

## EXECUTIVE SUMMARY

This performance audit of the Regional Education Service Agencies (RESAs) is authorized under Chapter 4, Article 2, Section 5 of the *West Virginia Code*. The objective of the audit was to determine the continued need for RESAs. The audit's findings and conclusions are highlighted below.

### Frequently Used Acronyms in this Report:

PERD - Performance Evaluation and Research Division  
RESA - Regional Education Service Agencies  
BOE - Board of Education  
AEPA - Association of Educational Purchasing Agencies  
PST - Public Service Training  
WVEIS - West Virginia Education Information System  
DOE - West Virginia Department of Education  
ESCs - Educational Service Centers  
TA - technical assistance to low-performing schools  
PD - staff professional development  
LEAs - local education agencies  
DHHR - Department of Health and Human Resources  
TANF - Temporary Assistance for Needy Families  
AFT - American Federation of Teachers  
NSDC - National Staff Development Council  
SPOKES - Strategic Planning in Occupational Knowledge for Employment and Success  
CSR – Code of State Rules  
W.Va. – West Virginia  
OEPA – Office of Education Performance Audits  
CPD – Center for Professional Development  
CFO – Chief Financial Officer

### Report Highlights:

#### **Finding 1: By Law, Technical Assistance to Low Performing Schools and Professional Development Are the Most Important Responsibilities for RESAs, But These Services Are a Relatively Small Percentage of Total Expenditures.**

- Technical assistance to low performing schools (TA) and professional staff development (PD) are statutorily RESA's most important responsibilities.
- PERD found that on average 18 percent of RESA's 2015 expenditures were for TA and PD, which is not reflective of being the most important responsibilities of RESAs.

- In addition, in terms of percentages or dollar amounts, there is no correlation between expenses for TA and PD and the number of Focus schools in each RESA.
- PERD concludes that there is inadequate direction, focus and resources centered on the important tasks of providing technical assistance to low performing schools and professional staff development.

**Finding 2: Twenty-five (25) Percent of RESA's Resources Do Not Serve the County School Systems.**

- RESA's enabling statute emphasizes that RESA's purpose is to provide educational services to county school systems.
- PERD finds that on average 25 percent of RESA expenditures in FY 2015 were for programs that do not serve county school systems. On an individual basis, RESAs 1 and 3 spent nearly 40 percent on non-county school system services.
- The primary services that fall in this category are adult education, Public Service Training, and workforce development programs.

**Finding 3: RESAs Are Mandated to Coordinate Shared Services to Counties; However, Many County-Level Services That Some RESAs Provide Are Exclusive to Specific Counties. The Legislative Auditor Is Uncertain If This Was the Legislature's Intent.**

- RESAs are required by law to facilitate the coordination and sharing among county boards for county-level functions.
- RESAs employ 158 individuals who provide county-level services; however, over half (82) are non-shared employees. These non-shared employees provide services that can be shared and are shared services in other RESAs.
- The Supreme Court issued a recent decision that states if the employment of non-shared personnel is provided for in RESA Strategic Plans, it cannot be said that non-shared employment contravenes legislative intent.
- Despite the Supreme Court decision, the Legislative Auditor concludes that since part of the legislative intent is for RESAs to provide coordinated and shared services, and the same types of positions are shared by some RESAs but not by others, it is uncertain that unshared positions were the Legislature's intent.

**Finding 4: The Regional Service Purpose of Providing Educational Services to Public School Systems Is Needed, But Carrying It Out Through the Concept of Autonomous Agencies Is Inefficient.**

- PERD finds that RESAs are extensions of the State Board of Education and there is significant overlap from the Department of Education in RESA programs and activities.
- Having RESAs organized as autonomous agencies invites duplication and redundancy, and imposes a coordination cost on the State.
- The Legislative Auditor recommends that the State BOE consider eliminating the autonomy of RESAs and have all RESA staff come under the authority of the DOE. The regional service purpose should emanate from regional staff of the DOE, not through regional agencies.
- Coordinated county-level functions can continue without RESAs. Therefore, consideration should be given to having coordinated county-level functions be administered by the Regional Councils.

**PERD's Response to the Agency's Written Response**

On November 23<sup>rd</sup>, 2016, the Performance Evaluation and Research Division received RESA's written response to this report, which can be found in Appendix F. The State Board of Education indicated that it will provide its written response in December 2016. The RESA written response gave no indication of agreement with any part of the report. With respect to Finding 1, the agencies stated that PERD correlates cost to value which results in the incorrect conclusion that a small percentage of total expenditures being devoted to TA and PD means that RESAs are not performing these tasks effectively. Due to grant restrictions, expenditures must be used for specific purposes. Therefore, the only way to increase expenditures for TA and PD would be to increase funding specific to TA and PD. RESAs added that the amount and value of TA and PD should be calculated on man-hours spent on duties as opposed to expenditures. The RESAs also expressed that some adult education is part of TA and PD, excluding executive directors' time and effort is not accurate, and that Medicaid billing should also be included in TA calculations.

