

SPECIAL AUDIT

OKLAHOMA STATE DEPARTMENT OF EDUCATION

July 1, 2008 through June 30, 2011



*Independently serving the citizens of
Oklahoma by promoting the
accountability and fiscal integrity of
governmental funds.*



Oklahoma State
Auditor & Inspector
Gary A. Jones, CPA, CFE

OKLAHOMA STATE DEPARTMENT OF EDUCATION

SPECIAL AUDIT REPORT – OSDE REQUEST

JULY 1, 2008 THROUGH JUNE 30, 2011



Oklahoma State Auditor & Inspector

2300 N. Lincoln Blvd. • State Capitol, Room 100 • Oklahoma City, OK 73105 • Phone: 405.521.3495 • Fax: 405.521.3426

January 4, 2012

Honorable Janet Barresi, Chairperson
Oklahoma State Board of Education
2500 North Lincoln Blvd., Room 118
Oklahoma City, Oklahoma 73105-4599

Transmitted herewith is the Special Audit Report of the Oklahoma State Department of Education.

Pursuant to your request and in accordance with the requirements of **74 O.S. 2001, § 227.8**, we performed a special audit with respect to the Oklahoma State Department of Education for the period July 1, 2008 through June 30, 2011.

The objectives of our special audit primarily included, but were not limited to, the areas of concern expressed by the Oklahoma State Department of Education General Counsel. Our findings and recommendations related to those objectives are presented in the accompanying report.

Because investigative procedures do not constitute an audit conducted in accordance with generally accepted auditing standards, we do not express an opinion on the account balances or financial statements of the Oklahoma State Department of Education for the period July 1, 2008 to June 30, 2011.

The Office of the State Auditor and Inspector is committed to serve the public interest by providing independent oversight and by issuing reports that serve as a management tool to the State. Our goal is to insure a government, which is accountable to the people of the State of Oklahoma.

We wish to take this opportunity to express our appreciation for the assistance and cooperation extended to our office during the course of our special audit.

This report is addressed to and intended solely for the information and use of the Oklahoma State Department of Education, the Oklahoma State Board of Education and other state officials given oversight responsibilities, as provided by statute. This report is also a public document pursuant to the **Oklahoma Open Records Act (51 O.S. § 24A.1 et seq.)** and shall be open to any person for inspection and copying.

Sincerely,

A handwritten signature in blue ink, reading "Gary A. Jones", is positioned below the word "Sincerely,".

GARY A. JONES, CPA, CFE
OKLAHOMA STATE AUDITOR & INSPECTOR

**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011**

TABLE OF CONTENTS

	page
State Board of Education	ii
Executive Summary	iii
Introduction.....	1
Objectives, Findings, and Recommendations	2

OBJECTIVES

I.	Review travel claims filed for reimbursement.....	2
II.	Review time worked and leave records	11
III.	Review employment and travel of a temporary employee	19
IV.	Review procedures related to IDEA residential placement	28
V.	Determine if reports were improperly altered or modified	35
VI.	Determine if certain provisions of FERPA were violated	37
VII.	Determine if there has been a misappropriation of state resources and employees.....	41
VIII.	Review the Special Education Services’ documentation of sole source contracts	42

**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011**

**STATE BOARD OF EDUCATION
(AS OF NOVEMBER 30, 2011)**

Phil Lakin.....Congressional District 1
Amy Anne FordCongressional District 2
Brian HaydenCongressional District 3
Leo J. (Lee) BaxterCongressional District 4
William “Bill” Price.....Congressional District 5
William F. “Bill” Shdeed.....Member At Large

Superintendent

Janet Barresi

EXECUTIVE SUMMARY

We performed a special audit/investigation, pursuant to the Department's request, and in accordance with the requirements of **74 O.S. 2001, § 227.8**. This report addresses issues concerning a former Assistant State Superintendent for the period July 1, 2008 through June 30, 2011.

This report covers six objectives related to the former Assistant State Superintendent, one objective related to a former "temporary" employee, and one objective related to the use of "sole source" contracts in the Department's Special Education Services section.

Information developed for the first objective supports the allegation that the former Assistant State Superintendent filed for and was reimbursed for travel claims that included false entries. Further, we concluded that the allegedly falsified travel claims may have been utilized more for the "appearance" of having been "on the job" and/or disguising absences from the job, rather than the often negligible amounts that were obtained with the travel claims.

In reviewing the above allegation, our investigative team identified other issues not specifically related to the original travel claim concerns. As a result, OSAI initiated a secondary line of investigation. The report concerning the subject matter of the second investigation will be issued under a separate cover and at a later date.

Information developed for the second objective supports the allegation that there was little or no time accountability system in place for the former Assistant State Superintendent to record and report "time worked" or time "on the job." As a result of the failure to enforce its own policies and procedures regarding the accountability for time worked, the "leave" records for the former Assistant State Superintendent were also unreliable.

In addition, we report the lack of consistency in enforcing the Department's own policies and procedures for time reporting was not confined to the single occurrence of the former Assistant State Superintendent, but that the Department had no uniform system for documenting the time claimed by its employees. We report there were other areas and sections of the Department where time records were not necessarily reliable and/or were nonexistent.

In the third objective, we report a variety of findings related to job duties, pay and travel expenses concerning a "temporary" employee, but there were no criminal allegations reported for this situation.

The 4th through the 7th objectives relate to the former Assistant State Superintendent. The allegations involved a relatively small (\$2.5 million) federal special education grant program for "residential placement," an alleged inappropriate change to a monitoring report for a specific school district, an alleged possible violation of the Federal Educational Rights and Privacy Act (FERPA), and a possible misappropriation of state resources and employees. We found these four concerns to be largely unsubstantiated.

The last objective was a nonspecific concern about the use of "sole source" contracts by the Department. Our test work in this area did not indicate any findings to report.

**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011**

Introduction

The Oklahoma State Department of Education (OSDE or Department) is defined in **70 O.S. 2001 § 1-105**, which states, in part:

A. The State Department of Education is that department of the state government in which the agencies created or authorized by the Constitution and Legislature and charged with the responsibility of determining the policies and directing the administration and supervision of the public school system of the state. These agencies are the State Board of Education, the State Superintendent of Public Instruction and such divisions and positions as may be established by law and by the State Board of Education.

B. The State Board of Education is that agency in the State Department of Education which shall be the governing board of the public school system of the state.

In June 2011, OSDE began an *internal* investigation related to travel claims filed by a former Assistant State Superintendent. The internal investigation indicated the possibility that the former employee may have filed false travel claims. Additionally, other concerns related to the same employee were identified by OSDE Administration.

The preliminary findings of the internal investigation resulted in State Superintendent Janet Barresi requesting the Oklahoma State Auditor and Inspector (OSAI) to perform an investigative audit of transactions and issues specifically related to the concerns involving this former employee.

The OSAI-Special Investigative Unit conducted an investigation; the results of which are included in the following report.

All dollar amounts included in our report are rounded to the nearest dollar, unless otherwise specified.

The Department's fiscal year starts July 1 and ends June 30. In this report, fiscal years are abbreviated by using the ending calendar year. For example, the fiscal year of July 1, 2010 to June 30, 2011, will be identified as "FY11."

**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011**

OBJECTIVE I: Review travel claims filed for reimbursement.

Background

Administration officials at OSDE became aware that an employee, Assistant State Superintendent Misty Kimbrough, may have submitted falsified travel claims for reimbursement. The OSDE conducted an internal investigation, and as a result, made a request to OSAI for an investigative audit of the travel claims filed by Kimbrough.

Through records provided by OSDE and the Office of State Finance, we determined Kimbrough had filed travel claims for reimbursement totaling \$6,820 for the three year audit period (FY09 through FY11). We reviewed the travel claim records for the reimbursements to Kimbrough.

Finding #1

A questionable travel claim was signed and submitted, but not paid for travel in June 2011.

On June 15, 2011, Kimbrough submitted a travel claim seeking reimbursement for mileage for attending the Oklahoma Alternative Assessment Program (OAAP), a 5-day event held in the metro area June 6-10, 2011. Kimbrough's travel claim listed attending the event each day

OKC/Warr Acres/OKC	<u>2</u>	6	6	16	4	1000	1330
OKC/Warr Acres/OKC	<u>2</u>	6	7	16	4	930	1300
OKC/Warr Acres/OKC	<u>2</u>	6	8	16	4	1200	1420
OKC/Warr Acres/OKC	<u>2</u>	6	9	16	4	1000	1230
OKC/Warr Acres/OKC	<u>2</u>	6	10	16	4	1230	1430

and incurring mileage expenses for 20 miles per day (16 map miles, 4 vicinity miles). This claim, had it been paid, would have represented a reimbursement amount of \$51.00.

The June travel claim was brought to the attention of OSDE administration and an internal investigation was conducted by OSDE. During that internal investigation OSDE obtained affidavits from eight employees involved in the OAAP conference, all stating they had seen Kimbrough at the event for only one day.

