



**Office of the Washington State Auditor**  
**Pat McCarthy**

**Whistleblower Investigation Report**  
**Washington State Center for**  
**Childhood Deafness and Hearing Loss**

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**Office of the Washington State Auditor**  
**Pat McCarthy**

October 29, 2018

The Honorable Jay Inslee  
Office of the Governor

**Report on Whistleblower Investigation**

Attached is the official report on Whistleblower Case No. 18-015 at the Center for Childhood Deafness and Hearing Loss.

The State Auditor's Office received an assertion of improper governmental activity at the Agency. This assertion was submitted to us under the provisions of Chapter 42.40 of the Revised Code of Washington, the Whistleblower Act. We have investigated the assertion independently and objectively through interviews and by reviewing relevant documents. This report contains the result of our investigation.

If you are a member of the media and have questions about this report, please contact Director of Communications Kathleen Cooper at (360) 902-0470. Otherwise, please contact Whistleblower Manager Troy Niemeyer at (360) 725-5363.

Sincerely,

Pat McCarthy  
State Auditor  
Olympia, WA

cc: Kelly Wicker, Deputy Chief of Staff  
Jessica Sydnor, Director of Human Resources  
Kate Reynolds, Executive Director, Executive Ethics Board  
Jacque Hawkins-Jones, Investigator

# WHISTLEBLOWER INVESTIGATION REPORT

## Assertions and Results

Our Office received a whistleblower complaint asserting the executive director (subject) of the Washington State Center for Childhood Deafness and Hearing Loss:

- Extended a special privilege to a non-state-employee by allowing her to use a state vehicle;
- Improperly claimed travel reimbursements; and
- Grossly mismanaged his responsibilities when he failed to ensure written contracts were in place.

We found no reasonable cause to believe the subject violated state ethics laws and rules.

We were unable to determine whether the reported actions rose to the level of gross mismanagement.

## Background

In 2009, the Washington State Center for Childhood Deafness and Hearing Loss (Center) was established to provide statewide leadership for the coordination and delivery of educational services to children who are deaf or hard-of-hearing. The Center is an independent agency in the state of Washington. The Governor appoints the governing Board of Trustees and the executive director. All of the Center's activities are under the authority of the Board of Trustees and the executive director.

State law (RCW 72.40.015) outlines the Center's three primary responsibilities:

1. To manage and direct the activities of the state school for the deaf (Washington School for the Deaf – WSD);
2. Provide statewide leadership and support to coordinate regionally delivered educational services in the full range of communication modalities, for children who are deaf or hard-of-hearing (direct consultative and evaluation services); and
3. Expand system capacity at the local and statewide level by collaborating with appropriate public and private partners for the training and professional development of educators serving children who are deaf or hard-of-hearing (professional development).

In addition to his specific duties at the Center, the subject participates in The Common Ground Project (project), which is funded through a grant. This project's goal is to ensure infants, children and youth who are deaf or hard-of-hearing receive the support and services they need. In calendar years 2016 and 2017, the Center received a total of over \$220,000 for the project. The subject travels throughout the country to participate in this project, and the Center uses a portion of the grant funds to cover those costs.

## About the Investigation

We reviewed the subject's travel documentation and emails, as well as vendor contracts, and interviewed witnesses.

### *State vehicle*

The complaint asserted that the subject allowed a non-state-employee to use a state vehicle. Because the vehicle in question is a part of the state car fleet, the Department of Enterprise Services (DES) manages the use and maintenance of this vehicle. We did not request the vehicle logs from DES because the miles were not in question. The Center pays a flat fee for the vehicles, which includes up to 500 miles of travel per month.

DES allows contractors or volunteers to drive a state vehicle while conducting state business if the Department head or their designee approves it.

We found the non-state-employee in question is a state employee who works for Central Washington University. She works as the state coordinator for deaf and hard-of-hearing services in collaboration with the Washington Sensory Disabilities Services, a statewide special need project funded by the Office of Superintendent of Public Instruction. In November 2017, the Center hired the employee as a program director.

The subject said the vehicle is assigned to the city where the employee is located. He said other staff can use the vehicle in lieu of renting a car if they are in the area. For instance, he has used the vehicle when he travels to the area for state business.

