



# **COMPLIANCE REVIEW REPORT**

**OFFICE OF THE STATE PUBLIC DEFENDER**

Compliance Review Unit  
State Personnel Board  
September 26, 2019

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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.

Effective July 1, 2012, the Governor's Reorganization Plan Number One (GRP1) of 2011 consolidated all of the functions of the Department of Personnel Administration and the merit-related operational functions of the State Personnel Board (SPB) into the California Department of Human Resources (CalHR).

Pursuant to Government Code section 18502(c), CalHR and SPB may "delegate, share, or transfer between them responsibilities for programs within their respective jurisdictions pursuant to an agreement." CalHR and SPB, 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.

### **EXECUTIVE SUMMARY**

The CRU conducted a routine compliance review of the OSPD personnel practices in the areas of examinations, appointments, EEO, PSC's, mandated training, compensation and pay, leave, and policy and processes<sup>1</sup>. The following table summarizes the compliance review findings.

Area	Finding
Examinations	Qualifications Appraisal Team Members Did Not Sign Rating Sheets
Appointments	Appointments Complied with Civil Service Laws and Board Rules
Equal Employment Opportunity	Equal Employment Opportunity Program Complied with Civil Service Laws and Board Rules
Personal Services Contracts	Unions Were Not Notified of Personal Services Contracts
Mandated Training	Ethics Training Was Not Provided for All Filers
Mandated Training	Supervisory Training Was Not Provided for All Supervisors
Mandated Training	Sexual Harassment Prevention Training Was Not Provided for All Supervisors
Compensation and Pay	Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	Alternate Range Movements Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	Hiring Above Minimum Requests Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Compensation and Pay	Pay Differential Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines
Compensation and Pay	Out of Class Pay Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines

<sup>1</sup> Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.

Area	Finding
Leave	Positive Paid Employees Tracked Hours Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Leave Auditing and Timekeeping Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Leave	Leave Reduction Plans Were Not Provided to Employees Whose Leave Balances Exceeded Established Limits
Policy	Department Does Not Maintain a Current Written Nepotism Policy
Policy	Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines
Policy	Performance Appraisals Were Not Provided to All Employees

A color-coded system is used to identify the severity of the violations as follows:

- Red = Very Serious
- Orange = Serious
- Yellow = Non-serious or Technical
- Green = In Compliance

## **BACKGROUND**

The Office of the State Public Defender (OSPD) is a small executive branch agency reporting directly to the Governor. The OSPD represents men and women who have been convicted of capital murder in the appeal of their convictions. This mission involves a highly technical area of the law, requiring uniquely qualified attorneys and legal support staff, and well-functioning and knowledgeable administrative and information systems units. The OSPD employs approximately 74 employees and has offices in Sacramento and Oakland.

## **SCOPE AND METHODOLOGY**

The scope of the compliance review was limited to reviewing the OSPD's examinations, appointments, EEO program, PSC's, mandated training, compensation and pay, leave, and policy and processes<sup>2</sup>. The primary objective of the review was to determine if the

<sup>2</sup> Timeframes of the compliance review varied depending on the area of review. Please refer to each section for specific compliance review timeframes.

OSPD'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 OSPD's examinations were selected for review to ensure that samples of various examination types, classifications, and levels were reviewed. The CRU examined the documentation that the OSPD provided, which included examination plans, examination bulletins, job analyses, and scoring results. The OSPD did not conduct any permanent withhold actions during the compliance review period.

A cross-section of the OSPD's appointments were selected for review to ensure that samples of various appointment types, classifications, and levels were reviewed. The CRU examined the documentation that the OSPD provided, which included Notice of Personnel Action (NOPA) forms, Request for Personnel Actions (RPA's), vacancy postings, certification lists, transfer movement worksheets, employment history records, correspondence, and probation reports.

The OSPD did not conduct any unlawful appointment investigations during the compliance review period, also did not make any additional appointments during the compliance review period.

The OSPD's appointments were also selected for review to ensure the OSPD applied salary regulations accurately and correctly processed employees' compensation and pay. The CRU examined the documentation that the OSPD 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: hiring above minimum (HAM) requests, arduous pay, bilingual pay, monthly pay differentials, and out-of-class assignments.

The review of the OSPD'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 OSPD's PSC's were also reviewed.<sup>3</sup> It was beyond the scope of the compliance review to make conclusions as to whether the OSPD's justifications for the contracts were legally sufficient. The review was limited to whether the OSPD's practices, policies, and procedures relative to PSC's complied with procedural requirements.

