



# **COMPLIANCE REVIEW REPORT**

## **CALIFORNIA DEPARTMENT OF EDUCATION**

Compliance Review Unit  
State Personnel Board  
April 14, 2023

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## INTRODUCTION

Established by the California Constitution, the State Personnel Board (the SPB or Board) is charged with enforcing and administering the civil service statutes, prescribing probationary periods and classifications, adopting regulations, and reviewing disciplinary actions and merit-related appeals. The SPB oversees the merit-based recruitment and selection process for the hiring of over 200,000 state employees. These employees provide critical services to the people of California, including but not limited to, protecting life and property, managing emergency operations, providing education, promoting the public health, and preserving the environment. The SPB provides direction to departments through the Board's decisions, rules, policies, and consultation.

Pursuant to Government Code section 18661, the SPB's Compliance Review Unit (CRU) conducts compliance reviews of appointing authorities' personnel practices in five areas: examinations, appointments, equal employment opportunity (EEO), personal services contracts (PSC's), and mandated training, to ensure compliance with civil service laws and Board regulations. The purpose of these reviews is to ensure state agencies are in compliance with merit related laws, rules, and policies and to identify and share best practices identified during the reviews.

Pursuant to Government Code section 18502, subdivision (c), the SPB and the California Department of Human Resources (CalHR) may "delegate, share, or transfer between them responsibilities for programs within their respective jurisdictions pursuant to an agreement." SPB and CalHR, by mutual agreement, expanded the scope of program areas to be audited to include more operational practices that have been delegated to departments and for which CalHR provides policy direction. Many of these delegated practices are cost drivers to the state and were not being monitored on a statewide basis.

As such, SPB also conducts compliance reviews of appointing authorities' personnel practices to ensure that state departments are appropriately managing the following non-merit-related personnel functions: compensation and pay, leave, and policy and processes. These reviews will help to avoid and prevent potential costly litigation related to improper personnel practices, and deter waste, fraud, and abuse.

The SPB conducts these reviews on a three-year cycle.

The CRU may also conduct special investigations in response to a specific request or when the SPB obtains information suggesting a potential merit-related violation.

It should be noted that this report only contains findings from this hiring authority's compliance review. Other issues found in SPB appeals and special investigations as well

as audit and review findings by other agencies such as the CalHR and the California State Auditor are reported elsewhere.

### **EXECUTIVE SUMMARY**

The CRU conducted a routine compliance review of the California Department of Education’s (CDE) personnel practices in the areas of examinations, appointments, EEO, PSC’s, mandated training, compensation and pay, leave, and policy and processes. The following table summarizes the compliance review findings.

Area	Severity	Finding
Examinations	In Compliance	Examinations Complied with Civil Service Laws and Board Rules
Appointments	Serious	Probationary Evaluations Were Not Provided for All Appointments Reviewed and Some That Were Provided Were Untimely <sup>1</sup>
Appointments	Technical	Department Did Not Provide Benefit Information in Accordance with Civil Service Law
Equal Employment Opportunity	Very Serious	A Disability Advisory Committee Has Not Been Established
Personal Services Contracts	In Compliance	Personal Services Contracts Complied with Procedural Requirements
Mandated Training	Very Serious	Ethics Training Was Not Provided for All Filers <sup>2</sup>
Mandated Training	Very Serious	Supervisory Training Was Not Provided for All Supervisors, Managers, and CEAs <sup>3</sup>

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<sup>1</sup> Repeat finding. The December 13, 2016, CDE Compliance Review Report identified missing probation reports in 11 of 76 appointment files reviewed. The June 29, 2020, CDE Compliance Review Report identified 17 missing probation reports in 14 of the 53 appointment files and 3 probation reports were not timely in 3 of the 53 appointment files reviewed.

<sup>2</sup> Repeat finding. The December 13, 2016, CDE Compliance Review Report identified 25 of 536 existing filers did not receive ethics training, and 6 of 189 new filers did not receive ethics training within 6 months of appointment. The June 29, 2020, CDE Compliance Review Report identified 86 of 149 existing filers did not receive ethics training, and 20 of 45 new filers did not receive ethics training within 6 months of appointment.

<sup>3</sup> Repeat finding. The December 13, 2016, CDE Compliance Review Report identified 9 of 62 new supervisors who did not receive supervisory training within 12 months of appointments. The June 29, 2020, CDE Compliance Review Report identified 24 of 25 new supervisors did not receive supervisory training within 12 months of appointment; 1 of 3 new managers did not receive managerial training within 12 months of appointment; neither of the 2 new CEAs received CEA training within 12 months of appointment, and 171 of 189 existing supervisors, managers and/or CEAs did not receive biennial leadership training.

Area	Severity	Finding
Mandated Training	Very Serious	Sexual Harassment Prevention Training Was Not Provided for All Employees <sup>4</sup>
Compensation and Pay	In Compliance	Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	In Compliance	Alternate Range Movements Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	In Compliance	Hire Above Minimum Requests Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	Very Serious	Incorrect Authorization of Bilingual Pay <sup>5</sup>
Compensation and Pay	In Compliance	Pay Differential Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	Very Serious	Incorrect Authorization of Out-of-Class Pay
Leave	Serious	Positive Paid Temporary Employees' Work Exceeded Time Limitations <sup>6</sup>
Leave	In Compliance	Administrative Time Off Authorizations Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Serious	Department Did Not Certify That All Leave Records Were Reviewed
Policy	In Compliance	Nepotism Policy Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	In Compliance	Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Serious	Performance Appraisals Were Not Provided to All Employees

<sup>4</sup> Repeat finding. The December 13, 2016, CDE Compliance Review Report identified sexual harassment prevention training was not provided to 6 of 62 new supervisors within 6 months of appointment, and 1 of 309 existing supervisors every 2 years. The June 29, 2020, CDE Compliance Review Report identified sexual harassment prevention training was not provided to 34 of 47 new supervisors within 6 months of appointment, and 165 of 175 existing supervisors every 2 years.

<sup>5</sup> Repeat finding. The June 29, 2020, CDE Compliance Review Report identified two errors in the CDE's authorization of bilingual pay.

<sup>6</sup> Repeat finding. The June 29, 2020, CDE Compliance Review Report identified 6 out of 30 positive paid employees reviewed exceeded the 1,500-hour or 189-day limitation.

## **BACKGROUND**

The CDE oversees the state's diverse and dynamic public school system, which is responsible for the education of more than 7,000,000 children and young adults in more than 9,000 schools.

The CDE and the State Superintendent of Public Instruction are responsible for enforcing education laws and continuing to reform and improve public elementary school and childcare programs. The CDE's mission is to provide a world-class education for all students from early childhood to adulthood. The CDE serves California by innovating and collaborating with educators, schools, parents, and community partners, preparing students to live, work, and thrive in a highly connected world.

## **SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing the CDE's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes<sup>7</sup>. The primary objective of the review was to determine if the CDE's personnel practices, policies, and procedures complied with state civil service laws and Board regulations, Bargaining Unit Agreements, CalHR policies and guidelines, CalHR Delegation Agreements, and to recommend corrective action where deficiencies were identified.

A cross-section of the CDE's examinations was selected for review to ensure that samples of various examination types, classifications, and levels were reviewed. The CRU examined the documentation that the CDE provided, which included examination plans, examination bulletins, job analyses, and scoring results.

The CDE did not conduct any permanent withhold actions during the compliance review period.

A cross-section of the CDE's appointments was selected for review to ensure that samples of various appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the CDE provided, which included Notice of Personnel Action forms, Request for Personnel Actions, vacancy postings, certification

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<sup>7</sup> Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.

lists, transfer movement worksheets, employment history records, correspondence, and probation reports.

The CDE did not conduct any unlawful appointment investigations or make any additional appointments during the compliance review period.

The CDE's appointments were also selected for review to ensure the CDE applied salary regulations accurately and correctly processed employees' compensation and pay. The CRU examined the documentation that the CDE provided, which included employees' employment and pay history and any other relevant documentation such as certifications, degrees, and/or the appointee's application. Additionally, the CRU reviewed specific documentation for the following personnel functions related to compensation and pay e.g., hire above minimum (HAM) requests, bilingual pay, monthly pay differentials, alternate range movements, and out-of-class assignments.

During the compliance review period, the CDE did not issue red circle rate requests or arduous pay.

The review of the CDE's EEO program included examining written EEO policies and procedures; the EEO Officer's role, duties, and reporting relationship; the internal discrimination complaint process; the reasonable accommodation program; the discrimination complaint process; and the Disability Advisory Committee (DAC).

The CDE's PSC's were also reviewed.<sup>8</sup> It was beyond the scope of the compliance review to make conclusions as to whether the CDE's justifications for the contracts were legally sufficient. The review was limited to whether the CDE's practices, policies, and procedures relative to PSC's complied with procedural requirements.

The CDE's mandated training program was reviewed to ensure all employees required to file statements of economic interest were provided ethics training, that all supervisors, managers, and CEAs were provided leadership and development training, and that all employees were provided sexual harassment prevention training within statutory timelines.

The CRU reviewed the CDE's monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely and ensure the department

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<sup>8</sup>If an employee organization requests the SPB to review any personal services contract during the SPB compliance review period or prior to the completion of the final compliance review report, the SPB will not audit the contract. Instead, the SPB will review the contract pursuant to its statutory and regulatory process. In this instance, none of the reviewed PSC's were challenged.

certified that all leave records have been reviewed and corrected if necessary. The CRU selected a small cross-section of the CDE's units in order to ensure they maintained accurate and timely leave accounting records. Additionally, the CRU reviewed a selection of the CDE employees who used Administrative Time Off (ATO) in order to ensure that ATO was appropriately administered. Further, the CRU reviewed a selection of CDE positive paid employees whose hours are tracked during the compliance review period in order to ensure that they adhered to procedural requirements.

During the compliance review period, the CDE did not have any employees with non-qualifying pay period transactions.

Moreover, the CRU reviewed the CDE's policies and processes concerning nepotism, workers' compensation, and performance appraisals. The review was limited to whether the CDE's policies and processes adhered to procedural requirements.

On March 21, 2023, an exit conference was held with the CDE to explain and discuss the CRU's initial findings and recommendations. The CRU received and carefully reviewed the CDE'S written response on April 5, 2023, which is attached to this final compliance review report.