With respect to Finding 2, RESAs stated that many students under the age of 21 participate in adult education. Therefore, PERD's calculations should be revised to account for the percentage of students under the age of 21 that participate in the program. The RESA written response also contends that the recent decision by the State Supreme Court of Appeals that reversed the Monongalia County Circuit Court's decision concerning interventionist services nullifies Finding 3 of the audit. The RESAs also deny any overlapping functions between the DOE and RESAs. Although they acknowledge that the DOE has direction over some programs that operate out of RESAs, they indicate that comprehensive strategic planning avoids duplication of effort between the two entities.

PERD assessed the RESA response. PERD's analysis concerning TA and PD as a percentage of total expenditures is a fair representation of the RESA's resources that can be applied to TA and PD activities. The fact that the agency has a large portion of restricted funds that cannot be used towards TA and PD is part of the funding limitations indicated in the report. The finding is not stating that RESAs are ineffective in the TA and PD that they provide. The finding is that TA and PD, as funds presently allow, do not constitute the most important responsibilities of the agencies as statute dictates. The report indicates that funding limitations is part of the cause. PERD would have included the direct cost of executive directors' involvement in TA and PD, but measuring this would have been difficult. Including some portion of adult education into TA or PD would be inappropriate in PERD's opinion. Also, including Medicaid billing as TA would be inappropriate. As the audit indicates, when RESAs provide Medicaid billing, they are providing counties a function that the counties would have to provide but RESAs are providing it at a lower cost by sharing these services.

PERD determined that although some individuals that participate in adult education are under the age of 21, they cannot take adult education if they are enrolled in public schools. Therefore, these individual are not in the public school system. The overlap between RESAs and the DOE is significant. The audit indicates that there are extensive efforts on the part of the State BOE to coordinate RESA activities to avoid duplication, but it is unreasonable to assert that as a result of this coordination there is no duplication. There are aspects of RESA programs that duplication cannot be avoided. Since by definition RESA executive directors oversee RESA programs and the DOE has significant responsibilities over the same programs, there are measures of duplication and redundancies present.

## Recommendations

- 1. The State Board of Education should consider administering the regional service purpose through regional staff of the Department of Education as oppose to regional agencies. Therefore, all autonomy and independence of RESAs should be effectively eliminated, and RESA staff should come under the Department. Appropriate statutory and rule amendments should be sought.*
- 2. The Department of Education, as the proposed oversight agency, should evaluate the need for or modification of current state-aid RESA positions or services in light of the regional service purpose being administered through regional staff instead of regional agencies, and make recommendation to the State Board of Education on appropriate reductions in the RESA state aid.*
- 3. The State Board of Education should define the regional service purpose, exclude Adult Education and Public Service Training from the purpose, and also phase out or transfer to appropriate agencies other RESA programs that do not serve public school systems. Emphasis should be placed on technical assistance to low performing schools and professional development that leads to improved student achievement.*

4. *The Department of Education should improve the focus and direction of the regional service purpose through its oversight of regional staff.*
5. *The State Board of Education should place all RESA shared county-level functions under the local control of the Regional Councils. Shared RESA employees should become county employees under the authority of the lead county of each RESA region, while non-shared RESA employees should become employees of the county for which they are under contract.*
6. *The State Board of Education should seek statutory and rule amendments to reduce the number of members of the Regional Councils to the county superintendents.*
7. *As the proposed administrator of the regional service purpose, the Department of Education should make itself available through regional staff to assist Regional Councils in any efforts to share county-level functions in the future.*
8. *If RESAs are terminated as agencies, it is recommended that the State Board of Education seek appropriate statutory (W. Va. §18-2-26(c)(4)) and rule (CSR 126-72-3.13.d) amendments to allow it to receive property owned by RESAs.*

**Finding 3: RESAs Are Mandated to Coordinate Shared Services to Counties; However, Many County-Level Services That Some RESAs Provide Are Exclusive to Specific Counties. The Legislative Auditor Is Uncertain If This Was the Legislature’s Intent.**

RESAs were created to facilitate “*coordination and cooperation among county boards*” for county-level functions. As part of this coordinating process, West Virginia Code §18-2-26(b)(3) specifically mentions “*cooperative purchasing*” and “*sharing specialized personnel*,” each of which involves a service that is shared by multiple county school systems. Sharing the service among counties reduces the cost to each participating county. Table 7 shows that each RESA has employed individuals who provide county-level services totaling 158 employees; however, on average over half of these employees are non-shared. The salaries, benefits and other expenses for these employees are paid by RESAs and subsequently reimbursed by the counties receiving the services along with an administrative fee.

