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## **Recommendations for Inclusion in the Scranton School District's Financial Recovery Plan**

The Scranton School District (District) is distinct from other school districts that have been placed in Financial Recovery Status in that 1) a former district contractor has recently been indicted for financial crimes against the District; 2) the former business manager has pleaded guilty to a felony corruption charge related to his work at the District; 3) based on information obtained from the Office of Attorney General's website, a state investigation is apparently ongoing;<sup>1</sup> 4) a transportation vendor received millions of dollars in fuel surcharge payments on a contract clause, for which no documentation exists to support whether it was ever legally authorized; 5) outstanding debt exceeds \$200 million; and 6) there is a demonstrable lack of public trust in District leadership. These issues and many others point to a long history of poor governance, poor internal controls, and alleged politically-motivated back-room dealings.

The culture of the Scranton School District must change for the sake of its students, parents, staff, and taxpayers. Transparent governance must become the norm, not the exception, starting with welcoming regular and open communication with all District stakeholders. The District and teachers' and support staff unions should work to form a better partnership. Vendors seeking public contracts must follow procurement requirements in law and understand that their fees are paid with taxpayer dollars intended to improve the education of students. Change should be embraced, not blocked. Updated policies, procedures, and controls will save money that should be directed into classrooms, where those funds are meant to help students.

The Department of the Auditor General (Department) has developed suggested recommendations for the District's Financial Recovery Plan. These recommendations are based upon input from students, parents, teachers, support staff, and residents of the District, as well

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<sup>1</sup> <https://www.attorneygeneral.gov/taking-action/updates/case-update-attorney-general-josh-shapiro-charges-scranton-school-board-official-for-using-public-dollars-for-personal-use/>

as the Department's knowledge of the District through years of conducting audits, most recently the October 2017 Performance Audit.<sup>2</sup> In addition to recommendations within local control, many of which require the direction and guidance of the newly-appointed Chief Recovery Officer (CRO), the Department outlines items that pertain to the Pennsylvania Department of Education (PDE) and the General Assembly in their duties to address public education issues.

Perhaps the most important recommendations are those that will cause a paradigm shift in the District's leadership so that the administration and the Board will embrace transparent governance and public accountability in conducting all aspects of District business. Incorporating more accountability and transparency into the Board's operations will benefit not only the District's students, parents, and employees but also state and local taxpayers.

### **Governance, Transparency and Accountability**

1. Transparency and accountability must become the standard; the top governance priority should be a sea change in the behaviors and governance practices of the Board and administration.<sup>3</sup> To achieve and sustain this necessary change, strong and precise language, including clear expectations and requirements, should be thoroughly integrated into board policies, procedures, and the internal control systems that guide decision-making and all operational and financial transactions.
  - a. A root cause of the District's problems are the blurred lines of authority between Board members, administration officials, and the providers of professional services (e.g., solicitors). The Financial Recovery Plan should delineate between educational and financial leadership, drawing boundaries between the leaders. It should open avenues for clearer priorities, more realistic financial projections, and increased transparent communications with the public, including state and local taxpayers.
  - b. The appointment of the CRO is an opportune time to retool leadership structures and set expectations for operating under Financial Recovery Status. The Board should work closely with the PDE to amend the District's policies to cite and integrate the CRO's authority during the recovery period.<sup>4</sup> It is critical that the

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<sup>2</sup> [https://www.paauditor.gov/Media/Default/Reports/schScrantonSchoolDistrict102417\(3\).pdf](https://www.paauditor.gov/Media/Default/Reports/schScrantonSchoolDistrict102417(3).pdf)

<sup>3</sup> Consistent with their oath of office as required by the Public School Code, all school board members must act with fidelity, which can be interpreted to mean the duty to act with loyalty, faithfulness, and trustworthiness. Please see attachment, page 1. Please note that all professional educators, including administrators, must abide by the Code of Professional Practice and Conduct and the Professional Educator Discipline Act as overseen by the Professional Standards and Practices Commission. See <https://www.pspc.education.pa.gov/Promoting-Ethical-Practices-Resources/Ethics-Toolkit/Pages/default.aspx>

<sup>4</sup> *Board Operating Guideline 003-BOG-4: Role of Directors and Superintendent in Governance and Management* provides a good example of such a policy, as is *006-BOG-3: Meeting Cancellation*, as it gives the Superintendent authority to pay bills and implement personnel transactions in the Board's absence.

leaders of the District be forthcoming with the CRO and respect her role in helping chart a course out of financial distress.