OSDE provided an email obtained during their internal investigation dated June 15, 2011, and reportedly from Kimbrough stating, in relevant part:

“This has been such a crazy time here at the Department, that I only got out to OAAP once during the 8 days my staff was there.” [emphasis added]

**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011**

The travel claim submitted for reimbursement for travel to and from the OAAP conference for five days was signed and dated June 15, 2011, the same date as the above email.

In addition to the June 15, 2011 travel claim, we found other claims for questionable travel that had been signed and submitted by Kimbrough, including one claim for overnight travel.

Finding #2

Kimbrough was paid \$224 as a result of filing a claim for overnight travel that appeared to have been falsified.

On November 5, 2010, Kimbrough signed a claim seeking reimbursement for overnight travel on October 28-29, 2010, reportedly traveling from Oklahoma City to Vinita and back. The claim sought reimbursement for 336 miles @ .50 per mile (\$168), as well as \$70 per diem for a meals allowance.

The purpose of the travel, according to supporting documentation, was to attend a “monitoring” event at the White Oak School¹. We obtained a copy of the monitoring report for White Oak School. The report did not include or list Kimbrough’s name as having been a member of the monitoring team.

We interviewed the employees whose names appeared on the monitoring report. During those interviews, OSDE employees Christa Knight, Mark Everhart, and Malissa Cook stated Misty Kimbrough was not present at the school site for that monitoring event.

Christa Knight told us she received a telephone call from Kimbrough saying she (Kimbrough) was not going to be staying overnight. In response to that call, Knight said she cancelled the motel room reservation for Kimbrough. During the interview, Knight retrieved a personal daily calendar reflecting the motel room cancellation, and showed it to our investigators. The calendar book had the notation “cancelled Misty’s room.”

We noted the travel claim seeking reimbursement for this trip did not include a motel receipt. The travel claim, as well as a supporting daily itinerary, both included the notation “per diem in lieu of stayed with friend.” State travel reimbursement rules for per diem allowances permit

¹ White Oak School is located approximately 6 to 7 miles west of Vinita.

**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011**

an extra \$10 per 24-hour period for those state employees who are able to stay overnight with family and/or friends. This “extra \$10” policy encourages the use of that “family or friends” option, rather than incurring the additional cost of a motel/hotel room for state related overnight travel.

In addition to the travel mileage and per diem amount, Kimbrough also included an additional \$11.60 for “Tolls on Pike Pass.”

In total, Kimbrough was reimbursed \$223.82, which included a -\$25.78 adjustment for not having used a state vehicle. Based on our interviews with the three OSDE employees and the review of the monitoring report listing of team members, this appeared to be a falsified claim.

OSDE utilizes a report titled a “Daily Report of Travel,” as well as another report titled “Personal Itinerary.” The itinerary report indicates Kimbrough was attending the White Oak monitoring event for part of October 28 and all of October 29, 2010. The itinerary report does not list specific times.

Both the daily report of travel and the travel claim reflected that Kimbrough had entered into travel status at 1:30pm (“1330”) on October 28 and ended her travel time on October 29 at 5:00pm (“1700”). The entries represented 11½ “work” hours (3½ hours on the 28th and 8 hours on the 29th), based on the OSDE working hours standard cited in their policy manual.

Mo	Day	Started	Ended	Start/Visited/End Cities	Map Miles	Vic Miles	Explanation
10	12	1000	1200	OKC/vicinity/OKC		18	1st Year Teacher Academy
10	16	800	1130	El Reno/OKC/El Reno	54	6	Autism Walk
10	26	1100	1400	OKC/vicinity/OKC		18	Mayor's Committee for Disabilities
10	28	1330		OKC/Vinita	168		Monitoring
10	29		1700	Vinita/OKC	168		Monitoring
				~Per diem in lieu of stayed with friend			
				*Tolls on Pike Pass			

When we interviewed the three OSDE employees who had actually attended the monitoring event, they all stated they believed Kimbrough had cancelled her plans to attend due to either an electrical problem or a heat and air unit problem at her home.

We obtained leave records for October 2010, to determine if Kimbrough had recorded any leave for the two days she was not in Vinita/White Oak

**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011**

School for the monitoring visit. According to those records, no leave had been recorded for those dates.

On July 12, 2011, OSDE paid Kimbrough for her 339.2 hours of unused annual leave, at a rate of \$37.40 per hour. Based on that rate, in addition to the \$223.82 travel reimbursement, we also question whether Kimbrough was entitled to payment of the \$430.10 for the 11.5 hours reflected on the itinerary report, as “hours worked” for the White Oak School monitoring visit.

(See also Objective II for findings on the OSDE time reporting system.)

Finding #3

Kimbrough filed additional questionable travel claims for travel in the Oklahoma City vicinity.

We questioned other claims filed by Kimbrough for reimbursement for mileage in and around the Oklahoma City area for attending various events or functions.

For example, Kimbrough signed a travel claim seeking reimbursement for 52 vicinity miles (52 @ .55 = \$29.70) for travel noted as “OKC/vicinity/OKC” on January 12, 2009. The associated daily report of travel form reflects travel on January 12, 2009, for the purpose of “IDEA B.”

We obtained the meeting minutes for the January 12, 2009, IDEA B State Advisory Panel Meeting, which included the following entry:

Cynthia Bernadi-Valenzuela: Welcome and Introductions

Ms. Bernadi-Valenzuela welcomed everyone. She gave a special welcome to the new members that were in attendance for the first time and thanked them for attending. Cynthia stated Ms. Kimbrough could not be in attendance due to handling legislative concerns at the capitol. [emphasis added]

The meeting minutes also include a listing of employees from OSDE that were in attendance. Kimbrough’s name was not on that list.

Kimbrough submitted a travel claim reflecting travel on August 4, 2010, for “OKC/vicinity/OKC” with a total mileage amount of 12 miles (\$6.00

**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011**

@ \$0.50). The corresponding daily report of travel reflects the purpose of the trip was a “Hearts for Hearing Conference”.

We obtained an email dated August 5, 2010, from OSDE Employee Mark Everhart to Misty Kimbrough. The subject of the email was related to the Hearts for Hearing meeting held the previous day.

Everhart’s email to Kimbrough with a subject line “Hearts for Hearing visit” starts out with “just wanted to fill you in on my visit to Keys Speech and Hearing yesterday” and includes comments related to the difficulty in getting to the meeting including the comment, “it’s probably good you didn’t go.”

OSDE provided an affidavit from Mark Sharp reflecting that on February 16, May 18, and June 15, 2011, Sharp and Cynthia Valenzuela had attended ICC meetings, and Misty Kimbrough was not present at those meetings. OSDE provided an affidavit from Cynthia Valenzuela indicating that she and Mark Sharp “usually attend ICC meetings on behalf of Misty Kimbrough.”

We requested and were provided the meeting minutes for the ICC meetings. The meeting minutes reflect the attendance at the meetings, including those who had a late arrival to the meeting, as shown in the example below:

The roll was called and the following members were present: Paula Brown, Marti Ferretti, Tara Ford, Raymond Haddock, Shari Kinney, Jim Lewis, Amy Owens, Heather Pike, Lynn Rambo-Jones (in at 10:07 am.), Edd Rhoades, Sue Robertson (in at 9:45 a.m.), Tammy Rogers, and Cynthia Valenzuela.

We compared the travel claims and “daily report of travel” forms for Misty Kimbrough reflecting travel related to the ICC meetings with the following results:

- Kimbrough had filed 13 travel claims totaling \$119.73, seeking reimbursement for expenses reportedly in relation to attending ICC related events.
- The minutes for one ICC meeting could not be provided.

**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011**

- In 9 of the 12 meetings for which we had minutes, the minutes reflected other OSDE members, and not Kimbrough, had attended.
- The meeting minutes for 2 of those 9 dates in question also included a specific reference that another member of OSDE had attended “for Kimbrough.”
- The total amount of questionable claims for the 9 events/meetings for which there was some evidence that Kimbrough had not attended was \$89.25.

Finding #4

The questionable travel claims may have been primarily for a purpose other than the actual amounts of reimbursement received.

Our review of the travel claims, itineraries, and travel reports indicated Kimbrough was claiming to have attended events that she apparently did not attend, according to information from affidavits and interviews of other OSDE employees. As such, we questioned not only the amounts claimed as reimbursement for travel, but also the “assumed time on the job,” related to the allegedly falsified travel claims.

For example, Kimbrough submitted a travel claim for travel occurring on April 16, 2011. The travel, which claimed a total of 76 miles, was reportedly to attend an “Ed. Interp. Videoconference.” OSDE obtained an affidavit from employee Mark Everhart indicating he was at the event on “Saturday April 15, 2011.”

We contacted Everhart and determined the actual date was Saturday April 16, 2011, not April 15 (which was a Friday). According to Everhart, Kimbrough was not in the videoconference session and he did not see her that day.

Kimbrough’s related travel reports indicated she was at this “Saturday” event from 12pm to 3:30pm. Since no official time records were kept by Kimbrough of the number of hours actually claimed for work, we have no means to determine whether this was an example of the “overtime” hours Kimbrough claimed to have worked, in this case 3½ alleged hours for a Saturday event. Later in this report (*Objective II*), we addressed Kimbrough’s use of *undocumented* overtime hours as a means to “adjust,” i.e. to reduce, the number of “leave” hours reportedly taken, thereby illegitimately increasing her balances of annual and other leave.

