

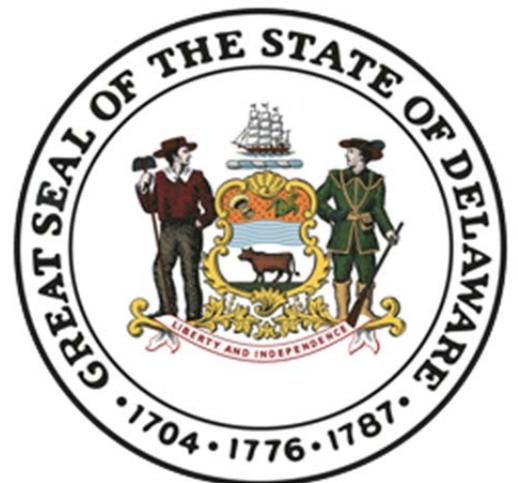
State of Delaware Office of Auditor of Accounts

Personnel Issues at Cape Henlopen School District

Special Investigation

**Fieldwork End Date: May 8, 2014
Issuance Date: May 8, 2014**

R. Thomas Wagner, Jr., CFE, CGFM, CICA
Auditor of Accounts





State of Delaware
Office of Auditor of Accounts
R. Thomas Wagner, Jr., CFE, CGFM, CICA

At a Glance

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This investigation was performed in accordance with the Council of the Inspectors General on Integrity and Efficiency, *Quality Standards for Investigations*.

For further information on this release, please contact:

Kathleen A. Davies
(302) 857-3919

Special Investigation of the Cape Henlopen School District (the District)

We opened a special investigation as a result of various allegations regarding the District Office operations, hiring practices, and pension violations. Allegations regarding abuse of official time without detailed specifics of time and date are difficult to substantiate or conclusively disprove. The District, under the most recent Superintendent's tenure, has developed reasonable controls to ensure that staff are held accountable for leave. Still, there seems to be a residual strain within the District's Business Office regarding favoritism.

We confirmed that two sisters work and process payroll together at the District Office. Unfortunately, the Director of Business Operations did not identify or correct the conflict in his assessment of the District's internal controls nor did he disclose the relationship in the internal control mapping document submitted to the Division of Accounting. Further, during our review, the Director of Business Operations insisted that proper controls are in place since he provides the final approval over payroll. We cannot understand why the District would take on unnecessary risk or require the last level of review to be more stringent than necessary when the District has ample financial secretaries to correct the issue.

Allegations that employees in the District received both a pension and a salary did prove to be partially substantiated. We learned the Office of Pensions gave one employee an ultimatum and he opted to suspend his pension benefit to comply with State requirements. According to the Pension Administrator, they would not pursue recovery of erroneously-received pension benefits since the employee is not currently violating the Return to Work rules.

Additional details of the report provide information regarding contracts and salaries for various positions that may or may not be concerning to the taxpayers of the District but are not outside the District or School Board's rights.

In general, we found Superintendent Fulton to be sincere and responsive to our inquiries. Further, changes made under his direction demonstrate a commitment to the District's responsibility to the students and the taxpayers.

Table of Contents

Background	1
Allegations and Results	4

The conclusion of the allegation is defined as follows:

Substantiated:	The allegation has been verified by competent evidence.
Partially Substantiated:	A portion of the allegation has been verified by competent evidence; however, competent evidence to verify the entire allegation could not be provided by the agency or obtained by AOA, or competent evidence was found to dispute a portion of the allegation.
Unsubstantiated:	Competent evidence was found to dispute the allegation.
Unable to Conclude:	Competent evidence to verify the allegation could not be provided by the agency or obtained by AOA.

Background

The District

The Cape Henlopen School District (the District) is a public school district in the State of Delaware (the State) that services residents in Southern Delaware, including towns such as Milton, Lewes, and Rehoboth. The District is comprised of one high school, two middle schools, four elementary schools, and the Sussex Consortium, which is a special school for all children in Sussex County with autism. Per the District Superintendent, the District enrolled 5,034 students as of September 30, 2013.

