

Secretary of State **AUDIT REPORT**

Report No. 2002-23 • May 31, 2002

Oregon Department of Education: Special Review—Personnel



Bill Bradbury, Secretary of State
Cathy Pollino, Director, Audits Division

Summary

PURPOSE

Stan Bunn, Superintendent of Public Instruction, requested that the Secretary of State perform an audit of the Department of Education. We determined that specific allegations under review by the Government Standards and Practices Commission would not be audited at this time in order to avoid duplicating efforts.

This is the first in a series of audits and focuses on personnel issues related to the department's acquisition of school district employees. During the course of this audit, we expanded our procedures to include a review of payments made to department employees in addition to their regular salaries.

RESULTS IN BRIEF

We found that the department could improve its personnel practices in some areas. Specifically, we found that the department:

- Did not competitively recruit to fill certain positions before filling them with school district employees. In those cases, school district employees cost more than state employees would have; therefore, the department may have paid more than necessary to fill those positions. In addition, we questioned the reimbursement of commuting costs.
- Assigned at least one school district employee powers that are not appropriate for non-state employees to possess under Oregon statutes, such as the power to enter into contracts and obligate state funds.
- Did not adequately document reasons for salary differentials and direct appointments.
- Frequently hired at the top half of the salary ranges without adequate justification for one classification. In addition, the allowability of leadwork payments for this classification is unclear.
- Overpaid a former executive employee over a 14-month period after he left one position and began working at a lower-level position, while maintaining his previous salary.
- Had an employee award program that violated state policy by basing those awards on length of service.

Generally, we found that the department did not maintain adequate documentation to support personnel actions and

payments. Also, we identified some instances of potential personal telephone use.

We did identify other issues that we believed deserved the attention of the department, but did not warrant reporting in the audit report. These issues were conveyed to the department in Management Letter No. 581-2002-05-01, dated May 28, 2002.

RECOMMENDATIONS

We recommend that the department:

- Review questioned costs and consult the Department of Justice to determine appropriateness and potential recovery of any amounts inappropriately paid.
- Competitively recruit to fill state positions and only use other means when competitive recruitment does not result in qualified applicants. Further, hire permanent employees to fill executive service positions.
- Follow state policies by hiring employees in the lower half of the pay range, discontinuing the current employee award program, and retaining documentation to support direct appointments.
- Develop and implement written policies and procedures to ensure that all personnel actions are reviewed and approved by management, documented, and monitored.
- Review leadwork duties described in the classification description and the Collective Bargaining Agreement to determine the appropriateness of leadwork differential pay for one classification.
- Review questionable telephone calls identified and periodically review the telephone records of other department employees not included in this review.

We also recommend that the Department of Administrative Services review its policies in light of a Government Standards and Practices Commission advisory opinion regarding employee reimbursement of personal telephone calls.

AGENCY RESPONSE

The Oregon Department of Education generally agrees with the recommendations.

Background

The Oregon Department of Education serves 198 school districts that are responsible for educating more than 570,000 elementary and secondary students, and 21 education service districts that provide districts with expertise and specialized resources. In addition, the department manages the Oregon School for the Blind, the Oregon School for the Deaf and education programs for students in correctional facilities.

To carry out its responsibilities, the department employed approximately 468 full-time employees at an estimated cost of \$51 million during the 1999-2001 biennium. During the audit period, the department also used school district employees to carry out its responsibilities through the use of job rotation agreements. The department has since begun using intergovernmental agreements for this purpose.

Through the use of job rotation agreements, the department was able to acquire school district employees for a specified period of time. During this time, the department reimbursed the school districts for all associated payroll and benefit costs.

Personnel Environment

According to a survey released in 1997, the department has experienced challenges in recruiting and retaining experienced personnel. The survey, which was performed by an education-based consulting firm and overseen by the Legislative Fiscal Office, Department of Administrative Services and Oregon Audits Division; found a disparity between school district and department salaries for select positions. The survey recommended reclassification and increased compensation for some state positions.

