

# Investigative Report

## Legislative Joint Auditing Committee

May 11, 2007

# The Learning Institute

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## Hot Springs School District

### INTRODUCTION

This report is issued pursuant to a request from Scott Smith, General Counsel to the Arkansas Department of Education (ADE), for the Division of Legislative Audit to conduct a review of The Learning Institute (TLI), established by the Hot Springs School District (District). Of particular interest is the financial operations and functions of TLI relating to the resources of the District as well as the District's relationship with other public or private entities. During fieldwork, other questionable transactions came to our attention and are discussed in this report.

### OBJECTIVES

Our objectives in conducting this review were as follows:

- ◆ *Assist the District's Board in determining the amount of District resources used in developing and operating the TLI program and assessing intellectual property value;*
- ◆ *Review the relationship between the District, ThinkBus, LLC, Data 4 Learning, LLC, Jefferson Parish Public School System (Jefferson Parish), and Roy Rowe, former District Superintendent;*
- ◆ *Analyze pertinent contracts to determine compliance with applicable sections of Arkansas Code Annotated (Code);*
- ◆ *Examine selected District disbursements for propriety; and*
- ◆ *Evaluate internal controls regarding certain District financial and operational policies.*

### SCOPE AND METHODOLOGY

This review was conducted primarily for the period July 1, 2004 through December 31, 2006. We analyzed relevant District contracts, financial records, and policies as well as applicable state laws and other states' Attorney General's Opinions. Appropriate individuals were interviewed and pertinent docu-

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ments of ThinkBus, LLC, Data 4 Learning, LLC, and Jefferson Parish were reviewed. In addition, internal controls were evaluated for sufficiency.

The methodology used in conducting this investigative review was developed uniquely to address our stated objectives, and therefore, the review was more limited in scope than an audit or attestation engagement performed in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States.

## BACKGROUND

### Purpose, Growth, and Leadership

TLI is a program, operated by the District, to provide formative assessment<sup>1</sup> services to participating Arkansas public school districts. These services include modular assessments in math and literacy, developed by TLI and modeled closely after the Arkansas Benchmark exams, which are used to determine strengths and weaknesses in curriculum and instruction. Through the TLI web portal, immediate feedback is provided to facilitate quality remediation and review. Curriculum support, professional development opportunities, and intervention strategies also are a part of the TLI program.

Originally, Mr. Rowe developed the concept of TLI to offer and implement, in other school districts, processes used by the District to achieve improved student test scores. In addition to the District, six school districts participated in TLI for the 2004-2005 school year and participation grew to twenty-seven districts in the 2006-2007 school year (see **Exhibit I**).

<sup>1</sup>A process used by teachers and students during instruction which provides feedback to adjust ongoing teaching and learning to improve students' achievement of intended instructional results

## Exhibit I

The Learning Institute List of Participating School Districts For the Period July 1, 2004 through December 31, 2006	
Arkadelphia**	Hot Springs*
Benton***	Hughes **
Blytheville**	Jonesboro***
Brinkley**	Lafayette County*
Bryant**	Little Rock***
Cabot***	Marion**
Camden Fairview*	McGehee**
Conway**	Mountain Pine* <sup>2</sup>
Cutter***	Rogers***
Dollarway***	Russellville***
Dumas**	Sheridan***
Forrest City*	Stuttgart* <sup>1</sup>
Fort Smith***	Texarkana*
Harrisburg***	Van Buren**
Hope***	Watson Chapel**

Participating since school year:  
 \*2004-2005  
 \*\*2005-2006  
 \*\*\*2006-2007

\*<sup>1</sup> Participation dropped after 2004-2005  
 \*<sup>2</sup> Participation dropped after 2005-2006

Source: Hot Springs School District

While Mr. Rowe administered TLI, Joel Rush, Director of Research and Evaluation at the District, was in charge of routine operations until his resignation on July 31, 2005. As Director, Mr. Rush, whose 2005-2006 employment contract was \$72,688, worked with companies and individuals contracted by the District to develop software and database programs for TLI.

The day after Mr. Rush resigned, the District entered into an annual contract of \$193,350 with ThinkBus, LLC, whose members are Mr. Rush and Matt Adams, to provide consulting services for TLI. However, the District continued to operate TLI, utilizing District employees, in the same manner as in the past.

In response to the Board's concern of TLI growing too large for the District to operate, TLI ownership was conveyed to ThinkBus in December 2006.

### **Funding**

Initial funding for TLI was a Walton Foundation grant of \$240,000 in the 2003-2004 school year. Subsequently, the majority of revenue consisted of fees based on a scale of \$20 per student with a minimum fee of \$20,000 and a maximum of \$60,000. Participating districts also paid nominal amounts for expenses associated with training programs. Refer to **Schedule 1 on page 13** for information relating to fees for participating districts.