**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011**

Also, since the allegedly falsified travel claims were generally for negligible sums, we concluded the claims could have been filed more as a means of establishing the “appearance” of working and being on the job, rather than for the purpose of obtaining the *actual dollar amounts reimbursed*.

For another example, Kimbrough submitted a claim for mileage on February 18, 2009, for attending an ICC meeting. The total amount of the mileage claimed was “9” miles, or \$4.95 at the \$0.55 per mileage rate for that time period. The associated documentation (travel claim, daily report of travel, personal itinerary) for Kimbrough reflects she had attended this meeting from 8:30am to 2:00pm, a total of 5½ hours.

However, the minutes for this meeting reflect another OSDE employee, Cynthia Valenzuela, had attended the meeting “for Misty Kimbrough”. While the travel claim reimbursement amount for that date was only \$4.95, the associated 5½ hours of time claimed by Kimbrough for the event would have amounted to approximately \$205, according to OSDE payroll records. Her annual salary was \$74,513 for FY09.

Conclusion

The information developed for this objective supports the allegation of falsified travel claims being submitted by Misty Kimbrough, former Assistant State Superintendent. Furthermore, due to the often minimal or negligible amounts involved, we concluded the travel claims and supporting documentation, that presented the “appearance” of attending meetings and events, may have been more for the purpose of disguising absences from work, rather than for obtaining money through questionable travel claims.

Recommendation

The above matter should be referred to the appropriate legal authority for review and evaluation.

**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011**

***Secondary
Investigation***

Kimbrough submitted a travel claim for reimbursement for overnight travel and associated per diem expenses for July 7-8, 2008. The travel claim reflects Kimbrough's official duty station as Oklahoma City and the overnight travel as also being Oklahoma City, with associated mileage of no or -0- map miles² and 15 "vicinity" miles, as shown below:

OFFICIAL DUTY STATION CITY: OKC - SDE - Special Education	Nature of Official Business: Leadership Conference/IEP Institute/IDEA B Advisory		Claimant Signature									
			Date									
Show point travel status began, each point visited and the point travel status ended. (Vicinity only travel should show general geographical area, e.g., Tulsa Vicinity)	Date		Mileage Claimed		Travel Status		Number of		Per-Diem		Lodging	TOTAL PER DIEM / LODGING
	Year	2008			Hour						Amount	
	Mo.	Day	Miles	Vicinity	Entered	Ended	Days	Hrs	Rate	Amount	Amount	
OKC/vicinity	7	7		5	730	-						
OKC/vicinity/OKC	7	8	-	10	-	1630	1	9	49	61.25	61.25	

Included in the claim documentation was an email from Kimbrough to Tom White, Assistant State Superintendent, confirming Kimbrough's hotel room for the Oklahoma City event. The email states, in relevant part:

Thank you so much, this will be quite a treat, to not have to commute from Norman.

Section 3(C)(b)(1) of the OSDE travel policy, states, in relevant parts:

Travel status for the purpose of meals and lodging expense reimbursement is defined as absence from the employee's or officer's home area or official station area while performing official state business. [emphasis added]

...

In addition, the trip must be of sufficient duration and distance to qualify as "overnight" absence from the person's home and/or official duty station area. [emphasis added]

In addition to OSDE policy, the **Oklahoma State Travel Act, 74 O.S. § 500.7** states, in relevant part:

Travel status for meals and lodging purposes shall be defined as absence from the officer's or employee's home area and/or

² Map miles are considered to be city-to-city miles. Vicinity miles are considered miles in addition to map miles.

**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011**

official duty station area while performing assigned official duties. [emphasis added]

The reimbursement of \$61.25 for meals in relation to “overnight” travel appeared to have been contrary to both OSDE policy and state law.

We asked OSDE for the billing information related to this event, in order to determine the cost of the hotel room involved, as well as to determine if *other OSDE employees*, who lived locally, were also provided hotel rooms and per diem, contrary to both OSDE policy and state law.

***Second Report
to be Issued***

While looking into the circumstances related to the 2008 event, our investigative team identified other issues not specifically related to the original travel claim concerns. As a result, OSAI initiated a secondary line of investigation. The report concerning the subject matter of the second investigation will be issued under a separate cover.

OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011

OBJECTIVE II: Review time worked and leave records.

Background

The concern expressed to us was related to time accountability for former Assistant State Superintendent, Misty Kimbrough. Kimbrough worked as head of the Special Education Services (SES) Section. The concern stemmed from employee reports indicating Kimbrough would often come in late and leave early, and an alleged general lack of accountability for her time worked and leave taken.

Finding #1

OSDE has not followed its own policy concerning time reporting and accountability. OSDE has no uniform system for documenting the time claimed by its employees. Only records of leave taken were kept for Kimbrough. Actual time worked was not documented and more or less “assumed.”

OSDE provided us a policy manual last revised in July 2001. This reportedly was/is the current policy manual. Section 2.3.5 of the policy manual states:

A record must be kept of all hours worked and hours absent from work by all employees. These records are necessary for preparation of the monthly sick and annual leave reports and to comply with the federal Fair Labor Standards Act. [emphasis added]

Section 2.4 of the policy manual states:

Records must be kept on employees’ daily hours worked and totals by workweek. These records are required to be preserved for a period of three years. Forms for recording hours worked may be obtained from Personnel Services. [emphasis added]

When we asked for the time records for Kimbrough, we were provided three sets of documents:

1. A section absentee report reflecting the amount of leave taken by employees and, ultimately, turned in to the Human Resources division.
2. An individual leave report containing essentially the same leave taken information, but not turned in to Human Resources.

**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011**

3. A leave explanation form reflecting leave taken, generally either due to arriving late and/or leaving early.

None of the documents provided for Kimbrough's time claimed indicated the number of hours worked, as required by OSDE policy. The methodology for recording time worked, in this case, amounts to a "time keeping by assumption" system.

We sampled other divisions of OSDE and found little uniformity in how the divisions are recording working hours. We found, for example:

1. The Office of the Comptroller records hours worked using an email based system.
2. The Lifelong Learning section records time worked using a modified version of the individual leave report.
3. The Child Nutrition section records hours worked via email for those employees working under a "flex time" rule. The other employees do not record time worked.
4. The Innovation and School Support section generally does not record hours worked, with the exception of one employee.

We met with that one employee working in the Innovation and School Support section. This individual actually maintains a daily time record on the form provided by OSDE and titled "Individual Time Sheet – Oklahoma State Department of Education." According to the employee, when she obtained the time sheet from the OSDE human resources section, she was told she was the "only one in the building" who used this form.

Finding #2

OSDE has not followed its own policy concerning the approval of overtime.

Section 2.4 of the OSDE policy manual states, in relevant part:

Directors and supervisors shall hold hours worked by employees to the State's established 40-hour workweek standard except in those cases where excessive hours of work are necessary because of seasonal activity or emergencies. Any overtime worked must have prior approval of the State Superintendent. (Prior Approval Forms are available in Personnel Services.) [emphasis added]

**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011**

The policy manual in Section 2.4 addresses both exempt and non-exempt employees. Exempt employees are defined as “executive, administrative, and professional.” The same policy states, in relevant part:

For exempt employees, previously approved compensatory time accrues at an hour-for-hour rate, one hour off for each hour worked overtime. [emphasis added]

Section 2.4 requires any overtime worked to have prior approval, even for “executive, administrative, or professional” positions. Additionally 2.4 also provided that Personnel Services has the overtime forms for documenting the approval.

Personnel Services has been changed to Human Resources (HR), since the 2001 policy manual was implemented. We sent an email to the HR section quoting the policy and asking who maintains the approval forms for overtime.

The response we received from our request was:

“I’m not aware of a form for prior approval to work overtime. To the best of my knowledge that has always been handled in email or in person. We will likely want to update that policy.”

The email from the HR division also suggested the SES Coordinator Carrie Howell “...*should still have records of Misty’s overtime hours worked and used.*” We inquired of Howell who replied, “*I NEVER had any records related to overtime worked by her, nor any records relating to the approval for her overtime.*”

The OSDE policy seems clear. Work hours should be recorded; overtime worked should have “prior approval of the State Superintendent” in writing; and those records should be maintained for a period of at least three years. However, with regard to Kimbrough, none of those records could be provided to our investigative team.

Finding #3

No apparent approval or review processes were place to review the leave hours, overtime hours, and/or adjustments being made to the Assistant State Superintendent’s leave records.

The SES Section implemented the use of a “leave explanation form,” apparently for the purpose of tracking absenteeism, tardiness, and/or recording times when a person has left work early. The leave explanation

**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011**

forms are not a part of the OSDE policy and procedure manual and were apparently implemented by the SES Section alone.