In response, the department initiated, and the legislature approved, a reclassification and increased salaries for education program managers. According to information provided by the department, compensation has increased and turnover has decreased since that time.

Audit Results

Non-competitive Filling of Department Positions

During our audit, we found that the department did not competitively recruit to fill key positions before entering into job rotation agreements with school districts. In addition, it appears that these agreements were used as long-term employment solutions. By not periodically opening these positions for competitive recruitment, the department may be paying more than necessary.

Agreements Used as Long-Term Employment Solutions

Based on our review, we concluded that the use of school district employees was considered a long-term, not temporary, employment solution. We reviewed all agreements for seven school district employees that filled department positions between July 1, 1999 and June 30, 2001, and found that:

- Agreements were for long periods of time. Six of the seven employees had cumulative agreements that exceeded one year, and two of these exceeded three years.
- Employees did not have positions at the school district to return to in six of seven instances. Two of the employees had their school district positions eliminated and four had their positions filled with full-time employees. One of the seven

employees returned to her school district.

Use of School District Employees May Cost the State More Than Necessary

Filling positions with school district employees cost the state more than if state employees were hired. Whether or not it was necessary for the department to incur this additional cost is not known, since the department did not competitively recruit to fill these positions.

Over a two-year period, the decision to use school district employees cost the state approximately \$62,600 more than if state employees were used. This estimate is based on the department's reimbursement of salaries and benefits that exceeded what a state employee would receive if qualified applicants could be found. All seven of the school district employees received from their districts a higher percentage of gross salary contributed into the Public Employee Retirement System. Further, one employee also received a tax-sheltered annuity and another received a travel stipend designed to reimburse for non-itemized miscellaneous travel expenses. These benefits are not available to the department's state employees. These higher benefits contributed approximately \$35,800 to the estimated increased costs. Salaries for two employees contributed approximately \$26,800.

Commuting Costs Questioned

The department paid \$12,900 for costs associated with commuting that appears questionable. Two of the seven school district employees received mileage reimbursement to commute from Eugene to the department. Payment for commuting costs was not specifically written into the job rotation agreements.

For one agreement, which represented the largest portion of the questioned costs, the department stated that commuting costs were required since the agreement showed the employee's official workstation as Eugene where the school district's office and the employee's home were located. The job rotation agreement for the second employee did not list an official workstation. State travel rules applicable to non-state individuals traveling on official state business defines official workstation as "the physical location an employee is permanently assigned to."

The original job rotation agreement for the employee that had Eugene as the official workstation, which began on September 1, 1997, was for a specific database project. As time passed, the job rotation employee's duties at the department changed. In September of 1999, the department named the employee as school finance director, which is a full-time position located at the department's office in Salem.

Although the employee's job duties at the department changed and subsequent job rotation agreements were executed, the department did not modify the terms of the agreement regarding the description of Eugene as the official workstation.

Given this long history of working at the department in Salem, we concluded that the continued designation of Eugene as the official workstation was questionable.

Assignment of Executive Powers to Non-State Employees Questioned

We also found that the department used school district employees to fill executive department positions. This may result in an inappropriate assignment of powers.

During our audit, we found that five of the seven school district employees on job rotation

agreements were filling executive state positions, and at least one of these employees was authorized to approve contracts and disburse state funds. Statutes authorize the Superintendent of Public Instruction to designate one or more suitable persons to sign or countersign warrants, vouchers, certificates or other papers and documents requiring the signature of the superintendent. Such appointment is subject to the State Personnel Relations Law. This would suggest that employees with such powers should be state employees.

Department's State Employee Practices Questioned

We also identified personnel practices resulting in questioned payments to state employees totaling approximately \$67,000. We further identified actions that do not appear to comply with state policies. These actions resulted in increased personnel costs to the department. We questioned:

- Salary differential payments.
- Leadwork payments and hiring practices related to the Department's Education Program Specialists (EPS).
- A former executive service employee salary overpayment.
- An award program contrary to state policy.
- Direct appointments that were not adequately documented.