## **RESULTS OF REVIEW**

The review results and recommendations, if applicable, are discussed below by topic. To assist in understanding the sequence of events, a timeline was prepared as shown in **Schedule 2 on pages 14 and 15**.

### **Sources and Uses of Funds**

To determine the amount of District resources used in developing the TLI program, we analyzed District financial information obtained from Arkansas Public School Computer Network (APSCN). Illustrated in **Exhibit II on page 5**, *District financial records* indicated TLI sources and uses of funds were \$1,294,796 and \$2,019,472, respectively, for the period July 1, 2003 through December 31, 2006, resulting in a deficit fund balance of \$724,676.

The sources of funds do not include uncollected fees of \$476,510 at December 31, 2006. Additionally, according to District personnel, National School Lunch Act (NSLA) and Title I restricted funds of \$333,808 were used to partially pay salaries of four employees, who primarily worked in

TLI. Former TLI Director Mr. Rush's compensation was \$138,185 for the period July 1, 2003 through July 31, 2005 and Mr. Rowe's 2006-2007 employment contract contained a provision compensating him \$25,000 to oversee the TLI program. Had these expenses, totaling \$496,993, been properly allocated to TLI and the uncollected fees of \$476,510 included in sources of funds for TLI, the deficit fund balance would have been greater. Furthermore, the District did not allocate overhead expenses to the TLI program.

District personnel also indicated Mr. Rowe had discretion for determining which expenses were coded to TLI; consequently, any other expenses that should have been coded to TLI were not readily known. Since the District was unable to definitely quantify all TLI uses of funds, the exact amount of District resources used to develop and operate the TLI program could not be determined. However, assuming the District collects unpaid fees and no other material expense miscodings, District funds used to operate TLI were \$745,159 more than fees and grants received. This deficit would have been larger had overhead expenses been prorated to the TLI program costs.

**We recommend** District management properly code and/or allocate expenses to ensure accurate financial information is presented to the Board. Inaccurate financial data could preclude the Board from making sound business decisions. **We also recommend** the District consult with ADE regarding the use of restricted funds for TLI purposes.

### **Intellectual Property**

*Black's Law Dictionary, Seventh Edition* defines intellectual property, in part, as "... a category of intangible rights protecting commercially valuable products of human intellect. The category comprises primarily trademark, copyright, and patent rights ...." A copyright grants an exclusive legal right to

reproduce, publish, distribute, or sell the content and form of an original work of authorship. Examples include computer programs, web sites, and data compilations.

After researching and reviewing the Federal Copyright Act (FCA) and several other states' Attorney General's Opinions<sup>2</sup> relating to intellectual property, the FCA scope appears to include public entities. According to the FCA, a computer program would be considered intellectual property subject to copyright laws. In general, the employer has the right to an exclusive copyright in material produced by either an employee or an independent contractor. Title 17, United States Code Annotated (USCA) Section 201 (b) explains the "work for hire doctrine" as: "In the case of a work made for hire, the employer or other person for whom the work was prepared is considered the author for purposes of this title, and, unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all the rights comprised in the copyright."

After TLI was created, the District began acquiring intellectual property in the form of formative assessment processes and computer software developed by employees as well as independent contractors. We were unable to assess intellectual property value because the District did not maintain an adequate accounting of costs associated with the TLI program development nor did ThinkBus maintain records to document phases of software development.

However, the District's financial records for the time period July 1, 2003 through December 31, 2006 indicated \$580,816 (see **Exhibit II on page 5**) was used for

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<sup>2</sup>Office of the Attorney General of the State of Louisiana, *Opinion No. 01-82*, 2002; Office of the Attorney General of the State of Minnesota, *Opinion No. 852*, December 4, 1995; Office of the Attorney General of the State of Nevada, *Opinion No. 89-1*, 1989; and Office of the Attorney General of the State of Illinois, *Opinion No. 142*, 1976

professional and technical services, such as software development. Prior to contracting with ThinkBus for consulting services, the District had expended over \$107,000 for services relating to software development. Furthermore, after contracting with ThinkBus, the District expended an additional \$250,604 and \$222,573 during the 2005-2006 and 2006-2007 school years, respectively, for consulting and technical services.

Although the Board has disposed of TLI, the Board may desire to obtain services of an expert in business and intellectual property valuation, if this information remains necessary.

### **ThinkBus, LLC**

Mr. Rush and Mr. Adams formed ThinkBus on May 10, 2005 with the intent to sell technology solutions and consulting services to local and state education agencies. ThinkBus is engaged in the business of computer application development, including technical consulting services and custom software development and maintenance. To conduct formative assessments, curriculum alignment, and assessment reporting for the District and TLI participating districts, ThinkBus enhanced and implemented software identified as The Learning Institute Web Portal. The District and ThinkBus entered into two contracts which are discussed below.