## **FINDINGS AND RECOMMENDATIONS**

### **Examinations**

Examinations to establish an eligible list must be competitive and of such character as fairly to test and determine the qualifications, fitness, and ability of competitors to perform the duties of the class of position for which he or she seeks appointment. (Gov. Code, § 18930.) Examinations may be assembled or unassembled, written or oral, or in the form of a demonstration of skills, or any combination of those tests. (*Ibid.*) The Board establishes minimum qualifications for determining the fitness and qualifications of employees for each class of position and for applicants for examinations. (Gov. Code, § 18931, subd. (a).) Within a reasonable time before the scheduled date for the examination, the designated appointing power shall announce or advertise the examination for the establishment of eligible lists. (Gov. Code, § 18933, subd. (a).) The advertisement shall contain such information as the date and place of the examination and the nature of the minimum qualifications. (*Ibid.*) Every applicant for examination shall file an application with the department or a designated appointing power as directed by the examination announcement. (Gov. Code, § 18934, subd. (a)(1).) The final earned rating of each person competing in any examination is to be determined by the weighted average of the earned ratings on all phases of the examination. (Gov. Code, § 18936.)



Each competitor shall be notified in writing of the results of the examination when the employment list resulting from the examination is established. (Gov. Code, § 18938.5.)

During the period under review, February 1, 2022, through October 31, 2022, the CDE conducted 99 examinations. The CRU reviewed 35 of those examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
CEA, Chief Counsel I	Open	Statement of Qualifications (SOQ) <sup>9</sup>	10/4/2022	6
CEA B, Director, Educator Excellence and Equity Division	Open	SOQ	4/21/2022	12
CEA B, Director, Student Achievement and Support Division	Open	SOQ	3/25/2022	15
CEA B, State Special Schools	Open	SOQ	5/9/2022	8
Child Nutrition Supervisor I	Open	Training and Experience (T&E) <sup>10</sup>	3/15/2022	1
Counselor, School for the Deaf	Open	T&E	3/15/2022	4
Education Administrator I	Open	T&E	2/22/2022	9
Education Administrator I	Open	T&E	4/20/2022	7
Education Administrator I	Open	T&E	7/20/2022	9
Education Fiscal Services Assistant	Open	T&E	4/20/2022	1
Education Fiscal Services Assistant	Open	T&E	5/20/2022	3
Education Fiscal Services Consultant	Open	T&E	4/20/2022	2
Education Fiscal Services Consultant	Open	T&E	5/20/2022	7
Education Programs Assistant	Open	T&E	9/20/2022	10

<sup>9</sup> In a Statement of Qualifications examination, applicants submit a written summary of their qualifications and experience related to a published list of desired qualifications. Raters, typically subject matter experts, evaluate the responses according to a predetermined rating scale designed to assess their ability to perform in a job classification, assign scores and rank the competitors in a list.

<sup>10</sup> The Training and Experience examination is administered either online or in writing, and asks the applicant to answer multiple-choice questions about his or her level of training and/or experience performing certain tasks typically performed by those in this classification. Responses yield point values.

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Education Research & Evaluation Administrator I	Open	T&E	6/15/2022	1
Education Research & Evaluation Assistant	Open	T&E	3/15/2022	6
Education Research & Evaluation Assistant	Open	T&E	9/15/2022	4
Education Research & Evaluation Consultant	Open	T&E	3/15/2022	7
Heavy Truck Driver	Open	T&E	3/15/2022	6
Legislative Representative, Department of Education	Open	T&E	4/15/2022	1
Legislative Representative, Department of Education	Open	T&E	6/30/2022	2
Night Attendant, School for the Blind	Open	T&E	3/15/2022	1
Night Attendant, School for the Blind	Open	T&E	9/15/2022	1
Night Attendant, School for the Deaf	Open	T&E	3/15/2022	3
Nutrition Education Administrator I	Open	T&E	3/15/2022	1
Nutrition Education Administrator I	Open	T&E	5/17/2022	4
Nutrition Education Assistant	Open	T&E	3/15/2022	1
Nutrition Education Consultant	Open	T&E	3/15/2022	3
Supervising Counselor, School for the Deaf	Open	T&E	4/29/2022	1
Supervising Counselor, School for the Deaf	Open	T&E	9/15/2022	1
Supervisor of Residence Programs, School for the Deaf	Open	T&E	6/15/2022	1
Teaching Assistant, School for the Blind	Open	T&E	3/15/2022	1
Teaching Assistant, School for the Deaf	Open	T&E	4/29/2022	11
Transportation Programs Consultant	Open	T&E	6/15/2022	2
Transportation Programs Consultant	Open	T&E	9/15/2022	3

<b>IN COMPLIANCE</b>	<b>FINDING NO. 1 EXAMINATIONS COMPLIED WITH CIVIL SERVICE LAWS AND BOARD RULES</b>
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The CRU reviewed 35 open examinations which the CDE administered in order to create eligible lists from which to make appointments. The CDE published and distributed examination bulletins containing the required information for all examinations. Applications received by the CDE were accepted prior to the final filing date. Applicants were notified about the next phase of the examination process. After all phases of the examination process were completed, the score of each competitor was computed, and a list of eligible candidates was established. The examination results listed the names of all successful competitors arranged in order of the score received by rank. The CRU found no deficiencies in the examinations that the CDE conducted during the compliance review period.

**Appointments**

In all cases not excepted or exempted by Article VII of the California Constitution, the appointing power must fill positions by appointment, including cases of transfers, reinstatements, promotions, and demotions in strict accordance with the Civil Service Act and Board rules. (Gov. Code, § 19050.) The hiring process for eligible candidates chosen for job interviews shall be competitive and be designed and administered to hire candidates who will be successful. (Cal. Code Regs., tit. 2, § 250, subd. (b).) Interviews shall be conducted using job-related criteria. (*Ibid.*) Persons selected for appointment shall satisfy the minimum qualifications of the classification to which he or she is appointed or have previously passed probation and achieved permanent status in that same classification. (Cal. Code Regs., tit. 2, § 250, subd. (d).) While persons selected for appointment may meet some or most of the preferred or desirable qualifications, they are not required to meet all the preferred or desirable qualifications. (*Ibid.*) This section does not apply to intra-agency job reassignments. (Cal. Code Regs., tit. 2, § 250, subd. (e).)

During the period under review, December 1, 2021, through August 31, 2022, the CDE made 259 appointments. The CRU reviewed 52 of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Accountant I (Specialist)	Certification List	Permanent	Full Time	1
Accountant Trainee	Certification List	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Accounting Administrator II	Certification List	Permanent	Full Time	1
Accounting Officer (Specialist)	Certification List	Permanent	Full Time	1
Associate Accounting Analyst	Certification List	Permanent	Full Time	2
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	1
Associate Governmental Program Analyst	Certification List	Limited Term	Full Time	1
Associate Management Auditor	Certification List	Permanent	Full Time	2
Attorney IV	Certification List	Permanent	Full Time	1
CEA	Certification List	CEA	Full Time	1
Child Development Consultant	Certification List	Permanent	Full Time	1
Education Administrator I	Certification List	Permanent	Full Time	1
Education Fiscal Services Assistant	Certification List	Permanent	Full Time	1
Education Programs Assistant	Certification List	Permanent	Full Time	1
Education Programs Consultant	Certification List	Permanent	Full Time	3
Education Research & Evaluation Consultant	Certification List	Permanent	Full Time	1
Information Officer I (Specialist)	Certification List	Permanent	Full Time	1
Information Officer II	Certification List	Permanent	Full Time	1
Information Technology Associate	Certification List	Permanent	Full Time	2
Information Technology Specialist I	Certification List	Permanent	Full Time	1
Information Technology Specialist II	Certification List	Permanent	Full Time	1
Legislative Representative, Department of Education	Certification List	Permanent	Full Time	2
Nutrition Education Consultant	Certification List	Permanent	Full Time	1
Office Technician (Typing)	Certification List	Permanent	Full Time	2
Office Technician (Typing), LEAP	Certification List	Limited Term	Full Time	2
Personnel Specialist	Certification List	Permanent	Full Time	1

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Personnel Supervisor I	Certification List	Permanent	Full Time	1
Research Data Specialist III	Certification List	Permanent	Full Time	1
Staff Services Analyst (General)	Certification List	Permanent	Full Time	4
Staff Services Manager I	Certification List	Permanent	Full Time	2
Education Research & Evaluation Assistant	Permissive Reinstatement	Permanent	Full Time	1
Associate Governmental Program Analyst	Training & Development	Permanent	Full Time	1
Staff Services Manager II (Supervisory)	Training & Development	Permanent	Full Time	1
Associate Governmental Program Analyst	Transfer	Permanent	Full Time	1
Associate Management Auditor	Transfer	Permanent	Full Time	1
Education Administrator I	Transfer	Permanent	Full Time	1
Education Programs Assistant	Transfer	Limited Term	Full Time	1
Education Programs Consultant	Transfer	Permanent	Full Time	1
Education Research & Evaluation Consultant	Transfer	Permanent	Full Time	1
Staff Services Analyst (General)	Transfer	Permanent	Full Time	1

<b>SEVERITY: SERIOUS</b>	<b>FINDING NO. 2 PROBATIONARY EVALUATIONS WERE NOT PROVIDED FOR ALL APPOINTMENTS REVIEWED AND SOME THAT WERE PROVIDED WERE UNTIMELY</b>
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**Summary:** The CDE did not provide 11 probationary reports of performance for 5 of the 52 appointments reviewed by the CRU. In addition, the CDE did not provide nine probationary reports of performance in a timely manner, as reflected in the table below. This is the third consecutive time this has been a finding for the CDE.

Classification	Appointment Type	Number of Appointments	Total Number of Missing Probation Reports
Accountant I (Specialist)	Certification List	1	3
Education Programs Assistant	Certification List	1	1
Staff Services Analyst (General)	Certification List	1	3
Associate Governmental Program Analyst	Transfer	1	2
Associate Management Auditor	Transfer	1	2

Classification	Appointment Type	Number of Appointments	Total Number of Late Probation Reports
Associate Governmental Program Analyst	Certification List	1	3
Education Programs Assistant	Certification List	1	1
Information Officer (Specialist)	Certification List	1	3
Associate Governmental Program Analyst	Transfer	1	1
Associate Management Auditor	Transfer	1	1

**Criteria:** The service of a probationary period is required when an employee enters or is promoted in the state civil service by permanent appointment from an employment list; upon reinstatement after a break in continuity of service resulting from a permanent separation; or after any other type of appointment situation not specifically excepted from the probationary period. (Gov. Code, § 19171.) During the probationary period, the appointing power shall evaluate the work and efficiency of a probationer in the manner and at such periods as the department rules may require. (Gov. Code, § 19172.) A report of the probationer's performance shall be made to the employee at sufficiently frequent intervals to keep the employee adequately informed of progress on the job. (Cal. Code Regs., tit. 2, § 599.795.) A written appraisal of performance shall be made to the Department within 10 days after the end of each one-third portion of the probationary period. (*ibid.*) The Board's record retention rules require that appointing powers retain all probationary reports for five years

from the date the record is created. (Cal. Code Regs., tit. 2, § 26, subd. (a)(3).)