Sandy Garrett
State Superintendent of Public Instruction
Oklahoma State Department of Education

Special Education Services
LEAVE EXPLANATION

Name: Misty K. Date(s) of Absence: 12/14/10

Person Filling Out Leave Explanation: Carrie Date: 12/14/10

NATURE OF ABSENCE: Annual ☒ Sick ☐ Enforced ☐ Business ☐

If business, give work activity and where you can be reached:

Length of absence: 1:00 A.M./P.M. to 4:30 A.M./P.M.

Supervisor Initials: _____ Date: _____

Comments: Call from Jack at school
3.50 Annual

In addition to the leave explanation forms, we were provided two other forms, *Individual Leave Reports* and *Section Absentee Reports*. These two reports reflect the amount of hours of leave taken. We noted neither of these reports were approved by Kimbrough's supervisor, who would have been the Chief of Staff for OSDE.

According to SES Section Coordinator Carrie Howell, if a person called in sick in the SES Section, or called in that they would be late, a leave explanation form would be prepared by the person taking the call.

The leave amount recorded on the leave explanation form would then be used to prepare the monthly individual leave report. The information from the individual leave report would then be used to prepare the section absentee report, which is ultimately the only document sent to HR for recording the amount of leave taken.

According to Howell, she would prepare the monthly individual leave report for each person in the section. The report was then given to Kimbrough for review. Kimbrough would then either make "adjustments" to the time or would tell Howell to "adjust" the time.

During our review of the leave records, we obtained an email from Kimbrough to Howell dated May 31, 2011, stating:

Hi Carrie – I worked most of the day today and early and late on Friday, trying to catch up on things. I will have some adjusted time. If you will email me when you calculate it, I will write you back and tell you what to change to adjusted.

Howell responded by email the same day, notifying Kimbrough the hours of leave used during the month were 15.3 sick, 12 enforced, and 20.25 annual. A few minutes later Kimbrough sent an email stating:

**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011**

Hi Carrie – I have 28 adjusted from carryover, autism walk, working late and early and weekend last week. That should take care of sick and enforced - - I think. Let me know. Thanks, Misty.

We were provided two individual leave reports for May 2011, for Kimbrough. One report reflected the leave hours as 15.3 sick, 12 enforced, and 20.25 annual. A large “X” was written across this unsigned report. A second signed individual leave report reflected only the 20.25 annual leave hours. The 15.3 and 12.0 of sick and enforced leave had apparently been “adjusted” to -0-.

Based on this information, the individual leave reports appeared to be unreliable since these reports have been “adjusted” based on overtime hours reportedly accrued by Kimbrough, but not documented.

We interviewed Kimbrough who stated she often worked late and would also get telephone calls during her off-duty hours, such as when taking annual leave. As an example, Kimbrough stated while she was on annual leave during early June 2011, Jan Smith, Executive Assistant to the Chief of Staff, called her to take care of a problem.

We interviewed Jan Smith, who recalled contacting Kimbrough and asking her to take care of a situation during a time when Kimbrough was on annual leave.

Kimbrough also stated another OSDE employee, Omar Mendoza, often worked late, and he should be able to verify Kimbrough often stayed late. We interviewed Mendoza who stated he would work late on occasions, and he had seen Kimbrough also working after hours on occasions.

Nonetheless, because the OSDE SES section did not record the number of hours worked on any given day, we had no means to calculate or confirm when Kimbrough may have accrued any carry-over time from working outside of normal working hours, or when working while on annual leave.

The SES section was able to provide the leave explanation forms for only calendar years 2010 and 2011. We obtained the section absentee reports submitted to HR and compared the section leave reports to the leave explanation reports to determine how much time had been “adjusted.” The amounts are reflected in the table below:

**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011**

Year	Leave Explanation Form		Section Absentee Report		Variances	
	LEF	LEF	SAR	SAR	(Calculated)	
	Sick	Annual	Sick	Annual	Sick	Annual
2010	172.4	122.85	151.35	51.5	-17.5	-71.35
2011	124.15	51.6	89.1	43.25	-35.05	-8.35
Totals	296.55	174.45	240.45	94.75	-52.55	-79.7

According to our review, sick and annual leave used had been adjusted or reduced by 52.55 and 79.7 hours, respectively. On July 12, 2011, OSDE paid Kimbrough \$12,688.20 for her “unused” 339.2 hours of annual leave, based on a rate of \$37.40 per hour. At that hourly rate, the dollar value of the 79.7 hours of leave “unused” (due to the adjustments) would be \$2,980.78.

Again, because no working hours were recorded, we had no means to verify the accuracy of the leave reportedly used or the balance of leave owed at the time of Kimbrough’s departure from OSDE.

Finding #4

Other documentation indicated time worked and/or leave taken may have been misrepresented and/or misreported.

OSDE provided copies of documents titled “Request for Annual Leave” indicating the request and approval for Kimbrough to take annual leave. OSDE provided 5 annual leave requests, totaling 64 hours, were submitted by Kimbrough during calendar year 2010. The actual amount of leave recorded on the section absentee reports was 46 hours, a variance of 18 hours as reflected in the table below:

Leave Request Date	Leave Starting Date	Leave Ending Date	Hours Of Leave Requested	Leave Hours Recorded	Variance (Hours)
2/7/2010	2/10/2010	2/11/2010	8	0	8
3/17/2010	6/17/2010	6/21/2010	24	24	0
5/21/2010	6/3/2010	6/4/2010	16	16	0
6/8/2010	6/25/2010	6/25/2010	8	4.5	4
9/13/2010	9/15/2010	9/15/2010	8	1.5	7
Totals			64	46	18

According to the SES Coordinator, the requests for annual leave were used when an employee anticipated taking annual leave. We had no means to determine if the variance in hours reflected leave requested, but not taken, or if there was leave taken, but subsequently “adjusted” *to reflect the leave was not taken*.

**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011**

While reviewing records at OSDE, we obtained a copy of an email dated March 3, 2010, from an OSDE employee and carbon copied to Kimbrough. The email reads, in relevant part:

I am responding on behalf of Misty, as she has been ill for several days and unable to respond promptly to your request to verify the quarterly report.

When we reviewed the section absentee reports obtained from the OSDE HR Section, we found no leave had been recorded from February 25 through March 3, 2010, the date indicated on the email.

As noted previously at Objective I, Finding #2, Kimbrough submitted a travel claim on November 5, 2010, seeking reimbursement for overnight travel to and from Vinita, Oklahoma on October 28-29, 2010. Kimbrough's itinerary for the same dates reflected she was participating in the "White Oak Monitoring."

Thursday	Office/Vinita ✓ Mtg. w/DAC; Travel to White Oak Monitoring
Friday	Vinita/OKC White Oak Monitoring
Saturday	

Evidence obtained from the monitoring team members contradicts the above entry in Kimbrough's itinerary, as previously reported. All three OSDE employees on the team confirmed Kimbrough had called and told them she was having difficulties at home related to either her electricity being off or having a heating/air conditioning unit problem, and that she (Kimbrough) would not be attending the monitoring event.

When we reviewed the section absentee report for Kimbrough for the October 28-29, 2010 dates, we found no leave had been recorded. We concluded the omission of leave taken to be another example of the unreliability of Kimbrough's leave records.

The test work and exceptions in this section applied only to the 2010 through mid-year 2011 records. OSDE was unable to provide the leave explanation forms for 2009, and the only other records maintained prior to 2010 were unsigned individual leave reports and the section absentee reports. Contrary to Departmental policy requiring records to be kept for "3 years," OSDE could only provide leave explanation records for barely half that record retention policy.

**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011**

Conclusion

The information developed for this objective supports the allegation concerning a lack of accountability for Kimbrough's time claimed for being on the job. However, we also observed that the lack of accountability for time claimed was more systemic and widespread within the Department, and consequently involved more employees than the one former Assistant State Superintendent.

Recommendations

1. OSDE should follow its policy and procedures with regard to recording and maintaining records of hours worked, in addition to the records maintained for the amount of leave taken.
2. OSDE should implement procedures to ensure supervisory personnel are signing and approving time records related to hours worked and leave taken.
3. OSDE should either modify or enforce its policy concerning the *prior written* approval of overtime hours worked, including the use of overtime approval forms.
4. OSDE should implement procedures to ensure that overtime hours worked and any subsequent "adjustments" are properly recorded, and that those records are adequately reviewed to ensure compliance with its overtime policy.

**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011**

OBJECTIVE III: Review employment and travel of a temporary employee.

Background

During the audit/investigation, we became aware of concerns some OSDE employees had regarding a temporary employee, Letha Bauter, who worked in the Special Education Services (SES) Section. Two employees were interviewed.

Both OSDE staff members expressed concerns related to Bauter being paid mileage for “commuting” miles to and from Stillwater. Also, the observation was made that Bauter, as a “part-time” temporary employee, was paid more than some full time employees in the division.

Finding #1

We found conflicting documentation as to the employee’s job description, title, and duties. Job titles varied, depending on what documents were reviewed.

When we asked OSDE for contracts related to the hiring and employment of Bauter, we were provided an interoffice memorandum dated October 7, 2009, from Misty Kimbrough to then Chief of Staff Lealon Taylor. The memo stated, in relevant parts:

I am proposing that Letha Bauter be hired as a temporary Technical Assistance Coordinator for the State Personnel Development Grant...

