UPDATED OTHER FUNDS ENDING BALANCES FOR THE 2015-17 & 2017-19 BIENNIA

Agency: Oregon Department of Education
Contact Person (Name & Phone #): Becky Frederick 503-947-5847

(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)
Other Fund Type	Program Area (SCR)	Treasury Fund #/Name	Category/Description	Constitutional and/or Statutory reference	2015-17 Ending Balance		2017-19 Ending Balance		Comments
					In LAB	Revised	In CSL	Revised	
Limited	58100-100-00-00000 - Department Operations	0401 - Education Cash Account	Operations/Grants	ORS 326.115/327.485/ 345.080/337.065/326.6 07(2)/326.603/338.155, Various Federal Statutes	0	1,582,015	1,427,135		Does not include Oregon Virtual School District [2] I or indirect Federal Funds expended as Other Funds.
Limited	58100-100-00-00000 - Department Operations	0401 - Education Cash Account	Operations		4,120,448	3,020,660	2,264,455		Indirect Federal Funds expended as Other Funds. The indirect rate is recalculated each 1-2 years and negotiated with USDOE. Additional costs anticipated in the 2017-19 budget will not be recovered by the indirect rate prior to the 2021-23 indirect rate application.
Limited	58100-100-00-00000 - Department Operations	1184 - Oregon Virtual School District	Operations	ORS 329.842	230,000	140,380	0		Program plans to expend funds available.
Limited	58100-100-00-00000 - Department Operations	1363 - Speech-Language Pathologist Trng Fund	Operations	ORS 327.008 (13), 348.406	0	329,047	296,833		
Limited	58100-100-00-00000 - Department Operations	1474 Youth Development Division Fund	Operations/Grants	HB3231 Sec 6 (2013)	0	0	0		Program plans to expend funds available.
Limited	58100-100-00-00000 - Department Operations	1477 Early Learning Division Fund	Operations/Grants	ORS 329.170-200	1,255,655	21,762	19,631		Balance represents less than 1 month of operating expenditures
Limited	58100-100-00-00000 - Department Operations	1478 Child Care Fund	Operations/Grants	ORS 657A.310	840,810	276,228	199,186		Balance representsabout 5 months of operating expenditures
Limited	58100-100-00-00000 - Department Operations	1486 - Network of Quality Teaching and Learning Fund	Operations	HB 3233 (2013) ORS 342.953	0	602,295	343,330		Balance represents less than 2 months of operating expenditures
Limited	58100-100-00-00000 - Department Operations	1542 - English Language Learners	Operations	HB 3499 (2015) Section 9	0	1,073,758	968,637		New program added in the 2015-17 biennium. Iimplementation delayed due to rule writing process and other start up activities.
Limited	58100-100-00-00000 - Department Operations	1548 -OR School Capital Improvement Matching Acct	Operations	SB 447 (2015) Sec 4	0	528,234	476,520		New program added in the 2015-17 biennium. Implementation of TAP contracts delayed due to rule writing process and other start up activities. Balance represents less about 7 months of operating expenditures.
Limited	58100-100-00-00000 - Department Operations	1659 -ART XI-P Bond Admin Fund 2016I	Operations - COI	SB 447 (2015) (2), COI 2016I XI-P GO Bond	0	0	0		New program added to the agency in the 2015-17 biennium. Cost of Issuance (COI) costs will never have ending balance.
Limited	58100-100-00-00000 - Department Operations	1660 - XI-P 2016I Go Bond-Sch Cap Imp Match FND	Grants	SB 447 (2015) Sec 4- 2016I XI-P GO Bond	0	85,000,000	10,591,176		New program added to the agency in the 2015-17 biennium. This balance represents General Obligation Bond revenues that are granted to SDs and ESDs over 3-year grant period (reimbursement basis).

UPDATED OTHER FUNDS ENDING BALANCES FOR THE 2015-17 & 2017-19 BIENNIA

Agency: Oregon Department of Education
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(a)	(b)	(c)	(d)	(e)	(f) 2015-17 Ending Balance	(g)	(h) 2017-19 Ending Balance	(i)	(j)
Other Fund Type	**Program Area (SCR)**	**Treasury Fund #/Name**	**Category/Description**	**Constitutional and/or Statutory reference**	**In LAB**	**Revised**	**In CSL**	**Revised**	**Comments**
Limited	58100-200-00-00000 - Special Schools	0401 - Education Cash Account	Operations/Grants	ORS 326.115/327.485/ 343.243-343.247/HB 5054 (2011)	578,247	879,053	791,411		The estimates are based on revenue/expenditure patterns and includes remainder of proceeds from the sale of OSB, which are limited to deferred maintenance costs. Assumes OSB proceeds will be spent down on outstanding deferred maintenance projects during the 2015-17 biennium.
Limited	58100-250-00-00000 - Youth Corrections Educational Program	0401 - Education Cash Account	Operations/Grants	ORS 326.115/327.026/ 327.485	1,157,473	1,552,421	1,400,439		Balance needed to offset fluctuations in ADMw. Represents less than 1 month operating expenditures.
Limited	58100-300-00-00000 - Grant in Aid	0401 - Education Cash Account	Operations/Grants	ORS 326.115/327.485 327.008(13)/348.406	3,677,032	1,119,184	1,009,616		The majority of the carryover balance is for the Hospital and Long Term Care and Treatment programs funded by the State School Fund.
Limited	58100-300-00-00000 - Grant in Aid	1321 - Blind and Visually Impaired Student Fund	Operations/Grants	ORS 346.315	963,576	983,494	887,210		Administration of these funds are through a contractual arrangement with an ESD. It is difficult to project how much they will spend on this program, because funding is specifically for students who were at OSB when the school closed. Projection is based on best estimate by program fiscal staff. Funding is needed until all students who were at OSB have completed their schooling. Balance represents about 6 months of operating expenditures based on 2015-17 expenditure average.
Limited	58100-300-00-00000 - Grant in Aid	1486 - Network of Quality Teaching and Learning Fund	Grants	HB 3233 (2013) ORS 342.953	0	1,760,596	1,588,234		Represents about 5.6% carryover for less than 2 months of operating expenditures.
Limited	58100-300-00-00000 - Grant in Aid	1542 - English Language Learners	Grants	HB 3499 (2015) Section 9	0	4,733,965	2,570,509		Represents about 5.9% carryover; implementation start-up delayed due to rulemaking and other program start up activities; expected to spend down program dollars in next biennium at a higher rate. Balance represents about 10 months of operating costs during phase-in, but would cover less than that in a fully implemented program.
Limited	58100-400-00-00000 - School Funding	0401 - Education Cash Account	Operations	ORS 326.115/327.485 321.751/321.754	254,328	0	0		Funds transferred from the Department of Revenue are fully allocated to districts.
Limited	58100-500-00-00000 - ELD GIA	1477 - Early Learning Division Fund	Grants	HB 3234 (2013) SECT 1, 7	0	440,917	397,751		New program added in the 2015-17 biennium. Balance represents less than 1 month of program expenditures.
Limited	58100-500-00-00000 - ELD GIA	1478 - Child Care Fund	Grants	HB 3234 (2013) SECT 37, 51, 55		574,336	518,108		New program added in the 2015-17 biennium. Balance represents less about 6 months of program expenditures
Limited	58100-550-00-00000 YDD GIA	1474 - Yourth Development Division Fund	Grants	HB 3231 (2013) SECT 6	0	62,295	56,196		New program added in the 2015-17 biennium. Balance represents less than 1 month of program expenditures

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Other Fund				**Constitutional and/or**	**2015-17 Ending Balance**		**2017-19 Ending Balance**		
Type	**Program Area (SCR)**	**Treasury Fund #/Name**	**Category/Description**	**Statutory reference**	**In LAB**	**Revised**	**In CSL**	**Revised**	**Comments**
Nonlimited	58100-100-00-00000 - Department Operations	0547 - Education Training Revolving Fund (Fund 3000)	Operations	ORS 326.340	111,494	144,492	130,346		ORS Title "Advanced Tech Ed & Training Fund" - diff than Treasury Fund title. The estimates are based on revenue and expenditure patterns, and represent less than 1 month of operating expenditures.
Nonlimited	58100-100-00-00000 - Department Operations	0577 - School Lunch Revolving Fund	Operations	ORS 327.525/327.520	678,830	924,385	833,888		Reimbursed cost of storage and distribution of government supplied bulk dairy products. May not exceed 3x the highest month's expenditure in the past 12 months.
Nonlimited	58100-450-00-00000 - Common School Fund	0401 - Education Cash Account	Operations	ORS 326.115/327.410/327.485	0	0	0		Funds transferred from the Department of State Lands are fully allocated to districts.
Nonbudgeted- NL	58100-200-00-00000 - Special Schools	0401 - Education Cash Account	Trust Fund	ORS 326.115/327.485	36,582	77,667	70,063		Student transportation costs
Nonbudgeted- NL	58100-200-00-00000 - Special Schools	0675 - OSD Trust	Trust Fund	ORS 346.055	5,863	144,943	130,753		Balance comprised of donated funds to be used for individual OSD students or for specific student programs.
Nonbudgeted- NL	58100-400-00-00000 - School Funding	0977 - Small School District Supplement Fund	Operations	ORS 327.360/327.008(9)	0	0	0		Small school districts that qualify receive supplemental funding.
Nonbudgeted- NL	58100-400-00-00000 - School Funding	0983 - School Improvement Fund	Operations	ORS 327.294/327.297	52,150	52,373	47,246		Projection increase based on Interest Earnings.
Debt Service Limited	58100-850-00-00000 - Debt Related Costs	9999	Debt Service	ORS 286A			0		DAS calculations
					$ 9,612,040	$ 100,952,398	$ 23,030,250		

Secretary of State Audit Report

Jeanne P. Atkins, Secretary of State

Gary Blackmer, Director, Audits Division

State Agencies Respond Well to Routine Public Records Requests, but Struggle with Complex Requests and Emerging Technologies

Executive Summary

Oregon state agencies respond well to most public records requests for routine information, but the infrequent complex requests produce challenges. As a result, some requesters believe that agencies deliberately discourage, delay, or block the release of public information.

The Department of Administrative Services should provide guidance and training to help agencies develop procedures, and agencies should create timeliness goals for responding to requests. Better monitoring, consistent fees, use of technology, and third-party mediation could also help with the retention and disclosure of public records and improve trust in Oregon's government.

Oregon's public records law was enacted in 1973. Known primarily as a law of disclosure, the law grants all citizens within the state of Oregon the right to inspect all records – with some exceptions.

When the law first passed, it included 16 classes of records that could be exempt from disclosure for a total of 55 exemptions. Changes and revisions since that time have raised the total number of exemptions in Oregon law to more than 400. The intent, however, remains the same: that Oregon's government is accessible and transparent to its people.

For our audit, we examined nine agencies of varying sizes and missions to capture a fuller picture of public records in Oregon state agencies. The nine agencies were:

- The Department of Human Services
- The Oregon Employment Department
- The Department of Environmental Quality
- The Public Employees Retirement System
- The Oregon Liquor Control Commission
- The Oregon Department of Education
- The Oregon Real Estate Agency
- The Oregon State Board of Nursing
- The Board of Parole and Post-Prison Supervision

Agencies handle routine requests well, struggle with complex ones

We found that public records requests generally fall into one of two categories. The first is routine requests, or common requests for information that agencies have easy and ready access to. These requests, which generally make up 90 percent or more of an agency's total requests, can be fulfilled at little to no cost and within a couple of weeks.

The other category is non-routine or complex requests. These are voluminous in scope, ask for "any and all" information, or are otherwise complicated for an agency to complete. These are the requests that can take weeks or months to fulfill and often at a high cost.

In the selected files we reviewed, we found no evidence to suggest that agencies were regularly taking an unreasonably long time, or charging unreasonably high fees, to respond to records requests. But when agencies struggle to respond to complex, non-routine requests, it can foster suspicion and distrust, which in turn can undermine the credibility and transparency of both the agency and Oregon government.

To address this distrust, some states and provinces have established a neutral, third-party entity that helps mediate disagreements between requesters and agencies. An ombudsman or commission can help determine when a request is too broad or when an agency is taking an unreasonably long time to respond. Oregon has no such mechanism. The Attorney General's role is limited to denials based on exemptions and fee waivers.

Agencies retain public records longer than required

It is important that agencies properly retain and manage their public records so they can be efficiently located and disclosed in response to a records request. To do this, agencies must follow their retention schedules – guidelines, created and authorized by the Archives Division, that determine how long certain records must be kept before they are destroyed or transferred to the State Archives for permanent retention.

But we found that agencies are keeping too many records for too long, resulting in a large volume of information. Some employees are too cautious about accidentally deleting or losing track of a public record, and so have a tendency to "keep everything."

We found that better management tools and specific training on the issue of record retention may help state employees better manage records. This can reduce the volume of public information statewide and assist agencies to more efficiently respond to public records requests.

Exemptions remain an issue and may require a closer look

Exemptions – those instances in which a record may be exempt from disclosure – make up a major portion of Oregon's public records law.

Agencies generally understand which exemptions most commonly apply to the records in their care. But due to the sheer number of exemptions in the law, including how they are worded and where in statute they are located, staff sometimes must consult with experts or the Department of Justice.

There is a perception among some requesters that agencies inappropriately use exemptions to block the release of public information. Most of Oregon's exemptions are applied at the agency's discretion. After weighing the public interest, these records may be disclosed *even if* an exemption applies. The exception is confidential information, which is legally prohibited from release.

These issues regarding exemptions are not new. After a national report gave Oregon a failing grade in government transparency eight years ago, state officials closely examined the law and accepted feedback from requesters and public officials. Their findings, published in 2010 as the Attorney General's Government Transparency Report, found that "Any meaningful overhaul of Oregon's public records law must reorganize and make coherent sense of the numerous exemptions."

A bill was subsequently introduced in the 2011 legislative session to address some of these recommendations, but it failed to pass. A task force was recently convened by the Attorney General to examine in greater detail the issues of exemptions in Oregon law.

Variations in responses frustrate some requesters

Requesters expect their government will be transparent and open, that fees charged for requests will be reasonable and records will be made available as quickly as possible. They expect agencies that fail to do so will be held accountable.

But variation among agencies' responses to records requests – in both fees and timeliness – can lead to confusion and frustration among requesters when they are not sure what kind of response to expect.

Agencies charge differing fees to provide public information. This variation extends to both the fees for copying costs and the charge for staff time to respond to a request. Agencies charge anywhere from $0.05 to $0.25 per page in copying costs, and from $15 to $40 per hour for staff time.

We also found a time variation among agencies in responding to requests, due largely to the differences between routine and non-routine requests. First, agencies have varying internal guidelines for what it means to be timely, if they have any internal guidelines at all. Second, timeliness depends largely on the type of request an agency receives. We found that routine requests were fulfilled within 14 days, while non-routine requests could take upwards of 265 days to fulfill.

We saw no evidence to suggest that adding a specific deadline in law would positively affect agencies' abilities to respond to requests in a timely fashion. But agencies that set internal guidelines or goals to respond to

requests hold themselves accountable to requesters while maintaining the flexibility provided in Oregon law.

Agencies are not keeping up with changing technologies

Oregon's public records law was updated in 2011 to extend the definition of a public record to electronic or digital messages. Agencies have taken a longer time to update their own policies to include emerging technologies such as email, text, and instant messages.

More than half of the agencies we examined had policies to address email as it relates to public records. But only one agency had specific language to address the use of a personal or private email account in conducting the public's business. Only one agency had a policy to address the use of instant messages, and no agencies had policies regarding text messages, as public records.

A few agencies have adopted policies to address social media, which appear to draw language from the Social Networking Media guide provided by the Department of Administrative Services.

Technologies like those mentioned above have changed how government and its agencies communicate with the public. Technology can also help agencies improve transparency by being proactive and making information available online. Several agencies have done so with commonly requested information, which can help reduce the overall number of public records requests.

Recommendations

Our recommendations are addressed to three groups: the Department of Administrative Services (DAS), all state agencies, and the Oregon Legislature.

We recommend the Department of Administrative Services create statewide, standard rates for copying and rates for employee labor, to resolve some of the inconsistency in public records requests fees statewide. We also recommend they provide guidance to agencies regarding communication technologies as they relate to public records, including personal email, text and instant messages, and social media.

For agencies, we recommend they create policies and procedures to clearly address communication technologies under the guidance of DAS. We also recommend they adopt tools to help manage both record retention and public records requests.

For the Legislature, we recommend they consider creating a neutral third-party, such as an ombudsman, to mediate disputes between requesters and agencies. We also encourage them to consider the forthcoming results from the Attorney General's task force for any recommended changes regarding the public records law.

For a complete list of our recommendations, see page 24 in this report.

Agency Response

The response from the Department of Administrative Services is attached at the end of the report.

Background

The origin of public records in Oregon

The passage of Oregon's public records law

The right to inspect public records in Oregon dates back to the early 1900s, when the Legislature first enacted the statute granting citizens the right to inspect public records. This right was subjected to three limitations:

- The inspection of records is to be for a lawful purpose.
- Inspection is to be conducted during business hours.
- Inspection should not interfere with the regular duties of the officer who possessed the records.

But in putting the statute into practice, officials realized there were circumstances that warranted certain limitations. This led to the Legislature passing the 1973 Public Records Act.

The 1973 law gave citizens the right to inspect all records, with some exceptions. Sixteen classes of records were exempted from disclosure for a total of 55 exemptions, covering records such as accident reports, student records, and personal information in which disclosure would result in an invasion of privacy.

Passage of the 1973 law also gave citizens an avenue to obtain records they believed belonged to the public. Anyone who is denied access to records can petition the Attorney General or a district attorney for an order requiring the public body to allow inspection.

The public records laws governing retention and disposition were originally enacted in 1961. The 1973 law established the right of the public to access those records.

The current public records law includes changes and additions made since 1973, but the intent of the law remains the same: that Oregon's government is accessible and transparent to its people.

Current laws regarding record retention, fees, timeliness, and exemptions

The current public records law includes an overview of how state agencies should retain their records and how to respond to public records requests. The law allows agencies to charge fees and set guidelines for turnaround time. The law also identifies which records may be exempt from disclosure.

Agencies are required to maintain public records according to retention schedules. Schedules are set based on the content of the record and not the format in which it is recorded.

An agency is allowed to charge fees to recoup the actual cost of making public records available. Fees may include the cost for summarizing,

The definition of a public record regarding disclosure:

Any writing that contains information relating to the conduct of the public's business, including but not limited to court records, mortgages, and deed records, prepared, owned, used or retained by a public body regardless of physical form or characteristics. ORS 192.410

compiling or tailoring the public records (either in organization or format) to meet a person's request. Fees may also cover the cost of time spent by an attorney in reviewing and redacting requested records or identifying exempt and non-exempt records. Agencies also have the ability to waive or reduce these fees.

After an agency receives a public records request, it is required to respond "as soon as practicable and without unreasonable delay." Agencies must acknowledge the receipt of the request.

The law lists records that are currently exempt from disclosure. These include, but are not limited to, trade secrets, information relating to the appraisal of real estate prior to its acquisition, and investigatory information compiled for criminal law purposes. Other public records exempt from disclosure include information of a personal nature such as medical files or employee or volunteer Social Security numbers.

Most of these exemptions are considered conditional, meaning that a public body is free to disclose a record or information even if an exemption applies to the record. Agencies must consider the public interest when determining if an exempt record should be disclosed.

Other records are always considered confidential, meaning that agencies are legally prohibited from releasing that information. For example, agencies are prohibited from releasing a public employee's photo I.D. badge or card without that employee's written consent.