- c. The organization of certain District departments should be reviewed by the CRO, in conjunction with the Board and the administration. The departments reviewed should include the business office, human resources, IT, maintenance and operations, and any other department that authorizes the use and/or disbursement of public funds. These departments should work with leadership to update their policies and standard written procedures to include key internal controls governing the use of public funds, including but not limited to general fund disbursements and payroll. These internal controls should include, but not be limited to, segregation of duties, record-keeping requirements, routine reporting requirements, and regular review controls.
- d. The Board should strictly adhere to the Pennsylvania Sunshine Act's Executive Session provision and the Board's meeting policy.<sup>5</sup> Past violations of the act include undisclosed Board executive session decisions to spend taxpayer funds without a public vote, deliberations on vendor contracts not covered by the statute, and in-person discussions with vendors. Any future attempt to circumvent the intent of the Sunshine Act should be unacceptable.
- e. The Board should consider following the Center for Public Education's *Eight Characteristics of Effective School Boards*, which includes characteristics of a board being "accountability driven" and striving to have a "collaborative relationship ... with the community."<sup>6</sup> All Board members should commit to the Pennsylvania School Board Association's (PSBA) *Principles for Governance and Leadership*.<sup>7</sup> Voting against these principles shows a lack of understanding of the responsibilities of the public position.

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<sup>5</sup> See 65 Pa.C.S. § 708, *Scranton School Board Policy 006: Meetings* which cites to Section 708 (relating to Executive Sessions) of the Sunshine Act, and Section 425 of the Public School Code (PSC), which covers school safety, 24 P.S. § 4-425 (added by Act 39 of 2018, July 1, 2018). New Section 425 of the PSC permits a public school entity (including school districts) to hold an executive session to plan, review or discuss matters related to school safety if a public discussion would be reasonably likely to impair the effectiveness of such measures; or create a likelihood of jeopardizing the safety or security of an individual or a school, including a building, public utility, resource, infrastructure, facility or information storage system.

<sup>6</sup> <http://www.centerforpubliceducation.org/research/eight-characteristics-effective-school-boards-full-report>. The Center for Public Education is an initiative of the National School Boards Association.

<sup>7</sup> <https://www.psba.org/about/governance/principles/>. There have been a total of 107 school entities that have adopted the PSBA's Principles for Governance and Leadership as of January 25, 2019:

<https://www.psba.org/about/governance/principles/school-entities-adopted-principles-governance-leadership>

2. Board member accountability and participation at this juncture is critical to the District's turnaround, particularly to avoid state receivership, which would result in dissolution of the local Board and almost complete loss of local control.
  - a. The District should continue to follow the Board's policy of video recording all meetings: regular/legislative, special, and committee meetings. These recordings should be publicly accessible online within a reasonable time period (24-48 hours) after each meeting.
  - b. The District should track each board member's meeting attendance. This attendance record should be readily available on the District's website and on the board's webpage to allow the public quick access to information regarding the level of participation of their elected officials. It should be updated monthly, and year-to-date attendance records should be reported on in regular meetings.
  - c. The District should ensure that all District employees, Board members, and administrators take any and all actions that, in the judgment of the CRO, are necessary to implement the Financial Recovery Plan and to refrain from taking any actions that, in the judgment of the CRO, would impede the implementation of the plan consistent with the Financial Recovery Status provisions of the PSC. The PSC grants the CRO the authority to directly control the Financial Recovery Plan implementation process; the District should respect the CRO's authority, and act accordingly.
  - d. On March 4, 2019 the Board, intermediate unit, and teachers' union established an advisory committee to consult with the CRO in carrying out the duties of the CRO consistent with the Financial Recovery Status provisions of the PSC.
    - i. The CRO should work with the Board to develop and immediately implement related anti-nepotism and conflict of interest disclosures for the advisory committee.
    - ii. The advisory committee does not include a seat for the maintenance union, which represents more than 200 of the District's employees; the CRO should work with the PDE to add a seat for the maintenance union, because their members' voices belong in this critical conversation.
    - iii. The General Assembly should amend the PSC to ensure labor organizations representing 15 percent or more of a district's staff automatically receive a seat on financial recovery advisory committees.
3. *Scranton School Board Policy No. 903, Public Participation in Board Meetings*, states in part:

The Public Comment segment of the meeting is for citizen comments – not for question/answer, discussion or debate. The School Board is not obligated to respond or comment.