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

The CRU also identified the OSPD's employees whose current annual leave, or vacation leave credits, exceeded established limits. The CRU reviewed a cross-section of these identified employees to ensure that employees who have significant "over-the-cap" leave balances have a leave reduction plan in place. Additionally, the CRU asked the OSPD to provide a copy of their leave reduction policy.

The CRU reviewed the OSPD's Leave Activity and Correction Certification forms to verify that the OSPD created a monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely. The CRU selected a small cross-section of the OSPD's units in order to ensure they maintained accurate and timely leave accounting records. Additionally, the CRU reviewed a selection of the OSPD employees who used Administrative Time Off (ATO) in order to ensure that ATO was appropriately administered. Additionally, the CRU reviewed a selection of OSPD's 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 OSPD did not have any employees with non-qualifying pay period transactions. The OSPD (also) did not authorize Administrative Time Off (ATO).

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

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<sup>3</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.

The OSPD declined On an exit conference to explain and discuss the CRU’s initial findings and recommendations. The CRU received and carefully reviewed the OSPD’s written response on September 9, 2019, 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, April 1, 2018 through March 31, 2019, the OSPD conducted three examinations. The CRU reviewed all three examinations, which are listed below:

Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Deputy State Public Defender	Open	Qualification Appraisal Panel (QAP) <sup>4</sup>	9/5/2018	13

<sup>4</sup> The Qualification Appraisal Panel (QAP) interview is the oral component of an examination whereby competitors appear before a panel of two or more evaluators. Candidates are rated and ranked against one another based on an assessment of their ability to perform in a job classification.



Classification	Exam Type	Exam Components	Final File Date	No. of Apps
Deputy State Public Defender	Open	QAP	10/1/2018	2
Senior Deputy State Public Defender	Departmental Promotional	Training and Experience <sup>5</sup>	3/20/2018	6

The CRU reviewed one departmental promotional and two open examinations which the OSPD administered in order to create eligible lists from which to make appointments. The OSPD published and distributed examination bulletins containing the required information for all examinations. Applications received by the OSPD 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.

**FINDING NO. 1 – Qualifications Appraisal Panel Members Did Not Sign Rating Sheets**

**Summary:** For both of the Deputy State Public Defender QAP exams, rating sheets were not signed by the panel members. Rating sheets did include the rater’s name, but not the rater’s signature.

**Criteria:** California Code of Regulations, CCR, title 2, section 195.2, subdivision (b) mandates that each member of a QAP shall sign, complete, and record his or her ratings on forms or in a manner prescribed by the Department. (Ibid.)

**Severity:** Non-serious or Technical. The regulation was established to ensure the accountability of panel members. Technical compliance is not essential to preserve the integrity of the examination process.

**Cause:** The OSPD stated that this was an oversight on the part of the panelists and the exam analyst.

<sup>5</sup> The Training and Experience (T&E) 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.

**Action:** It is recommended that within 60 days of the Executive Officer's approval of these findings and recommendations, the OSPD submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with Rule 195.2 (b). Copies of any relevant documentation should be included with the plan.

### **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 (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 (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 (e).)

For the purposes of temporary appointments, an employment list is considered not to exist where there is an open eligible list that has three or fewer names of persons willing to accept appointment and no other employment list for the classification is available. (Cal. Code Regs., tit. 2, § 265.) In such a situation, an appointing power may make a temporary appointment in accordance with section 265.1 (*Ibid.*) A Temporary Authorization Utilization (TAU) appointment shall not exceed nine months in a 12-month period. (Cal. Const., art. VII, § 5. ) In addition, when a temporary appointment is made to a permanent position, an appropriate employment list shall be established for each class to which a temporary appointment is made before the expiration of the appointment. (Gov. Code, § 19058.)

During the period under review, January 1, 2018 through December 31, 2018, the OSPD made 21 appointments. The CRU reviewed eight of those appointments, which are listed below:

Classification	Appointment Type	Tenure	Time Base	No. of Appts.
Deputy State Public Defender	Certification List	Permanent	Full Time	2
Information Technology Associate	Certification List	Permanent	Full Time	1
Legal Analyst	Certification List	Permanent	Full Time	1
Limited Examination and Appointment Program Candidate	Certification List	Temporary	Full Time	1
Research Analyst I-General	Certification List	Limited Term	Part Time	1
Senior Deputy State Public Defender	Certification List	Permanent	Full Time	1
Staff Services Manager I	Certification List	Permanent	Full Time	1

**FINDING NO. 2 – Appointments Complied with Civil Service Laws and Board Rules**

The OSPD measured each applicant’s ability to perform the duties of the job by conducting hiring interviews and selecting the best-suited candidates. For each of the eight list appointments reviewed, the OSPD ordered a certification list of candidates ranked competitively. After properly clearing the certification lists including SROA, the selected candidates were appointed based on eligibility attained by being reachable within the first three ranks of the certification lists.