Overview of the process for requesting public records

A public records request can vary in formality, from a simple telephone call to ask for a document to a composed letter that cites the public records law. For the purposes of this audit, we refer to public records requests as those that were documented as such by each agency.

Anyone can request public records by submitting a written request or contacting the agency via telephone or in person. The request usually includes a description of the information, the type of records, subject matter, approximate dates the records were created, names of any people involved, and contact information for the requester.

The custodian (public body mandated to create, maintain, care for or control a public record) has the duty to make non-exempt public records available for inspection and copying. The custodian receives a request, reviews it, and retrieves the records and, if they are not exempt from disclosure, provides the records to the requester.

Generally, a request that requires payment goes through the same process. In the cases where a fee would exceed $25, the custodian must provide a fee estimate to the requester before the information is retrieved. The requester pays for the fees before records are disclosed.

The definition of a public record regarding retention:

Any information that is prepared, owned, used or retained by a state agency or political subdivision; relates to an activity, transaction or function of the state agency or political subdivision; and is necessary to satisfy the fiscal, legal, administrative or historical policies, requirements or needs of the state agency or political subdivision. ORS 192.005

We asked nine agencies about the public records requests they received between January 2014 and when we contacted them in the summer of 2015. Their responses varied, from one agency receiving approximately 49 requests in that timeframe to another receiving more than 10,000. Some agency staff reported the number of requests for public records has increased in recent years.

Our audit objective was to examine state agency retention and disclosure practices concerning public records and the consistency among agencies in complying with Oregon's public records law. We focused on nine selected agencies of varying sizes and missions.

The nine agencies were:

- The Department of Human Services
- The Oregon Employment Department
- The Department of Environmental Quality
- The Public Employees Retirement System
- The Oregon Liquor Control Commission
- The Oregon Department of Education
- The Oregon Real Estate Agency
- The Oregon State Board of Nursing
- The Board of Parole and Post-Prison Supervision

Audit Results

Oregon state agencies are successfully complying with the public records law in responding to routine requests for information. These requests are common and can be fulfilled within a few days at little or no cost.

But agencies struggle to respond to the non-routine requests, which are complex or voluminous in scope. These requests can take weeks or months to fulfill, sometimes at a cost of hundreds of dollars.

We found that poor record retention management may contribute to challenges in responding to records requests. We found that agencies are keeping records for longer than the retention schedules require, resulting in a high volume of public records that are difficult to efficiently manage.

Oregon has also failed to keep up with emerging technologies, such as text and instant messages. Some agencies do not have policies in place to address these technologies, nor do they have policies to govern the use of private email accounts or devices when they are used for the public's business.

We identified a number of steps Oregon government and state agencies can take to approach public records requests with greater accountability and greater consistency.

How well agencies respond to requests depends on how routine or complex the request is

Majority of requests are routine, easy to fulfill

When it comes to the vast majority of public records requests, agencies we reviewed were successful in complying with the public records law.

The majority of the records requests agencies receive are routine. They are simple, common and narrow in scope, often asking for one or two documents. For example, more than half of the public records requests the Public Employees Retirement System receives are from members asking to see their own pension records.

The Department of Human Services considers 98 percent of its total requests to be routine. At both the Oregon State Board of Nursing and the Oregon Real Estate Agency, almost all of the total requests received are considered routine.

Our file reviews showed these routine requests did not usually invoke exemptions, if at all. They were often for records the agency had ready and easy access to. Agencies were generally able to provide these records for little or no cost and within a couple of weeks, falling well within the scope of the public records law's "as soon as practicable and without unreasonable delay" provision.

The remaining small percent of non-routine requests are challenging for agencies to fulfill, leading to a perception that agencies deliberately use methods such as high fees and lengthy delays to avoid releasing records.

Non-routine, complex requests take longer, cost more

Non-routine requests are those that are unusually complicated, voluminous or otherwise beyond the scope of what agencies typically see in a public records request. These requests are frequently for large amounts of information or for records spanning a lengthy period of time.

Our file reviews showed that many times, these requests begin with the phrase "any and all." They can include any and all documentation related to a particular person or entity; often, the request is for any and all correspondence related to a particular subject, including letters, memos, and emails.

One such request was made of the Department of Human Services in April 2014, asking for an entire file related to the licensing of a nursing facility. The request included evidence of any contested case involving the licensee, transcriptions, audio records and any and all correspondence. It took the agency 118 days – nearly four months – to fulfill this request, which included removing exempted material, at a charge of $742 (down from the initial estimate of about $1,000).

A request may also be complex if it is unique to an agency. The Oregon Employment Department recently received a public records request that included electronic correspondence – specifically, text messages. Staff told us it was the first instance such a request had ever been made of the agency.

Requests for information that may be exempt from disclosure can also be challenging for an agency. Agency staff will sometimes consult with attorneys to ensure such exemptions are properly applied; attorneys may need to review documents for sensitive information prior to their release. This extra attention can translate into longer wait times, higher fees for more staff time, or additional attorney fees.

Because of the factors mentioned above, there is a perception among some requesters that agencies could game the system. From their perspective, silence from an agency may be suspicious. Requests for records that contain sensitive information may take weeks to be released, leaving requesters questioning the reason for the delay.

For this reason, the Attorney General has recommended that agencies keep open lines of communication with the requester:

> "Upon receiving a records request, review the request to see if it is ambiguous, overly broad or misdirected. If so, contact the requester for clarification … A brief conversation with a requester can save considerable time and expense in responding to records requests."

Journalists we spoke to cited both delays and high costs as frequent tools they believe are used to block records requests. One journalist told us that when he sees a high cost in response to a request, it makes him wonder what the agency is hiding. Another said he was convinced agencies deliberately delayed releasing records for their own benefit, fully aware of the strict deadlines under which the media operate.

In our review of selected public records requests, we found no evidence to suggest that agencies were employing these tactics. But when agencies struggle to respond to complex, non-routine requests, it can foster suspicion and distrust, which in turn can undermine the credibility and transparency of both the agency and Oregon government.

Role of Attorney General is limited in mediating timeliness, fees

Requesters are limited in how to proceed if they are dissatisfied with an agency's response to a public records request.

In some instances, Oregon's Attorney General may be petitioned to order an agency to release public records. Beyond the Attorney General, requesters may also choose to sue in court. However, the Attorney General's role extends only as far as denials of public records requests or denials of fee waivers or reductions. Requesters who feel that an agency is violating the "unreasonable delay" provision of Oregon law, or who feel that an agency is charging prohibitively high fees, have no such avenue.

Several other jurisdictions have neutral, third-party entities that mediate such disagreements between agencies and requesters. Connecticut has a Freedom of Information Commission, which is a quasi-judicial commission of nine members and 15 supporting staff, who respond to complaints about public records. Complaints are resolved through the commission's hearing process.

In Washington, the Open Government Ombudsman assists both citizens and public agencies to comply with the state Public Disclosure Act. The ombudsman is a single individual appointed by the Attorney General.

British Columbia has an Information and Privacy Commissioner, who has the power to investigate and mediate disputes over privacy and access to information. The commissioner, with the assistance of an external six-member advisory board, provides independent oversight and enforcement of the province's freedom of information laws.

Oregon currently has no such mechanism to help mediate disputes between requesters and agencies over high fees or lengthy disclosure timelines.

Agencies retain public records longer than required

Chapter 192 of Oregon law – more commonly known as the public records law – begins with the subject of retention. "The records of the state and its

political subdivisions are so interrelated and interdependent," legislators wrote, "that the decision as to what records are retained or destroyed is a matter of statewide public policy."

Those political subdivisions, defined in the law as "a city, county, district or any other municipal or public corporation in this state," include state agencies.

The state and its political subdivisions, the law continues, have a responsibility to "insure orderly retention and destruction of all public records … and to insure the preservation of public records of value for administrative, legal and research purposes."

But the challenges of manually managing electronic records, along with a tendency to be too cautious, has led Oregon agencies to retain records for longer than necessary, resulting in too many records that complicate agency efforts to efficiently manage the public information with which they have been entrusted.

Agencies must adhere to their retention schedules

Record retention schedules specify both the minimum and maximum length of time that a public record must be kept to satisfy the administrative, legal, fiscal and historical requirements of that record.

To that end, state agencies must also *manage* their record retention processes, by doing the following:

- Ensure a reasonable level of protection for records.
- Comply with any applicable laws and policies.
- Maintain records in a manner that ensures timely, efficient and accurate retrieval of needed information.
- Provide secure and appropriate disposition or destruction for records that are no longer required to be kept.

This is achieved, in part, through the agency's retention schedule – a document that indicates how long specific records must be kept. Retention schedules further specify what must happen to records at the end of that period, including destruction or transfer to the State Archives.

Each agency has a retention schedule created and approved by the Oregon State Archives. This schedule is the agency's legal authorization to destroy public records.

There is a general retention schedule that applies to records common to all state agencies, plus agency-specific retention schedules that include records unique to that agency. For example, at the Department of Environmental Quality, air quality special projects records must be retained for 10 years and then be destroyed.

Agencies struggle with the volume of records

As important as retention schedules are, agency staff are not always following them. Instead, many employees are keeping far more records than necessary, complicating record management efforts.

In interviews, some employees told us they have a tendency to "hold on to everything," instead of destroying records that reach their disposition date. In some instances, employees create duplicate copies of records by printing off electronic records and keeping both, expressing distrust with electronic storage systems.

Agency staff may worry about losing track of a public record or accidentally destroying it too soon – actions that may have consequences. They may feel it is safer to simply hold on to everything.

But it is equally important that agencies adhere to their retention schedules, which includes destroying records at the appropriate date. Without the appropriate destruction of records, agencies accumulate more information they must manage, leading to this issue of volume.

Records retention is especially important in that it precedes records disclosure. After all, agencies cannot respond to a public records request and disclose records they do not have.

But they also cannot disclose records they cannot find. These large amounts of information are challenging for agencies to manage efficiently, particularly when trying to find among them a single record in response to a records request – like a needle in a haystack.

In fact, officials at both of the agencies with key public records responsibilities – the Oregon State Archives and the Department of Justice – said this tendency to stockpile records is one of Oregon's biggest issues in public records management.

Training, technology can streamline management efforts

Training is important for an organization's development and success – both for new employees and as a refresher for existing employees.

Agencies reported staff understood the significance of record retention. Each agency had staff dedicated to the task of managing public records. More than half of these employees had undergone training specific to public record retention, whether it was provided internally or by the Oregon State Archives.

However, as all state employees create public records in the course of their duties, the obligation for proper record retention lies with each state employee, not just a select few. We found that training on record retention is not consistently given to all agency staff. As a result, agencies risk noncompliance with retention schedules or internal policies and procedures.

Technology can be immensely beneficial to agencies as they manage increasing amounts of public information. Digital storage can be easier and more cost-efficient for an agency than keeping piles of boxes containing thousands of papers. Computers can search more quickly for a single document than a person can. And some software programs can automatically destroy digital information or remind the user to do so when the retention period has expired. As more records are being created digitally, digital-only storage and retention solutions are necessary.

One such program is HP Records Management, or HPRM, a records management program from Hewlett-Packard. The HPRM applies automatic retention and disposition control to all records and indexes the content of those records for searching, which can be helpful for responding to public records requests.

According to the Oregon State Archivist, several agencies in Oregon already use HPRM, formerly known as TRIM, or will be adopting it shortly, including the Department of Administrative Services and the Department of Environmental Quality. By purchasing the program in conjunction with other state agencies, such as the Secretary of State, the cost to each agency is approximately $37 per user per month.

Other agencies use other records management programs. For example, the Public Employees Retirement System uses IBM FileNet instead of HPRM to manage its records, including member and employer files.

However, agencies have differing needs for record management. A large agency that is responsible for a large volume of confidential and private information will have more records to manage than a smaller agency with fewer records. Some technologies can be expensive and unwieldy, or unable to securely store records with confidential information. Therefore, agencies should proceed with care when selecting and implementing record management programs.

In addition to helping agencies manage record retention, technology can be beneficial to agencies in tracking the public records requests they receive and how they respond to those requests.

Under a general retention schedule that applies to all state agencies, agencies are required to retain for five years any requests for disclosure of public records. They are also required to retain agency responses, including approvals, denials, Attorney General Orders, and any correspondence.

Many agencies we reviewed maintain a log to help keep track of these requests and their associated documentation. These logs vary in their appearance and level of complexity, from team collaboration software tools to simple spreadsheets. These logs can be useful in helping agencies keep track not only of how timely they were in responding to a request, but also of any documentation and correspondence associated with a request.

Not all agencies maintain a log; others have a log, but don't maintain it consistently. Some logs we saw were more thorough and detailed than others. And agencies that log requests differently within separate divisions are not consistently logging requests agency-wide.

Exemptions remain an issue and may require a closer look

A significant portion of Oregon's public records law is devoted to exemptions – meaning those instances in which a public record may be exempt from disclosure due to the sensitive or private nature of information it contains.

When the public records law was first enacted, it included only 55 exemptions. But over the years, the Legislature has gradually added more exemptions to this list. Today, Oregon's law contains more than 400 exemptions, scattered throughout various chapters and sections.

Compared to the federal public records law – the Freedom of Information Act, or FOIA – and some other states, this number appears high. The FOIA contains nine exemptions, while other states we examined had anywhere from approximately 18 to 175 exemptions built into their laws.

Generally, agency staff told us they had a clear understanding of which exemptions applied to most of their records. We found that most records, if they were subject to an exemption, fell under one of just a few common categories. For example, multiple agencies we visited said they had some records subject to attorney-client confidentiality.

However, due to the vast number of exemptions in the law – including how they are worded and where they are located – agency staff said they would sometimes consult with internal experts or with the Department of Justice to seek guidance on applying exemptions.

This process can delay the timeliness with which an agency responds to a public records request; it can also increase the cost both to an agency and to a requester. The more confusing the exemption, the greater the risk is that a request will both take longer to fulfill and cost more.

There is a perception among some journalists that agencies already use delays and high fees to limit access to public records. In addition to the effect exemptions can have on these factors, there is also a perception among some requesters that agencies improperly use exemptions themselves to decline a request for a public record.

This perception may stem from the discretionary nature of most of Oregon's exemptions. As noted earlier, many records can be disclosed at an agency's discretion even if an exemption applies to that record.

In making that determination, agencies are required to weigh public interests favoring nondisclosure against public interests favoring

disclosure, with a presumption toward disclosure – meaning the right of the public to know what its government is doing on the job. The exception is confidential information, which is legally prohibited from release.

However, it is not clear that agencies are weighing these competing interests in determining whether or not to release a public record. In interviews with agency staff, very few discussed weighing the public interest. According to one Department of Justice official, some agencies may misunderstand this conditional aspect of some of the law's exemptions.

These difficulties surrounding the exemptions in Oregon's public records law are not new. In 2007, a national report that gave Oregon a failing grade in terms of its government transparency spurred officials to take a closer look at the law. Their findings, published in October 2010 as the Attorney General's Government Transparency Report, encouraged the Legislature to make appropriate changes regarding timeliness, fees, and exemptions:

> "The steady growth of exemptions is perhaps the most vexing problem with the public records law. Not only are there too many exemptions but they are haphazardly scattered throughout state law and thus difficult to find. Seemingly similar types of information may be subject to different rules depending on the particular language adopted by the legislature in a particular case. Any meaningful overhaul of Oregon's public records law must reorganize and make coherent sense of the numerous exemptions. Some exemptions should be eliminated altogether."

A bill was subsequently introduced during the 2011 legislative session to address some of these recommendations, but it failed to pass. An earlier bill introduced in 1993 that would have addressed exemptions also failed to pass. It appears that these issues regarding exemptions, outlined years ago, remain issues to this day.

We did not attempt to determine whether or not agencies are properly applying exemptions, due in part to the efforts of a task force that the Attorney General recently convened. Therefore, we did not draw any conclusions or make recommendations regarding exemptions. The Attorney General's Public Records Law Reform Task Force plans to examine the issue of exemptions in Oregon law in more detail.

Variations in responses frustrate some requesters

At each of the agencies we reviewed, staff expressed their appreciation for the flexibility built into Oregon's public records law. It allows them to balance the task of responding to records requests with their regular duties to serve the public. Agencies are able to set policies and procedures that are tailor-made for their individual missions and goals.

However, this flexibility has led to inconsistencies in how agencies are responding to public records requests. Requesters have an expectation that

state government will be accountable to the public, and that public information will be made available within a reasonable time and for a reasonable fee. When requesters are not sure what kind of response to expect from an agency, it can lead to confusion and frustration.

A one-size-fits-all solution regarding cost or timeliness is problematic, given the broad array of services within state and local governments. Prior efforts by the Legislature to apply such a solution have been met with resistance from local governments and smaller public bodies with limited resources.

However, agencies can take certain steps to bring *more* consistency to the process of disclosing public information.

Fees charged for material costs and staff time vary widely

Under Oregon law, agencies are allowed to establish fees reasonably calculated to reimburse the agency for the actual cost of making public records available. These fees can cover both the costs of any paper or materials to provide copies of a record, as well as the staff time taken to locate, compile, and provide the records.

Agencies are also required to establish fee schedules, which specify upfront the amounts and manner of calculating fees in responding to requests for public records.

The size and type of a records request will impact the fee an agency may charge to produce it. But we found that even the manner of calculating fees for such things as materials and staff time varies widely among agencies.

For instance, some agencies are charging $0.25 per page for copies, while other agencies are charging only $0.05 per page.

Furthermore, some agencies provide a limited number of copies, upfront, free of charge. For example, the Department of Human Services and the Oregon Employment Department provide the first 10 pages free of charge, and then at a cost of $0.25 for each page beyond that.

When agencies do not consistently offer these initial free copies, it can lead to confusing variations in the cost for providing public records. It may appear that agencies are arbitrarily charging or waiving fees.

But the greatest variation in costs was how much agencies are charging for staff time. Much like the cost for materials, charges for staff time vary widely – anywhere from $15 to $40 per hour. Some agencies charge for the first 15 or 30 minutes of work. At other agencies, staff time is charged at the individual employee's hourly rate.

These variations have resulted in frustration and confusion for both agency staff and requesters. The fees paid by a requester do not always cover the cost of an employee's time in searching for and compiling a record. Flat rates such as $28 per hour for labor, for instance, do not take into account

the variety in salaries among staff who are responding to records requests. In some instances, agency staff expressed confusion over determining when it is or is not appropriate to charge a requester for public information.

Meanwhile, requesters may see widely different costs for similar requests made of different agencies without understanding why. Journalists told us that the fees agencies set seem arbitrary. Several journalists we spoke to said that high fees had, at least once, stopped them from moving forward with a public records request.

Response times for disclosing records vary by agency

Oregon's public records law is vague in regards to timeliness. Rather than setting a deadline for agencies to respond to a public records request, the law states only that agencies "shall respond as soon as practicable and without unreasonable delay."

The Oregon Attorney General offers more specific guidelines to ensure that public records are being released in a timely fashion:

> "In the usual case, we think that it should be possible to make requested records available within ten working days. We recognize that in some cases more time – even significantly more time – may be required."

We found these 'usual case' requests – routine requests – were indeed made available within a couple of weeks. It was the infrequent complex or non-routine requests that required more time.

The flexibility in the law allows agencies to set their own goals and guidelines regarding timeliness – as some agencies have. These deadlines vary, but some of the agencies we examined have adopted the Attorney General's recommendation. For example, the Oregon Employment Department, the Oregon Liquor Control Commission, and the Board of Parole and Post-Prison Supervision all have policies or goals to respond to public records requests within 10 days.

