



Follow-Up Review: Conflict of Interest Filings related to four vendors: Renaissance Learning Inc. (myON), NoRedInk Corp., Mesa Cloud Inc. and Responsive Learning

ASSURANCE • INSIGHT • OBJECTIVITY

Final Report

Audit Plan Code: 22-15.01

Based on their filings with the Procurement and School Resources Department, it appears the five employees reviewed do not have a conflict of interest that could have impaired their objectivity when working with these vendors during the contract periods (fiscal years 2020, 2021 and 2022).

Based on the required questionnaires from the vendors, three of the four vendors do not have a conflict of interest with any of the five employees. However, we could not make a determination for one vendor, Responsive Learning. This vendor did not have a conflict of interest questionnaire on file with the Procurement and School Resources Department during the contract periods.



Contents

ASSURANCE • INSIGHT • OBJECTIVITY

Follow-up Review Report

| | |
|----------------------------|---|
| Background | 1 |
| Objective and Scope | 3 |
| Methodology | 3 |
| Inherent Limitations | 4 |
| Results | 4 |
| Recommendation | 5 |
| Exhibit A - Criteria | 6 |

Abbreviations

| | |
|-------|--|
| EPISD | El Paso Independent School District |
| CIS | Refers to form <i>Local Government Officer Conflict Disclosure Statement</i> |
| CIQ | Refers to form <i>Conflict of Interest Questionnaire</i> |
| DBD | Refers to form <i>Affidavit Employee Disclosure of Interest in a Business Entity</i> |
| TCG | Trusted Capital Group Advisory Services, LLC |



Follow-up Review Report

ASSURANCE • INSIGHT • OBJECTIVITY

Background

According to the Internal Audit Charter outlined in Board Policy CFC (Exhibit), the scope of internal audit activities encompasses, but is not limited to, objective examinations of evidence to provide independent assessments to the Board, management, and outside parties on the adequacy and effectiveness of governance, risk management, and control processes for the El Paso Independent School District (EPISD). Internal audit assessments include evaluating whether the actions of the EPISD's employees and vendors/contractors comply with the District's policies, procedures, and applicable laws, regulations, and governance standards.

During the audit of "Contracted Services – Academics" performed in fiscal year 2021, EPISD administrators raised concerns regarding additional contracts with vendors (summarized in **Table 1**). The Board of Trustees approved revisions to the 2020-2021 and 2021-2022 Audit Plans to perform a follow-up review of these concerns. For the 2021-2022 Audit Plan, this follow-up review is project code 22-15. The order in which we performed the follow-up reviews was based on (i) information and evidence readily available to us, (ii) seriousness of the concern, and (iii) availability of individuals involved.

Table 1 – Summary of Contracts to Review

■ These vendors are the scope of this follow-up review report.

| No. | Vendor Name | Department | Contract Amount | Contract Period | Fiscal Year |
|-----|----------------------------------|----------------------------|-----------------|---------------------------------------|-------------|
| 1 | TCG Advisory Services, LLC | Finance and Operations | \$42,500 | October 1, 2020 to September 30, 2021 | 2021 & 2022 |
| 2 | TEG Technologies, LLC | Dual Language | \$525,000 | July 1, 2020 to June 30, 2021 | 2021 |
| 3 | Renaissance Learning Inc. (myON) | Curriculum and Instruction | \$715,224 | July 1, 2020 to June 30, 2021 | 2021 |
| 4 | NoRedInk Corp. | Curriculum and Instruction | \$162,232 | July 1, 2020 to June 30, 2021 | 2021 |
| 5 | Mesa Cloud Inc. | Chief of Staff | \$65,000 | October 15, 2019 to October 14, 2020 | 2020 & 2021 |
| 6 | Responsive Learning | Staff Development | \$99,968 | August 11, 2020 to June 30, 2021 | 2021 |

To date, we have performed the following under project code 22-15:

- The first follow-up review report focused on conflict of interest concerns related to the TCG Advisory Services contract (No. 1 above). This report was completed and issued on July 26, 2021.
- The second follow-up involved concerns related to (i) the staff involved in acquiring and identifying the need for the TEG Technologies contract (No. 2 above) and (ii) the vendor allegedly selling "competencies" created by EPISD to other parties. The individual who reported the concern did not have direct knowledge and was not involved in developing or implementing the TEG Technologies contract. As such, we conducted preliminary follow-up steps to include interviewing the employee managing the contract (contract owner).