Because the subject is the Department head, he has the authority to allow the employee the use of a state vehicle while conducting state business. In addition, the person in question was a state employee and was doing work for the Center. Therefore, we have no reasonable cause to believe an improper governmental action occurred.

### *Travel*

During our investigative period, we found the subject went on 58 trips total; including 20 trips out-of-state. The subject was in travel status 63 percent of the time during our investigative period.

According to the Center's records, the subject's official residence is in Battle Ground, which is 17 miles north of Vancouver where the Center is located. The Portland International Airport is located 12 miles south of Vancouver, whereas Seattle-Tacoma International Airport (SeaTac) is located 157 miles north of Vancouver.

We found the subject traveled out of state nine times to meet with individuals involved with the project. The project's grant covered all of the subject's flights, lodging, rental cars and per diem. All costs complied with state per diem rates.

We examined the subject's trips and noted:

- On 33 trips, the subject flew to his destination.
- On all but one trip, the subject flew out of SeaTac.
- He traveled from his official residence or work station directly to SeaTac airport on 17 trips.
- He received reimbursement for 4,820 miles to and from SeaTac - equaling \$2,578.

Additionally, we found the subject rented a vehicle on 28 trips – eight trips when the rental vehicle had more than 200 miles documented.

According to the subject's executive assistant (assistant), she created all travel requests for the subject. This included obtaining prior approval from the director of business operations, booking the subject's flights and rental car, and documenting his trip on the travel expense voucher. She said she ensures the reimbursement requests include the required receipts before sending them to the Center's business office, which processes the payment. When filling out the travel expense voucher, the assistant documents the travel start and stop times and enters the number of miles between destinations. She said a fiscal analyst in the business office determines the subject's reimbursable meals and mileage.

The assistant said the subject is not involved in creating his reimbursement request; he only signs the form she fills out. In addition, he does not calculate the amount of his reimbursement, the fiscal analyst in the business office does. The subject only informs the assistant of his travel plans and what the trip relates to, and she makes reservations accordingly.

The subject said his assistant and the business office handle his travel and reimbursement requests; he does not "touch any of that." The subject said he did not always request reimbursement for his mileage. He also did not claim lodging when he traveled north because he stays with friends and family in the area.

For travel including flights, the subject said he prefers to fly out of SeaTac because it "is easier, there are more direct flights and it's cheaper." Although he tries to couple meetings in the Puget Sound area with his flights, he said he prefers direct flights and most of the direct flights are out of SeaTac.

Regarding the mileage of the rental vehicles, the subject does not believe his use to be excessive because he receives unlimited mileage and a lot of his driving is work-related. For example, he went to a director's house in Mississippi for a meeting that was located "far from town." However, he did say if time allows, he likes to take drives around the area where he is traveling. For example, arriving to Ft. Lauderdale, Florida, early and driving down to Key West, about 194 miles away, or when a meeting was canceled in Atlanta, Georgia, and he drove to Savannah, about 250 miles away.

The State Administrative and Accounting Manual (SAAM) requires the traveler to select the travel alternative that is most economical and advantageous to the state. The Center's travel policies also mirror the SAAM and explain that the traveler, on official state business, is responsible for "paying any excess costs and any additional expenses incurred for personal preference or convenience."

In our review of the travel documentation, we did not see any documented analysis or justification to support the decisions related to flights and rental cars. We question whether flying out of SeaTac airport, as opposed to Portland International, is the most economical means considering the cost of mileage, the subject's time and airport parking.

Additionally, we question whether a rental car is necessary for each trip or if it is for the sole or partial benefit of the subject.

### *Contracts*

The Center created a statewide outreach team to fulfill the legislative mandate that was created in 2009. The outreach team provides services to deaf and hard-of-hearing students located throughout the state, including those in educational services districts (ESDs). In these situations, the ESDs contract with the Center to provide the specialized services. According to the Center, these services include:

- Observation and consultation – including program reviews and individual service plans
- Assessments and evaluations – such as audiology, behavior and speech
- Professional development – for example, teaching strategies and curriculum
- Family engagement – such as family activity night and parent-centered workshops

According to witnesses, the Center has had issues internally and with vendors regarding establishing contracts for these services.

Witnesses said the contracts process required multiple steps and timely responses from numerous parties for the contract to be in place before initiating services. Although the subject and the business office were working together to modify this process, witnesses said the subject and one of the outreach directors were consistently allowing services to occur without having a contract in place or paying for services not covered by a contract.