Although Oregon's flexible timeliness provision is not unique, many other states have set stricter requirements within their laws. In Washington and Illinois, for instance, agencies must respond to requests within five business days.

However, we found no evidence, in Oregon or other states, to suggest that implementing a deadline in law would speed up an agency's response. This is due largely to the differences between routine and non-routine requests.

Generally, agencies are already able to comply with routine requests within the Attorney General's recommended timeframe. Based on interviews, available agency turnaround time calculation, and our own analysis of an agency's public records log, we found that agencies generally completed routine requests within 14 days.

It is the non-routine or complex requests that take significantly longer. During our file reviews, we found instances where these requests can take as few as 14 days or upwards of 265 days to fulfill.

To determine this information, we asked each agency to provide us a log or tracking document for each request received between January 2014, and when we contacted them in the summer of 2015.

Most agencies were able to provide us with a log. Two agencies tracked requests individually by section or division and not agency-wide. Two agencies had only recently begun keeping a log of the requests received; those logs, therefore, did not date back to 2014. One agency did not log its public records requests at all.

Only two agencies maintained or tracked in their logs enough data to allow us to calculate timeliness in how the agency responded to all public records requests: the Public Employees Retirement System and the Department of Environmental Quality.

At the latter, employees regularly compile reports on the agency's timeliness. According to a recent staff report, more than 60 percent of public records requests received from 2014 to the second quarter of 2015 were completed within seven days. These reports are useful management tools for determining whether the agency is responding to requests in a timely fashion and seeing where improvements may be needed.

For most agencies, we were unable to determine timeliness due to insufficient data included in the logs. For example, several agencies did not include any dates in their logs – such as a date when a request was received or a date when the request was fulfilled. Other agencies said they did not regularly log every single request that they received.

We also reviewed a selection of agencies' files that related to public records requests. These files generally included the initial request, any correspondence the agency had with the requester, dates the request was received, invoices showing fees charged and paid, and information about what was requested.

To select files for these reviews, we asked agencies to identify requests that took a long time to fulfill or resulted in a fee. We also reviewed a file that we selected at random, in addition to the agency's most recently completed request. The file reviews provided us with a glimpse into the requests agencies receive and how they responded.

Journalists told us they believe there is a problem with agencies taking too long to release public records. They believe that, without specific deadlines, agencies are not holding themselves accountable for responding to requests in a timely fashion.

When agencies adopt their own policies to govern the timeliness for disclosing a public record, they offer requesters a standard to which they can be held accountable. But it also provides agencies with the same

flexibility to handle complex or voluminous requests that is currently built into Oregon's public records law.

However, agencies should better monitor their own timeliness in responding to public records requests to ensure compliance with internal guidelines, hold themselves accountable to requesters, and identify areas for improvement.

Agencies are struggling to keep up with changing expectations and technologies

Since the initial passage of Oregon's public records law, the Legislature over the years has made several changes to update the language or add more exemptions.

One such change, made in 2011, modified the definition of a public record to include digital or electronic records.

But while the law has been updated, agency policy hasn't necessarily followed. When it comes to addressing the use of email, text or instant messages and social media as public records, Oregon agencies have struggled to keep up.

Agencies' policies on email do not address private accounts, devices

Email is now widely accepted as a public record when state agencies use it to conduct the public's business.

More than half of the agencies we examined have already adopted specific policies governing the retention and use of email as a public record to ensure compliance with the law.

But not all agencies have these policies, or they may be unclear. This lack of clarity may put an agency at risk of failing to retain some public information, or failing to disclose it in response to a public records request.

Written policies can help prevent confusion and potential legal problems. Policies and procedures within an agency can establish a high degree of understanding, cooperation, and efficiency among employees.

Additionally, the distinction between public and private information in emails and on private devices such as laptops, smartphones, and tablets, is not always clear. Agencies and their employees face increasing confusion over when an email is or is not a public record – and how to treat it accordingly.

The new Governor recently adopted an email policy that clears up some of this confusion:

> "When the Office of the Governor receives a public records request or valid subpoena, all official e-mail accounts and systems used for official Office business are subject to search and production."

"To the extent that Office employees use personal e-mail addresses to communicate about official matters (that is, to the extent public records are associated with such addresses), those e-mails are similarly subject to search and production. Office employees are therefore <u>strongly encouraged</u> to engage in communications regarding official business <u>only</u> on their official e-mail accounts. If private accounts must be used, it is Office policy that employees copy their official e-mail accounts on all such outgoing communications, and forward any received messages on which their official e-mail accounts are not copied."

Of the agencies we examined, which did not include the Governor's Office, we found only one had adopted policies to specifically address the use of private email in conducting the public's business.

Agencies are slower to address text, instant messages

Beyond email, public employees may be increasingly using other technologies to communicate – namely, text and instant messages. Similar to email, these communications fall under the scope of public records law when they are used in conducting the public's business, and would require disclosure in response to a public records request.

The Governor's Office mitigates this risk by specifically addressing both text and instant messages in its policy:

"Office of the Governor employees may use text messaging to communicate factual and logistical information: (a) that is not a substantive part of the Office's work, or (b) that has been documented, or necessarily will be documented, in separate public records. In the absence of separate documentation, Office employees are not to use text messages for official purposes other than for routine communications that do not meet the definition of a "public record." This Policy applies equally to an employee's "official" mobile phone or computer and to an employee's "personal" mobile phone or computer."

We found that none of the agencies we examined had adopted clear policies to specifically address the use and retention of text messages as public records, and only the Department of Human Services (DHS) had a policy to clearly address instant messages.

Some agencies have policies in place, such as DHS, that refer to "other forms of electronic communications" as public records and may be interpreted to include text messages. However, this policy could be refined to include explicit guidance on the use and retention of text messages as public record.

Additionally, some agencies, such as the Public Employees Retirement System, told us they are in the process of trying some of these communications, like instant messaging. Should the agency choose to adopt

this form of communication, policies governing its use are anticipated to follow.

Social media creates a public record gray area

The proliferation of social media is also transforming the way state and local governments communicate with the public. Some Oregon agencies are creating Twitter accounts, and even publishing videos to YouTube.

As with any other writing that pertains to the public's business, these social media postings are included in the umbrella of public records – even if they consist only of 140 characters, as with Twitter.

Only a few agencies have established policies and procedures around social media, to ensure their use aligns with the requirements of the public records law.

Several of these policies appear to draw language from the Social Networking Media guide published by the Oregon Department of Administrative Services, which offers best practices on the use and retention of social media.

The policy also identifies a potential risk associated with a public body's use of social media. For instance, posts made to Twitter under an agency's account may not belong to the agency, but to Twitter. However, under Oregon's public records law, the agency still maintains responsibility for the information's retention.

According to the Oregon State Archivist, this is one portion of the law that has failed to keep up with emerging technologies. She noted that it is considered a best practice for agencies to post only duplicate information, so that they can maintain ownership of the original and compliance with the law.

Conflicting expectations of transparency and privacy

Emerging technologies have also impacted two conflicting interests: an increased expectation of transparency in our government, as well as an increased expectation of privacy for the individuals it serves.

Requesters who ask for any and all correspondence expect an abundance of information shedding light on conversations and decision-making that goes into the public business. But those records must also be carefully vetted to protect sensitive and confidential information – such as Social Security numbers or attorney-client communications. Disclosure of such confidential information has serious implications, even if it is done for the sake of transparency.

One way agencies can improve transparency is to use technology to be *proactive*, rather than *reactive* – that is, simply make public information available upfront, rather than waiting for the public to ask for it. This is the motivation behind Oregon's Open Data Portal, located at data.oregon.gov.

Several agencies have taken similar action. For example, the Oregon State Board of Nursing posts several types of public information online, including disciplinary actions against licensees. The Oregon Liquor Control Commission posts information about licensed businesses and new license applications it receives.

This kind of proactive accountability is beneficial both for agencies and for requesters. Requesters are able to quickly and easily locate information, eliminating the need for certain public records requests. Agencies, in turn, receive fewer requests and are able to devote more time and resources to unique requests or their other duties.

It does, however, come with its own risks. The Employment Department, for example, told us it has considered putting some information online – but certain information, due to confidentiality, simply cannot be posted. Agencies must be careful about the records they post online to avoid accidentally sharing sensitive or confidential information.

Recommendations

To bring more consistency to agency responses to public records requests, the Department of Administrative Services should provide statewide guidance and training on:

- procedures for handling non-routine and complex public records requests, including communicating with requesters regarding fees and timelines;
- procedures for the use and retention of electronic communication, including text and instant messaging as they relate to public records law; and
- procedures for the use of personal devices and personal email accounts, as they relate to public records law.

To address the variation in fees charged by state agencies, the Department of Administrative Services should also consider:

- creating rates to charge for the cost of copies of public records; and
- identifying rates to charge for labor for state employees working on public records requests.

To improve responses to public records requests, state agencies should create policies and procedures based on the guidance to be provided by the Department of Administrative Services, and:

- implement a record management program or process that fits the needs of each agency (e.g. HPRM or another system);
- create goals for turnaround time that fit agencies' processes based on past experiences with responding to requests;
- create and keep a tracking mechanism, such as a log, to measure adherence to turnaround time goals and to track documentation related to each request; and
- identify frequently requested information and consider proactively making the information available (e.g., posting more information on agency website or the Oregon Transparency Website).

To address concerns regarding high fees and long turnaround times for public records requests, the Oregon Legislature should:

- consider creating a third party, such as an ombudsman, to review disputes over non-routine requests; and
- take into consideration the results of the Attorney General's task force for any recommended changes to the public records law.

Objectives, Scope and Methodology

Our audit objective was to examine state agency retention and disclosure practices concerning public records and the consistency among agencies in complying with Oregon's public records law. We focused our reviews on nine selected agencies of varying sizes and missions.

The nine agencies were:

- The Department of Human Services
- The Oregon Employment Department
- The Department of Environmental Quality
- The Public Employees Retirement System
- The Oregon Liquor Control Commission
- The Oregon Department of Education
- The Oregon Real Estate Agency
- The Oregon State Board of Nursing
- The Board of Parole and Post-Prison Supervision

We also focused on public records requests received from January 2014 to when we contacted the agencies in the summer of 2015. Our audit work did not include reviews of local government agencies.

To address our audit objective, we reviewed Oregon's public records law and Administrative Rules, agencies' policies and procedures for record retention and disclosure, and researched other states' public records laws for disclosing public records.

We interviewed at least one employee from each selected agency who was knowledgeable about the agency's retention and disclosure processes. We also interviewed several public records requesters who are members of the media to gain an understanding of their experiences with the records request process.

We also conferred with the Oregon State Archives, which is a division of the Secretary of State's Office.

We obtained public records logs from the agencies and analyzed the logs for timeliness, frequency of requests and the types of information requested. We judgmentally selected a number of public records requests from the logs for file reviews. We reviewed files for consistency in complying with agencies' policies and public records laws.

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 objective. We believe that the evidence obtained and reported provides a reasonable basis to achieve our audit objective.

Auditors from our office, who were not involved with the audit, reviewed our report for accuracy, checking facts and conclusions against our supporting evidence.

Department of Administrative Services
Office of the Chief Operating Officer
155 Cottage Street NE, U20
Salem, OR 97301
PHONE: 503-378-3104
FAX: 503-373-7643

Oregon

Kate Brown, Governor

November 13, 2015

Gary Blackmer, Director
Audits Division
Office of the Secretary of State
255 Capitol Street NE, Suite 500
Salem, OR 97310

RE: Audit Report, *State Agencies Respond Well to Routine Public Records Requests, but Struggle with Complex Requests and Emerging Technologies*

Dear Mr. Blackmer:

Thank you for providing the Department of Administrative Services (DAS) with the audit report noted above. This audit, originally requested by Governor Brown, is very important, and DAS and state agencies are ready to implement the recommendations. The report identified areas where improvement is necessary to better and more consistently respond to non-routine and complex public records requests. We appreciate the work of the Oregon Audits Division staff and agree with the recommendations set forth.

Below you will find DAS' response to the specific audit recommendations. Management generally agrees with the recommendations. While DAS was not one of the agencies surveyed in the audit, we understand we are being asked to respond because of our responsibility to provide general oversight to state agencies. In anticipation of the release of this report, DAS has already begun discussion with state agency leaders at the Enterprise Leadership Team about the need for standardization of public records policies and processes that still meet individual agency business needs.

Audits Division recommendation:
To bring more consistency to agency responses to public records requests, the Department of Administrative Services should provide statewide guidance and training on: *procedures for handling non-routine and complex public records requests, including communicating with requesters regarding fees and timelines; procedures for the use and retention of electronic communication, including text and instant messaging as they relate to public records law; and procedures for the use of personal devices and personal email accounts, as they relate to public records law.*

DAS' Response:
Management generally agrees with the recommendations. Development of statewide policy regarding text messages and social media is already underway in anticipation of needs

identified by a new communications contract. DAS will work with the State Archivist to create a menu of options to meet retention and disposition requirements that can be adopted based on business needs.

In addition, the Department will provide clear guidance to state agencies to help ensure accuracy and consistency in response to public records requests. DAS will convene agency public information officers (PIOs) to identify best practices and develop recommended policy and procedure guidance to help agencies resolve barriers to effective response to non-routine and complex public records requests. DAS will engage and coordinate with state agency leadership in finalizing that policy guidance.

Audits Division recommendation:
To address the variation in fees charged by state agencies, the Department of Administrative Services should also consider: *creating rates to charge for the cost of copies of public records; and identifying rates to charge for labor for state employees working on public records requests.*

DAS' Response:
Management generally agrees with the recommendation. As mentioned above, DAS and the Enterprise Leadership Team are ready and willing to see standardization that still accommodates agency business requirements. DAS will convene agency PIOs and business managers to identify best practices and develop recommended policy guidance regarding standardized fees and charges. DAS will work with agencies to ensure fees and charges are appropriately levied in alignment with these guidelines.

Audits Division recommendation:
To improve responses to public records requests, state agencies should create policies and procedures based on the guidance to be provided by the Department of Administrative Services, and: *implement a record management program or process that fits the needs of each agency (e.g. HPRM or another system); create goals for turnaround time that fit agencies' processes based on past experiences with responding to requests; create and keep a tracking mechanism, such as a log, to measure adherence to turnaround time goals and to track documentation related to each request; and identify frequently requested information and consider proactively making the information available (e.g., posting more information on agency website or the Oregon Transparency Website).*

DAS' Response:
Management generally agrees with the recommendations. While these recommendations are directed to state agencies in general, not DAS in specific, the Department will work closely with agencies to make sure the recommendations are communicated to agencies along with DAS' policy guidance.

DAS will work collaboratively with the Office of the State Chief Information Officer, the Governor's Office and the State Archivist to evaluate the feasibility of implementing a technology solution to streamline and automate appropriate records management statewide. As

an agency, DAS is testing HPRM in the office of the COO with the intent of expanding its use, agency-wide, once testing is complete. DAS will create processes to evaluate effectiveness and monitor performance and will share that information with other state agencies. Any statewide solution will require careful planning and implementation.

Closing:

DAS management appreciates your audit team's efforts and for the recommendations made in the audit report. We look forward to working with the Secretary of State's Audits Division along with our statewide partners to improve responses to public records requests across the enterprise. If you have any general questions about this response, please contact Zachary Gehringer, Chief Audit Executive, at 503-378-3076.

Sincerely,

Clyde Saiki
DAS Director and Chief Operating Officer

Cc: Barry Pack, DAS Deputy Chief Operating Officer
George Naughton, DAS Chief Financial Officer
Madilyn Zike, DAS Chief Human Resources Officer
Zachary Gehringer, DAS Chief Audit Executive

About the Secretary of State Audits Division

The Oregon Constitution provides that the Secretary of State shall be, by virtue of her office, Auditor of Public Accounts. The Audits Division exists to carry out this duty. The division reports to the elected Secretary of State and is independent of other agencies within the Executive, Legislative, and Judicial branches of Oregon government. The division audits all state officers, agencies, boards, and commissions and oversees audits and financial reporting for local governments.

This report, a public record, is intended to promote the best possible management of public resources. Copies may be obtained from:

website: sos.oregon.gov/audits

phone: 503-986-2255

mail: Oregon Audits Division
             255 Capitol Street NE, Suite 500
             Salem, Oregon 97310

March 10, 2016

Salam Noor, Deputy Superintendent
Oregon Department of Education
255 Capitol Street NE, Suite 200
Salem, OR 97310-0203

Dear Mr. Noor:

We have completed audit work of a selected federal program at the Oregon Department of Education (department) for the year ended June 30, 2015.

CFDA Number	Program Name	Audit Amount
84.010	Title 1 Grants to Local Educational Agencies	$ 150,098,543

This audit work was not a comprehensive audit of your federal program. We performed this federal compliance audit as part of our annual Statewide Single Audit. The Single Audit is a very specific and discrete set of tests to determine compliance with federal funding requirements, and does not conclude on general efficiency, effectiveness, or state-specific compliance issues. The Office of Management and Budget (OMB) Circular A-133 identifies internal control and compliance requirements for federal programs. Auditors review and test internal controls for all federal programs selected for audit and perform specific audit procedures only for those compliance requirements that are direct and material to the federal program under audit. For the year ended June 30, 2015, we determined whether the department substantially complied with the following compliance requirements relevant to the federal program.

Compliance Requirement	General Summary of Audit Procedures Performed
Activities Allowed or Unallowed	Determined whether federal monies were expended only for allowable activities.
Allowable Costs/Cost Principles	Determined whether charges to federal awards were for allowable costs and that costs were appropriately allocated.
Cash Management	Confirmed program costs were paid for before federal reimbursement was requested, or federal cash drawn was for an immediate need.

Management Letter No. 581-2016-03-01

Compliance Requirement	General Summary of Audit Procedures Performed
Level of Effort, Earmarking	Determined whether the specified service or expenditure levels were maintained, and the minimum or maximum limits for specified purposes or types of participants were met.
Period of Performance	Determined whether federal funds were used only during the authorized period of performance.
Reporting	Verified the department submitted performance reports to the federal government in accordance with the grant agreement and that those reports were supported by the accounting records.
Subrecipient Monitoring	Determined whether the pass-through entity monitored subrecipient activities to provide reasonable assurance that the subrecipient administers federal awards in compliance with federal requirements.
Special Tests and Provisions	Determined whether the department complied with the additional federal requirements identified by the OMB.

Noncompliance

Noncompliance is a failure to follow compliance requirements, or a violation of prohibitions included in compliance requirements, that are applicable to a federal program. As described in the "Audit Finding and Recommendations" section, we identified noncompliance with a federal requirement which is required to be reported in accordance with OMB Circular A-133.

Internal Control Over Compliance

Department management is responsible for establishing and maintaining effective internal control over compliance with program requirements. In planning and performing our audit, we considered the department's internal control over compliance with requirements that could have a direct and material effect on the major federal program to determine the auditing procedures that are appropriate in the circumstances for the purpose of expressing an opinion on the department's compliance and to test and report on internal control over compliance in accordance with OMB Circular A-133, but not for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, we do not express an opinion on the effectiveness of the department's internal control over compliance.

A *deficiency in internal control over compliance* exists when the design or operation of a control over compliance does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, noncompliance with a type of compliance requirement of a federal program on a timely basis. *A material weakness in internal*

control over compliance is a deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a type of compliance requirement of a federal program will not be prevented, or detected and corrected, on a timely basis. A *significant deficiency in internal control over compliance* is a deficiency, or a combination of deficiencies, in internal control over compliance with a type of compliance requirement of a federal program that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Our consideration of internal control over compliance was for the limited purpose described above and was not designed to identify all deficiencies in internal control over compliance that might be material weaknesses or significant deficiencies and therefore, material weaknesses or significant deficiencies may exist that were not identified. We did not identify any deficiencies in internal control over compliance that we consider to be material weaknesses. However, we identified a deficiency in internal control over compliance, as described below, that we consider to be a significant deficiency.