The CRU found no deficiencies in the appointments that the OSPD initiated during the compliance review period. Accordingly, the CRU found that the OSPD’s appointments processes and procedures utilized during the compliance review period satisfied civil service laws and Board rules.

**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).)

Pursuant to Government Code section 19795, subdivision (a), in a state agency with less than 500 employees, like OSPD, the EEO Officer may be the Personnel Officer.

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).)

**FINDING NO. 3 – Equal Employment Opportunity Program Complied With All Civil Service Laws and Board Rules**

After reviewing the policies, procedures, and programs necessary for compliance with the EEO program's role and responsibilities according to statutory and regulatory guidelines, the CRU determined that the OSPD EEO program provided employees with information and guidance on the EEO process including instructions on how to file discrimination claims. Furthermore, the EEO program outlines the roles and responsibilities of the EEO Officer, as well as supervisors and managers. The EEO Officer, who is at a managerial level, reports directly to the Director of the OSPD. In addition, the OSPD has an established DAC, which reports to the Director on issues affecting persons with disabilities. The OSPD also provided evidence of its efforts to promote EEO in its hiring and employment practices, and to increase its hiring of persons with disabilities. Accordingly, the OSPD EEO program complied with civil service laws and Board rules.

**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, April 1, 2018 through March 31, 2019, the OSPD had 27 PSC's that were in effect. The CRU reviewed 11 of those, which are listed below:

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?	Union Notified?
Consolidated security Systems	Locksmith Service	2/4/2019-3/4/2019	\$241.05	Yes	No
Daniel Reschly	Expert Witness	5/22/2018-5/22/2021	\$24,000.00	Yes	No
Federal Express	Small Parcel Delivery Service	7/1/2017-11/27/2021	\$5,200.00	Yes	No
Hector Salgado	Translation/Interpreter Services	3/1/2019-3/1/2022	\$9,900.00	Yes	Yes
Inabind Systems	Service Contract for Fadback Binder	2/6/2019-6/30/2019	\$187.50	Yes	No
Karen Salekin	Expert Witness	3/2/2017-3/2/2021	\$50,000.00	Yes	No
Marc J. Tasse	Expert Witness	1/23/2012-1/22/2020	\$24,500.00	Yes	No
Mother Lode Van & Storage Inc	Office Moving Services	12/3/2018-12/31/2019	\$25,000.00	Yes	No
NC Moving & Storage	Internal office Moving Services	2/6/2019-2/7/2019	\$2,265.51	Yes	No

Vendor	Services	Contract Dates	Contract Amount	Justification Identified?	Union Notified?
NC Moving & Storage	Internal office Moving Services	11/6/2018-11/7/2018	\$8,888.60	Yes	No
Wesley A. Van Winkle	Expert Witness	7/4/2017-7/3/2020	\$49,300.00	Yes	No

**FINDING NO. 4 – Unions Were Not Notified of Personal Services Contract**

**Summary:** The OSPD did not notify unions prior to entering into all 11 of the PSC’s reviewed.

**Criteria:** “The contract shall not be executed until the state agency proposing to execute the contract has notified all organizations that represent state employees who perform the type of work to be contracted.” (Gov. Code section 19132, subdivision (b)(1).)

**Severity:** Serious. Unions must be notified of impending personal services contracts in order to ensure they are aware contracts are being proposed for work that their members could perform.

**Cause:** The OSPD states that the contracts staff mistakenly believed this requirement did not apply to the particular types of PSC’s used by the department.

**Action:** It is the contracting department’s responsibility to identify and notify any unions whose members could potentially perform the work to be contracted prior to executing the PSC. It is recommended that within 60 days of the Executive Officer’s approval of these findings and recommendations, the OSPD submit to the CRU a written corrective action plan that addresses the corrections the department will implement to ensure conformity with the requirements of Government Code section 19132 and AB 906. Copies of any relevant documentation should be included with the plan.

## **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), (b), & (c), & 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).) As to the sexual harassment and abusive-conduct prevention component, the training must thereafter be provided to supervisors once every two years. (Gov. Code, § 12950.1.)

