

PERFORMANCE AUDIT  
OF THE  
OFFICE OF ADMINISTRATIVE LAW AND  
THE STATE TENURE COMMISSION

DEPARTMENT OF EDUCATION

November 2002



Michigan  
*Office of the Auditor General*  
**REPORT SUMMARY**

*Performance Audit*  
*Office of Administrative Law and*  
*State Tenure Commission*  
*Department of Education*

Report Number:  
31-110-02

Released:  
November 2002

*The Office of Administrative Law (OAL) is responsible for processing appeals by providing administrative hearings and preparing draft decisions for the State Tenure Commission (STC) or the Superintendent of Public Instruction. OAL processes appeals for teacher tenure, property transfers, teacher certification matters, State school aid membership audits, and various other matters within the Department of Education. STC was established by the Teachers' Tenure Act of 1937 to act as a five-member board of review for all teacher tenure appeals.*

***Audit Objectives:***

1. To assess OAL's and STC's effectiveness and efficiency in processing tenure appeals, property transfer appeals, and State school aid membership audit appeals.
2. To assess OAL's and STC's compliance with applicable statutes, administrative rules, and Departmental policies and procedures.

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***Audit Conclusions:***

1. OAL and STC were effective and efficient in processing tenure appeals, property transfer appeals, and State school aid membership audit appeals.
2. OAL and STC were generally in compliance with applicable statutes, administrative rules, and Departmental policies and procedures.

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**Reportable Conditions:**

OAL had not developed operating policies and procedures regarding the processing of teacher tenure appeals, property transfer appeals, and State school aid membership audit appeals and the release of shielded information (Finding 1).

OAL frequently did not begin and/or conclude teacher tenure appeal hearings within statutory time frames and document the reason for delays (Finding 2).

STC gubernatorial membership appointments did not comply with State statute (Finding 3).

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**Agency Response:**

The Department's response stated that it generally agreed with the recommendations and had initiated corrective action, where appropriate.

A copy of the full report can be obtained by calling 517.334.8050 or by visiting our Web site at: [www.state.mi.us/audgen/](http://www.state.mi.us/audgen/)



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THOMAS H. MCTAVISH, C.P.A.  
AUDITOR GENERAL

November 27, 2002

Mr. Thomas D. Watkins, Jr., Chairperson  
State Board of Education  
Hannah Building  
Lansing, Michigan

Dear Mr. Watkins:

This is our report on the performance audit of the Office of Administrative Law and State Tenure Commission, Department of Education.

This report contains our report summary; description of agency; audit objectives, scope, and methodology and agency responses and prior audit follow-up; comments, findings, recommendations, and agency preliminary responses; and a glossary of acronyms and terms.

Our comments, findings, and recommendations are organized by audit objective. The agency preliminary responses were taken from the agency's responses subsequent to our audit fieldwork. The *Michigan Compiled Laws* and administrative procedures require that the audited agency develop a formal response within 60 days after release of the audit report.

We appreciate the courtesy and cooperation extended to us during the audit.

AUDITOR GENERAL

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## Description of Agency

The Department of Education was established by the Executive Organization Act of 1965 (Act 380, P.A. 1965). The Department is headed by the elected eight-member State Board of Education established by the State Constitution. The principal executive officer is the Superintendent of Public Instruction, who is appointed by the Board. Article VIII, Section 3 of the State Constitution vests in the State Board of Education the leadership and general supervision over all public education.

The primary responsibility of the Office of Administrative Law (OAL) is to process appeals by providing administrative hearings and preparing draft decisions for the State Tenure Commission (STC) or the Superintendent of Public Instruction in teacher tenure appeals\*, property transfer appeals\*, teacher certification matters, State school aid membership audit appeals\*, child nutrition program appeals, driver education instructor appeals, and other compliance and complaint matters. OAL also works with the Office of Special Education and Early Intervention Services in selecting and training special education hearing officers.

As of May 31, 2002, OAL's combined caseload totaled 33 active cases, of which 16 were teacher tenure appeals, 11 were property transfer appeals, 3 were teacher certification revocation appeals\*, 2 were State school aid membership audit appeals, and 1 was a child nutrition program appeal.

Expenditures for OAL were approximately \$750,000 for fiscal year 2000-01, and OAL had six full-time equated employees as of May 31, 2002.

STC was established by the Teachers' Tenure Act of 1937 (Sections 38.71 - 38.191 of the *Michigan Compiled Laws*) to act as a board of review for all teacher tenure appeals. STC is to have five members who are appointed by the Governor, with the Superintendent of Public Instruction serving as ex officio secretary of STC.

\* See glossary at end of report for definition.

## **Audit Objectives, Scope, and Methodology and Agency Responses and Prior Audit Follow-Up**

### Audit Objectives

Our performance audit\* of the Office of Administrative Law (OAL) and the State Tenure Commission (STC), Department of Education, had the following objectives:

1. To assess OAL's and STC's effectiveness\* and efficiency\* in processing tenure appeals, property transfer appeals, and State school aid membership audit appeals.
2. To assess OAL's and STC's compliance with applicable statutes, administrative rules, and Departmental policies and procedures.

