



Investigation of Improper Activities by a State Agency and Its Employees

A Director Committed Gross Misconduct When She Repeatedly Violated Merit-Based Employment Principles and Attempted to Retaliate Against Suspected Whistleblowers

March 2019

REPORT I2019-1





CALIFORNIA STATE AUDITOR

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March 26, 2019
Investigative Report I2019-1

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

In addition to the financial, performance, and high risk audits that my office performs, we administer the statutory provisions of the California Whistleblower Protection Act, which states that employees should be free to report improper governmental activities without fear of retribution. My investigations division's exclusive mission is to receive, review, and investigate allegations of state employees committing improper governmental activities within state agencies. In fiscal year 2017–18 alone, my staff substantiated or actively pursued evidence for nearly 1,500 allegations.

When an investigation substantiates improper governmental activities, my office may issue public reports summarizing our investigative work, but we do so only after carefully weighing the interests of the State and our obligation to keep confidential the identities of the whistleblowers and the employees involved. I also have authority to issue nonpublic reports to the heads of the agencies involved and, if appropriate, to the Office of the Attorney General and the appropriate legislative policy committees, when I determine that this reporting method will best correct the improper activity while protecting whistleblowers and cooperating witnesses.

In April 2015, my staff deemed credible allegations involving improper governmental activities by a department director and her daughter who worked at the same department. Because of the limited scope of these initial allegations against the department's highest ranking officer, and as state law allows, my office formally referred the case to the department's oversight agency for it to complete further investigation by June 2015. In that written referral, we cautioned agency officials that, by law, they must keep confidential the existence and details of the complaint, and that they could not disclose any information provided by my office or obtained from reviewing or investigating the allegations.

Nevertheless, we later learned that, within just a few weeks of our issuance of that confidential referral to the oversight agency, the agency secretary directly violated the law by sharing with the director information of the impending investigation, which is evidenced by an email between the director and the agency secretary. In that email, the director defended her daughter's presence in the department and speculated that the allegations came from within a particular ethnic group of employees. A few hours later, the director further shared with her brother, who also worked at the department, her email to the agency secretary, and the director indicated to the brother that he should delete the email after reading it.

In addition to the agency secretary's clear disregard of confidentiality requirements, the oversight agency failed to provide its final investigative report to us until a full year after the 60-day deadline required by law. During that year, my office received additional allegations of other instances of the director's improper governmental activities. Given the increased number and scope of the whistleblower accusations and our heightened concern about confidentiality and protecting whistleblowers against retaliation, we decided that the oversight agency's response to the investigative request was insufficient to fully address the allegations. Therefore, we incorporated the agency's findings into a separate and larger investigation that my staff conducted.

In the course of our investigation, my staff searched through more than one million emails to extract relevant evidence and interviewed dozens of witnesses regarding allegations spanning seven years. An alarming 20 of the individuals we interviewed told us that they feared retaliation from the director for their involvement in our investigation. Our concern was amplified when we learned in December 2017 that, despite our warnings to the director to avoid retaliatory conduct, the director attempted to confirm the identity of the suspected whistleblower by instructing an employee to review more than two years of email messages exchanged between a suspected whistleblower and department employees.

As we were wrapping up the last details of the investigation, we provided the oversight agency with a draft copy of our investigative findings and the director retired from state employment shortly after. Determining that it served the best interests of the State, the whistleblowers, and the witnesses, we issued a nonpublic report in May 2018 to the head of the agency, the then-Governor, key legislative leaders, and to the heads of the State Personnel Board and the California Department of Human Resources to allow these entities time to conduct their oversight responsibilities. As you will see, this investigative report details improper governmental activities spanning from 2011 through 2018 where the now-former director influenced a significant number of improper personnel transactions to benefit her daughter and another employee. Throughout our investigation, we found that the director repeatedly violated merit-based employment principles and engaged in nepotism, bad faith hires, improper promotions and transfers, attempted retaliation, and other misconduct that presented a risk to the State and which, in their entirety, constitute gross misconduct.

After we issued the nonpublic report in May 2018, we expected that the agency would take swift and appropriate disciplinary action against the director and associated subjects, protect those who cooperated with the investigation, and implement our recommendations to prevent future improper activities. Despite the agency providing its mandated monthly updates to us, we do not yet see evidence that the agency has acted with appropriate rigor to remediate the effects of the director's behavior; in fact, since we informed the oversight agency of our findings, it has not fully implemented any of the recommendations we made in the report. As of March 2019 and excluding duplicative recommendations, the agency has four pending recommendations, four partially implemented recommendations, and two recommendations we deemed resolved because impacted employees resigned or retired from state service. See Appendix A for a detailed analysis of the agency's progress in implementing our recommendations.

The agency's lack of demonstrable progress in implementing our recommendations, combined with the briefing we provided to the new administration and our determination that the threat of retaliation at the department had significantly decreased, all lead me to conclude that it is now in the best interest of the State to publicly report the findings of this investigation. Most importantly, since most of the employees involved in the investigation have since left the department, as have the director and the director's family members, many associated subjects, whistleblowers and cooperating witnesses no longer face significant threats of reprisal. Therefore, the following is the original report in its entirety, with the removal only of names that we are required to keep confidential and the addition of Appendix A, describing the agency's response thus far to our recommendations.

Respectfully submitted,

A handwritten signature in black ink that reads "Elaine M. Howle". The signature is written in a cursive, flowing style.

ELAINE M. HOWLE, CPA
California State Auditor

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Contents

Introduction	1
Results in Brief	1
Overview of Relevant Rules and Laws	2
Chapter 1: Nepotism—The Director Consistently Orchestrated Personnel Decisions That Favored Her Daughter and Violated Civil Service Employment Rules	5
The Director Preselected Her Daughter for a Bad Faith Appointment to a Staff Services Analyst Position	5
The Director Prevented a Corrective Action Against Her Daughter	7
The Director Inappropriately Arranged for Her Daughter’s Promotion to a Compliance Analyst Position	8
The Director Instructed Her Staff to Take Punitive Disciplinary Action Against the Daughter’s Supervisor Without Due Process	9
The Director Failed to Comply With State Law When She Arranged for Her Daughter’s Transfer to Information Technology	10
The Director Preselected Her Daughter for a Bad Faith Training and Development Assignment	11
Recommendations	13
Chapter 2: Dishonesty—Despite the Director’s Active Involvement in Her Daughter’s Career, the Daughter Failed to Perform Her Duties and Submitted False Claims	15
The Director’s Daughter Failed to Perform the Duties of Her T&D Assignment, and She Made False Claims About Hours and Assignments Worked	16
The Director’s Daughter Did Not Meet the Minimum Qualifications for Her Promotion and Made False Claims About the Work She Performed	18
Recommendations	19

Chapter 3: Favoritism—The Director Improperly Influenced Personnel Actions That Favored a Now-Executive Employee, Ordered the Falsification of Documents, and Approved Unjustified Extra Pay	21
The Director Facilitated Three Bad Faith Appointments for the Benefit of One Person Whom She Hired From Private Industry and Rapidly Promoted to an Executive Role	21
The Director Ordered the Falsification of Documentation and Improperly Reinstated the Executive to Her Prior CEA Job	23
The Director Approved a Continuation of Extra Pay Without Documenting That It Satisfied Applicable Criteria	25
Recommendations	25
Chapter 4: Risk to the State—The Director Put the State at Risk When She Characterized Employees by Race and Attempted to Identify and Retaliate Against Suspected Whistleblowers	27
The Director Repeatedly Referenced Her Employees by Race, Ethnicity, or Other Similar Characteristics	27
The Director Fostered a Culture of Fear in Which Her Employees Felt Compelled to Sidestep Rules or Face Potential Retaliation	28
The Director Improperly Attempted to Identify Whistleblowers and Retaliate Against Them	28
The Director Violated the Statute Requiring Confidentiality of Investigative Information	29
Recommendations	30
Summary of Agency’s Initial Response and California State Auditor’s Comments	31
Appendix A—Recommendations and Status of Actions Taken	33
Appendix B—Titles and Employment Status of Department Employees Identified in This Report	39

Introduction

Results in Brief

A department director consistently engaged in misconduct by using the influence of her position to circumvent California's long-held civil service hiring process when she orchestrated personnel decisions that benefited her daughter. The director exhibited this same disregard when she preselected another employee for several positions during the course of only 13 months. The merit-based employment principles that the director sidestepped time and again exist to promote fair selection practices from among the best qualified job candidates available and are in place specifically to safeguard against such forms of nepotism and favoritism.

The director's established pattern of repeatedly violating civil service employment rules, in its totality, constitutes *gross misconduct*. Our investigation revealed numerous circumstances from 2011 through 2018 in which the director deliberately and willfully disregarded the standards of behavior that a department can rightfully expect from its managers and executives. In doing so, she demonstrated gross indifference toward the procedures and protocols that underpin fairness and transparency, and she did not fulfill her obligation to ensure that the most qualified applicants hold the jobs that serve California's taxpayers.

This report describes multiple specific circumstances in which the director improperly swayed personnel decisions and actions to benefit her daughter's employment status. While California law does not specifically prohibit *nepotism*—the act of appointing relatives to positions in one's organization without regard for potentially better qualified candidates—the California Constitution requires employment practices to be based on the principle of merit, not familial relationships. In this case, the director preselected her daughter for a role in her own department, precluding consideration of and competition from other potential applicants. The daughter did not have the requisite qualifications for the job, nor did she follow the application rules to which all candidates must be held equally.

The director's daughter also acted in bad faith during the application process for several positions and in dishonestly reporting her time and duties performed. For example, when the director's daughter began working from home full time, she falsely claimed to have performed duties that records clearly show she did not do. Similarly, when she submitted her application for a promotion, she falsely claimed to have gained the necessary experience to meet the minimum qualifications.

As further evidence of the director's pattern of misconduct, this report describes another situation in which her repeated improper actions benefited one particular employee who now holds an executive position in the department. In each of the circumstances, the director involved her subordinates in helping her bypass established rules. Evidence collected in this investigation demonstrates that many staff members in her department expressed concern about the propriety of these personnel actions, but they carried out the director's wishes to avoid retaliation.

Once our investigation began, the director continued to disregard procedure and law when she divulged confidential information. Specifically, during an interview we conducted of her, we informed her several times that state law requires her to keep confidential all

information she obtained from us. Nevertheless, when we interviewed other members of her staff, including the department's chief information officer (CIO)—who is also the director's brother—they informed us that the director had warned them that we were conducting interviews and that we would request information from them regarding the whistleblower's allegations and her daughter's work in the department.

Similarly, the director repeatedly speculated during that interview about the identity of the whistleblower. Because the California Whistleblower Protection Act (whistleblower act) specifically prohibits retaliation against those who file complaints, we counseled the director against speculating about the whistleblower's identity; yet in spite of our warning, she continued to do so. A few weeks after the interview, she instructed a member of her staff to review more than two years of email messages exchanged between the individual she suspected of being the whistleblower and department employees.