Based on these preliminary steps, we determined there were insufficient facts to initiate a review. Therefore, we documented the preliminary work in our working papers and our determination not to proceed due to insufficient facts.

- This third follow-up focused on the remaining contracts (numbers three through six above). See letters A and B for details on what was reviewed for said contracts.

A. Objective re-assessment

Before committing additional internal audit resources, we re-assessed whether the remaining four contracts would present different or similar risks than those previously reported. We analyzed these contracts and compared them with two recent reports on contracted services. The two reports were (1) Audit Report 21-05.02: Contracted Services Audit – Academics issued May 27, 2021, and (2) Audit Report 22-15 Follow-Up Review: TCG Investment Advisory Services Contract issued July 26, 2021. We compared the following factors and looked for similarities:

- nature of the concern,
- the time frame of these contracts,
- key staff involved in acquiring said services (current and former),
- the need identification process operating at that time,
- root causes, and
- whether these concerns could continue in fiscal year 2021-2022.

B. Re-assessment determination

Based on the re-assessment, we determined the remaining four contracts have enough similarities under each factor with the contracts we already reviewed and reported. We determined that if reviewed against the same objectives, the results will likely lead to the same root causes previously reported to management. The root causes are the lack of (i) strategic planning and (ii) a formal needs assessment process in acquiring contracted services. In addition, we took into account ongoing corrective actions (1 below) and information available (2-3 below) during the time of this follow-up review. Specifically:

1. Management agreed to take corrective action to minimize the risks posed by the above-stated root causes. For example, for fiscal year 2021-2022, Academic contract owners will be required to complete a formal Business Analysis before acquiring contracted services over \$25,000. This may reduce strategic and financial risks to the District. Based on the amounts of the remaining contracts, the contracts owners will likely be required to present a formal Business Analysis to the Procurement and Budget and External Financial Management departments if they plan to renew contracts with these vendors in fiscal year 2021-2022.
 - a) As of August 31, 2021, three of the four contracts: (i) NoRedInk Corp., (ii) Mesa Cloud Inc., and (iii) Responsive Learning had not been renewed for fiscal year 2021-2022.
 - b) The contract with Renaissance Learning Inc. (myON) was renewed and approved by the Board of Trustees on June 15, 2021. In the materials presented to the Board, the contract owner provided a “Comprehensive Analysis of Instructional Resources,” which contains elements of a Business Analysis.

2. Key District staff involved in identifying the need or managing some of these contracts are former employees, such as the former Superintendent and former Chief of Staff. Former employees are not required to cooperate with the District (e.g., Internal Audit's follow-up review); thus, a fair and balanced presentation of these contracts' facts or events may not be entirely possible without their statements. In addition, we expected the level of documentation to be minimal or non-existent, similar to instances identified in (1) Audit Report 21-05.02: Contracted Services Audit – Academics issued May 27, 2021, and (2) Audit Report 22-15 Follow-Up Review: TCG Investment Advisory Services Contract issued July 26, 2021.
3. Since we received the initial concern, none of the contract owners nor other employees have reported similar concerns or non-compliance issues related to the remaining four contracts.

Therefore, the objective of this follow-up review was modified to exclude need identification and strategic planning risks. Instead, the objective focused on conflict of interest risk, which is a compliance risk associated with any contract. This risk could impact the District negatively if the contract owners and vendors did not properly comply with conflict of interest disclosure requirements (state and local – See Exhibit A – Criteria No. 1 to 4) during the contract periods or for fiscal year 2021-2022 (if contracts are renewed).

