

STATE OF FLORIDA AUDITOR GENERAL

Operational Audit

Report No. 2016-052
December 2015

VALENCIA COLLEGE



Sherrill F. Norman, CPA
Auditor General

Board of Trustees and President

During the 2014-15 fiscal year, Dr. Sanford C. Shugart served as President and the following individuals served as members of the Board of Trustees:

	<u>County</u>
Maria C. Grulich, Chair	Osceola
Lewis M. Oliver, III, Vice Chair ^a	Orange
Lucas D. Boyce to 7-1-14 ^b	Orange
Dr. Bruce A. Carlson ^c	Osceola
John M. Crossman	Orange
Linda Landman Gonzalez from 3-26-15 to 6-15-15 ^d	Orange
Guillermo Hansen ^e	Osceola
Daisy Lopez-Cid	Osceola
Raymer F. Maguire, III	Orange
Fernando J. Perez to 3-25-15 ^e	Orange

- Notes: ^a Board member served beyond the, end of term, May 31, 2014, and was reappointed on March 26, 2015.
^b Board member resigned on July 21, 2014, and position remained vacant through June 30, 2015.
^c Board member served beyond the end of term, May 31, 2015.
^d Board member was appointed but not confirmed and position remained vacant through June 30, 2015.
^e Board member served beyond the end of term, May 31, 2014.

The team leader was Jeffrey L. Cardinali, CPA, and the audit was supervised by Brenda C. Racis, CPA. Please address inquiries regarding this report to Jaime N. Hoelscher, CPA, Audit Supervisor, by e-mail at jaimehoelscher@aud.state.fl.us or by telephone at (850) 412-2868.

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VALENCIA COLLEGE

SUMMARY

This operational audit of the Valencia College (College) focused on selected College processes and administrative activities. Our audit disclosed the following:

Finding 1: The College entered into a property lease agreement with payments totaling \$27.4 million over a 60-year term without documented evaluations of lease or purchase options to establish which option would be the most cost-effective and beneficial.

Finding 2: The College paid terminal pay benefits totaling \$2.1 million to 24 employees pursuant to the College's retirement incentive program; however, certain payments exceeded State law benefit thresholds by a total of \$1.6 million.

BACKGROUND

Valencia College (College) is under the general direction and control of the Florida Department of Education, Division of Florida Colleges, and is governed by State law and State Board of Education rules. A board of trustees (Board) governs and operates the College. The Board constitutes a corporation and is composed of nine members appointed by the Governor and confirmed by the Senate. The College President serves as the executive officer and the corporate secretary of the Board, and is responsible for the operation and administration of the College.

The College has campuses in Kissimmee, Orlando, and Winter Park, Florida, and a criminal justice institute located in Orlando, Florida. Additionally, credit and noncredit classes are offered in public schools and other locations throughout Orange and Osceola Counties. The College reported enrollment of 29,967 full-time equivalent students for the 2014-15 fiscal year.

This operational audit focused on selected College processes and administrative activities. The results of our financial audit of the College for the fiscal year ended June 30, 2015, will be presented in a separate report. In addition, the Federal awards administered by the College are included within the scope of our Statewide audit of Federal awards administered by the State of Florida and the results of that audit, for the fiscal year ended June 30, 2015, will be presented in a separate report.

FINDINGS AND RECOMMENDATIONS

Finding 1: Facility Lease Agreement

State law¹ provides that a direct-support organization (DSO) is organized and operated exclusively to receive, hold, invest, and administer property and make expenditures to, and for the benefit of, a Florida College System institution. The College approved the Valencia College Foundation, Inc. (Foundation), as a DSO and the Foundation routinely receives and uses charitable contributions for the College.

¹ Section 1004.70(1)(a)2., Florida Statutes

In June 2013, the Board entered into an agreement to lease from the Foundation a 57,680 square foot facility for administrative office space. In July 2014, the agreement was updated to revise the lease amount and the rent commencement date to April 1, 2014. The updated lease agreement requires the College to pay \$456,461 annually for 60 years, or a total of \$27,387,660, and allows the College to terminate the agreement with a 2-year prior notice. The lease agreement also provides that the College may purchase the facility during the period January 1, 2020, through the end of the lease for the Foundation's cost basis (e.g., at April 1, 2014, the cost basis was \$6,615,433).

College personnel indicated that administrative office space was needed because the College had more than tripled in size and many business functions had been transferred to the College's various campus locations, making it more difficult and costly to function as a team. College personnel also indicated that the decision to initially lease rather than purchase the facility was made, in part, because of the lack of State construction funding and the lengthy process of issuing bonds. However, College records did not evidence that procedures had been established for the Board to consider lease or purchase options to ensure the selection of the most cost-effective and beneficial option. Had the College purchased the facility on April 1, 2014, financed it for 30 years at the State bond rate of 4.98 percent as of the lease agreement date, the College would have paid \$429,363 annually, or a total of \$12,880,890. This amount is \$21,122,203 less than the lease payments plus the cost to acquire the facility.