The District Office is the central location for the District's financial and administrative activities. Per the District's Board of Education (the Board) Policy, the Superintendent has "the primary responsibility and authority for the administration of this district" and serves as "the chief executive officer and educational advisor of the School Board." The Superintendent's duties, which are carried out with the assistance of the District Office employees, include:

- Select suitable curriculum;
- Recommend employee hires and dismissals to the District Board;
- Oversee the District's fiscal activities, including preparation of budgets and annual financial reports;
- Monitor school building needs and recommend new buildings or alterations, as appropriate.¹

Superintendent History

The District has had four Superintendents during the last five school years (2009/2010 school year through 2013/2014 school year).²

Superintendent Name	Start Date	End Date
Robert Fulton	07/31/2012	Current
Kevin Carson	06/27/2011	07/31/2012
David Robinson	06/01/2010	06/30/2011
George Stone	07/01/2005	05/31/2010

Eligibility for Service Pension

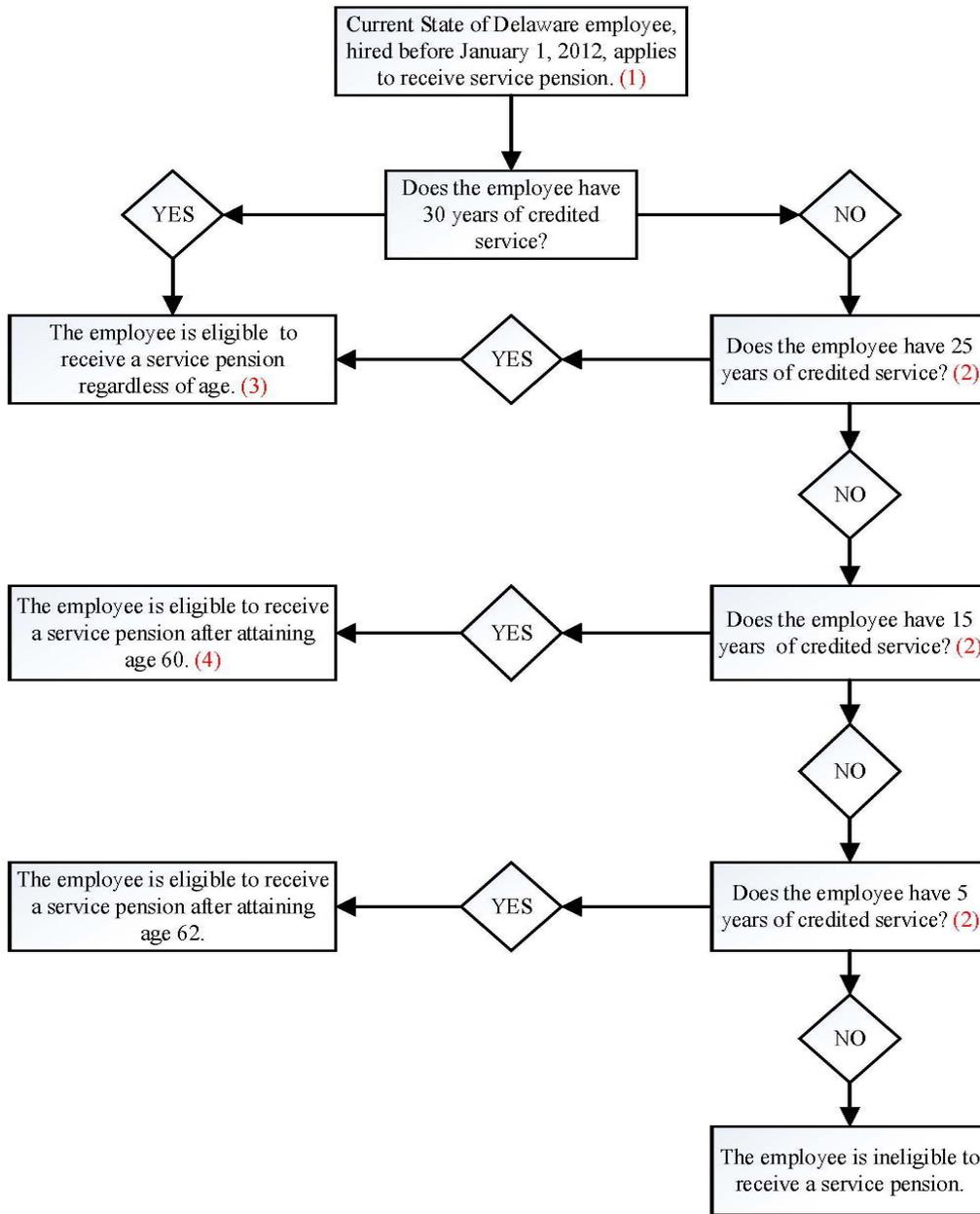
The District participates in the State Employees' Pension Plan.³ Different eligibility rules apply to employees hired on or after January 1, 2012 (considered "Post-2011 employees"), and employees hired prior to this date. Figure 1 reflects general pension eligibility rules for employees hired prior to January 1, 2012, which may be affected by other factors such as an employee less than 60 years of age and having less than 30 years of eligible service. Per 29 Del. C. §5523, a post-2011 employee must have 10 years of credited service to have a vested right to a pension, and therefore, those eligibility rules are not applicable to this engagement.