Audit Finding and Recommendations

Improve Accuracy of Maintenance of Effort Calculations

Federal Awarding Agency:	U.S. Department of Education
Program Title and CFDA Number:	Title 1 Grants to Local Educational Agencies (84.010)
Federal Award Numbers and Year:	S010A140037-14B; 2015
Compliance Requirement:	Maintenance of Effort
Type of Finding:	Significant Deficiency, Noncompliance
Questioned Costs:	$4,196

Federal regulations (34 CFR 299.5 and Section 9521 of ESEA) provide that a Local Educational Agency (LEA) may receive Title 1 program funds if the state educational agency determines the combined fiscal effort per student or the total expenditures of the LEA from state and local funds for free public education for the prior year was not less than 90% of the combined fiscal effort or total expenditures for the second prior year. If an LEA does not maintain adequate fiscal effort, the State must reduce the LEA's Title 1 funds allocated for the next award period. Federal compliance requirements specify an LEA's maintenance of effort (MOE) expenditures include expenditures such as instruction, attendance services, health services, and other support services. The requirements further specify MOE expenditures are not to include any expenditures for community services, capital outlay, debt services, and expenditures from federally-provided funds.

We reviewed the department's maintenance of effort (MOE) calculations for 197 LEAs that may receive Title 1 funds. Staff correctly identified all 4 LEAs that did not meet MOE requirements, but inadvertently omitted reducing 1 of the 4 LEAs' fiscal year 2015 award allocation. The department did not provide for an independent review of the MOE calculations and award reductions; therefore, an LEA was allocated and reimbursed $4,196 more than it should have been.

Additionally, we tested a sample of 20 LEAs' MOE compliance calculations to verify expenditures used in the calculations agreed to audited financial statement amounts and included only allowable categories. Thirteen of the 20 LEAs' MOE calculations included capital outlay expenditures, contrary to federal regulations. These errors occurred because department staff did not exclude capital outlay expenditures from the financial amounts used to calculate MOE. We verified the 13 LEAs met MOE requirements in spite of the errors. However, by including capital outlay expenditures in the MOE calculations, the department increases the risk that Title 1 fund allocations may be incorrectly determined.

We recommend department management:
- recover the excess allocated Title 1 funds;
- ensure MOE calculations and award reductions are independently reviewed; and
- ensure financial expenditures used for the MOE calculations include only those allowed by federal regulations.

Prior Year Findings

In the prior fiscal year, we reported noncompliance and internal control findings in the Statewide Single Audit Report related to Title 1 Grants to Local Educational Agencies; see Secretary of State audit report number 2015-05.

During fiscal year 2015, the department corrected these findings by establishing an independent review of the completeness and accuracy of Title 1 Federal Funding Accountability and Transparency Act reports, ensuring their timely submission, and strengthening controls to ensure all Title 1 program expenditures are excluded from annual State Per Pupil Expenditure calculation results. These findings, listed below, will be reported in the Statewide Single Audit Report for the fiscal year ended June 30, 2015 with a status of corrective action taken.

Finding Title	Prior Year Finding No.
Improve Subaward Reporting Under the Federal Funding Accountability and Transparency Act	2014-044
Strengthen Controls for State Per Pupil Expenditure Calculations	2014-047

The audit finding and recommendations above, along with your response, will be included in our Statewide Single Audit Report for the fiscal year ended June 30, 2015. Including your response satisfies the federal requirement that management prepare a Corrective Action Plan covering all reported audit findings. Satisfying the federal requirement in this manner, however, can only be accomplished if the response to the significant deficiency includes the information specified by the federal requirement, and only if the response is received in time to be included in the audit report. The following information is required for the response.

1) Your agreement or disagreement with the finding. If you do not agree with the audit finding or believe corrective action is not required, include in your response an explanation and specific reasons for your position.

2) The corrective action planned.

3) The anticipated completion date.

4) The name(s) of the contact person(s) responsible for corrective action.

Please provide a response to Dale Bond by March 18, 2016 and provide Rob Hamilton, Statewide Accounting and Reporting Services (SARS) Manager, a copy of your Corrective Action Plan.

The purpose of this communication is solely to describe the scope of our testing of internal control over compliance and the results of that testing based on the requirements of OMB Circular A-133. Accordingly, this communication is not suitable for any other purpose.

We appreciate your staff's assistance and cooperation during this audit. Should you have any questions, please contact Diane Farris or Dale Bond at (503) 986-2255.

Sincerely,

Office of the Secretary of State, Audits Division

cc: Rick Crager, Assistant Superintendent
        Dawne Huckaby, Assistant Superintendent
        Latham Stack, Internal Auditor
        Theresa Richards, Federal Systems Director
        Tomás Flores, Financial Services Director
        Miranda Summer, Chair, Oregon State Board of Education
        George Naughton, Acting Director, Department of Administrative Services

Office of the Secretary of State

Jeanne P. Atkins
Secretary of State

Robert Taylor
Deputy Secretary of State

Audits Division

Mary Wenger
Interim Director

255 Capitol St. NE, Suite 500
Salem, OR 97310

(503) 986-2255

March 11, 2016

Salam Noor, Deputy Superintendent
Oregon Department of Education
255 Capitol Street NE, Suite 200
Salem, Oregon 97310-0203

Dear Mr. Noor:

We have completed audit work of a selected federal program at the Oregon Department of Education (department) for the year ended June 30, 2015.

CFDA Number	Program Name	Audit Amount
84.027, 84.173	Special Education Cluster, Grants to States (IDEA, Part B) and Preschool Grants (IDEA Preschool)	$122,616,805

This audit work was not a comprehensive audit of your federal program. We performed this federal compliance audit as part of our annual Statewide Single Audit. The Single Audit is a very specific and discrete set of tests to determine compliance with federal funding requirements, and does not conclude on general efficiency, effectiveness, or state-specific compliance issues. The Office of Management and Budget (OMB) Circular A-133 identifies internal control and compliance requirements for federal programs. Auditors review and test internal controls for all federal programs selected for audit and perform specific audit procedures only for those compliance requirements that are direct and material to the federal program under audit. For the year ended June 30, 2015, we determined whether the department substantially complied with the following compliance requirements relevant to the federal program.

Compliance Requirement	General Summary of Audit Procedures Performed
Activities Allowed or Unallowed	Determined whether federal monies were expended only for allowable activities.
Allowable Costs/Cost Principles	Determined whether charges to federal awards were for allowable costs and that indirect costs were appropriately allocated.
Cash Management	Confirmed program costs were paid for before federal reimbursement was requested, or federal cash drawn was for an immediate need.

Management Letter No. 581-2016-03-02

Compliance Requirement	General Summary of Audit Procedures Performed
Matching, Level of Effort, Earmarking	Determined whether the minimum amount or percentage of contributions or matching funds was provided, the specified service or expenditure levels were maintained, and the minimum or maximum limits for specified purposes or types of participants were met.
Period of Performance	Determined whether federal funds were used only during the authorized period of performance.
Reporting	Verified the department submitted financial and performance reports to the federal government in accordance with the grant agreement and that those financial reports were supported by the accounting records.
Subrecipient Monitoring	Determined whether the pass-through entity monitored subrecipient activities to provide reasonable assurance that the subrecipient administers federal awards in compliance with federal requirements.

Noncompliance

Noncompliance is a failure to follow compliance requirements, or a violation of prohibitions included in compliance requirements, that are applicable to a federal program. As described in the "Audit Findings and Recommendations" section, we identified noncompliance with federal requirements which is required to be reported in accordance with OMB Circular A-133.

Internal Control Over Compliance

Department management is responsible for establishing and maintaining effective internal control over compliance with program requirements. In planning and performing our audit, we considered the department's internal control over compliance with requirements that could have a direct and material effect on the major federal program to determine the auditing procedures that are appropriate in the circumstances for the purpose of expressing an opinion on the department's compliance and to test and report on internal control over compliance in accordance with OMB Circular A-133, but not for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, we do not express an opinion on the effectiveness of the department's internal control over compliance.

A *deficiency in internal control over compliance* exists when the design or operation of a control over compliance does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, noncompliance with a type of compliance requirement of a federal program on a timely basis. *A material weakness in internal control over compliance* is a deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a type of compliance requirement of a federal program will not be prevented, or detected and corrected, on a timely basis. A *significant deficiency in internal control over compliance* is a

deficiency, or a combination of deficiencies, in internal control over compliance with a type of compliance requirement of a federal program that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Our consideration of internal control over compliance was for the limited purpose described above and was not designed to identify all deficiencies in internal control over compliance that might be material weaknesses or significant deficiencies and therefore, material weaknesses or significant deficiencies may exist that were not identified. We did not identify any deficiencies in internal control over compliance that we consider to be material weaknesses. However, we identified certain deficiencies in internal control over compliance, as described below, that we consider to be significant deficiencies.

Audit Findings and Recommendations

Ensure Subrecipient Monitoring Includes Federal Fiscal Requirements

Federal Awarding Agency:	US Department of Education
Program Title and CFDA Number:	Special Education Cluster (IDEA) 84.027 and 84.173
Federal Award Numbers and Year:	H027A120095, 2013; H173A120100, 2013; H027A130160, 2014; H173A130100, 2014; H027A140095, 2015; H173A140100, 2015
Compliance Requirement:	Subrecipient Monitoring
Type of Finding:	Significant Deficiency, Noncompliance

The department receives Federal funding for Special Education programs (IDEA, Part B and Preschool) and passes funding to school districts and education service districts through subgrants. Federal regulation, 34 CFR 80.40(a), requires the department to ensure subrecipients are in compliance with the requirements of the special education programs and have accounting systems and internal controls adequate to administer the awards.

The department has a process to monitor and review subrecipients' compliance with specific program requirements, but the process does not consider subrecipients' accounting and internal control systems and certain fiscal requirements, such as accounting, reporting, and procurement.

Without fiscal monitoring procedures, the department could not ensure that subrecipients had adequate accounting and internal control systems in place to comply with federal fiscal requirements. As a result, the funding awarded to the state as well as the districts could be at risk of sanctions or disallowances by the federal grantor agency due to noncompliance.

We recommend department management implement fiscal monitoring processes that ensure subrecipients have accounting and internal control systems adequate to administer federal fiscal requirements.

Improve Controls Over Period of Performance

Federal Awarding Agency:	US Department of Education
Program Title and CFDA Number:	Special Education Cluster (IDEA) 84.027 and 84.173
Federal Award Numbers and Year:	H027A120095, 2013; H173A120100, 2013; H027A130160, 2014; H173A130100, 2014; H027A140095, 2015; H173A140100, 2015
Compliance Requirement:	Period of Performance
Type of Finding:	Significant Deficiency, Noncompliance
Questioned Costs:	$178,458

Federal regulations, 34 CFR 76.708 through 76.709, state that program funds are to be obligated within an established period of performance. Special Education funds are available for obligation beginning July 1 of the fiscal year the funds are appropriated though September 30 of the second following fiscal year.

The department charged about $178,000 to the fiscal year 2015 grant award but the related expenditure was incurred prior to July 1, 2014, the beginning of the grant award's obligation period. The department has an established review process for expenditures; however, due to an error, the expenditure was coded to the wrong grant number. As a result, the expenditure was outside the period of performance.

We recommend department management ensure controls are properly designed to prevent recording expenditures outside the period of performance.

Prior Year Finding(s)

In the prior fiscal year, we reported noncompliance and internal control findings in the Statewide Single Audit Report related to the Special Education Cluster (IDEA); for the fiscal-year ended June 30, 2014, see Secretary of State audit report number 2015-05.

During fiscal year 2015, the department corrected one finding and made progress correcting the other finding. Prior year finding 2014-049 will be reported with a status of corrective action taken and 2014-48 with a status of partial corrective action taken in the Statewide Single Audit Report for the fiscal year ended June 30, 2015.

Finding Title	Prior Year Finding No.
Improve Procedures for Subaward Reporting Under the Federal Funding Accountability and Transparency Act	2014-049
Ensure Subrecipient Monitoring Includes Federal Fiscal Requirements	2014-048

The audit findings and recommendations above, along with your responses, will be included in our Statewide Single Audit Report for the fiscal year ended June 30, 2015. Including your responses satisfies the federal requirement that management prepare a <u>Corrective Action Plan</u>

covering all reported audit findings. Satisfying the federal requirement in this manner, however, can only be accomplished if the response to each significant deficiency includes the information specified by the federal requirement, and only if the responses are received in time to be included in the audit report. The following information is required for each response:

1) Your agreement or disagreement with the finding. If you do not agree with an audit finding or believe corrective action is not required, include in your response an explanation and specific reasons for your position.

2) The corrective action planned.

3) The anticipated completion date.

4) The name(s) of the contact person(s) responsible for corrective action.

Please provide a response to Dale Bond, Audit Manager, by March 18, 2016 and provide Rob Hamilton, Statewide Accounting and Reporting Services (SARS) Manager, a copy of your Corrective Action Plan.

The purpose of this communication is solely to describe the scope of our testing of internal control over compliance and the results of that testing based on the requirements of OMB Circular A-133. Accordingly, this communication is not suitable for any other purpose.

We appreciate your staff's assistance and cooperation during this audit. Should you have any questions, please contact Michael Yamamoto or Dale Bond at (503) 986-2255.

Sincerely,

Office of the Secretary of State, Audits Division

cc: Rick Crager, Assistant Superintendent, Office of Finance & Administration
        Sarah Drinkwater, Assistant Superintendent, Office of Student Services
        Latham Stack, Internal Auditor
        Tomás Flores, Financial Services Director
        Miranda Summer, Chair, Oregon State Board of Education
        George Naughton, Acting Director, Department of Administrative Services

March 14, 2016

Salam Noor, Deputy Superintendent
Oregon Department of Education
255 Capitol Street NE, Suite 200
Salem, Oregon 97310-0203

Dear Mr. Noor:

We have completed audit work of selected federal programs at the Oregon Department of Education (department) for the year ended June 30, 2015.

CFDA Number	Program Name	Audit Amount
10.558	Child and Adult Care Food Program (CACFP)	$ 35,528,735

Child Nutrition Cluster

10.553	School Breakfast Program (SBP)	36,772,264
10.555	National School Lunch Program (NSLP)	123,158,751
10.556	Special Milk Program for Children (SMP)	119,961
10.559	Summer Food Service Program for Children (SFSP)	6,871,174

This audit work was not a comprehensive audit of your federal programs. We performed this federal compliance audit as part of our annual Statewide Single Audit. The Single Audit is a very specific and discrete set of tests to determine compliance with federal funding requirements, and does not conclude on general efficiency, effectiveness, or state-specific compliance issues. The Office of Management and Budget (OMB) Circular A-133 identifies internal control and compliance requirements for federal programs. Auditors review and test internal controls for all federal programs selected for audit and perform specific audit procedures only for those compliance requirements that are direct and material to the federal program under audit. For the year ended June 30, 2015, we determined whether the department substantially complied with the following compliance requirements relevant to the federal programs.

Compliance Requirement	General Summary of Audit Procedures Performed	Federal Program
Cash Management	Confirmed program costs were paid for before federal reimbursement was requested, or federal cash drawn was for an immediate need.	SBP, NSLP, SMP, CACFP, SFSP

Management Letter No. 581-2016-03-03

Compliance Requirement	General Summary of Audit Procedures Performed	Federal Program
Eligibility	Determined whether only eligible individuals and organizations receive assistance under federal programs, and amounts provided were calculated in accordance with program requirements.	SBP, NSLP, SMP, CACFP, SFSP
Matching, Level of Effort, Earmarking	Determined whether the minimum amount or percentage of contributions or matching funds was provided, the specified service or expenditure levels were maintained, and the minimum or maximum limits for specified purposes or types of participants were met.	SBP, NSLP, SMP, SFSP
Period of Performance	Determined whether federal funds were used only during the authorized period of performance.	SBP, NSLP, SMP, CACFP, SFSP
Reporting	Verified the department submitted financial and performance reports to the federal government in accordance with the grant agreement and that those financial reports were supported by the accounting records.	SBP, NSLP, SMP, CACFP, SFSP
Subrecipient Monitoring	Determined whether the pass-through entity monitored subrecipient activities to provide reasonable assurance that the subrecipient administers federal awards in compliance with federal requirements.	SBP, NSLP, SMP, CACFP, SFSP
Special Tests and Provisions	Determined whether the department complied with the additional federal requirements identified by the OMB.	NSLP, SFSP

Noncompliance

Noncompliance is a failure to follow compliance requirements, or a violation of prohibitions included in compliance requirements, that are applicable to a federal program. As described in the "Audit Findings and Recommendations" section, we identified noncompliance with federal requirements which is required to be reported in accordance with OMB Circular A-133.

Internal Control Over Compliance

Department management is responsible for establishing and maintaining effective internal control over compliance with program requirements. In planning and performing our audit, we considered the department's internal control over compliance with requirements that could have a direct and material effect on each major federal program to determine the auditing procedures that are appropriate in the circumstances for the purpose of expressing an opinion Department management is responsible for establishing and maintaining effective internal

control over compliance with program requirements. In planning and performing our audit, we considered the department's internal control over compliance with requirements that could have a direct and material effect on each major federal program to determine the auditing procedures that are appropriate in the circumstances for the purpose of expressing an opinion on the department's compliance and to test and report on internal control over compliance in accordance with OMB Circular A-133, but not for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, we do not express an opinion on the effectiveness of the department's internal control over compliance.

A *deficiency in internal control over compliance* exists when the design or operation of a control over compliance does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, noncompliance with a type of compliance requirement of a federal program on a timely basis. *A material weakness in internal control over compliance* is a deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a type of compliance requirement of a federal program will not be prevented, or detected and corrected, on a timely basis. A *significant deficiency in internal control over compliance* is a deficiency, or a combination of deficiencies, in internal control over compliance with a type of compliance requirement of a federal program that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Our consideration of internal control over compliance was for the limited purpose described above and was not designed to identify all deficiencies in internal control over compliance that might be material weaknesses or significant deficiencies and therefore, material weaknesses or significant deficiencies may exist that were not identified. We did not identify any deficiencies in internal control over compliance that we consider to be material weaknesses. However, we identified a noncompliance finding as indicated below.

Audit Finding and Recommendation

Menu Certification Reimbursement Practices Should Align With Federal Regulations

Federal Awarding Agency: U.S. Department of Agriculture
Program Title and CFDA Number: Child Nutrition Cluster (10.553, 10.555, 10.556, 10.559)
Federal Award Numbers and Year: 7OR300OR3; 2014, 7OR300OR3; 2015
Compliance Requirement: Subrecipient Monitoring
Type of Finding: Noncompliance
Questioned Costs: $53,770

The Healthy, Hunger-Free Kids Act of 2010 provides for school food authorities (sponsors) to receive an additional reimbursement of 6 cents per lunch served if certified by the department to be in compliance with the new school meal patterns. Per federal guidance, the department should make a certification determination within 60 days of receipt of documentation from a sponsor. Federal guidance states the sponsor should be reimbursed the 6 cents beginning the month in which the compliant meals are served.

We analyzed data and identified sponsors where the department took more than 60 days to certify the sponsor's menu. According to the department, menu certification determinations were often delayed due to the amount of time required to help sponsors comply with federal certification requirements. The department reimbursed each sponsor for lunches served since the sponsor's original submission rather than when the sponsor's menu met compliance with the new school meal patterns. For example, if a sponsor submitted a menu for certification in February 2014 and the department certified it in December 2014, the department reimbursed the sponsor for lunches served back to February 2014. As shown in the table below, the menus for 29 sponsors were certified 4 to 19 months after the month the menus were submitted for certification.