Objective and Scope

The objective focused on reviewing the conflict of interest disclosure filings of the five employees and vendors listed in **Table 2** (on page 5). The review was to determine if the employees reported a conflict of interest resulting in an objectivity impairment with any of the vendors if not properly addressed.

The scope period of these conflict of interest disclosure filings applies to fiscal years 2020, 2021, and 2022. For employees, Local Government Officer Conflict Disclosure Statements (aka form CIS) or Affidavit Employee Disclosure of Interest in a Business Entity forms (aka form DBD) were reviewed. For vendors, we reviewed Conflict of Interest Questionnaires (aka form CIQ).

We added two executive cabinet-level administrators to the contract owners because they are in a position (i) of oversight of the contract owners, and (ii) they can affect a financial/contract decision involving these vendors. The two administrators are the Deputy Superintendent of Academics and Administration (currently the Interim Superintendent) and Associate Superintendent for Academics and School Leadership.

Methodology

To achieve our follow-up review objectives, we:

- Researched Chapter 176 of the Texas Local Government Code and EPISD Board policies, handbooks, manuals, or guides related to conflict of interest filings.
- Contacted Procurement staff in charge of tracking conflict of interest filings
- Reviewed forms provided by Procurement:
 - Local Government Officer Conflict Disclosure Statement (CIS)
 - Affidavit Employee Disclosure of Interest in a Business Entity (DBD)
 - Conflict of Interest Questionnaire (CIQ)
- Obtained and reviewed pertinent Procurement and contract documentation for the scope of the review.

- Obtained and reviewed Board Agenda materials.
- Interviewed relevant current EPISD personnel.

Inherent Limitations

Because of inherent limitations in a system of internal controls, there is a risk that errors or irregularities occurred and were not detected. Due professional care requires internal auditors to conduct examinations and verifications to a reasonable extent. Accordingly, an auditor can provide reasonable assurance, but not absolute, assurance that procedures and internal controls are followed and adhered to in accordance with federal, state, local policies and guidelines. This was a limited scope follow-up review and only included the areas stated in the Objective and Scope section of this report. No representations of assurance are made to other areas or periods not covered by this review.

Conclusion and Results

Based on their filings with the Procurement and School Resources Department, it appears the five employees reviewed do not have a conflict of interest that could have impaired their objectivity when working with these vendors during the contract periods (fiscal years 2020, 2021 and 2022).

Based on the required questionnaires from the vendors, three of the four vendors do not have a conflict of interest with any of the five employees. However, we could not make a determination for one vendor, Responsive Learning. This vendor did not have a conflict of interest questionnaire on file with the Procurement and School Resources Department during the contract periods. See **Result 1** for details.

Table 2 (on the next page) summarizes the following details:

- The contract owners' conflict of interest disclosures filings do not report conflicts with the four vendors (Renaissance Learning Inc., NoRedInk Corp, Mesa Cloud Inc., and Responsive Learning).
- The Deputy Superintendent's conflict of interest disclosure filings do not report a conflict with any vendor.
- The Associate Superintendent Academics & School Leadership's conflict of interest disclosures filings do not report a conflict with any of the four vendors.
- Three of the four vendors (Renaissance Learning Inc., NoRedInk Corp., and Mesa Cloud Inc.) do not report conflicts of interest with any of the five employees in our scope.
- One of the four vendors (Responsive Learning) did not have a CIQ on file with the Procurement Department.

Table 2 – Conflict of Interest Filings Reviewed
Applicable to fiscal years (FY) 2020, 2021 and 2022

| No. | Vendor Name | Title of Employee Filing | Conflict Disclosed? | Contract Renewed for FY 2022 |
|--|---------------------------|--------------------------|---|------------------------------|
| 1 | Renaissance Learning Inc. | ❶, ❷, ❸ | No | Yes |
| 2 | NoRedInk Corp. | ❶, ❷, ❸ | No | No |
| 3 | Mesa Cloud Inc. | ❶, ❷, ❹ | No | No |
| 4 | Responsive Learning | ❶, ❷, ❺ | Undetermined from the vendor side for FY 2020 and 2021. See Result 1. | No |
| ❶ = Deputy Superintendent, Academics and School Leadership (currently Interim Superintendent) ❷ = Associate Superintendent, Academics and School Leadership ❸ = Executive Director, Curriculum and Instruction ❹ = Chief of Staff (former) ❺ = Director, Staff Development 🟡 = Contract Owner | | | | |