¹ Information summarized based on information obtained from the District's Board Policy (<http://www.teachers.cape.k12.de.us/~ritter/boardpolicy.pdf>) on December 9, 2013.

² Information summarized from PHRST List of Authorized Positions reports for the District and employees' Work Force Job Summary for the periods June 30, 2005 through June 30, 2013. PHRST, an acronym for Payroll Human Resource Statewide Technology, is the portion of the State of Delaware Enterprise Resource Planning system pertaining to payroll, human resources, and benefits administration.

³ 29 Del. C. §5501 [effective until fulfillment of 79 Del. Laws, c. §174, 5] (e)(1)b

Figure 1: Pension Eligibility Rules for Employees Hired Prior to January 1, 2012



(1) Per 29 Del. C. §5522(b), “A former employee with a vested right to a service pension shall become eligible to receive such pension [after] (1) age 60 if credited service is equal to or greater than 20 years and includes service prior to July 1, 1976; or (2) age 62 if credited service is equal to or greater than 5 years.

(2) Per 29 Del. C. §5522(a), credited service is “exclusive of service credited under [29 Del. C.] §5501 (d)(4), (5) and (12).” These exclusions refer to certain employment situations in the armed forces and educational institutions prior to July 1, 1976, and approved leave without pay to assume an elected position.

(3) Per 29 Del. C. §5522(d), an employee who has 25 years of credited service shall have the amount of service pension payable reduced by 2/10 percent for each month of credited service the employee has under 30 years.

(4) Per 29 Del. C. §5522(c), An employee shall be eligible for a reduced service pension if he or she has 15 years of credited service and has attained the age of 55. The amount of service pension payable shall be reduced by 2/10 percent for each month the employee is under the age of 60.

Pensioners Returning to Work

Delaware Code states that an individual shall not receive a service or disability pension for any month during which the individual is an employee, unless the individual is:

1. An elected official
2. An official appointed by the Governor
3. A temporary, casual, seasonal, or substitute employee as defined by the Board of Pension Trustees (see definitions below)
4. A substitute teacher employed by a school district in the State or
5. A temporary justice of the peace appointed pursuant to §9211 of Title 10.⁴

For the purpose of pensioners, the Board of Pension Trustees defines temporary, casual, and seasonal employees as the following:

- Casual or Seasonal – “...an employee employed by an agency under 29 Del C. §5903(17) who works less than thirty (30) hours per week, who works thirty (30) hours or more per week for a duration of not longer than twelve (12) months, or who works in a position not defined as a full-time or regular part-time pension creditable position according to the Rules & Regulations contained herein...”
- Temporary – “...an employee employed in a position for a specific project or task and for a finite period of time that will not exceed twelve (12) months duration. The twelve (12) month period includes employment pursuant to a temporary employment services agreement...”⁵

In order to maintain a qualified status with the Internal Revenue Service, the State instituted “Return to Work” rules for the State Employees’ Pension Plan. These rules, effective July 1, 2012, include:

- Pensioners who seek employment for purposes 2, 3, or 4 above, or who contract with an employer participating in the State pension plan, are required to have a 6-month separation of service from their effective date of retirement, if under the age of 65.⁶
- Employees cannot have a prearranged agreement with the State to return to work after retirement.
- Employers may not modify an existing pension-covered position to accommodate the retiree.
- Pensioners who are employed as casual seasonal employees are subject to an annual earnings threshold before incurring a reduction in pension benefits.⁷ The threshold for calendar year 2013 was originally \$19,240, but was increased to \$30,000 with the Fiscal Year 2014 Operating Budget Act.

Pensioners must suspend their pension benefits if they return to work and occupy a pension-covered position. Any compensation earned in these positions after retirement is eligible to be included in the calculation of the employee’s pension benefits.

Beginning on January 1, 2012, the Office of Pensions (Pensions) performs limited procedures with PHRST information to ensure a person is not simultaneously collecting a pension while serving in a pension-covered position. Pensions also monitors the wages of pensioners hired as casual or seasonal employees to verify that they do not exceed the earnings threshold.

