



March 18, 2013

*Transmitted Via Email*

John Buyce  
Audit Director  
Office of the State Comptroller  
Division of State Government Accountability  
110 State Street, 11th floor  
Albany, NY 12236-0001

Re: OSC Audit Report No. 2011-S-22

Dear Mr. Buyce:

Attached is the Office For People With Developmental Disabilities' comments on the Office of the State Comptroller's Final Audit Report (2011-S-22) entitled: "*Dual Employment*".

This response is being submitted to you in accordance with Section 170 of the Executive Law.

Sincerely,

Laurie A. Kelley  
Acting Commissioner

LAK/mep  
Attachment

Executive Office

● 44 Holland Avenue, Albany, NY 12229-0001, TEL: 518-473-1997 FAX: 518-473-1271  
● 75 Marlon Street, New York, NY 10014, TEL: 212-229-3231 FAX: 212-229-3234  
● 101 West Liberty Street, Rome, NY 13440, TEL: 315-336-2300 x246 FAX: 315-571-7118  
● 500 A Balfour Road, Schenectady, NY 12304 TEL: 518-381-2110 FAX: 518-381-2190  
TTY: 866-933-4889, [www.opwdd.ny.gov](http://www.opwdd.ny.gov)

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**Office For People With Developmental Disabilities (OPWDD)  
Response to the Office of the State Comptroller's (OSC)  
Final Audit Report (2011-S-22) Dual Employment**

**COMMENTS**

OPWDD has and will take corrective action to enhance internal controls in the area of dual employment, however, we disagree with many areas of the audit findings. Throughout the audit process up until issuance of the draft report, the audit results identified "potential" payroll abuse by 26<sup>1</sup> staff who worked for OPWDD and another agency. As agreed at the exit conference and stated in the preliminary report, OPWDD should "...investigate instances of potential fraud and wrongdoing we identified..." However, the results stated in both draft and final reports state a much different conclusion - all 26 staff did, in fact, engaged in abusive payroll activity. Our concerns are related to the audit results and audit process; the following is a brief summary and more detail is contained later in the response:

- We understood that OSC characterized its findings as "potential" payroll abuse and in response we began investigations of the 26 employees. When the draft report was issued, OPWDD had completed 13 investigations and none identified payroll abuse. OPWDD has now completed all 26 investigations and evidence to support disciplinary action was identified in one case. Following are examples of the investigative results for two employees; both clearly show that no payroll abuse occurred: One employee made an input error entering AM instead of PM on the time record. Another employee's OPWDD's records were accurate, and we found (working with liaisons at the other agency) that the other agency did not use certain payroll records for payroll purposes, but OSC apparently used those records in its analysis – causing the appearance of abuse/overlap in time worked.
- Up until the draft report, we were not informed that the audit results per the preliminary report and agreed with at the exit conference had changed, the reason for the change, or given documentation to support the change. Also, the two examples cited above clearly evidence that all 26 employees did not commit payroll abuse. These examples were provided to OSC in response to the draft report, but OSC did not make changes to the final audit report to reflect this<sup>2</sup> or pursue the issue with OPWDD (e.g., ask for information /documentation).

We think the above provides evidence that the final audit report's conclusion that all 26 staff identified did, in fact, commit payroll abuse is not accurate, and also raises legitimate concerns about the audit process.

**RESPONSE TO THE REPORT**

Clarity

The final report states that it is not possible to determine whether the staff OSC identified failed to work required time at OPWDD. As a result, a reader may come away with the false impression that if payroll abuse occurred, it occurred on OPWDD time. In addition, the final report also states "Because of weaknesses in OPWDD policies and practices, managers and supervisors do not always know when staff members are involved in dual employment situations. Even when these arrangements are known and sanctioned..." OPWDD's policy requires pre-approval through department heads and the report cites no instances where this requirement was not met.

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<sup>1</sup> The draft report states 26 staff and the final report states 27; the last information from the auditors identified 26 staff.

<sup>2</sup> The final audit report was changed to state that staff were potentially overpaid (the draft report states they all were overpaid), but both reports still reflect erroneously that all identified staff, did in fact, commit payroll abuse.



### Change From Potential Payroll Abuse to Actual Payroll Abuse in Draft Audit Report

Throughout the audit process the results of the audit were of "potential" payroll abuse by 26 individuals who worked at OPWDD and another agency. The preliminary report's recommendation was for OPWDD to "investigate instances of potential fraud and wrong doing we identified..." Approximately six months after the closing, the draft audit report was issued which states a much different conclusion, that all staff did commit wrongdoing, violating time and attendance rules and engaging in abusive payroll activity. This finding is also included in the final audit report "Detailed analysis of time sheets and other payroll records showed 27 of these staff violated time and attendance rules, resulting in payroll payments for time potentially not worked" (Note: per foot note on page one of this response - the draft report states 26 staff and the final report states 27; the last information from the auditors identified 26 staff).

At the closing conference with OSC we discussed and we agreed with the audit result of "potential" abuse, and need for OPWDD to investigate in concert with other involved agencies. We are not aware of any additional audit work being done to arrive at the new conclusion (or any other support for it) that all staff did in fact, commit payroll abuse, and we were not given any opportunity to discuss the "new" audit results. OPWDD does not agree with the findings stated in the final audit report that all 27 staff committed payroll abuse, and as a result, the report's estimated potential overpayment of \$107,000 is overstated. In response to the draft report OPWDD stated that legitimate explanations had been identified for 13 cases investigated to date, and we provided OSC examples of the explanation for two of the staff. These staff did not commit payroll abuse, but the final audit report was not changed to reflect this.