Months to Certify Menu	Number of Sponsors	Total Reimbursements
4	3	$ 435
5	5	$ 668
8	2	$ 842
9	4	$ 21,896
10	2	$ 642
11	3	$ 2,750
13	2	$ 5,376
15	2	$ 14,237
16	4	$ 4,154
17	1	$ 2,108
19	1	$ 661
Total	**29**	**$ 53,770**

The department indicated that federal guidance received has, at times, been conflicting or unclear as to which meals should be reimbursed. Therefore, the department's position has been to reimburse the sponsor for lunches back to the month submitted for certification, which may not be allowable.

We recommend management obtain clarification from USDA as to whether it was appropriate to reimburse sponsors for menu certifications that took longer than 60 days to complete.

Prior Year Finding(s)

For the fiscal-year ended June 30, 2014, we reported a noncompliance and internal control finding related to the Child Nutrition Cluster; see Secretary of State audit report number 2015-05, finding 2014-046. During fiscal year 2015, the department took some steps to address this finding, which will be reported in the Statewide Single Audit Report for the fiscal year ended June 30, 2015 with a status of partial corrective action taken.

The audit finding and recommendation above, along with your response, will be included in our Statewide Single Audit Report for the fiscal year ended June 30, 2015. Including your response satisfies the federal requirement that management prepare a Corrective Action Plan covering

all reported audit findings. Satisfying the federal requirement in this manner, however, can only be accomplished if the response to the finding includes the information specified by the federal requirement, and only if the response is received in time to be included in the audit report. The following information is required for the response:

1) Your agreement or disagreement with the finding. If you do not agree with the audit finding or believe corrective action is not required, include in your response an explanation and specific reasons for your position.

2) The corrective action planned.

3) The anticipated completion date.

4) The name(s) of the contact person(s) responsible for corrective action.

Please provide a response to Kelly Olson by March 16, 2016 and provide Rob Hamilton, Statewide Accounting and Reporting Services (SARS) Manager, a copy of your Corrective Action Plan.

The purpose of this communication is solely to describe the scope of our testing of internal control over compliance and the results of that testing based on the requirements of OMB Circular A-133. Accordingly, this communication is not suitable for any other purpose.

We appreciate your staff's assistance and cooperation during this audit. Should you have any questions, please contact Alan Bell or Kelly Olson at (503) 986-2255.

Sincerely,

Office of the Secretary of State, Audits Division

cc: Sarah Drinkwater, Assistant Superintendent
        Rick Crager, Assistant Superintendent
        Joyce Dougherty, Child Nutrition Program Director
        Heidi Dupuis, School Nutrition Programs Manager
        Lynne Reinoso, Community Nutrition Programs Manager
        Tomas Flores, Financial Services Director
        Miranda Summer, Chair, Oregon State Board of Education
        George Naughton, Acting Director, Department of Administrative Services

Office of the Secretary of State

Jeanne P. Atkins
Secretary of State

Robert Taylor
Deputy Secretary of State

Audits Division

Mary Wenger
Interim Director

255 Capitol St. NE, Suite 500
Salem, OR 97310

(503) 986-2255

March 15, 2016

Salam Noor, Deputy Superintendent
Oregon Department of Education
255 Capitol Street NE
Salem, OR 97310-0203

Dear Mr. Noor:

We have completed audit work of a selected federal program at the Department of Education
(department) for the year ended June 30, 2015.

CFDA Number	Program Name	Audit Amount
93.575 & 93.596	Child Care and Development Fund Cluster	$14,920,073

This audit work was not a comprehensive audit of your federal program. We performed this
federal compliance audit as part of our annual Statewide Single Audit. The Single Audit is a very
specific and discrete set of tests to determine compliance with federal funding requirements, and
does not conclude on general efficiency, effectiveness, or state-specific compliance issues. The
Office of Management and Budget (OMB) Circular A-133 identifies internal control and
compliance requirements for federal programs. Auditors review and test internal controls for all
federal programs selected for audit and perform specific audit procedures only for those
compliance requirements that are direct and material to the federal program under audit. For the
year ended June 30, 2015, we determined whether the department substantially complied with
the following compliance requirements relevant to the federal program.

Compliance Requirement	General Summary of Audit Procedures Performed
Activities Allowed or Unallowed	Determined whether federal monies were expended only for allowable activities.
Allowable Costs/Cost Principles	Determined whether charges to federal awards were for allowable costs and that indirect costs were appropriately allocated.
Cash Management	Confirmed program costs were paid for before federal reimbursement was requested, or federal cash drawn was for an immediate need.
Matching, Level of Effort, Earmarking	Determined whether the minimum amount or percentage of contributions or matching funds was provided, the specified service or expenditure levels were maintained, and the

Compliance Requirement	General Summary of Audit Procedures Performed
	minimum or maximum limits for specified purposes or types of participants were met.
Period of Performance	Determined whether federal funds were used only during the authorized period of performance.
Reporting	Verified the department submitted financial and performance reports to the federal government in accordance with the grant agreement and that those financial reports were supported by the accounting records.
Subrecipient Monitoring	Determined whether the pass-through entity monitored subrecipient activities to provide reasonable assurance that the subrecipient administers federal awards in compliance with federal requirements.
Special Tests and Provisions	Determined whether the department complied with the additional federal requirements identified by the OMB.

Noncompliance

Noncompliance is a failure to follow compliance requirements or a violation of prohibitions included in compliance requirements that are applicable to a federal program. *Material noncompliance* is a failure to follow compliance requirements or a violation of prohibitions included in compliance requirements that are applicable to a federal program that results in noncompliance that is material either individually or when aggregated with other noncompliance to the affected federal program. As described in the "Audit Findings and Recommendations" section, we identified noncompliance with federal requirements that we consider to be material noncompliance. Compliance with such requirements is necessary, in our opinion, for the department to comply with the requirements applicable to the Child Care and Development Fund Cluster.

Internal Control Over Compliance

Department management is responsible for establishing and maintaining effective internal control over compliance with program requirements. In planning and performing our audit, we considered the department's internal control over compliance with requirements that could have a direct and material effect on the major federal program to determine the auditing procedures that are appropriate in the circumstances for the purpose of expressing an opinion on the department's compliance and to test and report on internal control over compliance in accordance with OMB Circular A-133, but not for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, we do not express an opinion on the effectiveness of the department's internal control over compliance.

A *deficiency in internal control over compliance* exists when the design or operation of a control over compliance does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, noncompliance with a type of

compliance requirement of a federal program on a timely basis. *A material weakness in internal control over compliance* is a deficiency, or combination of deficiencies, in internal control over compliance, such that there is a reasonable possibility that material noncompliance with a type of compliance requirement of a federal program will not be prevented, or detected and corrected, on a timely basis. A *significant deficiency in internal control over compliance* is a deficiency, or a combination of deficiencies, in internal control over compliance with a type of compliance requirement of a federal program that is less severe than a material weakness in internal control over compliance, yet important enough to merit attention by those charged with governance.

Our consideration of internal control over compliance was for the limited purpose described above and was not designed to identify all deficiencies in internal control over compliance that might be material weaknesses or significant deficiencies and therefore, material weaknesses or significant deficiencies may exist that were not identified. As discussed below, we identified certain deficiencies in internal control over compliance that we consider to be a material weakness.

Audit Findings and Recommendations

Improve Subrecipient Procedures

Federal Awarding Agency: U.S. Department of Health and Human Services
Program Title and CFDA Number: Child Care and Development Fund Cluster (CFDA 93.575, CFDA 93.596)
Federal Award Numbers and Year: 2014G99WRFD; 2014G999004
2014G999005; 2014G996005
2015G999004; 2015G999005
2015G996005; 2015G99WREL
Compliance Requirement: Subrecipient Monitoring
Type of Finding: Material Weakness, Material Noncompliance

The department is responsible for ensuring subrecipients expend awards in accordance with applicable federal statutes, regulations, and the terms and conditions of federal awards. The program requires the department to ensure subrecipients determine individual eligibility according to the rules established by the program. In addition, the new uniform guidance provides that the department must evaluate each subrecipient's risk of noncompliance to determine the appropriate monitoring procedures.

The department has written agreements with a subrecipient outlining the roles and responsibilities for meeting the program requirements, including eligibility. During the fiscal year, the department's monitoring consisted of a review of subrecipient invoices for payments and all applications for eligibility. The department does not receive any of the support verified by the subrecipient. Also, the department does not retain the applications so we were unable to review them for eligibility requirements.

The award letter received by the department in April 2015 stated the new uniform guidance was applicable to those funds. The department was not aware that the new requirements became effective during fiscal year 2015 and, thus, it did not evaluate each subrecipient's risk of noncompliance.

There is a risk subrecipients may not be following the program's procedures in determining eligibility if no on-site verification of subrecipient process/documentation is performed.

We recommend department management develop and document a process to assess each subrecipient's risk of noncompliance and ensure monitoring procedures periodically include a review of a subrecipient's eligibility determination process including income.

The audit finding and recommendation above, along with your response, will be included in our Statewide Single Audit Report for the fiscal year ended June 30, 2015. Including your response satisfies the federal requirement that management prepare a <u>Corrective Action Plan</u> covering all reported audit findings. Satisfying the federal requirement in this manner, however, can only be accomplished if the response to the significant deficiency and material weaknesses includes the information specified by the federal requirement, and only if the response is received in time to be included in the audit report. The following information is required for the response:

1) Your agreement or disagreement with the finding. If you do not agree with the audit finding or believe corrective action is not required, include in your response an explanation and specific reasons for your position.

2) The corrective action planned.

3) The anticipated completion date.

4) The name(s) of the contact person(s) responsible for corrective action.

Please provide a response to Kelly Olson by March 18, 2016 and provide Rob Hamilton, Statewide Accounting and Reporting Services (SARS) Manager, a copy of your Corrective Action Plan.

The purpose of this communication is solely to describe the scope of our testing of internal control over compliance and the results of that testing based on the requirements of OMB Circular A-133. Accordingly, this communication is not suitable for any other purpose.

We appreciate your staff's assistance and cooperation during this audit. Should you have any questions, please contact Michelle Rock or Kelly Olson at (503) 986-2255.

Sincerely,

Office of the Secretary of State, Audits Division

cc: Megan Irwin, Early Learning Division Director
Rick Crager, Assistant Superintendent, Office of Finance & Administration
Thomas Flores, Financial Services Director
Dawn Woods, Child Care Director
Pam Curtis, Chair, Early Learning Council
George Naughton, Interim Director, Department of Administrative Services

Office of the Deputy Superintendent
255 Capitol St NE, Salem, OR 97310
Voice: 503-947-5600
Fax: 503-378-5156

March 17, 2016

Mary Wenger, Interim Director
Oregon Audits Division
255 Capitol Street NE, Suite 500
Salem, Oregon 97310

Dear Ms. Wenger:

This letter is in response to four March 2016 letters from the Oregon Audits Division (OAD) to Deputy Superintendent Noor wherein the OAD noted deficiencies in internal controls related to the Child Care and Development Fund, Special Education, Title 1, and Child Nutrition Programs. These findings require a response from the Oregon Department of Education (ODE) to be included in the *Statewide Single Audit Report for the Fiscal Year Ended June 30, 2015.*

The OAD's letters specified four elements should be included in our response: 1) the department's agreement or disagreement with the finding; 2) the corrective action planned; 3) the anticipated completion date; and 4) the name of the contact person responsible for the corrective action. Following is our response:

CHILD CARE AND DEVELOPMENT FUND – OAD Letter Dated March 15, 2016

Improve Subrecipient Procedures
We agree with this finding and the recommendation that department management develop and document a process to improve subrecipient procedures. Our planned corrective action is as follows:

1. The department will use the requirements of the new Uniform Guidance to evaluate each subrecipient's risk of noncompliance.
2. Risk assessment training for all contract administrators is scheduled for Spring of 2016.
3. Perform an on-site review annually of the subrecipient's program procedures in determining eligibility including verification of income.

Our anticipated completion date is June 30, 2016.
Contact person: Dawn Woods, Child Care Director

SPECIAL EDUCATION – OAD Letter Dated March 11, 2016

Improve Controls over Period of Performance

We agree with this finding and the recommendation that department management ensure controls are properly designed to prevent recording expenditures outside the period of performance. Due to an error, $178,458 was recorded to an incorrect grant award. In December 2015, we updated our records and fixed the error by recording the expenditure to an allowable federal award. Currently, we review expenditures for period of performance during the grant closeout process. Our planned corrective action is to perform more frequent reviews on a quarterly basis of allowable expenditures and making corrections as needed.

Our anticipated completion date is June 30, 2016.
Contact person: Tomás Flores, Director of Financial Services

Ensure Subrecipient Monitoring Includes Federal Fiscal Requirements

We agree with this finding and the recommendation that department management implement fiscal monitoring processes. This issue was identified by the Office of Special Education Programs (OSEP) through their audit in October 2010, with communication to Oregon occurring in November 2014.

Over the past 1½ years, ODE has communicated to OSEP our progress on subrecipient monitoring as well as the calculation of the Maintenance of Effort (MOE) for local educational agencies. We also communicated the delay in completing corrective actions related to subrecipient monitoring due to the recent hiring of key financial positions. Corrective action already has been taken as follows:

1. Communicated with districts the four options for calculating MOE.
2. Encouraged the tracking of expenditures separately at the district level.
3. Contacted districts that had recently failed MOE and told them ODE would not take action to request a refund for failure to meet MOE.
4. Website resources were updated with current information.
5. We shared and discussed draft documents with OSEP during a conference call on February 22, 2016, that would be utilized during subrecipient monitoring visits. We will incorporate, as appropriate, suggested revisions by OSEP.
6. We received technical assistance resources from OSEP.

Our planned corrective action is as follows:

1. ODE will finalize development of two fiscal monitoring tools: Fiscal Year Risk Assessment for Individuals with Disabilities Education Act (IDEA) Federal Grants and IDEA Fiscal Monitoring
2. ODE will finalize its procedures for fiscal subrecipient monitoring to include a review of accounting and internal control systems and federal fiscal requirements of the award.

Our anticipated completion date is June 30, 2016.
Contact person: Sarah Drinkwater, Assistant Superintendent

TITLE 1 – OAD Letter Dated March 10, 2016

Improve Accuracy of Maintenance of Effort Calculations
We agree with this finding that department management improve accuracy over Maintenance of Effort (MOE) calculations. Our corrective action is as follows:

1. An inadvertent omission during the completion of the MOE calculations resulted in a Title 1-A allocation not reduced in the amount of $4,196 to reflect the school district's failure to meet MOE. We will recover the funds and make the appropriate repayment to the US Department of Education.
2. ODE will update its processes to improve controls over accuracy of MOE calculations, including:
   - A review of the financial expenditure methodology used to calculate MOE. We will ensure the calculation includes only those expenditures allowed by federal regulations and excludes expenditures, such as capital outlay, debt service, and expenditures from federally-provided funds and community services.
   - Implement an independent review of the MOE calculations and final allocations to school districts. As part of our supporting documentation, we will maintain notes of how failure to meet MOE by a school district resulted in a reduction of their final allocation.

Our anticipated completion date is June 30, 2016.
Contact person: Theresa Richards, Director of Federal Systems

CHILD NUTRITION PROGRAMS – OAD Letter Dated March 14, 2016

Menu Certification Reimbursement Practices Should Align With Federal Regulations
We agree with this finding and the recommendation that department management obtain clarification from the U.S. Department of Agriculture (USDA) regarding the appropriateness to reimburse sponsors for menu certifications that took longer than 60 days to complete. These are incentive payments when the meal pattern for the National School Lunch Program is certified as being adopted. Program sponsors submitted menus from all grade levels served for a self-identified week and the certification process was designed to be completed within 60 days. It was our understanding from USDA that we were to assist program sponsors with the submitted menus beyond the 60 day certification process, rather than restart the process with more recent menus. It was also our understanding that payments for certified menus were to be paid back to the month from which they were received.

Corrective action already taken is as follows:
1. The menu certification is now a part of either the administrative review or application process for new sponsors. By changing the timing of when menu certifications are conducted, the 60 day certification determination deadline is no longer an issue.
2. We are communicating with our federal partners at the USDA to resolve the situation identified in the finding.

Our anticipated completion date is June 30, 2016.
Contact person: Heidi Dupuis, Manager of School Nutrition Programs

Sincerely,   Sincerely,
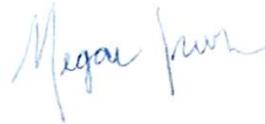
Salam A. Noor, Ph.D.   Megan Irwin,
Deputy Superintendent of Public Instruction   Early Learning Systems Director

Cc: Michelle Hooper, Chief of Staff
      Miranda Summer, Chair, Oregon State Board of Education
      Dawne Huckaby, Assistant Superintendent
      Sarah Drinkwater, Assistant Superintendent
      Rick Crager, Assistant Superintendent
      Theresa Richards, Director of Federal Systems
      Joyce Dougherty, Child Nutrition Program Director
      Heidi Dupuis, School Nutrition Programs Manager
      Lynne Reinoso, Community Nutrition Programs Manager
      Pam Curtis, Chair, Early Learning Council
      Dawn Woods, Child Care Director
      Tomás Flores, Financial Services Director
      Latham Stack, Internal Auditor
      Robert Hamilton, DAS, Statewide Accounting and Reporting Services Manager
      V. Dale Bond, OAD, Audit Manager
      Kelly Olson, OAD, Audit Manager

Secretary of State Audit Report

Jeanne P. Atkins, Secretary of State

Mary Wenger, Interim Director, Audits Division

Oregon Department of Education: Clearer Communication, Consistent Use of Results and an Ongoing Commitment to Improvement Could Help Address Testing Concerns

Executive Summary

Our audit responds to House Bill 2713 (2015), developed with input from the State Auditor. It called for a Secretary of State audit to review the impacts of the statewide summative assessment on Oregon's public schools, and make recommendations for improvement.

Through a series of surveys, site visits and interviews, we learned many schools faced challenges in the first year of administering the new Smarter Balanced test, including adjusting to the demands on staff and school resources. Some reported fewer challenges in the second year.

Some educators are concerned that certain student populations may experience more negative impacts than others. Some also told us that a more comprehensive assessment system would be useful.

Oregon introduced Smarter Balanced in 2015

The Smarter Balanced assessment is a new test introduced by the Oregon Department of Education to all public schools in the spring of 2015. Smarter Balanced tests 3rd - 8th graders and 11th graders in math and English language arts near the end of the school year. The test assesses students' progress toward meeting Oregon's college- and career-ready standards, the Common Core State Standards. Smarter Balanced requires more time and depth of knowledge than the previous test.

There is not clear agreement on the test's purpose

The Smarter Balanced test is intended to provide a measure for accountability, data to identify achievement gaps, and information about whether students meet standards overall, and many value these purposes. We also heard from educators who feel the test should be more useful in the classroom. However, other tools may be better suited for that purpose. The Oregon Department of Education could take a more active role in communicating about the test's purpose.

The results of the test are not used consistently

Schools, school districts and the state use Smarter Balanced test results inconsistently, and sometimes not at all. Educators told us that it would be easier to use results if they received them sooner. Many reported that additional guidance on how to use results would be helpful. Some also reported that a more comprehensive assessment system would be useful.

Many reported test administration challenges

Educators described schoolwide challenges in the first year of administering Smarter Balanced. Testing did not just affect the classrooms that were actively testing, but could also place additional staffing and resource demands on the entire school. However, some said there were fewer challenges in the second year.

