

**STATE OF FLORIDA AUDITOR GENERAL**

**Operational Audit**

Report No. 2016-084  
February 2016

**EASTERN FLORIDA STATE COLLEGE**



Sherrill F. Norman, CPA  
Auditor General

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Notes: <sup>a</sup> Board member served beyond the end of term,  
May 31, 2015.

<sup>b</sup> Board member served beyond the end of term,  
May 31, 2014, until reappointed, August 5, 2014.

The team leader was Jeffrey M. Brizendine, 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](mailto:jaimehoelscher@aud.state.fl.us) or by telephone at (850) 412-2868.

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# EASTERN FLORIDA STATE COLLEGE

## ***SUMMARY***

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This operational audit of Eastern Florida State College (College) focused on selected College processes and administrative activities and included a follow-up on findings noted in our report No. 2013-018. Our operational audit disclosed the following:

**Finding 1:** College records did not always evidence that capital improvement fees were used for authorized purposes, resulting in questioned costs of \$564,483.

**Finding 2:** The College did not always perform background screenings for applicable individuals in positions of special trust and responsibility.

**Finding 3:** Textbook affordability policies and procedures could be improved.

**Finding 4:** The College procured bank services without a contract or competitive proposals for the services.

**Finding 5:** The College needs to improve controls over the purchasing card program.

## ***BACKGROUND***

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Eastern Florida State 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 five 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 Cocoa, Melbourne, Palm Bay, and Titusville, Florida. Additionally, credit and noncredit classes are offered through a virtual campus and dual enrollment courses in public schools in Brevard County. The College reported enrollment of 11,039 full-time equivalent students for the 2014-15 fiscal year.

This operational audit focused on selected College processes administrative activities and included a follow-up on findings noted in our report No. 2013-018. 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***

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### **Finding 1: Capital Improvement Fees**

State law<sup>1</sup> authorizes Colleges to collect capital improvement fees and use the fees only to acquire improved real property or construct and equip, maintain, improve, or enhance College educational facilities. State law<sup>2</sup> also requires the College to prioritize each project to be funded in whole or in part by the capital improvement fee on its short-term plan for facility needs covering the next 5-year period. Educational facilities are defined by State law<sup>3</sup> and the *State Requirements for Educational Facilities (SREF)*<sup>4</sup> as buildings and equipment, structures, and special educational use areas that are built, installed, or established to serve primarily educational purposes and secondarily community social and recreational purposes.

During the period July 1, 2014, through March 31, 2015, the College incurred Unexpended Plant Fund expenses totaling \$15,334,105, including expenses totaling \$1,991,428 paid from capital improvement fees. To determine the propriety of Unexpended Plant Fund expenses, we selected and examined documentation supporting 28 Fund expenses totaling \$3,201,321. We found 3 expenses totaling \$156,249 paid from capital improvement fees for baseball stadium renovations such as new dugouts, fencing, and irrigation; however, the College did not specifically identify the baseball stadium renovation project on the College's 2012-13, 2013-14, or 2014-15 fiscal year short-term plans for facility needs. Our expanded examination of College records for the 2014-15 fiscal year disclosed that the College expended a total of \$564,483 from capital improvement fees for the baseball stadium renovations. These expenses represent questioned costs of capital improvement fees.

In response to our inquiry, College personnel indicated that the College included the baseball stadium renovations projected costs in the 2012-13, 2013-14, and 2014-15 fiscal year short-term plans for facility needs as renovation/remodeling and site improvement. College personnel also indicated that the College primarily used the baseball stadium for its intercollegiate athletic baseball team and not for educational purposes, but that the College could use capital improvement fees for the stadium since the stadium served a community social and recreational purpose, a purpose included in the State law and *SREF* definitions of educational facilities. While the short-term plans included budgets between \$3 million and \$5 million as priority 2 renovation/remodeling, infrastructure, site improvement, and land acquisition, the plans did not provide transparency for the actual use of the fees by specifically identifying each project to be funded in whole or in part by the fees. Further, since the stadium did not primarily serve an educational purpose and, therefore, did not meet the full definition of an educational facility, it was not apparent that use of capital improvement fees for the stadium renovations met the requirements set forth in State law.

