

# DUAL EMPLOYMENT PERFORMANCE AUDIT

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FOR FISCAL YEARS ENDED JUNE 30, 2020-2022



# DUAL EMPLOYMENT

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## REPORT SUPPLEMENT FOR FISCAL YEARS 2020-2022

**NOTE:** This report supplement to the Dual Employment Performance Audit was prepared internally by employees of the Office of Auditor of Accounts.

## BACKGROUND

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The Office of Auditor of Accounts (AOA) conducted a performance audit over compliance with the Dual Employment law by the State of Delaware's State agencies and political subdivisions of the State and their agencies (covered Organizations). The purpose of this audit was to evaluate the design and operation of internal controls and compliance with the Dual Employment law with regard to the compensation of elected and appointed Officials dually employed by covered Organizations. The audit covered employees with the described dual employment during the period from July 1, 2019 through June 30, 2022. The Public Integrity Commission identified a **total population of 22 persons** that held elected or paid appointed offices with the State while concurrently being employed at seven covered Organizations.

The Dual Employment law 29 Del. C. Ch. 58, Subchapter III. Compensation Policy was enacted in July 1986. AOA is **mandated to audit time records** maintained by covered Organizations to determine whether dually employed individuals were **paid from more than one State tax-funded source for working coincident hours of the day**. The covered Organizations' management is **responsible for the design and operations of internal controls** over policy and procedures, time records and compliance with the requirements of the Dual Employment law.

The Dual Employment law requires covered Organizations to limit compensation paid to persons employed with the covered Organizations who also serve in elected and paid appointed offices (Officials) in the State and political subdivisions (local governments) of the State to one tax-funded source, for duties performed during coincident hours of the workday. The law prohibits these Officials from being paid for any time missed during the workday or workweek, which is not covered by vacation, personal, or compensatory time, while serving in their elected or paid appointed office. To facilitate compliance with the law, covered **Organizations are required to keep a record of hours worked by the Officials** and to adjust the Officials' pay for hours spent serving their elected or paid appointed offices once each pay period. The State's Public Integrity Commission (PIC) administers the dual employment policy.

The audit was performed according to AOA's authority as set forth in 29 Del. C. § 2906. The Dual Employment law **mandates an annual audit**.



# DUAL EMPLOYMENT

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## REPORT SUPPLEMENT FOR FISCAL YEARS 2020-2022

### HISTORY OF THE DUAL EMPLOYMENT AUDIT

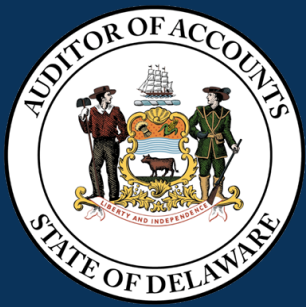
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Historically, the AOA has encountered great difficulty in performing its mandated Dual Employment Engagement. For a FY 2011 agreed-upon procedures engagement issued by State Auditor Wagner on September 18, 2012, auditors utilized data analysis techniques to identify a fraction of the population of dually employed individuals. However, the report noted that the State lacked the necessary policies and procedures to identify and monitor individuals as mandated by 29 Del. C., §5821(c). Consequently, auditors were unable to identify State employees who also held elected positions in city, county, or municipal governments, as required by 29 Del. C., §5822.

Three subsequently released dual employment audit examination reports covering auditing periods from July 1, 2011 to December 31, 2016 reported severe scope impairment. Once again, these reports noted that the State did not have policies or procedures to monitor or identify dually employed individuals as defined by 29 Del. C., §5822(a). As a result, State Auditors were unable to identify a population of dually employed individuals for testing. In addition, the State had not maintained time records for elected or appointed Officials; therefore, State Auditors were unable to test for the proper treatment of dual employment hours and were unable to conclude if the Officials were paid from more than one tax-funded source for working coincident hours of the day.

In 2020, an engagement auditing dual employment for calendar years 2017 and 2018 was discontinued. State Auditor McGuinness noted in a discontinuation notice that despite repeated findings in prior reports, advisory letters from the Office of the Attorney General, and advisory publications by the State Public Integrity Commission, the difficulties encountered in prior audits prevented the AOA from performing its function. This rendered AOA unable to identify a complete population of dually employed individuals for testing and unable to test for the proper treatment of dual employment hours.

Engagement	Scope	Status
Agreed-Upon Procedures	FY2011	Completed
Examination	July 1, 2011 - Dec. 31, 2013	Scope Impairment
Examination	CY2014	Scope Impairment
Examination	CY2015, 2016	Scope Impairment
None	CY2017, 2018	Scope Impairment



# DUAL EMPLOYMENT

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## REPORT SUPPLEMENT FOR FISCAL YEARS 2020-2022

### PERFORMANCE AUDIT

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The performance audit for the period July 1, 2019 to June 30, 2022 marks a significant milestone as it represents the first audit since 2011 to include a population of dually employed individuals. This inclusion is crucial for providing a comprehensive assessment of covered Organizations' employment practices.

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### AUDIT TIMELINE

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This audit was hampered by significant constraints and excessive delays in auditors gaining access to necessary records. The engagement began in July 2022 when State Auditor McGuinness contracted CPA firm Belfint, Lyons & Shuman, PA to complete the work for this mandate. When contacted about participating in the audit, the then Vice President & General Counsel for the University of Delaware (UD) responded: "UD must decline to provide the requested information, taking the position that 29 Del. C., §5822 does not apply, both by its own terms and because of the University of Delaware's Charter." Shortly thereafter, legal issues involving Auditor McGuinness impacted this audit.

In April 2023, State Auditor York approved the continuation of this audit and re-engaged UD, who initially reaffirmed their refusal to cooperate. In late 2023, a finding was drafted documenting UD's position as work continued with other covered Organizations.

In February 2024, UD agreed to cooperate with some requests from the State Auditor's office and began to provide limited information. Requests were made for contracts, original documents, agreements, and salary information, however UD refused to provide that documentation to AOA. Instead, UD provided summaries of some of the information requested which allowed the audit to proceed. Auditors performed testing on the limited information available between March and August of 2024. In September 2024, Belfint, Lyons & Shuman completed their findings and presented their final report to AOA.





# DUAL EMPLOYMENT

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## REPORT SUPPLEMENT FOR FISCAL YEARS 2020-2022

### AUDIT POPULATION

Auditors worked with the Public Integrity Commission and analyzed state payroll records to determine the population of employees working as State employees at agencies, departments, divisions, universities, and school districts that are dually employed, as defined by 29 Del. C., §5822(a).

The auditors' procedures could not identify all dually employed Officials holding elected or paid appointed positions. The following table represents the population of dually employed Officials identified during the audit and notes where an Official was subject to a Finding.

STATE EMPLOYEE	POSITIONS	FINDING
Andria L. Bennett	State Representative, City of Dover - City Clerk	Finding 5
Reneta L. Green-Streett	Judge, Superior Court Kent, Delaware Technical Community College	No Finding
Nnamdi O. Chukwuocha	State Representative, Delaware State University	No Finding
Melissa Minor-Brown*	State Representative, Delaware Technical Community College, University of Delaware	Finding 8
Sherae'a (Rae) Moore	State Representative, East Side Charter School	Finding 7
Sean Matthews	State Representative, Brandywine School District	No Finding
William Shannon Morris	State Representative, Kent County Levy Court	No Finding
John Lawrence Mitchell, Jr.	State Representative, Delaware Technical Community College	Finding 8
Francis E. Mieczkowski	Commissioner, Family Court, University of Delaware	No Finding
Eugene Young	Director Delaware State Housing Authority, University of Delaware	No Finding



# DUAL EMPLOYMENT

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## REPORT SUPPLEMENT FOR FISCAL YEARS 2020-2022

### AUDIT POPULATION CONTINUED

STATE EMPLOYEE	POSITIONS	FINDING
Madinah Avereer Wilson-Anton	State Representative, University of Delaware	No Finding
Michael Smith	State Representative, University of Delaware	No Finding
Sherry Dorsey Walker	State Representative, University of Delaware	No Finding
Ernesto Braulio Lopez	State Senator, University of Delaware	Finding 4
Sarah (Tizzy) Elizabeth Lockman	State Senator, University of Delaware	No Finding
Sheldon Rennie	Judge, Superior Court, University of Delaware	No Finding
Monica Horton	Judge, Court of Common Pleas, University of Delaware	No Finding
Jonathan Starkey	OGOV, Chief of Staff, University of Delaware	No Finding
Bethany Hall-Long	Lt. Governor, University of Delaware	Finding 4
A.J. Schall*	Director, DEMA, University of Delaware, Delaware State Fire School	No Finding
David S. Bentz	State Representative, University of Delaware	No Finding
Martin O'Connor	Commissioner Superior Court, University of Delaware	No Finding

\* - The report states that 24 positions were tested. This involved only 22 persons because Melissa Minor-Brown was tested as an employee of both Delaware Technical Community College and University of Delaware, and A.J. Schall was tested as an employee of both University of Delaware and Delaware State Fire School during the audit period.



# DUAL EMPLOYMENT

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## REPORT SUPPLEMENT FOR FISCAL YEARS 2020-2022

### KEY INFORMATION AND FINDINGS

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One of the basic risks posed by dual employment situations is the possibility of a person claiming to be in two places at the same time and being paid for the same hours by both employers. In past dual employment audits, AOA noted a lack of complete records of the population of dually employed individuals, a lack of time records, and payroll and employee policies that did not comply with the law. In the current engagement, because of continued weakness in policies and practices, the State and the PIC cannot always identify when individuals are involved in dual employment situations. Even when these arrangements are known and sanctioned, our audit shows that covered Organizations do not always take the necessary steps to verify work schedules, attendance, payroll records, or otherwise ensure individuals do not engage in payroll abuse.

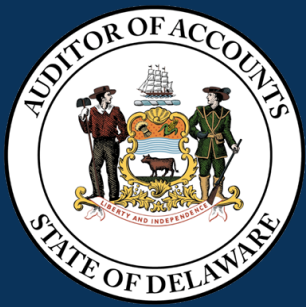
AOA noted the following findings in the audit:

#### **Finding 1 - State of Delaware and Public Integrity Commission**

- **Lack of Dually Employed Individuals Complete Population:** A record of dually employed Officials holding elected or paid appointed offices in political subdivisions of the State and their agencies concurrently while being employed by covered Organizations is not maintained by the State or the Commission. The State has not created a database of all dually employed Officials subject to the Dual Employment law and does not actively monitor or identify such persons. The information is contained in various records and databases.

#### **Finding 2 - Delaware General Assembly**

- **The Delaware General Assembly Does Not Maintain and Publish Time Records for Officials' Attendance at Legislative Sessions or Committee Meetings:** Auditors stated that the General Assembly does not maintain detailed records documenting time spent by Officials in attendance at legislative sessions or committee meetings. Because detailed records were not available, auditors were unable to confirm whether the Official's pay from covered Organizations was properly prorated or reduced for coincident hours of the day.



# DUAL EMPLOYMENT

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## REPORT SUPPLEMENT FOR FISCAL YEARS 2020-2022

### KEY INFORMATION AND FINDINGS CONTINUED

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#### Findings 3 & 4 - University of Delaware

- **UD Policies Do Not Comply with Dual Employment law:** UD does not have an internal control policy over its personnel that requires that coincident time be documented and verified and requires that the related salaries be prorated or reduced in accordance with the law. UD's Political Activity Policies do not comply with the law. It has been UD's position that the requirements of the law do not apply to UD. This is the first time since the Dual Employment law was passed in 1986 that UD has submitted to the Office of the Auditor of Accounts' Dual Employment audit.
- **Dually Employed University Employees Identified with Potentially Coincident Time:** Our testing of 16 University employees revealed two employees with potentially coincident time (between their positions with UD and with the State). These employees are Lieutenant Governor Bethany Hall-Long and former State Senator Ernesto Lopez. UD did not provide sufficient official records to allow us to verify whether the employees incurred coincident time. We found that only one of the two employees, Ernesto Lopez, with potentially coincident time reduced their salary 10%, to account for time spent away on legislative business, as required by University Policy effective until December 1, 2020. UD also did not follow its internal policies regarding political activities. UD did not provide support to indicate an exception to its policies was approved.

#### Finding 5 - City of Dover

- **City of Dover Policies Do Not Comply with Dual Employment law:** The Personnel Policy Manual does not include provisions for dually employed persons subject to the requirements of the law. The City does not have a policy over dually employed payroll that requires coincident time to be documented, verified, and prorated or reduced.
- **Recordkeeping and Potentially Coincident Time:** We identified 33 instances where General Assembly records indicated that former State Representative Andria Bennett, a Dover Official, was present at voting roll calls held during legislative sessions or was present at roll calls at the commencement of committee meetings that occurred during the employee's workweek. The City did not maintain timekeeping records, documenting hours the Official worked during the workday and workweek and, therefore, potentially coincident time could not be measured.