⁴ 29 Del. C. §5502 (a) (1) to (5)

⁵ Delaware’s Administrative Code, Title 19, Section 2002, State Employees’ Pension Plan, 1.0 Definitions.

⁶ 29 Del. C. §5502 (d) and (e)

⁷ 29 Del. C. §5502 (d)

Allegations and Results

Allegation #1 – Unable to Conclude

Employees of the District Office are abusing their time. Examples of abuse include working from home without proper documentation to support the different work schedule, taking long lunches, and leaving work during the day.

Results of Our Review

Leave Records Not Appropriately Reduced

We found that the District did not properly reduce leave by 7.0 days while an employee was out on extended leave from September through November 2012. We brought this oversight to the attention of the District, and they corrected the employee’s leave records as of February 24, 2014.

Leave Reporting

The District utilizes Aesop⁸ to record and approve leave. Employees have direct access to Aesop to request leave and perform call-out procedures. Each building in the District, including the District Office, has an “attendance designee” who maintains a log to record when an employee is absent. The attendance designees reconcile their attendance logs to Aesop entries each week to ensure that leave was taken when an employee was absent. All leave is then subject to approval by the building administrator, which in most cases is the school principal.

The District brought to our attention that the administrator approval carries its own issues. Aesop permits a “batch approval” of leave, allowing an administrator to approve all pending leave for multiple employees without reviewing the details of the individual requests. In a six-month period, the District identified several instances where comments were not entered in Aesop as required or the incorrect form of leave was used. The District is working to resolve these issues before any leave balances are inappropriately impacted.

Monitoring District Office Absences

The District Office attendance designee documents when employees working in the District Office enter and leave the building throughout the day. However, there are two entrances to the building, making it difficult to monitor all employee attendance during the day. For security purposes, swipe cards are used to enter the rear location of the building and after hours. They are, however, not used to exit the building since this may be a violation of fire code, but it may be possible to produce reports that monitor arrival times. In addition, employees may leave the building for legitimate business purposes, which may not always be communicated to the attendance designee.

Time Abuse

We were unable to perform procedures to confirm the validity of allegations regarding working from home and taking extended absences during the day due to the lack of specific details and subjectivity of the statements.

According to the Superintendent, he received several comments from the community regarding various forms of time abuse when he first took his position. He stated that, rather than waiting to observe the issues himself, he took proactive measures to immediately discontinue the practice of working from home. He also began a District-wide initiative to decrease overtime, and required that all overtime be completed from the District facilities. The Superintendent stated that he wants the community to see and

⁸ Aesop is a program created by Frontline Technologies for school districts to document employee leave. It also serves as an automated substitute placement program for teachers.

know that the District is minimizing expenses. He did not want the community to have the perception that District employees were doing the wrong things.

In addition to the Superintendent’s efforts, we do not have any formal hotline complaints regarding time abuse since the Superintendent took the position in August 2012. Various inquiries during fieldwork revealed a few employees perceived other employees were receiving preferential treatment. Other claims included employees performing non-District-related work during work time.

For informational purposes, a history of overtime paid to District employees is detailed in Table 1.

Fiscal Year	Total Overtime Paid to District Employees
2012	\$ 348,514.29
2013	334,790.60
2014 (only includes the first 17 out of 26 pay periods for the fiscal year)	196,124.86

Allegation #2 – Substantiated

Two sisters work together in the payroll department, resulting in a “conflict of interest.”

Results of Our Review

The District confirmed that prior to 2012; the two sisters named in the allegation were the only employees in the payroll department. The Director of Business Operations stated that the District rearranged their organizational structure approximately one year ago to provide for better cross-training and continuity among their seven financial secretaries. Yet, even after this restructuring, one sister, whose primary responsibilities are in the accounting department, continues to perform a review function over all financial secretaries in the payroll department, including her sister.

Per the Association of Certified Fraud Examiners, a strong code of business ethics and conduct does not permit employing “relatives of employees ... on a permanent or temporary basis where the relative directly reports to the employee or the employee exercises any direct influence with respect to the relative’s hiring, placement, promotions, evaluations or pay.”⁹ The Director of Business Operations insisted that proper controls are in place to mitigate any risk associated with the familial relationship since neither sister approved overtime or leave requests for each other, and all time and leave reporting was subject to his approval. However, the current organizational structure that provides for one sister reviewing the other’s work creates the perception of a conflict of interest and increases the potential for collusion.