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<sup>1</sup> Section 1009.23(11), Florida Statutes.

<sup>2</sup> Section 216.0158, Florida Statutes.

<sup>3</sup> Section 1013.01(6), Florida Statutes.

<sup>4</sup> Section 1.2(36)(d), *SREF*.

**Recommendation:** The College should enhance procedures to ensure that each project funded in whole or in part with capital improvement fees is specifically identified on its short-term plan for facility needs as required by State law. We also recommend that the College provide documentation to the Florida Department of Education supporting the allowability of the \$564,483 of questioned costs from capital improvement fees or restore this amount to the Unexpended Plant Fund.

## **Finding 2: Background Screenings**

Although not specific to colleges, State law<sup>5</sup> provides for background screenings for employees in positions of special trust and responsibility. For example, a level 2 background screening<sup>6</sup> is required for owners, operators, employees, and volunteers working in summer camps providing care for children; personnel hired to fill positions requiring direct contact with students in any district school system or university lab school; and certain State employment positions. College procedures<sup>7</sup> require background screenings for employees or volunteers in positions of special trust and responsibility, such as employees in certain departments including accounting, campus security, and the College's child care centers.

College personnel indicated that, as of November 2015, the College had performed background screenings for 167 employees, including cashiers and security officers. However, College procedures did not always require background screenings for other employees in positions of special trust and responsibility, such as the 45 Information Technology Department employees or the approximately 20 employees who worked in the College's sports camps and planetarium tours and have contact with persons under 18 years of age. In response to our inquiry, College personnel indicated that a plan is being developed to improve the College's background screening procedures. When individuals who work in positions of special trust and responsibility are not required to have background screenings, there is an increased risk that the individuals may have backgrounds that are not suitable for such employment.

**Recommendation:** The College should enhance procedures to ensure that background screenings, including fingerprinting, are performed for individuals in positions of special trust or responsibility, including those that have direct contact with persons under 18 years of age.

## **Finding 3: Textbook Affordability**

State law<sup>8</sup> requires colleges to post on their Web sites, as early as is feasible, but not less than 30 days prior to the first day of classes, a list of each textbook required for each course offered at the institution during the upcoming term. Additionally, State Board of Education (SBE) rules<sup>9</sup> require colleges to collect and maintain, before each textbook adoption is finalized, written or electronically transmitted certifications from course instructors attesting that all textbooks and other instructional materials ordered will be used, particularly each individual item sold as part of a bundled package. Further, the Textbook Affordability

<sup>5</sup> Section 409.175, Florida Statutes.

<sup>6</sup> A level 2 background screening includes fingerprinting for Statewide criminal history records checks through the Florida Department of Law Enforcement and national criminal history records checks through the Federal Bureau of Investigation.

<sup>7</sup> College Procedure No. 301.9, Criminal History Check.

<sup>8</sup> Section 1004.085(3), Florida Statutes.

<sup>9</sup> SBE Rule 6A-14.092(3), Florida Administrative Code.

Workgroup (Workgroup)<sup>10</sup> recommended that each college reduce textbook costs by developing and monitoring policies and guidelines for textbook adoption, such as a course-wide adoption of textbooks for the same course.

During the 2014-15 fiscal year, the College adopted 4,021 textbooks for the Fall 2014 term, 4,346 textbooks for the Spring 2015 term, and 1,323 textbooks for the Summer 2015 term. The College contracted with a vendor to manage and operate the College Bookstore, as well as compile and post a list of adopted textbooks on the Bookstore's Web site. According to College personnel, textbooks are generally published on the Web site within 24 hours after the Bookstore vendor recorded the adopted textbooks in the vendor's system.