# DUAL EMPLOYMENT

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## REPORT SUPPLEMENT FOR FISCAL YEARS 2020-2022

### KEY INFORMATION AND FINDINGS CONTINUED

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#### Finding 6 – Delaware State University

- **DSU Policies Do Not Comply with Dual Employment law:** The Employee Handbook does not include policy provisions for dually employed Officials subject to the requirements of the law. DSU does not have a payroll policy that requires coincident time to be documented, verified, and prorated or reduced.

#### Finding 7 – Eastside Charter School

- **Eastside Charter School Policies Do Not Comply with Dual Employment law:** The Personnel Policy Manual does not include provisions for dually employed Officials subject to the requirements of the law. The internal controls over payroll do not include procedures that document coincident.
- **Recordkeeping, Approvals, and Potentially Coincident Time:** We found the timekeeping records for State Representative Sherae’a Moore, a dually employed Official at Eastside Charter School, do not include the total number of hours worked for each day when there is coincident time and that the records are not formally verified by the dually employed Official’s supervisor each pay period. Although the School reduced the Official’s payroll in some instances during the period from November 4, 2020 (assumption of office) through June 30, 2022, it did not accurately prorate or reduce their payroll in all the applicable instances, during the period.

#### Finding 8 – Delaware Technical Community College

- **DTCC Payroll Was Not Properly Documented, Verified, or Reduced for Hours Officials Spent Serving in an Elected Position Coincident with their Workday:** We found controls over the documentation, verification, and reduction of dually employed payroll are not operating in the manner consistent with the way the policies were designed and did not capture and properly prorate or reduce incidents of coincident time. We found that former State Representative John Mitchell, an Official employed, full-time, by the College received compensation for coincident time. We also found that State Representative Melissa Minor-Brown, an Official employed, part-time, by the College received compensation for coincident time.

**STATE OF DELAWARE**

**DUAL EMPLOYMENT  
PERFORMANCE AUDIT AND  
INDEPENDENT AUDITOR'S REPORT**

**JULY 1, 2019 THROUGH JUNE 30, 2022**

**STATE OF DELAWARE**  
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**JUNE 30, 2022**

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*Independent Auditor's Report*

Deborah J. Moreau, Esq.  
Commission Counsel  
State of Delaware Public Integrity Commission  
401 Federal Street  
Margaret O'Neil Building, Suite 3  
Dover, DE 19901

Dear Ms. Moreau:

We present the attached report which provides the results of our performance audit of the State of Delaware's State agencies and political subdivisions of the State and their agencies' (covered Organizations') design and operation of internal controls and compliance with 29 Del. C., §5822 ("Dual Employment Law") regarding the compensation of elected and appointed officials employed by covered Organizations during the period from July 1, 2019 through June 30, 2022. The Office of Auditor of Accounts engaged Belfint, Lyons & Shuman, P.A. to conduct a Performance Audit of covered Organizations' compliance with 29 Del. C., §5822 under OAOA Contract Number 22-CPA-007-AUDSVCS.

The Office of Auditor of Accounts is mandated by 29 Del. C., §5823 *Audits; penalty* to audit the time records maintained by covered Organizations in accordance with 29 Del. C., §5822. Each covered Organizations' management is responsible for the design and operation of internal controls over time records and compliance with the requirements of the Dual Employment Law.

We conducted this performance audit in accordance with *Government Auditing Standards* as issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

This report is intended solely for the information and use of the covered Organizations, the Delaware State Public Integrity Commission, and the Office of the Auditor of Accounts, and is not intended to be, and should not be, used by anyone other than these specified parties. Under 29 Del. C., §10002(o), this report is a matter of public record, and its distribution is not limited. This report, as required by statute, will be provided to the Office of the Governor, General Assembly, Office of the Controller General, Office of the Attorney General, and Office of Management and Budget.

*Belfint, Lyons & Shuman, P.A.*

September 12, 2024  
Wilmington, Delaware

cc: Lydia E. York, State Auditor



To the Commission Counsel  
State of Delaware Public Integrity Commission

Distribution of the Report - Copies of this report will be distributed to the following recipients:

Delaware General Assembly

Valerie Longhurst, Speaker of the House of Representatives  
David P. Sokola, President Pro Tempore, State Senate

Delaware Courts - Superior Court

Judge Jan R. Jurden, President  
Constance Cristescu, Director of Human Resource

Brandywine School District

Lincoln Hohler, Superintendent  
Jill Floore, Chief Financial Officer  
Delethia McIntire, Director of Human Resource

City of Dover

Robin R. Christiansen, Mayor  
Dave Hugg, City Manager  
Naomi Poole, Human Resources Director

Eastside Charter School

Aaron Bass, Chief Executive Officer  
Maureen Thoman, Director of Human Resources and Lower School Personnel

Delaware State University

Tony Allen, PhD, President  
Dr. Irene Chapman-Hawkins, Chief Administrative Officer / Vice President for Human Resources  
Anas Ben Addi, Chief Financial Officer / Vice President of Finance

Delaware Technical Community College

Mark T. Brainard, President  
Dr. Valencia Brown, Vice President for Human Resource and Equity, Diversity & Inclusion  
Dr. Bobbi J. Barends, Vice President and Campus Director Owens  
Dr. Lora A. Johnson, Vice President and Campus Director George  
Lacey Weller, Director of Human Resources Owens Campus  
Tamesha Broughton, Director of Human Resources George Campus

Kent County Levy Court

Ken Decker, County Administrator  
Trudena Horsey, Human Resources Director

To the Commission Counsel  
State of Delaware Public Integrity Commission

Distribution of the Report - Copies of this report will be distributed to the following recipients - Continued:

University of Delaware

Dennis Assanis, President

Melissa Bard, Vice President and Chief Human Resource Officer

**STATE OF DELAWARE**  
**DUAL EMPLOYMENT PERFORMANCE AUDIT**  
**JUNE 30, 2022**

**PERFORMANCE AUDIT OVERVIEW**

Performance audits are audits that provide findings or conclusions based on an evaluation of sufficient, appropriate evidence against criteria. Performance audits provide objective analysis to assist management and those charged with governance and oversight in using the information to improve program performance and operations, reduce costs, facilitate decision making by parties with responsibility to oversee or initiate corrective action, and contribute to public accountability.

**BACKGROUND**

**Overview** - The Dual Employment Law requires covered Organizations to limit compensation paid to persons employed with the covered Organizations who also serve in elected and paid appointed offices (Officials) in the State and political subdivisions of the State to one tax-funded source, for duties performed during coincident hours of the workday. There are numerous Officials in the State and political subdivisions of the State that are employed with covered Organizations. The Dual Employment Law prohibits these Officials from being paid for any time missed during the workday or workweek, that is not covered by vacation, personal or compensatory time, while serving in their elected or paid appointed office. To facilitate compliance with the Dual Employment Law, covered Organizations are required to maintain a record of hours worked by the Officials and to adjust the Officials' pay for hours spent serving in their elected or paid appointed offices once each pay period.

**Covered Organizations and Officials** - For the purposes of this report, the State of Delaware and its agencies and the political subdivisions (local governments) of the State of Delaware and their agencies are referred to as "covered Organizations" and persons holding elected or paid appointed offices of the covered Organizations are referred to as "Officials." Payroll refers to the payroll for Officials dually employed at covered Organizations that is subject to the requirements of the Dual Employment Law and coincident time refers to overlapping hours of the workday and time commitments to elected and paid appointed offices.

The scope of the term "covered Organizations" and the applicability the requirements of the Dual Employment Law to them, is based on the descriptions of "State," "State agency," "State employee" and "political subdivision" per 29 Del. C. Ch. 58. Laws Regulating Conduct of Officers and Employees of the State. The law states:

*29 Del. C., §5804. Definitions.:*

*(10) "State" means the State of Delaware and includes any state agency.*

**STATE OF DELAWARE**  
**DUAL EMPLOYMENT PERFORMANCE AUDIT - CONTINUED**  
**JUNE 30, 2022**

**BACKGROUND - CONTINUED**

*Covered Organizations and Officials - Continued*

(11) “State agency” means any office, department, board, commission, court, school district, board of education and all public bodies existing by virtue of an act of the General Assembly or of the Constitution of the State, excepting only political subdivisions of the State, their agencies and other public agencies not specifically included in this definition which exist by virtue of state law, and whose jurisdiction:

- a. Is limited to a political subdivision of the State or to a portion thereof; or
- b. Extends beyond the boundaries of the State.

(12) a. “State employee” means any person:

- 1. Who receives compensation as an employee of a state agency.
- 2. Who serves as an appointed member, trustee, director or the like of any state agency and who receives or reasonably expects to receive more than \$5,000 in compensation for such service in a calendar year (not including any reimbursement for expenses); or
- 3. Who is an elected or appointed school board member.

29 Del. C., §5822(a), defines political subdivisions of the State as “including but not limited to any county, city or municipality.”<sup>1</sup>

**Dual Employment Law** - 29 Del. C. Ch. 58, Subchapter III. Compensation Policy, referred to as the Dual Employment Law, was enacted in July 1986. The law states:

§5821. Findings.

(a) *There are numerous elected state officials and other paid appointed officials who are also employed by state agencies, educational and other institutions, and other jurisdictions of government within the State.*

*The members of the General Assembly believe that the taxpayers of Delaware should not pay an individual more than once for coincident hours of the workday.*

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<sup>1</sup> The State of Delaware Attorney General issued an opinion on February 8, 2008 to the State Auditor confirming the applicability of the dual employment law to University of Delaware. Based on this opinion, the University of Delaware has been included in the scope of Performance Audit.



**STATE OF DELAWARE**  
**DUAL EMPLOYMENT PERFORMANCE AUDIT - CONTINUED**  
**JUNE 30, 2022**

**BACKGROUND - CONTINUED**

***Dual Employment Law - Continued***

*(b) The State should have in place clear policies and procedures to ensure that taxpayers of the State as a whole, and of its various governmental jurisdictions, are not paying employees or officials from more than 1 tax-funded source for duties performed during coincident hours of the workday.*

§5822. Policy.

*(a) Any person employed by the State, or by any political subdivision of the State, including but not limited to any county, city or municipality, who also serves in an elected or paid appointed position in state government or in the government of any political subdivision of the State, including but not limited to any county, city or municipality, shall have his or her pay reduced on a prorated basis for any hours or days missed during the course of the employee's normal workday or during the course of the employee's normal workweek while serving in an elected or paid appointed position which requires the employee to miss any time which is normally required of other employees in the same or similar positions.*

*(b) Any day an employee misses work due to his or her elected or paid appointed position, he or she shall have his or her immediate supervisor verify a time record stating specifically the number of hours worked that day; said verification to take place at least once every pay period.*

*(c) All time records, so verified, shall be kept by the immediate supervisor until such time as they are required by the State Auditor.*

*(d) No employee shall be permitted to make up time during hours other than the normal workday for purposes of compensation. A normal workday is defined by Merit Rule 5.0200. A standard work schedule is defined by Merit Rule 5.0210<sup>2</sup>.*

*(e) Any hours or days during which an employee uses vacation, personal, or compensatory days to which he or she is entitled shall not constitute hours or days which fall within the scope of this subchapter.*

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<sup>2</sup> The *State of Delaware Human Resources Manual*, last updated May 2013, indicates in *Section 1*, under subheading *Dual Employment*, that Merit Rule 5.0210 is now Merit Rule 4.2. The *State of Delaware Merit Rules*, adopted by the Merit Employees Relations Board on January 1, 2004 and last updated February 1, 2018, *Chapter 4.0 Pay Plan, Section 4.2 of the Merit Rules*, states "the standard work week for full-time employees shall be 37.5 hours or 40 hours as provided in the Budget Act."

**STATE OF DELAWARE**  
**DUAL EMPLOYMENT PERFORMANCE AUDIT - CONTINUED**  
**JUNE 30, 2022**

**BACKGROUND - CONTINUED**

*Dual Employment Law - Continued*

*(f) School administrators whose duties require that they work regularly during summer months shall not be exempted from this chapter. If a school administrator shall have no immediate supervisor, the school administrator's time record shall be verified by the appropriate school board at its next regular or special meeting following any pay period in which said administrator missed work due to his or her elected or paid appointed position.*

*§5823. Audits; penalty.*

*(a) The State Auditor shall conduct an annual audit of the time records which have been kept by the supervisors or school board in accordance with § 5822(b) and (c) of this title to determine whether or not an employee was paid from more than 1 tax-funded source for working coincident hours of the day.*

*(b) Any discrepancy found by the State Auditor shall be reported to the Public Integrity Commission for investigation pursuant to § 5810 of this title and/or to the Office of the Attorney General for possible prosecution under § 876 of Title 11 (tampering with public records in the first degree) and any other appropriate section.*

**Public Integrity Commission** - Pursuant to 29 Del. C. Ch. 58. Laws Regulating Conduct of Officers and Employees of the State., the State Public Integrity Commission (“Commission”) administers and implements Delaware's ethics law (Code of Conduct) for the Executive Branch; its financial disclosure law for all three branches, its lobbyists' registration and expense reporting laws, and its dual employment policy.