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 biannual basis. (*Ibid.*)

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 OSPD's mandated training program that was in effect during the compliance review period. The OSPD's ethics training, supervisory training and sexual harassment prevention training were found to be out of compliance.

#### **FINDING NO. 5 – Ethics Training Was Not Provided for All Filers**

**Summary:** The OSPD did not provide ethics training to two of 35 existing filers. In addition, the OSPD did not provide ethics training to four of 15 new filers within six months of their appointment.

**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 OSPD states that one of the existing filers completed the training late, and the other existing filer was on an extended sick leave during the annual update period, and refused to complete the training prior to leaving the agency shortly after the sick leave.

**Action:** The OSPD must take appropriate steps to ensure that filers are provided ethics training within the time periods prescribed. It is therefore recommended that no later than 60 days after the SPB's Executive Officer's approval of these findings and recommendations, the OSPD must submit a written corrective action plan to ensure compliance with ethics training mandates. Copies of any relevant documentation should be included with the plan.



**FINDING NO. 6 – Supervisory Training Was Not Provided for All Supervisors**

- Summary:** The OSPD did not provide basic supervisory training to one of one new supervisor within twelve months of appointment.
- 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).)
- 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 OSPD states that the 12 month requirement was not met due to the supervisor’s unexpected medical family leave, as well as the lack of availability of the training.
- Action:** The OSPD must take appropriate steps to ensure that new supervisors are provided supervisory training within the twelve months. It is therefore recommended that no later than 60 days after the SPB’s Executive Officer’s approval of these findings and recommendations, the OSPD must submit a written corrective action plan to ensure compliance with basic supervisory training mandates. Copies of any relevant documentation should be included with the plan.

**FINDING NO. 7 – Sexual Harassment Prevention Training Was Not Provided for All Supervisors**

- Summary:** The OSPD did not provide sexual harassment prevention training to three of five new supervisors within six months of their appointment. In addition, the OSPD did not provide sexual harassment prevention training to six of nine existing supervisors every two years.
- Criteria:** Each department must provide its supervisors two hours of sexual harassment prevention training every two years. New supervisors

must be provided sexual harassment prevention training within six months of appointment. (Gov. Code, § 12950.1, subd. (a).)

**Severity:** Very Serious. The department does not ensure that all new and existing supervisors 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 OSPD states that due to unforeseen medical and family leave, and challenges related to training availability, the training was not completed within the required time frame.

**Action:** The OSPD must take appropriate steps to ensure that its supervisors are provided sexual harassment prevention training within the time periods prescribed. It is therefore recommended that no later than 60 days after the SPB's Executive Officer's approval of these findings and recommendations, the OSPD must submit a written corrective action plan to ensure compliance with sexual harassment prevention training mandates. Copies of any relevant documentation should be included with the plan.

## **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>6</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

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<sup>6</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 (CA CCR Section 599.666).

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, January 1, 2018 through December 31, 2018, the OSPD made 21 appointments. The CRU reviewed eight of those appointments to determine if the OSPD applied salary regulations accurately and correctly processed employees' compensation, which are listed below:

Classification	Appointment Type	Tenure	Time Base	Salary (Monthly Rate)
Deputy State Public Defender	Certification List	Permanent	Full Time	\$10,394.00
Deputy State Public Defender	Certification List	Permanent	Full Time	\$11,361.00
Information Technology Associate	Certification List	Permanent	Full Time	\$5,174.00
Legal Analyst	Certification List	Permanent	Full Time	\$5,230.00
Limited Examination and Appointment Program Candidate	Certification List	Temporary	Full Time	\$2,921.00
Research Analyst I-General	Certification List	Permanent	Full Time	\$2,243.00
Senior Deputy State Public Defender	Certification List	Permanent	Full Time	\$11,929.00
Staff Services Manager I	Certification List	Permanent	Full Time	\$5,766.00

**FINDING NO. 8 – Salary Determinations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines**

The CRU found no deficiencies in the salary determinations that were reviewed. The OSPD 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 California Code of Regulations, title 2, section 599.681.

During the period under review, January 1, 2018 through December 31, 2018, the OSPD made two alternate range movements within a classification. The CRU reviewed the two authorized alternate range movements to determine if the OSPD applied salary regulations accurately and correctly processed employee’s compensation, which are listed below:

Classification	Prior Range	Current Range	Time Base	Salary (Monthly Rate)
Deputy State Public Defender	B	C	Full Time	\$9,854.00
Reasearch Data Analyst	A	C	Full Time	\$4,344.00

**FINDING NO. 9 – Alternate Range Movements Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines**

The CRU determined that the alternate range movements the OSPD made during the compliance review period, satisfied civil service laws, Board rules and CalHR policies and guidelines.