Salary Differentials Questioned

We identified approximately \$40,000 of salary differential payments that were not adequately supported by documentation. State policies allow salary differential payments for employees performing duties beyond what is expected for their classification.

We found that 50 of the 135 personnel files reviewed were missing documentation supporting the increased payments. For instance, several files did not contain documented approval or justification for the differential payments. Because of additional procedures performed, not all documentation retention problems resulted in questioned payments. Our questioned costs resulted from files that lacked documentation and, after further procedures, no additional documentation was identified that would justify the payments.

We also noted three instances in which payments, totaling approximately \$3,800, were made against policy. These included payments that exceeded the approved duration or exceeded the maximum amount allowed.

Hiring Practices and Leadwork Payments Questioned

For one classification, we found that the department did not adequately justify its departure from state policy in regard to beginning salary for new hires. In addition, the allowability of leadwork payments is unclear.

Reclassification of Education Program Specialists

During the 1999 Legislative Session, a special purpose appropriation was given for education program staff at the Department of Education to improve recruitment and retention. This action led to a splitting of one Education Program Specialist classification into two: Education Program Specialist 1 (EPS1) and Education Program Specialist 2 (EPS2).

The department worked with the Department of Administrative Services to develop new classification specifications and salary ranges. All of the existing

EPS employees were moved to the EPS2 classification, which has a higher pay range than the former EPS classification. Thus, employees received a 5 percent pay increase upon reclassification. In contrast, the new EPS1 classification has a lower pay range than the original EPS classification. The department agreed to fill one-third of the total EPS positions with EPS1's by June 30, 2005.

In addition to the 5 percent pay increase, some of the EPS2 employees received a monthly payroll differential payment equal to 5 percent of their gross pay for performing leadwork duties.

Departure from Starting Salary Policy Not Adequately Justified

During our audit, we found that 21 of the 30 Education Program Specialists (EPS) (70 percent) hired by the department during our audit period were hired at a starting salary in the top half of the salary structure. Although hiring of EPS employees in the top half of the salary structure declined after the reclassification, eight of the 17 EPS2's (47 percent) hired after the reclassification were hired in the top half of the salary structure.

State policy directs that new employees will normally be hired in the lower half of the salary range. The department may authorize payment above that rate when appropriate circumstances exist. We found that documentation to justify hiring in the top half of the salary structure was missing from personnel files.

Allowability of Leadwork Payments is Unclear

The Collective Bargaining Agreement between the state and the Oregon Public Employees Union allows leadwork payments when an employee is performing leadwork duties. Leadwork differentials are

not allowed if these duties are included in the classification description for the employee's position.

We reviewed the new EPS2 classification and found the description of leadwork duties to be similar to the Collective Bargaining Agreement's definition. It is unclear if the duties described in the EPS2 classification are the same as those described in the Collective Bargaining Agreement. If the duties were the same, then leadwork differentials would not be allowed.

Because of this lack of clarity, the appropriateness of making leadwork payments to some EPS2 employees is questionable. Since May 2000, the department has paid approximately \$2,750 a month in leadwork differentials for this classification.

Salary Overpayment to Former Executive Employee

The department overpaid an executive service employee by approximately \$18,700 over a 14-month period.

State policy requires that employees be paid at the appropriate rate for the position filled. State policy allows employees to retain their previous salaries in the event of a position reallocation or reclassification downward. Personnel records indicate that the employee's position was not reallocated or reclassified downward.

The State of Oregon's personnel database shows that the employee left one position and classification, and started the following day at a lower position and classification. The personnel file indicates that department management directed that the employee be moved to a lower position but maintain his previous salary. There was no written justification in the personnel file for freezing the salary.

Award Program Questioned

We found that the department awarded employees paid leave in violation of state policy. This program awarded employees four hours of paid leave for every five years of service. As a result, between July 1, 1999 and May 31, 2001, the department inappropriately awarded 263 hours of paid leave to 65 employees at a cost of approximately \$4,500 in salary.