**Severity:** Serious. The probationary period is the final step in the selection process to ensure that the individual selected can successfully perform the full scope of their job duties. Failing to use the probationary period to assist an employee in improving his or her performance or terminating the appointment upon determination that the appointment is not a good job/person match is unfair to the employee and serves to erode the quality of state government.

**Cause:** The CDE states that, despite the Human Resources Division (HRD) notifying supervisors of the requirement to complete probationary evaluations for employees and included due dates, not all supervisors completed or provided probationary evaluations to HRD and no follow-up was done to ensure compliance.

**Corrective Action:** Within 90 days of the date of this report, the CDE must submit to the SPB a written corrective action response which addresses the specific and measurable corrections the department will implement to demonstrate conformity with the probationary requirements of Government Code section 19172 and California Code of Regulations, title 2, section 599.795. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

<b>SEVERITY: TECHNICAL</b>	<b>FINDING NO. 3 DEPARTMENT DID NOT PROVIDE BENEFIT INFORMATION IN ACCORDANCE WITH CIVIL SERVICE LAW</b>
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**Summary:** The CDE did not memorialize that applicant received an explanation of benefits, prior to appointment, in a formal offer of employment 2 times out of the 52 appointments reviewed by the CRU.

**Criteria:** An appointing power, before offering employment to an applicant, shall provide the applicant, in writing, with an explanation of benefits that accompany state service. These documents shall include a summary of the applicable civil service position with salary ranges and steps within them, as well as information on benefits afforded by membership in the Public Employees' Retirement System and

benefits and protections provided to public employees by the State Civil Service Act. (Gov. Code, § 19057.2.)

**Severity:** Technical. An applicant is entitled to have all the information regarding benefits relating to their potential employment prior to deciding whether to accept or decline the appointment.

**Cause:** The CDE acknowledges the finding and states that they have continued to provide a good faith effort to provide the explanation of benefits prior to appointment by including it in the job offer letter sent to nominated candidates.

**Corrective Action:** Within 90 days of the date of this report, the CDE must submit to the SPB a written corrective action response which addresses the corrections the department will implement to demonstrate conformity with the explanation of benefits requirements of Government Code section 19057.2. Copies of relevant documentation (including a template letter) demonstrating that the corrective action has been implemented must be included with the corrective action response.

### **Equal Employment Opportunity**

Each state agency is responsible for an effective EEO program. (Gov. Code, § 19790.) The appointing power for each state agency has the major responsibility for monitoring the effectiveness of its EEO program. (Gov. Code, § 19794.) To that end, the appointing power must issue a policy statement committed to EEO; issue procedures for filing, processing, and resolving discrimination complaints; and cooperate with the CalHR, in accordance with Civil Code section 1798.24, subdivisions (o) and (p), by providing access to all required files, documents and data necessary to carry out these mandates. (*Ibid.*) In addition, the appointing power must appoint, at the managerial level, an EEO Officer, who shall report directly to, and be under the supervision of, the director of the department to develop, implement, coordinate, and monitor the department's EEO program. (Gov. Code, § 19795, subd. (a).)

Each state agency must establish a separate committee of employees who are individuals with a disability, or who have an interest in disability issues, to advise the head of the agency on issues of concern to employees with disabilities. (Gov. Code, § 19795, subd. (b)(1).) The department must invite all employees to serve on the committee and take appropriate steps to ensure that the final committee is comprised of members who have disabilities or who have an interest in disability issues. (Gov. Code, § 19795, subd. (b)(2).)



<b>SEVERITY: VERY SERIOUS</b>	<b>FINDING NO. 4 A DISABILITY ADVISORY COMMITTEE HAS NOT BEEN ESTABLISHED</b>
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**Summary:** The CDE does not have an active DAC. The CDE previously had a DAC, however, no DAC meetings have been held in at least 12 months.

**Criteria:** Each state agency must establish a separate committee of employees who are individuals with a disability, or who have an interest in disability issues, to advise the head of the agency on issues of concern to employees with disabilities. (Gov. Code, § 19795, subd. (b)(1).) The department must invite all employees to serve on the committee and take appropriate steps to ensure that the final committee is comprised of members who have disabilities or who have an interest in disability issues. (Gov. Code, § 19795, subd. (b)(2).)

**Severity:** Very Serious. The agency head does not have direct information on issues of concern to employees or other persons with disabilities and input to correct any underrepresentation. The lack of a DAC may limit an agency’s ability to recruit and retain a qualified workforce, impact productivity, and subject the agency to liability.

**Cause:** The CDE states that, although their general DAC has not met, chair members meet regularly to discuss membership, activities, and issues. Moving forward, the Office of Equal Opportunity will provide technical support and guidance to the DAC with advertisements, meetings, and other committee-related needs.

**SPB Reply:** While CDE’s chair members may be meeting regularly, that does not satisfy the need outlined in Government Code to form a DAC.

**Corrective Action:** Within 90 days of the date of this report, the CDE must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure the re-establishment of a DAC, comprised of members who have disabilities or who have an interest in disability issues. Copies of relevant documentation demonstrating that the corrective action has been implemented, including the new DAC roster, agenda, and

meeting minutes, must be included with the corrective action response.

**Personal Services Contracts**

A PSC includes any contract, requisition, or purchase order under which labor or personal services is a significant, separately identifiable element, and the business or person performing the services is an independent contractor that does not have status as an employee of the state. (Cal. Code Regs., tit. 2, § 547.59.) The California Constitution has an implied civil service mandate limiting the state’s authority to contract with private entities to perform services the state has historically or customarily performed. Government Code section 19130, subdivision (a), however, codifies exceptions to the civil service mandate where PSC’s achieve cost savings for the state. PSC’s that are of a type enumerated in subdivision (b) of Government Code section 19130 are also permissible. Subdivision (b) contracts include, but are not limited to, private contracts for a new state function, services that are not available within state service, services that are incidental to a contract for the purchase or lease of real or personal property, and services that are of an urgent, temporary, or occasional nature.

For cost-savings PSC’s, a state agency is required to notify SPB of its intent to execute such a contract. (Gov. Code, § 19131.) For subdivision (b) contracts, the SPB reviews the adequacy of the proposed or executed contract at the request of an employee organization representing state employees. (Gov. Code, § 19132.)

During the period under review, February 1, 2022, through October 31, 2022, the CDE had 358 PSC’s that were in effect. The CRU reviewed 47 of those, which are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?	Union Notification?
Allied Interpreting Service, Inc.	Court Certified Interpreting	7/1/22 - 6/30/23	\$4,999.00	Yes	Yes
Allied Interpreting Service, Inc.	Court Certified Interpreting	7/1/22 - 6/30/23	\$5,000.00	Yes	Yes
Brustein & Manasevit, PLLC	Virtual Workshop Presentation	7/1/22 - 6/30/23	\$7,500.00	Yes	Yes
Cal Interpreting & Translations	Translation Services	10/1/21 - 9/30/23	\$278,000.00	Yes	Yes
Cal-Hosa, Inc.	Subvention Services	7/1/22 - 6/30/23	\$225,000.00	Yes	Yes

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?	Union Notification?
California Association Future Farmers of America	Leadership Development Program	7/1/22 - 6/30/23	\$225,000.00	Yes	Yes
California Future Business Leaders of America, Inc.	Program Support Services	7/1/22 - 6/30/23	\$225,000.00	Yes	Yes
Circle Management Group, Ltd	IT Services	6/23/22 - 12/30/22	\$24,750.00	Yes	Yes
Collaborative Psychology Group	Independent Educational Evaluation	9/19/22 - 12/31/22	\$7,000.00	Yes	Yes
County of Santa Clara, Department of Environmental Health	Health and Sanitation Inspections	6/15/22 - 9/14/22	\$10,950.00	Yes	Yes
County of Yolo, Department of Community Services, Division of Environmental Health	Health and Sanitation Inspections	6/15/22 - 9/14/22	\$7,692.00	Yes	Yes
D.I. Ready Cleaning Service, Inc.	Custodial Services	7/1/22 - 6/30/22	\$12,408.00	Yes	Yes
Dolores C. Huerta Foundation	Keynote Presentation Speaker	3/1/22 - 6/30/22	\$1,500.00	Yes	Yes
Easter Seals Society of Superior California	Custodial Services	7/1/21 - 6/30/23	\$8,320.20	Yes	Yes
Eaton Interpreting Services, Inc.	American Sign Language Interpreting Services	7/1/22 - 6/30/23	\$9,999.00	Yes	Yes
Focus Language International, Inc.	Written Language Translation Services	7/1/20 - 6/30/23	\$49,999.00	Yes	Yes

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?	Union Notification?
Focus Language International, Inc.	Interpreting Services	9/12/22 - 12/31/22	\$1,260.00	Yes	Yes
Foundation for California Community Colleges	Consulting Services Agreement with a Foundation	7/1/21 - 6/30/22	\$299,999.98	Yes	Yes
InfoTrack US, Inc.	Legal Document Processing	7/1/22 - 6/30/23	\$4,999.00	Yes	Yes
Interpreters Unlimited, Inc.	Foreign Language Interpreting Services	7/1/22 - 6/30/23	\$101,144.00	Yes	Yes
Interpreters Unlimited, Inc.	American Sign Language Interpreting Services	7/1/22 - 6/30/23	\$8,000.00	Yes	Yes
Interpreters Unlimited, Inc.	Certified Translation Services	7/1/22 - 6/30/23	\$14,000.00	Yes	Yes
Interpreters Unlimited, Inc.	Written Translation Services	7/1/20 - 6/30/23	\$4,300.00	Yes	Yes
IS, Inc.	Technical Training Services	9/12/22 - 6/30/23	\$10,538.00	Yes	Yes
Jason Riggs	Application Reader	11/16/21 - 3/16/22	\$1,500.00	Yes	Yes
Jilio-Ryan Hunter & Olsen DBA Jilio-Ryan Court Reporters	Legal Services	7/1/22 - 6/30/23	\$9,999.00	Yes	Yes
Laura Irene Laabs	Application Reader	11/16/21 - 3/16/22	\$1,500.00	Yes	Yes
Linguabee, LLC	American Sign Language Interpreting Services	8/9/22 - 6/30/23	\$8,400.00	Yes	Yes
Maria E. Duran	Interpreting Services	8/1/21 - 6/30/22	\$4,725.00	Yes	Yes
Maria E. Duran	Interpreting Services	7/1/22 - 6/30/23	\$9,975.00	Yes	Yes