#### *Consulting Services Agreement*

A consulting services agreement (Agreement) was negotiated effective August 1, 2005 through July 31, 2006, and renewed for the following year. Neither Agreement was dated when signed by Mr. Rowe and Mr. Rush. Pertinent clauses of the Agreement included:

1. The District may terminate the Agreement, after giving thirty days written notice, if outlined services are not completed to the satisfaction of the District's Superintendent.

**Exhibit II**

**The Learning Institute  
Sources and Uses of Funds  
For the Period July 1, 2003 through December 31, 2006**

	7/1/2003 through 6/30/2004	7/1/2004 through 6/30/2005	7/1/2005 through 6/30/2006	7/1/2006 through 12/31/2006	Totals
<b>Beginning Balance</b>					\$ 0
<b>Sources of Funds</b>					
Donations	\$ 240,000				\$ 240,000
Fees (Note 1)		\$ 100,000	\$ 700,054	\$ 150,000	950,054
Other fees and reimbursements	800	51,859	20,888	31,195	104,742
<b>Total Sources of Funds</b>	240,800	151,859	720,942	181,195	<b>1,294,796</b>
<b>Uses of Funds</b>					
Personal services-salaries (Note 2)	12,587	65,445	353,220	297,241	728,493
Purchased services-employee benefits	963	15,162	85,115	70,797	172,037
Purchased professional and technical services:					
Effective Schools Products, Ltd. Learning 247		23,000			23,000
Travel		10,365	32,576	23,576	66,517
Supplies and materials	2,864	60,326	88,058	47,474	198,722
Equipment		31,768	47,042	19,671	98,481
Equipment (Note 3):					
Integration Services Corporation		25,677			25,677
Scantron Corporation		56,630			56,630
Subtotal	16,414	288,373	675,110	458,759	1,438,656
Purchased professional and technical services:					
Carrie Wells		24,544			24,544
ClearPointe Technology, Inc.	11,000	67,477			78,477
Evan D. Lenz			17,775	6,337	24,112
Other		4,618	7,611	21,819	34,048
Shari Coston			31,868	38,242	70,110
ThinkBus, LLC:					
Consulting services			193,350	96,675	290,025
Web portal services				59,500	59,500
Subtotal-purchased professional and technical services (Note 4)	11,000	96,639	250,604	222,573	580,816
<b>Total Uses of Funds</b> (Note 5)	27,414	385,012	925,714	681,332	<b>2,019,472</b>
<b>Ending Balance</b> (Note 6)					<b>\$ (724,676)</b>

Note 1: Does not include fees of \$476,510 due from participating districts as of December 31, 2006

Note 2: Does not include salaries of \$333,808 and \$138,185 paid four TLI employees and the TLI Director, respectively, from other District Funds or Superintendent's compensation of \$25,000 to oversee TLI for 2006-2007 school year

Note 3: Equipment incorrectly coded as professional and technical services

Note 4: Professional and technical services total \$107,639 prior to the contract with ThinkBus

Note 5: Does not include any overhead expenses

Note 6: The deficit balance would have been \$745,159 had the amounts from Notes 1 and 2 been included

**Source:** Hot Springs School District financial records and interviews with District personnel

2. Employees of ThinkBus will work not less than 224 days (8 a.m. to 4 p.m. with one hour for lunch) at the District Central Office or other locations on behalf of the District.
3. The District will pay ThinkBus an annual fee of \$193,350 in four equal installments.
4. The District will provide support services, including office space and use of necessary technology and equipment, for the benefit of ThinkBus as required to fulfill the responsibilities outlined in the Agreement.
5. ThinkBus holds an intellectual property interest in what is commonly referred to as "The Portal" as far as it has been developed to communicate standardized score and formative assessment results to education stakeholders.
6. Any improvements to or further inventions of intellectual property discovered or developed by ThinkBus employees shall be the property of ThinkBus.
7. Both parties recognize services of ThinkBus include working on various projects for the District. ThinkBus shall obtain the District's approval prior to the start of any new District project (only for the Agreement effective August 1, 2006).

The District paid ThinkBus \$193,350 and \$96,675 for the 2005-2006 and 2006-2007 contract periods, respectively (see **Exhibit II on page 5**).

#### *Web Portal Services Agreement*

The District entered into a one year web portal services agreement (Portal Agreement), effective August 1, 2006, with ThinkBus for maintenance and support services with respect to software known as The Learning Institute Web Portal. The

Portal Agreement was not dated when signed and included the following clauses:

1. Services are to be billed at the rate of \$2 per enrolled student of participating districts receiving services from TLI. The District and sixteen districts, which were participating in TLI prior to the Portal Agreement, are specifically excluded from this clause.
2. The District and ThinkBus may agree to provide services, representing significant deviations from services provided by TLI, to other districts. In such cases, the District will pay 50% of the gross revenues from these agreements to ThinkBus.
3. Either party may terminate the Portal Agreement upon written notice for material breach, provided the terminating party has given the other party at least fourteen days written notice of, and the opportunity to cure the breach.

