

**Department of Personnel &
Administration and the
State Personnel Board**

**Performance Audit
May 2009**



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Members of the Legislative Audit Committee:

This report contains the results of a performance audit of the Department of Personnel & Administration and the State Personnel Board. The audit was conducted pursuant to Section 24-50-103.5(2)(a) and (b), C.R.S., which requires the State Auditor to conduct a performance audit of the Department and Board at least once every four years. The report presents our findings, conclusions, and recommendations, and the responses of the Department of Personnel & Administration and State Personnel Board.

Sally Symanski

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Glossary of Terms and Abbreviations

Applicant Data System (ADS) – a statewide human resources system used to score and rank job applications.

Colorado Personnel and Payroll System (CPPS) – state system that maintains data on employee demographics, employee salaries, and job classifications.

Department of Personnel & Administration (Department) – oversees the state personnel system, manages state facilities and real estate, and provides business services such as financial accounting, purchasing, telecommunications, and administrative hearings.

Division of Human Resources (Division) – carries out the daily administration, oversight, and management of the state personnel system.

Governor's Office of Information Technology (OIT) – oversees technology initiatives at the state level.

Governor's Office of State Planning and Budgeting (OSPB) – develops budgets for state agencies and revenue estimates for the State.

HR Metrics: Roadmap for Measuring HR's Impact (Roadmap) – a report developed by the Division in conjunction with a private consultant that includes human resources metrics.

International Public Management Association for Human Resources (IPMA-HR) – a nonprofit organization that represents the interests of human resources professionals at the federal, state, and local levels of government.

Pro se litigants – parties to an appeal who choose to represent themselves during the appeal without the assistance of an attorney.

State Personnel Board (Board) – promulgates rules for the state personnel system and adjudicates employment disputes between classified employees and state agencies or higher education institutions.

State Personnel Director (Director) – head of the Department of Personnel & Administration and responsible for administering the state personnel system.



**Department of Personnel & Administration and State Personnel Board
Performance Audit
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Purpose and Scope

Our audit reviewed the management and oversight provided by the Division of Human Resources (Division) within the Department of Personnel & Administration (Department) and the State Personnel Board (Board) with respect to the state personnel system. We assessed the Division's implementation of effective workforce planning tools, specifically related to the state employee hiring process, the human resources audit function, and the quality of human resources data. We also evaluated the Board's processes for resolving workplace disputes involving state employees. We acknowledge the cooperation and assistance extended by management and staff at the Department, Division, and Board.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Overview

Article XII, Section 13 of the Colorado Constitution creates the state personnel system, which is composed of all appointive public officers and classified employees of the State. Classified employees, who are members of the state personnel system, and appointing authorities, who are the executive and division heads of agencies with classified employees, must adhere to the policies and procedures established specifically for this system in the Constitution, statutes, and state personnel rules. As of June 30, 2008, there were about 33,200 state classified employees, with an average of 9.4 years of service.

Within the Department, both the Division and the Board oversee various aspects of the state personnel system. The Division is responsible for administering the system in accordance with the Constitution, state laws, and personnel rules, and for providing oversight and guidance to state agencies. The Board is responsible for promulgating rules related to certain aspects of the state personnel system and resolving employee disputes that cannot be resolved at the agency level. The entire Division, which is funded through indirect cost recoveries, fees, and the General Fund, had expenditures of \$328 million in Fiscal Year 2008. Approximately \$2.1 million of the \$328 million went toward human resources activities. The remaining \$326 million was for the State's risk management program, administration of employee benefit plans, training, and the Colorado State

Employee Assistance Program. The Board, which is funded through the General Fund, indirect cost recoveries, or reappropriated cash funds, had expenditures of \$484,000 in Fiscal Year 2008.

Key Findings

State Workforce Management

The Division oversees administration of the state personnel system by providing directives, procedures, technical assistance, and training to state agencies and higher education institutions. We reviewed the Division's role in providing leadership and oversight of the state personnel system and identified the following areas for improvement:

Workforce management tools. The Division has not provided sufficient guidance and directives to state agencies and higher education institutions on implementing workforce management tools, such as metrics related to time-to-hire and succession planning. Of the 40 state human resources professionals responding to our survey, 27 (68 percent) reported that their agencies do not use benchmarks related to the hiring process. We reviewed a sample of 40 positions at eight state agencies and higher education institutions and found that for 80 percent (32 of 40) of the positions, it took the agencies and institutions more than eight weeks to fill the positions. In addition, we found that none of the eight state agencies and institutions in our sample has developed a formal succession plan on an organization-wide basis.

Human resources audits. The Division does not complete all human resources audits in a timely manner. Of the 35 audits conducted since Fiscal Year 2005, 7 (20 percent) have taken more than a year to complete, and four of the audits in progress as of March 2009 had been ongoing 24 months or longer. In addition, the Division does not adequately document its audit work and findings.

Human resources data. The Division does not have a consolidated, integrated information system that allows the Division to track and analyze consistent and reliable human resources data across all state agencies and higher education institutions. Specifically, we found: (1) the State's human resources data are fragmented because there is no one system in the State that contains human resources data for all state agencies and institutions; (2) the data contained in the Applicant Data System, one of the few systems available statewide, are inconsistent and unreliable; and (3) some of the systems housing human resources data are outdated and not viable options for meeting future information needs. As a result, aside from using manual processes, neither the Division nor agency and institution staff have access to some of the basic data needed to effectively manage the state personnel system.

Dispute Resolution

The Board adjudicates mandatory and discretionary appeals resulting from employee disputes. The Board is required to conduct a hearing for all mandatory appeals, which involve disciplinary actions that affect an employee's base pay, classification status, or tenure. In discretionary appeals, which

include issues that do not affect an employee's base pay, status, or tenure, the Board must decide, using statutory criteria, whether or not to grant a hearing. We identified the following areas where the Board could improve its management of the dispute resolution process:

Deadlines for discretionary appeals. The Board does not allow state agencies an opportunity to review employees' claims in discretionary appeals before preparing and submitting responses to those claims. The Board requires that both employees and state agencies submit their information sheets within 25 days of the Board's receipt of the petition for hearing. According to Attorney General's Office staff who represent state agencies in employee disputes, they have to speculate about employees' claims and often prepare information sheets that are more extensive than necessary to ensure that the State addresses all possible allegations that could be raised by employees. In addition, because employees sometimes abandon their appeals prior to the 25-day deadline but do not notify the Board, the Attorney General's Office wastes state resources preparing information sheets for cases that are subsequently dismissed.

Information management. The Board's case tracking system contains limited data and lacks the capabilities needed to properly manage the Board's hearing process. For example, the system (1) does not include certain data fields necessary to facilitate the tracking of essential information, such as the date all appeals either expire or are exhausted, and (2) is not capable of automatically calculating hearing and decision dates based on statutory deadlines. In addition, we found the Board does not maximize the usefulness of the system in certain areas.

Conflicts of interest. The Board has not established basic program and management controls for promoting ethical behavior and addressing perceived and actual conflicts of interest of Board members and staff. Specifically, the Board has not (1) developed formal guidance on how conflicts should be handled; (2) provided formal training to Board members at the time of their appointment and on a routine basis thereafter; (3) required Board members and staff to annually sign a statement that discloses real or perceived conflicts of interest and documents their understanding of appropriate behavior; or (4) developed a formal process for requiring Board members and staff to recuse themselves from discussions and decisions where a real or perceived conflict exists.

Customer support and assistance. Although the Board has developed and placed on its website various materials to assist *pro se* litigants who represent themselves, the materials are difficult to locate, and the Board does not inform litigants that the materials are available and where to find them. In addition, the Board's attorney referral list is not on the website and is only provided to litigants when requested.

Our recommendations and the responses from the Department of Personnel & Administration and the State Personnel Board can be found in the Recommendation Locator and in the body of the report.