### Audit Scope

Our audit scope was to examine the program and other records of the Office of Administrative Law and the State Tenure Commission. Our audit was conducted in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States and, accordingly, included such tests of the records and such other auditing procedures as we considered necessary in the circumstances.

### Audit Methodology

Our audit fieldwork, performed during April and May 2002, included an examination of OAL and STC records primarily for the period October 1999 through March 2002.

We performed a preliminary review to obtain an understanding of OAL and STC operations. Also, we interviewed staff and reviewed pertinent State statutes, rules, policies, and procedures.

To accomplish our first objective, we reviewed caseload processing procedures, analyzed caseload statistics, and reviewed staffing levels. Also, we reviewed selected case files for each caseload type to assess OAL's timeliness in responding to the appeal request, moving the case to hearing, writing the draft decisions, and issuing the final decisions.

\* See glossary at end of report for definition.

To accomplish our second objective, we reviewed selected case files for each caseload type to determine OAL's and STC's compliance with statutory and other requirements. Also, we reviewed financial and other records relevant to OAL and STC for compliance with State financial practices and administrative requirements.

#### Agency Responses and Prior Audit Follow-Up

Our report includes 3 findings and recommendations. The Department's response stated that it generally agreed with the recommendations and had initiated corrective action, where appropriate.

The agency preliminary response that follows each recommendation in our report was taken from the agency's written comments and oral discussion subsequent to our audit fieldwork. Section 18.1462 of the *Michigan Compiled Laws* and Department of Management and Budget Administrative Guide procedure 1280.02 require the Department of Education to develop a formal response to our audit findings and recommendations within 60 days after release of the audit report.

We repeated 1 of the 2 prior audit recommendations. The other recommendation was no longer applicable.

# COMMENTS, FINDINGS, RECOMMENDATIONS, AND AGENCY PRELIMINARY RESPONSES

## EFFECTIVENESS AND EFFICIENCY IN PROCESSING APPEALS

### COMMENT

**Audit Objective:** To assess the Office of Administrative Law's (OAL's) and the State Tenure Commission's (STC's) effectiveness and efficiency in processing tenure appeals, property transfer appeals, and State school aid membership audit appeals.

**Conclusion:** We concluded that OAL and STC were effective and efficient in processing tenure appeals, property transfer appeals, and State school aid membership audit appeals. However, we noted a reportable condition\* related to operating policies and procedures.

### FINDING

#### 1. Operating Policies and Procedures

OAL had not developed operating policies and procedures regarding the processing of teacher tenure appeals, property transfer appeals, and State school aid membership audit appeals and the release of shielded information\*.

Sound business practices require the development of policies and procedures for use in day-to-day operations. Policies and procedures are an internal control component that helps to ensure the propriety and uniformity of processing appeals, to improve the effectiveness and efficiency of OAL operations, and, when appropriate, to ensure that shielded information is not disclosed.

We noted this same condition during our prior audit. The Department of Education agreed with our prior audit recommendation to develop a policy and procedures manual and informed us that it would comply.

\* See glossary at end of report for definition.

## **RECOMMENDATION**

WE AGAIN RECOMMEND THAT OAL DEVELOP OPERATING POLICIES AND PROCEDURES REGARDING THE PROCESSING OF TEACHER TENURE APPEALS, PROPERTY TRANSFER APPEALS, AND STATE SCHOOL AID MEMBERSHIP AUDIT APPEALS AND THE RELEASE OF SHIELDED INFORMATION.

## **AGENCY PRELIMINARY RESPONSE**

OAL agreed with the recommendation and informed us that it has recently appointed a staff person to develop a policies and procedures manual regarding daily operations, which it expects will be completed by June 2003.

## **COMPLIANCE WITH LAWS AND REGULATIONS**

### **COMMENT**

**Audit Objective:** To assess OAL's and STC's compliance with applicable statutes, administrative rules, and Departmental policies and procedures.

**Conclusion:** We concluded that OAL and STC were generally in compliance with applicable statutes, administrative rules, and Departmental policies and procedures. However, we noted reportable conditions related to teacher tenure appeal hearings and STC membership.

### **FINDING**

#### **2. Teacher Tenure Appeal Hearings**

OAL frequently did not begin and/or conclude teacher tenure appeal hearings within statutory time frames and document the reason for delays.

Section 38.104 of the *Michigan Compiled Laws* requires that OAL begin teacher tenure appeal hearings no later than 60 days after service of the school board's answer to the teacher's appeal unless STC grants a delay for good cause shown by the teacher or school board. In addition, the statute requires that OAL conclude the hearings no later than 90 days from the filing of the teacher's appeal with STC. The statute also requires OAL and other parties to complete several steps of the

appeals process within set time frames. The total time frame for all steps of the appeals process is 290 days.