Result 1

The Procurement Department did not have a Conflict of Interest Questionnaire (CIQ) on file for Responsive Learning for the contract periods. As a result, we cannot determine if there were any conflicts of interest with any District employee during the contract period from the vendor side. However, none of the five employees listed a conflict of interest with Responsive Learning during the contract period or for fiscal year 2021-2022. During the time of this follow-up review, Responsive Learning filed a CIQ form with Procurement. According to this filing dated August 19, 2021 (applicable to fiscal year 2022), Responsive Learning does not report a conflict of interest with any District employee.

Recommendation

1

We recommend the Procurement Department consider adding a control to verify that vendors on the District's approved vendor list have a Conflict of Interest Questionnaire (CIQ) on file before entering into a contract valued at \$25,000 or more (regardless of the procurement method used). In addition, they may consider placing the vendor on hold for requisitions until the vendor submits or updates their CIQ due to a change.

Exhibit A – Criteria

| Criteria No. | Criteria |
|--------------|--|
| 1 | <p>Board Policy BBFA (LEGAL) (October 15, 2019) (Only applicable criteria listed below):</p> <p><u>Conflict Disclosure Statement:</u> A local government officer shall file a conflicts disclosure statement, as adopted by the Texas Ethics Commission, with respect to a vendor if the vendor enters into a contract with the District or the District is considering entering into a contract with the vendor; and the vendor:</p> <ol style="list-style-type: none"> Has an employment or other business relationship with the local government officer or a family member of the officer, and the business relationship results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that: <ol style="list-style-type: none"> A contract between the District and the vendor has been executed; or The District is considering entering into a contract with the vendor. |
| 2 | <p>Board Policy CHE (LEGAL) (November 2, 2015) (Only applicable criteria listed below):</p> <p><u>Required Vendor Disclosure:</u> The Texas Ethics Commission shall adopt a conflict of interest questionnaire that requires disclosure of a vendor's business and family relationships with a District. <i>Local Gov't Code 176.006(b)</i></p> <p><i>Local Gov't Code 176.006(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with the District and:</i></p> <ol style="list-style-type: none"> Has an employment or other business relationship with a local government officer of the District, or a family member of the officer, described by Local Government Code 176.003(a)(2)(A); Has given a local government officer of the District, or a family member of the officer, one or more gifts with the aggregate value specified by Local Government Code 176.003(a)(2)(B), excluding any gift described by Local Government Code 176.003(a-1); or Has a family relationship with a local government officer of the District. <p><i>Local Gov't Code 176.006(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the date that the vendor:</i></p> <ol style="list-style-type: none"> Begins discussions or negotiations to enter into a contract with a District; Submits to the District an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the District; or The date the person becomes aware: <ol style="list-style-type: none"> Of an employment or other business relationship with a local government officer, or a family member of the officer; That the person has given one or more gifts; or Of a family relationship with a local government officer. |
| 3 | <p>Board Policy DBD (Local) (November 2, 2015) (Only applicable criteria listed below):</p> <p><u>Affidavit/Disclosure of Ownership or Employment:</u> District employees shall comply with the following guidelines in accordance with the District's conflict of interest policy:</p> <ol style="list-style-type: none"> Any District employee with primary purchasing responsibilities (employees with budget authority) shall file an affidavit with the District's director for purchasing. The director for purchasing shall file an affidavit with the chief financial officer. The director for purchasing shall submit a statement to the chief financial officer that discloses a potential conflict of interest from District employees with primary purchasing responsibilities. The aforementioned statement (that includes a listing of affidavits for employees with primary purchasing responsibilities) shall be approved by the Superintendent and submitted for approvals by the Board at the beginning of the fiscal year. Any additions to that document shall also be submitted for Board approval. |