For example, we found several instances that showed the outreach director communicating with the Center's outreach coordinator and director of business and operations, notifying them that a non-Center-employee will be seeking reimbursement for time and travel. Most of these notifications happened after the fact, or without enough time to complete a contract before the service date.

We found the outreach coordinator and director of business and operations questioned the reimbursements when there was no contract or when they could not make a connection between

the Center and non-Center-employee's participation in the event under the current contract. The director of business and operations even contacted our Office to discuss the risks of not requiring a contract.

We found the subject was included in the conversations and rarely provided guidance, mostly providing directives instead. In one response he said, "I have directed our staff to provide the service at the district level, recognizing that it may result in our agency paying for the services provided."

In another response, the subject said, "[a]s a part of our legislative responsibility to provide capacity development at the local level we have and will continue to provide training opportunities without cost to participants or districts."

Witnesses stated said the subject is rarely on campus and his focus is largely on the project. They say his absence from campus and the day-to-day business activities has caused confusion within the business office.

The subject said a contract is not needed when the Center is providing professional development. However, a contract is needed for direct services that result in a product the Center produces, such as a report. He said the Center is "mandated by law to provide services even if we're given no money."

We spoke with witnesses who said there have been numerous meetings with management regarding the contracts process. Witnesses said those meetings did not solve anything because not all parties involved were around the table.

Witnesses said that because the subject is commonly in travel status, he does not participate in meetings to discuss budget-related items or concerns regarding contracts. According to witnesses, he often "swoops in" at the last minute and makes a directive without having all of the information or contribution from the appropriate parties.

In 2016, the Center received a procurement risk assessment from the Department of Enterprise Services (DES). These assessments are routine and determine the agency's delegated authority for purchasing goods and services. According to the Center's 2016 risk assessment, which was finished in February 2018, the Center received a score of "high," which is the highest risk score an agency can receive. The score of the previous risk assessment in 2014 was "low."

We spoke with the DES procurement risk assessment administrator (administrator), who said the Center received a "high" rating because the Center's procurement coordinator, with over 20 years' experience, left the agency and the Center did not fill her position. She left the Center in December 2017 and her position was filled in June 2018.

The administrator said he had many discussions with the subject and other employees of the Center regarding service contracts and its requirements by law. He said "procurement laws do not govern

when you are the vendor” and in these situations, the Center is contracting with individuals who are providing a service to other entities, which makes it the vendor.

Rather than a contract issue, the administrator described it as a management issue. He said management “better have ways of assuring you can get paid otherwise the well will go dry.”

We requested a list of paid services that did not have a contract in place before the date of service. The Center provided a list of 76 instances when a service was provided without a contract in place, totaling over \$26,000.

The subject said that the procurement specialist leaving created a flurry of activity and “caused problems they are working to solve now.” The subject said the previous director of business and operations also played a role in the current problems at the Center.

The subject believes the systems are strengthening and that the Center has good people who are analyzing and tweaking the processes accordingly.

We determined the Center did not violate state procurement laws. Therefore, the actions of the subject did not rise to the level of gross mismanagement. However, we did note that some policies and procedures were missing, not enforced or needed improvement. Additionally, we noted concerns regarding the Center’s budget.

## **Recommendations**

We recommend the Center improve its internal controls and establish policies and procedures to ensure:

- Employee travel methods are the most economical and advantageous to the state in accordance with the State Administrative and Accounting Manual.
- Employee travel records and documentation are organized and stored in one location, and include the reason for travel and accompanying registrations.
- It establishes service contracts or agreements before providing services.

## **State Auditor’s Office Concluding Remarks**

We thank Agency officials and personnel for their assistance and cooperation during the investigation.

## WHISTLEBLOWER INVESTIGATION CRITERIA

We came to our determination in this investigation by evaluating the facts against the criteria below:

### **RCW 42.40.020(4) - Definitions**

“Gross mismanagement” means the exercise of management responsibilities in a manner grossly deviating from the standard of care or competence that a reasonable person would observe in the same situation.

### **RCW 42.52.020 - Activities incompatible with public duties.**

No state officer or state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the state officer's or state employee's official duties.

### **RCW 42.52.070 - Special privileges.**

Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons.

### **RCW 42.52.160(1) - Use of persons, money, or property for private gain.**

(1) No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another.