To aid those, subject to the law in complying, the Commission issues advisory opinions on a case-by-case basis; publishes its opinion synopses annually; and offers training through the State Personnel Office's Training Unit and by scheduling classes with agencies when requested. It also may act on sworn complaints which allege violations of the laws. Procedures for requesting advisory opinions or filing complaints are in the statute and the Commission's rules.

The Commission administers the Code of Conduct for the State of Delaware and for 48 political subdivisions of the State (local governments of the counties, cities, and municipalities) that have not yet formally adopted their own codes of conduct. There are nine<sup>3</sup> local governments that have formally adopted their own codes of conduct.

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<sup>3</sup> Per the *State of Delaware Public Integrity Commission Annual Report 2022*, published March 3, 2023, the following nine political subdivisions of the State have adopted their own code of conduct: New Castle County, Dover, Lewes, Millsboro, Newark, Smyrna, Delaware City, Georgetown, and City of Wilmington.

**STATE OF DELAWARE**  
**DUAL EMPLOYMENT PERFORMANCE AUDIT - CONTINUED**  
**JUNE 30, 2022**

**BACKGROUND - CONTINUED**

*Public Integrity Commission - Continued*

The Commission maintains records of the annual (calendar year) financial disclosure reports required to be submitted by Officials of the State of Delaware per 29 Del. C., §5813. Report disclosing financial information. As defined by 29 Del. C., §5812, the Officials who must submit financial disclosures are of the State of Delaware and do not include elected and paid appointed Officials of the political subdivisions of the State. The disclosures include the personal financial interests of the Officials, including sources of salaries and wages. The disclosures are public records and may be requested via a Freedom of Information Act request available on the Commission’s website.

**RESULT OF PREVIOUS ENGAGEMENTS**

The Office of Auditor of Accounts has performed examinations and agreed-upon procedures engagements in the past. These engagements have noted the following types of findings:

- Lack of Complete Population of Dually Employed Individuals,
- Lack of Time Records,
- Payroll and Employee Policies that Do Not Comply with the Dual Employment Law.

**AUDIT OBJECTIVES**

Our audit will address the following objectives based on the requirements in the *Delaware Code*, State of Delaware *Administrative Code*, State of Delaware *Human Resources Procedure Manual*, State of Delaware *Merit Rules*, State of Delaware *Budget and Accounting Policy Manual (BAM)*, and the covered Organizations Policies (the requirements) during the period from July 1, 2029 through June 30, 2022 (the audit period):

**Objective 1:** Employee handbooks adopted by covered Organizations complied with the policies required by Delaware Code Title 29; Chapter 58. Laws Regulating the Conduct of Officers and Employees of the State §5822 Policy to “...have his or her pay reduced or prorated for any hours or days missed during the course of the employee’s normal workday or during the course of the employee’s normal workweek while serving in an elected or paid appointed position which requires the employee to miss any time which is normally required of other employees in the same or similar positions.”

**Objective 2:** Payroll internal controls were designed in accordance with the requirements to identify and document work hours missed by employees that are also elected or paid appointed officials.

**Objective 3:** Payroll internal controls operated as designed by the covered Organization to determine whether dually employed Officials’ time records for potentially coincident time for which pay was not reduced or prorated.

**STATE OF DELAWARE**  
**DUAL EMPLOYMENT PERFORMANCE AUDIT - CONTINUED**  
**JUNE 30, 2022**

**AUDIT SCOPE**

The period covered by the Performance Audit was July 1, 2019 through June 30, 2022. All covered Organizations identified during the audit as employing elected and paid appointed Officials during the period of July 1, 2019 through June 30, 2022 were selected for testing.

**AUDIT METHODOLOGY AND RESULTS**

To address the audit objectives of this performance audit, we performed the following procedures:

- A. Planning Phase: The audit relied on various sources of information and methods to properly plan the audit and to obtain an understanding of and assess dual employment processes at the covered Organizations, including the following:
  - 1. Reviewed the applicable sections of the *Delaware Code*, State of Delaware *Administrative Code*, and State of Delaware *Human Resources Procedure Manual*, State of Delaware *Merit Rules*, and the State of Delaware *Budget and Accounting Policy Manual (BAM)* to gain an understanding of the legal and policy requirements of the Dual Employment Law.
  - 2. Inquired about whether there were any findings and recommendations in reports resulting from previous audits that relate to the objectives of this audit and whether the recommendations have been implemented.
  - 3. Reviewed the Public Integrity Commission's Annual Reports for the audit period, its *Code of Conduct Opinion Synopsis - Outside Employment*, and its Ethics Bulletin 009 - *Dual Positions in Government*.
  - 4. Identified Organizations and Officials subject to the Dual Employment Law during the audit period by analyzing state payroll records and financial reports submitted to the Commission.
  - 5. Performed risk assessment procedures such as:
    - a. Obtained and documented an understanding of the covered Organizations and their environments and identified risks.
    - b. Completed engagement team discussions, including discussions about the possibility of error or fraud involving the Dual Employment Law compliance.

**STATE OF DELAWARE**  
**DUAL EMPLOYMENT PERFORMANCE AUDIT - CONTINUED**  
**JUNE 30, 2022**

**AUDIT METHODOLOGY AND RESULTS - CONTINUED**

- c. Made inquiries of management and others about risks (including fraud risks, related-party transactions, unusual transactions, and compliance with laws, regulations, contracts, and grant agreements).
  - d. Reviewed the applicable sections of covered Organizations' personnel manuals and internal control manuals.
  - e. Obtained and documented an understanding of the covered Organizations' internal control system over payroll by performing walkthroughs.
  - f. Identified the covered Organizations' key internal controls over payroll for testing.
- B. Performance Assessment: Based on the information gathered, we developed the following procedures to assess the design and operation of the key controls over payroll with respect to the audit objectives.
- 1. To assess that covered Organizations' personnel policies and internal control policies complied with the requirements of the Dual Employment Law we performed the following:
    - a. Compared covered Organizations' personnel policies per employee handbooks and other personnel policy documents, including employee codes of conduct and employee conflict of interest policies, to the requirements of the Dual Employment Law to determine if personnel policies complied with the law.
    - b. Compared the design of each covered Organization's key controls over payroll to the requirements to determine if the covered Organizations' controls were designed in a manner that complied with the law.
  - 2. To assess that covered Organizations' key internal controls over payroll operated as designed and to test dually employed Official's time records for potentially coincident time we performed the following:
    - a. Determined the terms of office and the time commitments for the elected and paid appointed positions held by each dually employed Official.
    - b. Determined the hours of scheduled employment with each covered Organization for each dually employed Official.

**STATE OF DELAWARE**  
**DUAL EMPLOYMENT PERFORMANCE AUDIT - CONTINUED**  
**JUNE 30, 2022**

**AUDIT METHODOLOGY AND RESULTS - CONTINUED**

- c. Compared time commitments for the elected and paid appointed office to the employment schedules of the dually employed Officials and identified potential coincident time during the normal workday and normal workweek.
- d. Sampled and tested records from a population of the covered Organization's payroll records, including timecards, leave reports and payroll registers, maintained for each dually employed Official to determine if coincident time was properly documented, verified, and reduced or prorated by the covered Organization as required by the Dual Employment Law.
- e. For covered Organizations with dually employed Officials holding elected offices in the Delaware State General Assembly, consisting of the House of Representatives and Senate, we performed the following to test completeness of the covered Organization's records:
  - i. Performed an analysis of the dates and times of scheduled House of Representatives and Senate legislative sessions<sup>4</sup> that the Official would have been expected to attend during the audit period to the payroll records maintained by the covered Organizations and investigated discrepancies to determine if coincident time was properly documented, verified, and reduced or prorated by the covered Organization as required by the law.
  - ii. Compared a sample of dates and times from a population of scheduled House of Representatives, Senate, and Joint committees that the dually employed Official was appointed to and would have been expected to attend during the audit period to payroll records maintained by the covered Organization for the dually employed Official to determine if coincident time was properly documented, verified, and reduced or prorated by the covered Organization as required by the law.

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<sup>4</sup> Per the Permanent Rules for the 150<sup>th</sup> and 151<sup>st</sup> General Assembly which were set by House Resolution No. 3 and Senate Resolution No. 2 of the 150<sup>th</sup> General Assembly and 151<sup>st</sup> General Assembly: The Delaware General Assembly convenes on the second Tuesday of January and meets on Tuesdays, Wednesdays, and Thursdays until June 30 each year unless otherwise ordered. House of Representatives session begins at 2:00 PM EST. Senate session begins at 2:00 PM EST on Tuesdays and Thursdays, at 4:00 PM EST on Wednesdays from January through May and at 3:00 PM EST on Wednesdays in June. The General Assembly breaks for two weeks for Easter and breaks for certain Joint Finance Committee (budget committee) and Joint Capital Improvement Committee (bond committee) meetings between January and June. The Speaker of the House and the President Pro Tempore of the Senate appoint legislators to standing committees of the House and Senate and to joint committees. The Speaker of the House and the President Pro Tempore of the Senate set the dates and times of the standing committees in the House and Senate, respectively, and of the joint committees. Scheduled legislative session and committee meetings are available on the Delaware General Assembly website: <https://legis.delaware.gov/sessioncalendar>.

**STATE OF DELAWARE**  
**DUAL EMPLOYMENT PERFORMANCE AUDIT - CONTINUED**  
**JUNE 30, 2022**

**AUDIT METHODOLOGY AND RESULTS - CONTINUED**

*Identification of Dually Employed Officials and Covered Organizations*

We found that the State does not maintain a complete record of dually employed Officials subject to the Dual Employment Law. The reports provided by the State and the Commission for our analysis did not include the elected and paid appointed Officials of the political subdivisions of the State and their agencies. Refer to *Finding Number 1* in the *Schedule of Findings and Recommendations* for details of the deficiencies identified and related recommendations.

We analyzed Public Officer Financial Disclosures submitted to the Commission for calendar years 2020 and 2021 in fiscal years 2021 (July 1, 2020 to June 30, 2021) and 2022 (July 1, 2021 to June 30, 2022), respectively. We also analyzed reports for fiscal year 2022 from the State’s payroll system, Payroll and Human Resource Statewide Technology (PHRST), including Concurrent Job Reports, listing State employees with two or more positions in PHRST, and payroll registers of State employees with pay from two or more separate departments in PHRST.

As summarized in the following chart, our analysis identified 23 persons that held elected or paid appointed offices with the State of Delaware while concurrently being employed at seven covered Organizations during the period from July 1, 2019 to June 30, 2022.

Covered Organization	Elected or Paid Appointed Office				
	Delaware General Assembly	Delaware State Housing Authority	Delaware Courts	Delaware Executive Branch of Government	Delaware Department of Emergency Management Agency
Public School District					
Brandywine School District	1	-	-	-	-
State Agency for Purposes of Dual Employment					
Delaware State University (DSU)	1	-	-	-	-
Delaware Technical Community College (DTCC) *	2	-	1	-	-
East Side Charter School	1	-	-	-	-
University of Delaware (U of D) *	7	1	5	2	1
Political Subdivision of the State					
City of Dover	1	-	-	-	-
Kent County Levy Court	1	-	-	-	-
	<u>14</u>	<u>1</u>	<u>6</u>	<u>2</u>	<u>1</u>

\* - One legislator was employed at both DTCC and U of D during the audit period.



**STATE OF DELAWARE**  
**DUAL EMPLOYMENT PERFORMANCE AUDIT - CONTINUED**  
**JUNE 30, 2022**

**AUDIT METHODOLOGY AND RESULTS - CONTINUED**

*Identification of Dually Employed Officials and Covered Organizations - Continued*

In accordance with the definition of State, State agency, State employee and political subdivision per 29 Del. C. Ch. 58, as described in the background section of this report, we determined the seven covered Organizations identified above were subject to the requirements of the Dual Employment Law for the following reasons:

- Delaware’s public school system was established by Article X of the Constitution of the State of Delaware. Per 29 Del. C. §5804(11,12), School district employees are considered State employees under the laws regulating the conduct of officers and employees of the State.
- The City of Dover (municipality) and Kent County Levy Court (county) are local governments that are considered political subdivisions of the State.
- DSU is organized as a corporation and is legally separate from the State of Delaware per its corporate charter, which was authorized by legislation per 14 Del. C. Ch. 65. However, also under 14 Del. C. Ch. 51, § 5109, because the majority of the DSU Board of Directors is appointed by the Governor of Delaware, DSU is considered a component unit of the State of Delaware.
- Delaware’s charter schools exist as corporations that are legally separate from the State of Delaware; however, their charters are granted by a public school district or the State Department of Education, with the approval of the State Board of Education as authorized by an act of the General Assembly per 14 Del. C. Ch. 5. Additionally, also under 14 Del. C. Ch. 5, the majority of the funding for the charter schools is provided by State of Delaware. For these reasons, the charter schools are considered component units of the State of Delaware.
- DTCC is established as a State agency per 14 Del. C. §9102.
- The U of D exists as a corporation and is legally separate from the State of Delaware per its corporate charter, which was authorized by an act of the General Assembly per 14 Del. C. Ch. 51. However, as a state-assisted institution, also under 14 Del. C. Ch. 51, § 5109, the accounting records of the University may be audited by the Auditor of Accounts of the State when sources of funds come to the University from state appropriation or from other funds commingled with state appropriations.

