



SPECIAL INVESTIGATION

**Additional Appointments
of
Supervisory and/or Managerial Employees**

California Department of Education

Prepared By:
Compliance Review Division
State Personnel Board
May 16, 2013

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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.

In addition, the SPB may review an appointing authority's personnel practices to ensure compliance with civil service laws, rules, and policies. The four major areas of review are examinations, appointments, equal employment opportunity (EEO), and personal services contracts.

The SPB may also conduct special investigations of an appointing authority's personnel practices to ensure compliance with civil service laws, rules, and policies. Special investigations may be initiated in response to a specific request or when SPB obtains information suggesting a potential merit-related violation.

EXECUTIVE SUMMARY

In response to a request by the Legislature, the SPB conducted a special investigation into the Department of Education (CDE)'s personnel policies and practices related to supervisorial and/or managerial employees who held an additional appointment in a rank-and-file position on January 11, 2013. On that date, the CDE had two Supervising Teachers who held additional appointments as Teacher Specialists. Both the Supervising Teacher and Teacher Specialist classifications are exempt positions, and hence, do not fall under civil service rules and regulations. Accordingly, those additional appointments do not implicate or violate civil service laws, rules, or policies.

BACKGROUND

Section 350 of the SPB's Personnel Management Policy and Procedures Manual on "Appointments and Status" (300-911 (1/79) Rev. 10/30/86) states, in pertinent part, that an additional appointment is subject to civil service laws and rules, as follows:

Additional appointment is the term used when a State civil service employee is appointed to a second position in State service. The term is

descriptive only since the fact that an appointment is held as an additional appointment does not change the civil service law and rule provisions that would otherwise apply to it.

¶...¶

There are no laws or rules that relate specifically to additional appointments. The authorities for making additional appointments are the same as for making any other appointment. These include the provisions on list appointments, transfers, reinstatements, etc. For example, an Office Assistant II who was reachable on the promotional list for Stenographer could receive an additional appointment as a Stenographer in the same manner as any other reachable eligible.

Section 350 also addresses two areas of “particular concern” regarding the good faith of an additional appointment:

1. The intent of the appointment must not be to circumvent the full-time appointment process; for example, making two part-time appointments of an individual who is eligible for part-time, but not full-time employment.
2. The intent of the appointment must not be to circumvent the overtime provisions.

Additionally, to ensure the proper use of additional appointments, Section 350 provides these examples: an additional appointment “to a distinctly different employment situation than the employee’s initial appointment; typically, this would involve appointment to a different class, department or State facility.”

The following departments had supervisors and/or managers who held additional appointments in rank-and-file positions within the same department on January 11, 2013:

Department	Count
California Department of Consumer Affairs	1
California Department of Corrections and Rehabilitation	227
California Department of Education	2
California Department of Food and Agriculture	2
California Department of Forestry and Fire Protection	1

California Department of Motor Vehicles	2
California Department of State Hospitals	173
California Department of Social Services	101
California Public Employees' Retirement System	56
California Department of Veterans Affairs	2
Employment Development Department (CUIAB)	4
Total	571

Source: State Controller's Office

The Legislature requested that SPB and California Department of Human Resources (CalHR) review those additional appointments.¹ In order to provide a comprehensive review in the most expeditious manner, CalHR focused on compliance with classification, compensation and labor laws, rules, and policies, while SPB focused on compliance with civil service laws, rules, and policies.

This report contains only the results from the SPB's review.

SCOPE AND METHODOLOGY

The scope of this special investigation involved a review of additional appointments held by CDE supervisors and/or managers in rank-and-file positions on January 11, 2013. The CDE had two such additional appointments, namely, two Supervising Teachers who held additional appointments as Teacher Specialists.

The primary objectives of this review were to determine if those additional appointments complied with state civil service laws, rules, and policies, and to recommend corrective action for any violations identified.

The SPB held an entrance conference with CDE on March 5, 2013, to explain the special investigation process. On that same date, CDE was given a material request form seeking documentation related to two employees whose primary appointment was to the Supervising Teacher classification and whose additional appointment was to the Teacher Specialist classification.

The SPB examined the documentation that CDE provided, which included EXEMPT 634-E timesheets. The SPB also interviewed appropriate CDE staff.

¹In January 2013, CalHR issued Policy Memo 2013-007 to Personnel Management Liaisons (PML) prohibiting departments from processing any new additional appointments. On April 25, 2013, CalHR issued Policy Memo 2013-015 instructing that effective immediately departments were no longer authorized to make any additional appointments for managers and supervisors. Policy Memo 2013-015 also sets forth options departments can consider in lieu of appointing managers and supervisors to additional positions.

On April 8, 2013, the SPB provided CDE with a copy of the SPB's draft report. The CDE reviewed the report and indicated to SPB that it concurred with the report's findings and conclusions.

FINDINGS

On August 20, 2012, the Department of Education's State Diagnostic Center, Southern California Region, appointed a half-time Supervising Teacher to an additional appointment as a half-time Teacher Specialist in the same facility. On July 1, 2012, the Department of Education's State Diagnostic Center, Central California Region, appointed a half-time Supervising Teacher to an additional appointment as a half-time Teacher Specialist in the same facility. Both additional appointments were in effect on January 11, 2013.

These positions are exempt from civil service, pursuant to Article VII, section 4, subdivision (i), of the California Constitution, which provides:

Sec. 4. The following are exempt from civil service:

.....

- (i) The teaching staff of schools under the jurisdiction of the Department of Education or the Superintendent of Public Instruction.

Thus, in this instance, the Supervising Teacher and Teacher Specialist classifications are exempt from civil service. Therefore, civil service laws and rules do not apply to those classifications. Accordingly, the CDE's two Supervising Teachers' additional appointments to Teacher Specialist positions did not implicate or violate civil service laws or board rules.

The SPB appreciates the professionalism and cooperation of the CDE during this special investigation.



**BOARD RESOLUTION ADOPTING
SPECIAL INVESTIGATION REPORT AND FINDINGS BY SPB
COMPLIANCE REVIEW DIVISION OVER ADDITIONAL APPOINTMENTS OF
SUPERVISORIAL AND MANAGERIAL EMPLOYEES IN
THE CALIFORNIA DEPARTMENT OF EDUCATION**

WHEREAS, the State Personnel Board (SPB or the Board) at its duly noticed meeting of May 16, 2013, carefully reviewed and considered the attached Special Investigation Report submitted by SPB's Compliance Review Division concerning additional appointments of supervisory and managerial employees in the California Department of Education.

WHEREAS, the Report was prepared following a special investigation that was conducted in response to the Legislature's request to examine whether the practice of appointing supervisory and/or managerial employees in additional rank-and-file positions within the California Department of Education violates civil service laws.

WHEREAS, each Report details the background, scope and methodology of the review, the findings and recommendations, and the affected department's response.

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby adopts the Report, including all findings and recommendations contained therein, and authorizes the issuance of the Report to the Legislature in response to its request for review. A true copy of the Report shall be attached to this Board Resolution and the adoption of the Board Resolution shall be reflected in the record of the meeting and the Board's minutes.

* * * * *

The foregoing Board Resolution was made and adopted by the State Personnel Board during its meeting on May 16, 2013, as reflected in the record of the meeting and Board minutes.



SUZANNE M. AMBROSE
Executive Officer