The presiding officer may: 1. Refer a question to a committee chair or administrator or request that the question be submitted in writing.<sup>8</sup>

The Board should feel empowered to utilize this option to respond when addressed by members of the public. More frequent dialogue with the public would help foster a culture of clear communication and transparency. Communication between the administration and the Board, the administration and teachers, the administration and parents, and the Board and the public seem particularly strained.

4. Opaque processes, restrictive, domicile-based hiring criteria, and narrow universes for applicant pools discourage qualified, diverse potential applicants to a District that is growing more diverse by the day. The CRO should work with the Board and labor groups to strengthen and modernize administrative and professional hiring policies.

#### **Academics and Educational Issues**

1. While the District is in Financial Recovery Status, the Board should set a reporting schedule and routinely report to the public the status of all extracurricular programs. Further, the Board should regularly report on the status of cut or curtailed teacher and staff positions for such programs since the state first placed it in Financial Watch Status, including the following: library, music, band, art, foreign language, and industrial arts. This will help the District remain accountable to the public regarding the status of programs necessary to student success in a global economy.
2. The integrity of academic records, like student transcripts, is paramount for any educational institution. The Financial Recovery Plan should include a review of academic record-keeping systems and provide guidelines for the District to make improvements in the quality, accuracy, and availability of student records.
3. It has been proven and is widely accepted that Pre-K attendance improves future academic and career outcomes for students. The District should work to maximize its eligibility for federal funding for Pre-K and review its admittance policies to make sure every child has fair access to the Pre-K program.
4. The Financial Recovery Plan provides an opportunity for the District to address the pressing need to better align K-12 academics with work readiness skills and career paths in growing industries and sectors. The CRO should consider formalizing communication with local businesses and economic development professionals to gather ideas, and

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<sup>8</sup> *Policy 006-Meetings* should include a reference to *Policy No. 903* under “Public Participation”.

possibly financial resources, to give teachers and guidance counselors the tools they need to more effectively introduce students to a broad range of career paths.

## Student Transportation

1. Using the powers and duties of districts under Recovery Status set forth in PSC Section 642-A,<sup>9</sup> the District should cancel its current primary transportation agreement, effective at the end of the 2018-19 school year to avoid disrupting families, and immediately solicit public bids for transportation services for the 2019-20 school year and beyond. According to the PSC, these powers must be specifically included in the Financial Recovery Plan:

PSC Section 642-A. Powers and duties.

- (a) General rule.--A school district in financial recovery status under this subdivision or in receivership under Subdivision (vi) may exercise any of the following powers only to the extent that the powers are specifically included in the school district's financial recovery plan and the exercise of the powers will effect needed economies in the operation of the district's schools:

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- (3) Cancel or renegotiate any contract to which the board of school directors or the school district is a party, if the cancellation or renegotiation of contract will effect needed economies in the operation of the district's schools. Collective bargaining agreements are specifically exempt from this clause and shall be governed by the provisions of clause (15).<sup>10</sup>
- a. In soliciting these bids, the District should adopt best business practices for school districts, which tie the cost of contracted transportation services to the number of miles driven and the number of students rather than using an arbitrary daily rate, which drives up costs without accountability and reduces the ratio of reimbursements to total transportation costs.
  - b. The District should make clear in its solicitation for bids that indefinite or numerous automatic contract renewal clauses will be prohibited absent a valid cause. The District should adopt this policy as part of an updated, more rigorous set of general procurement policies.
  - c. The District's new contract terms for transportation services should also allow for the possibility of price adjustments beneficial to the District that reduce costs when lower fuel costs and/or other achieved efficiencies could be passed through to the District. Annual automatic price increases should be prohibited

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<sup>9</sup> 24 P.S. § 6-642-A, <https://www.legis.state.pa.us/WU01/LI/LI/US/HTM/1949/0/0014..HTM>

<sup>10</sup> 24 P.S. § 6-642-A(a)(3).

absent a valid cause. Price adjustments must be tied to reasonable cost indices and allow for downward adjustments when appropriate.