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?	Union Notification?
Mary Isaac	Application Reader	11/16/21 - 3/16/22	\$1,500.00	Yes	Yes
Nancy S. Brownell	Curriculum Development and Review	7/1/22 - 12/31/22	\$9,375.00	Yes	Yes
Napa County Superintendent of Schools	Consulting Services with a Local Education Agency	7/1/22 - 6/30/23	\$665,629.69	Yes	Yes
NorCal Services for Deaf & Hard of Hearing	American Sign Language Interpreting Services	11/1/20 - 10/31/23	\$49,999.00	Yes	Yes
Orange County Superintendent of Schools	Consulting Services with a Local Education Agency	10/1/21 - 6/30/22	\$2,758.24	Yes	Yes
Print Project Managers, Inc.	Printing and Shipping Services	11/1/21 - 6/30/23	\$117,080.00	Yes	Yes
Sacramento County Environmental Management Department	Health and Sanitation Inspections	6/15/22 - 9/14/22	\$9,000.00	Yes	Yes
Sacramento County Superintendent of Schools	Database Management	7/1/22 - 6/30/23	\$281,004.32	Yes	Yes
San Joaquin County Superintendent of Schools	IT Services	7/1/21 - 6/30/23	\$450,000.00	Yes	Yes
San Joaquin County Superintendent of Schools	IT Consulting Services with a Local Education Agency	7/1/22 - 6/30/23	\$250,000.00	Yes	Yes
SAS Institute, Inc.	SAS Staff Training	7/1/22 - 6/30/22	\$28,630.00	Yes	Yes
Signature Resolution, LLC	Legal Mediation Services	10/10/22 - 6/30/23	\$9,999.00	Yes	Yes

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?	Union Notification?
Vilfer & Associates, Inc. dba Digital Evidence Ventures	Electronic Discovery Staff Training	4/27/22 - 6/30/22	\$9,605.00	Yes	Yes
WestEd	Technical Assistance Addressing Mental Wellness of Students	7/1/21 - 6/30/23	\$1,725,578.00	Yes	Yes
WestEd	Consulting Services for K-12 Data Systems	5/15/22 - 11/15/22	\$85,895.00	Yes	Yes
WestEd	Data Collection	7/1/22 - 6/30/24	\$7,515,700.00	Yes	Yes
WestEd	Consulting Services with a Joint Powers Agency	9/1/22 - 6/30/23	\$260,000.00	Yes	Yes

<b>IN COMPLIANCE</b>	<b>FINDING NO. 5 PERSONAL SERVICES CONTRACTS COMPLIED WITH PROCEDURAL REQUIREMENTS</b>
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The total dollar amount of all the PSC’s reviewed was \$13,055,210.43. It was beyond the scope of the review to make conclusions as to whether CDE justifications for the contract were legally sufficient. For all PSC’s reviewed, the CDE provided specific and detailed factual information in the written justifications as to how each of the contracts met at least one condition set forth in Government Code section 19130, subdivision (b). Additionally, CDE complied with proper notification to all organizations that represent state employees who perform or could perform the type or work contracted as required by California Code of Regulations section 547.60.2. Accordingly, the CDE PSC’s complied with civil service laws and board rules.

**Mandated Training**

Each member, officer, or designated employee of a state agency who is required to file a statement of economic interest (referred to as “filers”) because of the position he or she holds with the agency is required to take an orientation course on the relevant ethics statutes and regulations that govern the official conduct of state officials. (Gov. Code, §§

11146 & 11146.1.) State agencies are required to offer filers the orientation course on a semi-annual basis. (Gov. Code, § 11146.1.) New filers must be trained within six months of appointment and at least once during each consecutive period of two calendar years, commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3.)

Upon the initial appointment of any employee designated in a supervisory position, the employee shall be provided a minimum of 80 hours of training, as prescribed by the CalHR. (Gov. Code, § 19995.4, subd. (b).) The training addresses such topics as the role of the supervisor, techniques of supervision, performance standards, and sexual harassment and abusive conduct prevention. (Gov. Code, §§ 12950.1, subds. (a) and (b), & 19995.4, subd. (b).) Additionally, the training must be successfully completed within the term of the employee's probationary period or within six months of the initial appointment, unless it is demonstrated that to do so creates additional costs or that the training cannot be completed during this time period due to limited availability of supervisory training courses. (Gov. Code, § 19995.4, subd. (c).)

Within 12 months of the initial appointment of an employee to a management or Career Executive Assignment (CEA) position, the employee shall be provided leadership training and development, as prescribed by CalHR. (Gov. Code, § 19995.4, subds. (d) & (e).) For management employees the training must be a minimum of 40 hours and for CEAs the training must be a minimum of 20 hours. (*Ibid.*) Thereafter, for both categories of appointment, the employee must be provided a minimum of 20 hours of leadership training on a biennial basis. (*Ibid.*)

New employees must be provided sexual harassment prevention training within six months of appointment. Thereafter, each department must provide its supervisors two hours of sexual harassment prevention training and non-supervisors one hour of sexual harassment prevention training every two years. (Gov. Code, § 12950.1, subds. (a) and (b); Gov. Code, § 19995.4.)

The Board may conduct reviews of any appointing power's personnel practices to ensure compliance with civil service laws and Board regulations. (Gov. Code, § 18661, subd. (a).) In particular, the Board may audit personnel practices related to such matters as selection and examination procedures, appointments, promotions, the management of probationary periods, and any other area related to the operation of the merit principle in state civil service. (*Ibid.*) Accordingly, the CRU reviews documents and records related to training that appointing powers are required by the afore-cited laws to provide its employees.

The CRU reviewed the CDE's mandated training program that was in effect during the compliance review period, November 1, 2020, through October 31, 2022.

<b>SEVERITY: VERY SERIOUS</b>	<b>FINDING NO. 6 ETHICS TRAINING WAS NOT PROVIDED FOR ALL FILERS</b>
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**Summary:** During the period under review, the CRU reviewed 149 of CDE's 1,041 existing filers. The CDE did not provide ethics training to 15 of 149 existing filers. In addition, the CDE did not provide ethics training to 14 of 70 new filers within 6 months of their appointment. This is the third consecutive time this has been a finding for the CDE.

**Criteria:** New filers must be provided ethics training within six months of appointment. Existing filers must be trained at least once during each consecutive period of two calendar years commencing on the first odd-numbered year thereafter. (Gov. Code, § 11146.3, subd. (b).)

**Severity:** Very Serious. The department does not ensure that its filers are aware of prohibitions related to their official position and influence.

**Cause:** The CDE states that its decentralized records management system and complications from transitioning to an emergency telework environment in March 2020 created issues enforcing training requirements for all employees.

**SPB Reply:** The CDE has been out of compliance in this area since 2016, over three consecutive review periods.

**Corrective Action:** Within 90 days of this report, the CDE must submit to the SPB a written corrective action response which addresses the corrections the department will implement to demonstrate conformity with Government Code section 11146.3. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

<b>SEVERITY: VERY SERIOUS</b>	<b>FINDING NO. 7 SUPERVISORY TRAINING WAS NOT PROVIDED FOR ALL SUPERVISORS, MANAGERS, AND CEAS</b>
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**Summary:** The CDE did not provide basic supervisory training to 5 of 15 new supervisors within 12 months of appointment. This is the third consecutive time this has been a finding for the CDE.



Additionally, the CDE did not provide manager training to 1 of 3 new managers within 12 months of appointment; did not provide CEA training to 3 of 3 new CEAs within 12 months of appointment; and did not provide biennial leadership training to 81 of 85 existing supervisors, managers, and/or CEAs. This is the second consecutive time this has been a finding for the CDE.

**Criteria:** Each department must provide its new supervisors a minimum of 80 hours of supervisory training within the probationary period. Upon completion of the initial training, supervisory employees shall receive a minimum 20 hours of leadership training biennially. (Gov. Code, § 19995.4, subds. (b) and (c).)

Upon initial appointment of an employee to a managerial position, each employee must receive 40 hours of leadership training within 12 months of appointment. Thereafter, the employee shall receive a minimum of 20 hours of leadership training biennially. (Gov. Code, § 19995.4, subd. (d).)

Upon initial appointment of an employee to a Career Executive Assignment position, each employee must receive 20 hours of leadership training within 12 months of appointment. Thereafter, the employee shall receive a minimum of 20 hours of leadership training biennially. (Gov. Code, § 19995.4, subd. (e).)

**Severity:** Very Serious. The department does not ensure its leaders are properly trained. Without proper training, leaders may not properly carry out their leadership roles, including managing employees.

**Cause:** The CDE states that, prior to emergency telework in 2020, training for the managerial 20-hour biennial requirement had been conducted regularly in-person at CDE Headquarters. Prevention of the spread of Covid-19 necessitated the cancellation of all planned courses. CDE was also forced to cancel multiple in-house offerings of the 80-hour supervisory development program as CalHR rescinded an intra-office memorandum of understanding during the transition.

**SPB Reply:** The review period for CDE's mandated training was November 1, 2020, through October 31, 2022. In October 2020, CalHR began to offer its Leadership trainings virtually. Furthermore, many courses

are available virtually through CalHR and other vendors which would fulfill the 20 hour biennial training requirement.

**Corrective Action:** Within 90 days of the date of this report, the CDE must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure that new supervisors, managers, and CEAs are provided leadership and development training within twelve months of appointment, and that thereafter, they receive a minimum of 20 hours of leadership training biennially, as required by Government Code section 19995.4. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

<b>SEVERITY: VERY SERIOUS</b>	<b>FINDING NO. 8      SEXUAL HARASSMENT PREVENTION TRAINING WAS NOT PROVIDED FOR ALL EMPLOYEES</b>
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**Summary:** The CDE did not provide sexual harassment prevention training to 8 of 16 new supervisors within 6 months of their appointment. In addition, the CDE did not provide sexual harassment prevention training to 28 of 149 existing supervisors every 2 years. This is the third consecutive time this has been a finding for the CDE.

The CDE did not provide sexual harassment prevention training to 23 of 168 existing non-supervisors every 2 years.

**Criteria:** Each department must provide its supervisors two hours of sexual harassment prevention training every two years and non-supervisory employees one hour of sexual harassment prevention training every two years. New employees must be provided sexual harassment prevention training within six months of appointment. (Gov. Code, § 12950.1, subds. (a) and (b); Gov. Code § 19995.4.)

**Severity:** Very Serious. The department does not ensure that all new and existing employees are properly trained to respond to sexual harassment or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. This limits the department's ability to retain a quality workforce, impacts employee morale and productivity, and subjects the department to litigation.

**Cause:** The CDE states that its decentralized records management system and complications from transitioning to an emergency telework environment in March 2020 created issues enforcing training requirements for all employees.