RECOMMENDATION LOCATOR

Rec. No.	Page No.	Recommendation Summary	Agency Addressed	Agency Response	Implementation Date
1	18	Assist state agencies and higher education institutions in implementing effective workforce planning tools by providing training and online technical assistance on implementing metrics related to hiring and succession planning.	Department of Personnel & Administration	Agree	July 2010
2	22	Improve the human resources auditing function by (a) determining the overall purpose and statutory intent of the function, (b) developing and implementing procedures for conducting human resources audits, (c) evaluating how to dedicate more consistent staff resources to the audit function, (d) training staff who conduct human resources audits, and (e) considering how technology could improve auditing efforts.	Department of Personnel & Administration	Agree	January 2010
3	26	Ensure the Division has sufficient, reliable human resources data to effectively manage the state personnel system by (a) performing a business process analysis of the State's payroll and personnel data systems, and (b) working with the Governor's Office of Information Technology to identify solutions for consolidating and integrating these systems.	Department of Personnel & Administration	Agree	Unknown
4	32	Evaluate alternatives to the current process for submitting information sheets in discretionary appeals to ensure that state agencies have a sufficient opportunity to respond to employee claims. Pursue any necessary statutory or regulatory changes.	State Personnel Board	Agree	November 2009
5	34	Ensure the Board has an efficient mechanism to manage and monitor its caseload by (a) conducting an assessment of its data and system needs and determining the most efficient way to retrieve data, run reports, and set reminders, and (b) continuing to work with the Office of Administrative Courts and the Governor's Office of Information Technology to develop and implement a case management system.	State Personnel Board	Agree	July 2011

RECOMMENDATION LOCATOR

Rec. No.	Page No.	Recommendation Summary	Agency Addressed	Agency Response	Implementation Date
6	37	Strengthen safeguards for identifying and preventing conflicts of interest by developing rules and policies that (a) provide a process for resolving conflicts, (b) require Board members and staff to recuse themselves when an actual or perceived conflict arises, (c) require Board members and staff to annually sign a statement disclosing real or perceived conflicts of interest, and (d) require formal training on conflict-of-interest rules and policies for Board members.	State Personnel Board	Agree	January 2010
7	40	Make informational materials more accessible to litigants by (a) including information on and the location of available resources in the appeal application forms, and (b) ensuring that all necessary information is clearly labeled and located on the Board's website.	State Personnel Board	Agree	August 2009

Overview of the State Personnel System

Chapter 1

Article XII, Section 13 of the Colorado Constitution creates the state personnel system, which is composed of all appointive public officers and classified employees of the State. Classified employees, who are members of the state personnel system, and appointing authorities, who are the executive and division heads of agencies with classified employees, must adhere to the policies and procedures established specifically for this system in the Constitution, statutes, and state personnel rules. Collectively, these constitutional, statutory, and rule requirements create what is referred to as a “rule bound” state personnel system in Colorado. According to the Constitution and statute [Section 24-50-112.5, C.R.S.], state classified employees must be selected based on a merit system that considers job-related knowledge, skills, behaviors, and quality of job performance.

The Constitution also creates the State Personnel Board (Board) and the Department of Personnel & Administration (Department) and establishes the State Personnel Director (Director) as the head of the Department. The Constitution assigns the Board rulemaking authority over aspects of the state personnel system and the Director responsibility for administering the state personnel system in accordance with the Constitution, state laws, and rules. The State Personnel System Act [Section 24-50-101, et seq., C.R.S.] provides specific direction for the administration of the system, and Board and Director’s rules establish statewide human resources requirements that apply to all classified employees. Within the Department, both the Division of Human Resources (Division) and the Board oversee various aspects of the personnel system for classified employees.

Colorado has a decentralized personnel system in which most state agencies and higher education institutions perform their own human resources functions. Statute [Section 24-50-101(3)(d), C.R.S.] assigns the heads of principal departments and presidents of higher education institutions responsibility for the actual operation and management of personnel practices for their respective organizations. In addition, the Division has delegated responsibility for the selection, compensation, and performance management functions to most state agencies and higher education institutions. However, the Division continues to oversee the state personnel system and provide direction and support to delegated

agencies. Only one state agency, the Department of Treasury, has no delegated authority to handle the employee selection process and relies on the Division to handle this function.

Division of Human Resources

The Division is responsible for carrying out the daily administration, oversight, and management of the state personnel system. Within the Division, the Workforce Planning and Development Unit provides a range of services to state agencies and higher education institutions. These services include providing technical assistance on human resources topics to state agencies and institutions of higher education; certifying state human resources professionals in the employee selection process; auditing human resources operations throughout the system; developing hiring exams; providing training to human resources professionals and other state employees; overseeing procurement of state personal services contracts; and overseeing the performance pay system. In addition, the Division resolves employee disputes related to position reallocations, the employee selection process, performance evaluations, and the overall administration of the state personnel system.

The Division is also responsible for overseeing the State's risk management program; maintaining the State's job evaluation and compensation system; managing plans for health, life, and disability benefits for state employees; and managing the Colorado State Employee Assistance Program.

State Personnel Board

The State Personnel Board is responsible for promulgating rules for the state personnel system and adjudicating employment disputes between classified employees and state agencies or higher education institutions. According to Article XII, Section 14 of the Colorado Constitution, the Board shall adopt:

. . . rules concerning standardization of positions, determination of grades of positions, standards of efficient and competent service, the conduct of competitive examinations of competence, grievance procedures, appeals from actions by appointing authorities, and conduct of hearings by hearing officers where authorized by law.

The Board has Type 1 authority as defined in the Administrative Organization Act of 1968 [Section 24-1-105(1), C.R.S.]. According to statute, Type 1 authority

gives the Board the autonomy to exercise its prescribed statutory powers, duties, and functions, independent of the Department.

The Board consists of five members who serve five-year terms. Three members are appointed by the Governor; the other two are elected by classified employees. Board members cannot be officers or employees of the State or of any employee organizations. According to statute [Section 24-50-103(8), C.R.S.], Board members are compensated \$75 per day for each day in which they are engaged in the performance of their duties plus reimbursement for actual and necessary expenses incurred in the performance of their duties. The Board has a staff of six: a Director, who is appointed by the Board; three part-time administrative law judges, who hear employee disputes; and two support staff members, who process and file cases.

During Fiscal Year 2008 state employees filed more than 200 cases with the Board. These cases included issues of alleged discrimination; whistleblower allegations; disciplinary actions that affected an employee's base pay, status, and tenure; and other employment-related matters. In addition, Board staff facilitate the settlement process between parties and provide training on the dispute process to state agencies upon the agencies' request.

Funding and FTE

Funding for the entire Division comes from a variety of sources, including indirect cost recoveries from all state agencies, fees paid by state agencies for training, and the State's General Fund. Over the past four years the Division's expenditures have increased 46 percent, from \$225 million in Fiscal Year 2005 to \$328 million in Fiscal Year 2008. Approximately \$2.1 million of the \$328 million in expenditures for Fiscal Year 2008 went toward human resources activities. The remaining \$326 million was for the State's risk management program, administration of employee benefit plans, training, and the Colorado State Employee Assistance Program. Funding for the Board comes primarily from the State's General Fund, indirect cost recoveries, or reappropriated cash funds. Over the past four years the Board's expenditures have increased 6 percent, from about \$455,000 in Fiscal Year 2005 to \$484,000 in Fiscal Year 2008.

In Fiscal Year 2008 the Division was appropriated a total of 53.7 FTE, of which 13 were allocated to the Workforce Planning and Development Unit. The Board was appropriated 4.8 FTE during this same period.

State Workforce Demographics

The State's workforce is divided into classified employees, who are part of the state personnel system, and nonclassified employees. Classified employees comprise more than half of the State's workforce. According to Division data, as of June 30, 2008, there were about 33,200 classified employees. These employees had a median age of about 47 years, an average length of service of 9.4 years, and an average salary of about \$49,900.

Nonclassified employees are subject to their individual agencies' or institutions' personnel rules. These employees are primarily found in the Judicial Branch, the Legislative Branch, the Governor's Office, and the Departments of Law, Education, and Higher Education. The Division does not track data on nonclassified employees. However, according to the State's Fiscal Year 2008 Comprehensive Annual Financial Report, the State employs about 29,900 nonclassified employees.

Survey Results

We surveyed state agency executive directors, presidents of institutions of higher education, human resources professionals, legislators, certified employee organizations, and attorneys and employees with cases before the Board during Fiscal Years 2007 and 2008 to determine how they perceive the effectiveness of the Division and the Board. Our surveys addressed a variety of topics, including the overall effectiveness of the Division's administration of the state personnel system and the Board's dispute resolution process, the constitutional and statutory framework surrounding the state personnel system, and the employee selection process. Overall, survey respondents indicated that they are satisfied with the Division's administration of the state personnel system and the Board's administration of its dispute resolution process. However, respondents raised concerns about certain aspects of the employee selection process, as discussed in Chapter 2, and the Board's appeals process, as discussed in Chapter 3. In addition, respondents raised concerns about the limitations imposed by the constitutional and statutory framework surrounding the state personnel system, specifically with respect to the employee selection process. These concerns have been addressed in prior audit reports issued by the Office of the State Auditor. The Division should continue to look for opportunities to work with the General Assembly to identify possible solutions.