- d. Transportation contracts should include cost structures for student activity runs.
  - e. Any current and future agreements with transportation providers must reflect the bus driver qualification requirements set forth in the Child Protective Services Law.
2. The 2004 contract with the primary provider states: “The number of buses required by the District may be reduced or increase at the sole discretion of the District” (Article XV). The District should exercise its right to reduce the primary provider’s routes as much as possible and direct those cost savings to the classrooms.
  3. This Department’s 2017 Performance Audit findings regarding the District’s student transportation contracts led to questions surrounding “the legal validity of all three [2006, 2012, and 2016] contract documents”.<sup>11</sup> The CRO should work with the attorneys of the PDE’s Office of Chief Counsel (who are part of the Governor’s Office of General Counsel) and other state or federal authorities to assess the validity of the current agreement with the District’s primary transportation provider.
    - a. If the agreement is deemed invalid, the District should immediately determine what civil and/or criminal recourses are available to seek restitution for the funds paid on an illegal contract, in particular with regard to unauthorized fuel surcharges.
  4. The General Assembly should enact legislation to mandate public bidding requirements for all student transportation contracts. The new section should be a stand-alone provision in the PSC, Article XIII Pupils and Attendance<sup>12</sup> and include a requirement for the PDE to issue detailed bidding guidelines modeled after but not equivalent to the Commonwealth Procurement Code<sup>13</sup> and all existing executive branch management directives including Management Directive 215.3 (Pennsylvania Department of General Services’ [DGS’] Procurement Handbook).<sup>14</sup>

## Operations

1. The District has lacked oversight and inventory control mechanisms in its IT department; a thorough audit must be conducted and processes must improve immediately through

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<sup>11</sup> Department’s 2017 Performance Audit, at p. 38.

<sup>12</sup><https://www.legis.state.pa.us/cfdocs/legis/LI/uconsCheck.cfm?txtType=HTM&yr=1949&sessInd=0&smthLwlnd=0&act=014&chpt=13>

<sup>13</sup> <https://www.dgs.pa.gov/Local%20Government%20and%20Schools/COSTARS/PublishingImages/title62.pdf>

<sup>14</sup> <https://www.dgs.pa.gov/State%20Government/Materials-and-Services-Procurement/Procurement-Handbook/Pages/default.aspx>

implementation of written procedures that incorporate internal accounting controls. This audit should not be limited to a mere current inventory count, but should attempt to reconcile past inventory purchases and disposals with the inventory count, and ultimately make a concerted effort to account for any differences. The results of this audit should promptly be reported to the public upon approval by the Board.

2. Electronic record-keeping in all departments—including budget and finance, human resources, IT, and academics—is critical to the District’s efforts to be transparent: it will ultimately save money, reduce labor hours for administrative tasks, and improve internal accounting controls. The District should strive toward implementation of electronic record-keeping as quickly as possible.

## **Human Resources**

1. Following the release of this Department’s 2017 Performance Audit, which found improper health benefits paid to a private contractor of the District, the Attorney General launched an investigation but elected not to prosecute; however, it was established that taxpayers paid for nearly \$400,000 in healthcare benefits for the contractor and the contractor’s spouse.
  - a. The District should review the list of its participants in insurance programs to ensure that only full-time employees are participating, and publicly disclose any past or current instances of healthcare payments for non-employees.
  - b. The District should also review its procedures for paying vendors and independent contractors and for filing the annual IRS Form 1099; it should institute a policy disallowing payment to any applicable vendors/independent contractors until all tax forms have been completed and properly submitted.
  - c. The CRO should work with the administration to put stringent controls in place to ensure this cannot continue in the future.
  - d. The CRO should work with the attorneys of the PDE’s Office of Chief Counsel or other state or federal authorities to determine what civil recourse the District has to seek restitution for the negligence of the then staffs of the administration, human resources and business offices, solicitors, and Board members that the discovery of these improper health insurance payments exposed.
2. This Department’s 2017 Performance Audit also found bills for work on District vehicles totaling nearly \$700,000, which circumvented normal billing procedures. Since this finding was reported, the Attorney General has charged two individuals with felony counts, including criminal conspiracy, dealing in unlawful proceeds, and theft by deception.