Hiring Above Minimum Requests

The department may authorize payment at any step above the minimum limit to classes or positions in order to meet recruiting problems, to obtain a person who has extraordinary qualifications, to correct salary inequities resulting from actions by CalHR or the Board, or to give credit for prior state service. (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.*)

Persons with extraordinary qualifications should contribute to the work of the department significantly beyond that which other applicants offer. (*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.*) When a number of candidates offer considerably more qualifications than the minimum, it may not be necessary to pay above the minimum to acquire unusually well-qualified people. (*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 are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action.<sup>7</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.*)

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<sup>7</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.

During the period under review, January 1, 2018 through December 31, 2018 the OSPD authorized three HAM requests. The CRU reviewed the three authorized HAM requests to determine if the OSPD 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)
Deputy State Public Defender	List Appointment	New to State	\$9,210-\$11,815	\$11,361.00
Deputy State Public Defender	List Appointment	New to State	\$9,210-\$11,815	\$10,369.00
Legal Analyst	List Appointment	New to State	\$4,496-\$5,629	\$5,230.00

**FINDING NO. 10 – Hire Above Minimum Requests Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

The CRU found that the HAM requests the OSPD made during the compliance review period, satisfied civil service laws, Board rules, and CalHR policies and guidelines.

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, January 1, 2018 through December 31, 2018, the OSPD issued pay differentials<sup>8</sup> to four employees. The CRU reviewed the five authorized pay differentials to ensure compliance with applicable CalHR policies and guidelines. These are listed below:

Classification	Pay Differential	Monthly Amount
Information Technology Associate	13	\$256.25 (5%)
Information Technology Specialist I	13	\$383.70 (5%)
Legal Secretary	141	\$462.99 (5%)
Legal Secretary	141	\$206.75 (5%)
Legal Secretary	141	\$215.00 (5%)

**FINDING NO. 11 – Pay Differential Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines**

The CRU found no deficiencies in the pay differentials that the OSPD authorized during the compliance review period. Pay differentials were issued correctly in recognition of unusual competencies, circumstances, or working conditions in accordance with applicable rules and guidelines.

Out-of-Class Assignments and Pay

For excluded<sup>9</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 (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 (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

<sup>8</sup> For the purposes of CRU's review, only monthly pay differentials were selected for review at this time.

<sup>9</sup> "Excluded employee" means an employee as defined in section 3527(b) of the Government Code (Ralph C. Dills Act) except those excluded employees who are designated managerial pursuant to section 18801.1 of the Government Code.

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 120-day time period expires. (Classification and Pay Guide Section 375.)

During the period under review, January 1, 2018 through December 31, 2018, the OSPD issued OOC pay to one employee. The CRU reviewed the one authorized OOC assignment to ensure compliance with applicable MOU provisions, salary regulations, and CalHR policies and guidelines, which is listed below:

Classification	Bargaining Unit	Out-of-Class Classification	Time Frame
Office Technician	R01	Associate Information Systems Analyst	11/1/17-4/30/2018

**FINDING NO. 12 – Out of Class Pay Authorizations Complied with Civil Service Laws, Board Rules, and CalHR Policies and Guidelines**

The CRU found no deficiencies in the OOC pay assignments that the OSPD authorized during the compliance review period. OOC pay was issued appropriately to employees 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.

**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 nine months in any 12 consecutive months is not exceeded. The ATW method of counting time is used in order 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 of the working days of a month. When counting 189 days, every day worked, including partial days<sup>10</sup> worked and paid absences,<sup>11</sup> is 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.<sup>12</sup> (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 1,500 hours within 12 consecutive months may be used rather than the 189-day calculation. (Cal. Code Regs., tit. 2, § 265.1, subd. (d).)

Generally, permanent intermittent employees may work up to 1,500 hours in any calendar year. (Applicable Bargaining Unit Agreements.) However, Bargaining Unit 6 employees may work up to 2000 hours in any calendar year.

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

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

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<sup>10</sup> For example, two hours or ten hours counts as one day.

<sup>11</sup> For example, vacation, sick leave, compensating time off, etc.

<sup>12</sup> “California Code of Regulation section 265.1 became effective July 1, 2017, and did not apply at the time of all of these appointments. The current regulation sets forth the method for counting time for temporary appointments. The cap under the current regulation is 189 days.