Based on the whistleblower's allegations and the verified evidence we analyzed in the course of this investigation, we conclude that the director clearly and willfully disregarded laws and protocol by misusing the authority of her position to achieve her own interests. Her ongoing practice of influencing personnel actions neglected her duty to the State, and her documented reputation for retaliating against those whose behavior she perceived as disloyal, constitute *gross misconduct*.

Overview of Relevant Rules and Laws

Until the 20th century, most people who worked in state government secured their jobs as part of the *spoils system*—a way for those in political power to reward their personal friends and partisan supporters. However, since the Legislature established merit-based hiring with the passage of the first Civil Service Act in 1913, state law has mandated that appointments to state jobs must consider only candidates' knowledge, skills, and abilities to effectively complete the duties of the specific positions. State lawmakers cemented this cornerstone of California's merit-based employment principles with the passage of the Civil Service Act of 1934, which amended the California State Constitution and requires that state jobs be open to competition among all qualified candidates.

The State entrusts the State Personnel Board (SPB) and the California Department of Human Resources (CalHR) with enforcing civil service employment laws. The SPB ensures that departments comply with the decentralized merit-based selection system, which authorizes individual state departments and agencies to conduct competitive exams and make *good faith* hiring decisions—decisions arrived at honestly, without bias, and with diligent effort to abide by all prevailing rules and policies. Figure 1 describes some elements of a good faith appointment.

By contrast, a *bad faith* appointment may be one for which the successful candidate is *preselected*—that is, when the hiring decision makers have chosen the individual they intend to employ before, or in lieu of, conducting a fair and open competitive selection process. Other types of bad faith appointments may include the following:

- An employer appoints a candidate to a classification other than the one the employer specified in the advertised job posting.

- An appointee fails to submit application materials according to the requirements that the advertised job posting specified.
- An appointee knows that elements of the appointment violate the law and the appointee fails to reasonably attempt correction.

Under the provisions of the whistleblower act, the California State Auditor’s Office investigates complaints of improper governmental activities (IGAs) by state agencies and employees. IGAs include, but are not limited to, actions by an employee, including an officer, that:

- Violate a state or federal law.
- Are economically wasteful.
- Involve gross misconduct, incompetency, or inefficiency.

For the purposes of this report, *gross misconduct* is interpreted to mean glaringly noticeable mismanagement of governmental responsibilities, usually because of inexcusably bad or objectionable behavior.

Other relevant laws, regulations, and policies are identified in each chapter of this report.

Figure 1
Both the Employer and Employee Must Act in Good Faith to Achieve a Valid Appointment



Source: California Code of Regulations, title 2, section 249.

Note: In April 2018, the State Personnel Board adopted regulations pertaining to good faith appointments. Nonetheless, the regulations cited in this report were those in effect at the time the events occurred.

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Chapter 1

NEPOTISM—THE DIRECTOR CONSISTENTLY ORCHESTRATED PERSONNEL DECISIONS THAT FAVORED HER DAUGHTER AND VIOLATED CIVIL SERVICE EMPLOYMENT RULES

The director engaged in gross misconduct when she influenced personnel actions that favored her daughter as the successful candidate for employment and promotion in her department. In addition, the director interfered with a corrective action that one of her daughter's supervisors sought to take, and she inappropriately directed the disciplinary transfer of another of her daughter's supervisors.

The evidence we discovered in email records, personnel files, and witness statements demonstrates the director's gross misconduct in the following ways:

- The director precluded open and fair competition that would have ensured that the department hired the most qualified candidate for the job when she preselected her daughter for several positions in her department.
- The director inappropriately prevented the issuance of a corrective action memo against the daughter.
- The director instructed her staff to take punitive disciplinary action against the daughter's supervisor without due process.

Figure 2 on the following page shows the bad faith appointments and other misconduct that the director engaged in that benefited her daughter from 2011 through 2015.

The Director Preselected Her Daughter for a Bad Faith Appointment to a Staff Services Analyst Position

A year after the director's daughter separated from employment with the State, she sought in September 2011 to return to civil service as an associate governmental program analyst (AGPA) in the department where her mother served as director. The officially advertised job description (job posting) stated that the department would consider only those candidates with verified eligibility for the

Relevant Criteria

CalHR defines *nepotism* as the practice of an employee using his or her influence to aid another in the employment setting because of a personal relationship such as daughter or brother. State policy prohibits the practice because it is antithetical to the mandated merit-based selection process and inhibits fair and open competition. CalHR warns departments to be particularly cautious of allowing direct or indirect supervisor and subordinate reporting relationships between those who have such personal relationships. It mandates that each state department create and maintain a nepotism policy, and it most recently required that all departments update such policies in 2015.

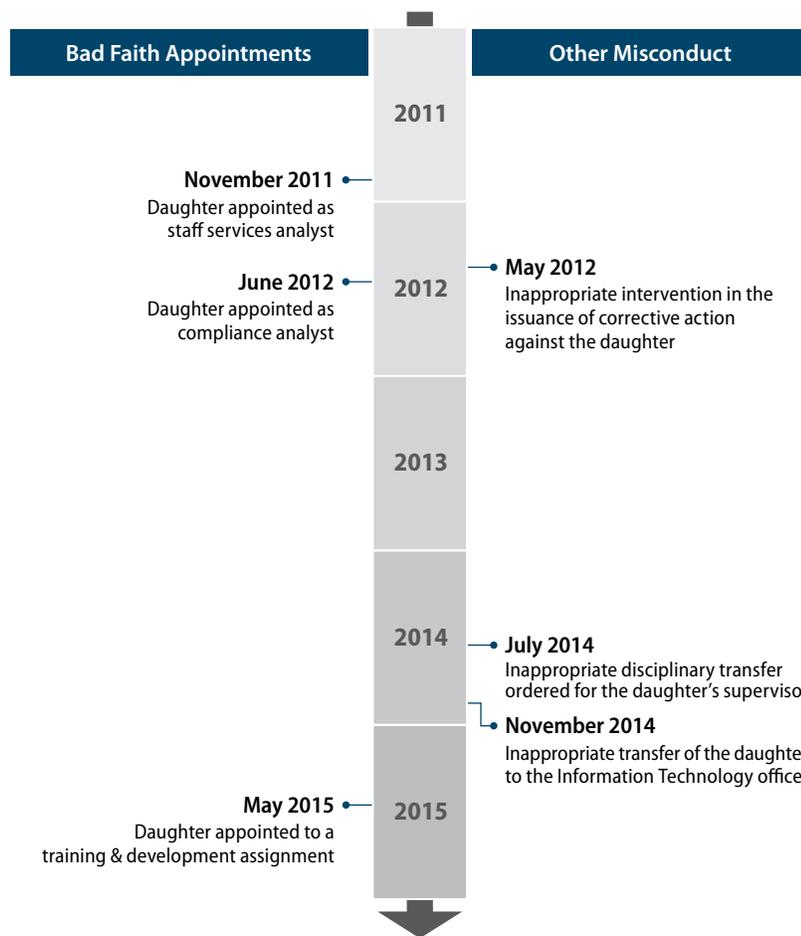
The State assigns each civil service job to a specific *classification*—a group by which one can identify jobs that have substantially similar minimum qualifications and compensation schedules.

To ensure that all civil service appointments uphold the merit-based hiring principles that encourage fair and open competition, and that the State hires the most competent candidate to perform the job, hiring managers must hold all job candidates equally to the minimum qualifications, classifications, and application requirements listed in an advertised job posting.

State law requires that all candidates for state employment take and pass examinations that prove their qualifications for specified state job classifications. Many of these exams are available online and to the general public, while some are offered as *internal transfer exams*, available only to those currently employed by a particular department to qualify them to transfer into higher-level positions within the same department.

AGPA classification. The job posting further specified that the department would not accept emailed applications and that all applications should be mailed or delivered directly to the division's management.

Figure 2
The Director's Pattern of Gross Misconduct Included Repeatedly Facilitating Bad Faith Appointments and Bypassing Civil Service Protocol for Her Daughter's Benefit From 2011 Through 2015



Source: California State Auditor's analysis of witness statements, personnel files, and email records.

A few days after the job posting was advertised, the director emailed the job posting to her daughter and instructed her to directly contact the hiring manager, a long-time friend, to express interest in the position. Later, the director's daughter emailed her application for the position to the hiring manager. The hiring manager informed the director that her daughter might not be eligible to transfer into the AGPA classification because her prior state job

classification was not comparable. In fact, that prior classification was roughly equivalent to one classification lower than an AGPA, and she did not meet the minimum qualifications to take the AGPA exam.

Since the director's daughter did not meet the minimum qualifications for the job, the hiring manager and the director instead endeavored to hire her as a staff services analyst (SSA). However, this particular job posting still required AGPA qualifications and did not state that the department would consider filling the position with any other classification, thereby barring the department from hiring the daughter into the SSA classification as well. Despite this obstacle, the hiring manager, with the director's approval, took steps to hire the director's daughter as an SSA through the use of an *internal transfer exam*. As described in the text box on page 5, an internal transfer exam is, by design and definition, available to—and valid for—only those currently employed by the State. Again, without regard for the established employment rules, the daughter took that exam for the SSA classification in November 2011, and within one week, she began working as an SSA—in the position originally advertised as requiring an AGPA classification—in the director's department.

"We may have to do a posting so you are not criticized."

—November 4, 2011, email from the director to her daughter after the hiring process was nearly complete.

The Director Prevented a Corrective Action Against Her Daughter

In May 2012, the director deepened her pattern of nepotism and exercised undue influence in her daughter's employment in the department when she prevented her daughter's supervisor from following protocol and disciplining the daughter for problematic attendance. As the State's progressive discipline policy requirements provide, her supervisor drafted a counseling memo to address the director's daughter's tardiness and failure to complete work in a timely manner. The supervisor intended to issue the memo to the daughter after obtaining human resources (HR) approval as procedures required.

After the supervisor submitted the draft memo to HR for review and the department's legal counsel had approved its issuance, HR staff members identified the intended recipient of the memo as the director's daughter and recommended that the supervisor *not* issue the memo. According to witness statements and email corroboration, when a senior staff member (who is not in the supervisor's chain of command) learned about the memo, she went to the supervisor and asked, "Are you trying to lose your job?" She then told the supervisor that she should not issue the counseling memo.

Email records and witness statements further demonstrate that those who reported to the director felt the need to alert her to the pending corrective action against her daughter, that the director preemptively alerted the daughter—via both work and personal email accounts—to the situation, and that the director inappropriately intervened to protect her daughter and halt the disciplinary process.