Due to the difficulty with staffing the SPDG over the years, there is more than enough administrative money to support the addition of Letha as a part-time temporary employee for a limited time period.



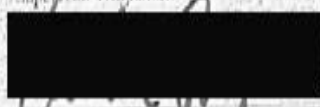
Letha would be based out of Stillwater...

I am recommending hiring Letha as soon as possible for the hourly rate of \$50.00 per hour.

The memorandum was signed by former Chief of Staff Taylor, apparently approving the hiring recommendation. The position was federally funded with State Personnel Development Grant (SPDG) money, funded through the Individuals with Disabilities Education Act (IDEA).

**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011**

OSDE provided a Performance Management Process (PMP) report signed by Taylor, Kimbrough, and Bauter that indicated the “initial planning” start date as November 9, 2009. The PMP report was dated November 10, 2010.

Section G: Record of Meetings/Discussions		(Must be completed in handwriting for retention of signatures)	
Purpose of Meeting: Initial Planning	Start Date: 11/9/2009		11/10/10
	11/10/10	Supervisor's Signature	Date
Employee's Signature	Date		Reviewer's Signature
			Date

The PMP report reflected Bauter’s service as the “Project Coordinator for the State Personnel Development Grant (SPDG), in conjunction with Susan Ellis, the full-time SPDG Project Coordinator.” The PMP report listed Bauter’s job title as “SPDG Project Coordinator (Temporary).” The PMP report also included the following:

Letha will perform supervisory duties, including overseeing print requests, contracts, requisitions, budget management, completion of reports, and supervision of SPDG personnel. Letha will supervise and oversee all activities outlined in the SPDG.

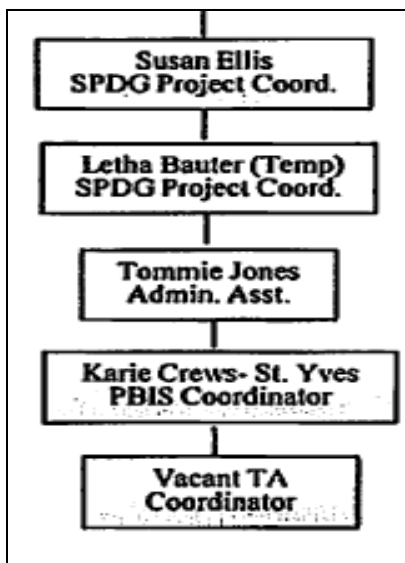
Between the October 7, 2009, memorandum and the November 10, 2010, PMP report, Bauter’s title was apparently changed from “temporary Technical Assistance Coordinator” to “SPDG Project Coordinator (Temporary).” The last page of the PMP identified Bauter’s job title as “SPDG Project Director.”

Finding #2

There was confusion regarding to whom the temporary employee was to report to. The temporary employee appeared to function more as a consultant, rather than the usual temporary employee situation.

On August 16, 2010, OSDE hired Susan Ellis in the position of fulltime SPDG Project Coordinator. According to Ellis, she had been told that, as the fulltime SPDG Project Coordinator, Bauter was supposed to report to her. However, rather than reporting to Ellis, Bauter reported directly to Kimbrough.

**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011**



During our interview with Bauter, she stated she was the project “director,” according to the Federal government. Ellis was the project “coordinator,” but according to OSDE, they were both “co-leads” and were at the same level. According to the OSDE organizational chart, the relevant portion of which is shown at left, both Ellis and Bauter were identified as the SPDG Project Coordinators.

The lack of a clearly defined reporting structure may have contributed to the other employees’ concerns over Bauter’s duties and responsibilities.

From her previous experience Bauter has had with regard to special education, as well her previous temporary position with the OSDE, it appeared that Bauter was hired more to function as a consultant, rather than the common conception of being a “temporary” employee. This may have also contributed to the concerns expressed by other OSDE employees.

Nonetheless, the records indicate Bauter was hired as a “temporary employee” at the request of Kimbrough, but the hiring had had the approval of former Chief of Staff Lealon Taylor.

Finding #3

A “temporary employee” was paid mileage for commuting from Stillwater to Oklahoma City.

As previously noted, when we asked OSDE for the contract and/or other documentation for hiring Bauter, we were provided the October 7, 2009 interoffice memorandum. The memorandum stated, with regard to mileage and commuting:

“Letha would be based out of Stillwater.”

According to records obtained from the Office of State Finance during the period July 1, 2008, through June 30, 2011. For the 20-month period (November 2009 to June 2011) of Bauter’s most recent temporary position, she had been paid \$17,139 in mileage claims, an average of \$857 per month. There was \$130 mileage paid in August 2008, prior to the most recent temporary position.

We obtained the travel claims and noted travel entries on 163 dates, beginning with “9/30/09” and ending with “3/29/11.” Those specific

**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011**

entries on the travel claims recorded “Stillwater/OKC/Stillwater,” indicating they were for commuting to and from Bauter’s residence in Stillwater to the OSDE building in Oklahoma City. The 163 travel claim entries totaled \$10,935.

As a test, we obtained time records for Bauter and compared the days worked to the travel claim dates for the period January 1, 2011 through March 31, 2011. Bauter reported working 12 days in January. We found mileage claims had been filed for travel to and from Oklahoma City on 10 of those 12 days (83%).

Similarly, during February and March 2011, Bauter reported working on 26 days and submitted claims for mileage to and from Oklahoma City on 21 of the 26 days (81%).

Based on that test, we concluded that Bauter’s primary job duties were not “...in Stillwater,” and her official duty station of “Stillwater – Special Education (Temp)” as filed on her travel claims, was not justifiable.

With regard to “tax home,” IRS Publication 463 states, in part:

To determine whether you are traveling away from home, you must first determine your tax home. Generally, your tax home is your regular place of business or post of duty, regardless of where you maintain your family home. [emphasis added]

While the hiring memorandum and the travel claims may reflect Bauter was “based” in Stillwater, the time cards and travel claims indicated she was primarily and “regular(ly)” working in Oklahoma City.

Finding #4

Travel claims were submitted for two dates, for which no work hours were recorded.

While reviewing the January–March 2011 time and travel records for Bauter, we noted travel claims were submitted that included the dates of January 20, 2011, and March 22, 2011, reflecting travel from “Stillwater/OKC/Stillwater” totaling \$132.60. When we reviewed the time cards for these dates, no hours were reported as having been worked.

These discrepancies likely represent “clerical errors,” but these are the kinds of errors that ought to be identified by an *effective* supervisory level review.

**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011**

Finding #5

Some work hours may have been charged and paid, that were actually “commute” time.

The interoffice memorandum that apparently authorized the hiring of Bauter, and that reflected she was “based out of Stillwater,” did not include any provisions setting forth whether Bauter was to be paid for her time associated with commuting back and forth from Oklahoma City to Stillwater.

A 2010 OSDE travel policy, reportedly in effect since 2003, includes the following under section B.1 (General Rules).

Employees shall restrict travel to their assigned territory, unless directed otherwise. Field based employees are not reimbursed for travel to the state office unless requested to do so by their director. [emphasis added]

As previously noted, we do not agree that Bauter’s official duty station was Stillwater. We reviewed a 2001 policy and procedure manual provided to us and represented as the current manual, and found no guidance on OSDE policy concerning time allowed for commutes.

Bauter told us that, during the audit period, she was not paid for her time spent commuting back and forth from Stillwater to Oklahoma City.

From the 2010 travel claims, we randomly selected 25 entries to determine if it appeared time was being claimed for commuting hours. We based our test on the starting and ending times shown on the travel claims versus the number of hours claimed on the temporary employee time sheets.

According to the Oklahoma Department of Transportation, the distance from Stillwater to Oklahoma City and back is 128 miles. Based on that distance, we estimated the travel time to be not less than 2 hours, roundtrip.

When we reviewed the randomly selected claims from the second half of 2010, we generally found a difference of 2 and 5 hours between the amounts of time recorded on the time cards and the start and stop times shown on the travel claims. We concluded, based on these claims, Bauter was *generally* not being paid for travel time for that time period.

**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011**

We also selected the first 25 entries for travel submitted for 2011 and compared those times to the time records for the corresponding dates. The travel entries were dated January 3, 2011, through March 7, 2011. On 11 of the 25 dates (44%), it appeared all or part of the commute time may have been factored into the overall number of hours worked.

For example, the travel claim entry for January 3, 2011, indicated a travel starting time of 800 (8:00am) and an ending time of 1700 (5:00pm), a total of nine hours for the work day. The corresponding time record indicated eight hours worked. Given the commuting distance of 128 miles it would seem that some portion of the commute time was included in the total hours claimed for work hours.

We also noted one instance on January 25, 2011, where the travel claim reflected hours from 800 (8:00am) to 1530 (3:30pm), a total of 7½ hours. The time card records for that date recorded Bauter as working eight hours.

Overall, for the 2011 records we reviewed, it appeared some portion of the time spent commuting to and from Oklahoma City may have been factored in to the work time recorded.