### **WAC 292-110-010(1) and (3) - Use of state resources.**

(1) Statement of principles. All state employees and officers are responsible for the proper use of state resources, including funds, facilities, tools, property, and their time. This section does not restrict the use of state resources as described in subsections (2) and (3) of this section.

(3) Permitted personal use of state resources. This subsection applies to any use of state resources not included in subsection (2) of this section.

(a) A state officer or employee's use of state resources is de minimis only if each of the following conditions are met:

- (i) There is little or no cost to the state;
- (ii) Any use is brief;

- (iii) Any use occurs infrequently;
- (iv) The use does not interfere with the performance of any state officer's or employee's official duties;
- (v) The use does not compromise the security or integrity of state property, information systems, or software;
- (vi) The use is not for the purpose of conducting an outside business, in furtherance of private employment, or to realize a private financial gain; and
- (vii) The use is not for supporting, promoting the interests of, or soliciting for an outside organization or group.

**RCW 43.88.160 - Fiscal management—Powers and duties of officers and agencies.**

This section sets forth the major fiscal duties and responsibilities of officers and agencies of the executive branch. The regulations issued by the governor pursuant to this chapter shall provide for a comprehensive, orderly basis for fiscal management and control, including efficient accounting and reporting therefor, for the executive branch of the state government and may include, in addition, such requirements as will generally promote more efficient public management in the state.

(1) Governor; director of financial management. The governor, through the director of financial management, shall devise and supervise a modern and complete accounting system for each agency to the end that all revenues, expenditures, receipts, disbursements, resources, and obligations of the state shall be properly and systematically accounted for. The accounting system shall include the development of accurate, timely records and reports of all financial affairs of the state. The system shall also provide for central accounts in the office of financial management at the level of detail deemed necessary by the director to perform central financial management. The director of financial management shall adopt and periodically update an accounting procedures manual. Any agency maintaining its own accounting and reporting system shall comply with the updated accounting procedures manual and the rules of the director adopted under this chapter. An agency may receive a waiver from complying with this requirement if the waiver is approved by the director. Waivers expire at the end of the fiscal biennium for which they are granted. The director shall forward notice of waivers granted to the appropriate legislative fiscal committees. The director of financial management may require such financial, statistical, and other reports as the director deems necessary from all agencies covering any period.

## State Administrative and Accounting Manual

### 10.10.20 - These criteria must be used for selecting and approving travel

In addition to complying with state travel policies and procedures, an agency head or authorized designee must use the following criteria to determine whether to authorize a person to travel on official state business, and to determine what travel alternatives to authorize.

1. Select the travel alternative that is most economical to the state.

Agencies must use this criteria except in the situations noted in Subsection 10.10.20, #2.

All costs should be considered--travel, labor, etc.--in making the determination. For example: Is it less expensive to drive than fly out of Sea-Tac Airport? Is it cheaper to fly out of Sea-Tac than out of Port Angeles?

2. Select the travel alternative that is most advantageous to the state.

An agency may use this advantageous criterion only in the following situations:

- To ensure the health and safety of agency travelers (Subsection 10.10.35)
- To comply with the Americans with Disabilities Act (Subsection 10.10.40)
- Process and travel situations for meals with meetings (Subsection 10.40.60)
- Use of privately owned motor vehicles (Subsection 10.50.20)
- The personal travel plans of the traveler shall not influence this criterion.

### 10.10.25 - Implement alternatives to travel

Agencies are to develop and implement alternatives to travel, as well as less expensive means of travel. These methods should include, but are not limited to:

- Teleconferencing and video conferencing;
- Video recordings and published reports;
- Car-pooling and greater use of public transportation;

- Reduced frequency of regularly scheduled out-of-town meetings;
- Restrictions on the number of staff traveling to the same destination; and
- Coordinating between agencies for joint travel arrangements when more than one agency is involved.

## **Definitions**

**OFFICIAL STATION** - The city, town, or other location where the state official or employee's office is located, or the city, town, or location where the state official or employee's work is performed on a permanent basis. For the purposes of these travel regulations, Olympia, Tumwater and Lacey are considered to be the same official station. A state official or employee's official station is to be designated by the agency. It is to be determined by the needs of the agency and not assigned because it is the home or preferred living area of a state official or employee.