As part of our audit, we compared the 2014-15 fiscal year textbook adoption reports to textbooks added to the Bookstore's Web site and found that the College had not established monitoring procedures to ensure that textbook information was posted on the Bookstore Web site at least 30 days prior to the first day of classes. Specifically, we identified untimely postings for 194 textbooks (4.8 percent) for the Fall 2014 term, 53 textbooks (1.2 percent) for the Spring 2015 term, and 154 textbooks (11.6 percent) for the Summer 2015 term. These 401 textbooks were posted from 6 to 95 days late and included 65 textbooks from the Fall term and 12 textbooks from the Spring term that were not posted to the Web site until 8 to 65 days after the first day of classes. In response to our inquiry, College personnel indicated that the delays occurred because instructors did not timely notify the Bookstore staff of the textbooks or the instructors directly notified students of the textbooks and did not notify the Bookstore staff. Without timely posted textbook information on the Bookstore Web site, the College cannot demonstrate compliance with State law and students may misunderstand course textbook requirements and not have sufficient time to consider textbook purchase options and limit their textbook costs.

**Recommendation: The College should develop and implement textbook affordability policies and procedures to ensure textbooks are timely posted to the Bookstore Web site.**

#### **Finding 4: Procurement of Bank Services**

The Government Finance Officers Association (GFOA)<sup>11</sup> recommends that governments reevaluate bank services on a periodic basis, using a competitive selection process, to help governments achieve their objectives of appropriate and cost-effective bank services while protecting their funds and reducing risk. Further, the GFOA recommends that governments enter into contracts for bank services that specify services, fees, and other components of compensation.

During the 2014-15 fiscal year, the College maintained two zero-balance bank accounts and one depository bank account. The College used the zero-balance bank accounts as clearing accounts to process expenses such as payments for employee compensation, payroll deductions and withholdings, and employee health insurance. Deposits to the zero-balance bank accounts were immediately offset by payments such that the accounts continuously maintained a zero balance. Additionally, the College used the depository account for receipt of State appropriations, tuition fees, and other miscellaneous

<sup>10</sup> The Workgroup, consisting of membership from the Florida College System, in cooperation with the Division of Florida Colleges issued a report dated December 1, 2009, that contained certain recommendations.

<sup>11</sup> Government Finance Officers Association, Best Practice – *Procurement of Banking Services*.

collections. During the 2014-15 fiscal year, the College maintained an average monthly bank balance in the depository bank account of \$9.3 million, with balances ranging from \$6.1 million to \$12.2 million, and incurred banking service fees totaling \$27,718 for the account.

College personnel indicated that, in December 2007, the College went through a competitive selection process for bank services and selected a new bank. While transitioning to the new bank in May 2008, the bank began showing signs of fiscal distress, so the College terminated the arrangement and continued with its existing bank. However, although we requested, neither College personnel nor the bank could provide a written contract between the College and the bank. Without a Board-approved written bank services contract, College deposits may not be adequately protected and bank services and related fees may be inconsistent with Board expectations.

**Recommendation: The Board should execute written contracts for bank services to protect the College's deposits, identify the responsibilities of the College and bank, and define expected bank services and related fees. We also recommend that the Board procure bank services on a periodic basis using a competitive selection process.**

#### **Finding 5: Purchasing Card Program**

The College administers a purchasing card (P-card) program, which gives employees the convenience of purchasing items without using the standard purchase order process and expedites low-dollar purchases of goods and services. The College's *P-Card Policies and Procedures Manual (Manual)* provides guidance on the use of P-cards and requires cardholders to complete a monthly P-card reconciliation report and submit it, along with the monthly billing statements and all supporting documentation, to the cardholder's financial manager for review and approval. As of March 11, 2015, there were 334 P-cards issued to College employees, including 139 financial managers.

The College incurred P-card charges totaling \$1,720,356 for the period July 1, 2014, through February 28, 2015, and our tests disclosed that the College's P-card procedures were properly designed and operating effectively to ensure that P-card transactions generally represented appropriate College expenses. However, because the *Manual* did not require supervisory review and approval of financial manager P-card transactions, no review and approval of these transactions occurred. While our tests of P-card transactions did not disclose any inappropriate charges or potential fraud, the absence of supervisory review and approval of financial manager P-card transactions increases the risk that inappropriate charges or fraud could occur without timely detection.