There were two qualifiers to our testing procedures that should be taken into consideration. First, our procedures did not account for time spent during lunch breaks, since those were not reported or recorded on the time cards. Second, we had no way to reliably determine whether work was being performed at the “official duty station” at “Stillwater,” *after* the ending time reflected on the travel status section of the OSF Form 19 state travel claims.

Finding #6

Compensation paid to a temporary employee was double the rate paid the regular duty employee.

In addition to the time and travel issues, some OSDE employees also expressed a concern about the amount of compensation given to a “temporary” employee. Specifically, there was a concern that a temporary staff member was making more than the full-time person holding *essentially the same position*.

The interoffice memo hiring Bauter included, in relevant part:

**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011**

I am recommending hiring Letha as soon as possible for the hourly rate of \$50.00 per hour.

Based on our review of the timesheet hours worked and the payroll records, we determined Bauter was paid \$50.00 per hour. We have summarized the total amounts paid per month in the tables that follow:

Fiscal Year 09-10			Fiscal Year 10-11		
Month	Hours	Gross Pay	Month	Hours	Gross Pay
11/2009	64.5	\$3,225.00	7/2010	68	\$3,400.00
12/2009	104	\$5,200.00	8/2010	66	\$3,300.00
1/2010	93	\$4,650.00	9/2010	69	\$3,450.00
2/2010	119.5	\$5,975.00	10/2010	46	\$2,300.00
3/2010	115.5	\$5,775.00	11/2010	89	\$4,450.00
4/2010	114.5	\$5,725.00	12/2010	105.5	\$5,275.00
5/2010	71.5	\$3,575.00	1/2011	95.5	\$4,775.00
6/2010	61.5	\$3,075.00	2/2011	93	\$4,650.00
Total Amount		\$37,200.00	3/2011	94	\$4,700.00
			4/2011	99.5	\$4,975.00
			5/2011	100.5	\$5,025.00
			6/2011	175	\$8,750.00
			Total Paid		\$55,050.00

Based on the hours claimed and amounts paid, apparently the former Chief of Staff accepted the recommendation by former Assistant State Superintendent Kimbrough that Bauter should be compensated at a rate of \$50.00 per hour.

We obtained payroll records for the full-time SPDG Coordinator, Susan Ellis. During FY11, Ellis was paid \$4,208 per month, approximately \$25.00 per hour³. Although it was unclear as to the position Bauter was serving in, whether as a technical assistance coordinator, a project coordinator, or “director,” or a “co-lead,” we confirmed Bauter had received pay at *double* the calculated hourly rate of the full-time SPDG project coordinator, for apparently the same duties and position.

Other Concern Questionable exclusion of the full-time SPDG Project Coordinator, with regard to a national SPDG conference.

While reviewing travel claims, we noted Bauter was reimbursed for a trip to Groton, Connecticut, to attend a conference related to the State

³ Based on an average of 173 hours per month.

**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011**

Personnel Development Grant project. The conference was the National Secondary Transition Technical Assistance Center (NSTTAC) Mid-year “Check and Connect” Cadre Meeting, held at the Mystic Marriott Hotel and Spa, Groton, CT. The conference was held October 12-16, 2010.

Attached with the claim was a memorandum dated November 12, 2010, from “Letha Bauter, Project Coordinator, SPDG” to then State Superintendent Sandy Garrett. The memo indicated, “This conference was a requirement for the implementation of the SPDG grant.” [emphasis added]

We contacted Susan Ellis, the full-time Project Coordinator for the SPDG grant, and asked if she had attended this conference, since it had been a “requirement.” Ellis responded back that if the conference was a requirement of the SPDG grant, then she would have attended. However, she had “...not receive(d) information on this conference nor was I offered the opportunity to attend this conference.”

We note that there are “regional” SPDG conferences held each year around the country. A 2012 “national” conference titled, *Building Stronger Professional Development...Systems through a Focus on Implementation* is scheduled for March 6-7, 2012, at Key Bridge Marriott in Arlington, VA. This 2012 “national” conference has the option to “attend virtually.”

If an actual “requirement,” the attendance at the 2010 conference appeared to have been arbitrarily extended to one “co-lead,” but inexplicably, not to the other “co-lead.”

- Recommendations**
1. We recommend OSDE review the classification and use of “temporary” employees to determine whether the service being provided would be better implemented through the use of a contract clearly describing the job duties, pay and benefits of the “temporary” employee.
 2. Further, we recommend OSDE review whether an amended “W-2” form for calendar years 2009 and 2010 is needed for the taxable fringe benefit for mileage paid for “commuting” between Stillwater and Oklahoma City. There is time to review the 2011 W-2 information to be filed with the IRS to ensure it properly reflects the reimbursement for commuting miles to and from the workplace, in accordance with IRS publication 463.

**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011**

3. The Department should review other “temporary” employee situations, if any, to determine whether there may be “taxable fringe benefits” that were not identified and reported earlier, in accordance with IRS rules and regulations.

**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011**

OBJECTIVE IV: Review procedures related to IDEA residential placement.

Background

In conjunction with the No Child Left Behind Act, the Individuals with Disabilities Education Act (IDEA) was reauthorized on December, 3, 2004. IDEA requires every child with disability between 3 and 21 to receive a “free appropriate public education” (FAPE).

According to **34 CFR § 300.101**:

- (a) *General.* A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities...

In accordance with IDEA, under the “zero reject rule,” there are no limitations or qualifiers on the severity of the disability. As such, the courts have ruled that even if the student is apparently incapable of benefiting from educational services and all efforts are seemingly futile – even if the child is unconscious or in a coma – *the school is still required to provide educational services to the child.*

The legislation also provides for a variety of “related services” that may be needed to assist a child with a disability to benefit from special education. The list of related services is lengthy, including social, psychological, physical, occupational and numerous other potential therapies and services.

There are cases in which a child cannot receive the FAPE in a regular classroom or special classroom setting because of the nature or severity of the child’s disability. Under these circumstances, an out-of-state residential placement may be required.

34 CFR § 300.104 requires:

If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.

**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011**

Because federal regulations remove the financial burden of educating children with disabilities from the parents, those costs, including residential placement, become the responsibility of the local school district. Because of the added expenses associated with placing students in a residential based environment, IDEA granted states the ability to allocate funds to the local district to help defray the costs.

On January 20, 2005, the OSDE sent a letter informing school districts of a new department policy in which the OSDE would contract and pay for the out-of-state facility. The local school district would only be financially responsible for a payment to the OSDE in the amount equivalent to the district's average teacher salary. OSDE began allocating the maximum allowable amount of \$2.5 million to assist the local school districts for these high-needs students' costs.

The average annual cost for an out-of-state residential placement for each child varies from year to year, but for FY09 through FY11, was approximately \$200,000. In addition to the residential care cost and the reimbursement to OSDE, the local school district is also responsible for the travel expenses of the parents/guardians of the child to and from the out-of-state facility.

OSDE divided the funds into two tiers; Tier 1 includes funding for the out-of-state residential placement and Tier 2 includes funds for all other costs associated with high-needs students. Tier 1 funds, which are used for the out-of-state residential placement, consume the majority of the \$2.5 million allocated funds. The Tier 1 funding is the focus of this concern.

By 2009, all OSDE funds were obligated or allocated to eleven children that were currently in residential placement, leaving no funding assistance for any additional placements. Beginning with the current FY12, OSDE placed a limitation on the funding provided to districts for high-needs children. OSDE amended their policy to only offer a funding percentage of the costs.

Therefore, districts are now responsible for from 5% to 50% of the costs for residential placement, plus the equivalent of one teacher's salary and the "reasonable and necessary" travel expenses of parents/guardians to out-of-state residential placement facilities. This policy change was done in an effort to reallocate available funds for *additional* placements.

**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011**

For each child with a disability there is an individualized education program (IEP), which is the foundation of the child's education program. The IEP is a written plan that specifies the services that are needed, the frequency of the services, the level of the child's performance, how the disabilities affect academic performance, accommodations to be provided, etc.

An IEP team, generally comprised of assigned teachers and school officials and the parents of the child, develop and design the educational plan. If the local IEP team determines that a child's educational needs cannot be met in a regular public school setting, then out-of-state residential placement may be required. This will be documented in the child's IEP.

OSDE records showed nine (9) students in out-of-state residential placement during FY09, eleven (11) during FY10, and nine (9) during FY11. The costs incurred by OSDE for the out-of-state placement ranged from \$1.7 million to nearly \$2.2 million.

Prior to OSDE paying the residential placement costs, the school district must complete an application and verify certain considerations and requirements have been met. The application and a new or revised IEP must be provided to OSDE.

The primary concern expressed by OSDE was that Kimbrough was disbursing millions of dollars of Tier 1 funds each year, without the necessary applications and IEPs from the local school districts, and in a potentially arbitrary manner. Additionally, OSDE was concerned Kimbrough had total control of the Tier 1 funds and may have given preferential treatment to some school districts.

Finding #1

OSDE does maintain the applications and IEP records for its residential placement situations.