- a. The District should operate within the bounds of employee contracts to investigate and, if wrongdoing is found, potentially discipline employees who took or continue to gain from improper benefits from vendors paid using taxpayer funds.
  - b. The CRO and the District should work with state authorities to explore options for recouping these funds. Guidance for public entities and citizens seeking to recoup stolen or improperly distributed public funds should be more accessible.
  - c. The General Assembly should amend the Public Employee Pension Forfeiture Act to require that any felony or term of imprisonment exceeding three years (and any substantially similar federal/other state convictions) in addition to the already enumerated public employment offenses would require pension forfeiture. (See pending SB 113<sup>15</sup> that would require pension forfeiture for any felony or a term of imprisonment exceeding five years [and substantially similar federal/other state convictions] in addition to the already enumerated public employment offenses, which appears to be extremely lenient.<sup>16</sup>)
3. The District has a history of incorrectly reporting to the PDE the number of charter school and nonpublic school students, which results in overpayments for transportation. The District must continue to improve its data collection, monitoring, and reporting of student populations, in human resources, and in all other function areas.
  4. While the Financial Recovery Plan should be able to consider and include recommended position reductions and salary/benefit reductions, it should oppose the subcontracting of support services represented by SEIU 32 BJ.

## **Budget and Finance**

1. The Scranton School District holds over \$200 million in debt and annually pays over \$18 million in debt service. This pattern of borrowing must end if the District is to recover financially. The District should take advantage of no-interest Transitional Loans from the Commonwealth, which it can now access under Financial Recovery Status.
  - a. Overpayment of financial fees has been an issue for the District. The CRO should utilize all available resources of the PDE and educational associations or institutions to ensure that any financial services contracts are legally permissible,

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<sup>15</sup> SB 113 has passed the Senate the required three times for enactment and passed the House once (March 12, 2019). <https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2019&sInd=0&body=S&type=B&bn=0113>

<sup>16</sup> The Auditor General's August 2017 SERS/PSERS Performance Audit included a recommendation for forfeiture of a public pension for a public employee (not just a school employee) convicted of a sexual crime against anyone who does not, or is unable, to give informed consent: <https://www.paauditor.gov/press-releases/auditor-general-depasquale-urges-state-employees-retirement-system-to-do-more-to-cut-investment-fees>

meet the provisions set forth by the Municipal Securities Rulemaking Board (MSRB), and fall within standard municipal advisory fee ranges.

- b. Before going to the Board for approval, all borrowing transactions should be reviewed by the attorneys of the PDE's Office of Chief Counsel (who are part of the Governor's Office of General Counsel), and if above a set threshold of the District's borrowing capacity, reviewed by an independent agency like the Auditor General or Treasury. Obligations which the District cannot reasonably fulfill should not be approved.
  - c. The General Assembly should enact legislation to mandate multiple layers of analysis of school district financial transactions, at both the state and local level.
2. Any Financial Recovery Plan for the District, as well as those of other districts in Financial Recovery Status, should advocate for the Commonwealth to statutorily reform its current funding formula for public education so that urban school districts, such as Scranton, receive equitable per pupil funding. Funding of school districts should be designed so the formula provides for fair funding for all students across the Commonwealth. The burden of begging to obtain fair funding should not fall on the shoulders of school district officials, teachers, support staff, parents, and students.
3. Any state funding provided to the District, while it is in Financial Recovery Status, will remain subject to audit at any time as deemed necessary by the Department of the Auditor General. The Department should have the authority to block future funding if such audits find that public resources have not been used properly.
4. To encourage auditor independence, the District should adopt a policy of rotating its independent auditing firm every five years. The policy should require the District to solicit public bids or proposals for its annual independent auditing services, no matter the proposed or budgeted annual costs. The policy, along with any independent auditing services contract, should also prohibit automatic renewal clauses and should require the Board to address, in a public forum, how a contracted independent auditing firm would propose maintaining independence if an existing contract were to be renewed or extended.
5. The District should update its procurement policy to require public bids or proposals to be solicited for all goods and services costing \$20,000 or more annually as a best practice. It should require written quotations from a minimum of three qualified and responsible contractors for all contracts (including for the purchases of goods or services) of more than \$10,000 as a best practice. Documentation of quotes obtained by the District should be retained in accordance with the District's record-keeping policy. The policy should prohibit piecemeal purchasing from one vendor to avoid the procurement policy requirements and thresholds.