**Recommendation: We recommend that the College strengthen procedures to ensure that financial manager P-card transactions are subject to supervisory review and approval.**

### ***PRIOR AUDIT FOLLOW-UP***

The College had taken corrective action for the finding included in our report No. 2013-018.

## **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 March 2015 to November 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, and identify weaknesses in those controls.
- Determine whether management had taken corrective actions for findings included in our report No. 2013-018.
- 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 statistically 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 College's written information technology (IT) policies and procedures to determine whether the policies and procedures addressed certain important IT control functions, such as security, systems development and maintenance, and disaster recovery.
- Evaluated the College data center's physical access controls to determine whether vulnerabilities existed.
- Reviewed College procedures for maintaining and reviewing employees' access to IT resources to determine the appropriateness and necessity of access based on employees' job duties and whether the access prevented the performance of incompatible duties. We examined access privileges for all 17 employees granted access to the finance resources applications and for all 22 employees granted access to the human resource application to determine the appropriateness and necessity of the access granted. We also reviewed logging procedures for security changes and administrative level privileges within applicable system software.
- Reviewed College procedures designed to prohibit former employees' access to electronic data files. We also examined the access privileges for 8 of the 94 employees who separated from employment during the 2014-15 fiscal year to determine whether the former employees' access privileges had been timely deactivated.
- Evaluated the College's written security policies and procedures governing the classification, management, and protection of sensitive and confidential information.
- Determined whether a comprehensive IT disaster recovery plan was in place and had been recently tested.
- Evaluated select operating system, database, network, and application security settings to determine whether authentication controls were configured and enforced in accordance with IT best practices.
- Determined whether a written, comprehensive IT risk assessment had been developed to document the College's risk management and assessment processes and security controls intended to protect the confidentiality, integrity, and availability of data and IT resources.
- Determined whether a comprehensive IT security awareness and training program was in place.
- Examined Board minutes to determine whether Board approval was obtained for policies and procedures in effect during the 2014-15 fiscal year and for evidence of compliance with Sunshine Law requirements (i.e., proper notice of meetings, meetings readily accessible to the public, and properly maintained meeting minutes).
- Examined College records to determine whether the College informed students and employees at orientation and on its Web site of the existence of the Florida Department of Law Enforcement sexual predator and sexual offender registry Web site and the toll-free telephone number that gives access to sexual predator and sexual offender public information as required by Section 1006.695, Florida Statutes.