Classification	Time Base	Time Frame	Hours Worked
Graduate Student Assistant	Intermittent	6/11/2018-3/28/2019	133
Graduate Student Assistant	Intermittent	9/28/2018-4/10/2018	25
Staff Services Manager I	Intermittent	7/3/2018-3/28/2019	634.5
Staff Services Manager I	Intermittent	7/2/2018-3/28/2019	552
Student Assistant	Intermittent	12/18/2018-4/10/2019	200.58
Student Assistant	Intermittent	1/31/2019-4/10/2019	205

**FINDING NO. 13 – Positive Paid Employees Tracked Hours Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

The CRU found no deficiencies in the employees reviewed whose hours were tracked during the compliance review period. The OSPD provided sufficient justification and adhered to applicable laws, regulations, and CalHR policy and guidelines for positive paid employees.

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.) 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, October 1, 2018 through December 31, 2018, the OSPD reported four units comprised of 65 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
October 2018	013	14	14	0
November 2018	013	14	14	0

**FINDING NO. 14 – Leave Auditing and Timekeeping Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

The CRU reviewed employee leave records from two different leave periods to ensure compliance with applicable laws, regulations and CalHR policy and guidelines. Based on our review, the CRU found no deficiencies. The OSPD kept complete and accurate time and attendance records for each employee and officer employed within the department and utilized a monthly internal audit process to verify all leave input into any leave accounting system was keyed accurately and timely.

Leave Reduction Efforts

Departments must create a leave reduction policy for their organization and monitor employees' leave to ensure compliance with the departmental leave policy; and ensure employees who have significant "over-the-cap" leave balances have a leave reduction plan in place and are actively reducing hours. (Human Resources Manual Section 2124.)

Applicable Memorandums of Understanding and the California Code of Regulations prescribe the maximum amount of vacation or annual leave permitted. "If a represented employee is not permitted to use all of the vacation to which he or she is entitled in a calendar year, the employee may accumulate the unused portion."<sup>13</sup> (Cal. Code Regs., tit. 2, § 599.737.) If it appears an excluded employee will have a vacation or annual leave balance that will be above the maximum amount<sup>14</sup> as of January 1 of each year, the appointing power shall require the supervisor to notify and meet with each employee so affected by the preceding July 1, to allow the employee to plan time off, consistent with operational needs, sufficient to reduce their balance to the amount permitted by the applicable regulation, prior to January 1. (Cal. Code Regs., tit. 2, § 599.742.1.)

<sup>13</sup> For represented employees, the established limit for annual or vacation leave accruals is 640 hours, however for bargaining units 06 there is no established limit and for bargaining unit 05 the established limit is 816 hours.

<sup>14</sup> Excluded employees shall not accumulate more than 80 days.

“It is the intent of the state to allow employees to utilize credited vacation or annual leave each year for relaxation and recreation. (Cal. Code Regs., tit. 2, § 599.742.1.), ensuring employees maintain the capacity to optimally perform their jobs. For excluded employees, “the employee shall also be notified by July 1 that, if the employee fails to take off the required number of hours by January 1, the appointing power shall require the employee to take off the excess hours over the maximum permitted by the applicable regulation at the convenience of the agency during the following calendar year. (*Ibid.*) To both comply with existing civil service rules and adhere to contemporary human resources principles, state managers and supervisors must cultivate healthy work- life balance by granting reasonable employee vacation and annual leave requests when operationally feasible. (Human Resources Manual Section 2124.)

As of December 2018, four OSPD employees exceeded the established limits of vacation or annual leave. The CRU reviewed four of those employees’ leave reduction plans to ensure compliance with applicable laws, regulations, and CalHR policy and guidelines, which are listed below:

Classification	Collective Bargaining Identifier	Total Hours Over Established Limit	Leave Reduction Plan Provided
Career Executive Assignment	M01	502.75	No
Deputy State Public Defender	R02	63	No
Senior Deputy State Public Defender	R02	904	No
Supervising Deputy State Public Defender	S02	670	No
<b>Total</b>		2,139.75	

**FINDING NO. 15 – Leave Reduction Plans Were Not Provided to Employees Whose Leave Balances Exceeded Established Limits**

**Summary:** The OSPD did not provide leave reduction plans for the four employees reviewed whose leave balances significantly exceeded established limits. Additionally, the OSPD did not provide a general departmental policy addressing leave reduction.