All covered Organizations identified were subjected to the procedures developed to address Objective 1, 2, and 3 of this performance audit.

**STATE OF DELAWARE**  
**DUAL EMPLOYMENT PERFORMANCE AUDIT - CONTINUED**  
**JUNE 30, 2022**

**AUDIT METHODOLOGY AND RESULTS - CONTINUED**

**Objective 1** - Covered Organizations’ personnel policies complied with the requirements.

Results - We compared the covered Organizations’ personnel policies to the requirements of the Dual Employment Law. As summarized in the following chart, we found three covered Organizations had not formally adopted personnel policies addressing the dual employment of elected and paid Officials and the requirements of the Dual Employment Law. One covered Organization’s personnel policies addressing the dual employment of elected and paid officials did not comply with the requirements of the Dual Employment Law. Refer to *Finding Numbers 3, 5, 6, and 7* in the *Schedule of Findings and Recommendations* for details of the deficiencies identified and related recommendations.

Covered Organization	Compiled with the Requirement	Personnel Polices Did Not Comply with the Requirement	Were Not Adopted
Brandywine School District	X		
City of Dover			X
DSU			X
DTCC	X		
East Side Charter School			X
Kent County Levy Court	X		
University of Delaware		X	

**Objective 2** - Covered Organizations’ payroll internal controls were designed in accordance with the requirements to identify and document work hours missed by employees that are also elected or paid appointed officials.

Results - As a result of our inquiries with management of the covered Organizations and our review of the covered Organizations payroll internal control documents, we found, as summarized in the following chart, that three covered Organizations had not implemented controls over payroll in accordance with the requirements and one covered Organization’s controls in place over payroll were not designed in a manner that complied with the requirements. Refer to *Finding Numbers 3, 5, 6, and 7* in the *Schedule of Findings and Recommendations* for details of the deficiencies identified and related recommendations.

**STATE OF DELAWARE**  
**DUAL EMPLOYMENT PERFORMANCE AUDIT - CONTINUED**  
**JUNE 30, 2022**

**AUDIT METHODOLOGY AND RESULTS - CONTINUED**

***Objective 2 - Continued***

Results - Continued

Covered Organization	Controls Over Payroll Subject to the Dual Employment Law		
	Were Designed in Accordance with the Requirements	Were Not Designed in Accordance with the Requirements	Were Not Implemented
Brandywine School District	X		
City of Dover			X
DSU			X
DTCC	X		
East Side Charter School		X	
Kent County Levy Court	X		
University of Delaware			X

***Objective 3*** - Payroll internal controls operated as designed by the covered Organization to determine whether dually employed Officials' time records for potentially coincident time for which pay was not reduced or prorated.

Results - To identify potentially coincident time, we compared the dually employed Officials' time commitments to their elected and paid appointed offices to their employment schedules at the covered Organizations. We determined that there were eight Officials employed at six covered Organizations with coincident time commitments, as summarized in the following chart.

Covered Organization	Time Commitments for Elected and Paid Appointed Office	
	Overlapped with Employment Schedule	Did Not Overlap with Employment Schedule
Brandywine School District	1	0
City of Dover	1	0
DSU	0	1
DTCC	2	1
East Side Charter School	1	0
Kent County Levy Court	1	0
University of Delaware	2	14
	8	16

**STATE OF DELAWARE**  
**DUAL EMPLOYMENT PERFORMANCE AUDIT - CONTINUED**  
**JUNE 30, 2022**

**AUDIT METHODOLOGY AND RESULTS - CONTINUED**

***Objective 3 - Continued***

*Results - Continued*

We concluded that no further testing was necessary on those Officials that we determined did not have potentially coincident time during the audit period.

To assess the operation of the Organizations' key internal controls over payroll and to identify Officials with potential unadjusted coincident time, we selected samples as summarized in the following chart and compared the expected coincident time identified to the Officials' payroll records:

- To test the accuracy of coincident time reported on the Officials' payroll records, we selected a random sample of 20% of the dates and times where coincident time was recorded in the covered Organizations' payroll records for each dually employed Official at the covered Organization whose time commitments to their elected or paid appointed office coincided with their employment schedules.
- Payroll records for each dually employed Official, whose time commitments to their elected office in the General Assembly coincided with their employment schedules at the covered Organizations, that corresponded to the following dates and times:
  - All the dates and times of scheduled General Assembly legislative sessions that the Official would have been expected to attend during the audit period.
  - A random sample of 20% of the dates and times of scheduled House of Representatives or Senate Committee meetings and Joint Committee meetings that the Official would have been expected to attend during the audit period.

To address this objective of the performance audit as it relates to Officials holding elected office in the General Assembly, we reviewed voting roll calls maintained for legislative sessions and roll calls maintained in committee meeting minutes, when available. We found that while roll calls are maintained, the General Assembly does not maintain, for various reasons, detailed records documenting time spent in attendance at legislative session or committee meetings. Refer to *Finding Number 2* in the *Schedule of Findings and Recommendations* for details of the deficiencies identified and related recommendations.

**STATE OF DELAWARE**  
**DUAL EMPLOYMENT PERFORMANCE AUDIT - CONTINUED**  
**JUNE 30, 2022**

**AUDIT METHODOLOGY AND RESULTS - CONTINUED**

***Objective 3 - Continued***

*Results - Continued*

The following chart summarizes the records sampled:

Covered Organization	Number of Sampled Records		
	Time Records	Sessions Analyzed for General Assembly Members	Committee Meetings for General Assembly Members
Brandywine School District	13	113	14
City of Dover *	-	45	26
DTCC **	216	142	74
East Side Charter School	10	89	11
Kent County Levy Court	18	113	9

\* Employee time records were not prepared or maintained for the audit period.

\*\* 100% of time records corresponding to expected attendance at session and committee meetings during the audit period were tested.

We examined payroll records for each of the transactions selected and determined that coincident time at three of the covered Organizations was not properly documented, verified, and reduced, or prorated by the covered Organization, as required by the law. This is summarized in the following chart. Refer to the *Finding Numbers 5, 7, and 8* in the *Schedule of Findings and Recommendations* for details of the deficiencies identified and related recommendations.

Covered Organization	Exception by Category			
	Coincident Time Not Properly Documented	Coincident Time Not Properly Verified	Coincident Time Not Properly Reduced or Prorated	Coincident Time Not Timely Adjusted
City of Dover Delaware	33	-	-	-
DTCC	25	13	30	-
East Side Charter School	21	21	6	-

**STATE OF DELAWARE**  
**DUAL EMPLOYMENT PERFORMANCE AUDIT - CONTINUED**  
**JUNE 30, 2022**

**AUDIT METHODOLOGY AND RESULTS - CONTINUED**

***Objective 3 - Continued***

*Results - Continued*

The University asserted that two of its employee's responsibilities were adjusted throughout the year to accommodate their elected responsibilities. However, the University did not provide sufficient official records to allow us to verify that the employees' coincident hours and related salaries were appropriately adjusted as required by the Dual Employment Law. Refer to *Finding Number 4* in the *Schedule of Findings and Recommendations* for details of the identified and related recommendations.

**STATE OF DELAWARE**  
**SCHEDULE OF FINDINGS AND RECOMMENDATIONS; (MANAGEMENT'S RESPONSES AND**  
**CORRECTIVE ACTION)**

**JUNE 30, 2022**

***ORGANIZATION - STATE OF DELAWARE***  
***FINDINGS***

***Finding Number 1 - No Complete Record of Dually Employed Officials Subject to the Requirements of the Dual Employment Law***

**Condition:** We found the following during our procedures to identify dually employed Officials subject to the requirements of the Dual Employment Law:

A record of dually employed Officials holding elected or paid appointed offices in political subdivisions of the State and their agencies concurrently while being employed by covered Organizations is not maintained by the State or by the Commission.

**Criteria:** Elected and paid appointed Officials of the State of Delaware and its political subdivisions must adhere to the requirements of 29 Del. C. Ch. 58 Laws Regulating the Conduct of Officers and Employees of the State. The Public Integrity Commission is responsible for implementing and administering this chapter.

Per 29 Del. C., §5821. Findings (c) *The State should have in place clear policies and procedures to ensure that taxpayers of the State as a whole, and of its various governmental jurisdictions, are not paying employees or officials from more than 1 tax-funded source for duties performed during coincident hours of the workday.*

Per the following excerpts from 29 Del. C., §5809. State Public Integrity Commission - Power and duties, the Commission is to:

(8) *To prescribe forms for reports, statements, notices and other documents required by law. The Commission may permit the filing of reports, statements, notices, and other documents by electronic means and may specify the form and content of such filings ...*

(10) *To provide assistance to state agencies, employees and officials in administering the provisions of this law.*

(11) *To prepare an annual report by March 1st of each year describing its activities for the previous year and to prepare such other reports and studies as may advance the purposes of this chapter.*

**Cause:** The conditions above were caused by the following:

- The State has not created a formal database of dually employed Officials subject to the Dual Employment Law and does not actively monitor or identify such persons. The information is contained in various records and databases.

**STATE OF DELAWARE**  
**SCHEDULE OF FINDINGS AND RECOMMENDATIONS; MANAGEMENT'S RESPONSES AND**  
**CORRECTIVE ACTION - CONTINUED**

**JUNE 30, 2022**

***ORGANIZATION - STATE OF DELAWARE***  
***FINDINGS - CONTINUED***

***Finding Number 1 - No Complete Record of Dually Employed Officials Subject to the Requirements of the Dual Employment Law - Continued***

**Cause - Continued:**

- PHRST Reports for concurrent positions and concurrent pay are limited to payroll that is processed through the State's payroll system, PHRST. These reports do not capture records maintained in other human resources and payroll systems managed by agencies of the State that operate outside of the State's accounting and payroll systems, and political subdivisions of the State and their agencies.
- Elected and paid appointed officials in political subdivisions of the State and their agencies are not required by Delaware code to submit financial disclosures to the Commission. 29 Del. C., §5812(n)(2) defines a public officer for financial disclosure reporting purposes and does not include elected and paid appointed officials of political subdivisions of the State.

**Effect:** Our procedures could not identify all dually employed Officials holding elected or paid appointed positions in political subdivisions and their agencies concurrently with employment with the State and its agencies or political subdivisions of the State and their agencies. Therefore, there may be covered Organizations, that were subject to the requirements of the Dual Employment Law during the audit period, that were not identified for testing.

**Recommendation:** We recommend the following:

- The Commission undertake discussions with the political subdivisions of the State to implement financial disclosure reporting procedures at the local government level.
- The Commission identify opportunities to assist political subdivisions of the State with public financial disclosures for their elected and appointed officials to promote integrity and transparency and compliance with the Dual Employment Law.
- Require political subdivisions of the State and their agencies to maintain and submit records of dually employed Officials within their jurisdictions that are subject to the requirements of the Dual Employment Law to the Commission.



**STATE OF DELAWARE**  
**SCHEDULE OF FINDINGS AND RECOMMENDATIONS; MANAGEMENT'S RESPONSES AND**  
**CORRECTIVE ACTION - CONTINUED**  
**JUNE 30, 2022**

***ORGANIZATION - STATE OF DELAWARE***  
***FINDINGS - CONTINUED***

***Finding Number 1 - No Complete Record of Dually Employed Officials Subject to the Requirements of the Dual Employment Law - Continued***

**Recommendation - Continued:**

- The Commission work with the State to create a formal database of dually employed Officials subject to the requirements of the Dual Employment Law to facilitate monitoring of compliance with the requirements and to facilitate audits of the records by Office of the Auditor of Accounts as required by the Dual Employment Law.
  
- The Commission consider adding a question on dual employment to the required annual financial disclosures.