The District paid ThinkBus \$59,500 for web portal services for the 2006-2007 contract period (see **Exhibit II on page 5**).

#### **ThinkBus Agreement Issues/Concerns**

Under the Agreement, Mr. Rush's duties remained the same as those performed as a District employee. Mr. Rush also retained use of a District credit card and cellular telephone and the right to initiate and approve purchase orders on behalf of the District. Discussed below are issues/concerns with the two contracts the District entered into with ThinkBus.

#### *Employee vs. Contract Labor*

As specified in the contracts, the District controlled when and where ThinkBus employees' work was to be performed. Additionally, the District provided support staff and services including office space and use of technology and equipment. Travel expenses for Mr. Rush and Mr. Adams to

attend out-of-state workshops were also paid by the District. Normally, independent contractors receive their own training, supply their own tools and equipment, and work with various clients, none of which ThinkBus did.

Based on the above facts and review of Internal Revenue Service (IRS) regulations, Mr. Rush and Mr. Adams may be deemed employees of the District rather than independent contractors even though the Board recognized them as such.

**We recommend** the District review IRS regulations and consult with appropriate representatives of the IRS to determine the appropriate employment status of Mr. Rush and Mr. Adams and implement corrective action, if necessary.

#### *Ethics*

As previously discussed, the District entered into the Agreement with Mr. Rush, on behalf of ThinkBus, the day after his resignation from District employment. This arrangement, with the questioned employment status of Mr. Rush and his retaining use of a District credit card and cellular telephone, may conflict with state ethics provisions.

Code § 6-24-104 states, in part, “No ... employee shall knowingly use or attempt to use his ... official position to secure unwarranted privileges ....” Furthermore, Code § 6-24-110 states, in part, “Any effort by a nonemployee to influence any public educational entity board member, administrator, or employee to breach the standards of ethical conduct ... is a breach of ethical standards ....”

**We recommend** the Board implement procedures to ensure compliance with ethics Code and restrict District credit card and cellular telephone usage to employees.

#### *Intellectual Property*

According to Title 17, USCA, the overarching principle when considering ownership of intellectual property developed in a “work

made for hire” situation is a written instrument signed by both parties. The Agreement and Portal Agreement expressly assigned intellectual property to ThinkBus. However, the contracts were not dated when signed by Mr. Rowe and Mr. Rush, on file at the District, nor mentioned in Board meeting minutes. Past and current Board members were interviewed and the Board indicated approving the Agreement Mr. Rowe entered into with ThinkBus in 2005. The Board also acknowledged general awareness of the Agreement renewal in 2006 and the assignment of intellectual property, which is commercially valuable as discussed in the next section of this report. In addition, the Agreement, entered into on August 1, 2005, indicated ThinkBus had intellectual property rights to “The Portal”; however, the Portal Agreement was not entered into until a year later. The Board did not affirm knowing the Portal Agreement had been executed, but indicated approving an additional fee of \$2 per student, for participating districts joining in the 2006-2007 school year, be paid ThinkBus.

#### **Data 4 Learning, LLC**

Administrators of Jefferson Parish, located in Marrero, Louisiana, expressed interest in services offered by TLI. In August 2005, Mr. Rowe and Mr. Rush met with the administrators in Louisiana, at Jefferson Parish’s expense, to discuss implementation of the TLI program.

In the aftermath of Hurricane Katrina, Jefferson Parish neglected to reimburse travel expenses of \$833 to the District and further negotiations were postponed until May 2006 when Mr. Rowe and Mr. Rush returned to Louisiana.

According to Mr. Rowe and Mr. Rush, based on legal advice from ADE and the District’s attorney, a conclusion was reached that TLI *should not* serve an entity outside the State of Arkansas. As a result, Data 4 Learning, LLC was formed by Mr. Rowe, Mr. Rush, and Mr. Adams, specifically to offer Jefferson

Parish formative assessment services, somewhat comparable to those provided Arkansas school districts by TLI. Apparently, Data 4 Learning was formed to bypass the conclusion TLI should not be operated outside the state.

Data 4 Learning entered into a web portal services agreement with Jefferson Parish on June 7, 2006, and a consulting services agreement on June 21, 2006 to render formative assessment services. Jefferson Parish paid Data 4 Learning \$150,000 and \$109,915 in August 2006 and January 2007, respectively.

Furthermore, Data 4 Learning contracts with Jefferson Parish were based on the TLI concept and processes developed with District resources. Data 4 Learning contracts with Jefferson Parish were not discussed with the Board, ADE, or the District's legal counsel.