Testing took away from other duties of school and school district personnel. Some schools hired additional staff or substitutes specifically for testing. Testing also tied up computer labs for months at some schools. Time spent taking and preparing for the test took away from instruction time.

Some student populations may experience more negative impacts than others

Standardized testing may affect certain student groups more than others. Despite having accommodations, we heard concerns that the test's greater use of technology and language may increase the risk that some students will not be able to demonstrate their abilities accurately. Students who take longer to complete the assessment may miss more instruction time.

Students in special education, English Language Learners, and students with less exposure to technology and typing may be particularly affected.

Recommendations

We recommend that the Oregon Department of Education improve communication, foster consistent use of results and continue its commitment to improve test administration. Our specific recommendations can be found on page 18 of the report.

Agency Response

The full agency response can be found at the end of the report.

Background

The federal government requires a test aligned to standards

An annual test aligned to rigorous, statewide education standards is one of several requirements to receive federal funding. Last year, the federal government provided over $300 million to Oregon schools and districts to serve low-income and disadvantaged students.

Since the federal No Child Left Behind Act of 2002, states have been required to test every student enrolled in a public school in English language arts (ELA) and math annually in grades 3-8 and once in high school.

The Every Student Succeeds Act of 2015 has changed conditions to receive federal funding, but the testing requirement remains. Oregon must still have at least 95% participation on the statewide assessment to meet federal guidelines. The state must also rate schools according to student participation and achievement on the annual exam.

The Oregon Department of Education (department) is responsible for these tests and preparing reports to the federal government showing how Oregon complies with federal law. But many of the decisions about testing logistics are made by Oregon's 197 school districts and 1,200 schools where students are tested.

Smarter Balanced is aligned with the Common Core State Standards

In 2010, the Oregon State Board of Education adopted the Common Core State Standards in ELA and math. These standards expect more from students than the former standards. Oregon's previous assessment, the Oregon Assessment of Knowledge and Skills (OAKS), was not designed to measure against these standards, so a new assessment was needed in these subjects.

In the 2014-15 school year, Oregon joined 17 other states in administering a test developed by the Smarter Balanced Assessment Consortium (SBAC). Eleven other states and Washington D.C. administered a test designed by the Partnership for Assessment of Readiness for College and Careers (PARCC). Both Smarter Balanced and PARCC tests were developed by consortiums of member states. The other 21 states used a variety of assessments, including those purchased from other vendors.

The purpose of these types of tests is to provide a measure for accountability, data to identify achievement gaps, and information about whether students meet standards overall. For example, Smarter Balanced can provide information to districts about disparities in academic achievement between different groups of students, so the district can direct

resources where they are most needed. The test can also be used as one measure of a student's progress toward college-and career-ready standards, but is not intended to guide individual students' instruction or be used for student placement.

Smarter Balanced assesses more challenging content standards and contains a wider variety of questions, tasks, and problems than traditional multiple-choice tests. This allows students to demonstrate analytical writing, critical thinking, and problem-solving skills along with their knowledge of facts. SBAC maintains a pool of field-tested questions that make up the test given to member states. These questions are developed by educators and content experts.

The test consists of a computer adaptive section and a performance task in each of the tested subjects. The computer adaptive section offers harder or easier questions based on a student's answers to pinpoint their achievement level. The performance task presents students with a common topic or problem then requires them to answer questions and perform tasks such as writing and research.

The test requires that students demonstrate their knowledge through more writing than previous tests. Written responses are scored by hand.

In the first year of implementation, the performance task was preceded by a classroom activity, which has since been eliminated in response to concerns about testing time.

With new tests, state expenditures have increased

2013-14 costs include:
- OAKS reading, math, science, social sciences and 11th grade writing
- English Language Proficiency Assessment
- Kindergarten Assessment

2014-15 costs include:
- OAKS science and social science
- Smarter Balanced math and ELA
- English Language Proficiency Assessment
- Kindergarten Assessment
- 12th grade retest in OAKS reading, math, and writing

In the 2013-14 school year, the department paid nearly $5.2 million to support most statewide tests, including OAKS. The majority ($4.5 million) was for a contract with vendor American Institutes for Research (AIR).

In the 2014-15 school year, after the transition to Smarter Balanced, the department paid nearly $10.2 million to test the same subjects under the new standards (See Figure 1).

Of this amount, nearly $8.2 million went to AIR for test delivery, scoring and reporting results for the Smarter Balanced tests, as well as the English Language Proficiency Assessment and the OAKS science and social sciences tests. This includes supporting the computer platforms for test delivery and reporting. Just over $1.8 million went to the SBAC for membership fees, which includes the pool of Smarter Balanced test questions and technical documents such as blueprints, item and content specifications, accessibility manual, and reports. About $200,000 went to another contract to hand score the OAKS writing retest opportunity.

The AIR contract increased primarily due to hand scoring the Smarter Balanced assessment, which required written responses at all grade levels and in both ELA and math. The contract also included printing and

distributing Kindergarten Assessment materials and supporting an OAKS retest opportunity offered to 12th graders during the transition year.

Figure 1: Contract payments to support most statewide tests
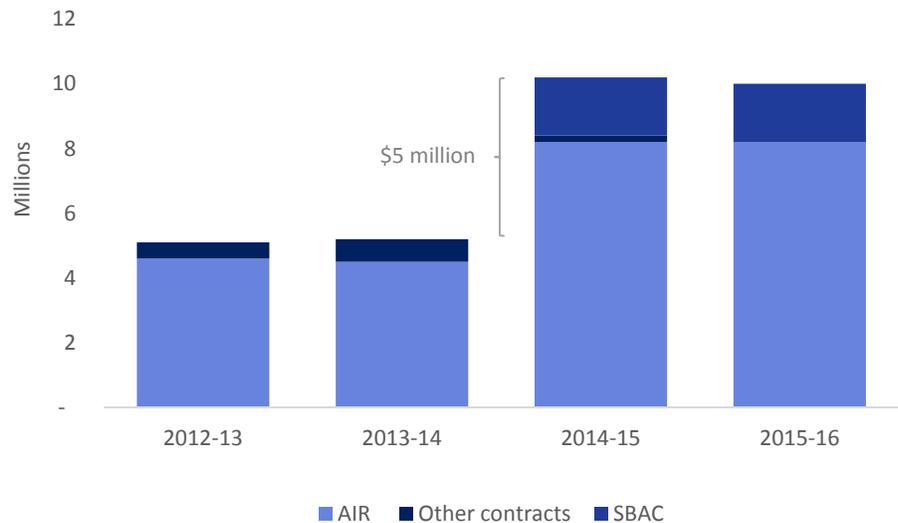
Statewide test results are a measure of school performance

School accountability systems can ensure that every student has access to a high-quality education. One function of a school accountability system is to gather information and report on the performance of schools and districts. In accordance with federal requirements, the primary measure Oregon uses in this system is performance on annual, statewide standardized tests. This is an example of performance measurement.

Organizations that systematically use performance measurement information to facilitate learning and improvement can deliver better outcomes. Using measurement information is part of the broader performance management framework, and organizations that do not follow the principles below may risk not achieving their goals or losing trust from the public. We considered the following principles when gathering information about impacts of the test and developing recommendations:

• Establishing meaningful goals that are aligned with desired results
• Communicating performance transparently and purposefully
• Ensuring that data is accurate and useful for users
• Using data to inform decisions
• Using information to continuously improve
• Recruiting supportive leaders and champions
• Ensuring sufficient resources and expertise
• Demonstrating improvement and communicating success

Audit Results

Many in the education community have concerns about the new Smarter Balanced test and the trade-offs associated with administering it in schools.

Through a series of surveys of district superintendents, parents and educators, site visits at public schools, and focused interviews, we learned that many schools faced challenges in the first year of administering the new Smarter Balanced test. Some are concerned about how certain student populations experience the test.

Impacts of testing, such as lost instruction time, might be considered a worthwhile trade-off, if the purpose and benefits of the test are clear. Some we spoke with valued testing for its role in addressing achievement gaps and some valued the rigor of the new standards.

Many also shared their ideas for improvement with us. These highlight steps the department can take to help achieve Oregon's education goals, while working to reduce negative impacts of these tests on schools.

We completed our audit in response to House Bill 2713, passed during the 2015 Legislative Session, with input from the State Auditor. The bill called for an audit reviewing the impacts of the statewide summative assessments on Oregon's public schools, and making recommendations for improvement. Due to timing, most information we report is from the first year of administering Smarter Balanced, with additional information from early in the second year of testing. Some reported fewer challenges in the second year.

The test purpose and benefits are not always clear

"ODE has provided many documents that are intended to explain the purpose and validity of [the test]. I would encourage them to continue to develop these materials as I feel that districts are still struggling with student, parent, and community 'buy in'..."

-District Survey Respondent

There is not clear agreement on the purpose of Smarter Balanced

Not everyone agrees on the purpose of the Smarter Balanced test, with some we spoke to focusing on the test as a measure of how individual students are performing and others focusing on it as a gauge of systems-level goals, such as school accountability and addressing achievement gaps.

Parents told us that they would like more information about the purpose of the test. Some teachers asked why the state requires a test that is not useful in the classroom. Several superintendents reported that they would like more tools to communicate about the purpose of the test with teachers and parents.

The department could clarify its message about the purpose of the test and take a more active communications role. At times, department staff focused on promoting the benefits to individual students and the test's alignment to higher standards, and less on the equity and accountability purposes of the test. Department staff also told us that they rely on districts and principals

to have conversations with teachers and parents about the test, which creates a risk that these groups receive inconsistent messages.

While it can be challenging to communicate with large constituencies across the state, the department has made efforts to connect directly with teachers and parents. Staff in the department's assessment team have toured the state to talk with teachers about the assessment. More recently, the department held community forums around the state to gather input from teachers, parents and community members about future policy changes.

Additional communications may require a larger investment of resources. The California Assessment Director told us that their state made a significant financial investment to ensure a smooth transition to Smarter Balanced. Many of their efforts have focused on communications, including contracting early to develop a communications plan, holding press events, and meeting monthly with representatives from large constituency groups.

Smarter Balanced results are not consistently used in ways that provide clear benefits to everyone

"It would be better if we could get the results sooner. This would allow us to make decisions earlier..."

-Principal Survey Respondent

Smarter Balanced results are not used consistently throughout the education system. Survey respondents identified current and potential limitations to using data, such as untimely results, uncertainty about how to use results, different skill levels in interpreting data, and a lack of complimentary resources. Some were unsure how they would use Smarter Balanced results, since the first year of results are most useful in providing a baseline to show student growth.

We heard cases where results have not been available to administrators in time to make decisions about budgets and resource allocation. Superintendents and principals who responded to our survey said that more timely results would help them use the results to make decisions for the following school year. The department expects districts will receive results more quickly in the second year of testing.

"We use the data to try and determine areas of strengths and weaknesses in our curriculum and make adjustments accordingly."

-Principal Survey Respondent

Some survey respondents said they are able to use the results to inform district or school improvement, while others said they need more information about what the scores mean, as well as results over multiple years, before they will be able to use them effectively. Without consistent use of results, opportunities to make improvements in schools and districts may be missed.

As part of its school improvement efforts, the department works with about 90 schools and their districts on improvement plans and interpreting data, including Smarter Balanced results, and would like to expand their efforts to work with more districts on data interpretation.

Principals and teachers said they would find the results more useful if they included more detailed information. Individual student reports have an overall score in both math and ELA, and in a few general areas within those

subjects. Educators would like more information about whether students are able to apply specific concepts.

Detailed student achievement data could be used to look at classes or schools and identify possible areas for intervention. For example, if many students scored lower in fractions than other math concepts, a school might look for supplemental instruction materials about fractions or offer professional development in that area.

The department and districts can generate more detailed reports when annual Smarter Balanced results are available through the state's online system. These reports break down a subject area into more detail to show how groups of students performed on specific concepts. Greater awareness and access to these reports could be helpful to principals and teachers.

Comprehensive assessment systems provide a wider range of information

In education, various types of assessments can provide different types of information. Formative, interim, and summative assessments are three common types (See Figure 2).

Figure 2: Three types of assessment in a comprehensive assessment system

Formative	Interim	Summative
Regular classroom practices that teachers use to understand how a student is learning to inform instruction	Periodic check-ins used to identify gaps in learning and help to track progress throughout the year	A test used to measure a level of performance at the end of any instruction period
Examples: Observation, class activities, homework, quizzes	Examples: Midterms, chapter tests, benchmark exams	Examples: Final exams, Smarter Balanced, OAKS

These three types of assessments can be combined to form an assessment system that could serve systems-level purposes and include tools that educators find beneficial. In a comprehensive system, summative results can point toward useful formative resources. Interim tests can give benchmarking information that show which standards students need to focus on before taking the summative assessment.

Some survey respondents felt that formative and interim assessments provide information that is more useful to teachers in guiding instruction than statewide summative assessments. Some expressed a greater trust in teacher assessment of student performance than in standardized test scores.

Currently, the state does not provide access to common formative and interim assessments, and availability of these types of resources varies across districts. Some districts have adopted standard interim assessments. Others have not, leaving it up to individual schools to acquire or develop them.

A budget note in House Bill 5008 (passed in 2013) prohibited the department from purchasing the full Smarter Balanced assessment package, which includes formative and interim resources. This bill provided some funding for district-selected interim assessments, but it was not sustained after the first year.

Of states administering Smarter Balanced, only Oregon and one other state do not use the full assessment package. Education officials in Washington and California said that having the complete assessment system has been beneficial in their states.

Although OAKS was a summative assessment, students had up to three opportunities to pass and received results immediately. These factors enabled schools to administer the first opportunity early in the year and use the results for benchmarking. Because Smarter Balanced is only conducted once, near the end of the school year, schools and districts may feel they are missing results they previously used to guide instruction and make decisions.

By not offering comprehensive assessment resources, the state may be missing an opportunity to realize the benefits of an effective performance measurement system and better support educators with tools they find useful.

Some feel the test receives too much emphasis

While some told us they value the rigor of the higher standards, we also heard concerns the test is overemphasized.

"Return more instructional time to students by placing less emphasis on state testing and shortening the test."

-Teacher Survey Respondent

Emphasis can include the time teachers and students spend taking and preparing for the test. It can also include feelings of stress or pressure to do well. The state and district accountability systems and the possible use of test results in teacher evaluations can also create pressure.

The test is intended to provide a measure for accountability, data to identify achievement gaps, and information about whether students meet standards overall, but the benefits that come from gathering this information may take time to develop as schools and districts use them in improvement efforts. We heard skepticism that test results are being used to address systemic problems, such as achievement gaps.

Some feel there are not clear benefits to the students and educators most affected by the test because the results are not well-suited to inform instruction or individual educational decisions at the student level.

These, as well as other factors, may have contributed to a sense of distrust and lack of buy-in. Additional factors may have included uncertainty during the first year of administration; a lack of understanding or readily available information on how the test was developed, what the questions look like, and how the test is scored; criticism of sample test questions; and disapproval of standardized testing in general.

Parents and students across the country have expressed dissatisfaction with the way standardized tests are used in the education system. Oregon law allows families to opt out of Smarter Balanced by submitting a form. Where large number of students opt out, the results may be less useful for informing decisions about schools and districts. Differences in demographics between students who opt out and the whole student population may skew comparisons of student subgroups. Opt-out groups are active in many states, including states administering tests other than Smarter Balanced.

The test demands more time and depth of knowledge

Because it assesses critical thinking and problem-solving skills required by the Common Core State Standards, the Smarter Balanced test is complex. This complexity leads to a test that can be time consuming.

Smarter Balanced is designed as an untimed test and students are given as much time as they need to complete it. According to 2014-15 department data, in the first year, students spent an average of around four hours on the computer taking the ELA portion of the test and two hours on the math section (See Figure 3).

Figure 3: Oregon Average Smarter Balanced Test Time - 2014-15 School Year

■ Average ELA ■ Average Math
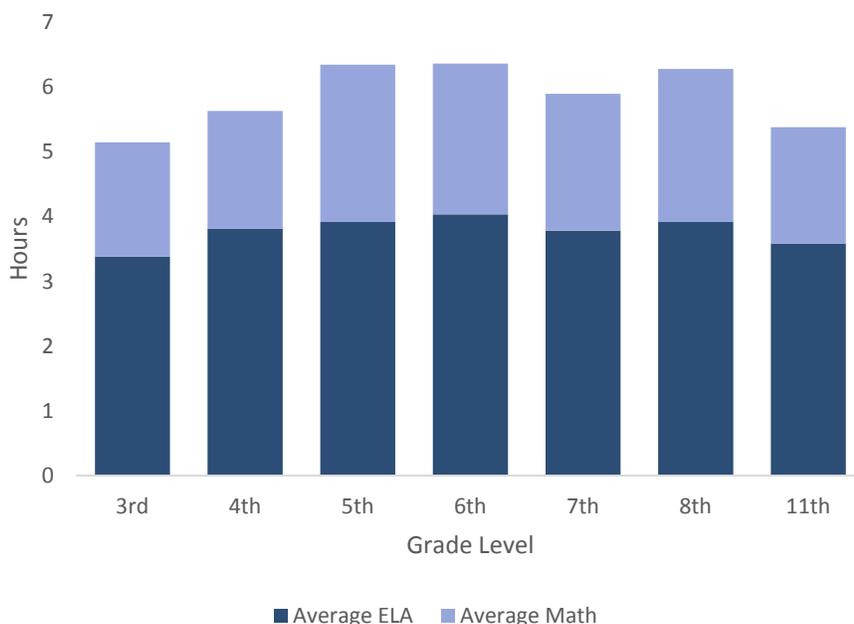
There are students who take longer than the averages described above. Department data indicates nearly 90% of students finished the ELA section within six and a half hours and the math section within four hours. However, multiple survey respondents reported students taking even longer; one teacher estimated students taking between 18-23 hours.

Understandably, with so much time invested in the test, many are interested in receiving individual students' results. In order to offer those results in detail, the test must ask more questions of each student, making it longer. A shorter test, focused solely on the health of the system, would provide less precise individual results.

Many reported challenges with test administration

Schools faced challenges in the first year of administering the new test

Educators described schoolwide challenges in the first year of administering Smarter Balanced. Testing did not just affect the classrooms that were actively testing, but could also place additional staffing and resource demands on the entire school. However, some said there were fewer challenges in the second year.

Coordinating and administering the test takes staff time. This includes supervising students who finish early or opt out of testing. Some principals hired new staff or substitutes, while others said they absorbed increased staffing needs with existing staff. Staff may be taken from other duties, including teachers, administrators, instructional coaches, librarians, counselors and specialists.

Annual training is required for proctors who administer statewide assessments, mainly teachers but also others such as teaching assistants, substitutes and specialists. This training sometimes displaces professional development on specific subjects or other instructional topics. Discussing test administration can take up meeting time at schools.

Several suggested that outside proctors could improve test administration and reduce the staff demands on schools.

Access to shared resources and space, such as computers, libraries and computer labs, can also present a challenge during testing. Some reported that testing tied up computers for months. We heard that having at least one computer for every student can be helpful.

In addition, test preparation and administration may have reduced available instruction time. For example, some teachers reported spending extra class time preparing students to navigate the new format.

The impact from these challenges could include less instruction time, fewer support services, and less access to common resources for all students during testing.

This could be the case with any annual statewide test. But since the test was new and could take longer for students to complete, some reported a much more significant disruption than in the past.