**Criteria:** “It is the policy of the state to foster and maintain a workforce that has the capacity to effectively produce quality services expected by both internal customers and the citizens of California. (Human Resources Manual Section 2124.) Therefore, appointing authorities and state managers and supervisors must create a leave reduction policy for the organization and monitor employees’ leave to ensure compliance with the departmental leave policy; and; ensure employees who have significant “over-the-cap” leave balances have a leave reduction plan in place and are actively reducing hours.”  
(*Ibid.*)

**Severity:** Non-Serious or Technical. California state employees have accumulated significant leave hours creating an unfunded liability for departmental budgets. The value of this liability increases with each passing promotion and salary increase. Accordingly, leave balances exceeding established limits need to be addressed immediately.

**Cause:** The OSPD states that key position turnover and other mission critical priorities delayed the development and implementation of this policy.

**Action:** The OSPD provided a new employee leave management policy which included a leave reduction policy, and showed that it was disseminated to all OSPD employees on July 18, 2019. The OSPD also states that staff with excessive balances have now created leave reduction plans through December 2020, which will be monitored by their supervisors and human resources staff. Therefore, no further action is required at this time.

## **Policy and Processes**

### **Nepotism**

It is the policy of the State of California to recruit, hire and assign all employees on the basis of merit and fitness in accordance with civil service statutes, rules and regulations. (Human Resources Manual Section 1204.) Nepotism is expressly prohibited in the state workplace because it is antithetical to California’s merit based civil service. (*Ibid.*) Nepotism is defined as the practice of an employee using his or her influence or power to aid or hinder another in the employment setting because of a personal relationship. (*Ibid.*) Personal relationships for this purpose include but are not limited to, association by blood,

adoption, marriage and/or cohabitation. (*Ibid.*) In addition, there may be personal relationships beyond this general definition that could be subject to these policies. (*Ibid.*) All department nepotism policies should emphasize that nepotism is antithetical to a merit-based personnel system and that the department is committed to the state policy of recruiting, hiring and assigning employees on the basis of merit. (*Ibid.*)

**FINDING NO. 16 – Department Does Not Maintain a Current Written Nepotism Policy**

**Summary:** The OSPD does not maintain a current written nepotism policy designed to prevent favoritism or bias in the recruiting, hiring, or assigning of employees.

**Criteria:** It is the policy of the State of California to recruit, hire and assign all employees on the basis of fitness and merit in accordance with civil service statutes, rules and regulations. (Human Resources Manual Section 1204). All department policies should emphasize that nepotism is antithetical to a merit-based personnel system and that the department is committed to the state policy of recruiting, hiring and assigning employees on the basis of merit. (*Ibid.*)

**Severity:** Very Serious. Given the lack of a nepotism policy, it is evident these considerations were either inadvertently overlooked or purposely ignored. Accordingly, corrective action is warranted.

**Cause:** The OSPD states that key position turnover and other mission critical priorities delayed the development and implementation of this policy.

**Action:** The OSPD provided a new nepotism policy designed to prevent favoritism or bias in the recruiting, hiring, or assigning of employees, and showed that it was disseminated to all OSPD employees on July 18, 2019. Therefore, no further action is required at this time.

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 receiving notice 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 OSPD did not employ volunteers during the compliance review period.

**FINDING NO. 17 – Workers' Compensation Process Complied with Civil Service Laws, Board Rules, and/or CalHR Policies and Guidelines**

The CRU verified that the OSPD provides notice to their employees to inform them of their rights and responsibilities under CA Workers' Compensation Law. Furthermore, the CRU verified that when the OSPD received worker's 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 subsection (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 18 permanent OSPD employees to ensure that the department was conducting performance appraisals on an annual basis in accordance with applicable laws, regulations, policies and guidelines. These are listed below:

**FINDING NO. 18 – Performance Appraisals Were Not Provided to All Employees**

**Summary:** The OSPD did not provide performance appraisals to two of 18 employees reviewed at least once in each twelve calendar months after the completion of the employee’s probationary period.

Classification	Date Performance Appraisals Due
Chief Deputy State Public Defender	7/1/2018
Supervising Deputy State Public Defender	3/31/2018

**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 twelve 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 OSPD states that, during the period under review, the State Public Defender who is the supervisor for each of the positions in question, was also acting as the Chief Information Officer due to staff separation. This conflicting responsibility in addition to her regular workload prevented her from completing performance appraisals for the two staff in this finding.

**Action:** It is recommended that within 60 days of the Executive Officer’s approval of these findings and recommendations, the OSPD submit to the SPB a written corrective action plan that 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 any relevant documentation should be included with the plan.



## **DEPARTMENTAL RESPONSE**

The OSPD's response is attached as Attachment 1.