The Superintendent expressed he was not aware of the overlapping duties of the sisters and committed to working with the Director of Business Operations to resolve the issue.

⁹ Per the 2013 Fraud Examiner’s Manual, Sample Code of Business Ethics and Conduct, Page 4.654

Internal Control Plan and Questionnaire

The District submitted a written Internal Control Plan and Questionnaire (the Plan) for payroll to the Division of Accounting (DOA) for review.¹⁰ The purpose of the Plan was to establish, maintain, and assess controls in and around PHRST. DOA does not request agencies or school districts to identify any relationships that may increase risk and weaken their internal control structure; however, a district with a good understanding of internal controls would provide such information. Yet, the District failed to voluntarily disclose the relationship between the two sisters. The Plan also lacked sufficient detail to assess the District's payroll process and determine if adequate controls are in place.

The Plan did reveal that the same financial secretary who reviews her sister's work continues to have update capabilities for all of the modules within the system since she serves as a backup for all of those functions. This secretary also has the responsibility of verifying all data entered into the system and performs reconciliation duties. Per Section 2.1.2 of the State of Delaware *Budget and Accounting Manual*, "...segregation of duties divides the responsibility for a transaction or activity among different parties, so no one employee has complete control over the processing of transactions." In particular, the agency should separate the "...responsibility between the person with the ability to enter or change data in an automated system and the person who provides the approval for the transaction."

Allegation #3 – Partially Substantiated

Employees in the District are receiving both a pension and a salary, specifically the Dean of Students and the Athletic Director.

Results of Our Review

The Athletic Director has not collected pension benefits as of our inquiry on December 23, 2013; therefore, this part of the allegation is unsubstantiated.

However, the Dean of Students simultaneously collected a State pension and received compensation from the District totaling \$117,013.73, as a casual employee, from August 15, 2010 through August 25, 2012. His original contract specifically stated he was holding a "non-pension position" as the Dean of Students; however, he worked as a full-time 10-month employee and performed Administrator-type duties.

A casual or seasonal employee is permitted to collect a pension under certain circumstances set forth in 29 Del. C. §5502 (a) (3), but the Dean of Students did not meet those requirements. His original contract stated the duration of his employment was four years, violating both the casual, seasonal, and temporary employee definitions set forth by the Board of Pension Trustees. Pensions reported that the District contacted them on August 16, 2010 to notify them of the hire "under temporary contract with no benefits."

According to one District employee, "it was no secret" that the District knew this person was retiring from another school district and wanted him for the high school football program.¹¹ As a result, the District created, and the Board approved, the Dean of Students position specifically for this person, with a

¹⁰ Pursuant to DOA memo 12-07, Internal Control Guidelines Policy for Payroll, each department and school district within the State was required to submit a written Internal Control Plan for payroll to DOA for their review. We reviewed the Plan submitted by the District dated April 4, 2013.

¹¹ Per the Cape Henlopen High School football record obtained from www.CapeVikingsSports.com, the team had losing season records of 3-6 and 1-9 before the Dean of Students' participation as the head coach. Beginning with his tenure as the head coach for the 2010-2011 season, the football team improved their record to 5-5, followed by two 8-2 seasons and a trip to the Delaware Interscholastic Athletic Association State Tournament quarterfinal game in November 2012. Athletic season records are denoted by the number of games won to the number of games lost.

contract stating, “The Dean of Students position will exist for a period of four (4) years as long as [he] serves as Head Football Coach and satisfactorily meets his job targets set forth by the Principal.”

Pending the implementation of the Return to Work Rules, effective July 1, 2012, discussions began in April 2012 between Pensions and the Dean of Students. When presented with the circumstances, Pensions gave the Dean of Students the option to earn less than the annual earnings limitation effective for calendar year 2013 or cease drawing pension benefits. The employee opted to suspend his pension benefits, and he no longer receives pension benefits as of August 31, 2012.

Following the suspension of his pension benefits, the District revised the Dean of Students’ contract from a 10-month to a 12-month employee, added fringe benefits, and provided a substantial increase in pay. The revised contract also extends the Dean of Students’ services for two years, with an automatic renewal clause. In addition to the approximate \$7,500 a year he receives as the head varsity football coach, a history of the contractual compensation for the Dean of Students is illustrated in Table 2.