- Examined College records to determine whether the College had developed an anti-fraud policy and procedures to provide guidance to employees for communicating known or suspected fraud to appropriate individuals. Also, we determined whether the College had implemented appropriate and sufficient procedures to comply with its anti-fraud policies.
- Analyzed the unencumbered balance in the unrestricted current fund of the College Board of Trustees' approved operating budget to determine whether the balance was below 5 percent of the total available fund balances at June 30, 2015. Also, we performed analytical procedures to determine whether financial transactions in other funds may require resources from unrestricted funds that would cause a significant reduction in available unrestricted current or auxiliary funds.
- Verified that the three payments totaling \$26,782 made by the College to its direct-support organization during the period July 1, 2014, through June 30, 2015, were authorized by Section 1004.70(1)(a)2 and (3), Florida Statutes.
- From the population of 1,182 student receivables totaling \$1,249,410, recorded as of June 17, 2015, selected and examined documentation relating to 30 student receivables totaling \$29,550 to determine whether collection efforts were adequate and restrictions on student records and holds on transcripts and diplomas were appropriate and enforced for students with delinquent receivable accounts.
- Examined College records to determine whether uncollectible accounts written-off, totaling \$612,803, were properly approved.
- Evaluated controls over student fees to determine whether students who had not paid fees in an approved manner were not considered in calculating full-time equivalent (FTE) enrollments for State funding purposes pursuant to Sections 1009.22(11) and 1009.23(9), Florida Statutes.
- From the population of 30,090 students enrolled as Florida residents during the Fall 2014 and Spring 2015 terms, selected and examined College records for 35 students to determine whether the College documented Florida residency and correctly assessed tuition in compliance with Sections 1009.21 and 1009.22, Florida Statutes, and State Board of Education Rule 6A-10.044, Florida Administrative Code.
- Examined College records related to distance learning courses, with fee revenue totaling \$1,461,980 for the 2014-15 fiscal year, to determine whether the fee was assessed and collected as provided by Section 1009.23(16)(b), Florida Statutes.
- Examined College records related to its dual enrollment program to determine whether the College was in compliance with Section 1007.271(21), Florida Statutes.
- From the population of 223 industry certifications eligible for performance funding that were attained by students during the period May 2014 through May 2015, selected and examined 30 certifications to determine whether the College maintained documentation for student attainment of the industry certifications.
- From the population of three auxiliary operations vendor contracts totaling \$704,003 for the 2014-15 fiscal year, selected and examined College records related to one contract totaling \$652,213 to determine whether the College properly monitored compliance with the contract terms for fees, insurance, and other provisions. Also, we performed analytical procedures to determine whether the College's auxiliary services were self-supporting.
- Examined documentation to determine whether the College's policies and procedures regarding textbook affordability were in accordance with Section 1004.085, Florida Statutes.
- Reviewed College records for supervisory review and approval of time worked and leave used by noninstructional and administrative employees to evaluate whether compensation payments were appropriate and leave balances are accurate.

- Reviewed the College's policies and procedures for payments of accumulated annual and sick leave (terminal leave pay) to determine whether the policies and procedures promoted compliance with State law and Board policies. From the population of 65 former employees paid terminal pay totaling \$340,103 during the period July 1, 2014, through March 31, 2015, we selected and examined terminal leave payments totaling \$260,768 made to 12 former employees and evaluated the payments for compliance with Sections 110.122 and 1012.865, Florida Statutes and Board Procedure No. 304.6.
- Reviewed severance pay provisions included in 6 of 13 senior management employee contracts to determine whether the provisions complied with Section 215.425(4), Florida Statutes.
- Examined records for the three employees, including the College President, who were paid compensation exceeding \$200,000 during the 2014-15 fiscal year, to determine whether the three employees' paid compensation, totaling \$704,460, did not exceed limits established by Sections 1012.885 and 1012.886, Florida Statutes.
- Evaluated College policies and procedures for obtaining background screenings and determined whether individuals in positions of special trust and responsibility, such as positions that have direct contact with persons under the age of 18, had undergone appropriate background screenings.
- Reviewed College policies and procedures to determine whether health and life insurance was provided only to eligible employees, retirees, and dependents and that such insurance was timely canceled upon separation from employment. Also, we determined whether the College had procedures for reconciling health insurance costs to employee, retiree, and Board-approved contributions.
- From the population of payments totaling \$126,960.92 to five consultants during the period July 1, 2014, through March 31, 2015, examined documentation for 8 payments that we selected totaling \$124,610 related to two consulting agreements to determine whether the agreements were Board-approved and properly awarded and executed, payments were made in accordance with contract terms, and vendors maintained adequate insurance.
- Reviewed the adequacy of College procedures for selecting bank services.
- Selected and examined purchasing card (P-card) records for 7 of 19 employees who were issued P-cards and separated from employment during the 2014-15 fiscal year to determine whether the P-cards were timely canceled upon the cardholder's employment separation.
- From the population of P-card transactions totaling \$1,720,356 during the period July 1, 2014, through February 28, 2015, examined 30 P-card transactions that we selected totaling \$35,988 to determine whether the P-card program was administered in accordance with College policies and procedures and transactions were not of a personal nature.
- Evaluated College policies and procedures related to identifying potential conflicts of interest. For selected College officials, we reviewed Department of State, Division of Corporation records; statements of financial interests; and College records to identify any potential relationships that represent a conflict of interest with vendors used by the College.
- For the two major construction projects with total contracts of \$29,600,000, in progress during the 2014-15 fiscal year, examined documentation to determine whether the College complied with applicable policies, procedures, and State laws and rules. Specifically, we examined:
  - Evidence of the selection process for 33 contracts awarded to architects and engineers, construction managers, and subcontractors to determine whether the College adequately monitored the selection process.
  - Documentation to determine whether the Board had adopted a policy establishing minimum insurance coverage requirements for design professionals, such as architects and engineers.