**SPB Reply:** The CDE has been out of compliance in this area since 2016, over three consecutive review periods.

**Corrective Action:** Within 90 days of the date of this report, the CDE must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure that all employees are provided sexual harassment prevention training in accordance with Government Code section 12950.1. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

## **Compensation and Pay**

### **Salary Determination**

The pay plan for state civil service consists of salary ranges and steps established by CalHR. (Cal. Code Regs., tit. 2, § 599.666.) Several salary rules dictate how departments calculate and determine an employee's salary rate<sup>11</sup> upon appointment depending on the appointment type, the employee's state employment and pay history, and tenure.

Typically, agencies appoint employees to the minimum rate of the salary range for the class. Special provisions for appointments above the minimum exist to meet special recruitment needs and to accommodate employees who transfer into a class from another civil service class and are already receiving salaries above the minimum.

During the period under review, December 2, 2021, through August 31, 2022, the CDE made 259 appointments. The CRU reviewed 23 of those appointments to determine if the CDE applied salary regulations accurately and correctly processed employees' compensation, which are listed below:

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<sup>11</sup> "Rate" is any one of the salary rates in the resolution by CalHR which establishes the salary ranges and steps of the Pay Plan (Cal. Code Regs., tit. 2, section 599.666).

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Accounting Administrator II	Certification List	Permanent	Full Time	\$7,576
Accountant I (Specialist)	Certification List	Permanent	Full Time	\$3,512
Accounting Officer (Specialist)	Certification List	Permanent	Full Time	\$4,819
Associate Accounting Analyst	Certification List	Permanent	Full Time	\$5,793
Associate Governmental Program Analyst	Certification List	Permanent	Full Time	\$5,441
Education Administrator I	Certification List	Permanent	Full Time	\$9,907
Education Fiscal Services Assistant	Certification List	Permanent	Full Time	\$6,083
Education Programs Consultant	Certification List	Permanent	Full Time	\$7,722
Education Programs Consultant	Certification List	Permanent	Full Time	\$7,538
Information Officer II	Certification List	Permanent	Full Time	\$7,076
Information Technology Specialist II	Certification List	Permanent	Full Time	\$9,878
Nutrition Education Consultant	Certification List	Permanent	Full Time	\$8,568
Personnel Supervisor I	Certification List	Permanent	Full Time	\$6,061
Research Data Specialist III	Certification List	Permanent	Full Time	\$8,751
Staff Services Analyst (General)	Certification List	Permanent	Full Time	\$4,588
Staff Services Analyst (General)	Certification List	Permanent	Full Time	\$4,476
Staff Services Manager I	Certification List	Permanent	Full Time	\$6,403
Staff Services Manager I	Certification List	Permanent	Full Time	\$6,871
Associate Governmental Program Analyst	Transfer	Permanent	Full Time	\$5,383

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Education Administrator I	Transfer	Permanent	Full Time	\$10,542
Education Programs Consultant	Transfer	Permanent	Full Time	\$9,205
Education Research and Evaluation Consultant	Transfer	Permanent	Full Time	\$8,322
Staff Services Analyst (General)	Transfer	Permanent	Full Time	\$4,320

<b>IN COMPLIANCE</b>	<b>FINDING NO. 9 SALARY DETERMINATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b>
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The CRU found no deficiencies in the salary determinations that were reviewed. The CDE appropriately calculated and keyed the salaries for each appointment and correctly determined employees' anniversary dates ensuring that subsequent merit salary adjustments will satisfy civil service laws, Board rules and CalHR policies and guidelines.

Alternate Range Movement Salary Determination (within same classification)

If an employee qualifies under established criteria and moves from one alternate range to another alternate range of a class, the employee shall receive an increase or a decrease equivalent to the total of the range differential between the maximum salary rates of the alternate ranges. (Cal. Code Regs., tit. 2, § 599.681.) However, in many instances, the CalHR provides salary rules departments must use when employees move between alternate ranges. These rules are described in the alternate range criteria. (CalHR Pay Scales). When no salary rule or method is cited in the alternate range criteria, departments must default to Rule 599.681.

During the period under review, December 2, 2021, through August 31, 2022, the CDE made six alternate range movements within a classification. The CRU reviewed five of those alternate range movements to determine if the CDE applied salary regulations accurately and correctly processed each employee's compensation, which are listed below:

Classification	Prior Range	Current Range	Time Base	Salary (Monthly Rate)
Information Technology Specialist I	A	B	Full Time	\$6,732

Classification	Prior Range	Current Range	Time Base	Salary (Monthly Rate)
Information Technology Specialist I	B	C	Full Time	\$8,899
Personnel Specialist	B	C	Full Time	\$4,277
Staff Services Analyst (General)	A	B	Full Time	\$3,897
Staff Services Analyst (General)	A	B	Full Time	\$4,536

<b>IN COMPLIANCE</b>	<b>FINDING NO. 10</b>	<b>ALTERNATIVE RANGE MOVEMENTS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b>
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The CRU determined that the alternate range movements the CDE made during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

#### Hiring Above Minimum Requests

The CalHR may authorize payment at any step above the minimum limit to classes or positions to meet recruiting problems, or to obtain a person who has extraordinary qualifications. (Gov. Code, § 19836.) For all employees new to state service, departments are delegated to approve HAMs for extraordinary qualifications. (Human Resources Manual Section 1707.) Appointing authorities may request HAMs for current state employees with extraordinary qualifications. (*Ibid.*) Delegated HAM authority does not apply to current state employees. (*Ibid.*)

Extraordinary qualifications may provide expertise in a particular area of a department's program. (*Ibid.*) This expertise should be well beyond the minimum qualifications of the class. (*Ibid.*) Unique talent, ability or skill as demonstrated by previous job experience may also constitute extraordinary qualifications. (*Ibid.*) The scope and depth of such experience should be more significant than its length. (*Ibid.*) The degree to which a candidate exceeds minimum qualifications should be a guiding factor, rather than a determining one. (*Ibid.*) The qualifications and hiring rates of state employees already in the same class should be carefully considered, since questions of salary equity may arise if new higher entry rates differ from previous ones. (*Ibid.*) Recruitment difficulty is a factor to the extent that a specific extraordinary skill should be difficult to recruit, even though some applicants are qualified in the general skills of the class. (*Ibid.*)

If the provisions of this section conflict with the provisions of a memorandum of understanding reached pursuant to Government Code section 3517.5, the memorandum

of understanding shall be controlling without further legislative action.<sup>12</sup> (Gov. Code, § 19836, subd. (b).)

Appointing authorities may request and approve HAMs for former legislative employees who are appointed to a civil service class and received eligibility for appointment pursuant to Government Code section 18990. (Human Resources Manual Section 1707.) The salary received upon appointment to civil service shall be in accordance with the salary rules specified in the California Code of Regulations. (*Ibid.*) A salary determination is completed comparing the maximum salary rate of the former legislative class and the maximum salary rate of the civil service class to determine applicable salary and anniversary regulation. (*Ibid.*) Typically, the legislative employees are compensated at a higher rate of pay; therefore, they will be allowed to retain the rate they last received, not to exceed the maximum of the civil service class. (*Ibid.*)

Appointing authorities may request/approve HAMs for former exempt employees appointed to a civil service class. (Human Resources Manual Section 1707.) The salary received upon appointment to civil service shall be competitive with the employee’s salary in the exempt appointment. (*Ibid.*) For example, an employee appointed to a civil service class which is preceded by an exempt appointment may be appointed at a salary rate comparable to the exempt appointment up to the maximum of the salary range for the civil service class. (*Ibid.*)

During the period under review, December 2, 2021, through August 31, 2022, the CDE authorized six HAM requests. The CRU reviewed three of those authorized HAM requests to determine if the CDE correctly applied Government Code section 19836 and appropriately verified, approved, and documented candidates’ extraordinary qualifications, which are listed below:

Classification	Appointment Type	Status	Salary Range	Salary (Monthly Rate)
Education Programs Assistant	Certification List	New to State	\$5,279 - \$7,977	\$7,977
Education Programs Consultant	Certification List	New to State	\$7,538 - \$9,435	\$8,700
Education Programs Consultant	Certification List	New to State	\$7,538 - \$9,435	\$9,205

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<sup>12</sup> Except that if the provisions of the memorandum of understanding requires the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

<b>IN COMPLIANCE</b>	<b>FINDING NO. 11 HIRE ABOVE MINIMUM REQUESTS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b>
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The CRU found that the HAM requests the CDE made during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

Bilingual Pay

A certified bilingual position is a position where the incumbent uses bilingual skills on a continuous basis and averages 10 percent or more of the total time worked. According to the Pay Differential 14, the 10 percent time standard is calculated based on the time spent conversing, interpreting, or transcribing in a second language and time spent on closely related activities performed directly in conjunction with the specific bilingual transactions.

Typically, the department must review the position duty statement to confirm the percentage of time performing bilingual skills and verify the monthly pay differential is granted to a certified bilingual employee in a designated bilingual position. The position, not the employee, receives the bilingual designation and the department must verify that the incumbent successfully participated in an Oral Fluency Examination prior to issuing the additional pay.

During the period under review, December 2, 2021, through August 31, 2022, the CDE issued bilingual pay to 10 employees. The CRU reviewed nine of these bilingual pay authorizations to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Bargaining Unit	Time Base	No. of Appts.
Associate Governmental Program Analyst	R01	Full Time	2
CEA	M01	Full Time	1
Education Programs Consultant	R21	Full Time	5
School Health Education Consultant	R21	Full Time	1

<b>SEVERITY: VERY SERIOUS</b>	<b>FINDING NO. 12 INCORRECT AUTHORIZATION OF BILINGUAL PAY</b>
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**Summary:** The CRU found three errors in the CDE’s authorization of bilingual pay. This is the second consecutive time this has been a finding for the CDE.



Classification	Description of Findings	Criteria
Associate Governmental Program Analyst	Department failed to provide supporting documentation that the employee has been tested and certified bilingual. In addition, the department failed to supply supporting documentation demonstrating the need for bilingual services.	Government Code section 7296 and Pay Differential 14
CEA		
Education Programs Consultant	Department failed to supply supporting documentation demonstrating the need for bilingual services.	Pay Differential 14

**Criteria:** For any state agency, a “qualified” bilingual employee, person, or interpreter is someone who CalHR has tested and certified, someone who was tested and certified by a state agency or other approved testing authority, and/or someone who has met the testing or certification standards for outside or contract interpreters as proficient in both the English language and the non-English language to be used. (Gov. Code, § 7296, subd. (a)(3).)

An individual must be in a position that has been certified by the department as a position which requires the use of bilingual skills on a continuing basis averaging 10 percent of the time spent either conversing, interpreting, or transcribing in a second language and time spent on closely related activities performed directly in conjunction with specific bilingual transactions. (Pay Differential 14.)