| <b>Table 7</b>  |   |  |   |
|---|---|--|---|
| <b>RESA FY 2015 County Reimbursed Employee Breakdown</b>  |   |  |   |
|   | <b>Total County-Reimbursed RESA Employees</b> | <b>Non-Shared County-Reimbursed RESA Employees</b> | <b>Percentage of Non-Shared County-Reimbursed RESA Employees as a Percent of Total County-Reimbursed RESA Employees</b> |
| <b>RESA 1</b>   | 31  | 23   | 74.19%  |
| <b>RESA 2</b>   | 7   | 2  | 28.57%  |
| <b>RESA 3</b>   | 16  | 11   | 68.75%  |
| <b>RESA 4</b>   | 4   | 0  | 0.00%   |
| <b>RESA 5</b>   | 13  | 2  | 15.38%  |
| <b>RESA 6</b>   | 37  | 23   | 62.16%  |
| <b>RESA 7</b>   | 33  | 19   | 57.58%  |
| <b>RESA 8</b>   | 17  | 2  | 11.76%  |
| <b>Total</b>  | 158   | 82   | 51.90%  |
| <i>Sources: Based on employment data and service agreements with counties as provided by Regional Education Service Agencies. Calculations were made by PERD.</i> |   |  |   |

These non-shared employees provide services that can be shared among member counties and are shared services in other RESAs. For example, RESA 6 has non-shared employees who provide social work services exclusively for Marshall County Schools and Wetzel County Schools. RESA 6 also employs several non-shared specialized employees such as occupational therapists, physical therapists, speech pathologists, sign language interpreters, and braille and hearing specialists. These specialized personnel and others such as audiologists are shared positions in other RESAs. RESA 3 employs six non-shared computer technicians for Kanawha County Schools and four non-shared computer technicians for Boone County Schools. Computer

technicians are the most frequently shared and non-shared positions within the RESA system. RESA 8 operates a bus program for Berkeley County School's special needs afterschool program, which includes employing a transportation director and a secretary. These employees work directly from a Berkeley County school building and have no office space in the RESA 8 building. Berkeley County reimburses RESA 8 for these employees. **In these types of employment agreements, RESAs are functioning more like employment agencies than facilitating coordination and cooperation among county school boards.**

The State BOE amended its rule, CSR §126-72-2.5.g, to allow RESAs to assume responsibility of one or more county functions for one or more member counties. This amendment allows RESAs to employ personnel that can be exclusive to one county. It should be noted that this amendment was made in January 2015, years after RESA's practice to employ non-shared personnel. PERD finds that RESAs have employed non-shared county employees for each year of the audit scope (FY 2013 – FY 2015).

## **A Recent Supreme Court Ruling Addresses the Issue of Non-Shared RESA Personnel**

The American Federation of Teachers (AFT) filed a lawsuit in 2011 against the Monongalia County BOE for hiring interventionists from RESA 7 who would provide personalized training for students who were having difficulties in math and reading. The AFT's argument was that the interventionists were classroom teachers and by using RESA 7 to employ these individuals, the Monongalia County BOE violated teacher hiring laws. The Monongalia Circuit Court Judge ruled in favor of the AFT. The Monongalia County BOE appealed to the State Supreme Court. In September 2016, the West Virginia Supreme Court of Appeals reversed the circuit court's ruling by indicating that county boards are authorized to contract with RESAs to provide interventionist services for county students.

The Legislative Services Division within the Office of the Legislative Auditor states that the Supreme Court of Appeals expressly addresses W.Va. Code §18-2-26(a) and its intent by stating: *"The intent of the Legislature in providing for establishment of RESAs, hereinafter referred to in this section as agency or agencies, is to provide for high quality, cost effective education programs and services to students, schools and school systems."*<sup>1</sup> In addition, the Supreme Court provides that another intent of the RESAs, in both code and rule, is to assist the State Board in implementing programs and services as directed by that body (W.Va. Code §18-2-26(b)). Also, *"among the various legislative rules governing RESAs is one that expressly authorizes RESAs to employ staff to "perform services described in the Strategic Plan or to operate...projects that may require staff and support services for effective implementation."*<sup>2</sup> In the case, the employment of the interventionists was provided for in the Strategic Plan. Furthermore, the Court found that the

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<sup>1</sup> West Virginia Supreme Court of Appeals, *Monongalia County BOE v. American Federation of Teachers, et al.*, September 2016 Term, No. 15-0662, p. 14.

<sup>2</sup> *Ibid.*, p. 17.

legislative rules expressly empower RESAs to contract with and receive funds from the county boards of education in support of the Strategic Plan.