Audit Scope and Methodology

This report includes the results of our audit of the management and oversight provided by the Division of Human Resources' Workforce Planning and Development Unit and the State Personnel Board. Statute [Section 24-50-103.5(2)(a) and (b), C.R.S.] requires the Legislative Audit Committee to cause to be conducted a performance audit of the state personnel system and the Board every four years. Our last performance audit of the Division and the Board was released by the Legislative Audit Committee in 2005. In accordance with the statute, our audit considered:

- The effectiveness of the Division and Board in filling job vacancies.
- The effectiveness of the Division's staffing levels given the decentralization of the state personnel system.
- The efficiency with which the Division and Board have processed formal complaints.
- The Board's adoption of rules and regulations, procedures, and practices that affect the efficiency and economy of state government.
- The extent to which the Division and Board have operated in the public interest and whether they are perceived as effective by other state agencies and members of the General Assembly.

During the audit, we analyzed Division and Board data; reviewed statutes, rules, and Division and Board policies and procedures; and interviewed Division and Board staff, Board members, and representatives from certified employee organizations. As discussed above, we also surveyed representatives from state agencies, legislators, attorneys and employees with cases before the Board during Fiscal Years 2007 and 2008, and representatives from certified employee organizations. In addition, we obtained information from four other states (California, Connecticut, South Carolina, and Texas) to gain insight into their human resources practices.

State Workforce Management

Chapter 2

According to the International Public Management Association for Human Resources (IPMA-HR), the stakes are high for public sector organizations to recruit and retain people with appropriate skills and experience to deliver quality services. Without talented, qualified employees, the State of Colorado cannot provide critical services to its citizens. State government is the largest employer in Colorado, with more than 63,000 employees in Fiscal Year 2008. Of these, about 33,200 were classified employees in the state personnel system. Salaries for the State's classified employees represent a significant expense for the State. In Fiscal Year 2008 the State paid about \$1.7 billion in salaries to classified employees, or about 9 percent of the State's total expenditures of \$19.6 billion for that year. The critical nature of the work performed by the classified employees, as well as the significant expense associated with employing them, makes effective management of the workforce of utmost importance.

According to the State Personnel System Act [Section 24-50-101(3)(a), C.R.S.], "the purpose of the state personnel system, as a merit system, is to assure that a qualified and competent work force is serving the residents of Colorado." The Division of Human Resources oversees administration of the personnel system by providing directives, procedures, technical assistance, and training to state departments and institutions. Due to the decentralization of the state personnel system, however, the Division has delegated daily responsibility for managing the personnel system to the heads of principal departments and higher education institutions.

We reviewed the Division's role in providing leadership and oversight of the state personnel system. We found that the Division could improve its management of the State's workforce by integrating technology with other mechanisms designed to ensure that state agencies and institutions recruit and retain skilled and qualified employees. We identified three primary areas in which the Division can improve its oversight of the workforce. These include implementing effective workforce management tools, improving the human resources audit function, and improving the quality of human resources data so that they can be used to better inform the Division's oversight activities. We also reviewed the Governor's Office of State Planning and Budgeting's (OSPB's) oversight of the statewide hiring freeze that occurred during Fiscal Year 2009 and identified areas for improvement, should the hiring freeze be extended.

Workforce Management Tools

According to the State Personnel System Act [Section 24-50-101(3)(c), C.R.S.], the state personnel director is responsible for providing “necessary directives and oversight for the management of the state personnel system,” “leadership in the areas of policy and operation of the state personnel system,” and “consultant services to executive branch agencies and institutions of higher education to further their professional management of human resources in state government.” According to the U.S. Government Accountability Office, government agencies should integrate workforce planning and management efforts with broader organizational strategic planning to ensure the agencies have the talent they need for future challenges. Workforce planning and management may include efforts to develop strong leaders; plan for employee retirements; acquire, develop, and retain talent; and create organizational cultures driven by individual employees’ job performance and results. We reviewed two types of workforce management and planning tools—the use of benchmarks to measure hiring times and succession planning—and found that the Division has not provided sufficient guidance and directives to state agencies and higher education institutions on implementing these tools.

Measuring Time-to-Fill

Filling vacancies timely is important so that state agencies and institutions can minimize the risk of losing qualified candidates and reduce the loss of productive effort. A 2007 report titled *Recruiting and Staffing in the Public Sector* released by IPMA-HR emphasizes the importance of incorporating human resources measures into management practices to “improve operations and service delivery and evaluate overall performance.” The report goes on to say that measuring the time it takes to fill a vacant position can “help an organization gauge the efficiency of the steps in the recruitment process.” There is no standard benchmark for time-to-fill in the public sector; therefore, we used data from a national survey of public sector employers as a point of comparison to evaluate the efficiency of the State’s hiring process. IPMA-HR conducted a survey in 2008 for *Governing Magazine* and found that nearly two-thirds (41 of 67, or 61 percent) of public agency respondents who said they have “rule bound” personnel systems reported they could generally fill vacant positions in less than eight weeks. Time-to-fill was defined as the number of calendar days from the date of a job posting to the date the newly hired employee began work.

As part of our audit, we reviewed a sample of 40 vacant positions filled at eight state agencies and higher education institutions from Fiscal Year 2008 through the first half of Fiscal Year 2009. We compared the length of time it took to fill these

40 positions with the eight-week (or 56 calendar days) benchmark established in the IPMA-HR survey. We found that for 80 percent of the positions in our sample (32 positions), it took the departments and institutions more than eight weeks to fill those vacancies. In addition, we found that the overall average time-to-fill had increased by almost a week since our 2005 performance audit. Specifically, we found that the average time-to-fill for the 40 positions in our sample was 86 calendar days, compared with an average of 80 calendar days at the time of our last audit. No clear correlation existed between the level of position and the amount of time it took to fill the position. We also compared the length of time it took human resources professionals to conduct their portion of the recruiting process with the length of time for hiring managers within an agency or institution to complete theirs to determine whether one phase of the process was taking significantly longer than the other. Typically, human resources professionals review job applications, determine which job applicants are qualified for a position, administer competitive exams, and generate lists of applicants eligible for an interview. Hiring managers are usually responsible for conducting interviews and selecting the most desirable candidates for positions. We found that each portion of the hiring process took about the same amount of time—an average of 43 calendar days for human resources staff to complete their responsibilities and 45 calendar days for hiring managers.

In addition, we found that many state agencies and institutions do not use benchmarks to evaluate the efficiency of their hiring process. According to a survey we conducted of human resources professionals across the State, 68 percent of respondents (27 of 40) said their agencies do not use benchmarks. For those agencies that do use benchmarks, we found that some do not always measure compliance with those benchmarks or use the information to identify delays or attempt to implement improvements in the hiring process.

Succession Planning

Succession planning for organizations is crucial, considering the aging workforce. Throughout the United States the workforce is aging, and the number of employees eligible for retirement is growing. According to the U.S. Department of Labor's Bureau of Labor Statistics, the median age of the U.S. labor force is rising. In 2006 the median age was 41 years, and by 2016 the median age is projected to increase to 42 years.

The workforce in Colorado mirrors this trend. In its Fiscal Year 2008 Workforce Demographics Report, the Division reported that as of June 30, 2008, the median age of the State's classified employees was about 47 years. In addition, the Division reports that 12 percent (3,900 of 33,200 employees) of the State's classified workforce was eligible for full or early retirement as of June 30, 2008,

and another 27 percent (9,000 employees) will be eligible within the next five years. All 52 state agencies and higher education institutions and all occupational groups will be affected by these retirements. As the following table shows, the “Professional and Financial Services” and “Labor, Trades, and Craft Services” occupational groups will be most affected.

Classified State Employees Eligible to Retire in 5 Years or Less¹ by Occupational Group as of June 30, 2008			
Occupational Group (Examples of Positions in the Occupational Groups)	Number of Employees Currently in Group	Employees Eligible to Retire in 5 Years or Less	
		Number	Percent of Group
Administrative Support and Related (e.g., Administrative Assistants and Office Managers)	4,800	2,200	46%
Professional and Financial Services (e.g., Accountants, IT Professionals, and Teachers)	10,800	5,000	46%
Physical Sciences and Engineering (e.g., Engineers, Environmental Specialists, and Conservation Specialists)	2,000	900	45%
Labor, Trades, and Craft Services (e.g., Transportation Maintenance Technicians, Carpenters, and Custodians)	5,400	2,200	41%
Health Care Services (e.g., Physicians, Health Care Technicians)	3,600	1,300	36%
Enforcement and Protective Services (e.g., Correctional Security Officers, State Troopers)	6,600	1,300	20%
Total	33,200	12,900	39%
Source: Office of the State Auditor’s analysis of data provided by the Department of Personnel & Administration. ¹ According to the Division of Human Resources, this represents employees who will be at least age 50 and are eligible for either full or reduced retirement.			