**Severity:** Very Serious. Failure to comply with the state civil service pay plan by incorrectly applying compensation rules in accordance with CalHR’s policies and guidelines results in civil service employees receiving incorrect and/or inappropriate pay.

**Cause:** The CDE acknowledges that three employees identified did not have authorization documents to approve their bilingual pay; however, no cause was provided.

**Corrective Action:** Within 90 days of the date of this report, the CDE must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Government Code section 7296 and Pay Differential 14. Copies of relevant documentation demonstrating that the corrective action has

been implemented must be included with the corrective action response.

Pay Differentials

A pay differential is special additional pay recognizing unusual competencies, circumstances, or working conditions applying to some or all incumbents in select classes. A pay differential may be appropriate in those instances when a subgroup of positions within the overall job class might have unusual circumstances, competencies, or working conditions that distinguish these positions from other positions in the same class. Typically, pay differentials are based on qualifying pay criteria such as: work locations or shift assignments; professional or educational certification; temporary responsibilities; special licenses, skills or training; performance-based pay; incentive-based pay; or recruitment and retention. (Classification and Pay Manual Section 230.)

California State Civil Service Pay Scales Section 14 describes the qualifying pay criteria for the majority of pay differentials. However, some of the alternate range criteria in the pay scales function as pay differentials. Generally, departments issuing pay differentials should, in order to justify the additional pay, document the following: the effective date of the pay differential, the collective bargaining unit identifier, the classification applicable to the salary rate and conditions along with the specific criteria, and any relevant documentation to verify the employee meets the criteria.

During the period under review, December 2, 2021, through August 31, 2022, the CDE authorized two pay differentials.<sup>13</sup> The CRU reviewed two of these pay differentials to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Pay Differential	Monthly Amount
Departmental Construction & Maintenance Supervisor	433	5.5%
Senior Architect	433	5.5%

<b>IN COMPLIANCE</b>	<b>FINDING NO. 13</b>	<b>PAY DIFFERENTIAL AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND CALHR POLICIES AND GUIDELINES</b>
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The CRU found no deficiencies in the pay differentials that the CDE authorized during the compliance review period. Pay differentials were issued correctly in recognition of unusual

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<sup>13</sup> For the purposes of CRU’s review, only monthly pay differentials were selected for review at this time.

competencies, circumstances, or working conditions in accordance with applicable rules and guidelines.

Out-of-Class Assignments and Pay

For excluded<sup>14</sup> and most rank-and-file employees, out-of-class (OOC) work is defined as performing, more than 50 percent of the time, the full range of duties and responsibilities allocated to an existing class and not allocated to the class in which the person has a current, legal appointment. (Cal. Code Regs., tit. 2, § 599.810, subd. (a)(2).) A higher classification is one with a salary range maximum that is any amount higher than the salary range maximum of the classification to which the employee is appointed. (Cal. Code Regs., tit. 2, § 599.810, subd. (a)(3).)

According to the Classification and Pay Guide, OOC assignments should only be used as a last resort to accommodate temporary staffing needs. All civil service alternatives should be explored first before using OOC assignments. However, certain MOU provisions and the California Code of Regulations, title 2, section 599.810 allow for short-term OOC assignments to meet temporary staffing needs. Should OOC work become necessary, the assignment would be made pursuant to the applicable MOU provisions or salary regulations. Before assigning the OOC work, the department should have a plan to correct the situation before the time period outlined in applicable law, policy or MOU expires. (Classification and Pay Guide Section 375.)

During the period under review, December 2, 2021, through August 31, 2022, the CDE issued OOC pay to 15 employees. The CRU reviewed 10 of these OOC assignments to ensure compliance with applicable MOU provisions, salary regulations, and CalHR policies and guidelines. These are listed below:

Classification	Bargaining Unit	Out-of-Class Classification	Time Frame
Associate Governmental Program Analyst	R04	Education Fiscal Services Consultant	12/2/21 – 12/15/21
Child Nutrition Supervisor I	S19	Child Nutrition Supervisor I	12/2/21 – 2/28/22

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<sup>14</sup> “Excluded employee” means an employee as defined in Government Code section 3527, subdivision (b) (Ralph C. Dills Act) except those excluded employees who are designated managerial pursuant to Government Code section 18801.1.

Classification	Bargaining Unit	Out-of-Class Classification	Time Frame
Education Administrator I	S21	CEA B, Acting Director, Educator Excellence & Equity Division	12/2/21 – 6/30/22
Education Fiscal Services Consultant	R21	CEA B, Interim Director, Government Affairs	12/2/21 – 12/31/21
Education Programs Consultant	R21	Education Research & Evaluation Administrator I	12/2/21 – 3/17/22
Education Programs Consultant	R21	Education Administrator I	12/2/21 – 5/31/22
Education Programs Consultant	R21	Education Administrator I	12/13/21 – 3/18/22
Education Programs Consultant	R21	Education Administrator I	12/2/21 – 1/31/22
Information Technology Specialist I	R01	Education Research & Evaluation Administrator I	12/2/21 – 3/1/22
Supervising Management Auditor	M01	CEA B, Director, Audits & Investigation Division	12/2/22 – 12/6/22

<b>SEVERITY: VERY SERIOUS</b>	<b>FINDING NO. 14 INCORRECT AUTHORIZATION OF OUT-OF-CLASS PAY</b>
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**Summary:** The CRU found seven errors in the CDE’s authorization of OOC pay:

Classification	Out-of-Class Classification	Description of Findings	Criteria
Associate Governmental Program Analyst	Education Fiscal Services Consultant	Employee was overcompensated for December 2021 pay period.	Pay Differential 91
Education Programs Consultant	Education Research & Evaluation Administrator I	Employee was overcompensated for December 2021 and January 2022 pay periods.	Pay Differential 91
Education Programs Consultant	Education Administrator I	Employee was overcompensated for January 2022 pay period.	Pay Differential 91

Classification	Out-of-Class Classification	Description of Findings	Criteria
Education Programs Consultant	Education Administrator I	Employee was overcompensated for December 2021 and January 2022 pay periods.	Pay Differential 91
Education Programs Consultant	Education Administrator I	Employee was overcompensated for February 2022 pay period.	Pay Differential 91
Information Technology Specialist I	Education Research & Evaluation Administrator I	Employee was overcompensated for December 2021, January 2022, and February 2022 pay periods.	Pay Differential 91
Supervising Management Auditor	CEA B, Director, Audits & Investigation Division	Employee was overcompensated for December 2021 pay period.	Pay Differential 101

**Criteria:**

An employee may be temporarily required to perform out-of-class work by his/her department for up to one hundred twenty (120) calendar days in any twelve (12) consecutive calendar months when it determines that such an assignment is of unusual urgency, nature, volume, location, duration, or other special characteristics; and cannot feasibly be met through use of other civil service or administrative alternatives. Departments may not use out-of-class assignments to avoid giving civil service examinations or to avoid using existing eligibility lists created as the result of a civil service examination.

Employees may be compensated for performing duties of a higher classification provided that: the assignment is made in advance in writing and the employee is given a copy of the assignment; and the duties performed by the employee are not described in a training and development assignment or by the specification for the class to which the excluded employee is appointed and, are fully consistent with the types of jobs described in the specification for the higher classification; and the employee does not perform such duties for more than 120 days in a fiscal year. (Cal. Code Regs., tit. 2, § 599.810, subd. (b)(1)(3)(4).)

For excluded employees, there shall be no compensation for assignments that last for 15 consecutive working days or less. (Cal. Code Regs., tit. 2, § 599.810, subd. (c).) An excluded employee performing in a higher class for more than 15 consecutive working days shall receive the rate of pay the excluded employee would receive if appointed to the higher class for the entire duration of the assignment, not to exceed one year. (Cal. Code Regs., tit. 2, § 599.810, subd. (d).) An excluded employee may be assigned out-of-class work for more than 120 calendar days during any 12-month period only if the appointing power files a written statement with the CalHR certifying that the additional out-of-class work is required to meet a need that cannot be met through other administrative or civil service alternatives. (Cal. Code Regs., tit. 2, § 599.810, subd. (e).)

**Severity:** Very Serious. The CDE failed to comply with the state civil service pay plan by incorrectly applying compensation laws and rules in accordance with CalHR's policies and guidelines. This results in civil service employees receiving incorrect and/or inappropriate compensation.

**Cause:** The CDE states they experienced multiple retirements and departures in the Payroll and Benefits Office resulting in several new hires which caused inadvertent errors.

**Corrective Action:** Within 90 days of the date of this report, the CDE must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with California Code of Regulations, title 2, section 599.810 and Pay Differential 91 and 101. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

## Leave

### Positive Paid Employees

Actual Time Worked (ATW) is a method that can be used to keep track of a Temporary Authorization Utilization (TAU) employee's time to ensure that the Constitutional limit of 9 months in any 12 consecutive months is not exceeded. The ATW method of counting

time is used to continue the employment status for an employee until the completion of an examination, for seasonal type work, while attending school, or for consulting services.

An employee is appointed TAU-ATW when he/she is not expected to work all the working days of a month. When counting 189 days, every day worked, including partial days<sup>15</sup> worked and paid absences<sup>16</sup>, are counted. (Cal. Code Regs., tit. 2, § 265.1, subd. (b).) The hours worked in one day is not limited by this rule. (*Ibid.*) The 12-consecutive month timeframe begins by counting the first pay period worked as the first month of the 12-consecutive month timeframe. (*Ibid.*) The employee shall serve no longer than 189 days in a 12 consecutive month period. (*Ibid.*) A new 189-days working limit in a 12-consecutive month timeframe may begin in the month immediately following the month that marks the end of the previous 12-consecutive month timeframe. (*Ibid.*)

It is an ATW appointment because the employee does not work each workday of the month, and it might become desirable or necessary for the employee to work beyond nine calendar months. The appointing power shall monitor and control the days worked to ensure the limitations set forth are not exceeded. (Cal. Code Regs., tit. 2, § 265.1, subd. (f).)

For student assistants, graduate student assistants, youth aides, and seasonal classifications a maximum work-time limit of 1500 hours within 12 consecutive months may be used rather than the 189-day calculation. (Cal. Code Regs., tit. 2, § 265.1, subd. (d).)

Additionally, according to Government Code section 21224, retired annuitant appointments shall not exceed a maximum of 960 hours in any fiscal year (July-June), regardless of the number of state employers, without reinstatement, loss, or interruption of benefits.

At the time of the review, the CDE had 36 positive paid employees whose hours were tracked. The CRU reviewed 25 of those positive paid appointments to ensure compliance with applicable laws, regulations, policies, and guidelines, which are listed below:

Classification	Tenure	Time Frame	Time Worked
Associate Construction Analyst	Retired Annuitant (RA)	7/1/21 – 6/30/22	716.75 Hours
Associate Governmental Program Analyst	RA	7/1/21 – 6/30/22	606 Hours

<sup>15</sup> For example, two hours or ten hours count as one day.