- From the population of construction expenditures totaling \$14,471,178, documentation for 12 payments totaling \$6,445,811 for one construction project with expenditures totaling \$8,576,805 during the 2014-15 fiscal year to determine whether the payments were adequately supported and properly approved.
- From the population of Public Education Capital Outlay (PECO) and other restricted capital outlay payments totaling \$15,334,105, examined College records supporting 28 payments that we selected totaling \$3,201,321 to determine whether the funds were expended in compliance with the restrictions imposed on the use of these resources.
- Determined if PECO funds were properly encumbered by the required reversion date or returned as required by Section 216.301(2)(a) and (c), Florida Statutes.
- Determined whether the College had adopted an adequate policy for electronic funds transfers.
- 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***

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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



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STATE COLLEGE

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January 15, 2016

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Dear Ms. Norman:

The following is the response to the preliminary and tentative finding of your operational audit of Eastern Florida State College.

Finding No. 1: Capital Improvement Fees.

The appropriate College staff will annually review and identify proposed projects on its short-term plan for facilities needs in order to best determine which may be funded in whole or part from capital improvement fees.

The College does not agree that the use of capital improvement fees for athletic facilities in any way contradicts requirements set forth in state law. On the contrary, the College believes that these funds are specifically available for these kinds of projects and offers, in addition to this view, the attached opinion from College counsel Gray Robinson.

The auditor has concluded that the baseball facility does not serve an educational purpose since no formal courses are held there. The term "Educational Purpose" is not defined in statute nor state board rule. The college considers both intramural and intercollegiate athletics, which are authorized student activities, to be parts of the College mission and, along with hundreds of other student activities, clearly a part of the educational experience offered. See also Fla. Admin. Code R. 6A-14.058.

Participants are taught the skills to work, communicate, and build consensus with others. They are taught critical and strategic thinking skills. They are taught the history of and rules of the sport and how to function within the parameters of these rules and procedures. All of these capabilities are key workforce skills that employers look for in today's graduates. Some students learn these skills and abilities by participating in athletics while others learn them by participating in music and arts programs, student government, or student clubs. Though these skills and abilities may not always be taught in formal classroom settings, they are nevertheless educational, and a basic purpose of the college system.

The auditor has also concluded that since the stadium did not primarily serve an educational purpose, it does not meet the full definition of an educational facility. The College disagrees with the auditor's apparent interpretation of the "full definition" of Section 1013.01(6), Fla. Stat. Many educational facilities, such as science and language labs would fail to meet this "secondary community social or recreational purpose" test yet nevertheless, are indisputably educational facilities.

Finally, Section 1.2, State Requirements for Educational Facilities (SREF) defines the word "facility" in three mutually exclusive ways:

(36) Facility.

1. Ancillary Facility. A building or other facility necessary to provide districtwide support services, such as an energy plant, bus garage, warehouse, maintenance building and/or administrative building.

2. Auxiliary Facility. The support spaces that are not designed for student occupant stations located at educational facilities and plants, such as libraries, administrative offices and/or cafeterias.

3. Educational Facility. The buildings and equipment, structures, and special educational use areas that are built, installed or established to serve primarily the educational purposes and secondarily the social and recreational purposes of the community.

Of these categories, athletic facilities can only be reasonably defined as 3, an educational facility.

In conclusion, the College will consult with FDOE to determine the allowability of the use of capital improvement fee funds on this project.