| | |
|---|--|
| | <p>4. Purchasing transaction shall be reviewed periodically (at least annually under the directions of the Superintendent to ensure that conflicts of interest do not exist).</p> |
| 4 | <p>Texas Local Government Code §176.003. Conflicts Disclosure Statement Required (Only applicable criteria listed below).</p> <p>(a) A local government officer shall file a conflict disclosure statement with respect to a vendor if:</p> <ol style="list-style-type: none"> 1. The vendor enters into a contract with the local governmental entity, or the local governmental entity is considering entering into a contract with the vendor; and 2. The vendor: <ol style="list-style-type: none"> (A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that: <ol style="list-style-type: none"> (i) a contract between the local governmental entity and the vendor has been executed; or (ii) the local governmental entity is considering entering into a contract with the vendor; (b) A local government officer shall file the conflicts disclosure statement with the records administrator of the local governmental entity not later than 5 p.m. on the seventh (7th) business day after the date on which the officer becomes aware of the facts that require the filing of the statement under Subsection (a). <p>Texas Local Government Code §176.006. Disclosure Requirements for Vendors and Other Persons; Questionnaire. (Only applicable criteria listed below).</p> <p>(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:</p> <ol style="list-style-type: none"> 1. has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A); <ol style="list-style-type: none"> (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of: <ol style="list-style-type: none"> (1) the date that the vendor: <ol style="list-style-type: none"> (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or (2) the date the vendor becomes aware: <ol style="list-style-type: none"> (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a); (C) of a family relationship with a local government officer. (b) The commission shall adopt a conflict of interest questionnaire for use under this section that requires disclosure of a vendor's business and family relationships with a local governmental entity. (c) The questionnaire adopted under Subsection (b) must require, for the local government entity with respect to which the questionnaire is filed, that the vendor filing the questionnaire: <ol style="list-style-type: none"> (1) describe each employment or business and family relationship the vendor has with each local government officer of the local governmental entity; (2) identify each employment or business relationship described by Subdivision (1) with respect to which the local government office receives, or is likely to receive, taxable income, other than investment income, from the vendor; (d) A vendor shall file an updated completed questionnaire with the appropriate records administrator not later than the seventh business day after the date on which the vendor becomes aware of an event that would make a statement in the questionnaire incomplete or inaccurate. |



EL PASO INDEPENDENT SCHOOL DISTRICT

BOARD OF TRUSTEES

Al Velarde, President - District 2
Daniel E. Call, Vice-President - District 7
Leah Hanany, Secretary - District 1
Josh Acevedo, District 3
Isabel Hernandez, District 4
Israel Irrobali, District 5
Freddy Khlayel-Avalos, District 6

Internal Audit Department

📍 1014 N. Stanton St. El Paso, TX 79902

📞 Phone 915-230-2743 ✉ Email audit@episd.org

Fraud, Waste, and Abuse Hotline:

<https://www.reportlineweb.com/EPISD> or (800) 620-8591



The El Paso Independent School District does not discriminate in its educational programs or employment practices on the basis of race, color, age, sex, religion, national origin, marital status, citizenship, military status, disability, genetic information, gender stereotyping and perceived sexuality, or on any other basis prohibited by law. Inquiries concerning the application of Titles VI, VII, IX, and Section 504 may be referred to the District compliance officer, Patricia Cortez, at 230-2033; Section 504 inquiries regarding students may be referred to Kelly Ball at 230-2856.

El Distrito Escolar Independiente de El Paso no discrimina en los programas de educación o en prácticas de empleo usando el criterio de raza, color, edad, sexo, religión, origen nacional, estado civil, ciudadanía, estado militar, discapacidad, información genética, estereotipo sexual o sexualidad percibida, u otra práctica prohibida por la ley. Preguntas acerca de la aplicación del título VI, VII o IX, y la Sección 504 pueden ser referidas al oficial del distrito, Patricia Cortez al 230-2033; preguntas sobre 504 tocante a estudiantes pueden ser referidas a Kelly Ball al 230-2856.