These data reinforce the importance of succession planning. The State must anticipate the loss of experienced employees and craft a plan to preserve a base of institutional knowledge and expertise, thereby ensuring the uninterrupted provision of state services. Succession planning is an ongoing process that entails systematically identifying, assessing, and developing the skills and talents necessary for leadership continuity and for the continued effective and efficient operation of an organization. Adequate succession planning—whether through the development of current employees or the recruitment of individuals outside the organization—helps ensure that someone with the necessary skills can step in

when someone leaves a critical state position. Other states have recognized the importance of adequately planning for future workforce needs. For example, the California State Auditor reported in March 2009 that “employees will eventually retire and planning for these retirements is prudent to ensure continued delivery of state services.”

In our 2005 performance audit, we recommended that the Division develop succession planning tools for state agencies and institutions. In response to the audit, the Division has provided information to state agencies and institutions about developing succession plans. However, the Division has not made development and implementation of these plans a requirement, nor has it followed up to ensure that agencies have actually implemented a succession plan. Of the eight agencies and institutions in our sample, none has developed a formal succession plan on an organization-wide basis. One agency is participating in a pilot program with the Division to develop an agency-wide succession plan. Another institution implemented a succession plan in 1993 for staff in the human resources department; however, the institution as a whole does not have a succession plan.

In fulfilling its statutory responsibilities the Division should provide mechanisms for state human resources professionals to effectively plan, manage, and evaluate activities affecting the State’s workforce. According to the Division, measuring and tracking human resources activities using established metrics can help managers at state agencies “deliver a workforce necessary to achieve business goals that improve financial and organizational effectiveness and performance.” In Fiscal Year 2006 the Division worked with a consultant to develop human resources metrics that were published in a report called *HR Metrics: Roadmap for Measuring HR’s Impact (Roadmap)*. The *Roadmap* identifies metrics that state human resources professionals should track to help inform daily and long-term strategic human resources activities. For example, the *Roadmap* outlines measures for state agencies to use to evaluate successful hiring practices, such as the cost for managers to spend time interviewing and selecting new employees; effects on productivity based on how long it takes to hire new employees; and effects on productivity based on how long it takes new employees to learn their jobs. The *Roadmap* also identifies metrics related to succession planning, such as effects on productivity when existing employees must complete critical duties of employees who have retired; effects on productivity when successors for critical positions are retained in an organization; and cost savings in the hiring process when key positions are filled internally.

Although the *Roadmap* is intended to help guide effective workforce management and planning in the State, we found that since the *Roadmap* was published in July 2008, the Division has not communicated to agencies and institutions that

implementing metrics, such as those included in this tool, should be a priority. In addition, the Division has not provided any training on the use of human resources metrics since Fiscal Year 2006, when the Division provided one training session to human resources professionals to introduce the idea of using human resources metrics.

Other states use metrics to assess their human resources functions. For example, human resources professionals for the State of Texas are advised to calculate and analyze metrics such as turnover rates, particularly in relation to employees' length of service; training costs compared with the number of employees trained in specific areas; time-to-fill; and cost-per-hire. The State's ability to continually provide high-quality services is contingent upon state agencies' and higher education institutions' use of effective workforce planning tools to recruit and retain qualified employees. As such, the Division should assist state agencies and institutions in developing their own metrics for hiring practices and other human resources activities. In addition, the Division should continue to work with agencies and institutions to ensure that they develop and implement succession plans for their organizations. For example, the Division could provide training and online materials related to hiring practices and succession plans to help agencies and institutions implement these workforce planning and management tools.

Recommendation No. 1:

The Division of Human Resources should assist state agencies and higher education institutions in implementing effective workforce planning tools by providing training and online technical assistance to state human resources professionals on how to implement metrics, such as those included in the *HR Metrics: Roadmap for Measuring HR's Impact*, to inform hiring practices and develop long-term workforce planning strategies, including succession plans.

Department of Personnel & Administration/Division of Human Resources Response:

Agree. Implementation date: July 1, 2010.

The Department will develop guidance and training for state agencies on how to implement metrics at the agency level. The Department has developed workforce planning processes and tools that are available via the Department/Division website. Online training is being developed to support each of eight key planning practices: strategic management, talent

management, knowledge management, workforce planning, succession planning, retention and branding, human capital management, and accountability. Workforce planning is the first session to be offered and will be available in early Fiscal Year 2010. The course objective is to teach a systematic workforce planning process to managers who routinely identify and plan for their work unit's staffing needs. Participants will analyze their work unit's current and future staffing needs and compare those needs against available competencies. They will use the information from the analysis to create a workforce plan for their work unit, and finally they will implement their workforce plans. The next online training course planned will be succession planning. Metrics will be established for each planning practice. For example, for workforce planning we plan to measure the "effect of absenteeism on labor utilization" and the "turnover rate." Participants in the online training courses will come away knowing how to use these metrics and what they mean for managing their work unit.

Human Resources Audits

Statute [Section 24-50-101(3)(d), C.R.S.] requires the Division to provide postaudit review of the operation and management of the state personnel system. Accordingly, as part of its oversight function the Division audits state agencies' and higher education institutions' human resources management practices. Recent audits have assessed practices such as the employee selection process, compensation, records management, grievances, and procurement of personal services contracts. The audits are intended to evaluate compliance with applicable laws and rules as well as to identify areas for improvement and model practices that could be shared with other agencies and institutions. Division audit staff also perform other functions, such as advising agencies and institutions on the employee selection process and reviewing employee performance pay programs.

We reviewed the Division's human resources audit process and found that improvements are needed to ensure that this process provides effective oversight of agency personnel systems. Specifically, we identified the following issues with the Division's audit process that limit its effectiveness:

- **Timeliness.** The Division does not complete all human resources audits in a timely manner. Specifically, 7 of the 35 audits (20 percent) conducted by the Division since Fiscal Year 2005 have taken more than a year to complete. In addition, the Division had nine audits in progress as of

March 2009, and these had been ongoing for an average of 16 months, with four audits lasting 24 months or longer. Although the average length of time for the Division to complete an audit has decreased by about four months since our 2005 performance audit, audits are still taking a long time to complete. Although Division staff reported that they inform agencies during the audit when problems are identified, long completion times may delay the final resolution of these problems or delay the start of new audits.

- **Audit documentation.** The Division does not adequately document its audit work and findings. For example, we reviewed documentation for a personal services contract audit and found that the working papers did not provide clear and logical support for the audit findings. Staff turnover has occurred at the Division, and inadequate audit documentation has required replacement staff to repeat the audit work. Since Fiscal Year 2005, six of the seven audit staff positions have experienced turnover, including one position that has been filled by four different people in the last five years. According to Division staff, during followup new staff have been unable to determine whether an agency had corrected the problems originally identified in the audit. This is because when staff went back to review the original findings, the documentation was insufficient to substantiate the original problems or determine whether the actions taken corrected the problems.

The Division's audit function is one of its primary mechanisms for overseeing human resources practices in the State. If the audit function does not enable the Division to ensure a "sound, comprehensive, and uniform system of personnel management and administration," as required by statute, problems may go unaddressed. We reviewed a sample of 40 personnel files at eight state agencies and higher education institutions to determine whether the agencies and institutions were complying with rules and requirements related to hiring classified employees. We identified several problems. For example, one agency did not verify the education of two employees prior to their hire. Another agency appears to have hired an out-of-state resident without receiving approval to do so, which violates a Constitutional requirement that state employees be Colorado residents. We brought these instances to the agencies' and Division's attention for further review.

In our 2005 performance audit, we identified similar concerns about the Division's monitoring and oversight of the State's human resources management practices. Although the Division has made some improvements, we believe that underlying weaknesses in the Division's human resources audit function still exist. Specifically, the Division has not strategically defined how it will fulfill its

statutory responsibility to conduct “postaudit review.” For example, the Division has not determined whether postaudit review consists primarily of auditing, providing technical assistance, sharing best practices, or some combination of these approaches. Determining the purpose of the postaudit review could have ramifications on the type of work done during the review, the level of documentation required, and the rigor of the methodology.

The Division has also not established standard procedures for staff to follow when conducting and documenting human resources audits. For example, the Division does not require staff to develop audit plans that include specific work steps and deadlines for completing an audit. In addition, the Division has not established standard procedures for following up with agencies to determine whether audit recommendations have been implemented. Other state agencies with oversight responsibilities have implemented specific procedures for staff to follow when evaluating the effectiveness of functions delegated to another organization. For example, the Department of Human Services has developed and implemented standard procedures for staff to use when reviewing how well counties are administering their Food Stamp programs.