Mr. Rowe loaned \$40,000 to Data 4 Learning on July 14, 2006 so contractual obligations to Jefferson Parish could be fulfilled. Other than repayment of the loan, Data 4 Learning has made no payments to Mr. Rowe.

After Data 4 Learning was formed, Mr. Rowe renewed the Agreement and entered into the Portal Agreement with ThinkBus. This arrangement and the Jefferson Parish contracts seem to contradict Code §§ 6-24-101 and 6-24-104 which state, in part, "... administrators, and employees, ... shall carry out all official duties for the benefit of ... the community and the State of Arkansas .... No ... administrator ... shall knowingly use ... his ... official position to secure unwarranted privileges ...."

In addition, although Mr. Rowe resigned as a Data 4 Learning member on November 6, 2006, his membership in Data 4 Learning, whose remaining members are also ThinkBus members, appears to conflict with Code §6-24-111 which states, in part, "... it is a breach of ... ethical standards ... for

administrators to be or become the ... agent, or independent contractor of any party contracting with the public educational entity they serve ...."

To allow the Board an opportunity to comply with state ethics provisions, **we recommend**, at a minimum, the Board require administrators and employees to promptly disclose, in writing, conflict of interest issues. **We also recommend** the issue of potential residual royalties, to which the District may be entitled from intellectual property relating to Data 4 Learning's contracts with Jefferson Parish, be addressed by the Board.

### **Disposition of TLI**

To comply with the Board's request to completely sever TLI from the District, an agreement (Disposition Agreement), effective December 12, 2006, between the District and ThinkBus was executed for the disposition of TLI. Relevant clauses included:

- + The District assigns, sells and delivers to ThinkBus all of its rights, title and interest in and to TLI including the name and any intellectual properties of TLI.
- + ThinkBus agrees to continue, without disruption to participating districts, the services previously performed by TLI.
- + ThinkBus will offer current District employees working for TLI employment with ThinkBus in the same capacity and at the same rate of compensation.
- + The District agrees to provide ThinkBus with certain District facilities for training and related activities for no less than twenty days.
- + The District shall pay ThinkBus half of all 2006-2007 school year fees collected through December 31, 2006.
- + Participating districts owing fees for the current year of services will be invoiced



for half of the fees by the District and for the other half by ThinkBus with the exception of Little Rock School District (the fee split is 25% to the District and 75% to ThinkBus).

- + ThinkBus will provide TLI services, at no cost, to the District for the time period January 2, 2007 through May 31, 2009.

Summarizing the Disposition Agreement terms, ThinkBus received or is to receive the following (see **Exhibit III**):

- + The TLI name;
- + Ownership of intellectual property;
- + \$150,000, which represents half the current school year prepaid fees from participating districts; and

- + Fees of \$491,510 from participating districts for the remainder of the 2006-2007 school year.

In exchange, the District is to receive formative assessment services, free of charge, valued at \$150,000 for twenty-nine months.

The Disposition Agreement does not provide a provision regarding any recourse to which the District would be entitled should ThinkBus breach the contract terms.

However, though not stipulated in the Disposition Agreement, the District is obtaining signed documentation from each participating district releasing the District from any responsibility or obligation to provide TLI services beginning January 1, 2007. As of the report date, nineteen of

**Exhibit III**

The Learning Institute Terms of Disposition Agreement December 12, 2006	
ThinkBus, LLC	Hot Springs School District
<p>TLI name</p> <p>Ownership of intellectual property</p> <p>Use of HSSD facilities for 20 days</p> <p>\$150,000 for half the current school year prepaid fees HSSD received from participating districts</p> <p>\$491,510 for fees from participating districts for the remainder of the current school year</p>	<p>Formative assessment services from ThinkBus for twenty-nine months at no charge (services valued at \$150,000)</p>
<p>HSSD: Hot Springs School District TLI: The Learning Institute</p>	
<p><b>Source:</b> Hot Springs School District</p>	

twenty-seven releases have been obtained and twenty-two participating districts owe \$476,510 to the District for TLI services provided during July 1, 2006 through December 31, 2006 (see **Schedule 1 on page 13**).

ThinkBus relocated the TLI offices away from the District and while both parties indicated District property was not removed during the disposition, we were unable to verify this assertion because the District did not maintain accurate fixed assets records.

**We recommend** the Board consult with legal counsel to determine if the Disposition Agreement should be amended to address recourse should ThinkBus breach the contract. **We also recommend** the District obtain the remaining releases and uncollected fees from the participating districts. In addition, **we recommend** the District update fixed assets records relating to TLI.

### **Improper Disbursements**

To determine whether District funds pertaining to TLI were properly disbursed, we examined available documentation and interviewed District personnel and Mr. Rush. This examination indicated District funds/credit cards were improperly disbursed/used as detailed below and summarized in **Exhibit IV on page 11**.