On the other hand, some reported that the new test takes up similar or less class time as OAKS, since students can only take it once per year. Additionally, since OAKS was also on the computer, Oregon schools may

"…It took more time during staff meetings to train for and be prepared for the testing…"

- Teacher Survey Respondent

"The computer lab is no longer available from March-June for anything other than testing."

-Principal Survey Respondent

have been better prepared for Smarter Balanced than schools in other states that had previously administered paper and pencil tests.

Technical issues remained in the computer platform in the first year and into the second year. We heard multiple reports of computers freezing and accommodations, such as text-to-speech, not working properly. When that happens, proctors are not always able to stop the test to address the technical error, and can only encourage the student to do their best to continue the test. This can be stressful, especially when students and proctors are not clear if work will be lost.

The department contracts with Intermountain Educational Service District in Eastern Oregon to take calls and problem-solve with test proctors. Reports of technical issues are passed on to the vendor, AIR, to fix. We heard that this process may address problems one at a time, but may not always fix problems system-wide.

In addition to difficulties administering the test, there was also uncertainty in the first year. We heard that uncertainty about what the test would look like or how long it would take left some teachers and administrators feeling unprepared. One test coordinator told us that his school did not hear about what had or had not worked from schools that piloted the assessment.

All of these factors may have contributed to the negative perceptions and feelings of anxiety or pressure that we frequently heard.

Schools do not always understand test administration guidance or have access to information about best practices

The department sets requirements for secure and valid testing to ensure that each student has a fair opportunity to demonstrate his or her abilities, and school districts are fairly rated for state and federal accountability. The current requirements were also in place for OAKS. The department provides guidance on these requirements through a test administration manual and training modules. However, these materials are long and complex, and we heard it can be difficult to find specific information.

"…The test coordinator and instructional coach have spent a lot of time researching answers to questions about things that are not clear in the manuals."

-Teacher Survey Respondent

Many report the level of security expected during testing leads to disruption and stress, and some said the requirements, such as ensuring that no one enters the testing area, and restricting interactions with students to the phrase "do your best," are not reasonable within a school environment.

School test coordinators must report any deviation from the rules as an impropriety or test irregularity. This includes situations outside a proctor's control, such as technical errors, which can be common in the first year of a new test. We heard the process for documenting an impropriety has resulted in a large amount of paperwork and additional administration. The department currently has plans to streamline this process in time for the next administration of Smarter Balanced.

The requirement prohibiting teachers and other proctors from looking at test questions may have created anxiety among some school staff. Teachers who would like to provide feedback to improve the new assessment based on things they heard from students or inadvertently saw on screens may fear that knowing about test questions could lead to repercussions, including the possible loss of their teaching license.

Accessibility resources for eligible students have been an area of particular concern (See Figure 4). Information about which resources are available to which students is not well-known by all teachers and administrators, including Special Education teachers. Some teachers felt that all students could benefit from designated supports, such as printing sections of the test, but were hesitant to offer them too broadly. Teachers were also concerned they may be unnecessarily restricting students from using assistance they should be eligible for.

Figure 4: Accessibility Resources

Universal Tools	Designated Supports	Accommodations
Available to all students	Available to students for whom a need has been identified by school personnel familiar with each student's needs and testing resources	Available to students with a documented need noted in an Individualized Education Program (IEP) or 504 plan
Examples: digital notepad, scratch paper and a highlighter tool	Examples: a pop-up translated glossary, print on request, and the ability to take the test in a separate setting	Examples: Braille, closed captioning, and the use of a scribe

It takes time for teachers to decide which supports and accommodations are appropriate for each student, and to input them into the testing system. Available supports and accommodations have changed multiple times, including in the middle of the school year. Clear information about these changes does not always reach teachers and staff, and this has led to additional uncertainty.

In one region, school districts have communicated about test administration questions and shared best practices for several years. The department has been available to this group for information sharing. However, the department could do more to facilitate the sharing of best practices across all regions.

Preparedness, resources and priorities vary within and between districts

The State Board of Education adopted the Common Core State Standards in 2010 and the Smarter Balanced assessment in 2013. Readiness for the rollout of the Smarter Balanced assessment was inconsistent. District readiness includes early adoption of Common Core-aligned curriculum, teacher training, and resources to support test administration.

Some districts implemented Common Core-aligned curriculum or offered training in teaching to the new standards earlier than others. Other districts still have curricula that are not well aligned to the standards. In general, the amount of time dedicated to teacher professional development can vary. Training related to assessments and assessment literacy competes for time and resources with other topics and education priorities.

We heard that Smarter Balanced places more demands on a school's technology than previous assessments. While some schools and districts had adequate technology prior to the start of Smarter Balanced, others have spent resources adding or upgrading technology. We heard the timing of the rollout, following a recession, could have limited districts' abilities to ensure adequate technology in time for testing. The Oregon Parent Teacher Association (PTA) reported more schools asking the PTA for money for technology.

Smarter Balanced testing must occur within the last third of the school year, but the length and timing of the testing window is determined by the district. Where there continue to be unmet technology, lab space, bandwidth or infrastructure needs, districts may need to schedule a wider testing window, with some students testing in early spring, and others testing near the end of the school year.

Testing students earlier in the year means that teachers may have to compress classroom instruction, so that they are able to get through all of the material before testing begins. However, testing students near the end of the school year may affect when schools receive results.

"Because we are nearly 1:1 using chrome books, students are able to test in their classrooms. There is little impact…"

-District Survey Respondent

Some student populations may experience more negative impacts than others

Impacts can vary based on school characteristics

Schools may face different impacts associated with testing based on whether they receive federal Title I funds, whether they are a dual language program, and the grade levels they teach.

Many schools face pressure to improve math and ELA test scores. Title I schools, which have high percentages of students in poverty, may face greater pressure because of accountability requirements associated with federal funding. We heard from some teachers that pressure to prepare students for the test by improving math, reading, and technology skills makes it challenging for schools to dedicate time and resources to other subjects and enrichment opportunities.

Several teachers and principals we surveyed noted that they have lost Title I-funded reading and math intervention time during testing because they reallocated staff to meet the demands of the assessment.

"…Our testing coordinator is also our Title 1 teacher, so she gets pulled away from reading groups if teachers that are testing need her help…"

-Teacher Survey Respondent

Oregon has many dual language immersion programs where students in younger elementary grades are taught core subjects primarily in a language other than English, with instruction in English increasing in later years.

Both the ELA and math sections of Smarter Balanced require written responses. We heard that elementary students in dual language programs may have difficulties showing their ability on the math section because they have been taught math in the partner language. This may reflect poorly on the school's rating.

Another concern raised for dual language programs is that while they are testing, it can be challenging to schedule their classes to ensure students are receiving the appropriate mix of instruction in both English and the partner language, which can undermine their bi-literacy goals.

The grade levels taught at the school may also affect their experiences with the assessment. Elementary schools are most likely to experience difficulties getting their students ready to use the technology and may need to teach keyboarding skills and other computer tools used on the test. Additionally, many educators are concerned that the new test may not be appropriate for younger children, with language and technology requirements that they are not developmentally ready to meet.

Both elementary and middle schools have multiple grades that need to be tested, and may experience negative impacts related to wider testing windows and lack of space or technology. In contrast, in high school, a single grade level is tested (11th), so fewer students take Smarter Balanced at the same time.

As with OAKS, students in high school can use a passing score on the test to demonstrate they have mastered the Essential Skills, which is a requirement for graduation. Some high schools may work with students to put together work samples that demonstrate their mastery of the essential skills. Once they have met this requirement, there are fewer incentives for them to take Smarter Balanced and the school may be penalized for low test participation.

Impacts can also vary depending on student population

Proponents of summative assessments value how the results may draw attention to inequities for historically underserved populations. In order for summative assessments to provide useful information, students who take them need to be able to demonstrate their abilities accurately. If a student's individual circumstances prevent them from doing their best work on the assessment, the results may not be as useful in identifying achievement gaps or areas for program improvement. Smarter Balanced offers accommodations and supports that are intended to ensure that students are able to demonstrate their abilities accurately, but some educators are concerned that accommodations do not address all impacts.

We heard concerns from educators about how some student populations may experience the test differently than other students, including concerns about students missing additional services or instruction, students experiencing additional stress, negative impacts to students' self-esteem, and concerns about whether Smarter Balanced is fair for all students. Educators told us that they have questions about the fairness and validity of the test.

Many of the teachers who answered our survey expressed concern that students from lower income households may have less exposure to technology at home. Additionally, students may take the test on a device they are not used to, for example on a computer when they usually use an iPad in the classroom. We heard concerns that students who struggle with the technology may not be able to adequately demonstrate that they know the material on the test.

Students identified as English Language Learners take more standardized tests than other students. In addition to Smarter Balanced, they are required to take an annual statewide English language proficiency test and may take additional school and district assessments. Some educators were concerned that students learning English were missing more instruction time than their English speaking peers.

Students are required to generate written responses at all grade levels in both the ELA and math portions. This may present an extra challenge to English Language Learners, and students with dyslexia or language impairments.

Students who receive Special Education and Title I services may experience more negative impacts than others as a result of the test. These services may become unavailable during test time, as the spaces, computers, and staff members devoted to these services are used to support the assessment.

"…If my ADHD child uses the amount of time she really needs, she would fall behind in her regular classroom work."

-Parent Survey Respondent

Even when a student is eligible for a support or accommodation (see Figure 4 on page 13), they may not use them. This could be because they do not know where on the computer to find the tools or because they do not want to be seen by others as needing the supports. These students may also lose additional instruction time so that they can learn to navigate the accommodations before testing begins. After the test starts, their teachers are not able to help due to testing rules.

If an accommodation does not function properly, and cannot be addressed while the student is taking the test, this may lead to additional stress for both the student and the proctor.

A few accommodations make the test longer for students who use them. For example, a student who is visually impaired may take significantly longer if the test is read to them, and may miss out on classroom instruction as a result. Other students have challenges that accommodations cannot fully address, such as anxiety or attention

disorders. These challenges are not unique to Smarter Balanced, but they may be exacerbated by the length of the test.

Federal guidelines require students to be tested at grade level. When a student is working well below grade level, they may be faced with test questions beyond their level of understanding. Several educators, including Special Education teachers, reported students giving up and randomly clicking through the test. Additionally, because the test is only designed to measure whether a student meets grade level standards, it may be challenging to see any growth these students make, if that growth leaves them still working below grade level.

We heard a variety of opinions about opting these students out. On one hand, the test could be creating unnecessary anxiety and lowering self-image. On the other hand, some feel their needs will be ignored if the school is not being held accountable for raising their scores. Additionally, opting out one particular population may skew a school's results, and could mask achievement gaps.

When we spoke with civil rights and advocacy groups, a common sentiment is that there needs to be some form of assessment to hold schools accountable for ensuring that every student has access to a high-quality education. However, as the above concerns illustrate, some student populations may experience more negative impacts than others. When impacts fall hardest on vulnerable populations, it is important to find ways to minimize those impacts.

Recommendations

In order to better achieve the goals of Oregon's school accountability system, support educators, and decrease negative impacts of the test on schools and students, we recommend that the Oregon Department of Education:

- Clarify the purpose of the statewide summative assessments.

- Identify and expand communication efforts that have been successful.

- Provide additional information to the public regarding the development, content, validation and scoring of the Smarter Balanced assessment.

- Provide additional guidance on the use of test results to districts and schools.

- Continue to work with AIR to provide results in a timely manner.

- Continue to identify and expand opportunities to use summative assessment data, in conjunction with other data sources, for systems improvement.

- Consider opportunities to expand the use of formative and interim assessments and/or de-emphasize the focus on summative assessments.

- Continue to work with AIR and SBAC to address technical issues such as computers freezing and accommodations not working properly.

- Streamline and improve test administration guidance, especially related to accessibility resources and scheduling.

- Formalize mechanisms for school-level educators to provide feedback that can improve future testing.

- Facilitate sharing of best practices by encouraging regional sharing and highlighting examples.

- Continue to identify and incorporate opportunities to reduce individual impacts in collaboration with the SBAC.

Objectives, Scope and Methodology

This audit responds to House Bill 2713 (2015), which called for an audit of the use of statewide summative assessments developed by a multistate consortium. During development of the bill, the State Auditor provided input to ensure directives in the bill were feasible and answered legislative questions. In accordance with the bill, our audit objective was to gather information on the impacts of the summative assessments on Oregon schools, identify potential problems with other performance measurement systems, and make recommendations on improving statewide summative assessment processes, effects and outputs.

We focused our audit on the impacts of the Smarter Balanced assessment on Oregon public schools. We did not audit the content of the assessment. Our identification of potential problems with other performance measurement systems focused on a review of best practices needed to avoid potential problems or risks to performance measurement systems.

Due to timing, most of the information we gathered was regarding the first year of administering Smarter Balanced for most schools, with additional information from the beginning of the second year of testing. Schools that participated in field-testing administered the test one additional year.

To address our audit objective, we interviewed representatives from the Asian Pacific American Network of Oregon, Chalkboard Project, Coalition of Communities of Color, Confederation of Oregon School Administrators, Decoding Dyslexia, Disability Rights Oregon, Family and Community Together, Higher Education Coordinating Commission, Intermountain Education Service District, National Down Syndrome Congress, Northwest Down Syndrome Association, Northwest Evaluation Association, Northwest Regional Education Service District, Oregon Education Association, Oregon Parent Teacher Association, Oregon Save Our Schools, Oregon School Boards Association, Parents Across America Oregon, Region One Assessment Consortium, Stand for Children, and Teachers Standards and Practices Commission. We interviewed several education experts and representatives from various school districts and four other states.

We interviewed multiple Oregon Department of Education staff members in the Office of Assessment and Accountability and Office of Deputy Superintendent of Public Instruction. We interviewed leadership from the Smarter Balanced Assessment Consortium and the Oregon Chief Education Office.

We conducted site visits at six Oregon public schools. The schools were judgmentally selected to obtain a diverse sample in terms of geography, student population, grade levels, test participation, poverty level and preparation for adopting Common Core State Standards. The information gathered at these site visits cannot be generalized to all Oregon schools, due to the sample size and selection process.

We conducted surveys of district administrators, principals, educators and parents. The district administrator and principal surveys were distributed through email lists obtained through the Oregon Department of Education. The educator survey was distributed through an email list obtained from the Teachers, Standards and Practices Commission. A link to the parent survey was distributed through the Oregon Parent Teacher Association newsletter and Facebook page.

We received 5,072 responses to the educator survey, 799 responses to the parent survey, 376 responses (31% response rate) to the principal survey, and administrator responses from 95 school districts out of 197 total districts (48%). We did not calculate response rates for the educator and parent surveys, as the total populations are unknown. The educator survey distribution list (approx. 59,500) contained people not actively teaching in Oregon and the parent survey was shared on Facebook. Due to the risk of response bias, we presented the survey results as a summary of perspectives and did not generalize to the larger population.

We reviewed documentation related to the Smarter Balanced assessment including contracts, communication plans, training materials and manuals.

We researched potential problems with performance measurement systems. We identified that if organizations do not effectively use performance measures to inform decisions and improve results, it could lead to potential problems, such as not delivering improved results for the public or losing public trust. The audit team reviewed principles related to the use of performance measures for better results. The team considered these principles when gathering information and developing recommendations.

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 objective. We believe that the evidence obtained and reported provides a reasonable basis to achieve our audit objective.

Auditors from our office, who were not involved with the audit, reviewed our report for accuracy, checking facts and conclusions against our supporting evidence.

Oregon Department of Education

Kate Brown, Governor

September 8, 2016

Oregon Secretary of State
ATTN: Sheronne Blasi, Performance Audit Administrator, Audits Division
255 Capitol St. NE, Suite 500
Salem, OR 97310

Dear Ms. Blasi:

This letter provides a formal response to the Secretary of State Audit Report for House Bill 2713 (2015). First and foremost, I want to commend the Secretary of State audit team for their thoughtful and comprehensive approach to collecting information, synthesizing results, and producing the final report. We appreciate the opportunity to assist in data collection and review efforts. Moreover, we believe the report provides key insights that will enable us to further improve the state testing system. Ultimately, we are committed to continuous improvement actions that lead to improved student outcomes, and believe this report captures important information that will assist us with those goals.

Based on the feedback provided by survey participants included in the report, as well as the overall recommendations, the Oregon Department of Education (ODE) will take the following actions:

1. Communication
   We will connect with school district leaders and education partners to determine additional communication needs relative to the statewide assessment system. Specifically, we will ask what additional resources would be useful in their local efforts to communicate the purpose of statewide summative assessments with students, parents, and community members. Furthermore, we will establish additional communication channels to provide information and resources in the most timely and effective manner possible. In addition, we will conduct an internal review of the technical documentation that explains how the tests are organized, aligned to academic content standards, administered, scored, and reported, to ensure consistency and accessibility of critical information to schools and educators. Lastly, we will provide additional information on test administration training protocols and ODE help desk support structures in place to support test administrators during the state testing window. We will begin these actions immediately and complete them by February 1, 2017.

2. Technical Assistance
   We will continue to work with our test delivery partner, American Institutes for Research, to identify opportunities to improve the turnaround time of summative assessment results back to school districts. It is important to note that the feedback provided as part of this report is based on the first operational year (2014-15) of Smarter Balanced English language arts and math tests in Oregon. ODE made significant improvements in test results delivery time in the second year of administration (2015-16). For example, most test results were scored and returned to school districts no later than 14 days from the time a test was completed, with many scores returned within a matter of days. In fact, more than 99 percent of the tests that were started prior to May 15, 2016 were returned to school districts by June 1, 2016. This represents a significant improvement over the turnaround time in the first year when ODE and its test vendor were in the process of implementing the new scoring and reporting specifications for the Smarter Balanced assessments.

In addition to improving test result delivery times, ODE is leading two assessment literacy projects designed to increase local capacity for performance-based and formative assessment practices. These initiatives are consistent with the language in the report recommending increased emphasis on assessment tools and resources beyond statewide summative assessments. The overarching goal of these projects is to provide resources which support high quality local assessment practices that can be freely used by any educator to identify individual students' progress and inform instruction practices in real-time. There are currently 16 school districts participating in pilot projects begun during the 2016-17 school year, and ODE intends to scale these projects up and move toward statewide implementation in the 2017-19 biennium. More information about these projects is available at http://www.ode.state.or.us/search/page/?id=5503

3. Balanced Assessment System
    This report highlights the importance of assessment systems that enable educators to collect evidence in a variety of ways to support student learning throughout and across school years. This information is consistent with information and feedback provided by other groups, including the Oregon Education Association ("A New Path for Oregon: System of Assessment to Empower Meaningful Student Learning"), the House Bill 2680
    Work Group, and the Every Student Succeeds Act (ESSA) Standards and Assessment Work Group. Therefore, we are actively pursuing opportunities to engage with education partners to clarify the role played by different types of assessments (formative, interim, and summative). We will provide resources and capacity-building for Oregon schools in using both formative and interim assessment practices as well as statewide summative assessment results. This will allow local educators to both inform instructional decisions at the individual student level and engage in meaningful evaluation of program effectiveness to drive improved student outcomes for Oregon students. In addition, ODE will actively seek the resources necessary to provide these tools statewide in the 2017-19 legislative session.

We greatly appreciate the opportunity to collaborate with the Secretary of State on this important work. If you have any questions or require additional information, please do not hesitate to contact Dr. Derek Brown, Assistant Superintendent of Assessment and Accountability (derek.brown@ode.state.or.us) at (503) 947-5841.