We were informed by OSDE administration that no documentation could be found on those students in out-of-state residential placement. This led to the concern that Kimbrough had disbursed the Tier 1 funds without obtaining the necessary documentation and applications from the school districts.

**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011**

We interviewed officials at the local school districts which had students in residential placement. Although OSDE reportedly did not maintain applications and IEPs, we learned that the school districts *had submitted* applications with the required documents to OSDE.

During our interview with Kimbrough, she stated OSDE did maintain applications and IEP's for the students in placement, and she provided the location of the files. Subsequent to the interview, we went to OSDE and found the missing files in the location Kimbrough stated they would be found.

The residential placement applications and IEPs were maintained in several large file folders in a locked cabinet in the Special Education Section of OSDE. The section coordinator was responsible for maintaining the files, as well as the keys to the locked cabinet. According to her, no one had asked her about the files.

We reviewed the residential placement files and found there were applications, as well as IEP records, maintained in the files.

Finding #2

No evidence was found to support the allegation that preferential treatment was provided to some school districts.

This concern was apparently based in part on OSDE being unable to find the applications or IEPs for students in residential placement. Because OSDE believed Kimbrough had the ability to arbitrarily approve or deny applications, our focus centered on determining *if* any applications had been denied.

We requested OSDE officials send emails to each school district in the state to determine if any school district had been denied residential placement for one of their students. No district indicated they had applied and been denied placement services.

During our interview with Kimbrough, she also stated no residential placement applications had ever been denied. Based on our interviews, inquiries and our review of residential placement records, all of the submitted applications had been approved, and there was no basis for us to conclude Kimbrough was arbitrarily approving or denying residential placement applications.

**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011**

Finding #3

One district had expressed a need when funding was unavailable, but the district had not been notified when funds subsequently became available.

In October 2009, Edmond Public School District sent an email to Kimbrough inquiring about funding for residential placement. Kimbrough responded to the inquiry, stating there were no funds available for additional residential placements.

At the time of the inquiry, eleven other students were in residential placement and contracts had been executed with a total estimated cost of \$2.49 million, leaving less than \$5,000 for a placement with a potential cost of \$200,000 or more.

On November 13, 2009, Kimbrough issued a memorandum to district superintendents, indicating Tier 1 funds were no longer available until further notice.

In the spring of 2011, Kimbrough notified the Okemah Public School District of the possibility that additional Tier 1 funding may become available. Kimbrough did not notify Edmond Public School District of the same information. In an interview, Kimbrough indicated she forgot about the Edmond inquiry and confirmed she did not notify any other districts of the possibility of additional Tier 1 funding becoming available.

We determined from Edmond P.S.D. officials, that in this situation, if Kimbrough had contacted them, she would have been told the placement was no longer needed. The outcome of Kimbrough's contact with Okemah P.S.D., concerning the possibility of Tier 1 funds becoming available, would not have been affected.

Because Edmond P.S.D. had only made an inquiry, and did not submit an application, we concluded Edmond P.S.D. had not been denied funding due to any preferential treatment or favoritism afforded Okemah P.S.D. During the FY10 time period, Edmond P.S.D. had two students in Tier 1 residential placement.

**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011**

**Conclusion &
Additional Concern**

Although we cannot conclude Kimbrough and/or OSDE acted improperly in their respective decisions concerning the allocation of the residential placement funds, we do have reservations/observations about the process that had been in place.

Essentially Kimbrough received the applications, determined if there was adequate funding, and then forwarded those applications to both the OSDE legal division and the Superintendent of Education for ultimate approval of the placement contracts, all of which were approved.

In November 2009, when OSDE notified the local school districts the application process was essentially closed due to lack of funds, there was no apparent procedure or process in place to ensure that districts were notified when funding eventually became available.

Eventually, when some funding became available, only one school, Okemah P.S.D., had been contacted. Fortunately, Okemah was apparently the only school with a need for Tier 1 funds at that point. Had other school districts also been in need of Tier 1 funds, *they would not have known to submit applications*, since there were no notices sent.

This process appeared to have been an administrative oversight, rather than preferential treatment or favoritism in this instance. However, *if any other districts had needed Tier 1 funds*, the notification to only one district almost certainly would have been construed as an arbitrary decision and may have led to significant legal issues for OSDE.

Recommendation

OSDE should implement clear policies, guidelines and procedures regarding the allocation and disbursement of “Tier 1” and “Tier 2” funds for the State’s high-needs students.

**Residential
Placement
Options**

Between July 2009 and June 2011, the number of students in Tier 1 residential placement varied from 9 to 11. The average yearly cost for the out-of-state placement was about \$200,000 per student. Because of the lack of residential care in the State of Oklahoma, these students are currently being sent to out-of-state facilities, at considerable cost to the State and school districts and inconvenience to the parents/guardians.

Placing students in out-of-state facilities impacts the parent’s or guardian’s ability to have routine interaction with their child. In one case, the out-of-state placement facility is located in Andover, MA, over 1,700 miles away

**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011**

from the school district. The facility most often contracted is located in Wichita, KS.

In addition to being a detriment to the parent-child relationship, the out-of-state placements also result in costs to the local school district to pay for the traveling expenses of the parent or guardian to visit a child who has been placed in out-of-state placement. During FY10, one school district, for example, paid over \$11,000 for the parents' travel related expenses to visit their child, who was in an out-of-state residential placement facility.

According to one special education director we interviewed, the number of children in need of residential placement is expected to grow over time.

Special education directors at various local school districts developed a proposal for an in-state facility that could serve as many as 100 students, rather than the current 9 to 11. We were provided a copy of the proposal, which included one suggestion of utilizing bond proceeds to build a facility which would be operated by a state university.

Recommendation We recommend state officials review the proposal and determine the feasibility of a state facility which could keep federal dollars in-state, possibly reduce certain costs, provide services to a potentially much larger number of the State's high-needs students and relieve some of the burden of parents and/or guardians having to travel out of state to visit their children.

**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011**

OBJECTIVE V: Determine if reports were improperly altered or modified.

Background The concern expressed was that a former OSDE employee had information related to a monitoring report for “Elgin” Public Schools. Allegedly, the report had been improperly changed to reflect a more positive report.

Finding **Changes were made during the monitoring report review process. The changes did not appear to be “improper.”**

We interviewed the former OSDE employee who was the source of the allegation. Her concern related to the Elk City Public School, not Elgin Public School. The former employee stated that after the SES monitoring team had completed their original report, changes were made to the report, allegedly because Kimbrough and the Elk City special education director were friends.

We interviewed a current OSDE employee who had also participated in that monitoring process. The current employee also felt like valid findings had been removed from the report. Both the current and former employees expressed concern that a “positive” statement had been added to the report.

According to the project coordinator, the special education director at the school was well versed in the practices and procedures of monitoring and monitoring reports. At Kimbrough’s request, the project coordinator contacted the special education director and went over the report for several hours.

As a result of this process, some of the findings were removed, because the finding or findings did not have sufficient support. The project coordinator did not feel like removing the unsupported findings was improper.

The project coordinator did, however, mention she had not agreed with Kimbrough’s instruction to add a positive statement to the report. In an interview, Kimbrough confirmed that she instructed the project

**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011**

coordinator to add a positive statement to the report, but added that she felt that a positive statement should be added to the report “template.”

We obtained an internal memorandum in which the project coordinator asked if the positive statement paragraph should be added to all reports. Kimbrough replied that she had promised the positive paragraph to Elk City, and the reason for the change was because of a new administration. The rest of the message was not legible.

We obtained copies of the original and revised reports. The original report contained nine areas of non-compliance, and the revised report reflected eight areas of non-compliance. Based on a cursory review of the two reports, the following area of non-compliance was removed:

OSDE Findings:

Based on two of 30 files reviewed, the Parent Consent, OSDE Form 4, could not be located.

We reviewed monitoring reports before and after the Elk City Public School report. The “positive” paragraph does not appear to have been made a part of a monitoring report “template,” as indicated by Kimbrough. As such, that *addition* to the Elk City Public School report could be viewed as “arbitrary.”

Conclusion

Based on our discussion with the project coordinator, the change(s) made to the Elk City Public School monitoring report were due to insufficient support for the finding that was removed. The *addition* to the report appears arbitrary, but the allegation of misusing authority to direct inappropriate or “improper” changes to a monitoring report was not sufficiently substantiated, in our view.

Recommendation

No recommendation is provided for this objective.

**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011**

OBJECTIVE VI. Determine if certain provisions of FERPA were violated.

Background

The concern expressed was that former Assistant State Superintendent Kimbrough may have violated the provisions of the Federal Educational Rights and Privacy Act (FERPA). The concern consisted of two parts.

First, Kimbrough may have improperly disclosed some information to an attorney concerning two special needs students, one in the Mid-Del P.S.D. and one in the Okemah P.S.D. Second, Kimbrough may have improperly disclosed some information or had some improper communication with the parents of the special needs child in the Okemah school district.

The United States Department of Education website provides, in part, the following:

The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a Federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education.