*Roy Rowe, Former Superintendent*

- ▲ Unallowable credit card charges of \$33 for tips.
- ▲ Questioned credit card charges of \$239.

*Joel Rush, Former District Employee*

- ▲ Undocumented and questioned credit card charges of \$2,116 and \$489, respectively.

Without adequate supporting documentation, we were unable to verify Mr. Rowe's and

Mr. Rush's undocumented and questioned credit card charges were for District purposes.

*Joel Rush/Matt Adams, ThinkBus*

As previously discussed, Mr. Rush retained the use of a District credit card after his employment ceased. Even though he indicated this credit card was used only on the District's behalf, we were unable to verify Mr. Rush's assertion without adequate supporting documentation. Of the credit card charges, totaling \$26,451, Mr. Rush incurred, we noted the following:

- ▲ Undocumented and questioned District credit card charges of \$15,569 and \$5,406, respectively.
- ▲ A nonbusiness charge of \$106 which Mr. Rush reimbursed.

In addition, the District reimbursed Mr. Rush \$774 for out-of-state travel expenses to discuss TLI with prospective districts. The District also reimbursed Mr. Adams unallowable expenses of \$29 for tips.

*Jefferson Parish*

The District reimbursed Mr. Rush \$833 for two airline tickets to New Orleans. According to Mr. Rush and Mr. Rowe, Jefferson Parish had agreed to reimburse the District for travel expenses, but neglected to do so.

**We recommend** the District obtain reimbursement for unallowable expenses from the applicable individual(s). **We also recommend** the District determine the business purpose of undocumented and questioned credit card charges and obtain reimbursement from the responsible individual(s) for those charges unsubstantiated for District purposes. Additionally, **we recommend** the District request repayment from Jefferson Parish for unreimbursed travel expenses.

**Internal Control Weaknesses**

Our evaluation of internal controls and policies in place at the District revealed numerous internal control deficiencies. To improve internal controls and enhance financial reporting and accounting practices, **we recommend** the Board and/or District management:

- ✧ Exercise proper Board fiscal oversight responsibility;
- ✧ Require supporting documentation for disbursements;
- ✧ Develop operational policies to address credit card use, cellular telephone use, and travel by District employees;
- ✧ Devise a policy regarding approval of purchase orders;
- ✧ Establish procedures to ensure the correct classification of expenditures;

- ✧ Maintain a current and accurate fixed assets inventory;
- ✧ Develop procedures to ensure contracts are properly negotiated and contain all relevant information including signatures and dates;
- ✧ Implement procedures to ensure compliance with state law provisions relating to disbursements and ethics; and
- ✧ Transcribe Board meeting minutes in a manner to fully disclose the Board's intentions.

**CONCLUSION**

TLI was developed to provide formative assessment services to the District and other participating districts. Sources and uses of funds, as shown in **Exhibit II on page 5**, reflect District resources in excess of \$700,000 were used to operate the program.

**Exhibit IV**

Hot Springs School District  
 Summary of Improper Transactions and Amounts Due/Potentially Due HSSD  
 For the Period July 1, 2004 through December 31, 2006

Description	District Employees		ThinkBus		Jefferson Parish	Totals
	Roy Rowe	Joel Rush	Joel Rush	Matt Adams		
Unallowable disbursements	\$ 33		\$ 880	\$ 29	\$ 833	\$ 1,775
Amounts reimbursed			(106)			(106)
<b>Total Amounts Due HSSD</b>	<b>\$ 33</b>		<b>\$ 774</b>	<b>\$ 29</b>	<b>\$ 833</b>	<b>\$ 1,669</b>
Undocumented disbursements		\$2,116	\$15,569			\$17,685
Questioned disbursements	\$ 239	489	5,406			6,134
<b>Total Undocumented/Questioned Disbursements and Amounts Potentially Due HSSD</b>	<b>\$ 239</b>	<b>\$2,605</b>	<b>\$20,975</b>			<b>\$23,819</b>

HSSD: Hot Springs School District

**Source:** Hot Springs School District financial information

Further, certain expenditures pertaining to the operations of the TLI program, but paid from other Funds, were not coded to TLI resulting in an inaccurate financial presentation.

While District funds were used in excess of fees collected, District management maintains the TLI program resulted in improved student test scores and teacher morale and enhanced the community's perception of the District.

During the 2005-2006 school year, the District contracted with ThinkBus to provide technical consulting services and custom software development relating to the TLI program. Intellectual property valuation could not be determined because neither the District nor ThinkBus maintained records to document phases of software development.

Since the District entered into a contract with Mr. Rush the day after his resignation from the District and due to Mr. Rush's questioned employment status as well as his retention of a District credit card and cellular telephone, there may be conflict with Code ethics provisions. Also, because the former superintendent formed Data 4 Learning with owners of ThinkBus, with whom the District had an existing contract, there appears to be conflict with state ethics provisions.