Sincerely,

Salam Noor, Ph.D.
Deputy Superintendent of Public Instruction
Oregon Department of Education

About the Secretary of State Audits Division

The Oregon Constitution provides that the Secretary of State shall be, by virtue of her office, Auditor of Public Accounts. The Audits Division exists to carry out this duty. The division reports to the elected Secretary of State and is independent of other agencies within the Executive, Legislative, and Judicial branches of Oregon government. The division is authorized to audit all state officers, agencies, boards, and commissions and oversees audits and financial reporting for local governments.

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             Salem, Oregon 97310

Secretary of State Audit Report

Jeanne P. Atkins, Secretary of State

Mary Wenger, Interim Director, Audits Division

Oregon Department of Education: Computer Systems Ensure Integrity of Data, But Other Processes Need Improvement

Executive Summary

The Oregon Department of Education (department) oversees the education of over 560,000 students in Oregon's public K-12 education system. The annual distribution of the State School Fund of $3 billion and federal funding of about $750 million help fund Oregon's public education.

The department's computer systems reasonably ensure the integrity of data used to distribute the State School Fund and appropriately process school district claims for federal funding. However, improvements are needed to provide better security for computer systems and student data, manage changes to computer systems, and ensure systems can be restored in the event of a disaster.

Computer systems ensure integrity of student and school data

Department staff use the Consolidated Collection System to analyze and aggregate school and student data. They use information from this system to allocate monies to Oregon's schools and education service districts. Computer systems reasonably ensured the integrity of student and school information through automated processes that accurately identify students and detect potential data errors. In addition, department analysts use system information to validate student and school data.

Computer systems appropriately receive and process school district claims for federal funding

The department uses the Electronic Grant Management System and the Federal Cash Ordering System to receive and process requests for federal program expenditure reimbursements. We found that computer controls reasonably ensure that these systems could appropriately receive and process school district claims for federal funding. These systems ensure

grant claims do not exceed available balances and reject claims that otherwise would be ineligible for reimbursement.

Security measures for computer systems were insufficient

Although the department provides important protection measures for security, improvements are needed to better secure their computer systems and data. Weaknesses we identified relate to the department's processes for planning, configuring, managing, and monitoring information technology security components. As such, the department does not provide an appropriate layered defense to protect agency computer applications. Thus, confidential student level information is at increased risk of disclosure or compromise.

Management of changes to computer systems needs improvement

The department has formal processes and tools for managing changes to their systems, but staff do not always fully utilize them. Independent and technical reviews of computer code changes did not always occur and processes were not in place to ensure only approved code could be placed in production. These weaknesses increase the risk that developers could introduce unauthorized or untested changes to the systems.

System files and data are appropriately backed up but procedures for timely restoration after a disaster are absent

The department has processes in place to back up critical data and can restore individual files as needed. However, department management and staff have not fully developed and tested a comprehensive disaster recovery plan capable of restoring critical systems and data in the event of a disaster or major disruption. Without a disaster recovery plan, the department cannot ensure it can timely restore operations in the event of a disaster.

Recommendations

We recommend that Department of Education management ensure resolution of identified security weaknesses, improve processes for changing computer code, and fully develop and test processes for restoring computer systems after a disaster.

Agency Response

The full agency response can be found at the end of the report.

Background

The Oregon Department of Education (department) functions under the control and operation of the Oregon State Board of Education, with the Superintendent of Public Instruction serving as the administrative officer. The mission of the department is to foster excellence for every learner through innovation, collaboration, leadership, and service to its education partners.

The Oregon Constitution directs the Legislature to "provide by law for the establishment of a uniform and general system of common schools." The State Board of Education and the State Superintendent of Public Instruction are responsible for adopting rules for the general governance of public schools; implementing statewide standards for public schools; and making distributions from the State School Fund to districts that meet all legal requirements.

The department serves 197 school districts and 19 education service districts and oversees the education of over 560,000 students in Oregon's public K-12 education system. The agency is also in charge of public preschool programs, the Oregon School for the Deaf, regional programs for children with disabilities, and education programs in Oregon youth correctional facilities.

Department computer systems and processes

To support its mission, the department uses various computer applications and maintains over 120 databases. The department currently hosts the majority of its computer servers, applications, and databases at Oregon State University's data center.

Department staff use the Consolidated Collection System to control data inputs from school districts and other entities in order to populate over 70 databases. Information included in these databases often contain confidential student level data subject to requirements of the federal Family Educational Rights and Privacy Act (FERPA).

Consolidated Collection System data is critical because it supports the department's key business processes. Department staff use information from this system to distribute the State School Fund and measure the efficacy of education programs through statistical analysis.

In addition, the department uses several other computer applications to manage payments that reimburse schools for federal program expenditures they incur. These applications include the Electronic Grant Management System, and the Federal Cash Ordering System.

Management of student data collections and storage is a dynamic process. As federal and state programs for education change, computer systems must be equally nimble to ensure stakeholders receive the information they need. In addition, because much of the information the department

handles is sensitive, the department must exercise great care to protect this information.

Funding for education programs

Money to support public education in grades K–12 comes from the state income taxes, Lottery funds, property taxes, and federal funding. Federal revenue sources include the Individuals with Disabilities Education Act, the National School Lunch Program, No Child Left Behind assessment funds, Child Care related funds, and various other education programs.

Allocations to school districts include transportation and general-purpose grants. The general-purpose grants follow a legislatively prescribed distribution formula based on number of students, with additional weighting reflecting specific education costs (e.g., poverty, special education, and remote schools), teacher experience, and local tax resources.

While distribution of the State School Fund totals approximately $3 billion annually, the department also distributes over $750 million of federal and state funding through the grant-in-aid programs for purposes such as child nutrition, special education, specialized education initiatives, professional development, and compensatory education.

Audit Results

The purpose of this audit was to evaluate the effectiveness of Oregon Department of Education (department) controls over its information technology computing environment. Specifically, we evaluated the department's information technology processes, procedures and key computer applications. Based on the results of this work, we found that:

- Computer systems ensure integrity of student and school data.
- Computer systems appropriately receive and process school district claims for federal funding.
- Security measures for computer systems were insufficient.
- Management of changes to computer systems needs improvement.
- System files and data are appropriately backed up but procedures for timely restoration after a disaster are absent.

Computer systems ensure integrity of school and student data

Calculating distributions from the State School Fund requires the department to collect statistical information from schools and school districts regarding student enrollment and other metrics as prescribed in law. Department staff use this information to allocate the State School Fund to the individual schools, districts, and education service districts located throughout Oregon. Federal agencies also require the department to capture, aggregate and regularly report certain student data in order to qualify for federal program funding.

Department staff use the Consolidated Collection System (CCS) to analyze and aggregate school and student data. This system relies on Microsoft Access and other databases. In addition, staff use Microsoft Excel spreadsheets to calculate individual payments they make to schools and districts. Processes department staff use to ensure CCS accurately measures the effectiveness of education programs and equitably distributes the State School Fund include:

- Electronic edits ensure that each student has a unique identification number and can only be counted once. If a student is reported by more than one institution, funding for that student is suspended until staff resolve the difference.
- System controls alert staff when data may contain errors or when data may have been inappropriately uploaded into the system. These processes also identify inputs that do not appear reasonable according to prior entries, allowing staff to verify and approve these amounts.
- System processes ensure publically viewed data does not include detail that could be attributable to individual students.

- Analysts use computer logic to independently validate student and school data. They then communicate these results to schools and school districts through a web portal to allow them to again verify the data.
- Logical access controls ensure that only users with a business need have access to systems.
- The system automatically logs changes users make to data.

We evaluated these controls and found they were functioning as intended. Based on this work, we concluded that system controls reasonably ensure the integrity of student and school data the department uses to distribute the State School Fund.

Computer systems appropriately receive and process school district claims for federal funding

The department is responsible for managing school districts' federal grant claims. This task includes ensuring school districts' claims for federal reimbursements comply with specified grant requirements. The department assigns staff to monitor school districts' compliance with federal requirements for reimbursement. These grant managers rely on computer systems to provide the data they need to carry out their duties.

The department's Electronic Grant Management System (EGMS) is a web-based computer application school districts and educational service districts use to report their expenditures to the department for reimbursement. In addition, staff use the Cash Ordering System (COS) to obtain federal reimbursements for qualifying expenditures. These computer systems have electronic and manual processes to ensure proper reimbursements of federal grants, including:

- system edits to prevent grant claims from exceeding the available balance of the grants;
- processes to ensure all approved reimbursement claims are transferred to the COS;
- electronic processes to stop claims that are no longer eligible for reimbursement;
- controls to ensure reimbursement claims entered into EGMS are not paid twice by the COS; and
- logical access controls to ensure claims are only entered by authorized personnel.

We evaluated these controls and found they provided reasonable assurance that department systems could appropriately receive and process school district claims for federal funding.

Security measures for computer systems were insufficient

In September 2016, Governor Kate Brown issued Executive Order 16-13 (directive) outlining a process to unify IT security functions to protect and secure information entrusted to the State of Oregon. The directive instructs state agencies to consolidate security functions and staffing into the Office of the State Chief Information Officer (OSCIO). In addition, it directs agencies to work with this new security group to develop and implement security plans, rules, policies, and standards adopted by the state Chief Information Officer.

Proper security requires the coordinated use of multiple security components to protect the integrity of computer systems and their data. The security industry refers to this methodology as defense in depth. The underlying principle is that it is more difficult to defeat a complex and multi-layered defense system than to penetrate a single barrier.

Department management has provided important protection measures for security, but improvements are needed to better secure their computer systems and data. Weaknesses we identified relate to the department's processes for planning, configuring, managing, and monitoring information technology security components.

Based on our evaluation, the department has not provided an appropriate layered defense to protect agency computer applications and data against internal and external threats. As a result, confidential student level information is at increased risk of unauthorized disclosure or compromise.

This is particularly noteworthy given federal requirements for protecting student data and the criticality of department information systems used to fund Oregon public schools. In addition, it is not yet clear how implementation of the Executive Order will impact the department's ability to timely resolve identified security weaknesses.

Because of the sensitive nature of IT security we communicated the details of weaknesses we identified in a confidential letter according to ORS 192.501 (23).

Management of changes to computer systems needs improvement

Computer program code should be managed to ensure only tested and approved modifications are placed into production. To ensure this occurs, changes to computer code should be closely monitored, approved, and compared to the previously authorized versions.

Department management has established formal administrative procedures for approving proposed changes to their systems. Their Change

Review Board evaluates proposed changes to identify potential conflicts. After this initial review and approval, the department's technical team lead assigns staff to change the code.

The department has formal procedures and tools for developing, testing, and moving approved computer code changes into production. These procedures include limiting access to computer code, providing quality assurance testing and approval, and using automated version control tools. When followed, these processes provide adequate control over computer program changes.

However, department staff do not always follow established procedures or utilize available tools. Specifically, developers did not always perform independent reviews of computer code changes, perform code comparisons, or ensure only approved code could be placed in production.

In addition, important tools the department utilizes to limit developers' access to computer code or provide robust version control are not compatible with application code developed using Microsoft's Access Data Project (ADP). Department staff use this tool to maintain EGMS and COS. Therefore, these computer system cannot receive the benefit of important program change management tools.

Collectively, these weaknesses increase the risk that developers could introduce unauthorized or untested changes to the system. Should this occur, the department could experience delays in receiving and processing grant claims or incur disruptions to the distribution of the State School Fund.

System files and data are appropriately backed up but procedures for timely restoration after a disaster are absent

Restoring operations after a disaster or other serious disruption requires significant advance planning and coordination. Generally accepted standards for information technology indicate that organizations should mitigate the risks associated with serious service disruptions by developing and testing disaster recovery plans. These plans should be based on agreed-upon requirements, and should be regularly updated to reflect changes to the computing environment.

The department has processes in place to back up critical data and can restore individual files as needed. However, management and staff have not fully developed and tested a comprehensive disaster recovery plan capable of timely restoring critical systems and data in the event of a disaster or major disruption.

Specifically, department staff have not clearly identified or defined critical recovery roles, responsibilities, or necessary infrastructure and configurations. In addition, they have not categorized and labeled

information assets or prioritized their order for restoration. Department staff also have not identified how quickly systems need to be restored.

Without these steps, the department cannot ensure it can timely restore operations and risks loss of educational data and delays in making monthly payments to schools from the State School Fund.

Recommendations

We recommend that Department of Education management:

- Work with OSCIO management and staff to fully and timely resolve the security weaknesses we identified in our confidential management letter.
- Ensure independent reviews of all computer code changes are performed, including code comparisons, and establish procedures to ensure only approved computer code will be promoted to production.
- Fully develop and test a comprehensive disaster recovery plan for timely restoration of critical systems and data in the event of a disaster. This plan should clearly identify critical recovery roles, responsibilities, resources needed, and priorities for timely restoring systems.

Objectives, Scope and Methodology

The purpose of our audit was to review and evaluate the effectiveness of key general and application controls over the computing environment at the Oregon Department of Education (Department). Our specific objectives were to determine whether information system controls governing the department's core applications provide reasonable assurance that:

- Inputs into the Consolidated Collection System remain complete, accurate, and electronic processes used to distribute the State School Fund are appropriately controlled.
- Transactions processed through the department's information systems reasonably ensure federal expenditures and revenues are complete and valid.
- The department's information systems are protected against unauthorized use, disclosure, modification, damage or loss.
- Changes to computer code are managed to ensure integrity of electronic systems and data.
- System files and data are appropriately backed up and can be timely restored.

The scope of our audit included the Electronic Grant Management System, the Federal Cash Ordering System, the Consolidated Collection System, and processes for State School Fund distribution. We evaluated controls for information system security, change management, and backup and recovery controls that were in effect during our audit, ending in October 2016.

We conducted interviews with department personnel, observed operations and procedures, and examined available computer system and security documentation. To fulfill our audit objectives, we evaluated processes for:

- receiving grant claims and requesting reimbursement for federal expenditures;
- collecting and reporting on statistical information from educational institutions;
- calculating and distributing the State School Fund;
- providing logical access to computer systems; and
- providing system and data backup and restoration.

We used the IT Governance Institute's publication "Control Objectives for Information and Related Technologies" (COBIT), and the United States Government Accountability Office's publication "Federal Information System Controls Audit Manual" (FISCAM) to identify generally accepted control objectives and practices for information systems.

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 objective. We believe that the evidence obtained and reported provides a reasonable basis to achieve our audit objective.

Auditors from our office, who were not involved with the audit, reviewed our report for accuracy, checking facts and conclusions against our supporting evidence.

December 6, 2016

Neal Weatherspoon
Information Technology Audit Manager
Audits Division, Office of the Secretary of State
Public Service Building, Suite 500
255 Capitol Street NE
Salem, OR 97310

Dear Neal:

Thank you for the opportunity to respond to the December 8, 2016 audit of the Oregon Department of Education (ODE)'s computer systems. We consider the audit a very important review and safeguard to enhance the protection and management of ODE's computer systems. ODE is committed to protecting the data housed in our computer systems and takes all feedback and recommendations very seriously. ODE's response to the Oregon Secretary of State Audits Division (OAD) recommendation is outlined in this letter. We generally agree with OAD's recommendation for each specific finding; our associated responses follow.

OAD Recommendation:
We recommend that Department of Education management ensure resolution of identified security weaknesses, improve processes for changing computer code, and fully develop and test processes for restoring computer systems after a disaster.

ODE response:
Management agrees with the recommendation. ODE has a demonstrated history of protecting the computer systems managed by the agency through supporting continuous improvement of the agency's computer systems and information security. Information systems evolve and change over time, as do the threats to those systems, and ODE continues to evolve the agency's information technology strategic and operational plans and information security strategy to meet those challenges.

OAD Finding: Security measures for computer systems were insufficient.

ODE Response: **ODE has a long history of practicing a defense-in-depth approach to information security and to protecting the agency's computing systems and resources. ODE has several efforts underway to address identified security weaknesses. Over the past year, ODE has completed a number of security projects that further enhance the agency's security stance. As of the release of this audit, ODE is reviewing the 2016 security plan and updating it for 2017 using the agency's participation in external audits and risk assessments to inform decision making and security project planning for 2017.**

OAD Finding: Management of changes to computer systems needs improvement.

ODE Response: ODE has very strong control processes for changing computer code on the vast majority of our computing systems. OAD's concerns are specific to legacy systems that ODE is currently maintaining and has plans to upgrade, migrate or replace in the next biennium. The elimination of legacy systems will result in ODE comprehensively managing computer code changes across the agency's computing environment.

OAD Finding: System files and data are appropriately backed up but procedures for timely restoration after a disaster are absent.

ODE Response: ODE will fully develop and test processes for restoring computer systems after a disaster. While ODE is confident that the agency's data are protected and can be restored in the event of an emergency, the agency recognizes a need for a detailed and tested disaster recovery plan. ODE has already scheduled a project for developing and testing disaster recovery plans and processes in early 2017 with the expectation that this plan will be completed and tested by December 2017.

The Oregon Department of Education would like to thank the Oregon Secretary of State's Office, Audits Division for the opportunity to respond to this audit. We take these findings and recommendations very seriously. The findings align with the ongoing work ODE has been doing to continuously maintain and expand on our information security stance and computer systems management.

We appreciate your team's hard work and effort over the last year to identify concerns and highlight opportunities to strengthen ODE's computing system environment. Since the team completed its fieldwork in October 2016, we have moved forward with implementing its recommendations and will continue to progress as described above.

If you have any questions about this response, please contact Susie Strangfield, ODE Chief Information Officer at susie.strangfield@ode.state.or.us.

Thank you for the recommendations and the insights and feedback your audit has afforded us.

Sincerely,

Salam A. Noor, Ph.D.
Deputy Superintendent of Public Instruction

About the Secretary of State Audits Division

The Oregon Constitution provides that the Secretary of State shall be, by virtue of her office, Auditor of Public Accounts. The Audits Division exists to carry out this duty. The division reports to the elected Secretary of State and is independent of other agencies within the Executive, Legislative, and Judicial branches of Oregon government. The division is authorized to audit all state officers, agencies, boards, and commissions and oversees audits and financial reporting for local governments.

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phone: 503-986-2255

mail: Oregon Audits Division
             255 Capitol Street NE, Suite 500
             Salem, Oregon 97310

The following is a summary of significant Emergency Board actions taken at the December 2016 meeting:
Consent:

Department of Education
Acknowledged receipt of a report on the implementation of the mixed delivery preschool program.

Department of Education
Approved the submission of a federal grant application to the U.S. Department of Health and Human Services in an amount of up to $75,000 for a Child Care and Development Block Grant Implementation Research and Evaluation Planning Grant.

6. **Department of Education**
Allocated $273,062 from the Emergency Fund established by section 1, chapter 837, Oregon Laws 2015 to supplement the appropriation made to the Department of Education by section 1(1), chapter 759, Oregon Laws 2015, Operations, for grants to school districts to improve Internet connectivity and access, with the understanding the Department of Administrative Services will unschedule that amount until school districts and the Department of Education have been notified of the approval of the federal funding. *The federal grant was approved, and the agency is working to finalize grant awards to distribute these funds on eligible projects.*

The following is a summary of significant Emergency Board actions taken at the December 2016 meeting:
Consent:

Approved retroactively, the submission of a federal grant application by the Department of Education to the U.S. Department of Education for an Enhanced Assistance Grant to develop an alternative science assessment for students with severe cognitive disabilities; the agency was notified that it did not receive the grant after submitting the request to the Emergency Board.

7. **EDUCATION**
Allocated $2,058,554 from a reservation established within the Emergency Fund for the Department of Education to be distributed to school districts and Education Service Districts for the costs related to testing for elevated levels of lead in water fixtures which are used for drinking, food preparation, and other uses leading to human consumption. *These funds are being distributed in March/April 2017 in the total amount of $1,793,018.*