We reviewed 13 (50%) of the 26 teacher tenure appeals in which STC issued the final decision between October 1999 and March 2002. We determined that OAL had not begun the appeal hearings for 11 (85%) of the 13 cases within the 60-day requirement. Eight (73%) of the 11 hearings began in 65 to 83 days and 3 (27%) of the 11 hearings began in 107 to 159 days. Also, OAL had not documented in 10 (91%) of the 11 case files the reason for exceeding the 60-day requirement. Further, OAL did not conclude the hearings for 4 (31%) of the 13 cases within the 90-day requirement. However, for the entry appeals process, OAL and the other parties completed all steps of the appeals process for 12 (92%) of the 13 cases within the 290-day time frame.

Adhering to the 60- and 90-day requirements would provide statutory compliance and could reduce teacher and/or school district costs associated with the appeals. Further, although not specifically required by statute, documenting reasons for not complying with the time requirements would help to increase the integrity of the appeals process and may indirectly expedite the process.

### **RECOMMENDATION**

We recommend that OAL begin and/or conclude teacher tenure appeal hearings within statutory time frames and document the reason for delays.

### **AGENCY PRELIMINARY RESPONSE**

OAL agreed with the recommendation and stated that it has initiated a procedure requiring the administrative law judge to approve any request for adjournment and ensure that documentation containing the reasons for the adjournment is placed in the file. This procedure will apply to both the 60- and 90-day time frames. As noted in the finding, OAL and the other parties almost always completed the appeals process within the 290-day statutory time frame.

## **FINDING**

### **3. STC Membership**

STC gubernatorial membership appointments did not comply with State statute.

Sections 38.131 and 38.132 of the *Michigan Compiled Laws* state that STC shall consist of five members made up of the following: two classroom instructors, one member of a school district board of education, one superintendent of schools, and one member of the general public. Each member shall be appointed to a five-year term beginning on the first day of September. Immediately preceding the expiration of a member's term, the Governor shall appoint a succeeding member for a new five-year term. In the event of a vacancy on STC, the Governor shall immediately appoint a successor to complete the unexpired term.

In June 2000, one STC member representing classroom instructors resigned. The Governor did not appoint a successor, as required by statute, to complete the term that was to expire in August 2003. Therefore, STC has since functioned with only four members. Also, the STC member representing the general public, whose term was to expire in August 2003, resigned on September 6, 2001. On October 6, 2001, the Governor reappointed this STC member to a new term with an expiration of August 2006. This appointment was not in compliance with Section 38.132 of the *Michigan Compiled Laws*, which states that appointments for unexpired terms shall be for the remainder of the terms.

## **RECOMMENDATION**

We recommend that STC, in conjunction with the Governor, help ensure that STC gubernatorial membership appointments comply with State statute.

## **AGENCY PRELIMINARY RESPONSE**

The Department agreed with this recommendation to the extent that it is legally possible but indicated that it has no authority over appointment decisions, as this role is vested in the Governor's Office. OAL stated that it offered advice to the Governor's Office regarding the recent appointment referenced in the audit report, which is the extent of OAL's opportunity for participation in the appointment process.

## Glossary of Acronyms and Terms

<b>effectiveness</b>	Program success in achieving mission and goals.
<b>efficiency</b>	Achieving the most outputs and outcomes practical with the minimum amount of resources.
<b>ISD</b>	intermediate school district.
<b>OAL</b>	Office of Administrative Law.
<b>performance audit</b>	An economy and efficiency audit or a program audit that is designed to provide an independent assessment of the performance of a governmental entity, program, activity, or function to improve public accountability and to facilitate decision making by parties responsible for overseeing or initiating corrective action.
<b>property transfer appeal</b>	Individual property owners may file a petition with their ISD requesting that their property be transferred from one local school district to another when certain circumstances are present. If the ISD refuses the request or if the ISD fails to act, the individual property owner may appeal to the State Superintendent of Public Instruction. OAL performs the administrative support function for the Superintendent in processing such appeals, which can include conducting administrative hearings.
<b>reportable condition</b>	A matter that, in the auditor's judgment, represents either an opportunity for improvement or a significant deficiency in management's ability to operate a program in an effective and efficient manner.

<b>shielded information</b>	Personal information of an appellant or student information that is not to be disclosed in response to a Freedom of Information Act request or is considered confidential in accordance with the federal Family Education Rights and Privacy Act.
<b>State school aid membership audit appeal</b>	ISDs perform annual State school aid membership audits of their local school districts. If a dispute occurs, the local school district may appeal the audit finding(s) to the Department of Education. If the dispute remains unresolved, the State Superintendent of Public Instruction is ultimately responsible for the final decision. OAL performs the administrative support function for the Superintendent in processing such appeals.
<b>STC</b>	State Tenure Commission.
<b>teacher certification revocation appeal</b>	School Support Services, Department of Education, regulates teacher certifications within the State. Teachers can appeal the suspension or revocation of their teaching certificates to OAL.
<b>teacher tenure appeals</b>	A teacher on continuing tenure, as defined in the Teachers' Tenure Act (Act 4, P.A. 1937, Extra Session), may contest a school board's decision to proceed upon charges against the teacher by filing an appeal with STC. OAL performs the administrative support function for STC in processing these appeals.