Ultimately, the director's daughter's supervisor never issued the attendance counseling memo. This supervisor told us that issuing the memo would have been a detriment to her career and that she feared retaliation from the director who had a reputation for retaliating against those whose actions displeased her.

The Director Inappropriately Arranged for Her Daughter's Promotion to a Compliance Analyst Position

Relevant Criteria

In very specific circumstances, state law allows a department to promote an employee without going through the State's regular civil service competitive hiring process—often referred to as a *promotion-in-place*. However, the California State Restriction of Appointments Policy and Procedure Manual (SROA Manual) also outlines the conditions that *disallow* a department to promote an employee “in place.”

- An employee may not promote-in-place from a rank-and-file classification to a supervisory, managerial, or higher-level specialist class.
- An employee may not promote-in-place to a true position vacancy.
- The promotion-in-place may not involve a change of position, assignment, or supervisory/subordinate relationship.
- The promotion must follow a typical path by which an employee would usually move to the next higher level in a class series.

If the parameters of a promotion do not meet the requirements outlined above, employers are required to follow the State's regular civil service competitive hiring process.

As early as January 2012—just two months after the director's daughter's initial appointment as an SSA—the director began arranging for her daughter's promotion-in-place to a compliance analyst position, which analyzes compliance with various laws and regulations. The director sent almost monthly emails to various subordinate personnel expressing her opinions and preferences concerning promoting her daughter. Then, the director violated the existing rules for a valid promotion-in-place. For example, the compliance analyst position is not in the promotional path or class series of an SSA, as required for a promotion-in-place. Further, the assigned duties and supervisor for the director's daughter's original SSA position to the compliance analyst position would change significantly, which is not permitted according to the SROA Manual. The compliance analyst position required the daughter to plan and conduct field investigations, inspections, and witness interviews; take affidavits from outside sources; make determinations about whether entities complied with state laws; and report to the department's assistant

chief. By contrast, her work as an SSA was generally limited to analyzing and preparing contracts for the division and assisting with tracking the division's budget; in addition, she would report to a different supervisor.

Since the director's daughter did not meet the requirements for promotion-in-place to the compliance analyst position, the department was bound by law to conduct a competitive selection process to fill the position. Nevertheless, the director exerted enough indirect pressure that despite the supervisor's reservation about the daughter's readiness, the supervisor ultimately acquiesced and the promotion proceeded. In the end, the director's actions diminished the rights of other potential candidates because she did not allow for open and fair competition as state law requires.

The Director Instructed Her Staff to Take Punitive Disciplinary Action Against the Daughter's Supervisor Without Due Process

In 2014 the director's daughter moved from her compliance analyst role and was working as a special investigator in the department's HR office. In July of that year, after the daughter had been in this role for about three months, she complained to the director that she disagreed with the investigative direction from her supervisor, the unit manager, who had been assigned to help the daughter with her first full investigation. In a weekend text to the director, the daughter said that the unit manager's approach would be a "huge disruption and create chaos" and that she needed to continue the investigation with another investigator instead of the unit manager.

Relevant Criteria

State law dictates very precise steps that a department must take to implement an adverse or other disciplinary action against a state employee. The department must properly serve a state employee with a written statement of the pending adverse action, and it must contain specific timelines, reasoning, and notice advising the employee of his or her rights to and requirements for answering or appealing the adverse action. Additionally, the SPB has determined that transferring an employee to another role is a disciplinary act if its purpose is punishment.

After the director learned of the differences of opinion between her daughter and the unit manager, the director instructed the HR chief to immediately remove the unit manager from overseeing the daughter's unit. Email records indicate that the director told the HR chief that the unit manager was "not capable of judgment" as a likely justification for the action. On Saturday night, the HR chief emailed another HR manager, writing that "effective immediately," the unit manager would be removed from her role. In turn, the HR manager forwarded the email to the unit manager, and this email served as the unit manager's notice that she was being transferred. On the following Monday, the HR chief issued instructions that the unit manager was to move out of her office by the end of the week.

In our interviews, both the director and the HR chief told us that the unit manager's involuntary transfer was not made in response to the daughter's communication with the director and cited the unit manager's poor performance as the reason for the punitive disciplinary action. Despite the director's assertion that she "did nothing" in response to her daughter's complaint and that she delegated the situation to the HR chief and told her to "handle it," electronic communication records for July 11, 2014, through July 14, 2014, make clear the following:

- The director's call for the unit manager's immediate and involuntary transfer out of the unit was a direct response to the daughter's complaint.
- The unit manager's involuntary transfer was immediate, disciplinary, and punitive in nature.
- The process by which the director instructed her staff to implement the disciplinary action violated state law and many of its requirements for carrying out a valid adverse action.

In addition, we found no evidence that the department gave the unit manager notice or a right to appeal, and the unit manager told us that she was never served with a formal notice of disciplinary action.

The Director Failed to Comply With State Law When She Arranged for Her Daughter's Transfer to Information Technology

Relevant Criteria

State law prohibits a department from assigning any person to perform the duties of any class other than that to which his or her position is allocated. However, departments may temporarily assign employees to the duties typical of a different classification (special assignment) if the assignment's purpose is for training and development (T&D), if it meets a compelling management need, or if its purpose is to facilitate the return of an injured employee to work. Additionally, the department must document the special assignment in writing and indicate the assignment's specific duration and duties.

In November 2014, the director's daughter received an anonymous letter at her home and her office in which the author enumerated ten ways that the daughter was benefitting from the director's inappropriate involvement in her state employment. Following the daughter's communication to the director about the troubling anonymous letter, the director took immediate action to move her daughter into a different office. She consulted on a Saturday in person with the department's CIO, the director's brother, and she then informed the HR chief that her daughter would move into an information technology (IT)

position within his office, that the position would coordinate IT training needs, and that her daughter would report to a specific IT manager.

Subsequently, the CIO sent an email to inform the IT manager that the director's daughter would be reporting to him. Since the IT manager had not previously overseen training office responsibilities, the CIO went on to describe the position as "a revival of a function" that would be responsible for tracking mandatory training and that the function could grow to include all the IT training in the department.

In the meantime, the HR chief issued a reassignment memo to the director's daughter that simply stated the following:

"This memorandum is to confirm that effective November 18, 2014 you are being placed on a special assignment to the [department's] Training Office. While you are on special assignment, you will be reporting to [the IT manager] ...".

The memo concluded with other logistical information about how the new role would not entitle the daughter to relocation or travel expense reimbursement. Neither this memo, nor any other official documentation that we could locate in this investigation, identified any of the three acceptable circumstances that allowed for a valid special assignment. Furthermore, we could not find anything that indicated the duration of the special assignment or the specific duties that the director's daughter was expected to perform.

Although the director's daughter's classification remained unchanged for six months, she neither performed the duties of a special investigator nor spent a majority of her time tracking the training that staff completed. Instead, she performed various other HR-related administrative duties such as coordinating the department's compliance with the Dymally-Alatorre Bilingual Services Act (bilingual act) and updating training-related content on the department's intranet.

Furthermore, email records and witness statements demonstrate that the transfer of the director's daughter created an inappropriate reporting relationship. The daughter did not take her direction from the IT manager as originally indicated; instead, the director functioned loosely and inappropriately as her daughter's supervisor. Evidence revealed that the director assigned many, if not all, of her daughter's duties, that her daughter often reported her work progress to the director, and that the director frequently reviewed work her daughter performed on the bilingual act and intranet content.

The director admitted that her conversations were more supervisory in nature and that she provided her daughter with "concepts" that her daughter could then tell her supervisor she was doing with her time. The director said that because of their "special relationship," her daughter knew how the director liked things to be completed. The IT manager confirmed that he did not assign any of the director's daughter's duties during this time.

The Director Preselected Her Daughter for a Bad Faith Training and Development Assignment

By early 2015, the director had instructed HR staff to find a permanent position for her daughter in the IT office. According to an HR staff member, her supervisor instructed her to make a chart that would show where the director's daughter could fit into the IT office in a role that was general enough for her; management would then present the results to the director for her to choose which position she wanted for her daughter. The HR staff member identified the IT procurement and contracting unit as the best fit for the daughter.

Once the director decided that she wanted her daughter placed in that IT procurement and contracting role, she further thwarted protocol by not involving the IT manager in defining the position even though the IT manager oversaw IT procurement and contracting and would be the direct supervisor of that role. Instead, the director, her brother, and her daughter—the preselected recipient of the appointment—worked together to prepare the T&D agreement for the daughter's new position. In fact, the IT manager told us that he was largely unaware of any plan to place the director's daughter in a T&D position within his unit until he saw the final HR-approved T&D agreement.

On April 28, 2015, HR issued a memo that approved the director's daughter's T&D assignment and established its time frame as May 1, 2015, to April 30, 2017. As Figure 3 on the following page shows, by June 10, all necessary parties had signed the T&D agreement; however, on June 12, an HR staff member emailed the HR chief explaining that because this placement involved filling a vacant position, the department was required to publicly advertise the vacancy before filling it. HR issued the publicly advertised job posting on June 23, and it stipulated that all applications were due by July 7. The advertisement identified two important limitations: (1) applications received after the advertised due date would not be accepted; and (2) only current department employees would be considered for the position, thereby limiting the pool of candidates.

After the advertisement was posted, the director questioned the need for her daughter to submit an application for the position. However, her daughter signed her application on July 23 and submitted the application the next day, more than two weeks past the due date. When an HR staff member reviewed the application on August 3, she saw that the date on the daughter's