- a. The 2017-18 Board made strides last year by adding more strict bidding requirements to *Policy No. 610: Purchases Subject to Bid/Quotation*:

The Scranton School District will not enter into contracts for goods and services without a bid, Request for Proposal (RFP) or Request for Quote (RFQ), and will not extend a contract without bid Request for Proposal (RFP) or Request for Quote (RFQ) past a period of five years from the initial term.

This policy should be fully implemented and adhered to. An annual training on this topic for Board members and staff would be helpful in reinforcing the importance of following procurement policies. The Pennsylvania Association of School Business Officials (PASBO) may be able to assist with this training.

- b. The General Assembly should enact legislation to amend the PSC, Article VI School Finances<sup>17</sup> to require the PDE (in consultation with DGS) to compile a comprehensive procurement manual for all school entities (school districts, charter/cyber schools, vocational schools, and intermediate units) modeled after but not equivalent to the DGS' Procurement Handbook and covering the existing PSC construction contract bidding requirements, the new transportation bidding requirements, cooperative purchasing, the PlanCon process, and ethics in contracting.
6. While the District is in Financial Recovery Status – and perhaps in perpetuity - the CRO should consider enforcing a policy that any contract with a total annual obligation of over \$250,000 should be analyzed by an attorney from the PDE's Office of Chief Counsel in order to ensure it is in line with the PSC and state and federal procurement laws.
  7. The District should work with the City of Scranton to formally and routinely analyze, and report to the public, the annual lost tax revenues related to tax-exempt commercial and nonprofit real property.
    - a. The District should consider adopting a formal procedure of annually requesting PILOT (Payment in Lieu of Taxes) contributions from tax-exempt nonprofit organizations. It should report responses from these organizations to the public.
  8. The Financial Recovery Plan should include options for working with the City of Scranton and Lackawanna County to streamline tax collection, maximize revenue from current tax rates, and modernize tax policies to encourage entrepreneurship and business expansion, which would add to the tax base for the District.

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<sup>17</sup><https://www.legis.state.pa.us/cfdocs/legis/LI/uconsCheck.cfm?txtType=HTM&yr=1949&sessInd=0&smthLwInd=0&act=014&chpt=6>

9. Scranton and Pittsburgh are the only districts in the state that operate on a calendar year budget (year-end December) instead of an academic/fiscal year budget (year-end June). The calendar year budget impedes the District's ability to properly forecast needs for the academic year and creates multiple duplicate reporting obligations. While challenging to convert to a fiscal year budget, the Financial Recovery Plan should include an option to pursue this change in order to streamline processes for the business office. This in turn will save staff time and money and enable better planning and budgeting for each classroom, school building, and administrative department.
10. The Financial Recovery Plan should require the District to publicly report any overspending of allotted departmental budgets and to take measures, as necessary, to make mid-year budget adjustments. Where feasible, the District should use underspent funds in expenditure areas to offset overspending in other areas.
  - a. The District should improve public access to information by posting not only preliminary and final budgets, but monthly and quarterly budget updates as well. This information should be available online, in the business office, and at the public library.

### **Looking to the Future**

District officials should welcome the arrival of the CRO, and view the beginning of this recovery period as an opportunity to put past mistakes and poor governance practices behind the District and focus on what matters most - educating Scranton's 10,000 public school students, and all of the children who will follow.