Sherrill F. Norman  
Auditor General, State of Florida  
January 15, 2015  
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Finding No. 2: Background Screenings

The College agrees to enhance procedures to ensure that background screenings, including fingerprinting, are performed for all individuals in positions of special trust or responsibility, including those that have direct contact with persons under 18 years of age.

Finding No. 3: Textbook Affordability

The College has implemented an online textbook adoption system that will be monitored to ensure that all required textbooks have been approved and posted to the bookstore website in accordance with statutory requirements.


Finding No. 4: Procurement of Bank Services

The College's depository accounts have been fully and continuously protected by Florida's Qualified Public Depository program. The college is preparing a request for proposal for banking services that will be released in the next 90 days.

Finding No. 5: Purchasing Card Program

Although supervisory approval of purchasing card transactions incurred by a financial manager was not required by the Manual, all purchasing card transactions are reviewed by Accounts Payable staff for compliance with college policies and procedures. This level of transaction review is equivalent to the review of traditional procurement transactions. In order to comply with the auditor's recommendation, the Manual will be updated to require supervisor approval of financial manager transactions.

Sincerely,



Dr. James H. Richey  
President

Attachment: Richard E. Mitchell, Esquire, Chair, Higher Education Practice Group,  
Gray/Robinson

cc: Mark Cherry, Chief Financial Officer  
Brenda Racis, Auditor, State of Florida

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January 15, 2016

Mr. Mark Cherry  
Chief Financial Officer  
Eastern Florida State College  
1519 Clearlake Road  
Cocoa, Florida 32922

Dear Mr. Cherry:

The purpose of this letter is to summarize my legal opinion on the following "preliminary and tentative audit finding" by the State of Florida Auditor General ("AG") as to the use of capital improvement fees by Eastern Florida State College ("EFSC") to renovate its on-campus intercollegiate baseball complex:

[S]ince the stadium did not primarily serve an educational purpose and, therefore, did not meet the full definition of an educational facility, it was not apparent that use of capital improvement fees for the stadium renovations met the requirements set forth in State law.

Respectfully, the AG's initial position is inconsistent with Florida law for the following primary reasons:

The twenty-eight (28) locally-governed institutions within the Florida College System are subject to the jurisdiction of the State Board of Education ("BOE"). Fla. Const. art. IX, § II. The BOE has provided that a college president shall "[p]erform duties and exercise responsibilities assigned by law, by rules of the State Board of Education, and by the board of trustees," among other things. Fla. Admin. Code R. 6A-14.0261. The BOE has also determined that college athletics are authorized student activities, see Fla. Admin. Code R. 6A-14.058, and this official determination is based on statutory authority as the Florida Legislature has plainly provided that "[e]ach Florida College System institution president shall ... Administer the Florida College System institution's program of intercollegiate athletics." § 1001.65(8), *Fla. Stat.*

In this light, it is clear that intercollegiate athletics programs are mission-centric and integral components of our Florida College System institutions, guided by the same purpose and objectives as curricular and co-curricular programs. Their goal is to reflect the institution's values and contribute to the mental, moral and physical development, training and teaching of student-athletes, and their purpose is no different than any

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academic program, which is to achieve the highest possible standard of excellence. See *Johnson v. Sparkman*, 31 So. 2d 863, 864 (Fla. 1947) (explaining that property used for educational purposes includes “property known to the community as a place where one can resort for cultural, mental or manual training, a place devoted to the purpose of imparting learning and skills that make for better citizenship and community life.”); Black’s Law Dictionary 592 (9th ed. 2009) (“educational institution” means “all buildings and grounds necessary to accomplish the full scope of educational instruction, including those things essential to mental, moral, and physical development.”); *Beach v. Univ. of Utah*, 726 P.2d 413, 419 (Utah 1986) (recognizing that the purpose of higher education institutions is to “educate in a manner which will assist the graduate to perform well in the civic, community, family, and professional positions he or she may undertake in the future.”).