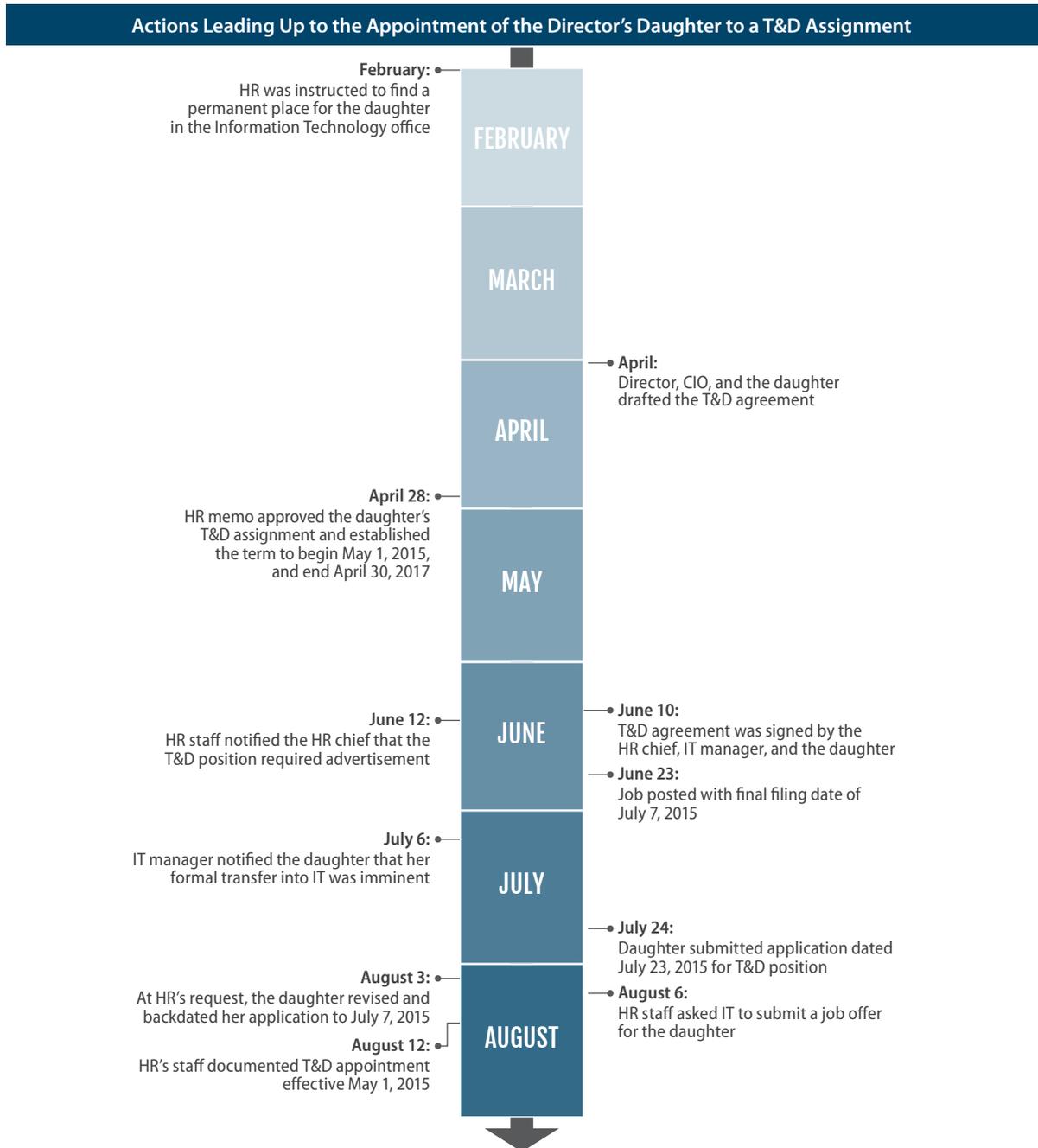
Relevant Criteria

State law requires that all job announcements be advertised on the CalHR website before they are filled. State law also authorizes departments to assign T&D assignments, which provide training opportunities in a career field different from that in which an employee currently serves. A T&D agreement outlines the assignment's time frame and describes the training the employee must receive to achieve eligibility for regular employment in the classification.

application was past the job closing date and asked that the daughter change the date on the application. Almost one month past the advertised due date, the director's daughter resubmitted her application now predated to July 7, 2015.

Figure 3

The Appointment of the Director's Daughter to a T & D Assignment Defied the Department's Typical Personnel Protocol From February Through August 2015



Source: California State Auditor's analysis of witness statements, personnel files, and email records.

The department ultimately extended the job offer to the director's daughter in August 2015. When we interviewed the IT manager about the hiring process, he confirmed that as the hiring manager for a vacancy in his unit, he normally would be involved in the hiring steps to fill it. However, he did not recall ever being provided with job applications to review or participating in any candidate interviews. He said that he was not asked for input on anything related to the director's daughter's placement in the T&D assignment. In total, the timeline of this hiring process and the IT manager's statements offer clear evidence that the department did not, in fact, conduct a good faith competitive selection process and that the director actively participated in the preselection of her daughter and the preclusion of any other potential candidates.

Finally, on August 12, 2015, the director's daughter's official employment record was documented to reflect that the daughter began the T&D assignment on May 1, 2015, nearly three months before the job offer was extended to her, presumably to facilitate her claim that this experience qualified her for a later promotion. The IT manager confirmed that she did not begin working in that role in May 2015.

Recommendations

Given the totality of the director's improper conduct, the oversight agency should work with the Governor's Office to take appropriate steps to ensure that the director, and any other individual who may occupy her position, cannot take similar actions.

The oversight agency should also take the following actions:

- Require the director, the HR chief, and the senior staff member to undergo CalHR or SPB training on the requirements for making good faith appointments.
- Ensure that the department strengthens its nepotism policy so that it prohibits employees with personal relationships from having any involvement in the selection, appointment, promotion, retention, supervision, and discipline of one another.

The California State Auditor will forward the results of this investigation to SPB and recommend that it void any improper appointments, if appropriate.

The California State Auditor will forward the results of this investigation to CalHR to review its delegation of authority agreement with the department regarding the department's hiring practices.

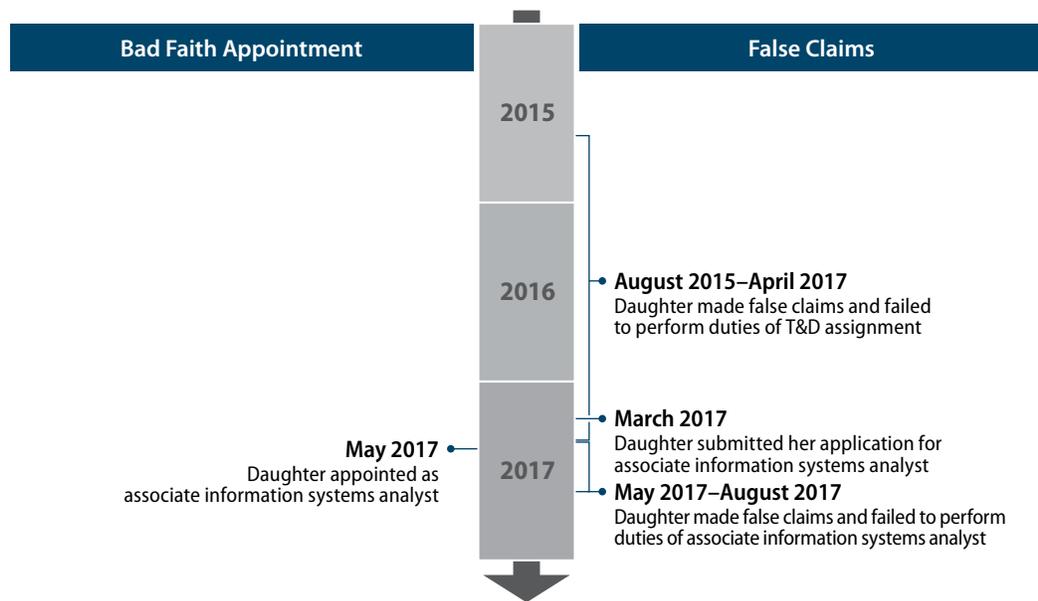
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Chapter 2

DISHONESTY—DESPITE THE DIRECTOR’S ACTIVE INVOLVEMENT IN HER DAUGHTER’S CAREER, THE DAUGHTER FAILED TO PERFORM HER DUTIES AND SUBMITTED FALSE CLAIMS

From August 2015 through April 2017, the director’s daughter failed to substantially engage in or complete the duties agreed to in her T&D agreement. Furthermore, there is little evidence that she completed any alternate duties during this time. However, she submitted timesheets indicating that she regularly worked 40-hour workweeks during her time in the T&D assignment, and she then claimed that T&D time as the experience that satisfied the minimum qualifications for her subsequent appointment as an associate information systems analyst (AISA). Finally, as Figure 4 illustrates, from May 2017 to early August 2017, after the director’s daughter had attained the AISA promotion, she continued to claim full-time hours on timesheets and she continued to produce no substantial work.

Figure 4
 The Director’s Daughter Failed to Perform the Duties of Her Positions and Filed False Claims From August 2015 Through Early August 2017



Source: California State Auditor’s analysis of witness statements, personnel files, and email records.

The evidence we discovered in email records, personnel files, system reports, and witness statements demonstrates that the director’s daughter acted dishonestly in the following ways:

- For the 21 months from August 2015 to April 2017, she failed to substantially engage in or complete the duties she agreed to in her T&D agreement.
- She submitted fraudulent timesheets indicating that she regularly worked 40-hour workweeks during this time for which the State paid her more than \$102,000 in salary.

- On her official application for appointment as an AISA, she claimed the time that she supposedly worked in her T&D assignment as the experience necessary to meet the minimum qualifications for the AISA classification.
- For the four months from April 2017 through early August 2017, evidence indicates that she did not perform any of the work she claimed to have engaged in as an AISA, but she continued to submit timesheets reporting full-time work, for which the State paid her more than \$27,000.

The Director's Daughter Failed to Perform the Duties of Her T&D Assignment, and She Made False Claims About Hours and Assignments Worked

Relevant Criteria

State law requires that state employees devote their full time, attention, and efforts to their duties during their scheduled work hours. It also provides that employees may be disciplined for acts of dishonesty and inexcusable neglect of duty.

State law states that anyone who, with intent to defraud the State, presents for payment any false or fraudulent claim may face a penalty of imprisonment, a fine, or both.

Employers must make *reasonable accommodations*—changes to the workplace or to the way a job is performed—that will enable employees or job applicants with medically verified disabilities to successfully perform a position's basic duties. Reasonable accommodations do not change the essential functions of the job.

The State may take action to recover an overpayment if it does so within three years of the overpayment.

During the same week that the director's daughter initially submitted her late application for the T&D assignment in IT procurement and contracting, she also submitted a request to the IT manager for a reasonable accommodation that would allow her to work from home full-time. Although she provided the required doctor's note that requested consideration for her to work from home, we found no evidence that the department followed its established procedures to approve the accommodation. The department did provide us with the daughter's telecommuting agreement, but it was not complete with signatures and it did not articulate a set work schedule, both of which were required.

Nevertheless, the T&D agreement, which the director's daughter helped to draft, specified her T&D duties: she was to

“perform journey level procurement and contracting of [IT] goods and services...” and was to receive “routine intensive training.” She was supposed to spend much of her time working with IT managers procuring goods and services required for IT operations and projects. She was expected to divide the rest of her time between contract analysis and other activities related to transaction management.

In our interview with the director's daughter, she admitted that, other than reading the *State Administrative Manual* (which would not suffice as full-time work), she did not during the 21 months of her T&D assignment, perform any of the procurement or contracting duties listed in the T&D agreement. The IT manager confirmed that she did not perform the listed activities, and he added that these were not duties that could be performed as a full-time telecommuter.