**View of Responsible District Officials and Planned Corrective Actions:** Refer to Management Response section.

**STATE OF DELAWARE**  
**SCHEDULE OF FINDINGS AND RECOMMENDATIONS; MANAGEMENT’S RESPONSES AND**  
**CORRECTIVE ACTION - CONTINUED**  
**JUNE 30, 2022**

***ORGANIZATION - STATE OF DELAWARE***  
***FINDINGS - CONTINUED***

***Finding Number 2 - The Delaware General Assembly Does Not Maintain and Publish Time Records for Officials’ Attendance at Legislative Sessions or Committee Meetings***

**Condition:** Our review of the records maintained by the General Assembly for Officials’ attendance at legislative sessions or committee meetings found the following:

The General Assembly does not maintain detailed records documenting time spent by Officials in attendance at legislative sessions or committee meetings.

**Criteria:** Elected and paid appointed Officials of the State of Delaware and its political subdivisions must adhere to the requirements of 29 Del. C. Ch. 58 Laws Regulating the Conduct of Officers and Employees of the State for which the Public Integrity Commission is responsible for implementing and administering.

**Cause:** The conditions above were caused by the following:

- The Rules of the 150<sup>th</sup> and 151<sup>st</sup> Assembly<sup>5</sup> of the House of Representatives and Senate, which govern the proceedings of each House, do not require attendance records for Officials that document attendance in session or at committee meetings.

**Effect:** We were able to reasonably estimate, but not confirm, if Official’s pay from covered Organizations was properly prorated or reduced for coincident hours of the day.

- Evidence of compliance with the State of Delaware’s dual employment law is not transparently maintained and cannot be easily verified by the Commission, auditors, or the public.

**Recommendation:** We recommend the General Assembly work with the Commission to identify opportunities to promote transparency and assist in carrying out the requirements of the Dual Employment Law.

- **View of Responsible District Officials and Planned Corrective Actions:** Refer to Management Response section.

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<sup>5</sup> §9, Article II of the Delaware Constitution states “Each House may determine the rules of its proceedings.” The Permanent Rules for the 150<sup>th</sup> and 151<sup>st</sup> General Assembly were set by House Resolution No. 3 and Senate Resolution No. 2 of the 150<sup>th</sup> General Assembly and 151<sup>st</sup> General Assembly.

**STATE OF DELAWARE**  
**SCHEDULE OF FINDINGS AND RECOMMENDATIONS; MANAGEMENT'S RESPONSES AND**  
**CORRECTIVE ACTION - CONTINUED**  
**JUNE 30, 2022**

***ORGANIZATION - STATE OF DELAWARE FINDINGS***  
***MANAGEMENT'S RESPONSE & CORRECTIVE ACTION***



HOUSE OF REPRESENTATIVES  
STATE OF DELAWARE  
411 LEGISLATIVE AVENUE  
DOVER, DELAWARE 19901

September 9, 2024

Mr. George G. Fournaris, CPA, CGFM  
Principal  
Belfint, Lyons & Shuman  
1011 Centre Rd, Ste. 310  
Wilmington, DE 19805

TRANSMITTED VIA EMAIL

Dear Mr. Fournaris,

In regards to the Dual Employment Performance Audit and Independent Auditor's Report for July 1, 2019 through June 30, 2022, the Delaware House of Representatives wishes to respond as follows:

**"House members who are engaged in dual employment are expected to accurately keep track of leave time with their other agency. The House of Representatives will continue to record attendance by roll call on the House floor at the beginning of each session day or if the member is not available at that time, then during the first available vote on a bill. The House will also continue to take attendance for committee meetings which are reflected in the subsequent meeting minutes. Both House attendance roll calls and House committee minutes are publicly available on the General Assembly website ([legis.delaware.gov](http://legis.delaware.gov)) or through the Office of the Chief Clerk."**

Thank you again for the opportunity to respond to the Dual Employment Performance Audit and Independent Auditor's Report for July 1, 2019 through June 30, 2022. Please do not hesitate to contact me should you have any further questions.

Best regards,

A handwritten signature in black ink, appearing to read "Richard L. Puffer".

Richard L. Puffer  
Chief Clerk  
Delaware House of Representatives

**STATE OF DELAWARE**  
**SCHEDULE OF FINDINGS AND RECOMMENDATIONS; MANAGEMENT'S RESPONSES AND**  
**CORRECTIVE ACTION - CONTINUED**  
**JUNE 30, 2022**

***ORGANIZATION - STATE OF DELAWARE FINDINGS***  
***MANAGEMENT'S RESPONSE & CORRECTIVE ACTION - CONTINUED***

RYAN C. DUNPHY  
*Secretary of the Senate*



SENATE  
STATE OF DELAWARE  
LEGISLATIVE HALL  
DOVER, DELAWARE 19901

Belfint Lyons & Shuman, PA  
c/o George Fournaris, CPA, CGFM, Principal  
1011 Centre Road, Suite 310  
Wilmington, DE 19805

September 9, 2024

Dear Mr. Fournaris,

Thank you for allowing us the opportunity to submit comments and sending us the amended finding. The Senate tracks and will continue to track Senators' attendance during legislative sessions and in approved committee meeting minutes, which are available at [legis.delaware.gov](http://legis.delaware.gov) or by contacting the Office of the Secretary of the Senate. Legislators dually employed should accurately track their time while performing their legislative duties, as they also occur outside of formal legislative sessions and committee hearings.

Should you have questions or need additional information, please contact me via phone at (302) 744-4129 or email at [ryan.dunphy@delaware.gov](mailto:ryan.dunphy@delaware.gov).

Sincerely,

A handwritten signature in black ink that reads 'Ryan C. Dunphy'.

Ryan C. Dunphy  
Secretary, Delaware State Senate

411 Legislative Avenue, Dover, Delaware 19901  
Senate Office: 302-744-4129  
Email: [Ryan.Dunphy@delaware.gov](mailto:Ryan.Dunphy@delaware.gov)

**STATE OF DELAWARE**  
**SCHEDULE OF FINDINGS AND RECOMMENDATIONS; MANAGEMENT'S RESPONSES AND**  
**CORRECTIVE ACTION - CONTINUED**  
**JUNE 30, 2022**

***ORGANIZATION - STATE OF DELAWARE FINDINGS***  
***MANAGEMENT'S RESPONSE & CORRECTIVE ACTION - CONTINUED***



**STATE OF DELAWARE**  
**DELAWARE STATE PUBLIC INTEGRITY COMMISSION**

MARGARET O'NEILL BUILDING  
410 FEDERAL STREET, SUITE 3  
DOVER, DELAWARE 19901

TELEPHONE: (302) 739-2399

September 6, 2024

The Honorable Lydia York  
Auditor of Accounts  
401 Federal Street, Suite One  
Dover, DE 19901

**RE: RESPONSE TO SCHEDULE OF FINDINGS**

Dear Auditor York,

The State Public Integrity Commission ("PIC") received your thorough report of the Dual Employment Examination for Calendar Years 2019 – 2022. The PIC agrees with your findings and would like to offer the following response:

*Finding #1: No Complete Record of Dually Employed Officials Subject to the Requirements of the Dual Employment Law.*

Response: The PIC agrees there are no mechanisms currently in place which could accurately capture all of the dual employment data described in 29 Del. C. § 5822(a). Appropriate legislation, intended to move the State towards compliance with the Dual Employment law, has been drafted and ready for implementation since 2018. While some of the original sponsors of the proposed Bill are no longer members of the General Assembly, the PIC is confident that it will be able to find substitute sponsors and present the legislation to the entire General Assembly in the upcoming session. Additionally, preliminary contacts have been made with other State agencies needed to implement the coming changes.

PIC would like to thank you and your office for your diligent efforts to bring much needed transparency and accountability to the State's Dual Employment law.

Respectfully,

A blue ink signature of Deborah J. Moreau, Esq., written in a cursive style.

Deborah J. Moreau, Esq.  
Commission Counsel

**STATE OF DELAWARE**  
**SCHEDULE OF FINDINGS AND RECOMMENDATIONS; MANAGEMENT’S RESPONSES AND**  
**CORRECTIVE ACTION**  
**JUNE 30, 2022**

***ORGANIZATION - UNIVERSITY OF DELAWARE FINDINGS***

***Finding Number 3 - The University of Delaware Personnel Policies and Internal Control Policies over Payroll Did Not Comply with the Requirements of the Dual Employment Law***

**Condition:** The University of Delaware does not have an internal control policy over its personnel that requires that coincident time be documented and verified, and requires that the related salaries be prorated or reduced in accordance with the Dual Employment Law.

**Criteria:** The University of Delaware receives a significant percentage of its budget from State of Delaware appropriations and is considered a State agency for purposes of the Dual Employment Law. It exists as a corporation by nature of its Charter, which is authorized by an act of the General Assembly (see 29 Del. 14 C. Ch. 51). It must adhere to the requirements of the Dual Employment Law, including having annual audits of the time records conducted by the Office of Auditor of Accounts.

- Per 29 Del. C., §5804. Definitions.:

*(10) “State” means the State of Delaware and includes any state agency.*

*(11) “State agency” means any office, department, Board, commission, court, school district, board of education and all public bodies existing by virtue of an act of the General Assembly or of the Constitution of the State, ...*

*(12) a. “State employee” means any person:*

- 1. Who receives compensation as an employee of a state agency;*
- 2. Who serves as an appointed member, trustee, director or the like of any state agency and who receives or reasonably expects to receive more than \$5,000 in compensation for such service in a calendar year (not including any reimbursement for expenses); or*

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***Finding Number 3 - The University of Delaware Personnel Policies and Internal Control Policies over Payroll Did Not Comply with the Requirements of the Dual Employment Law - Continued***

**Criteria - Continued:**

- Per 29 Del. C., §5822. Policy.:
  - (a) *Any person employed by the State, or by any political subdivision of the State, including but not limited to any county, city or municipality, who also serves in an elected or paid appointed position in state government or in the government of any political subdivision of the State, including but not limited to any county, city or municipality, shall have his or her pay reduced on a prorated basis for any hours or days missed during the course of the employee's normal workday or during the course of the employee's normal workweek while serving in an elected or paid appointed position which requires the employee to miss any time which is normally required of other employees in the same or similar positions.*
  - (b) *Any day an employee misses work due to his or her elected or paid appointed position, he or she shall have his or her immediate supervisor verify a time record stating specifically the number of hours worked that day; said verification to take place at least once every pay period.*
  - (c) *All time records, so verified, shall be kept by the immediate supervisor until such time as they are required by the State Auditor.*
  - (d) *No employee shall be permitted to make up time during hours other than the normal workday for purposes of compensation. A normal workday is defined by Merit Rule 5.0200. A standard work schedule is defined by Merit Rule 5.0210.*
  - (e) *Any hours or days during which an employee uses vacation, personal, or compensatory days to which he or she is entitled shall not constitute hours or days which fall within the scope of this subchapter.*
- Per 29 Del. C., §5823. Audits; penalty:
  - (a) *The State Auditor shall conduct an annual audit of the time records which have been kept by the supervisors or school board in accordance with § 5822(b) and (c) of this title to determine whether or not an employee was paid from more than 1 tax-funded source for working coincident hours of the day.*



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***Finding Number 3 - The University of Delaware Personnel Policies and Internal Control Policies over Payroll Did Not Comply with the Requirements of the Dual Employment Law - Continued***

**Criteria - Continued:**

The following University of Delaware policies applied to employee political activities during the audit period:

- Through December 1, 2020: University of Delaware Political Activity Policy (Section: Governance, Ethics & General Policies; Policy Name: Political Activity) requires employees that engage in political activities to notify the President of the University in advance. Additionally, unless limited by the employee's Collective Bargaining Agreement, the employee's compensation is to be reduced by 10% if the employee is compensated for holding office.
- Effective December 2, 2020: University of Delaware Political Activity and Lobbying (Section: Governance, Ethics and General Policies; Policy Name: Political Activity and Lobbying; Section III. Policy Standards and Procedures, A. Political Activity, 5.) requires the following:

*Anyone associated with the University who wishes to assume an official position with a campaign (e., treasurer, member of a campaign advisory committee, etc.) or run for or hold political office must:*

- (a) Notify their supervisor, Human Resources, as well as the Office of Government Relations and the Office of Federal Relations in advance;*
- (b) Make it clear that such participation is in their individual capacity by using their personal contact information (personal email, cell phone, and/or home address) for campaign-related correspondence;*
- (c) Request that the campaign make no reference to their position with the University;*
- (d) Must use vacation time for conducting any campaign activities during normal working hours;  
and*
- (e) Ensure that no action should be taken that might implicate the University, as an organization, in Political Activity.*

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***Finding Number 3 - The University of Delaware Personnel Policies and Internal Control Policies over Payroll Did Not Comply with the Requirements of the Dual Employment Law - Continued***

**Cause:** It has been the University of Delaware's position that the requirements of the Dual Employment Law do not apply to the University. This is the first time that the University has submitted to the Office of the Auditor of Accounts' Dual Employment audit.

The University of Delaware Political Activity Policies do not comply with the Dual Employment Law.