Finally, the Division has not effectively managed the limited resources it has available to oversee the human resources management functions of state agencies and higher education institutions. In addition to one vacant position, the Division employs five staff and one supervisor who are responsible for conducting human resources audits. According to their job descriptions, these staff should be spending between 20 percent and 55 percent of their work time conducting audits. This equates to 2.5 FTE allocated to the audit function. However, staff reported they do not actually spend the allotted amounts of time on human resources auditing because they also perform other duties, such as providing consultation services, technical assistance, and performance management training to agencies. In addition, prior to our audit, staff responsible for conducting audits had not received any audit training. In February 2009 staff participated in an online training course. We believe the Division should routinely provide auditing training, as needed, to the staff responsible for the audit function.

As the Division works to improve its human resources audit function, it should consider how a new technology system, discussed in Recommendation No. 3, could improve the efficiency of its auditing efforts. For instance, South Carolina’s Office of Human Resources uses its information technology system to generate queries from data maintained by all state agencies on topics such as employee classifications, awards, and promotions. Using these queries, South Carolina is able to complete about 35 audits per year and augment its data queries with other audit work, such as agency interviews and file reviews.

Recommendation No. 2:

The Division of Human Resources should improve the effectiveness of its human resources auditing function as an oversight mechanism by:

- a. Conducting a strategic assessment to determine the overall purpose and statutory intent of the function and how best to accomplish this purpose, implementing any necessary changes.
- b. Developing and implementing procedures for conducting human resources audits that define standards for completing and documenting audit work.
- c. Evaluating how its existing staff resources could be reallocated to dedicate more consistent resources to the audit function, and implementing the necessary changes.
- d. Providing training to staff who conduct human resources audits on effective auditing practices.
- e. Considering how technology could improve the efficiency of its auditing efforts.

Department of Personnel & Administration/Division of Human Resources Response:

Agree. Implementation date: January 1, 2010.

The Department will develop and publish a policy statement that defines the purpose of “postaudit review,” including procedures for conducting audits, standards for documentation of audit work and findings, and standards for completion. In addition the Department will assess whether dedicated staff or rotational assignments best meet the needs of the Department. The Department will also develop a standardized training process to assure that staff performing the audit function are equipped to meet audit standards. Finally, the Department will consider how technology can be used to improve the efficiency of auditing efforts.

Human Resources Data

During the 2008 Legislative Session, the General Assembly enacted Senate Bill 08-155 to centralize management of the State's information technology resources. The Bill requires state agencies to cooperate in "developing and implementing processes for the sharing of data and information." In addition, the State's chief information officer is responsible for implementing "statewide efforts to standardize information technology resources to the extent possible." The Governor's Government Efficiency and Management Performance Review, released in June 2008, also emphasized the importance of centralizing data systems, thereby enabling the State to be "more agile and more able to make rapid changes in business processes." The State's human resources data are an important component of the information the State uses to manage its operations. Human resources data include payroll information, employee demographic data, records of the application review and examination processes used to select classified employees, and data on personnel actions taken within an agency, such as hiring decisions.

During our review of state hiring practices we found that the Division does not have a consolidated, integrated information system that allows the Division to track and analyze consistent and reliable human resources data across all state agencies and higher education institutions. As a result, aside from using manual processes, neither the Division nor individual agency and institution staff have access to some of the basic data needed to effectively manage the state personnel system. For example, the Division and state agencies and institutions cannot analyze data on the number of applications received each year or the number of applications that are active at any given time. This information would typically be used as a workload indicator for the human resources and program staff responsible for processing these applications and filling positions. The Division also cannot obtain data on how long agencies and institutions are taking to fill vacant positions or the number of funded and unfunded vacant positions in the State. In addition, the Division cannot access data on how much leave is used each year by employees or on the State's total fiscal liability in terms of unused annual leave that would have to be paid to employees leaving employment with the State. These data are important for addressing both workload and budgeting issues. Finally, the Division and state agencies and institutions do not have data on the basic knowledge, skills, and abilities of employees to use for developing succession plans and training replacement staff.

We identified three primary problems with the State's human resources data. First, the available data are fragmented because there is no one system in the State that contains human resources data for all state agencies and institutions.

Currently state agencies and higher education institutions use 13 different personnel systems to track human resources activities, such as employee selection and payroll, for the 33,200 classified employees during Fiscal Year 2008. As discussed below, the Applicant Data System (ADS) is available statewide and can be used to score and rank job applications, although not all state agencies and higher education institutions use the system. The Colorado Personnel and Payroll System (CPPS) maintains data on employee demographics, employee salaries, and job classifications. Most state agencies use CPPS, but higher education institutions do not. Due to the limitations of current state systems, many state agencies and institutions have implemented their own systems for tracking human resources activities for their organizations. For example, the Department of Corrections uses its own system for tracking employee leave, while the Department of Regulatory Agencies uses its own system to track employee leave as well as performance plans and evaluations. Various higher education institutions use Banner, Oracle, or PeopleSoft software to track their personnel and payroll data.

Second, data contained in ADS, one of the few systems available statewide, are inconsistent and unreliable. Some dates recorded in ADS reflect the dates when human resources staff entered the data, which are not necessarily the actual dates when human resources activities occurred. In addition, staff at different agencies who use ADS do not enter these dates at the same point during the hiring process. Therefore, the Division cannot rely on data maintained in ADS to comprehensively analyze aspects of the State's hiring process. We have identified problems with ADS in prior audits and recommended the Division either modify ADS or develop a new system to capture important information. Although the Division agreed with these recommendations, it has not received the funding to implement a new system, and making repairs to ADS would not be cost effective.

Finally, some of the systems housing human resources data are outdated and not viable options for meeting future information needs. For example, ADS was implemented in 1992. Division staff have indicated that the system was built with a programming language that is no longer used or supported in the information technology community. In addition, CPPS was already several years old when it was implemented in 1986, and has become outdated in the 23 years since.

The fragmentation and lack of reliable human resources data may be creating cost inefficiencies for the State. Although the total cost of using multiple independent personnel systems is unknown, other data demonstrate that relying on fragmented data systems, including those used to store personnel data, can be costly. In December 2008 the Governor's Office of Information Technology (OIT) engaged the information technology company Oracle to prepare an organizational

assessment of the State's current financial, procurement, and human resources systems. Oracle analyzed self-reported data from five state departments to estimate savings that could be realized from replacing the State's central accounting system and consolidating other systems, including human resources data systems. The analysis found that better use of technology could produce at least \$8 million in efficiencies for the State by the end of a five-year implementation period. According to Oracle, these potential savings represent the quantified value of lost productivity due to current inefficiencies, such as manual processes and duplicate data entry that could be redirected to value-added activities.

The lack of timely, integrated, and reliable data also has impeded the Division's efforts to implement high-quality baseline reporting metrics for functions such as hiring and developing succession plans, as discussed in Recommendation No. 1. According to the report *Recruiting and Staffing in the Public Sector* by IPMA-HR, "effective performance measurement relies on accurate, reliable data that are available on a timely basis."

Other states are addressing similar technology issues by implementing statewide enterprise resource planning systems, which are single computerized systems that support common business functions such as human resources, accounting, purchasing, and asset management across all state government agencies. According to data presented to the Division by Oracle, 29 of the 50 states have implemented or are in the process of implementing statewide enterprise resource planning systems. For example, Connecticut has implemented a centralized human resources management system containing modules for payroll, timekeeping, benefits, and other human resources functions. In February 2007 Connecticut reported that replacing its outdated systems with a single system that provides consistent statewide data has improved the quality of statewide information and made central human resources agencies more effective.

According to the Division, the State has not examined the data needed to effectively manage human resources functions since the state personnel system was decentralized in the 1970s. Specifically, the Division has not conducted a business process analysis of the 13 personnel and payroll systems currently in use to determine how to best integrate these data and meet the needs of state agencies and higher education institutions, as well as the State as a whole. The Division has indicated that it is working with OIT and the Office of the State Controller to pursue such an analysis. The Division should continue working with OIT to identify solutions for providing sufficient and reliable statewide human resources data for effective management of the state personnel system. To ensure that the State has complete statewide information, it is important that any new system contain data from all state agencies and higher education institutions.

Recommendation No. 3:

The Division of Human Resources should ensure that the State has sufficient, reliable human resources data to effectively manage the state personnel system by:

- a. Performing a business process analysis of the State's payroll and personnel data systems.
- b. Working with the Governor's Office of Information Technology to identify solutions for consolidating and integrating these systems.

Department of Personnel & Administration/Division of Human Resources Response:

Agree. Implementation date: Unknown.