Timely documented evaluations assessing facility lease and purchase options would serve to increase public confidence in the decision-making process and demonstrate the Board's selection of the most cost-effective and beneficial option.

Recommendation: The College should establish procedures to ensure that documented evaluations of facility lease and purchase options are considered by the Board before entering facility agreements. Additionally, the Board should document consideration of the lease arrangement with the Foundation and other lease or purchase options to evidence whether the Board selected the most cost-effective and beneficial option.

Finding 2: Severance and Accumulated Sick Leave Pay

State law² defines severance pay as salary, benefits, or perquisites for employment services yet to be rendered that are provided to an employee who has recently been or is about to be terminated, limits such pay from exceeding 20 weeks of compensation, and prohibits the pay in instances of misconduct. College contracts for certain employees, such as the President and senior management, comply with State law by including provisions that limit severance pay to 20 weeks and prohibit the pay in instances of misconduct.

State law³ also permits colleges to pay full-time instructional staff and educational support employees up to 100 percent of accumulated sick leave balances based on the number years of service. For other than instructional staff or educational support employees, State law⁴ permits colleges to pay, for unused sick

² Section 215.425(4), Florida Statutes

³ Section 1012.865(2)(d), Florida Statutes

⁴ Section 1012.865(2)(e), Florida Statutes

leave accumulated on or after July 1, 2001, an amount equal to one-fourth of the employee's unused sick leave or 60 days of the employee's pay, whichever amount is less.

In addition to severance and accumulated sick leave pay, College policy,⁵ as authorized by State law,⁶ has provided a retirement incentive program (Program) for eligible employees since the 1988 calendar year. However, the College has not modified the program to recognize the limitations imposed upon severance payments by Chapter 2011-143, Laws of Florida. To receive Program benefits, employees must terminate employment with the College and retire no later than 48 months after becoming eligible for normal retirement. The Program provides retirement incentives for employees, such as additional compensation based on 75 days of salary, multiplied by 1.5 (equating to more than 22 weeks of pay); health insurance costs; and accumulated sick leave balances.

For the 2014-15 fiscal year, the College paid \$2,402,601 in Program benefits to 24 retiring employees, of which \$2,145,639 was additional compensation based on 75 days of the employees' salaries, multiplied by 1.5, and health insurance costs. However, these additional compensation benefits represented severance pay, and payments totaling \$1,527,596 made to 21 of the 24 retirees exceeded 20 weeks of the employees' compensation specified in State law. In response to our inquiry, College personnel indicated that these program payments were not for employment services yet to be rendered since these benefits were part of the employee's employment contract, therefore the payments were not severance pay. However, it appears that the above payments are severance pay⁷ as the payments are only made to employees who agree to terminate their employment.

Also, for the 2014-15 fiscal year, the College paid \$256,962 to 19 of the 24 retiring employees for Program benefits attributed to accumulated sick leave balances. However, these payments, when combined with non-Program accumulated sick leave payments, resulted in payments totaling \$79,554 made to 15 of these employees in excess of the limits set forth in State law. College personnel indicated that Program benefits for accumulated sick leave is one portion of the Program and is not part of the terminal pay for accumulated sick leave balances. However, interpreting the payments in this manner effectively circumvents the statutory limit on accumulated sick leave pay.

Recommendation: The College should enhance procedures to ensure that severance and accumulated sick leave pay do not exceed the limits established in State law.

Follow-up to Management's Response

The College's response indicates that the Program payments made to date are not prohibited severance pay as the payments were not for "employment services yet to be rendered." However, as the payments were conditioned upon the employee's termination of employment, and were not fixed by contract or law, and Attorney General Opinion No. 97-21 provides that "extra compensation in the form of a lump-sum payment as an incentive to end their employment," without express statutory authority, violates Section 215.425, Florida Statutes, it appears that severance payments totaling \$1,527,596 are prohibited by State law.

⁵ Policy 6Hx28:3C-12, Retirement Incentive Program

⁶ Section 1001.64, Florida Statutes

⁷ Section 215.425(4)(d), Florida Statutes

The College's response also indicates that leave balances, among other components, are "mere measuring sticks to determine the amount of the benefit that might be applicable" and that "Program payouts based on leave balances are not actually payouts of sick leave." However, since the College separately made sick leave payments to the employees based on the maximum amount permitted by State law, further payments related to accumulated sick leave effectively circumvent Section 1012.865(2)(e), Florida Statutes, and result in extra compensation prohibited by Section 215.425, Florida Statutes.