<sup>16</sup> For example, vacation, sick leave, compensating time off, etc.

Classification	Tenure	Time Frame	Time Worked
Associate Governmental Program Analyst	RA	7/1/21 – 6/30/22	897 Hours
Education Fiscal Services Administrator	RA	7/1/21 – 6/30/22	371 Hours
Education Fiscal Services Consultant	RA	7/1/21 – 6/30/22	482 Hours
Education Programs Consultant	RA	7/1/21 – 6/30/22	958 Hours
Education Programs Consultant	RA	7/1/21 – 6/30/22	905.50 Hours
Education Programs Consultant	RA	7/1/21 – 6/30/22	474.25 Hours
Field Representative, School Administration (Specialist)	RA	7/1/21 – 6/30/22	204.50 Hours
Heavy Truck Driver	RA	7/1/21 – 6/30/22	464.50 Hours
Information Technology Manager I	RA	7/1/21 – 6/30/22	369.50 Hours
Nutrition Education Consultant	RA	7/1/21 – 6/30/22	170.25 Hours
Office Technician (General)	RA	7/1/21 – 6/30/22	548 Hours
Senior Accounting Officer (Specialist)	RA	7/1/21 – 6/30/22	951 Hours
Staff Services Manger I	RA	7/1/21 – 6/30/22	789.50 Hours
Staff Services Manger II (Supervisor)	RA	7/1/21 – 6/30/22	960 Hours
Staff Services Manger III	RA	7/1/21 – 6/30/22	336.50 Hours
Student Assistant	Temporary	9/1/21 – 8/31/22	1800 Hours
Student Assistant	Temporary	9/1/21 – 8/31/22	999 Hours
Student Assistant	Temporary	11/1/21 – 10/31/22	1528.75 Hours
Student Assistant	Temporary	12/1/21 – 11/30/22	747 Hours
Student Assistant	Temporary	9/1/21 – 8/31/22	999 Hours
Student Assistant	Temporary	11/1/21 – 10/31/22	1148.30 Hours



Classification	Tenure	Time Frame	Time Worked
Student Assistant	Temporary	7/1/21 – 6/30/22	659.50 Hours
Student Assistant	Temporary	11/1/21 – 10/31/22	612 Hours

<b>SEVERITY: SERIOUS</b>	<b>FINDING NO. 15 POSITIVE PAID TEMPORARY EMPLOYEES' WORK EXCEEDED TIME LIMITATIONS</b>
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**Summary:** The CDE did not consistently monitor the actual number of days and/or hours worked to ensure that positive paid employees did not exceed the 189-day or 1,500-hour limitation in any 12 consecutive month period. This is the second consecutive time this has been a finding for the CDE.

Specifically, the following employees exceeded the 1,500-hour limitation:

Classification	Tenure	Time Frame	Time Worked	Time Worked Over Limit
Student Assistant	Temporary	9/1/21 – 8/31/22	1800 Hours	300 Hours
Student Assistant	Temporary	11/1/21 – 10/31/22	1528.75 Hours	28.75 Hours

**Criteria:** If any employee is appointed to an intermittent time base position on a TAU basis, there are two controlling time limitations that must be considered. The first controlling factor is the constitutional limit of nine months in any 12 consecutive months for temporary appointments that cannot be extended for any reason. (Cal Const., art. VII, § 5.) Time worked shall be counted on a daily basis with every 21 days worked counting as one month or 189 days equaling nine months. (Cal. Code Regs., tit. 2, § 265.1, subd. (b).) Another controlling factor limits the maximum work time for student, youth, and seasonal classifications to 1,500 hours. (Cal. Code Regs., tit. 2, § 265.1, subd. (d).)

**Severity:** Serious. The number of days or hours an individual may work in a temporary appointment is limited in the state civil service. TAU appointments are distinguished from other appointments as they can be made in the absence of an appropriate employment list.

**Cause:** The CDE states that the 1,500-hour limitation was misinterpreted as a calendar year (January 1<sup>st</sup> to December 31<sup>st</sup>) rather than a rolling consecutive 12 months.

**Corrective Action:** Within 90 days of the date of this report, the CDE must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with California Code of Regulations, title 2, section 265.1. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

### Administrative Time Off

ATO is a form of paid administrative leave status initiated by appointing authorities for a variety of reasons. (Human Resources Manual Section 2121.) Most often, ATO is used when an employee cannot come to work because of a pending investigation, fitness for duty evaluation, or when work facilities are unavailable. (*Ibid.*) ATO can also be granted when employees need time off for reasons such as blood or organ donation, extreme weather preventing safe travel to work, states of emergency, voting, and when employees need time off to attend special events. (*Ibid.*)

During the period under review, August 1, 2021, through July 31, 2022, the CDE authorized three ATO transactions. The CRU reviewed the three ATO transactions to ensure compliance with applicable laws, regulations, and CalHR policies and guidelines, which are listed below:

Classification	Time Frame	Amount of Time on ATO
Associate Governmental Program Analyst	9/9/22 – 9/15/22	40 Hours
Associate Governmental Program Analyst	8/17/21 – 8/18/21, 8/20/21, 8/30/21, 9/1/21 – 9/3/21	61 Hours
Education Research & Evaluation Assistant	3/2/21 – 3/7/21	32 Hours

<b>IN COMPLIANCE</b>	<b>FINDING NO. 16 ADMINISTRATIVE TIME OFF AUTHORIZATIONS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU found no deficiencies in the ATO transactions reviewed during the compliance review period. The CDE provided the proper documentation justifying the use of ATO and adhered to applicable laws, regulations and CalHR policy and guidelines.

Leave Auditing and Timekeeping

Departments must keep complete and accurate time and attendance records for each employee and officer employed within the agency over which it has jurisdiction. (Cal. Code Regs., tit. 2, § 599.665.)

Departments are directed to create a monthly internal audit process to verify all leave input into any leave accounting system is keyed accurately and timely. (Human Resources Manual Section 2101.) Departments shall create an audit process to review and correct leave input errors on a monthly basis. The review of leave accounting records shall be completed by the pay period following the pay period in which the leave was keyed into the leave accounting system. (*Ibid.*) If an employee’s attendance record is determined to have errors or it is determined that the employee has insufficient balances for a leave type used, the attendance record must be amended. (*Ibid.*) Attendance records shall be corrected by the pay period following the pay period in which the error occurred. (*Ibid.*) Accurate and timely attendance reporting is required of all departments and is subject to audit. (*Ibid.*)

During the period under review, May 1, 2022, through August 1, 2022, the CDE reported 148 units comprised of 5,320 active employees. The pay periods and timesheets reviewed by the CRU are summarized below:

Timesheet Leave Period	Unit Reviewed	Number of Employees	Number of Timesheets Reviewed	Number of Missing Timesheets
May 2022	120	16	16	0
June 2022	590	35	35	0
July 2022	30	22	22	0
July 2022	150	28	28	0
July 2022	645	36	36	0
August 2022	160	26	26	0
August 2022	660	41	41	0

<b>SEVERITY:</b> <b>SERIOUS</b>	<b>FINDING NO. 17 DEPARTMENT DID NOT CERTIFY THAT ALL LEAVE RECORDS WERE REVIEWED</b>
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**Summary:** The CDE failed to provide a Leave Activity and Correction Certification form for the seven units reviewed between May 2022 and August 2022 pay periods.

**Criteria:** Each appointing power shall keep complete and accurate time and attendance records for each employee and officer employed within the agency over which it has jurisdiction. (Cal. Code Regs., tit. 2, § 599.665.) Departments are directed to create an audit process to verify all leave input is keyed accurately and timely. (Human Resources Manual Section 2101.) Departments shall identify and record all errors found and shall certify that all leave records for the unit/pay period identified have been reviewed and all leave errors identified have been corrected. (*Ibid.*) Attendance records shall be corrected by the pay period following the pay period in which the error occurred. (*Ibid.*)

**Severity:** Serious. Departments must document that they reviewed all leave inputted into their leave accounting system to ensure accuracy and timeliness. Failure to audit leave could put the department at risk of incurring additional costs from the initiation of collection efforts from overpayments, and the risk of liability related to recovering inappropriately credited leave hours and funds.

**Cause:** The CDE states they inadvertently did not certify that all leave records were reviewed.

**Corrective Action:** Within 90 days of the date of this report, the CDE must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure that their monthly internal audit process is documented and that all leave input is keyed accurately and timely. The CDE must incorporate completion of Leave Activity and Correction Certification forms for all leave records even when errors are not identified or corrected. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

## Policy and Processes

### Nepotism

It is the policy of the State of California to hire, transfer, and promote all employees on the basis of merit and fitness in accordance with civil service statutes, rules and regulations. Nepotism is expressly prohibited in the state workplace because it is antithetical to California's merit based civil service. (Cal. Code Regs., tit. 2, § 87.) (*Ibid.*) All appointing powers shall adopt an anti-nepotism policy that includes the following components: (1) a statement that the appointing power is committed to merit-based hiring and that nepotism is antithetical to a merit-based civil service system; (2) a definition of "nepotism" as an employee's use of influence or power to hire, transfer, or promote an applicant or employee because of a personal relationship; (3) a definition of "personal relationship" as persons related by blood, adoption, current or former marriage, domestic partnership or cohabitation; (4) a statement that prohibits participation in the selection of an applicant for employment by anyone who has a personal relationship with the applicant, as defined in section 83.6; (5) a statement that prohibits the direct or first-line supervision of an employee with whom the supervisor has a personal relationship, as defined in section 83.6; (6) a process for addressing issues of direct supervision when personal relationships between employees exist. (*Ibid.*)

<b>IN COMPLIANCE</b>	<b>FINDING NO. 18 NEPOTISM POLICY COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU verified that the policy was disseminated to all staff and emphasized the CDE's commitment to the state policy of hiring, transferring, and promoting employees on the basis of merit. Additionally, the CDE's nepotism policy was comprised of specific and sufficient components intended to prevent favoritism, or bias, based on a personal relationship from unduly influencing employment decisions.

### Workers' Compensation

Employers shall provide to every new employee, either at the time of hire or by the end of the first pay period, written notice concerning the rights, benefits, and obligations under workers' compensation law. (Cal. Code Regs., tit. 8, § 9880, subd. (a).) This notice shall include the right to predesignate their personal physician or medical group; a form that the employee may use as an optional method for notifying the employer of the name of employee's "personal physician," as defined by Labor Code section 4600. (Cal. Code Regs., tit. 8, § 9880, subd. (c)(7) & (8).) Additionally, within one working day of

receivnotice or knowledge that the employee has suffered a work-related injury or illness, employers shall provide a claim form and notice of potential eligibility for benefits to the injured employee. (Labor Code, § 5401, subd. (a).)