Florida law expressly authorizes the use of capital improvement fees to “equip, maintain, improve, or enhance the educational facilities of the Florida College System institution,” § 1009.23(11)(a), *Fla. Stat.*, and defines “educational facilities” as the “buildings and equipment, structures, and special educational use areas that are built, installed, or established to serve primarily the educational purposes and secondarily the social and recreational purposes of the community and which may lawfully be used as authorized by the Florida Statutes and approved by boards.” § 1013.01(6), *Fla. Stat.* See also, Fla. Admin Code 69A-58.003(7) (“As used in these rules . . . ‘educational facilities’ includes each educational facility, educational plant, ancillary plant, and auxiliary facility and all buildings and structures contained therein and thereon.”).

Since the Florida Legislature has not statutorily-defined the term “educational purposes,” the Supreme Court of Florida has interpreted the term to include “any educational purpose.” *Lumms v. Fla. Adirondack Sch., Inc.*, 168 So. 232, 239 (Fla. 1934) (holding that school property “equipped with buildings, dormitories and play grounds suitable for school purposes” qualified under tax exemption for property used for “educational purposes”) (emphasis added).

Florida courts have broadly applied this wide-ranging “any educational purpose” standard. See, e.g., *Walden v. Berkeley Preparatory Sch., Inc.*, 337 So. 2d 1029 (Fla. 2d DCA 1976), *cert. denied*, 344 So. 2d 327 (Fla. 1977) (holding that preparatory school headmaster’s residence served “educational purposes” as it was used and available for cookouts and picnics for student groups, teas for students and parents, faculty entertainment, individual counseling of students and parents, and entertainment and housing of school guests); *Guyer v. Sch. Bd. of Alachua Cnty.*, 634 So. 2d 806, 809 (Fla. 1st 1994), *cert denied*, 641 So. 2d 1345 (Fla. 1994) (“In the present case, there is no doubt that the Halloween festivities and decorations serve a secular purpose. According to the school principal, the costumes and decorations serve to make Halloween a fun day for students and serve an educational purpose by enriching their educational background and cultural awareness.”).

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Furthermore, there is no legal authority supporting the narrow contention that formal classroom courses must be taught in a facility for it to serve educational purposes. *Compare*, Fla. Admin. Code 69A-58.0081(9) (specifying that “the emergency rescue (escape) opening shall be provided in rooms over 250 square feet used for classroom or other educational purposes or normally subject to student occupancy of 6 or more.”) (emphasis added).

The College's intercollegiate baseball program is within its educational mission as authorized by BOE regulation and Florida statutes, and therefore the program's related buildings and structures are primarily used for the educational purposes of teaching, developing and training intercollegiate student-athletes: (i) to work, communicate, and build consensus with their teammates and others; (ii) critical and strategic thinking skills; and (iii) the history of and rules of sport and to effectively function within the parameters of governing rules, among other things. Other students learn these same skills and abilities by participating in music and arts programs, student government and student clubs. These capabilities are key workforce skills that employers look for in recruiting today's college graduates.

Additionally, the College's baseball stadium complex secondarily serves community social and recreational purposes as it is open to the public for attendance at games and other functions, such as youth baseball camps. In comparison, many access-restricted educational facilities - such as science and research laboratories - may not serve a secondary community social or recreational purpose; nevertheless, such facilities indisputably qualify as educational facilities. *See State of Fla. v. Atkinson*, 831 So. 2d 172, 174 (Fla. 2002) (“A basic tenet of statutory construction compels a court to interpret a statute so as to avoid a construction that would result in unreasonable, harsh, or absurd consequences.”).

Under these circumstances, with respect to the use of locally-collected capital improvement fees for the renovation of a facility which fully qualifies under Florida law as an educational facility used for educational purposes, it is my considered legal opinion that Eastern Florida State College's use of capital improvement fees for the baseball stadium renovations was fully authorized under Florida law.

Respectfully yours,



Richard E. Mitchell, Esq.  
Chair, Higher Education Practice Group  
GrayRobinson, P.A.