Consequently, the finding stands as presented and we continue to recommend that the College limit severance and accumulated sick leave pay to the limits established in State law.

OBJECTIVES, SCOPE, AND METHODOLOGY

The Auditor General conducts operational audits of governmental entities to provide the Legislature, Florida's citizens, public entity management, and other stakeholders unbiased, timely, and relevant information for use in promoting government accountability and stewardship and improving government operations.

We conducted this operational audit from April 2015 to August 2015 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The objectives of this operational audit were to:

- Evaluate management's performance in establishing and maintaining internal controls, including controls designed to prevent and detect fraud, waste, and abuse, and in administering assigned responsibilities in accordance with applicable laws, rules, regulations, contracts, grant agreements, and other guidelines.
- Examine internal controls designed and placed in operation to promote and encourage the achievement of management's control objectives in the categories of compliance, economic and efficient operations, reliability of records and reports, and safeguarding of assets.
- Identify statutory and fiscal changes that may be recommended to the Legislature pursuant to Section 11.45(7)(h), Florida Statutes.

This audit was designed to identify, for those programs, activities, or functions included within the scope of the audit, weaknesses in management's internal controls; instances of noncompliance with applicable laws, rules, regulations, contracts, grant agreements, and other guidelines; and instances of inefficient or ineffective operational policies, procedures, or practices. The focus of this audit was to identify problems so that they may be corrected in such a way as to improve government accountability and efficiency and the stewardship of management. Professional judgment has been used in determining significance and audit risk and in selecting the particular transactions, legal compliance matters, records, and controls considered.

As described in more detail below, for those programs, activities, and functions included within the scope of our audit, our audit work included, but was not limited to, communicating to management and those

charged with governance the scope, objectives, timing, overall methodology, and reporting of our audit; obtaining an understanding of the program, activity, or function; exercising professional judgment in considering significance and audit risk in the design and execution of the research, interviews, tests, analyses, and other procedures included in the audit methodology; obtaining reasonable assurance of the overall sufficiency and appropriateness of the evidence gathered in support of our audit findings and conclusions; and reporting on the results of the audit as required by governing laws and auditing standards.

Our audit included the selection and examination of records and transactions. Unless otherwise indicated in this report, these records and transactions were not selected with the intent of projecting the results, although we have presented for perspective, where practicable, information concerning relevant population value or size and quantifications relative to the items selected for examination.

An audit by its nature does not include a review of all records and actions of management, staff, and vendors, and as a consequence, cannot be relied upon to identify all instances of noncompliance, fraud, waste, abuse, or inefficiency.

In conducting our audit, we:

- Reviewed for appropriateness and propriety, the terms of a lease agreement between the College and its direct-support organization (DSO) for administrative office space.
- Selected and examined 6 payments totaling \$598,953, from the population of 64 payments, totaling \$713,933, made by the College to its DSO during the 2014-15 fiscal year, to determine the legal authority and public purpose in making such payments.
- Reviewed the College's policies and procedures for terminal pay to determine compliance with State law and Board policies. From a population of 111 employees receiving \$589,140 in terminal pay from July 1, 2014, through April 30, 2015, for accumulated annual and sick leave, we selected and examined records for 19 employees receiving terminal pay totaling \$406,332 to determine whether terminal pay was calculated in accordance with Sections 110.122 and 1012.865, Florida Statutes, and Board Policy Nos. 6Hx28.3C-12 and 6Hx28:3F-02.
- Reviewed the College's retirement incentive program to determine whether program provisions were in accordance with applicable State laws and Board policies. We selected and examined the 24 payments totaling \$2,402,601 paid during the 2014-15 fiscal year to determine whether the payments were made in accordance with applicable State laws and the Board's program provisions.
- Reviewed the procedures used for proper solicitation of proposals, evaluation of proposals and contractor presentations, and final selection of the construction manager for one construction project with an estimated budget of \$10,103,000. Additionally, we reviewed the selection procedures used to award two construction manager contracts, to be paid at cost plus a fee markup ranging from 10 to 15 percent, for renovation projects costing up to \$1 million to determine whether such procedures were adequate and fair.
- From a population of 657 industry certifications eligible for performance funding during the 2014-15 fiscal years, we selected and examined 30 certifications to determine whether the College maintained documentation for student attainment of the industry certifications.
- Communicated on an interim basis with applicable officials to ensure the timely resolution of issues involving controls and noncompliance.
- Performed various other auditing procedures, including analytical procedures, as necessary, to accomplish the objectives of the audit.

- Prepared and submitted for management response the findings and recommendations that are included in this report and which describe the matters requiring corrective actions. Management's response is included in this report under the heading **MANAGEMENT'S RESPONSE**.