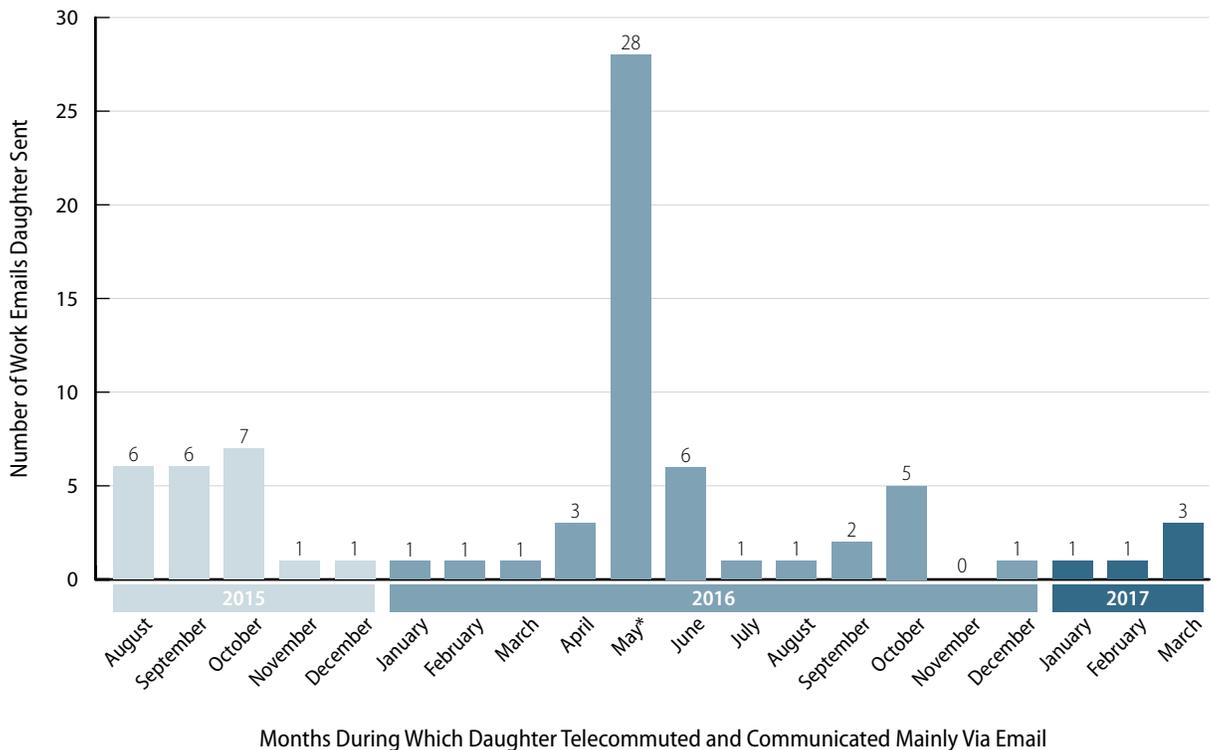
The director's daughter's and IT manager's interview statements establish that their main form of communication was through email while she was on her T&D assignment. Although the daughter claimed to have participated in some phone conversations with her manager, evidence suggests that the IT manager did not even have the daughter's phone number for a time. When we reviewed the daughter's email activity from August 2015 through March 2017, we found very little evidence of communication or work product while she was working from home. In fact, as

Figure 5 demonstrates, for 11 of those months we found either zero or just one work email sent by the daughter per month. In eight other months, she sent no more than seven work emails per month. In May 2016, the daughter decided to return to working in an office, but about a week after she began reporting to the office, she returned to working from home.

When we asked the director about her daughter’s lack of email activity while she was working from home on the T&D assignment, the director claimed her daughter had been working the department’s call center. The IT manager said that he too believed that the daughter was working on call center activity and that the call center staff set her schedule. The call center is a cloud-based system that allows employees to log in from remote locations, answer calls from the public, and provide assistance or department-related information. However, the chief of staff, who managed the call center, stated that the director’s daughter was only added to the call center in May 2016, eight months after she first claimed to begin working the call center. Furthermore, records indicate that she logged into the system on only two days, May 17 and May 18, 2016, and only for a combined total of 50 minutes during the entire period in question. In total, from August 2015 through March 2017, the daughter submitted timesheets claiming full-time work, charging minimal vacation time, and receiving \$102,269 in salary for these 21 months.

Despite the above issues and the IT manager’s admission in his interview with us that the director’s daughter had been his worst employee, she was next promoted to the AISA role as described below.

Figure 5
The Director’s Daughter Sent Fewer Than Seven Work Email Messages in Most Months From August 2015 Through March 2017



Source: California State Auditor’s analysis of the daughter’s sent email messages.

* We found that because the director’s daughter worked in an office for a small portion of May 2016, the daughter sent a higher number of emails.

The Director's Daughter Did Not Meet the Minimum Qualifications for Her Promotion and Made False Claims About the Work She Performed

Relevant Criteria

Standard state applications require candidates to certify the accuracy and completeness of their application under penalty of perjury. Any false, incomplete, or incorrect statements may result in disqualification from the examination process or dismissal from employment with the State.

As the text box on page 16 explains, anyone who presents any false or fraudulent claim for payment may face a penalty of imprisonment, a fine, or both; and state law provides that an employee may be disciplined for acts of dishonesty and inexcusable neglect of duty. It also permits the State to recover an overpayment if it does so within three years of the overpayment.

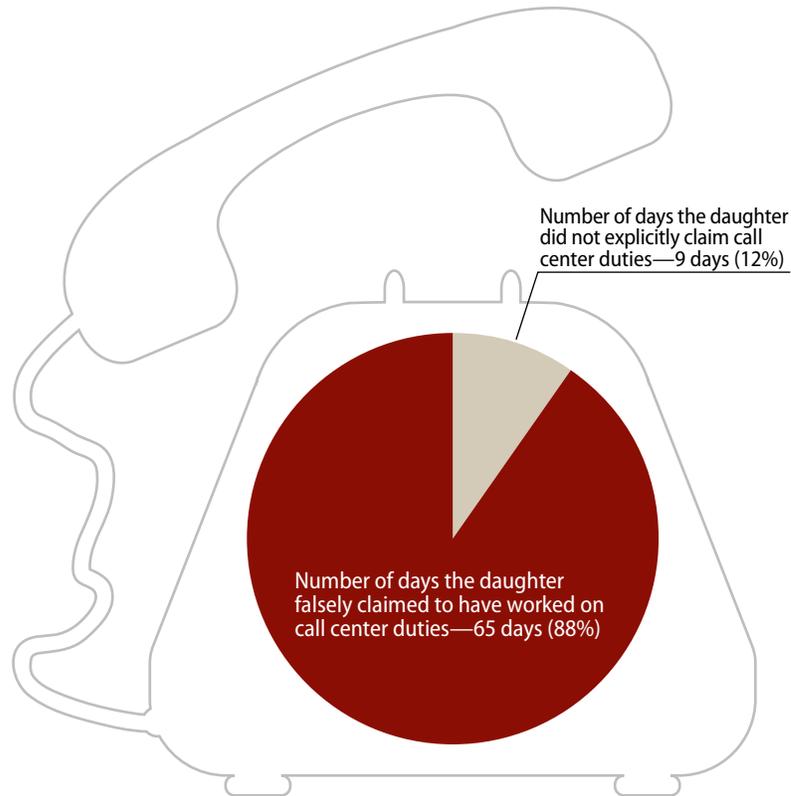
As established above, the director's daughter did not perform the listed duties of her T&D agreement, which were developed to give her the experience necessary to meet the minimum qualifications for the AISA position. In addition, the evidence we received does not support the claim that she performed any other substantial work during that time. However, she still claimed on her state application for the AISA job that she worked 40 hours each week beginning May 2015 in her T&D position. Therefore, the director's daughter provided false information on her state application.

The director's daughter began reporting to a new supervisor in April 2017 before she was officially appointed to the AISA position in May 2017. According to the new supervisor, the daughter was assigned to her because she had been having issues reporting her work time to the IT manager. Therefore, the new supervisor did not believe she was actually responsible for assigning any duties to the daughter. Rather, her responsibility was simply to receive the director's daughter's attendance reports, which she did by requiring the daughter to send her daily emails to account for her time.

When we asked the new supervisor what duties the director's daughter performed while she worked for her, she stated that the daughter worked on the department's call center managed by the chief of staff. As Figure 6 on the following page shows, we reviewed the daughter's daily emails to her new supervisor and saw that on 65 of the 74 days (88 percent) during which she reported to the new supervisor, the daughter specifically told the supervisor that she would be answering phone calls for the department's call center. However, when we obtained the daughter's call center records for this period, we found that the daughter had neither logged in nor answered a single call from April 2017 through early August 2017.

When we asked the director's daughter in a December 2017 interview about the contradiction between her daily email assertions to her most recent supervisor and the log-in records that proved that she had not performed the work she claimed, she admitted that she had lied in the daily emails to her supervisor. We also found that she was dishonest when she said that instead of call center work, she had been working on the department's intranet and had reported her progress on the intranet to the CIO, the director's brother. Realizing the impropriety of her statement, she immediately retracted it and ultimately could not provide us with the name of anyone to whom she had reported. When we checked email records, most of the intranet work she performed had been completed years prior, and we verified with the IT manager that the intranet project had been suspended well before this time frame. Ultimately, the daughter could not provide us with proof of any contemporaneous work product from April 2017 until she went on long-term leave in August 2017. Based on the timesheets that she submitted, she was paid \$27,060 during these four months.

Figure 6
Number of Days the Daughter Falsely Reported That She Worked on Call Center Duties From April Through Early August 2017



Source: California State Auditor's review of the daughter's emails from April 2017 through early August 2017.

Recommendations

Given the director's daughter's improper conduct, we recommend that the oversight agency take the following actions:

- Discipline her for her improper activities and document the actions in her official personnel file.
- Collect \$129,329 from her for her fraudulent claims of time worked.
- Suspend her telecommuting agreement.
- Require the IT manager and the new supervisor to attend external training related to the proper supervision of staff and, in particular, of staff who work remotely.

- Require the director, the IT manager, and the new supervisor to undergo training by CalHR related to the proper procedures to formalize and manage reasonable accommodations.
- Ensure that all staff who are currently permitted to telecommute full-time have the proper documentation and justification on file and require that telecommuting agreements be reevaluated annually.

The California State Auditor will forward the results of this investigation to SPB and recommend that it void any improper appointments, if appropriate.

The California State Auditor will forward the results of this investigation to CalHR to review its delegation of authority agreement with the department regarding the department's hiring practices.

Chapter 3

FAVORITISM—THE DIRECTOR IMPROPERLY INFLUENCED PERSONNEL ACTIONS THAT FAVORED A NOW-EXECUTIVE EMPLOYEE, ORDERED THE FALSIFICATION OF DOCUMENTS, AND APPROVED UNJUSTIFIED EXTRA PAY

In another series of bad faith appointments, which closely mirror those that the director facilitated to benefit her daughter (see Chapter 1), the director similarly demonstrated blatant disregard for merit-based employment principles when she showed favoritism in the personnel actions she influenced on behalf of one employee who now holds an executive position. Figure 7 on the following page illustrates the timeline of the relevant personnel actions and some of the circumstances that surrounded them.