The Department recognizes that the State's existing information systems supporting finance, procurement, and human resources functions are fragmented, outdated, and increasingly at risk of failure. In particular, the Department has made several attempts to replace the ADS (Applicant Data System), which is the primary source for hiring and selection data, without success. In addition, the Department prepared a white paper, which outlined the need for a Business Process Assessment and Redesign. Compelling evidence makes the case for assessing our current business process expenditures and resource allocation. The Department, with the full support and cooperation of OIT, recommends that the State make it a high priority to conduct this analysis by investing adequate resources (estimated to be \$500,000) to obtain the critical information necessary to proceed with cost-effective solutions for improving its back-office support functions. The increasing risk of information systems failure and the unexploited business efficiency and effectiveness opportunities will only put greater pressure on future budgets. Given the current budgetary environment, the Department has been unable to proceed with such an assessment.

The Department is committed to working with OIT to identify IT solutions for meeting the State's basic human resources data needs, but without funding, there is little meaningful progress to be made.

Hiring Freeze

In October 2008 the Governor's Office implemented a hiring freeze as part of a budget contingency plan to help contain expenditures and address the State's economic downturn. The hiring freeze, which began October 1, 2008, and was in effect for Fiscal Year 2009, affected classified positions at agencies within the Executive Branch, excluding higher education institutions. OSPB, with assistance from the Department, was responsible for overseeing the hiring freeze and processing requests for exemption from the freeze. The Governor's Chief of Staff was responsible for making all final decisions as to whether exemption requests should be approved.

According to the hiring freeze guidelines issued by OSPB, agencies were allowed to self-determine that positions and functions meeting the following criteria were exempt from the hiring freeze:

- Positions fully funded with federal monies
- Positions fully funded by gifts, grants, and donations
- Positions filled as a result of an employee's exercising retention rights in a layoff situation
- Positions that are reallocations of current positions or promotions not resulting in a salary increase
- Positions resulting from intradepartmental transfers with no fiscal impact

In addition, positions having direct, daily contact with the public in a position of health and/or safety at least 50 percent of the time were also considered exempt from the hiring freeze. However, agencies were required to provide a list of all of these types of positions to OSPB for approval prior to proceeding with the hiring process.

According to the hiring freeze guidelines, some positions not meeting the criteria listed above would still qualify for an exemption. Agencies could submit an exemption request to OSPB for positions (1) critical to the public's health, welfare, and safety; (2) critical to the welfare and safety of persons in the State's legal custody; (3) that were part of a caseload staffing requirement; (4) that would create a disruption to essential state services if not filled; or (5) where failure to perform the service would create a legal liability.

As part of our review of the State's hiring practices, we also reviewed a sample of 10 positions that had been filled at state agencies while the hiring freeze was in effect. We found one instance in which the Department of Revenue had improperly determined that a position was exempt from the hiring freeze. The

Department announced a position after self-determining that the position met the criteria listed in the bullets above because it was funded with continuing appropriations and therefore, did not require specific approval to be announced. However, we confirmed with OSPB staff that the position did not meet the specific exemption criteria and, according to the hiring freeze guidelines, should not have been announced without express approval. Although our audit found only one instance of noncompliance with the hiring freeze guidelines in the 10 positions we reviewed, there are risks that other state agencies may have improperly filled positions that should have been subject to the hiring freeze.

We also found that OSPB did not have adequate data for us to fully assess outcomes of exemption requests or determine the fiscal impact of filling positions that were exempted from the hiring freeze. We analyzed 523 exemption request forms submitted to OSPB by agencies as of December 2008. Of the total exemption requests submitted, 89 percent (464 requests) were approved for exemption from the hiring freeze, and 8 percent (41 requests) were not approved. We could not determine whether the remaining 3 percent of requests (18 requests) were approved or denied because the requests had not been signed off on by the Governor's Chief of Staff. In addition, we could not determine how many of the positions approved for exemption had been filled by the agencies because OSPB does not track this information. Finally, we could not determine the fiscal impact to the State through the end of Fiscal Year 2009 for filling positions that were exempted from the hiring freeze. Although the exemption request form required agencies to provide data on the cost of filling the position through the end of Fiscal Year 2009, we found that some agencies provided data for the specific position included in the exemption request, while other agencies reported large dollar amounts that appear to reflect their entire personal services appropriations.

Considering the economic situation facing Colorado, it is critical that the State implement and adhere to effective mechanisms that ensure accountability for salary dollars. Although we do not have a formal recommendation in this area, should the hiring freeze be extended into Fiscal Year 2010 or implemented again in the future, we believe that appropriate controls should be implemented to ensure that positions are properly exempted and sufficient data are collected to measure the full fiscal impact of the freeze.

Dispute Resolution

Chapter 3

Workplace disputes involving state employees can be resolved by the employing agency or institution, or by the Board, depending upon the nature of the dispute. When disputes relate to working conditions, agency policies, or agency actions, state employees may file a grievance with the employing agency to resolve the issue. If employees disagree with their employing agency's final decision, they may appeal to the Board to conduct a hearing to review the decision.

The Board adjudicates two types of appeals, mandatory and discretionary. Statute [Section 24-50-125(5), C.R.S.] requires the Board to conduct hearings for all mandatory appeals, which involve disciplinary actions that affect an employee's base pay, classification status, or tenure. In discretionary appeals, which include issues such as corrective actions that do not affect an employee's base pay, status, or tenure, the Board must decide, using statutory criteria, whether or not to grant a hearing. According to statute [Section 24-50-123(3), C.R.S.], the Board may grant a hearing when it appears that the agency has violated the employee's rights under the state and federal constitution, state grievance procedures, or whistleblower and discrimination statutes.

In Fiscal Year 2008 the Board received 217 appeals from state employees. Of these, 106 (49 percent) were for mandatory appeals and 111 (51 percent) were for discretionary appeals. As of April 2009, 197 of the 217 appeals had been closed, and the remaining 20 appeals were still in progress.

We reviewed the Board's role in helping to resolve employee disputes and found that the Board could improve its management of the dispute resolution process by ensuring that its policies, procedures, and case management system work together to create an effective and efficient adjudication process. Specifically, we identified areas for improvement related to the Board's deadlines in discretionary cases, information management, conflict-of-interest policies, and customer assistance.

Deadlines for Discretionary Appeals

A discretionary appeal begins when an employee files a petition for hearing with the Board. According to statute [Section 24-50-123(3), C.R.S.], the Board has 90 days from the date it receives the petition to decide if the employee should be granted a hearing. To help meet this deadline, the Board implemented rules requiring the employee, within 15 days of filing the petition for hearing, to provide the agency with all of the documentation he or she is relying upon to support the appeal. Similarly, the agency also has 15 days to provide the employee with documentation supporting the agency's final agency decision related to the issue being appealed. The Board refers to these exchanges of information as "mandatory disclosures." In addition, Board rules require both parties to submit an "information sheet" within 25 days of the Board's receipt of the petition for hearing. For the employee, the information sheet should provide detailed information on the exact nature of the employee's claims against the agency and a description of the facts supporting those claims. For the agency, the information sheet should provide the agency's response to the employee's claims and a description of the facts supporting the response. The Board's administrative law judge reviews both parties' information sheets and makes a preliminary recommendation to the Board as to whether a hearing should be granted. The Board reviews the administrative law judge's recommendation based on the information sheets and decides to grant or deny a hearing.

We reviewed the Board's processes surrounding discretionary appeals and found that the Board's requirement that both parties submit their information sheets at the same time does not allow state agencies an opportunity to review employees' claims before preparing and submitting their response to those claims. Instead, agencies must prepare their information sheets based on the information submitted by employees when they submit their original petition for hearing and the documentation submitted through mandatory disclosures. Generally, the petition for hearing includes a brief description of the agency actions being appealed and the reasons for the appeal. In a survey we conducted of employees and attorneys who had participated in the Board's process, attorneys representing state agencies expressed concerns that they often have to speculate about employees' claims when preparing information sheets because they do not have an opportunity to review and respond to specific allegations.

According to staff at the Attorney General's Office who represent state agencies in employee disputes, the Board's 25-day deadline for information sheets has negatively affected their agency. For example, because state agencies do not know the exact nature of employees' claims, the Attorney General's Office, on behalf of the state agencies, prepares information sheets that are often more

extensive than necessary to ensure that the State addresses all possible allegations that could be raised by employees. In addition, employees sometimes abandon their appeals prior to the 25-day deadline but do not notify the Board. We reviewed a sample of 12 discretionary appeals and found that in 3 (25 percent) of the appeals, the employees did not file information sheets when the agencies filed theirs, and the Board dismissed their cases. According to the Attorney General's Office, it costs, on average, about \$750 to prepare an agency's information sheet. Therefore, it cost about \$2,250 to prepare the information sheets for the three appeals in our sample that were subsequently dismissed.