AUTHORITY

Section 11.45, Florida Statutes, requires that the Auditor General conduct an operational audit of each College on a periodic basis. Pursuant to the provisions of Section 11.45, Florida Statutes, I have directed that this report be prepared to present the results of our operational audit.



Sherrill F. Norman, CPA
Auditor General

MANAGEMENT'S RESPONSE

VALENCIA COLLEGE

December 3, 2015

Sherrill F. Norman
Auditor General
G74 Claude Pepper Building
111 West Madison Street
Tallahassee, FL 32399-1450

Dear Ms. Norman:

Please see the following responses provided relating to the June 30, 2015, audit report of Valencia College.

Finding 1: Facility Lease Agreement

Recommendation: The College should establish procedures to ensure that documented evaluations of facility lease and purchase option are considered by the Board before entering facility agreements. Additionally, the Board should document consideration of the lease arrangement with the Foundation and other lease or purchase options to evidence whether the Board selected the most cost-effective and beneficial option.

On July 16, 2013, our board was presented the key lease information (i.e. annual lease payment, cost per square foot, terms of renovation, college purchase rights and the right of first refusal options) for what is now the District Office building for Valencia College. Additionally, prior to the board meeting the yet to be signed lease agreement was distributed for their review. At the meeting on July 23, 2013, our board approved the agreement based on its beneficial options and well as its cost effectiveness relating to market competitiveness of the location and the rate received.

Notably, at the time of purchase the college did not want to have the state incur any long term debt obligation. In addition, the arrangement provided operational savings, flexibility and growth potential and aligned with the student first capital spending strategy.

To remain fully compliant, we will ensure that significant lease opportunities and decisions that the college might consider are reviewed with the board. In addition, we will periodically review with the board exercise options provided to Valencia College relating to purchasing the building.

Finding 2: Severance and Accumulated Sick Leave Pay
Recommendation: The College should enhance procedures to ensure that severance and accumulated sick leave pay do not exceed the limits established in State law.

This pertains to Valencia College's Policy 6Hx28: 3C-12, Retirement Incentive Program ("Program"). At the outset, it is important to note that on September 23, 2015, for business reasons unrelated to this audit, Valencia's District Board of Trustees formally voted to repeal the Program, adopting a transition period schedule that will close the Program to employees in stages with full repeal occurring at the conclusion of the 2018-19 fiscal year. Nonetheless, payments made to date by the College in accordance with the Valencia Program under discussion in the Preliminary and Tentative Audit Finding ("Finding") are not prohibited severance pay, as they do not fall within the express definition of "severance pay" as contained in applicable Florida law.

With respect to payments made to retiring College employees in accordance with the Program's provisions, the Finding opines that "...it appears that the above payments are severance pay as the payments are only made to employees who agree to terminate their employment." The Finding correctly cites Section 215.425(4), F.S. as the basis for the definition of severance pay to be applied here, "...the actual or constructive compensation, including salary, benefits, or perquisites, for employment services yet to be rendered which is provided to an employee who has recently been or is about to be terminated..." but fails to recognize or give meaning to the clause, "*for employment services yet to be rendered*" in reaching its conclusion. This disregard of the impact of the inclusion of "*for employment services yet to be rendered*" is critical indeed, given that the legislature chose for its own reasons to narrow the meaning of "severance pay" in this law by expressly limiting the application of its prohibition to include only compensation for employment services yet to be rendered. In the present case, no Program payments made by the College to its employees were made in consideration of employment services yet to be rendered, and in fact all such payments have been calculated and based upon services already rendered to the College. Therefore, the Program payments do not and cannot meet the express statutory definition of severance pay.

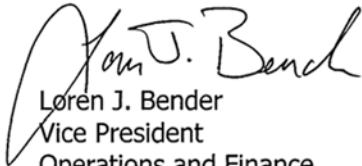
The Program is an established College compensation package earned over time by eligible employees - in calculating the value of Program benefits in each case, the policy uses a backward looking calculation, drawing upon past service of the employee and based in part on the balances of various types of accrued leave, among other components, as mere measuring sticks to determine the amount of the benefit that might be applicable. However, Program payouts based on leave balances are not actually payouts of sick leave or any other type of leave, as

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evidenced in part by the fact that the employees' actual leave balances (always separately paid out in accordance with the law as part of a separate terminal pay policy) were never affected by Program payouts. Valencia's Program is compliant with Florida law, and terminal pay for sick leave is paid in accordance with Florida law.

Should you have any questions, please let me know.

Sincerely,



Loren J. Bender
Vice President
Operations and Finance

c: Brenda Racis
Sanford Shugart