The evidence we discovered in email records, personnel files, and witness statements demonstrates the director’s gross misconduct in the following ways:

- The director preselected the executive for a lower-level position in her department and hired her without following protocol, she improperly promoted the executive to a management classification, and she preselected the executive again for a newly created career executive assignment (CEA) position.
- The director instructed her staff to violate state law by setting aside the executive’s resignation and backdating records to falsify the documentation for a leave of absence.
- The director improperly reinstated the executive into her former CEA role.
- The director allowed a continuance of a pay differential (extra pay) for the executive without properly documenting that it met the criteria.

The Director Facilitated Three Bad Faith Appointments for the Benefit of One Person Whom She Hired From Private Industry and Rapidly Promoted to an Executive Role

The director triggered three bad faith appointments in a span of 13 months for the benefit of an executive she hired from private industry. Just as the director made a bad faith appointment when she preselected her daughter for the daughter’s first job in the department, the director similarly disregarded hiring rules for this executive. In fact, the director preselected the executive as the winning candidate before the department had even begun the proper competitive hiring process. In addition, because of the illegal way the appointment was made, the department cannot demonstrate that it gave deference to state employees in jeopardy of layoff.

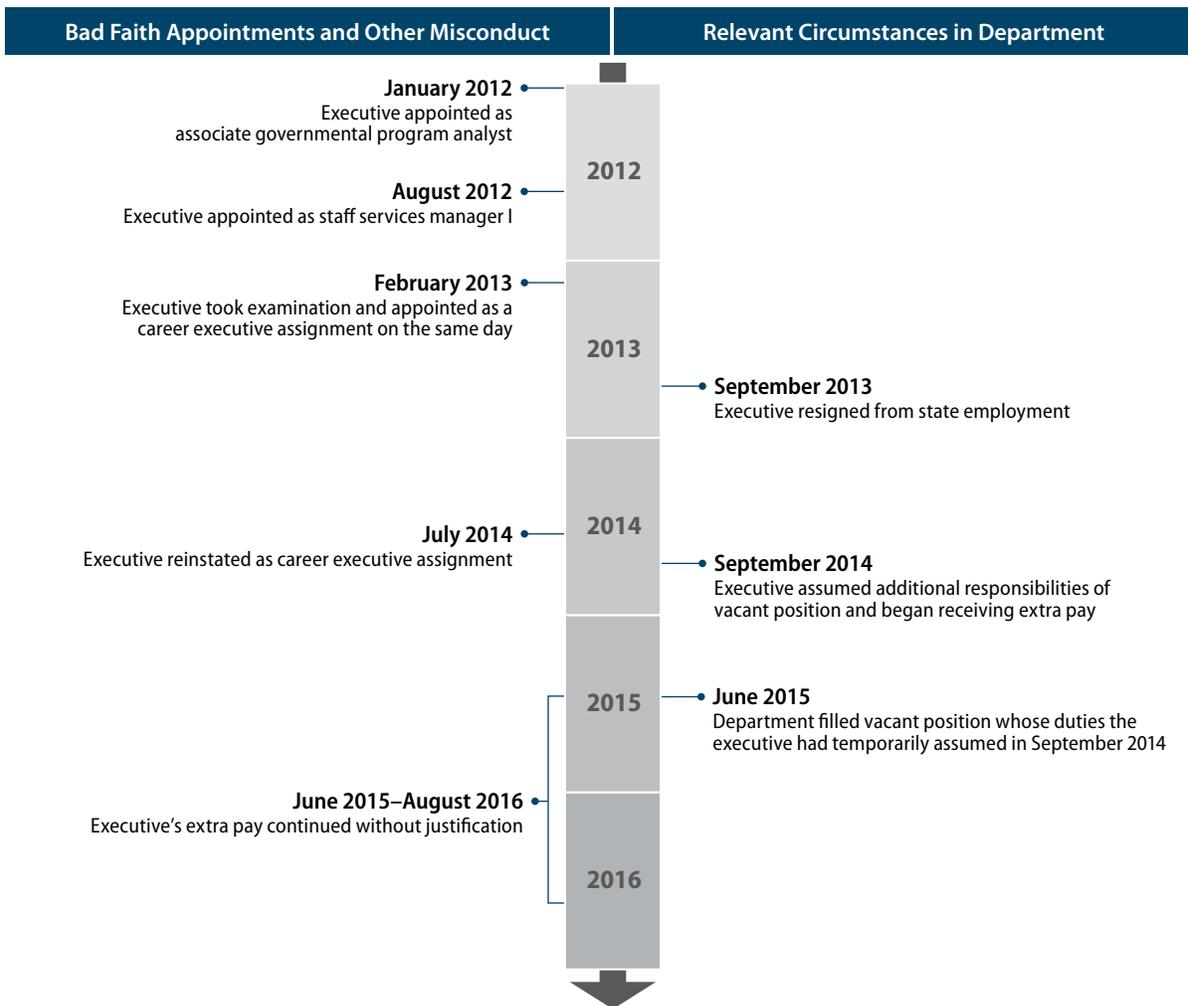
Relevant Criteria

State law mandates that appointments to state jobs must consider only candidates’ knowledge, skills, and abilities to effectively complete the duties of the position.

As the text box on page 8 describes, state law only allows a department to promote an employee *in place*—to bypass the state’s competitive hiring and promotion processes—in very specific circumstances. For instance, an employee may not promote-in-place from a rank-and-file classification to a managerial or higher-level specialist class.

Figure 7

The Director's Pattern of Gross Misconduct Continued When She Repeatedly Facilitated Bad Faith Appointments and Failed to Justify Extra Pay for One Executive From 2012 Through 2016



Source: California State Auditor's analysis of witness statements, personnel files, and email records.

A little more than seven months after the executive was hired, the director facilitated a promotion-in-place that was not permitted, which moved the executive from the rank-and-file classification of AGPA to the managerial classification of a staff services manager (SSM) I. Since the promotion-in-place did not meet the limited circumstances outlined in the SROA Manual, filling the SSM I opportunity should have been carried out through a fair and open competition available to all qualified candidates.

Then, less than seven months after the executive's improper promotion-in-place to SSM I, the director again preselected the executive to fill a CEA role. Although the job posting for the CEA position was publicly posted on January 22, 2013, allowing other eligible candidates

to apply, we found that before the executive's appointment to the CEA position, HR staff members and a senior staff member exchanged multiple emails that referred to the CEA position as that executive's position. Subsequently, on February 21, 2013, the executive took the examination for the position and on the very same day, her appointment became effective.

The Director Ordered the Falsification of Documentation and Improperly Reinstated the Executive to Her Prior CEA Job

In September 2013, the executive informed the department she was going to resign her state employment to complete her doctoral studies. The department's HR chief attested—and email records confirmed—that before the executive submitted the paperwork to make her separation official, the HR chief informed her that taking a leave of absence would be better than officially leaving state employment. However, the executive decided to officially resign from state employment and she cashed out her accrued leave balances. Records from the State Controller's Office verify that as of September 13, 2013, the executive had completely separated from state employment.

In May 2014, after the executive had completed her doctorate, the director contacted her and asked if she was interested in returning to the department to lead the "policy research team." The executive expressed her interest and said that she "looked forward to discussing the vision and conditions of the position."

The director then asked one of her senior staff members to determine whether the executive could reinstate to her former CEA position. The senior staff member—having researched the answer and consulted with the HR chief, who confirmed the information with a contact at CalHR—reported back to the director that the executive could not, in fact, return directly to the CEA position. Specifically, the executive would have to take the CEA exam again, and because the CEA exam was available only to current state employees, the executive would first have to reinstate at her highest prior civil service classification as an SSM I. After that, she could take the CEA exam again and the director could reappoint her as a CEA. Records indicate that the director initially planned to follow the protocol: one of the managers in the department extended a job offer to the executive at a classification roughly equivalent to that of SSM I, and the executive agreed to start about a week later.

Relevant Criteria

State law says that no resignation shall be set aside on the ground that it was given or obtained by reason of mistake.

State law also defines a career executive assignment (CEA) as an appointment to a high-level policy-influencing position that is typically part of a department's executive management team. Because the CEA employment category uniquely recognizes the broad responsibilities of the employees in these top managerial roles, the CEA is set apart from other civil service classifications, requires separate qualification exams, and is governed by different employment rules. While these rules changed in 2015, those in effect during the time of the actions described in this report did not allow for direct reinstatement to a CEA position. Instead, employees in CEA roles who voluntarily separated from state employment and later wished to return were entitled to reinstate to the highest level of regular civil service classification that they attained before their CEA appointment.

However, five days before that start date, the director inexplicably decided to reinstate the executive as a CEA rather than in the position for which she had interviewed and accepted the offer. The following events then took place:

- July 12, 2014, 12:37 p.m.

The director emailed the HR chief and said “[the executive] will come back reinstated to her CEA [position] because she did not understand she had a leave [of absence] option ...”.

- July 12, 2014, 1:04 p.m.

The executive sent to the director an email about possible leave options:

Dear Director [last name],

I recently encountered information regarding state service processes for leave time. I was not aware of the array of leave options available with state service when it became necessary for me to focus full time on completing my doctorate degree requirements. I did not understand the process involved to pursue/achieve such an arrangement with the department. Would you please advise if there are any options available at this time, given these circumstances?

Thank you for your time and consideration.

Kind regards,
[Executive]

- July 12, 2014, 2:41 p.m.

The director forwarded the executive’s email to the HR chief and said, “Please reinstate her.”

Despite knowing that the executive’s reinstatement was not permitted, the HR chief ultimately complied with the director’s instructions. On or around July 21, 2014, she prepared—and the director signed—a backdated memo that stated the director’s approval of an education-related leave of absence for the executive effective September 13, 2013. According to the HR chief, the director gave unequivocal instruction that the backdated memo should void and replace the executive’s separation documentation in her official employment records.

In our interview with the HR chief, we asked whether she felt that the instructions to reinstate the executive were optional or open to additional discussion. She said that she had already clearly informed the director that the executive could not be reinstated as a CEA, and if the director insisted that the HR chief reinstate the executive, “then I’ll reinstate her.” We posed the same question to another member of the HR staff and he said that he was not happy about it when the HR chief instructed him to void the executive’s separation from state employment because he knew it was improper. However, he felt he had no choice in the matter.