Prior to July 2005 the Board was not subject to a statutory time limit to determine whether or not to grant a hearing for discretionary appeals. According to Board staff, at that time employees filed their information sheets first, and state agencies were given a specified time period in which to respond. However, the passage of House Bill 04-1373 created the 90-day deadline for the Board to decide whether to grant a hearing in discretionary appeals. In response to this change, the Board implemented the rules requiring employees and state agencies to make mandatory disclosures and file information sheets simultaneously to ensure that the Board could meet its statutory deadlines.

Although the preliminary recommendation process for deciding whether or not to grant a hearing is unique to the Board, allowing respondents time to review claimants' allegations before submitting a response is a common practice in courts. As discussed above, prior to the creation of the 90-day statutory deadline, the Board required employees to file their information sheets before agencies were required to respond. In addition, we contacted other state agencies that conduct judicial hearings similar to the Board's and found that they allow respondents time to review initial allegations before submitting a response. For example, the Office of Administrative Courts requires claimants to submit applications summarizing all contested issues first, and then opposing parties are given 30 days to respond. Similarly, the Public Utilities Commission allows responding parties 20 days to file a response after the initial claims are submitted.

The Board should consider additional revisions to its preliminary recommendation process for discretionary appeals to allow state agencies an opportunity to respond to employees' claims while still complying with the statutory deadlines. For example, the Board could establish one deadline for employees to file their information sheets and a later deadline for state agencies to submit their information sheets. Evaluating its current process for accepting information sheets would help the Board ensure the fair and timely resolution of appeals while maximizing the use of state resources.

Recommendation No. 4:

The State Personnel Board should evaluate alternatives to the current process for submitting information sheets in discretionary appeals to ensure that state agencies have sufficient opportunity to respond to employee claims, while recognizing time limits imposed on the Board for hearing appeals. One alternative the Board should consider is establishing separate deadlines for employees and state agencies to submit their information sheets. At the conclusion of this evaluation the Board should pursue any necessary statutory or regulatory changes.

State Personnel Board Response:

Agree. Implementation date: November 1, 2009.

In implementing this recommendation, the Board will review its current rules and processes in order to determine the appropriate alternative(s). In doing so, the Board must balance certain factors, including, but not limited to, having the parties exchange as much information as possible prior to submittal of the information sheets; ensuring that the appropriate information is provided to the administrative law judge for consideration; screening cases to determine which may be appropriate for an evidentiary hearing; and assuring compliance with the 90-day statutory deadline for review of petitions for discretionary hearings within the monthly Board meeting timeframe. The statutorily imposed 90-day deadline enacted in 2005 has constrained the ability of the Board to allow parties in a discretionary hearing matter sufficient time, in the Board's view, to adequately address the issues presented, and the Board will explore the possibility of a legislative modification of this time period in the 2010 Legislative Session.

Information Management

The Board uses a case tracking system to manage its caseload. The Board hired a contractor about 10 years ago to develop the system, which was originally intended to provide calendar, tickler, look-up, case numbering, and reporting functions, as well as monitoring of statutory deadlines. Currently the Board uses its case tracking system to record individual case data, which includes classifying the different types of appeals submitted to the Board and documenting allegations,

the timeliness of appeals, and case assignments to the administrative law judges. Further, the system is used to help create a report for the Governor's Office regarding whistleblower cases.

We reviewed the Board's case tracking system and found that the data contained in the system are limited and, overall, the system lacks the capabilities needed to properly manage the Board's hearing process. Specifically, the system does not include certain data fields necessary to facilitate the tracking of essential information, such as the date that the record is closed for purposes of determining the deadline for issuing the initial decision or the date on which all appeals either expire or are exhausted. We also found that the system is not capable of automatically calculating hearing and decision dates based on statutory deadlines. Finally, we found that the Board does not do enough to maximize the usefulness of the system in areas where the system could be helpful. We identified instances in which information is available in the system, but the Board does not use the information to generate reports. For example, the Board does not produce reports on how many appeals have been filed in a particular year in comparison with other years or how many Board decisions have been appealed to the Colorado Court of Appeals.

Due to the limitations in the State Personnel Board's case tracking system, the Board lacks adequate information to provide oversight and assess the timeliness of its core activities. In addition, Board staff have had to implement many manual and workaround processes to compensate for the system's limitations. For example, when scheduling a case for a hearing, Board staff have to use a separate process to calculate the 90-day statutory deadline for holding hearings and use this information to determine the hearing dates. Staff then enter the hearing dates into the case tracking system. Board staff must also manually review each individual hard-copy case file to determine if a case has exceeded the 270-day statutory time limit for investigations conducted by the Colorado Civil Rights Division. These manual processes are an inefficient use of the Board's limited staff resources.

The trend in courts throughout the country is to implement state-of-the-art case management systems that will help the courts improve work processes and reduce staffing requirements. The Colorado Judicial Branch, which oversees all state courts, has created its own multifaceted case management system which contains electronic filing, case management, and electronic data warehouse functions. This system enables the Judicial Branch to comprehensively manage its caseload.

The Board is currently working with the Office of Administrative Courts and OIT to procure a new case management system that will be owned by Administrative Courts but also used by the Board. We reviewed the Request for Information

prepared by the agencies and found that the proposed system should improve operational efficiencies and data analysis for the Board. For example, the new system should allow the Board to:

- Schedule the docket electronically, taking into consideration the time limits within which each type of case must be held.
- Provide reminders or alerts when deadlines are approaching, using a tickler system.
- Generate reports and retrieve data on the various cases, while identifying any trends.

Although the Office of Administrative Courts will own the new case management system, it is essential that the Board be integrally involved in the system's design, testing, and implementation. The Board should identify the functional capabilities and data elements needed for the Board to be able to manage and measure its key operational areas, and it should provide this information to the Office of Administrative Courts. The Board and the Office of Administrative Courts should also continue to work together to develop and implement a case management system that meets the Board's needs.

Recommendation No. 5:

The State Personnel Board should ensure that it has a mechanism that allows it to efficiently manage and monitor its caseload by:

- a. Conducting a thorough assessment of its data and system needs and determining the most efficient way to retrieve data, run reports, and set reminders.
- b. Continuing to work with the Office of Administrative Courts and the Governor's Office of Information Technology to develop and implement a case management system that meets the Board's needs.

State Personnel Board Response:

Agree. Implementation Date: July 2011.

The Board has been working with the Office of Administrative Courts (OAC) to develop and implement a case management system that meets

both agencies' needs. Currently OAC has submitted the functional requirements for the system (developed by both the OAC and the Board) to the Request for Information process in order to obtain, by June 30, 2009, an approximate overall cost for developing such a system. Both the OAC and the Board will then submit a proposed decision item to the management team at the Department of Personnel & Administration for inclusion in the 2010 Legislative Session discussions on the Fiscal Year 2011 budget. The system would then be developed and tested, with a goal of implementation by July 1, 2011.

Conflicts of Interest

There are numerous provisions in statute, case law, and state policies emphasizing the responsibility of board members, administrative law judges, and state employees to act impartially and avoid real or perceived conflicts of interest. For example, Board staff, including administrative law judges, are required to comply with the Executive Department Code of Ethics, as issued by an Executive Order of the Governor. The Order specifies that state employees, "who serve the people of the State of Colorado as public officials, should do so with integrity and honesty, and should discharge their duties in an independent and impartial manner." In addition, administrative law judges must comply with the Colorado Code of Judicial Conduct, which requires judges to perform their duties impartially and to disqualify themselves from a case when their impartiality might reasonably be questioned. In recent case law specific to the Board, the Colorado Court of Appeals issued a decision stating that it is the responsibility of the Board as a whole to recuse any member who has the appearance of impropriety in a case. Finally, both Board members and staff must comply with the code of ethics and standards of conduct contained in Article 18 of Title 24 of the Colorado Revised Statutes. These statutes reiterate public officials' and employees' duties to act impartially and avoid real or perceived conflicts of interest.

As part of our audit, we assessed the Board's process for identifying and addressing potential conflicts of interest and promoting ethical behavior among Board members and staff. We found that although the Board has some processes in place, there are additional areas where the Board could strengthen its basic program and management controls to promote ethical behavior and address perceived and actual conflicts of interest. Specifically, we found that the Board has not developed formal guidance on how Board members and staff should handle conflicts when they occur. In addition, the Board has not consistently provided formal training to Board members at the time of their appointment or on a routine basis thereafter. According to the Board, new members are provided

with general information related to conflicts of interest when they are first appointed, but members do not routinely receive formal training on the topic. The Board reported that it provided conflict-of-interest training to members in September 2008, but this was a one-time training. We also found that the Board does not require Board members and staff to annually sign a statement that discloses real or potential conflicts of interest and documents Board members' understanding of appropriate behavior. Finally, we found that the Board has not developed a formal process for requiring Board members and staff to recuse themselves from discussions and decisions where a real or perceived conflict of interest exists.