## **SPB REPLY**

Based upon the OSPD's written response, the OSPD will comply with the CRU's recommendations and findings.

It is further recommended that the OSPD comply with the afore-stated recommendations within 60 days of the Executive Officer's approval and submit to the CRU a written report of compliance.

## Office of the State Public Defender

770 L St., Suite 1000  
Sacramento, California 95814-3362  
Telephone: (916) 322-2676  
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September 5, 2019

Suzanne Ambrose, Executive Officer  
State Personnel Board  
801 Capitol Mall  
Sacramento, CA 95814

Dear Ms. Ambrose:

The SPB's Compliance Review Unit (CRU) conducted a routine compliance review of the OSPD personnel practices in the areas of examinations, appointments, equal employment opportunity (EEO), personal services contracts (PSCs), mandated training, compensation and pay, leave, and policy and processes. The primary objective of the review was to determine if OSPD personnel practices, policies and procedures complied with state civil service laws and board regulations and to recommend corrective action where deficiencies were identified. The CRU identified eight areas of deficiency.

### **FINDING NO. 1 – Qualifications Appraisal Panel Members Did Not Sign Rating Sheets**

Cause: The OSPD acknowledges this finding and understands the importance of insuring that all qualifications appraisal panel members sign the rating sheets. This was an oversight on the part of the panelists and the exam analyst. Staff has updated the rating sheets to include a signature line and has received additional training on the importance of insuring the exam packets are completely documented prior to finalizing each exam.

### **FINDING NO. 4 – Unions Were Not Notified of Personal Services Contract**

Cause: The OSPD acknowledges this finding and understands the importance of notifying the unions regarding all personal services contracts. The contracts staff mistakenly believed this requirement did not apply to the particular types of personal services contracts used by the department. OSPD contracts staff has received additional training and as of July 1, 2019, OSPD is notifying the unions for all personal services contracts.

### **FINDING NO. 5 – Ethics Training Was Not Provided for All Filers**

Cause: The OSPD acknowledges this finding and understands the importance of insuring that all filers complete the Ethics Training within 6 months of hire and every two

years thereafter. Albeit late, all filers except one identified in this finding completed the training. The one filer was on an extended sick leave during the annual update period and refused to complete the training prior to leaving the agency shortly after returning from the sick leave. The training coordinator has received additional training on the importance of insuring the training is completed within the given timeframes.

**FINDING NO. 6 – Supervisory Training Was Not Provided for All Supervisors**

Cause: The OSPD acknowledges this finding and understands the importance of training all supervisors. The twelve months requirement was not met due to this supervisor's unexpected medical and family leave, as well as the lack of availability of this training.

**FINDING NO. 7 – Sexual Harassment Prevention Training Was Not Provided for All Supervisors**

Cause: OSPD acknowledges this finding and understands the importance of insuring that all supervisors are provided sexual harassment prevention training every two years and within six months of appointment. Due to unforeseen medical and family leave and challenges related to training availability, the training was not completed within the required time frame.

**FINDING NO. 15 – Leave Reduction Plans Were Not Provided to Employees Whose Leave Balances Exceeded Established Limits**

Cause: The OSPD acknowledges this finding and understands the importance of maintaining employee leave balances at or below established limits to mitigate the unfunded liability caused by leave balances that exceed established limits. An Employee Leave Management Policy was finalized and disseminated to all employees on July 18, 2019. Staff with excessive balances have created leave reduction plans through December 2020 that will be monitored by their supervisors and human resources staff.

**FINDING NO. 16 – Department Does Not Maintain a Current Written Nepotism Policy**

Cause: The OSPD acknowledges this finding and understands the importance of having and following a nepotism policy. The department was working on establishing a policy when this review began. The finalized policy was implemented and disseminated to staff on July 18, 2019.

**FINDING NO. 18 – Performance Appraisals Were Not Provided to All Employees**

Cause: The OSPD acknowledges this finding and understands the importance of providing an annual written appraisal and discussion with each employee. Going forward, the OSPD is committed to providing a timely appraisal to all employees.

The OSPD appreciates the work of the CRU as well as their professionalism and technical assistance during the review. Additionally, OSPD takes the reported deficiencies very seriously and has implemented corrective action to strengthen oversight and compliance in the sited areas as indicated in our responses above. If you have any questions or concerns, please contact Charlene Bennett, Chief of Administration at (916) 322-2130 or [Charlene.Bennett@ospd.ca.gov](mailto:Charlene.Bennett@ospd.ca.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "Mary K. McComb".

Mary K. McComb  
State Public Defender