Data 4 Learning was formed specifically to offer formative assessment services, similar to those provided by TLI, to Jefferson Parish, an out-of-state school district. The District may be entitled to residual royalties from intellectual property relating to Data 4 Learning's contracts with Jefferson Parish.

The Board's concern of TLI growing too large for the District to operate resulted in the dissolution of TLI. Through the Disposition Agreement, ThinkBus received or is to receive the TLI name, intellectual property rights, and fees of \$641,510 from participating districts for the remainder of the current school year. In exchange, the District is to receive, at no charge, formative

assessment services, valued at \$150,000, from ThinkBus.

The District also incurred improper disbursements and credit card charges, as illustrated in **Exhibit IV on page 11**. The District is due \$1,669 and is potentially due an additional \$23,819 depending on the determination of the propriety of the undocumented and questioned disbursements.

Numerous internal control weaknesses and lack of adequate Board oversight contributed to the aforementioned issues. District management and the Board have responded internal control enhancements have been or will be implemented.

For a copy of this report  
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**Investigative Report**  
Legislative Joint Auditing Committee  
May 11, 2007

**The Learning Institute**  
Hot Springs School District

**INTRODUCTION**

This report is being issued pursuant to a request from Scott Smith, General Counsel to the Arkansas Department of Education (ADE), for the Division of Legislative Audit to conduct a review of The Learning Institute (TLI), established by the Hot Springs School District (District). Of particular interest is the financial operations and functions of TLI relating to the resources of the District as well as the District's relationship with other public or private entities. During fieldwork, other questionable transactions came to our attention and are discussed in this report.

**OBJECTIVES**

Our objectives in conducting this review were as follows:

- Assist the District's Board in determining the amount of District resources used in developing and operating the TLI program and assessing intellectual property value;
- Review the relationship between the District, ThinkBus, LLC, Data 4 Learning, LLC, Jefferson Parish Public School System (Jefferson Parish), and Ray Rowe, former District Superintendent;
- Analyze pertinent contracts to determine compliance with applicable sections of Arkansas Code Annotated (Code);
- Examine selected District disbursements for propriety; and
- Evaluate internal controls regarding certain District financial and operational policies.

**SCOPE AND METHODOLOGY**

This review was conducted primarily for the period July 1, 2004 through December 31, 2006. We analyzed relevant District contracts, financial records, and policies as well as applicable state laws and other states' Attorney General's Opinions. Appropriate individuals were interviewed and pertinent docu-

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**Schedule 1**

The Learning Institute  
 Participating Districts - Fees and Amounts Due HSSD and ThinkBus  
 For the Period July 1, 2004 through December 31, 2006

Participating District	Fees Collected		Scheduled Fees July 1, 2006 through June 30, 2007	As of December 31, 2006		
	2005	2006		Collected by HSSD	Districts Owe HSSD	Districts Owe ThinkBus
						(Note 1)
Arkadelphia		\$ 44,900	\$ 44,480		\$ 22,240	\$ 22,240
Benton			60,000		30,000	30,000
Blytheville		60,000	60,000		30,000	30,000
Brinkley		20,000	20,000		10,000	10,000
Bryant		60,000	60,000	\$ 60,000		
Cabot			60,000	60,000		
Camden Fairview	\$ 20,000	56,140	60,000		30,000	30,000
Conway		60,000	60,000		30,000	30,000
Cutter			13,420		6,710	6,710
Dollarway			30,680		15,340	15,340
Dumas		35,040	31,180		15,590	15,590
Forrest City	20,000	57,394	60,000		30,000	30,000
Fort Smith			60,000	60,000		
Harrisburg			21,460		10,730	10,730
Hope			54,780		27,390	27,390
Hughes		20,000	20,000		10,000	10,000
Jonesboro			60,000	60,000		
Lafayette County	20,000	20,000	20,140		10,070	10,070
Little Rock			30,000		7,500	22,500
Marion		60,000	60,000		30,000	30,000
McGehee		26,580	21,880		10,940	10,940
Mountain Pine	0	0				
Rogers			60,000	60,000		
Russellville			60,000		30,000	30,000
Sheridan			60,000		30,000	30,000
Stuttgart	20,000					
Texarkana	20,000	60,000	60,000		30,000	30,000
Van Buren		60,000	60,000		30,000	30,000
Watson Chapel		60,000	60,000		30,000	30,000
<b>Total Fees</b>	<b>\$ 100,000</b>	<b>\$ 700,054</b>	<b>\$ 1,268,020</b>	<b>300,000</b>	<b>476,510</b>	<b>491,510</b>
Prepaid fees HSSD owes ThinkBus per Disposition Agreement:						
Fees HSSD paid ThinkBus on December 19, 2006				(30,000)		30,000
Balance due ThinkBus at December 31, 2006				(120,000)		120,000
Fees Applicable to 2006-2007 School Year				<b>\$ 150,000</b>	<b>\$ 476,510</b>	<b>\$ 641,510</b>
Fees Due from participating districts to: HSSD					<b>\$ 476,510</b>	
Fees Due from participating districts to: ThinkBus						<b>\$ 491,510</b>