State policy allows agencies to establish and maintain award programs that recognize and promote extraordinary employee or team achievements. To satisfy state policy requirements, the award program must be:

- Based on performance, not solely on time of service, and
- Established with clear criteria and fully documented.

In this case, the department awarded paid leave to employees based on time of service. In addition, the policy lacks certain key state policy requirements such as plan objectives and performance criteria.

Direct Appointments Not Supported

The department did not keep adequate documentation in its files to support the direct appointments of six staff members.

We reviewed the method of appointment for 39 department employees and found nine that appeared to be directly appointed. Of these nine, we were unable to locate written documentation to support the direct appointment of six individuals, including two Associate Superintendents and four support staff members.

Contributing Factors

Several factors contributed to these conditions:

- According to department management, the primary reason

for using job rotation agreements was to recruit highly experienced and skilled school district employees.

- During the period reviewed, the department did not have adequate policies and procedures to ensure that personnel payments and actions were:
 - Appropriately reviewed and approved by management.
 - Adequately documented in employee personnel files.
 - Regularly and consistently monitored.
 - Fully compliant with state policies.

Recommendations

We recommend that the department:

- Review questioned costs identified in this report and consult with the Department of Justice to determine appropriateness and potential recovery of any amounts improperly paid.
- Competitively recruit to fill state positions. If competitive recruitment does not result in qualified applicants, and school district employees are used, the department should periodically recruit to fill these positions.
- Hire permanent employees to fill executive service positions.
- Follow state personnel policies. For example:
 - Hire new employees in the lower half of the pay range. Any exceptions should be well documented and approved by appropriate management.
 - Discontinue the current policy of employee awards based on time of service.
 - Retain documentation to support direct appointments.

- Develop and implement written policies and procedures to ensure that all personnel actions are appropriately reviewed and approved by management, adequately documented, and regularly and consistently monitored. Documentation in employee personnel files should be detailed enough to justify any personnel action and support that all state policy requirements are met.
- Contact the appropriate agency, either the Department of Administrative Services or the Department of Justice, to review the leadwork duties described in the classification description for Education Program Specialist 2's and the Collective Bargaining Agreement to determine appropriateness of leadwork differential pay.
- Determine if EPS2 employees currently receiving leadwork differential payments are performing qualifying leadwork duties. Also, provide instruction to managers on what duties would qualify an employee for the differential and what documentation is required to justify the payment.

Vacation Leave and Overtime Payments

No exceptions were identified when we reviewed payments for accrued vacation leave paid to employees who did not show as separated from the department. We also did not identify any exceptions when we reviewed overtime payments made to executive service employees from July 1999 through May 2001.

Agency Accomplishments

Department management has taken steps to improve its personnel practices, including creating and filling a Human Resources Director position. In addition, the department has hired, as permanent state

employees, the school district employees who previously filled executive service positions.

Other Matters

Use of State Telephones Questioned

During our review, we identified calls made from state telephones that appeared to be personal. Oregon Revised Statute 244 prohibits public officials, including employees, from using their offices for personal financial gain or avoidance of financial detriment through a means that is not available to the general public.

According to a Government Standards and Practices Commission (GSPC) advisory opinion, personal long-distance telephone calls should not be made from state telephones even if the employee reimburses the agency for the cost of such calls. State employees, however, may make personal calls to advise others when their duties unexpectedly exceed their normal workday.

In addition, according to Department of Administrative Services policy, state agencies may opt to allow repayment if they set narrow limits and the costs do not result in state subsidy. This appears to conflict with the GSPC's advisory opinion, which does not allow personal long-distance telephone calls even when reimbursement is made.

We reviewed telephone records for six of the seven job rotation employees included in our audit. One employee was not working for the department during the time reviewed. The review included six employees with state landline records from January 2001 through June 2001. In addition, we reviewed cell telephone records between July 1999 and April 2001 for the one job rotation employee who was issued a state cell telephone.

As a result of our testing, we questioned 392 calls, at an approximate cost of \$380. Most of these calls were to employees' personal residences.