Public employers may choose to extend workers' compensation coverage to volunteers that perform services for the organization. (Human Resources Manual Section 1415.) Workers' compensation coverage is not mandatory for volunteers as it is for employees. (*Ibid.*) This is specific to the legally uninsured state departments participating in the Master Agreement. (*Ibid.*) Departments with an insurance policy for workers' compensation coverage should contact their State Compensation Insurance Fund (State Fund) office to discuss the status of volunteers. (*Ibid.*)

In this case, the CDE did not employ volunteers during the compliance review period.

<b>IN COMPLIANCE</b>	<b>FINDING NO. 19 WORKERS' COMPENSATION PROCESS COMPLIED WITH CIVIL SERVICE LAWS, BOARD RULES, AND/OR CALHR POLICIES AND GUIDELINES</b>
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The CRU verified that the CDE provides notice to their employees to inform them of their rights and responsibilities under California's Workers' Compensation Law. Furthermore, the CRU verified that when the CDE received workers' compensation claims, they properly provided claim forms within one working day of notice or knowledge of injury.

Performance Appraisals

According to Government Code section 19992.2, subdivision (a), appointing powers must "prepare performance reports." Furthermore, California Code of Regulations, title 2, section 599.798, directs supervisors to conduct written performance appraisals and discuss overall work performance with permanent employees at least once in each twelve calendar months after the completion of the employee's probationary period.

The CRU selected 99 permanent CDE employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations, policies, and guidelines.

<b>SEVERITY: SERIOUS</b>	<b>FINDING NO. 20 PERFORMANCE APPRAISALS WERE NOT PROVIDED TO ALL EMPLOYEES</b>
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**Summary:** The CDE did not provide annual performance appraisals to 75 of 99 employees reviewed after the completion of the employee's probationary period.

**Criteria:** Appointing powers shall prepare performance reports and keep them on file as prescribed by department rule. (Gov. Code, § 19992.2, subd. (a).) Each supervisor, as designated by the appointing power, shall make an appraisal in writing and shall discuss with the employee overall work performance at least once in each 12 calendar months following the end of the employee's probationary period. (Cal. Code Regs., tit. 2, § 599.798.)

**Severity:** Serious. The department does not ensure that all of its employees are apprised of work performance issues and/or goals in a systematic manner.

**Cause:** The CDE states that, despite HRD notifying supervisors of the requirement to complete performance appraisals for employees, not all supervisors provided performance appraisals and no follow-up reminders were sent to ensure compliance.

**Corrective Action:** Within 90 days of the date of this report, the CDE must submit to the SPB a written corrective action response which addresses the corrections the department will implement to ensure conformity with Government Code section 19992.2 and California Code of Regulations, title 2, section 599.798. Copies of relevant documentation demonstrating that the corrective action has been implemented must be included with the corrective action response.

### **DEPARTMENTAL RESPONSE**

The CDE's response is attached as Attachment 1.

### **SPB REPLY**

Based upon the CDE written response, the CDE will comply with the corrective actions specified in these report findings. Within 90 days of the date of this report, a written corrective action response including documentation demonstrating implementation of the corrective actions specified must be submitted to the CRU.



**CALIFORNIA DEPARTMENT  
OF EDUCATION**

**TONY THURMOND**  
STATE SUPERINTENDENT OF  
PUBLIC INSTRUCTION

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April 5, 2023

Suzanne M. Ambrose, Executive Officer  
State Personnel Board  
801 Capitol Mall  
Sacramento, CA 95819

Dear Ms. Ambrose:

We have reviewed the Draft compliance Review Report for the California Department of Education (CDE), prepared by the State Personnel Board's Compliance Review Team. The draft report summarized the CDE's personnel practices in the areas of examinations, appointments, EEO, PSC's, mandated training, compensation and pay, leave, and policy and processes.

Generally, we find the report to be thorough and an accurate summary of processes that existed during the time period reviewed. We take our responsibilities seriously and are committed to correcting all deficiencies noted in the report and strive to comply with mandated requirements by adjusting our processes.

Please find CDE's responses below:

**Finding No. 2      Probationary Evaluations Were Not Provided For All  
Appointments Reviewed and Some That Were Provided Were  
Untimely**

**Cause:** Despite the Human Resources Division (HRD) notifying supervisors of the requirement to complete probationary evaluations for employees and included due dates, not all supervisors completed or provided probationary evaluations to HRD and no follow-up was done to ensure compliance.

**CDE Response:** The HRD makes good faith efforts to inform management of the requirements on probationary evaluations. Management is informed during the supervisory training modules, and are provided the forms and due dates of probationary evaluations of their employees.



Currently, the probationary evaluations are tracked for compliance by first line supervisors. The failure to comply has been an on-going concern for HRD which will continue to be addressed. In the future, the CDE will send reminders to supervisors when probationary evaluations are due to ensure timely submission.

**Finding No. 3      Department Did Not Provide Benefit Information In Accordance With Civil Service Law**

**Cause:** CDE acknowledges that two applicants did not receive an explanation of benefits, prior to appointment, in a formal offer of employment.

**CDE Response:** CDE has continues to provide a good faith effort to provide the explanation of benefits prior to appointment by including it in the job offer letter sent to nominated candidates. An appointment cannot be made without receiving a signed job offer letter.

**Finding No. 4      A Disability Advisory Committee Has Not Been Established**

**Cause:** Although the general DAC has not met, chair members meet regularly to discuss membership, activities, and issues.

**CDE Response:** DAC membership applications are available on the CDE's Intranet website and accepted on an ongoing basis. Moving forward, the Office of Equal Opportunity will provide strong technical support and guidance to the DAC with advertisements, meetings, and other committee-related needs.

**Finding No. 6      Ethics Training Was Not Provided For All Filers**

**Cause:** Prior to 2020, the tracking and monitoring of mandatory training compliance was conducted by both OEO with assistance from the Learning and Development Office. The branching of this process, along with decentralized records management system and complications from transitioning to an emergency telework environment in March of 2020, created issues in enforcing training requirements for all employees.

**CDE Response:** CDE will send reminder notices to employees who did not complete the required Ethics Training and will also notify their immediate supervisor that the training has not been completed. CDE will closely monitor and track employees who have not completed the training.

**Finding No. 7      Supervisory Training Was Not Provided For All Supervisors, Managers, and CEAs**

**Cause:** Prior to Emergency Telework, training that applied towards the managerial 20-hour biennial requirement had been conducted regularly, in-person, at CDE Headquarters. Prevention of the spread of Covid 19 necessitated the cancellation of all planned courses. CDE was also forced to cancel multiple in-house offerings of the 80-hour supervisory development program as CalHR rescinded an intra-office memorandum of understanding during and because of this transition.

**CDE Response:** CDE offers multiple online training courses available to Supervisors. In addition, CalHR now offers a variety of online courses available to supervisors, managers and CEAs. CDE will send reminders to supervisors, managers and CEAs of training requirements. CDE will closely track and monitor the completion of training requirements.

**Finding No. 8      Sexual Harassment Prevention Training Was Not Provided For All Employees**

**Cause:** CDE states that before 2020, tracking and monitoring mandatory training compliance was conducted by both OEO with assistance from the Learning and Development Office. The branching of this process, along with a decentralized records management system and complications from transitioning to an emergency telework environment in March of 2020, created issues in enforcing training requirements for all employees.

**CDE Response:** CDE will send reminder notices to employees who did not complete the required Sexual Harassment Prevention Training and will also notify their immediate supervisor that the training has not been completed. CDE will closely monitor and track employees who have not completed the training.

**Finding No. 12      Incorrect Authorization of Bilingual Pay**

**Cause:** CDE Acknowledges that three employees identified did not have authorization documents to approve Bilingual Pay.

**CDE Response:** CDE will establish procedures to provide supporting documentation, such as the Bilingual Pay Authorization Requests, Language Usage Survey Tall Form, duty statements, and evidence of passing the bilingual fluency examinations prior to authorizing the Pay Differential 14.

**Finding No. 14      Incorrect Authorization of Out-Of-Class Pay**

**Cause:** During this time period, CDE experienced multiple retirements and departures in the Payroll and Benefits Office resulting in several new hires and therefore errors were made inadvertently.

**CDE Response:** In these instances, CDE will work on establishing accounts receivables to collect the overpayments. To mitigate further occurrences, OOC pay will be not be keyed until reviewed and approved by a Payroll Supervisor or Manager.

**Finding No. 15      Positive Paid Temporary Employees' Work Exceeded Time Limitations**

**Cause:** CDE acknowledges that the 1500-hour limitation was misinterpreted as calendar year (Jan 1<sup>st</sup> to Dec 31<sup>st</sup>) rather than a rolling consecutive 12 months.

**CDE Response:** CDE will establish procedures to ensure that HRD staff have a clear understanding of the 1500-hour limitation within 12 consecutive months and will train staff accordingly. In addition, CDE will ensure that impacted employees and Supervisors/Managers are informed.

**Finding No. 17      Department Did Not Certify That All Leave Records Were Reviewed**

**Cause:** CDE inadvertently did not certify that all leave records were reviewed.

**CDE Response:** CDE will ensure that the Leave Activity and Correction Certification form has been completed and will send reminder notices to staff to ensure the completion of the certification. CDE will ensure staff are aware of the requirement and will ensure that the certification is completed accordingly.

April 5, 2023

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**Finding No. 20      Performance Appraisals Were Not Provided To All Employees**

**Cause:**                      Despite HRD notifying supervisors of the requirement to complete performance appraisals for employees, not all supervisors provided performance appraisals and no follow-up was done to ensure compliance.

**CDE Response:**        Currently CDE HR sends email notifications to supervisors and managers starting in late December notifying that performance appraisals are due by February 28. The email contains a link to the Annual Performance Appraisal Intranet page for further direction and the Performance Appraisal Summary STD. 638. Going forward, CDE HR will continue to send this notification and include reminder notifications throughout the review period to supervisors and managers. In addition to the notifications, CDE HR will follow an escalation process for past due appraisals to ensure all employees receive an appraisal.

If you have any questions or would like to discuss further please contact Sueshil Chandra, Staff Services Manager III, Employment Services Office at 916.322.3269 or via email at [SChandra@cde.ca.gov](mailto:SChandra@cde.ca.gov).

Sincerely,

Chaunda Wilson, Director  
Human Resources Division

cc:      Abel Guillen, Deputy Superintendent, CDE, Operations & Administration Branch  
         Sueshil Chandra, Staff Services Manager III, CDE, Human Resources Division