34 CFR § 99.64 provides for the procedures to be followed with regards to an investigation of FERPA violations. The provision states, in relevant parts:

A complaint must contain specific allegations of fact giving reasonable cause to believe that a violation of the Act or this part has occurred.

...

The Office investigates a timely complaint filed by a parent or eligible student, or conducts its own investigation when no complaint has been filed or a complaint has been withdrawn, to determine whether an educational agency or institution has failed to comply with a provision of this Act or this Part.

The term “office” is defined in the Act as Family Policy Compliance Office, U.S. Department of Education. In general, the Act prohibits “personally identifiable information” of a student from being revealed, except according to those specified circumstances allowed by the Act. According to **34 CFR § 99.3**, the following provides for further definition or explanation of “personally identifiable information.”

**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011**

The term includes, but is not limited to:

- a) The student's name;
- b) The name of the student's parent or other family members;
- c) The address of the student or student's family;
- d) A personal identifier, such as the student's social security number, student number, or biometric record;
- e) Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
- f) Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty;
- g) or Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

Because FERPA is a Federal law with clearly defined authority for violations of FERPA to be investigated by the U.S. Department of Education, we limited the scope of our inquiry to determining whether there may have been a disclosure of *personally identifying information* related to the special needs students. Such an action would give a “reasonable cause” to believe FERPA may have been violated.

Findings

We were unable to substantiate the allegation that a FERPA violation had occurred.

We contacted an attorney, Brad Clark, who had made an “open records” request to OSDE, in relation to a Mid-Del student. Our inquiry was to determine whether any personally identifiable information related to that Mid-Del student had been disclosed by Kimbrough.

Clark stated neither he nor his clients, the parents of an Okemah special needs student, had been provided any personally identifying information of the Mid-Del special needs student.

**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011**

Furthermore, Clark stated that he had been contacted by the parents of the Mid-Del special needs student. They had sought Clark out to represent *them* in the matter. He declined representing the Mid-Del parents, since he was already representing the parents of the Okemah student.

In addition to the suggested improper disclosure of personally identifiable information, part of the first concern expressed to us was that merely disclosing the fact that a school has a special needs child may be a violation of FERPA.

In some cases, a District may be compelled to disclose the fact they *have* a special needs student, while not specifically identifying the student, in order to comply with other statutes, including the **Open Meeting Act** and the **Open Records Act**.

For example, in order to comply with the **Open Meeting Act**, a school board would need to vote and approve a contract for the residential placement of a special needs student. This requirement would compel the district to place the item on an agenda, as well as recording the vote in the meeting minutes, both of which are public records.

In these cases, the districts are disclosing the fact that they have a special needs student, but not identifying the student. One district, for example, included an agenda item voting on the contract for a special needs student as follows:

Vote to approve or not approve contract for residential placement at Heart Spring Residential Facility in Wichita, KS for a Midwest City High School student for the 2011-12 School Year. The approximate cost of the contract will be \$189,430.44 to be paid from General Fund, Project Code 000. – Dr. Axtell.

Furthermore, in response to the Open Records request, OSDE provided documentation to Clark, including letters sent to seven school districts identifying the school district, the placement facility, and the cost of the placement for the students in their respective districts. For example, one of the documents provided in response to the Open Records request included the following:

Norman Public School District will be responsible for paying 50 percent of the total out-of-state cost for the FY2012 residential placement of [name redacted] at Melmark in the amount of \$173,655.76 [...]

**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011**

Although OSDE administration had posed the possibility that merely disclosing a school has a special needs student could be a violation, they did essentially the same thing in complying with the provisions of the **Open Records Act** request that OSDE had received.

The second part of the concern expressed was Kimbrough had been having improper conversations with the Okemah parents and may have disclosed something improper during those conversations.

According to Clark, the Okemah parents initiated the contact with Kimbrough. We interviewed the special needs instructor at Okemah School, who said she believed it was the parents of the student who had initially contacted Kimbrough. The instructor told us the parents were well versed in the special needs field and were persistent in seeking the best possible solutions for their child.

During our interview with Kimbrough, she also stated the Okemah parents had contacted her initially, and she denied having disclosed any *personally identifying information* in relation to the Mid-Del student.

Conclusion

Based on the interviews done, and without some additional corroborating evidence of a prohibited disclosure of personally identifying information, we were unable to substantiate the allegation.

Recommendation

The Family Policy Compliance Office of the U.S. Department of Education is the public entity tasked by the Act with investigating FERPA violations. If OSDE believes they have “reasonable cause” that one of their employees has violated the FERPA provisions, we recommend they contact the USDE Family Policy Compliance Office to request an investigation.

**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011**

OBJECTIVE VII: Determine if there has been a misappropriation of state resources and employees.

Background	There was a concern that Assistant State Superintendent Kimbrough had allowed employees to go home early in exchange for doing personal favors for her, such as washing her car and/or babysitting her son.
Findings	<p>Some personal services may have been requested, and performed, but we were unable to substantiate a pattern of abuse or misappropriation with regard to this allegation.</p> <p>We interviewed employees regarding personal favors for Kimbrough. One employee indicated she had been asked to mail a Valentine’s Day card for Kimbrough on one occasion and had gone to a drug store to pick up medicine for Kimbrough. On both occasions, the employee said she used annual leave for the errands.</p> <p>Another employee, with regard to the babysitting issue, stated that when Kimbrough would come to the office, she occasionally brought her son along as well. On those occasions, the son would come to his office. The employee did not feel like he was compelled to “babysit,” but rather that it was more the son’s choice to come to his office.</p> <p>We requested an email be sent to all SES Section employees, asking if any employee had been asked to perform personal tasks for Kimbrough. The email was sent to 33 employees of the section. We received two responses to the email.</p> <p>One employee denied performing any personal tasks for Kimbrough. The other employee stated she performed trivial tasks such as bringing her lunch and/or items from the snack bar.</p>
Conclusion	We are unable to substantiate this allegation.
Recommendation	No recommendation is provided for this objective.

**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011**

OBJECTIVE VIII: Review the Special Education Services' documentation of sole source contracts.

**Background &
Procedures**

There was a concern expressed to us about the Department's use of sole source contracts generally. We were asked to review a sample of sole source contracts relating to the SES Section.

From the Oklahoma Central Purchasing Act, the definition for "sole source" is found at **74 O.S. § 85.2**, definitions:

"33. "Sole source acquisition" means an acquisition which, by specification, restricts the acquisition to one supplier;"

One Internet source describes "sole source" as:

"A sole source contract implies that there is only one person or company that can provide the contractual services needed, and any attempt to obtain bids would only result in one person or company being available to meet the need."

We obtained a list of sole source contracts for the SES Section for FY11. There were fifteen (15) sole source contracts. Three of those contracts were related to issues covered in the residential placement section of our report at Objective IV. We judgmentally selected three additional sole source contracts from the twelve remaining to determine if the contracts contained documentation required by State statutes under the following provisions:

- **74 O.S. § 85.41** requires, "... the supplier to certify that the supplier has not previously provided the state agency or another state agency with the final product that is a substantial duplication of the final product of the proposed contract..."
- **74 O.S. § 85.41** also requires, "A professional services contract shall include an audit clause which provides that all items of the supplier that relate to the professional services are subject to an examination by the state agency, the State Auditor and Inspector and the State Purchasing Director..."

**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011**

- **74 O.S. § 85.42** requires “...each contract...shall include a statement certifying that no person who has been involved in any manner in the development of that contract while employed by the State of Oklahoma shall be employed to fulfill any of the services provided for under said contract...”
- **74 O.S. § 85.45j** requires a certification signed by the chief administrative officer indicating the supplier is the only person or business that can provide the acquisition.

The above statutes served as the criteria for our review. In other words, we reviewed the sole source contracts for the following documentation:

1. The contract included the certification by the supplier that the product was not a duplication of a previously provided product.
2. The contract included an audit clause.
3. The contract included the certification that no employee involved in the development of the contract was subsequently employed and paid for performing any of the contracted services, upon leaving state employment.
4. The contract included the certification by the chief administrative officer that the supplier was the only person or business that can provide the service.

Findings

None to report.

We reviewed the contracts for the criteria noted above. All three contracts included the required documentation. Lacking any specific concerns or allegations, we did not expand our review.

Recommendation

No recommendation is provided for this objective.

**OKLAHOMA STATE DEPARTMENT OF EDUCATION
SPECIAL AUDIT REPORT – OSDE REQUEST
JULY 1, 2008 THROUGH JUNE 30, 2011**

DISCLAIMER

In this report, there may be references to state statutes, Attorney General's opinions and other legal authorities that appear to be potentially relevant to the issues reviewed by this Office. The State Auditor and Inspector has no jurisdiction, authority, purpose or intent by the issuance of this report to determine the guilt, innocence, culpability or liability, if any, of any person or entity for any act, omission, or transaction reviewed. Such determinations are within the exclusive jurisdiction of regulatory, law enforcement, and judicial authorities designated by law.



OFFICE OF THE STATE AUDITOR AND INSPECTOR

2300 N. LINCOLN BOULEVARD, ROOM 100

OKLAHOMA CITY, OK 73105-4896

WWW.SAI.OK.GOV