The Director Approved a Continuation of Extra Pay Without Documenting That It Satisfied Applicable Criteria

Beginning in September 2014, the director had the executive assume some additional responsibilities—50 percent of the duties of a then-vacant executive position—for which the director approved 10 percent in extra pay each month for up to 24 months or whenever the department filled the vacant executive position. In June 2015, the department promoted an employee to fill the vacant position; thus, the executive no longer had to perform those extra duties. An HR staff member asked the new HR chief if the extra pay for the executive should end and the director said she wanted the executive to continue receiving the extra pay because the executive was “performing other special/additional duties.” HR management communicated to others and the director that for the extra pay to continue, they would need to have a new written justification on file for the executive’s extra monthly salary. Email records show at least four attempts to get a new justification, but neither the director nor anyone else ever provided one.

Relevant Criteria

CEAs whose responsibilities go beyond those in their job descriptions for a minimum of three months to a maximum of 24 months may receive a pay differential (extra pay) of up to 10 percent of their salary.

As the text box on page 16 explains, the State may take action to recover an overpayment if it does so within three years from the date of overpayment.

Even though the director did not provide the requested justification, the executive continued to receive the monthly extra pay after June 2015. We requested but did not receive clear documentation suggesting that the additional pay was appropriate and warranted. In addition, members of the HR management and staff believed that they were not permitted to make any changes to the executive’s pay. For example, one HR staff member stated if he had removed the extra pay when the position was filled, “it would have caused a lot of turmoil. I mean, [the executive] would have noticed it in her check, she would have went to the director... I probably would have had to put [the extra pay] back on...I wasn’t going to touch it.” Another HR staff member also stated that she could not have the extra pay removed because she “would have gotten in trouble.” She added that “it’s common knowledge that [the executive] and the director are close. If we had [removed the extra pay], all hell would have broken loose.” As a result, the State may have paid the executive a total of \$13,191 in unjustified extra pay for the 15 months from June 2015 through August 2016.

Recommendations

Given the totality of the director’s improper conduct, the oversight agency should work with the Governor’s office to take appropriate steps to ensure that the director, or any other individual who may occupy her position, is prevented from taking similar actions.

The oversight agency should also require the director, HR chief, and the senior staff member to undergo CalHR or SPB training on the requirements for making good-faith appointments, permissible reinstatements, leaves of absences, and pay differentials.

The California State Auditor will forward the results of this investigation to SPB and recommend that it void any improper appointments, if appropriate.

The California State Auditor will forward the results of this investigation to CalHR to review its delegation of authority agreement with the department regarding the department's hiring practices, and if appropriate, require the department to collect \$13,191 from the executive for the extra pay she received.

Chapter 4

RISK TO THE STATE—THE DIRECTOR PUT THE STATE AT RISK WHEN SHE CHARACTERIZED EMPLOYEES BY RACE AND ATTEMPTED TO IDENTIFY AND RETALIATE AGAINST SUSPECTED WHISTLEBLOWERS

During our investigation of the director, she categorized and described her employees by racial characteristics on several occasions. Furthermore, witnesses consistently described a pattern wherein the director attempted to take vindictive actions against those whom she believed were disloyal to her. In our interactions with the director, we observed that she adamantly and repeatedly speculated as to the identity of the individual she perceived to be the whistleblower, and she took concerted steps that were retaliatory in nature against those whom she believed to have provided information to us. Finally, despite our repeated warnings, the director violated our confidentiality statute and improperly divulged information about this investigation.

The Director Repeatedly Referenced Her Employees by Race, Ethnicity, or Other Similar Characteristics

In the course of this investigation, we encountered multiple statements in which the director referred to an individual employee or group of employees by racial, ethnic, or age-related characteristics. For instance, when accusing her daughter’s supervisor of writing the anonymous letter, the director wrote in an email that her daughter’s supervisor and her coworker are “all [a] part of the Filipino network...[and the director’s daughter] says they all band together.” In another example, when we asked the director during our November 2017 interview whether she believed that she had exerted undue pressure on the personnel-action decision that one of her subordinates had made, her response was this: “She’s an African American tough cookie” and she is a long-term employee, so there was “nothing I could do to pressure her.” We also observed in evidence and heard from witnesses that many employees found offensive and discriminatory the director’s comments about what she termed the “gray tsunami”—an apparent reference to the department’s legal division’s aging workforce and wave of impending retirements.

Relevant Criteria

An employer may not lawfully discriminate against employees based on characteristics such as race, national origin, sex, age, or disability, which includes a perception that the person has any of these characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics.

The director is responsible for establishing and maintaining relationships with all groups concerned with the work of the department. The director is also charged with the responsibility to represent the governor as assigned and serves as a member of the governor’s council.

The use of such comments contributes to a perception that the director—who represents the Governor in her official capacity—lacks the necessary judgment and engages in unbecoming conduct that could be perceived by her employees as discriminatory, which exposes the department and the State to the risk of discrimination complaints and lawsuits.

The Director Fostered a Culture of Fear in Which Her Employees Felt Compelled to Sidestep Rules or Face Potential Retaliation

In the witness statements we collected as a part of this investigation, 20 of the individuals we interviewed told us that they feared possible retaliation from the director as a result of speaking with our office. Several witnesses alleged that the director had a history of retaliating against those whom she believed were disloyal to her, which contributed to a culture of fear in the department. Employees feared that if they did not follow the director's instructions—even when they knew that those personnel actions were contrary to the merit-based employment principles that the department was obligated to uphold—it could adversely affect their career paths. One HR staff member told us that HR was regularly instructed to process work that was illegal and that the staff did not speak up because they feared retaliation. Another HR employee asserted that the director's daughter received preferential treatment because of her relationship to the director. He also echoed the fears others expressed about challenging orders when an issue related to the daughter and her employment arose.

The director's disregard for civil service rules contributed to a pattern of gross misconduct. One example relates to her daughter's bad faith appointment to the T&D assignment in the IT office (see Chapter 1). HR staff reported to us that they felt pressure to "make it happen" despite the daughter's failure to follow the proper application process. One member of the HR staff said that she felt pressured by her management and department executives to disregard personnel rules. She said that the director's daughter "is an independent country, nobody can touch her...[and that] the director...historically doesn't care about civil service rules. [Executives] just want us to make it happen."

Just as with the director's references to employees' racial or ethnic characteristics that we discussed above, the director's disregard for civil service rules puts the State at increased risk for retaliation complaints.

The Director Improperly Attempted to Identify Whistleblowers and Retaliate Against Them

Throughout our November 2017 interview with the director, instead of focusing on answering our questions about her department's personnel actions, the director speculated about the

Relevant Criteria

The whistleblower act protects state employees who report improper governmental activities. It prohibits retaliation against those who make such protected disclosures (whistleblowers) and defines it as a crime punishable by monetary penalties and imprisonment. State law further prohibits individuals from using—or even attempting to use—their official authority to intimidate, coerce, or otherwise interfere with a whistleblower's rights. Use of *official authority* includes conferring any benefit, such as appointment or promotion, or effecting any reprisal, such as suspension or other disciplinary action.

whistleblower's identity. She said she believed that our investigation had originated from a particular individual who no longer worked for the department and who was upset with her and wanted to "get back at her." We cautioned the director against such speculation because we were concerned about possible retaliation toward those whom she perceived to have provided information to our office. Despite our warning, the director continued to insist that she knew that "a cabal of people" was motivated against her. She even asserted that she could prove the whistleblower's dislike

for her by obtaining and showing to us email messages that would support her suspicion. We informed her that we would disregard any such emails and we attempted to refocus the director’s attention on the allegations.

Disregarding our warnings, in early December 2017 the director affirmed instructions for an employee who reported to her (reporting employee) to review all email messages exchanged between the individual whom the director suspected of being the whistleblower (suspected whistleblower) and other department employees. After her review of the emails in question, the reporting employee wrote a memo for the director that named three high-level department employees who had regularly communicated with the suspected whistleblower. The director then forwarded this memo to our office in an email on December 11 in an effort to discredit those she believed were providing us with information.

On December 21, the director—through the reporting employee—provided a draft memo to the department’s oversight agency to place one of the three high-level employees on administrative leave effective December 26. Two hours after this memo was sent to the oversight agency, our office responded to the director’s December 11 email and admonished her to refrain from any form of retaliation against any possible person submitting an allegation and against anyone who might have assisted us in our investigation. Ultimately, the administrative leave memo was not issued because of “the concern that it may be construed as interfering, or chilling, or...in any way having an impact on the [investigation].”

In addition, despite our admonishment, we found evidence that the reporting employee continued to review the perceived whistleblower’s emails as late as January 31, 2018, when she intercepted a January 16, 2018, email from the suspected whistleblower and a department employee. These patterns of disregard for the law and apparent attempts at retribution constitute gross misconduct under the law, open the State to unnecessary and avoidable risk, and cannot be allowed to continue.

“I have never, and will not ever, engage in any act of retaliation against a [department] employee for disclosure of any information to...[your office].”

—January 10, 2018, email from the director to our office in response to our December 21, 2017, admonishment

The Director Violated the Statute Requiring Confidentiality of Investigative Information

We informed and reminded the director several times during our interview with her that state law requires all parties involved—including the director and all other witnesses we called on—to keep any information about this investigation confidential until the investigation concluded. Nevertheless, the director violated our confidentiality statute by discussing with others the information she obtained from our interview. For example, when we interviewed the department’s chief of staff, she let us know that the director and the department’s chief counsel had informed her that our office would ask her for specific evidence regarding the director’s daughter’s work product. In addition, the CIO also admitted during his

Relevant Criteria

The whistleblower act provides that no information obtained from the State Auditor by any employee as a result of our request for assistance, nor any information obtained thereafter as a result of further investigation, shall be divulged or made known to any person without the prior approval of the State Auditor.

interview with us that the director had informed him that we were conducting interviews and that we would be requesting information about her daughter's T&D assignment. Finally, the very fact that the director instructed her employee to analyze the perceived whistleblower's emails and prepare the memo naming employees who had communicated with the suspected whistleblower indicates to us that she may well have divulged confidential information about our investigation to that staff member. This behavior again reinforces the director's pattern of disregard for the rules when they interfered with her intended course of action.

Recommendations

Given the totality of the director's improper conduct, the oversight agency should work with the Governor's office to take appropriate actions to ensure that the director, or any other individual who may occupy her position, is prevented from taking similar actions.

The California State Auditor will forward the results of this investigation to SPB and recommend that it take appropriate action.

Respectfully submitted,



ELAINE M. HOWLE, CPA
California State Auditor

Date: May 2, 2018

Summary of Agency's Initial Response and California State Auditor's Comments

After reviewing our draft report, the department's oversight agency reported to us in March 2018 that the issues identified are of grave concern and it is committed to ensuring the department adheres to both the spirit and letter of the law governing our merit-based civil service system. It also stated that it is committed to safeguarding the rights of its employees to be free from retaliation or reprisal for making any good faith complaints and communications of improper governmental activities.