The Board is charged with adjudicating and resolving disputes between state agencies and employees in a fair and equitable manner. In Fiscal Year 2008 the Board received more than 200 appeals from employees, with issues ranging from termination to pay reductions to alleged discrimination. In its adjudicatory role, the Board must hear appeals and make objective, impartial decisions, based on the evidence presented, that affect people's livelihoods. The Board will lose credibility if Board members or staff have conflicts of interest—whether real or perceived—but nonetheless continue to hear and decide appeals. In three recent instances, Board members had conflicts with cases appealed to the Board, but those members did not voluntarily recuse themselves from discussions and decisions related to the appeals. In the first instance, the Board's decision in the case was ultimately overturned by the Court of Appeals due to the Board member's conflict with an attorney in the case. Acting in accordance with the Court of Appeals' decision, in the other two instances the Board voted to remove the member from any discussions and decisions surrounding the cases and from other cases involving the agency with which the member had a conflict.

Other state agencies with boards and commissions that act in an adjudicatory capacity have developed and implemented conflict-of-interest statutes, policies, and procedures for members and staff. For example, the Department of Regulatory Agencies, which oversees approximately 50 boards and commissions, provides extensive materials and training that address conflicts of interest for the different boards under its jurisdiction. These materials include the *Handbook for Board Members and Commissioners*, *New Board Member Ethics and Conflicts of Interest Presentation*, *Current Board Member Manual on Conflicts of Interest*, and for some boards and commissions, an annual training for members presented by the Attorney General's Office. In addition, the Public Utilities Commission, within the Department of Regulatory Agencies, has a conflict-of-interest policy that requires all the commissioners to annually sign an acknowledgement form and agree to abide by the policy.

The Board should strengthen its controls for promoting ethical behavior by developing and implementing formal rules and policies for addressing real or perceived conflicts of interest to ensure that Board members and staff act consistently and appropriately when conflicts occur. These rules and policies should include a process for resolving conflicts when they occur and a requirement that Board members and staff recuse themselves from appeals where a real or perceived conflict exists. In addition, Board members and staff should be required to annually sign a statement that discloses real or perceived conflicts of interest and documents their understanding of the Board's rules and policies related to such conflicts. Finally, the Board should provide formal training to new Board members on conflicts of interest at the time of appointment, and routinely thereafter.

Recommendation No. 6:

The State Personnel Board should strengthen safeguards for identifying and preventing conflicts of interest by developing rules and policies that:

- a. Include a process for resolving conflicts when they occur.
- b. Require Board members and staff to recuse themselves from an appeal, should an actual or perceived conflict arise.
- c. Require Board members and staff to annually sign a statement that discloses real or perceived conflicts of interest and documents their understanding of the Board's rules and policies related to such conflicts.
- d. Require that formal training on conflicts-of-interest rules and policies be provided to Board members at the time of appointment, and consistently thereafter.

State Personnel Board Response:

- a. Agree. Implementation date: December 1, 2009.

Pursuant to Executive Order D 008-01, the Code of Judicial Conduct applies to all administrative law judges, including the Board's administrative law judges. In addition, pursuant to a decision from the Colorado Court of Appeals in 2003 resulting from a 2001 Board case, when the Board conducts quasi-judicial proceedings (i.e., hears cases), it and its members must comply with the Code of Judicial Conduct.

As such, Board members are charged with identifying and resolving actual or apparent conflicts to assure that the processes before the Board are fundamentally fair to the participants. The Board adheres to this mandate in discharging its duties. In two recent extraordinary situations, the Board affirmatively voted to remove a Board member from the discussion and deliberation of matters when the member did not recuse himself in the face of an apparent conflict, and it voted to establish guidelines for recusal of the Board member who has a matter pending before the Board. The Board is currently managing conflicts that confront either Board staff or its members and recognizes that a formalization of its processes should be implemented.

- b. Agree. Implementation date: December 1, 2009.

In connection with formalizing its conflicts resolution process, as discussed immediately above, the requirement of recusal by staff and Board members will be incorporated. The Board is mindful, however, that identification of conflicts is a subjective matter; i.e., the process for identification and resolution of conflicts is dependent on the “self-reporting” of same by Board staff, its administrative law judges, and its members. It is recognized that if conflicts are either not disclosed or discovered by happenstance, the Board can only react to resolve the matter. The Board intends to address the various situations in formulation of its processes, as stated above.

- c. Agree. Implementation date: December 1, 2009.

The Board intends to incorporate the requirement of an annual conflicts disclosure in the formulation of its conflicts process.

- d. Agree. Implementation date: On or before January 2010 and within budgetary constraints.

It should initially be noted that the Board’s administrative law judges are required to attend ethics and conflicts training pursuant to Executive Order D 008-01, which training is currently offered through the Office of Administrative Courts within the Department of Personnel & Administration. The Board will continue to provide conflicts training when a new member is appointed or elected, and intends to provide at least annual ethics/conflicts training to Board members. The Board would note that other departments have boards and commissions that conduct hearings and other quasi-judicial proceedings. To the extent these departments have some form of

conflicts training, the Board will explore the possibility of joint training opportunities.

Customer Support and Assistance

The Board's mission includes resolving disputes involving state employees in a manner that is fair and understandable for all parties and providing guidance through rules, decisions, communication, and training. Some litigants, called *pro se* litigants, are parties who choose to represent themselves during their appeal without the assistance of an attorney. The majority of the employees who file cases with the Board are *pro se*. According to Board data, of the 217 appeals filed in Fiscal Year 2008, 156 (72 percent) included a *pro se* employee who did not have legal representation and who likely was not familiar with the hearing process.

We reviewed the customer support and assistance the Board provides to *pro se* litigants and found that the Board could improve the accessibility of informational materials related to the hearing process. The Board has developed various materials to assist *pro se* litigants, including a *Non-Lawyers' Guide & FAQs*, a *Representing Yourself at the State Personnel Board Hearing* document, an attorney referral list, and sample forms such as a prehearing statement and Board orders that set out various procedures. Although most of these materials are on the Board's website, the Board does not inform litigants that the materials are available or where to find them. Further, we found that the materials are difficult to locate on the Board's website. The Board has recently consolidated all of the materials in one section on its website, which is an improvement. However, this section is in the "General Information" folder under the tab entitled "About the Board," which would appear more suitable for information related to the Board itself rather than for information to assist *pro se* litigants. There are other tabs, such as "Hearings and Appeals" and "Filing Requirements," that would be a more logical place to store this information. Finally, we found that the attorney referral list is not on the Board's website, but rather is provided by Board staff only when requested by a litigant.

It is important that the Board address these deficiencies and improve the accessibility of informational materials related to the hearing process for *pro se* litigants. If information is not easily accessible, *pro se* litigants may not understand the hearing process and, therefore, could be at a disadvantage when presenting their cases. According to a survey we conducted of employees who had participated in the Board's appeals process, 47 percent (8 of 17 respondents) said they had difficulties navigating through the Board's processes while

attempting to meet deadlines. Additionally, according to the Board's administrative law judges, *pro se* litigants' lack of sufficient knowledge of the Board's processes can cause problems during the hearing. For example, on occasion *pro se* litigants have asked the administrative law judges to modify the rules or create exceptions so they could more easily navigate the hearing process. The Board should ensure that information related to the hearing process is easily accessible to litigants. Specifically, the Board should let all litigants know when they first file an appeal what informational materials are available and where to find them. The Board should also ensure that all informational materials are included on the Board's website and are easy to locate.

Recommendation No. 7:

The State Personnel Board should make informational materials related to the hearing process more accessible to litigants by:

- a. Including information on and the location of available resources in the appeal application forms provided to all employees at the beginning of a case.
- b. Ensuring that all necessary information is clearly labeled and located on the Board's website.

State Personnel Board Response:

Agree. Implementation date: August 2009.

- a. In light of this recommendation, the Board has revised certain orders and materials sent to parties to include information on and the location of available resources. The Board staff is currently working with the Division of Human Resources to streamline the filing of appeals. This work will include the revision of the Board's current appeal form. The Board staff will include, in the revised appeal form, a reference to the website link where available resources may be found.
 - b. The Board staff has revised the Board website to make the *pro se* materials more visible.
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