Table 2: Dean of Students’ Compensation		
School Year	Contract Amount	Percent Increase
2010/2011	\$54,000	-
2011/2012	63,000	16.7%
2012/2013	107,500	70.6%
2013/2014	110,000	2.3%

The Dean of Students’ revised contract specifically details his job duties, which appear comparable to the tasks that may be assigned to the three high school assistant principals. The assistant principals have numerous responsibilities and each performs a combination of tasks as assigned by the high school principal. The job description for a high school assistant principal includes “Improving Student Climate” and “Promoting Positive School-Community Relations.” The Dean of Students’ revised contract states his responsibilities as “Improving School Quality, Enforcing the District Code of Conduct, Community Liaison Related to Student Discipline and School Climate, and Other Duties as assigned by the Principal of Cape Henlopen High School.”

The Cape Henlopen High School currently has one principal and three assistant principals. These high school administrators were contracted to earn the following amounts as of July 1, 2012 for the 2012/2013 school year:

Table 3: High School Administrator Wages	
High School Administrators	Annual Salary as of July 1, 2012
Principal	\$117,769
Assistant Principal One	105,578
Assistant Principal Two	106,910
Assistant Principal Three	93,267

As illustrated in Table 3, all three assistant principals earned an annual salary less than the Dean of Students.

Additional Information Identified Beyond the Allegation

An additional employee, who previously retired from another State school district in July 2004, was not specifically named in the allegation but was discovered as a result of our test work procedures. The minutes for the Board meeting on May 27, 2010, revealed that the Board appointed an interim Superintendent for the 2010/2011 school year. The District classified this employee as a casual seasonal employee while the Superintendent position remained vacant in the State's payroll system.

The interim Superintendent served the District for 13 months, from June 1, 2010 to July 1, 2011, and received \$173,648.58 in compensation. Pensions confirmed that this employee received pension benefits for the entire duration of his employment with the District.

We referred the matters regarding the Dean of Students and Interim Superintendent to Pensions for further review of their wages earned at the District while also collecting a pension. The Pension Administrator stated that Pensions is not retroactively adjusting pension benefits. However, he did not disagree with our assessment that since the Superintendent position was and continues to be a pension-covered position, the Interim Superintendent should have suspended his pension benefits while occupying the position.

The Pension Administrator stated that since these two situations are not currently violating any pension rules, any action from Pensions is not deemed necessary.

We also provided Pensions with a list of full- and part-time District employees who were 62 years of age or over as of January 1, 2013 and employed for the 2013/2014 school year. Of these employees, Pensions confirmed that there were 3 full-time employees and 34 part-time employees who were collecting pension benefits during calendar year 2013. The three full-time employees were identified as casual, seasonal, or substitute employees and were not in pension-eligible positions. All 37 employees identified in this analysis were under the \$30,000 earnings limitation for calendar year 2013.

Interviews with District employees identified another employee who potentially violated the pension rules while working for the District. Pensions confirmed the individual has collected pension benefits since July 2007, but earned less than \$30,000 during calendar year 2013.

Allegation #4 – Unsubstantiated

The Dean of Students position is considered "temporary seasonal" but has been filled by the same person for three years and was never posted.

Results of Our Review

We did not identify any legal provisions that govern how a school district must hire or treat casual, seasonal, or temporary positions. Therefore, these decisions are performed at the discretion of the local school boards.

The District Board stated that they do not have any policies specific to casual or seasonal employees, but they generally advertise open positions in accordance with the contract for that class of employee. For example, the District would advertise a temporary custodial position for 10 days. Table 4 summarizes the advertising requirements for the 2013/2014 school year based on the District's Board Policy and contract language for each classification.

Table 4: Employee Classification and Advertising Requirements		
Class of Employees	Covered Employees	Requirement for Advertising Position Availability
Administrative	Superintendent Directors Supervisors Principals Specialists	None ^a
Professional	All instructional personnel	Advertisement required; length of time not specified ^b
Classified	Athletic coaches (head and assistants) All support service personnel, including: Cafeteria staff Secretaries and receptionists School custodians School nurses	Advertised for at least 10 business days; in July and August, advertised for 5 business days ^c

^a Per the District, Administrators have individual employment contracts with the Board and are not covered by a collective bargaining agreement.

^b Per Section 10.3 of the “Agreement between the [Board] and the Cape Henlopen Education Association”

^c Per Section 7:2.2 of the “Agreement between the [Board] and the Cape Henlopen Support Staff Association”

Based on information obtained in Allegation #3, the Dean of Students position was created by the former Superintendent and carries administrator-type duties. Accordingly, there was no advertising requirement. The Board acted within its authority to fill the position with the candidate they found most suitable.