**Effect:** The University of Delaware did not require employees to notify their supervisors of any day the employee missed work due to his or her elected or paid appointed position and have his or her immediate supervisor verify a time record, stating specifically the number of hours worked that day. Such verification is to take place at least once every pay period and kept by the supervisor until required by the State Auditor to comply with the requirements of the Dual Employment Law.

**Recommendation:** We recommend that the University of Delaware review its personnel policies and internal controls and implement policies for dually employed officials to ensure that coincident time is properly documented and verified, and that salaries are prorated or reduced as required by the Dual Employment Law. We also recommend that the University work with the Office of the Auditor of Accounts and the Public Integrity Commission to develop such policies.

**View of Responsible District Officials and Planned Corrective Actions:** Refer to Management Response section.

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***Finding Number 4 - Dually Employed University of Delaware Employee Identified with Potentially Coincident Time***

**Condition:** Our testing of 16 University of Delaware employees revealed two employees with potentially coincident time (between their positions with the University and with the State). The University did not provide sufficient official records to allow us to verify whether or not the employees incurred coincident time, as defined by the Dual Employment Law.

We found that only one of the two employees with potentially coincident time reduced their salary 10% as required by University Policy effective until December 1, 2020.

**Context:** The University's Personnel Policies define a full-time faculty member as an individual who has 12 credit contact hours or 18 teaching contact hours per semester without regard to the actual hours worked by the employee. The University does not require employees to maintain time sheets. The following summarizes the facts and circumstances of the two dual employed individuals identified:

- The University did not provide detailed supporting documentation or relevant agreements to allow us to make a determination of whether one employee worked coincident hours at their two State-funded (or partly State-funded) positions. And, if it was the case that coincident hours were worked, documentation was, likewise, not provided to allow us to make a determination of whether hours and compensation were appropriately adjusted in accordance with the Dual Employment Law and the University's Political Activity Policy during the period of July 1, 2019 through June 30, 2022.

The University asserted that the employee's responsibilities were adjusted throughout the year to accommodate their elected responsibilities; however, sufficient supporting documentation was not provided to corroborate this assertion. This employee's elected position is scheduled to attend at least 168 hours\* of general assembly sessions plus other meetings each year.

- The other employee entered into an agreement with the University to reduce their compensation by 10% or approximately 208 hours as required by University Policy. The employee's elected position required attendance at General Assembly sessions and committee meetings that were scheduled to take between 168 and 336 hours per year. No supporting records were provided to corroborate the University's assertion that the employee's salary was appropriately reduced for coincident hours.

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***Finding Number 4 - Dually Employed University of Delaware Employee Identified with Potentially Coincident Time - Continued***

**Criteria:** The University of Delaware must adhere to the requirements of 29 Del. C., §5822 (Dual Employment Law).

- Per 29 Del. C., §5822. Policy.:
  - (a) *Any person employed by the State, or by any political subdivision of the State, including but not limited to any county, city or municipality, who also serves in an elected or paid appointed position in state government or in the government of any political subdivision of the State, including but not limited to any county, city or municipality, shall have his or her pay reduced on a prorated basis for any hours or days missed during the course of the employee's normal workday or during the course of the employee's normal workweek while serving in an elected or paid appointed position which requires the employee to miss any time which is normally required of other employees in the same or similar positions.*
  - (b) *Any day an employee misses work due to his or her elected or paid appointed position, he or she shall have his or her immediate supervisor verify a time record stating specifically the number of hours worked that day; said verification to take place at least once every pay period.*
  - (c) *All time records, so verified, shall be kept by the immediate supervisor until such time as they are required by the State Auditor.*
  - (d) *No employee shall be permitted to make up time during hours other than the normal workday for purposes of compensation. A normal workday is defined by Merit Rule 5.0200. A standard work schedule is defined by Merit Rule 5.0210.*
  - (e) *Any hours or days during which an employee uses vacation, personal, or compensatory days to which he or she is entitled shall not constitute hours or days which fall within the scope of this subchapter.*

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***Finding Number 4 - Dually Employed University of Delaware Employee Identified with Potentially Coincident Time - Continued***

**Criteria - Continued:**

The following University of Delaware policies applied to employee political activities during the audit period:

- Through December 1, 2020: University of Delaware Political Activity Policy (Section: Governance, Ethics & General Policies; Policy Name: Political Activity) requires employees that engage in political activities to notify the President of the University in advance. Additionally, unless limited by the employee's Collective Bargaining Agreement, the employee's compensation is to be reduced by 10% if the employee is compensated for holding office.
- Effective December 2, 2020: University of Delaware Political Activity and Lobbying (Section: Governance, Ethic and General Policies; Policy Name: Political Activity and Lobbying; Section III. Policy Standards and Procedures, A. Political Activity, 5.) requires the following:

*Anyone associated with the University who wishes to assume an official position with a campaign (e., treasurer, member of a campaign advisory committee, etc.) or run for or hold political office must:*

- (f) Notify their supervisor, Human Resources, as well as the Office of Government Relations and the Office of Federal Relations in advance;*
- (g) Make it clear that such participation is in their individual capacity by using their personal contact information (personal email, cell phone, and/or home address) for campaign-related correspondence;*
- (h) Request that the campaign make no reference to their position with the University;*
- (i) Must use vacation time for conducting any campaign activities during normal working hours; and*
- (j) Ensure that no action should be taken that might implicate the University, as an organization, in Political Activity.*

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***Finding Number 4 - Dually Employed University of Delaware Employee Identified with Potentially Coincident Time - Continued***

**Criteria - Continued:**

Best practices require that organizations identify significant operational and accounting policies, especially those related to compliance with laws and regulations, and to formally document policies in manner that ensures the policies are understood and communicated to all personnel.

**Cause:** The University of Delaware did not follow the Dual Employment Law because it has previously been the University's position that the requirements of the Dual Employment Law did not apply to the University.

The University of Delaware also did not follow its internal policies (noted above) regarding political activities. The University of Delaware did not provide any support to indicate an exception to its policies was approved.

**Effect:** The University of Delaware did not require employees to document the notification of their supervisors of any the employee missed work due to his or her elected or appointed position and have his or her immediate supervisor review and verify a time record stating specifically the number of hours worked that day. Such verification is to take place at least once every pay period and kept by the supervisor until required by the State Auditor to comply with the requirements of the Dual Employment Law.

**Recommendation:** We recommend that the University of Delaware review its personnel policies and internal controls and implement policies specifically for dually employed officials, to ensure that coincident time is properly documented and verified, and that salaries are prorated or reduced as required by the Dual Employment Law. We also recommend that the University work with the Office of the Auditor of Accounts and the Public Integrity Commission to develop such policies.

**View of Responsible District Officials and Planned Corrective Actions:** Refer to Management Response section.

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***MANAGEMENT’S RESPONSE & CORRECTIVE ACTION***



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*Via electronic mail*

September 6, 2024

Re: Management’s Response to Draft Report of Audit Findings Nos. 3 and 4  
– University of Delaware

Dear Auditor York,

I write on behalf of the University of Delaware regarding the 2019 – 2022 Dual Employment Audit being performed by Belfint, Lyons & Shuman at your direction. Thank you for providing a draft copy of the Report of Audit (“Report”) and meeting with University representatives on August 27. This letter in its entirety constitutes Management’s Response and should be included in full in the final Report.

**Executive Summary**

This letter responds to the draft Dual Employment Audit by the Auditor of Accounts. To be clear: The University of Delaware is not subject to the Dual Employment Law, and the audit findings as to it are improper and misplaced. As provided in 29 *Del. C.* § 5822, the Dual Employment Law applies only to a State agency or its subdivisions. The Auditor’s Office has agreed in the past in writing, and again in a recent meeting, that the University is not a State agency. At that same meeting, the Auditor’s Office also conceded that Finding 4 was inappropriate. However, that finding was included in the final Report.

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Unlike audits required by law and consistent with the University’s Charter, no scope of audit, agreed procedures, or MOU was presented by the Auditor’s Office. Nor did the University agree to cooperate, other than to provide readily-available information. Most importantly, the Report assumes, without legal analysis, that the University is subject to this Dual Employment Law. Not so. By its own terms, the statute does not apply to the University. Moreover, the University’s Charter prohibits such an audit.

The Auditor’s Office has ignored our several requests for a written response to these points, and instead demanded a prompt response from the University so the Auditor’s Office could release this report on its own accelerated timeline.

**Analysis**

As stated at our August 27, 2024 meeting, the University disagrees with the legal analysis underlying Findings Nos. 3 and 4 (“Findings”). While we heard from your outside audit firm, it is reasonable to expect that the legal conclusions which underpin the Findings (or any audit for that matter) would be provided by legal counsel rather than CPAs. In any event, those legal conclusions are incorrect.

The central theme – and singular error – of the Findings is the assumption that the University must comply with the Dual Employment Law, *29 Del. C. § 5822*, which imposes certain salary limitations on State employees who also serve as elected or appointed State officials. By its own terms, the Dual Employment Law does not apply to the University and its employees. Moreover, the University’s Charter precludes its application to the University.

**The Dual Employment Law does not apply to the University.** As noted in the Findings, the Dual Employment Law applies to “[a]ny person employed by the State, or by any political subdivision of the State ... who also serves in an elected or paid appointed position in state government.” *See, § 5822(a)*. The University is not “the State,” and our courts have held that the University is not a “political subdivision of the State.” *See Delaware Building & Construction Trades Council, AFL-CIO v. The University of Delaware, et. al.*, 2016 WL 3703113 (Del. Super. Ct. July 1, 2016) (the University is not a “subdivision of the State” for purposes of another part of Title 29, the Prevailing Wage Law).

Nor does the University meet the Dual Employment Law’s definition of “State Agency:” “any office, department, board, commission, committee, court, school



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district, board of education and all public bodies existing by virtue of an act of the General Assembly or of the Constitution of the State... .” Note the absence of the word “university” in that lengthy definition that expressly includes other educational entities. And, while the University’s Charter was an “act of the General Assembly,” so too were all corporations established at that time. That legislative act did not create a “public body.” If the University were a “public body,” it would not have been necessary for Delaware’s FOIA to declare that the University is a public body only with respect to meetings of the full Board or records reflecting how the University spends that portion of its budget funded with State appropriations. *See, 29 Del. C. § 10002(l).*

Other portions of Title 29 also exclude the University from definitions of “State Agency.” *See, 29 Del. C. § 6902(1):* “Agency” shall include Delaware Technical and Community College and the Delaware State University ***but shall not include ... the University of Delaware ...***” (Emphasis added). Indeed, your Office has previously recognized that the University is not a “State Agency” under Title 29. On March 2, 2020, your Office entered into a Memorandum of Understanding with the University which provides, among other things, that the “University is not a state agency under the definition in *29 Del. C. § 6902(1) ...*”

**The application of the Dual Employment Law to the University would violate its Charter.** Delaware’s courts disfavor interpretations of one statute that creates conflict with another. *Turnbull v. Fink, 668 A.2d 1370, 1377 (Del. 1995)* (“Where possible, a court will attempt to harmonize two potentially conflicting statutes dealing with the same subject.”).

Although the University’s Charter is different from other statutes appearing in our Delaware Code,<sup>1</sup> this fundamental rule of statutory interpretation nevertheless applies. Therefore, the Dual Employment Law may not be interpreted in a way that collides with the University’s Charter. The Charter provides:

Notwithstanding any provisions appearing elsewhere in the laws of this State which might suggest or provide the contrary, the entire control and management of the affairs of the University, which is conferred upon the Board of Trustees by the foregoing paragraph, shall

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<sup>1</sup> The University’s Charter constitutes a contract between the University’s Trustees and the State. As such, the United States Constitution prohibits amendments to the Charter without the University’s consent. *See, Trustees of Dartmouth College v. Woodward, 17 U.S. 518 (1819).*

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be construed, in the area of fiscal and revenue matters, as including, but not as being limited to, the following powers and duties:

...

All authority with respect to salaries and compensatory payments or benefits, as well as other terms of employment, of any and all University personnel, and individual salaries or salary increases or other benefits do not have to be reported or justified to any official or agency of the State ... . *University Charter, § 5106(b)(1)*.

The restrictions imposed, and inquiries required, by the Dual Employment Law directly conflict with this Charter provision, and any interpretation of the law that seeks to apply it to the University is incorrect and inconsistent with the General Assembly’s grant of authority to the Trustees as expressed by the Charter.

Moreover, the Charter provides that the State Auditor may not:

audit, question or inquire into the receipt, handling or expenditure of any funds coming to the University from any source other than a state appropriation ... . *University Charter, § 5109*.

The Findings make no mention of State appropriated funds, and even if they did, the reach of § 5109 of the University Charter would limit the scope of any audit to the mere notation that there were University employees paid with State funds. The limited authority given to the Auditor under this provision does not include the power to investigate compliance with laws that do not apply to the University.