The Legislative Services Division further explains the Supreme Court decision by stating:

Although part of the legislative intent is to provide coordinated and shared services, the Supreme Court is emphasizing that the overarching intent of RESAs is to provide “high quality, cost effective education programs and services to students, schools and school systems” and also give effect to the State Board’s implementation of programs and services, including the Strategic Plans. Thus, if the employment of non-shared personnel is provided for in the Strategic Plans, it cannot be said that the employment contravenes legislative intent, even if it is not shared.

The Legislative Auditor acknowledges the decision of the State Supreme Court of Appeals as it relates to this finding. A review of each RESA’s Strategic Plan indicates that there are references to shared and non-shared county-level functions to be provided. Therefore, it cannot be stated that the non-shared employment arrangements contradict legislative intent.

Nevertheless, the practice of employing non-shared positions raises concerns. The legal opinion of the Legislative Services Division indicates that part of the legislative intent is to provide coordinated and shared services. However, as stated previously, most of the unshared positions are computer technicians and specialized personnel that can be shared and are shared in other RESAs. **Therefore, the question becomes how is the legislative intent to provide shared services being met by those RESAs that are not sharing the same types of positions that are being shared by other RESAs? What are the criteria and reasons for these positions not being shared?** Some counties may not want to share positions because it would be inconvenient or insufficient. However, counties may also desire the flexibility of having county services without the obligation of having contractual employees on their payroll, or to be able to terminate services at any time since RESA contracts allow for this as long as the pro-rated amount of the contract is paid. This has been a concern of the West Virginia School Service Personnel Association. For several years the Association has proposed legislation for the Legislature’s consideration that would prohibit County BOEs from using RESA employees to displace or to avoid employment of additional service personnel and professional instructional personnel of the county boards of education. The Association’s most recent legislation was HB 4516 which was introduced during the 2014 legislative session. However, no action was taken on the bill. **If the reason for shareable positions not being shared is reluctance by some counties, then there is concern that state aid funds are being used to facilitate a purpose that some counties are resisting.**

Another concern with non-shared county positions is salary differentials. PERD examined this possibility in Kanawha County’s school system. The Kanawha County School Board employs eight positions that have the title “computer programmers,” and the Board also pays RESA 3 for six non-shared “computer technicians.” These 14 positions meet similar qualifications and have substantially equivalent job descriptions. However, the Board’s eight computer programmers are under contract with the Kanawha County BOE, while the six RESA 3 computer technicians are will-and-pleasure employees of the State BOE. PERD requested salary data for these 14 positions to determine if there are any pay differentials. Table 8 shows the salary data for these positions.



We found that Kanawha County's eight computer programmers are paid more than the RESA 3 computer technicians, but this is likely the result of the computer programmers having longer tenure with Kanawha County, and in a few cases the computer programmers had higher credentials than some RESA 3 computer technicians. Although the salary differentials in these cases are not a concern, the practice of employing non-shared employees who have equivalent counterparts in the same county runs the risk of potentially creating employment disparities. Counties may benefit from these non-shared employment arrangements but the savings would be higher if these positions were shared.

| <b>Table 8</b>  |   |  |                                       |
|---|---|--|---------------------------------------|
| <b>FY 2015 Computer Technician Salary Comparison</b>                                  |   |  |                                       |
| RESA 3<br>Computer<br>Technicians<br>Salaries   | Computer<br>Technicians<br>Years of<br>Experience | Kanawha<br>County<br>Programmers<br>Salaries | Programmers<br>Years of<br>Experience |
| \$37,957  | 3   | \$52,806                                     | 30                                    |
| \$36,908  | 1   | \$46,756                                     | 29                                    |
| \$36,879  | 1   | \$46,756                                     | 27                                    |
| \$36,612  | 2   | \$46,756                                     | 18                                    |
| \$30,898  | 1   | \$46,756                                     | 15                                    |
| \$28,669  | 0   | \$45,354                                     | 11                                    |
| -   | -   | \$45,354                                     | 11                                    |
| -   | -   | \$42,569                                     | 7                                     |
| <i>Sources: Information Provided by RESA 3 and Kanawha County Board of Education.</i> |   |  |                                       |

## **RESA State Aid Is Being Used to Provide Services That Should Be Funded By Counties.**

Some RESAs are providing direct services to counties using their RESA state aid but are not charging counties for these services. Although this is commendable and beneficial for counties that struggle financially, it is questionable for RESAs to use its state aid to provide services to a county when the county is required to provide those services through its own funding sources, and when other counties are reimbursing RESAs for those same services. In RESA 4, one full-time computer technician is funded completely with state aid funds without reimbursement. In RESA 8, an audiologist is contracted to provide services for all RESA 8 member counties using state aid, including salary, benefits, travel and supplies, but RESA 8 does not charge counties for these services. RESA 3 employs an audiologist that is funded in part through county reimbursement and in part funded with RESA state aid. Currently, the number of RESA employees providing these direct services without charge is only a few and not all RESAs are engaging in this practice.