One individual made 337 of the 392 questionable calls. We also noted that this same individual reimbursed the department for 90 other calls not included in the questioned calls above.

We recommend that the department follow the GSPC advisory opinion by not allowing employees to make personal long-distance calls with state telephones, even if reimbursement is made. The department should review the questionable calls identified in this audit to determine their allowability and seek advice from the Department of Justice concerning further action. In addition, the department should periodically review the telephone records of other department employees not included in this review.

We also recommend that the Department of Administrative Services review its policies in light of the Government Standards and Practices Commission advisory opinion regarding employee reimbursement of personal telephone calls.

Objectives, Scope and Methodology

The objectives of our audit specific to job rotation agreements entered into to fill department positions were to determine if:

- The department has controls in place to ensure that amounts paid to school districts related to agreements are appropriate, and that agreements and related payments adhere to applicable state laws and rules.
- Agreements result in higher costs to the state than use of state employees.

- The use of state telephones by school district employees working at the department complies with applicable state laws and rules.

Additional audit objectives were to determine if:

- The department has controls in place to ensure that differential payments are appropriate, adequately documented, and in compliance with applicable state laws and rules.
- The department has controls in place to ensure that paid leave given to state employees is appropriate and adheres to applicable state laws and rules.
- The department paid overtime to employees who did not appear eligible, and paid employees for relocation expenses, miscellaneous expenses or unused vacation leave that did not adhere to applicable state laws and rules.
- The department made direct appointments in compliance with state laws and rules.

To accomplish these objectives, we:

- Reviewed applicable laws, rules, policies and procedures.
- Interviewed department staff, management, and individuals outside of the department as deemed necessary.
- Reviewed department documentation, documentation at the Department of Administrative Services, electronic payroll records generated from the Oregon State Payroll System, and documentation received from various school districts.
- Reviewed all job rotation agreements for seven school district employees who filled department positions between July 1, 1999 and June 30, 2001. As part of this review, we summarized payments to school districts and compared to

amounts in the agreements and to amounts paid by school districts to the employees. We also compared payments by the department to an estimate of what a state employee would cost in the same position.

- Identified benefits available to school district employees but not to state employees who were reimbursed by the department under the job rotation agreements.
- Obtained electronic telephone records between January 1, 2001 and June 30, 2001, for all school district employees filling state positions at the department under job rotation agreements included in our audit. We judgmentally reviewed long-distance calls for appropriateness. We also reviewed cell telephone records for the period July 1999 through April 11, 2001 for the one school district employee who was provided a state cell telephone. Long-distance calls were also judgmentally selected for review.
- Identified all of the department's employees receiving a pay differential from July 1999 through May 2001. For these employees, we reviewed their personnel files and performed additional procedures as deemed necessary.
- Selected a judgmental sample of employees receiving miscellaneous paid leave from July 1999 through May 2001. Payments made to these employees were tested for appropriateness.
- Identified and tested 100 percent of employees from July 1999 through May 2001 who received payments for accrued vacation leave without a separation date, employees paid overtime who did not appear eligible, and employees who received relocation or other miscellaneous reimbursements.
- Reviewed a judgmental sample of executive department

employee personnel files for documentation to support direct appointments.

We conducted this audit according to generally accepted government

auditing standards. We limited our review to the areas specified above.

Oregon Department of Education's Response to the Audit Report

The State Superintendent of Public Instruction requested the Secretary of State's Personnel Audit in June 2001 and ODE staff and management worked closely and cooperatively with the audit team throughout the process. ODE is pleased that the recommendations in the audit report affirmed actions already underway by the Department to strengthen internal controls and improve documentation of personnel and payroll practices.

In general, ODE agrees with the recommendations of the audit report. Nearly all, eight out of ten, of the specific audit results were the result of practices which predated the current administration. This review has provided guidance for addressing long-standing practices.