**The University Policy is not a matter for enforcement by State Officials.** As one might expect, given the involvement of University personnel in Delaware’s civic affairs, University employees occasionally seek elected office. The University neither encourages nor discourages that activity. As the Findings point out, the University has, over the years, fashioned a policy dealing with such activity. That policy has been amended from time to time and the continuing development and application of that policy is a matter of importance to the University. However, with all due respect, the University suggests that the policy’s enforcement is a matter for the University rather than the State.

The recommendation included in the Findings suggest that “the University work with the Office of Auditor of Accounts and the Public Integrity Commission to develop such policies” as are suggested in the Report. With respect, the University declines to accept that recommendation as it is based on a false legal

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premise. Instead, the University will continue to give due consideration to issues arising when its faculty and other employees seek and hold public office – not because such consideration is required by State law, but rather because the issues associated with the holding of public office by University employees are important and complex.

In closing, we ask that the Findings be removed from the Report as they are based on erroneous legal conclusions and presume to report on matters outside the reach of the State Auditor, namely investigating compliance with laws that do not apply to the University and assessing the University's enforcement of its own policies. In the event the Findings remain in the Report, the University must advise all interested parties that, contrary to the Report's improper application of Delaware Law, the Dual Employment Law does not apply to the University.

Respectfully submitted,



Daniela Ivancikova

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This performance audit is conducted in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States. *Government Auditing Standards* Paragraph 9.52 (below), requires auditors to respond to the auditee's response, when there is a disagreement.

*“When the audited entity’s comments are inconsistent or in conflict with the findings, conclusions, or recommendations in the draft report, the auditors should evaluate the validity of the audited entity’s comments. If the auditors disagree with the comments, they should explain in the report their reasons for disagreement.”*

We have several disagreements with the University’s response. The following are our replies to the points made in the University’s response.

1. The first paragraph of the Analysis section of the University’s response states the following:

*“As stated at our August 27, 2024 meeting, the University disagrees with the legal analysis underlying Findings Nos. 3 and 4 (“Findings”). While we heard from your outside audit firm, it is reasonable to expect that the legal conclusions which underpin the Findings (or any audit for that matter) would be provided by legal counsel rather than CPAs. In any event, those legal conclusions are incorrect.”*

We must express in the strongest terms that Belfint, Lyons & Shuman, PA has not provided any legal services, analysis, or conclusions as part of this Performance Audit. Our report provides the background of the Dual Employment law; however, **this portion of our report is not and should not be construed as legal analysis or conclusions.**

BLS relied upon direction provided by the Auditor’s office. The Auditor’s office has indicated the basis for its directions included the opinion issued to the State Auditor by the State of Delaware Attorney General on February 8, 2008. This legal opinion indicated the University of Delaware’s State-funded salaries are subject to audit as required by 29 Del. C. § 5822.

2. In the Executive Summary, there are several statements with which we disagree:

- a. *“The University of Delaware is not subject to the Dual Employment Law, and the audit findings as to it are improper and misplaced. As provided in 29 Del. C. § 5822, the Dual Employment Law applies only to a State agency or its subdivisions.”*



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Delaware Attorney General’s Office issued an opinion on February 21, 2008, in response to the then-State Auditor’s request for an opinion on the Applicability of Dual Employment Statute to University of Delaware Employees. The opinion states, in part:

*“While it is an issue of first impression, we conclude for the reasons that follow that employees of the University are employees of the State subject to the Compensation Policy.*

*The University’s statutory origin and these other factors convince us that the University falls squarely within the broad definition of ‘State agency’ in Chapter 58: it is a ‘public bod[y] existing by virtue of an act of the General Assembly.’ Accordingly, University employees are employees of the state subject to the Compensation Policy.*

*“This conclusion is further supported by the decisions of the Delaware Courts addressing whether the University is a State agency. The cases reveal that the University is a hybrid entity and its status as a State agency is not clearly defined but rather is dependent on the context of the statutory analysis. In other words, the University may be a State agency for certain purposes and not for others.”*

The University should review a copy of the February 8, 2008, Attorney General’s opinion which includes all the citations used to reach this conclusion, from the Auditor of Accounts.

b. *“... Auditor’s Office also conceded that Finding 4 was inappropriate.”*

Neither the representatives of the Office of Auditor of Accounts (OAOA) nor the representatives of Belfint Lyons & Shuman (BLS) made such a statement concerning Finding 4.

c. *“Unlike audits required by law and consistent with the University’s Charter, no scope of audit, agreed procedures, or MOU was presented by the Auditor’s Office.”*

The University’s response is the first time this concern has been raised. During this audit, which is required by the State Code and also confirmed by the Attorney General’s opinion dated February 8, 2008, BLS and OAOA have had many in-person, e-mail and telephone communications with the University. During

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these numerous contacts with senior members of the University’s administration, the University did not request a written audit plan or MOU prior to the release of the requested information. The following list summarizes our key meetings and communications with the University.

- On July 25, 2022, BLS contacted University of Delaware’s Vice President and Chief Human Resources Officer by e-mail to inform the University that that BLS was engaged by OAOA to audit compliance with Code Title 29 §5822 and requesting manuals, payroll reports, timesheets, etc. for the audit. (The University did not agree to provide the requested materials.)
  - On May 24, 2023, BLS and OAOA met with representatives of the University at Hullihen Hall to discuss starting on the audit.
  - On May 25, 2023, BLS sent a document request to the University’s Assistant Vice President, Chief of Internal Audit, requesting manuals, payroll reports, timesheets for selected employees, etc. (Same as request made July 25, 2022). No response was received.
  - On February 1, 2024, BLS received a telephone call from the University’s Government and Community Relations Department. At their request, BLS explained the purpose, scope, methodology and timing of the audit. BLS also explained that it had drafted a finding, reporting that the University had refused to cooperate with BLS’ previous document requests. After this call, the University partially complied with BLS’ requests and began to cooperate with the audit.
- d. *“The Auditor’s Office has ignored our several requests for a written response to these points, and instead demanded a prompt response from the University so the Auditor’s Office could release this report on its own accelerated timeline.”*

As of February 2024, a complete draft of the report was submitted to OAOA for review. The report’s issuance was delayed to provide the University an opportunity to comply with our audit requests.

We note that these requests for a “prompt response” and “accelerated timeline” occurred 25 months after OAOA and BLS first requested documentation to perform this audit, seven months after the University agreed to cooperate and 24 days after the draft findings were provided for the University’s review.

**STATE OF DELAWARE**  
**SCHEDULE OF FINDINGS AND RECOMMENDATIONS; MANAGEMENT’S RESPONSES AND**  
**CORRECTIVE ACTION - CONTINUED**  
**JUNE 30, 2022**

***ORGANIZATION - UNIVERSITY OF DELAWARE***  
***BELFINT, LYONS & SHUMAN PA’S RESPONSE TO***  
***MANAGEMENT’S RESPONSE & CORRECTIVE ACTION - CONTINUED***

3. The Analysis section of the University’s response, on page 4, states:

*“Moreover, the Charter provides that the State Auditor may not: audit, question or inquire into the receipt, handling or expenditure of any funds coming to the University from **any source other than a state appropriation** ... . University Charter, § 5109” (emphasis added).*

From the beginning of our audit, we have been very clear that the scope of the audit included only salaries paid from State of Delaware appropriations in accordance with the February 8, 2008, Attorney General’s opinion which states:

*“Section 5109 expressly grants the State Auditor the authority to audit the University’s ‘receipt, handling or expenditure’ of State appropriations. Significantly, there appears to be no restriction on that authority relative to funds appropriated for employees’ salaries and the legislatively-designated use of those funds.”*

Our requests to the University only included employees whose compensation was funded (partly or completely) by State of Delaware appropriations. Further, the University’s responses only included information on compensation paid from State of Delaware appropriations.

**STATE OF DELAWARE**  
**SCHEDULE OF FINDINGS AND RECOMMENDATIONS; MANAGEMENT'S RESPONSES AND**  
**CORRECTIVE ACTION - CONTINUED**  
**JUNE 30, 2022**

***ORGANIZATION - CITY OF DOVER***  
***FINDINGS***

***Finding Number 5 - The City of Dover's Personnel Policies and Internal Control Policies over Payroll Did Not Comply with the Requirements of the Dual Employment Law***

**Condition:** We identified the following conditions as a result of our procedures:

- Although the City of Dover's Personnel Policy Manual includes a policy on outside employment, the policy does not include provisions for dually-employed persons subject to the requirements of the Dual Employment Law.
- The City of Dover does not have a policy over dually employed payroll that requires coincident time to be documented, verified, and prorated or reduced as required by the Dual Employment Law.
- We identified 33 instances where General Assembly records indicated that the Dover Official was present at voting roll calls held during legislative sessions or was present at roll calls at the commencement of committee meetings that occurred during the employee's workweek. The City of Dover did not maintain timekeeping records, documenting hours the Official worked during the workday and workweek.

**Criteria:** The City of Dover must adhere to the requirements of 29 Del. C., §5822 (Dual Employment Law) because it is a political subdivision of the State of Delaware.

Sound internal controls require organizations to ensure compliance with laws and regulations with appropriate policies and procedures. Such policies and procedures should be formally documented and communicated to all affected personnel.

**Cause:** The conditions above were caused by the following:

- The City of Dover's Personnel Policy (Employee Handbook), updated June 2018, does not include provisions for dually employed Officials subject to the requirements of the Dual Employment Law.
- The City of Dover has not implemented internal controls over payroll that include procedures for the documentation, verification, and reduction of coincident time in the dually employed Official's payroll.
- The appointed Dover Official is considered an exempt employee, and the City of Dover does not require timecards for its exempt employees.



**STATE OF DELAWARE**  
**SCHEDULE OF FINDINGS AND RECOMMENDATIONS; MANAGEMENT'S RESPONSES AND**  
**CORRECTIVE ACTION - CONTINUED**  
**JUNE 30, 2022**

***ORGANIZATION - CITY OF DOVER***  
***FINDINGS - CONTINUED***

***Finding Number 5 - The City of Dover's Personnel Policies and Internal Control Policies over Payroll Did Not Comply with the Requirements of the Dual Employment Law - Continued***

**Effect:** The conditions above have the following effect:

- By not implementing and formally documenting the requirements of the Dual Employment Law in personnel policies and internal controls over payroll, the City of Dover increases its risk that employees and their supervisors may be unaware of the requirements and that the City will not comply with the requirements.
- The City of Dover was not in compliance with the requirements of the Dual Employment Law.
- Because timekeeping records were not prepared by the covered Organization for the dually employed Official, it could not be determined if the Official's pay had been properly prorated or reduced by the City of Dover for coincident time.

**Recommendation:** We recommend that the City of Dover implement personnel policies and internal controls required by 29 Del. C., §5822 (Dual Employment Law) to ensure that coincident time is properly documented, verified, and prorated or reduced.

**View of Responsible District Officials and Planned Corrective Actions:** Refer to Management Response section.

**STATE OF DELAWARE**  
**SCHEDULE OF FINDINGS AND RECOMMENDATIONS; MANAGEMENT'S RESPONSES AND**  
**CORRECTIVE ACTION - CONTINUED**  
**JUNE 30, 2022**

***ORGANIZATION - CITY OF DOVER***  
***MANAGEMENT'S RESPONSE & CORRECTIVE ACTION***



July 25<sup>th</sup>, 2024

This letter serves as a formal response to the findings of the audit. I acknowledge that the City of Dover does not have an internal policy regarding the proper handling of dual employment law and procedure. We plan to take immediate action to create an internal policy while ensuring that we comply with the law.

If you have any further questions or concerns, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "H. Naomi Poole".

H. Naomi Poole, MMHR

HRD for the City of Dover

City of Dover  
P.O. Box 475  
Dover, Delaware 19903

**STATE OF DELAWARE**  
**SCHEDULE OF FINDINGS AND RECOMMENDATIONS; MANAGEMENT’S RESPONSES AND**  
**CORRECTIVE ACTION - CONTINUED**  
**JUNE 30, 2022**

***ORGANIZATION - DELAWARE STATE UNIVERSITY***  
***FINDINGS***

***Finding Number 6 - Delaware State University’s Personnel Policies and Internal Controls over Payroll Did Not Comply with the Requirements of the Dual Employment Law***

**Condition:** We identified the following conditions as a result of our procedures:

- Although the Delaware State University’s Employee Handbook includes a policy on outside employment, the policy does not include provisions for dually employed Officials subject to the requirements of the Dual Employment Law.
- Delaware State University does not have a payroll policy that requires coincident time to be documented, verified, and prorated or reduced as required by the Dual Employment Law.

**Criteria:** Delaware State University must adhere to the requirements of 29 Del. C., §5822 (Dual Employment Law) because it is an agency of the State of Delaware.