Overall, the oversight agency stated that it accepted the recommendations contained in the report and that it would cooperate with the State Personnel Board (SPB) and the Department of Human Resources (CalHR) as they carry out their own investigations into the conduct addressed in this report. It stated that it would commit to taking any remedial action deemed appropriate by SPB and CalHR, including taking disciplinary action and seeking restitution for any improper payments as mentioned in this report.

With respect to the director's daughter's dishonesty discussed in Chapter 2, we note the following regarding the oversight agency's decision to wait upon CalHR and SPB's investigations to take action against the director's daughter. First, CalHR's and SPB's investigations will be focused upon the department's improper hiring practices rather than the daughter's dishonesty in claiming time she did not work. Second, under the law, it is the appointing power, or its authorized representative, not CalHR or SPB, who may discipline the daughter for dishonestly reporting her time and attendance. Lastly, as state law prevents departments from collecting overpayments it made more than three years from the date of overpayment, the oversight agency should work with the department to proceed expeditiously to collect the \$129,329 that the director's daughter was improperly paid from August 2015 through August 2017.

Finally, the oversight agency did not address our recommendations to work with the Governor's office to take appropriate steps regarding the director's gross misconduct as identified in chapters 1, 3, and 4.

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Appendix A

RECOMMENDATIONS AND STATUS OF ACTIONS TAKEN

Since the issuance of the original report, the oversight agency has not fully implemented any of the recommendations, as detailed below.

Chapter 1

Recommendation 1: Given the totality of the director's improper conduct, the oversight agency should work with the Governor's office to take appropriate steps to ensure that the director, and any other individual who may occupy her position, cannot take similar actions.

- **Status: PENDING.** As the director retired from state service, the agency did not take any action against her. To prevent any other individuals who occupy the same position from taking similar actions, the agency stated in May 2018 that it would require the department's future directors to undergo training on the importance of avoiding perceptions of impermissible bias as well as the anti-retaliation provisions of the California Whistleblower Protection Act. The agency did not provide any relevant training completed by its acting director, who subsequently also retired. In March 2019, the agency provided evidence that the department's chief deputy director attended training about these two topics. Once a permanent director is appointed, the agency stated that it would ensure the new director completes the training within 12 months of his or her appointment.

Recommendation 2: The oversight agency should require the director, the HR chief, and the senior staff member to undergo CalHR or SPB training on the requirements for making good faith appointments.

- **Status: PARTIALLY IMPLEMENTED.** In December 2018, the HR chief and two senior staff members attended a "Best Hiring Practices" course provided by CalHR's legal division. However, the acting director did not attend this training and has since retired. In February 2019, the agency reported that the department's chief deputy director completed the training. In March 2019, the agency reported that once the permanent director is appointed, it will direct him or her to complete the training. In addition, the agency informed us that its HR chief position is currently vacant and that once a replacement is hired, it would also require that individual to complete the

recommended training. This recommendation will remain partially implemented until the department's permanent director, when hired, completes the required training.

Recommendation 3: The oversight agency should ensure that the department strengthens its nepotism policy so that it prohibits employees with personal relationships from having any involvement in the selection, appointment, promotion, retention, supervision, and discipline of one another.

- **Status: PARTIALLY IMPLEMENTED.** In August 2018, the agency provided us with a draft of its revised nepotism policy. Our review revealed that, although some improvements were made, the draft policy still allowed the director to grant exceptions; thus, the policy still permitted the director to approve employees with personal relationships to participate in the selection, appointment, retention, supervision and discipline of one another. We recommended to the agency that the policy be revised to specify that if the close relationship involves the director or his or her executive staff, the agency should be required to grant the exception to policy instead of the department director. We also asked that the agency ensure that the policy addresses our recommendation for managers and supervisors with close personal relationships with affected employees to not be involved in the promotion, retention, and discipline of those employees.

The agency agreed to implement the adjustments and in February 2019, the agency provided us with a memorandum the department's chief deputy director issued to all staff specifically addressing our previously identified deficiencies. However, the actual policy does not appear to include the language contained in the memorandum addressing the identified deficiencies. The agency reported in March 2019 that it would formally incorporate the requested changes into its nepotism policy by May 2019. Until the deficiencies are directly addressed within the department's nepotism policy, this recommendation is considered partially implemented.

Chapter 2

Recommendation 4: The oversight agency should discipline the director's daughter for her improper activities and document the actions in her official personnel file.

- **Status: PENDING.** In May 2018, the agency asserted that because the daughter resigned from state employment effective April 2018, she was no longer subject to state

disciplinary action. We responded that although she was no longer a state employee, the agency still should document in the daughter's official personnel file that she resigned shortly after we shared our investigation with the agency. The agency stated in February 2019 that it intends to discuss the recommendation with CalHR, SPB, and other appropriate entities prior to making a final decision. In March 2019 the agency stated that it contacted CalHR and SPB and that neither of them had finalized their reviews at that time. The agency stated that SPB anticipated finalizing its review by April 2019.

Recommendation 5: The oversight agency should collect \$129,329 from the director's daughter for her fraudulent claims of time worked.

- **Status: PENDING.** In May 2018, the agency asserted that because the overpayments are tied to the daughter's associate information systems analyst appointment, it would wait until the SPB completes its investigation into that appointment. We asserted in June 2018 that the daughter's dishonest and fraudulent timesheets could be acted upon under the department's power to collect any overpayments it makes. In addition, we reminded the agency that since collection efforts are limited to three years, it should act expeditiously to recover these funds. The agency asserted that it would wait for direction from SPB before it took any action on this recommendation. In February 2019, the agency stated that it intends to also discuss the recommendation with CalHR and other appropriate entities prior to making a final decision. In March 2019 the agency stated that it contacted CalHR and SPB and that neither of them had finalized their reviews at that time. The agency stated that SPB anticipated finalizing its review by April 2019. By delaying action, the agency has already lost the ability to collect \$41,560 of overpayments because the statute of limitations has expired.

Recommendation 6: The oversight agency should suspend the director's daughter's telecommuting agreement.

- **Status: RESOLVED.** In May 2018, the agency reported that as the director's daughter had resigned, no valid telecommuting agreement requires suspension. Thus, we determined that this recommendation is resolved.

Recommendation 7: The oversight agency should require the IT manager and the new supervisor to attend external training related to the proper supervision of staff and, in particular, of staff who work remotely.

- **Status: RESOLVED.** In July and August 2018, the agency reported that the IT manager and new supervisor would take CalHR's supervisory training course by October 2018. We questioned the agency's proposed action as this training already is mandated biennially by Government Code section 19995.4 and, as evidenced by our findings, did not have the desired effect on the IT manager's and new supervisor's management skills. The agency defended its decision for these individuals to attend this mandated training because neither employee had taken the mandated training in the past 18–20 years and, by taking the course again, the training would enable the two individuals to more effectively discharge their supervisory duties. Ultimately, the agency reported to us that the IT manager completed the supervisory training as planned. The new supervisor did not attend the training because she retired. As the new supervisor is no longer employed by the State, we determined that this recommendation is resolved.

Recommendation 8: The oversight agency should require the director, IT manager, and the new supervisor to undergo training by CalHR related to the proper procedures to formalize and manage reasonable accommodations.

- **Status: PARTIALLY IMPLEMENTED.** By October 2018, the agency provided evidence that the IT manager and new supervisor had attended in-house training relating to reasonable accommodations. Although the training was not provided by CalHR as we originally recommended, the training materials appeared thorough and relevant to the concerns we raised during our investigation. In addition, the department had the HR chief, senior staff member, and all other IT managers and supervisors also attend this training. In March 2019 the agency stated that it would direct the director, when appointed, to complete the training. The recommendation will be deemed partially implemented until the department's permanent director, when appointed, completes the recommended training. We believe the new permanent director should take the training within the initial 90 days from his or her appointment.

Recommendation 9: The oversight agency should ensure that all staff who are currently permitted to telecommute full time have the proper documentation and justification on file and require that telecommuting agreements be reevaluated annually.

- **Status: PARTIALLY IMPLEMENTED.** In June 2018, the agency informed us that the telecommuting program was removed from the new supervisor's unit and returned to the HR division. The agency also stated that as part of its implementation, it would update the department's telecommuting policy to require renewals of all telecommuting agreements annually, develop a communications plan to ensure participants understand their roles and responsibilities, require in-person meetings with management, and provide quarterly reports to the director and administration chief on its telecommuting program. The agency stated in March 2019 that it intends to memorialize the department's communications plan by April 2019.

In February 2019, the agency provided us with a memorandum that the department's chief deputy director issued to telecommuting employees and to department supervisors and managers reminding staff that telecommuting agreements must be renewed annually. However, the actual department policy on telecommuting does not include this requirement. The agency reported in March 2019 that it would formally incorporate the requested changes into the department's telecommuting policy by May 2019.

The agency provided to us its first two quarterly reports in October 2018 and February 2019 which indicate about 250 employees are permitted to telecommute for the department, some of whom are permitted to telecommute full time. It also showed the number of agreements it authorized or renewed in each month. Based on the information we reviewed, the department is addressing the renewals of its telecommute agreements on a monthly basis. Nevertheless, until a revised telecommuting policy is provided that specifically notes that telecommuting agreements must be reevaluated by management annually, the recommendation is only partially implemented.

Chapter 3

Recommendation 10: See recommendation 1 on page 33 for status of actions taken.

Recommendation 11: The oversight agency should require the director, HR chief, and the senior staff member to undergo CalHR or SPB training on the requirements for permissible reinstatements, leaves of absences, and pay differentials.

- **Status: PENDING.** In June 2018, the agency told us that it has decided that all department supervisors and managers would receive this training. In December 2018, the agency stated that it had engaged CalHR to design and provide customized training to the department on these topics. The agency reported that the training is scheduled to occur in late March 2019 and that its chief deputy director and other department managers and executives are enrolled in the training. The agency also stated that the senior staff member was removed from her CEA position and no longer functions in a supervisory capacity. Until the training is completed by the director and HR chief, and we are given an opportunity to evaluate the course materials covered, this recommendation is pending.

Chapter 4

Recommendation 12: See recommendation 1 on page 33 for status of actions taken.

Our office forwarded the results of this investigation to SPB and recommended that it void any improper appointments, if appropriate. In addition, we forwarded the results of this investigation to CalHR to review its delegation of authority agreement with the department regarding its hiring practices, and if appropriate, requested that it require the department to collect \$13,191 from the executive for the extra pay she received.

Appendix B

Titles and Employment Status of Department Employees Identified in This Report

TITLE REFERENCED IN REPORT	EMPLOYMENT STATUS AS OF MARCH 2019
Director	Retired
Director's Daughter	Resigned from State Service
Executive	Department Employee
Chief Information Officer	Retired
Hiring Manager	Department Employee
Senior Staff Member	Department Employee
HR Chief	Department Employee
Chief of Staff	Department Employee
New Supervisor	Retired
Reporting Employee	Resigned from State Service
IT Manager	Retired