The audit report acknowledges improvements put in place by the Department, particularly the hiring of an experienced Human Resources Director. In addition, the Department has aggressively moved to ensure it has adequate policies and procedures so that:

- Personnel payments and actions are appropriately reviewed and approved by management;*
- Employee records include adequate and appropriate documentation of all formal personnel actions;*
- Payments are monitored to be fully compliant with state policies; and*
- Permanent employees are hired to fill executive positions.*

Though the Department generally agrees with the recommendations, it would offer the following perspective and distinctions from the recommendations made by the Secretary of State.

- ODE has reviewed the questioned costs and consulted the Department of Justice to determine the appropriateness of questioned amounts paid. In contracting, the Department paid the amounts necessary to obtain the identified services. The issues are whether the contract costs were deemed an appropriate value to the Department and whether payments were made consistent with the contracts terms and conditions. The Department answers these questions affirmatively.*
- A review approved by the Joint Legislative Audit Committee was planned and managed by the Legislative Fiscal Office, the Department of Administrative Services and the Oregon Audits Division, and in a cooperative effort issued a 1997 MAP audit recommending that "ODE, in cooperation with the legislature and appropriate state agencies, should take the steps necessary to attract and retain professionals with sufficient credibility to lead implementation of Oregon's Educational Act for the 21st Century." The Department has done so, and will continue to actively address the need to recruit and retain highly skilled employees, consistent with this recommendation. A review of recruitments conducted over the past two years by the Department reveals that over 95 percent of all new hires were accomplished through competitive recruitment. Where specific experience and specialized skills have been*

required, ODE has sought to competitively recruit to fill these positions. There have been occasions when minimal applicant response has prompted the Department to explore alternative means to fill needed positions. The Department concurs that executive service positions could be filled as state service appointments.

- ODE agrees with the recommendation to retain appropriate documentation for all personnel actions. The improvement of internal controls and documentation cited are currently underway. Employees will be hired in the lower half of the pay range where such pay rates are competitive with the prevailing wage for prospective employees. However, the Department must actively address the need to recruit and retain highly skilled employees, and compensation for these recruits is a market function over which the Department has little control. Market conditions and prevailing wage comparisons are a key reason that the Education Program Specialist class received increases in compensation following a thorough review by the Department of Administrative Services. The Department has recognized employees for their years of service. Steps to insure compliance with Department of Administrative Services, Human Resource Services Division policy 50.040.01 have been implemented.
- ODE concurs with the recommendation to develop and implement written policies and procedures to ensure that personnel actions are reviewed and approved by management, documented, and periodically reviewed. The process of development and implementation is already underway and with an anticipated completion date of September 30, 2002.
- ODE intends to review lead work duties and differential pay, as described in the Collective Bargaining Agreement. Any proposed changes will be subject to successor negotiations.
- The Secretary of State's audit team confirmed the inconsistency between the telephone use policy of the Department of Administrative Services (DAS) and the Government Standards and Practices Commission (GSPC). State employees, at all levels, rely on consistent policies and procedures; currently, DAS and GSPC policies deliver contradictory guidance on telephone use. Costs for questionable calls made by ODE staff have been reimbursed at this time.

Department of Administrative Services' Response to the Audit Report

The Department of Administrative Services will review its policy with the Government Standards and Practices Commission and revise that policy to meet the Commission's standards and to remove any inconsistencies.

This report, which is a public record, is intended to promote the best possible management of public resources. Copies may be obtained by mail at Oregon Audits Division, Public Service Building, Salem, Oregon 97310, by telephone at 503-986-2255 and 800-336-8218 (hotline), or internet at Audits.Hotline@state.or.us and <http://www.sos.state.or.us/audits/audithp.htm>.

AUDIT ADMINISTRATOR: *Jason M. Stanley, CPA*

AUDIT STAFF: *Sandra Gillispie, CPA • Darrin Hotrum • Brad Posenjak • Jason Robinson • Ben Wilson*

DEPUTY DIRECTOR: *Charles A. Hibner, CPA*

The courtesies and cooperation extended by the officials and staff of the Department of Education were commendable and much appreciated.

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