For example, in the case of one employee there was a case of overlapping schedules, and our investigation found it was easily explained as a data entry error. OPWDD uses TIMES (an electronic system designed to record actual hours worked and track leave accruals) and OSC used time sheets derived from TIMES in its analysis. However, in this instance the employee mistakenly entered PM instead of AM. As a result of this data entry error, it showed a morning shift when the person actually worked evenings.

### Internal Control Weakness at OPWDD Which Caused Concern of Payroll Abuse

The audit identified a potential internal control weakness within the TIMES system. TIMES pre-populates an employee's work hours for each day over a two week pay period based on a regular schedule, and it is cumbersome to change the hours. Because of the potential for staff to rely exclusively on the default schedule, even when it did not accurately reflect the actual hours worked in a given week, OPWDD – in accordance with guidance from the Governor's Office of Employee Relations – designed a timesheet that requires a daily certification of hours worked by both the employee and supervisor, as well as a biweekly attestation. Despite these precautions, we've learned that OPWDD staff and supervisors may not accurately change actual hours worked each day, but merely be concerned that the total hours worked and accrual charges, if any, are accurate.

This explains some of the identified problems, and the following (information provided by the auditors) documents the fact that the issue is real, that the time records used by OSC in its analysis were not always updated, not because of abuse, but because of unawareness of the requirement and the importance of it:

- OSC staff observed an employee arriving at 3:30 at OPWDD for work; she correctly signed in at 3:30, but her TIMES record showed her work day starting at 3:00. Per OSC the employee stated that she makes the hours up if she is late but does not change TIMES; she was more concerned with working the correct number of hours and not the actual hours as recorded in TIMES. Note: We asked and OSC informed us that they did not observe/check to see if the employee made up the hours.
- An individual had overlapping and adjoining work schedules, and the report includes the following statement regarding this individual: "The immediate supervisor did not have employees update their actual hours on the time reports; she felt if the employee was working eight hours, this was sufficient."



These issues may illustrate an internal control weakness, but are not indicative, without further review/ investigation, of definitive time and attendance payroll abuse, or circumventing payroll practices for personal gain. We do though concur that the time records should reflect actual hours worked, and we will enhance internal controls to help ensure this.

Note: The State Comptroller's Comment section of the final report states in part "...It is our understanding that many, if not all, of the "legitimate explanations" to which officials refer are simply unsupported excuses... officials have not provided us with any other records...that demonstrate the employees actually worked during different times..." It's very important to note that OSC recommended OPWDD further investigate and take any appropriate action - OSC did not always ask for results of the investigations or documentation to support them. Therefore, we do not agree that OSC can support its findings asserting that documentation was not provided, when it was not expected to be provided and it was not always requested.

## RESPONSE TO THE RECOMMENDATIONS

### **Recommendation #1:**

*Work with the other agencies involved in these cases to determine whether the dually employed individuals we identified are continuing to abuse time and attendance procedures. Take appropriate actions, as warranted, including but not limited to:*

- *recovering inappropriate salary payments;*
- *identifying inappropriate salary and service and contacting the appropriate New York City retirement system and/or the New York State and Local Retirement System to submit salary and service adjustments for the appropriate time periods; and*
- *assisting in any further investigation.*

### OPWDD Response

OPWDD does not agree that all individuals were involved in time and attendance payroll abuse. OPWDD completed its investigation for the 26 employees identified by the auditors, collaborating wherever possible with the liaisons (provided by OSC) at the other agency the staff person worked, and found that there was only one case where there was clear evidence of impropriety, where disciplinary action could be taken. Our response to recommendation #3 provides a summary of where enhancements should be made to enhance internal controls.

### **Recommendation #2:**

*Ensure the other dually employed staff are working the time for which they are being paid.*

### OPWDD Response

It is OPWDD's expectation that all employees, whether or not they are dually employed, work the time for which they are paid. OPWDD does not agree that all audited individuals were involved in time and attendance payroll abuse and we provided clear evidence of such in the response section of the report. Our response to recommendation #3 provides a summary of enhancements to internal controls, to further reduce the risk of impropriety.

### **Recommendation #3:**

*Provide pertinent time and attendance training to dually employed staff and their supervisors, and assure required policies and procedures are followed.*



OPWDD Response

OPWDD agrees with this recommendation. OPWDD's Division of Workforce and Talent Management issued a reminder to staff on February 13, 2014 regarding the TIMES payroll system, emphasizing the importance of the accuracy of TIMES records, and that they must reflect the actual hours worked by employees. This notification will be distributed annually. Also, OPWDD's Office of Counsel on November 27, 2013 issued a reminder regarding the necessity for approval of outside activities (including dual employment). The OPWDD Employee Handbook will be updated to emphasize the importance of the accuracy of the TIMES record, and that the timesheet must reflect actual hours worked. Likewise, the bi-weekly TIMES attestation by employee and supervisor will be revised to reflect the same message. Lastly, new employee training will also be updated to emphasize the policy that TIMES records must reflect actual hours worked, and the importance of it.

We would like to take this opportunity to thank your audit team for their professionalism, and also for the opportunity to respond to the findings contained in this draft report. Should you have any questions, please don't hesitate to contact Mary E. Peck, Director of Internal Control, at 518-474-4376 or [Mary.E.Peck@opwdd.ny.gov](mailto:Mary.E.Peck@opwdd.ny.gov)