Note 1: Due only if ThinkBus provides services  
 HSSD: Hot Springs School District

Source: Hot Springs School District financial records and The Learning Institute disposition agreement

## Schedule 2

The Learning Institute Timeline of Events For the Period July 1, 2003 through February 28, 2007	
Date	Event
July 1, 2003	Hot Springs School District (District) hired Joel Rush as Director of Research.
January 2004	The District formed The Learning Institute (TLI), a program operated by the District and dedicated to academic achievement for all students.
May 25, 2004	The District contracted with ClearPointe Technology, Inc. for software development.
May 28, 2004	The District received a \$240,000 grant from the Walton Foundation for the TLI program.
December 2004	The District contracted with Carrie Wells, an independent contractor, to continue software development and database and system administration.
May 10, 2005	ThinkBus, LLC was formed with Mr. Rush and Matt Adams as members.
July 31, 2005	Mr. Rush resigned his position as TLI Director.
August 1, 2005	The District contracted with ThinkBus for services of Mr. Rush and Mr. Adams for one year at a cost of \$193,350.
August 9 - 11, 2005	Roy Rowe, former District Superintendent, and Mr. Rush traveled to New Orleans to discuss TLI with Jefferson Parish Public School System (Jefferson Parish) administrators.
April 25, 2006	The District reimbursed Mr. Rush for airfare to New Orleans on August 9, 2005 for two individuals.
May 8, 2006	Mr. Rowe and Mr. Rush met with Jefferson Parish administrators in New Orleans to discuss providing TLI services to Jefferson Parish.
June 7 & June 21, 2006	Jefferson Parish contracted with Data 4 Learning for technical consulting and assessment development services and web portal services.
July 11, 2006	Articles of Organization for Data 4 Learning, LLC were filed with the Secretary of State, with Mr. Rush, Mr. Adams, and Mr. Rowe as members, specifically to offer services to Jefferson Parish.
July 14, 2006	Mr. Rowe loaned \$40,000 to Data 4 Learning.
August 1, 2006	The District renewed its contract with ThinkBus for services of Mr. Rush and Mr. Adams for one year at a cost of \$193,350.

*Continued on page 15*

## Schedule 2

Continued from page 14

The Learning Institute Timeline of Events For the Period July 1, 2003 through February 28, 2007	
Date	Event
August 1, 2006	The District contracted with ThinkBus for web portal services (software identified as TLI Web Portal). Services billed at a rate of \$2 per enrolled student in TLI participating districts, with the exception of seventeen districts.
August 4, 2006	Data 4 Learning received \$150,000 from Jefferson Parish.
August 8, 2006	Data 4 Learning repaid \$40,000 to Mr. Rowe.
November 1, 2006	Mr. Rush relinquished his District credit card and cellular telephone to the District.
November 6, 2006	Mr. Rowe resigned from Data 4 Learning.
November 28, 2006	The Board agreed, in principle, to terminate the contract with ThinkBus, effective January 1, 2007.
December 12, 2006	The District executed an agreement with ThinkBus for the disposition of TLI under which the District surrendered all rights, title, and interest in and to TLI including the name and intellectual properties. The District agreed to pay ThinkBus \$150,000 for half the prepaid fees for the current year. ThinkBus will also receive \$491,510 from other participating districts for the remainder of the current year, if services are provided. Additionally, the District will receive, at no cost, services valued at \$150,000 for the time period January 2, 2007 through May 31, 2009.
December 19, 2006	The District paid ThinkBus \$30,000 of the prepaid fees from other participating districts.
December 31, 2006	Mr. Rowe resigned as District Superintendent. The District owed Mr. Rowe \$67,500 for the balance of his contract.  The District owed ThinkBus \$130,000 for remaining prepaid fees.  Participating districts owed the District \$476,510.  Participating districts owed ThinkBus \$491,510.
January 11, 2007	Data 4 Learning received \$109,915 from Jefferson Parish.
January & February 2007	The District is obtaining signed releases from participating districts removing any obligation of the District to provide TLI services.
February 28, 2007	The District had received signed releases from nineteen of the twenty-seven participating districts.
<p><i>Source: Hot Springs School District financial records, ThinkBus, LLC, Data 4 Learning, LLC, and Jefferson Parish Public School System documents, and interviews with appropriate individuals</i></p>	