Delaware State University’s financial and payroll transactions are processed through the State’s accounting system and payroll system and are subject to the requirements of the BAM. Chapter 14 Payroll Compliance, Section 14.2.1 Controls of the BAM requires the following:

*“Organizations are required to maintain and enforce effective internal controls to monitor payroll related transactions. These internal controls must be documented in a Payroll Internal Controls Plan. Controls must include, but are not limited to, the review and approval of all wage payments, preapproval of overtime, docking and leave usage for employees.”*

These effective internal controls should include controls addressing the Dual Employment Law

**Cause:** The conditions above were caused by the following:

- Delaware State University’s Employee Handbook, revised November 2018, does not address for dually-employed Officials subject to the requirements of the Dual Employment Law.
- Delaware State University has not implemented internal controls over payroll that include procedures for the documentation, verification, and reduction of coincident time in dually employed Official’s pay in accordance with the Dual Employment Law.

**STATE OF DELAWARE**  
**SCHEDULE OF FINDINGS AND RECOMMENDATIONS; MANAGEMENT'S RESPONSES AND**  
**CORRECTIVE ACTION - CONTINUED**  
**JUNE 30, 2022**

***ORGANIZATION - DELAWARE STATE UNIVERSITY***  
***FINDINGS - CONTINUED***

***Finding Number 6 - Delaware State University's Personnel Policies and Internal Controls over Payroll Did Not Comply with the Requirements of the Dual Employment Law - Continued***

**Effect:** By not implementing and formally documenting the requirements of the Dual Employment Law in personnel policies and internal controls over payroll, Delaware State University increases its risk that employees and their supervisors may be unaware of the requirements and that the University will not be in compliance with the requirements.

**Recommendation:** We recommend that Delaware State University implement personnel policies and internal controls required by 29 Del. C., §5822 (Dual Employment Law) to ensure that coincident time is properly documented, verified, and prorated or reduced.

**View of Responsible District Officials and Planned Corrective Actions:** Refer to Management Response section.

**STATE OF DELAWARE**  
**SCHEDULE OF FINDINGS AND RECOMMENDATIONS; MANAGEMENT'S RESPONSES AND**  
**CORRECTIVE ACTION - CONTINUED**  
**JUNE 30, 2022**

**ORGANIZATION - DELAWARE STATE UNIVERSITY FINDINGS**  
**MANAGEMENT'S RESPONSE & CORRECTIVE ACTION**



**DELAWARE STATE UNIVERSITY**

OFFICE OF THE EXECUTIVE VICE PRESIDENT

September 6, 2024

**Management Response and Corrective Action**

**Dual Employment Performance Audit – FY 2019 – FY 2022**

Delaware State University did not have a policy regarding Dual Employment during the audit period. Delaware State University has adopted a policy that complies with 29 Del. C. §5822 effective August 31, 2024.

Submitted,

A handwritten signature in black ink, appearing to read "Irene C. Hawkins".

Irene Chapman-Hawkins Ed.D.  
Executive Vice President  
Delaware State University

**STATE OF DELAWARE**  
**SCHEDULE OF FINDINGS AND RECOMMENDATIONS; MANAGEMENT'S RESPONSES AND**  
**CORRECTIVE ACTION - CONTINUED**  
**JUNE 30, 2022**

***ORGANIZATION - EASTSIDE CHARTER SCHOOL***  
***FINDINGS***

***Finding Number 7 - Eastside Charter School's Personnel Policies and Internal Controls Over Payroll Did Not Comply with the Requirements of the Dual Employment Law and Payroll Was Not Properly Reduced for Hours the Official Spent Serving in an Elected Position Coincident with their Workday.***

**Condition:** We identified the following conditions as a result of our procedures:

- Eastside Charter School's Personnel Policy Manual does not include provisions for dually employed Officials subject to the requirements of the Dual Employment Law.
- Eastside Charter's School internal controls over payroll do not include procedures that document coincident time in the manner required by the Dual Employment Law. We found that Eastside Charter School's timekeeping records for the dually employed Official do not include the total number of hours worked for each day when there is coincident time and that the records are not formally verified by the dually employed Official's supervisor each pay period.
- Although Eastside Charter School reduced the Official's payroll in some instances during the period from November 4, 2020 (assumption of office) through June 30, 2022, it did not accurately prorate or reduce their payroll in all the applicable instances, during the period. Of the 21 committee hearing dates and times sampled, we identified 6 instances where hours the Official spent serving in their elected position during their workday, were not properly captured in their bi-weekly payroll, per Eastside Charter's School's timekeeping records.
- The dually employed Official is employed as a teacher with Eastside Charter School. Per 14 Del. C., §1317, teachers are considered 10-month contract employees and have the option of being paid bi-weekly payments during the contract or annual period. The Official elected to be paid bi-weekly during the annual period. In the six instances we identified, where hours the Official spent serving in their elected position during their workday were reduced, the Official's pay was reduced, incorrectly, at the rate of pay determined by the 12-month period rather than at the rate of earnings for the 10-month period. In all pays that were reduced for coincident time, including those where the hours reduced were correctly reduced, the rate was incorrect. The hourly difference between the 12-month rate of pay and the 10-month rate of earnings ranged from \$2.90 and \$3.15 per hour during the audit period.

**Criteria:** Eastside Charter School must adhere to the requirements of 29 Del. C., §5822 (Dual Employment Law) because it is an agency of the State of Delaware.

**STATE OF DELAWARE**  
**SCHEDULE OF FINDINGS AND RECOMMENDATIONS; MANAGEMENT’S RESPONSES AND**  
**CORRECTIVE ACTION - CONTINUED**  
**JUNE 30, 2022**

***ORGANIZATION - EASTSIDE CHARTER SCHOOL***  
***FINDINGS - CONTINUED***

***Finding Number 7 - Eastside Charter School’s Personnel Policies and Internal Controls Over Payroll Did Not Comply with the Requirements of the Dual Employment Law and Payroll Was Not Properly Reduced for Hours the Official Spent Serving in an Elected Position Coincident with their Workday - Continued***

**Criteria - Continued:**

Eastside Charter School’s financial and payroll transactions are processed through the State’s accounting system and payroll system and are subject to the requirements of the BAM. Chapter 14 Payroll Compliance, Section 14.2.1 Controls of the BAM requires the following:

*“Organizations are required to maintain and enforce effective internal controls to monitor Payroll related transactions. These internal controls must be documented in a Payroll Internal Controls Plan. Controls must include, but are not limited to, the review and approval of all wage payments, preapproval of overtime docking and leave usage for employees.”*

**Cause:** The conditions above were caused by the following:

- Eastside Charter School’s Personnel Policy Manual, as of August 2023, does not include provisions for dually employed Officials subject to the requirements of the Dual Employment Law.
- Eastside Charter’s School’s internal controls over dually employed payroll do not have sufficient preparation and review procedures over hours worked by the dually employed Official.
- Eastside Charter School records coincident time for the dually employed Official in Outlook Calendar Appointments and a Google Sheets Spreadsheet. Although the Supervisor maintains the records of coincident time, there is no formal verification by the Supervisor or record of the actual hours worked by the Official.
- Eastside Charter School reduced the Official’s pay for coincident time at the rate of pay determined by the 12-month payment period rather than at the rate of earnings for the 10-month period.

**STATE OF DELAWARE**  
**SCHEDULE OF FINDINGS AND RECOMMENDATIONS; MANAGEMENT’S RESPONSES AND**  
**CORRECTIVE ACTION - CONTINUED**  
**JUNE 30, 2022**

***ORGANIZATION - EASTSIDE CHARTER SCHOOL***  
***FINDINGS - CONTINUED***

***Finding Number 7 - Eastside Charter School’s Personnel Policies and Internal Controls Over Payroll Did Not Comply with the Requirements of the Dual Employment Law and Payroll Was Not Properly Reduced for Hours the Official Spent Serving in an Elected Position Coincident with their Workday - Continued***

**Effect:** The conditions above have the following effect:

- By not implementing and formally documenting the requirements of the Dual Employment Law in personnel policies and internal controls over payroll, Eastside Charter School increases its risk that employees and their supervisors may be unaware of the requirements and that the Charter School will not in compliance with the requirements.
- Eastside Charter School was not in compliance with the requirements of the Dual Employment Law. By not properly documenting and verifying hours worked by the dually employed Official, coincident hours were not properly captured in the bi-weekly payroll resulting in the Official being paid from more than one tax-funded source for coincident hours of the workweek.
- In the instances where pay was reduced for coincident time during the workweek, the wrong rate was used, resulting in the Official’s pay being reduced by less than the correct amount.

**Recommendation:** We recommend Eastside Charter School implement the following:

- Review its personnel policies and internal controls and implement policies for dually employed Officials to ensure that coincident time is properly documented, verified, and prorated or reduced as required by the Dual Employment Law.
- Review its internal controls over dually employed payroll to ensure that hours of unpaid leave per employee payroll agree to employee timekeeping records and are reduced at the proper rate.

**View of Responsible District Officials and Planned Corrective Actions:** Refer to Management Response section.



**STATE OF DELAWARE**  
**SCHEDULE OF FINDINGS AND RECOMMENDATIONS; MANAGEMENT'S RESPONSES AND**  
**CORRECTIVE ACTION - CONTINUED**  
**JUNE 30, 2022**

***ORGANIZATION - EASTSIDE CHARTER SCHOOL FINDINGS***  
***MANAGEMENT'S RESPONSE & CORRECTIVE ACTION***



August 19, 2024

kindergarten - college - career

**Dual Employment Audit FY20-22 Response and Correction Action Plan**

Eastside Charter has reviewed the FY20-22 audit and will implement the following changes to our policies based on the findings.

- Review its personnel policies and internal controls and implement policies for dually employed Officials to ensure that coincident time is properly documented, verified, and prorated or reduced as required by the Dual Employment Law.
- Review its internal controls over dually employed payroll to ensure that hours of unpaid leave per employee payroll agree to employee timekeeping records and are reduced at the proper rate.
- Update timesheets and policies for dually employed officials

Please contact the Director of HR/Operations, Maureen Thomas at 302-518-3579 or [Maureen.thomas@escs.k12.de.us](mailto:Maureen.thomas@escs.k12.de.us) with any further questions.

Maureen Thomas

Director of HR/Operations  
Eastside Charter School

**STATE OF DELAWARE**  
**SCHEDULE OF FINDINGS AND RECOMMENDATIONS; MANAGEMENT’S RESPONSES AND**  
**CORRECTIVE ACTION - CONTINUED**  
**JUNE 30, 2022**

***ORGANIZATION - DELAWARE TECHNICAL COMMUNITY COLLEGE***  
***FINDINGS***

***Finding Number 8 - Delaware Technical Community College Payroll Was Not Properly Documented, Verified, or Reduced for Hours the Official Spent Serving in an Elected Position Coincident with their Workday.***

**Condition:** We found Delaware Technical Community College’s (the “College”) controls over the documentation, verification, and reduction of dually employed payroll are not operating in the manner consistent with the way the College’s policies were designed and did not capture and properly prorate or reduce incidents of coincident time. We found the following:

- We found an Official employed, full-time, by the College received compensation for coincident time. Of the 141 sessions and committee meetings selected for testing, where pay was required to be reduced for coincident time, we found the following:
  - 27 instances where General Assembly roll call records indicated the Official was present at roll calls for session voting or at roll calls at the commencement of committee meetings, for which the employee was paid for regular time at the College. Documentation prepared by the Official and the College was insufficient to determine the number of coincident hours paid.
  - Eight timecards selected for testing were unavailable. During these eight pay periods, there were 25 sessions or committee meetings of which the Official was a member. Documentation prepared by the Official and the College was insufficient to determine the number of coincident hours paid.
  - Five timecards, which included 13 instances of coincident time, lacked evidence of the supervisor’s verification.

**STATE OF DELAWARE**  
**SCHEDULE OF FINDINGS AND RECOMMENDATIONS; MANAGEMENT’S RESPONSES AND**  
**CORRECTIVE ACTION - CONTINUED**  
**JUNE 30, 2022**

***ORGANIZATION - DELAWARE TECHNICAL COMMUNITY COLLEGE***  
***FINDINGS - CONTINUED***

***Finding Number 8 - Delaware Technical Community College Payroll Was Not Properly Documented, Verified, or Reduced for Hours the Official Spent Serving in an Elected Position Coincident with their Workday - Continued***

**Condition - Continued:**

- We found another Official, employed part-time, by the College also received compensation for coincident time. Of the 75 sessions and committee meetings selected for testing for the part-time employed Official, where pay was required to be reduced for coincident time occurrences, we found the following:
  - There were three instances where General Assembly records indicated the Official was present at roll call at the commencement of committee meetings and where coincident time was recorded on the employee’s timecard and for which the employee was paid for regular time at the College.

**Criteria:** Delaware Technical Community College must adhere to the requirements of 29 Del. C., §5822 (Dual Employment Law) because it is an agency of the State of Delaware.

Delaware Technical Community College’s financial and payroll transactions are processed through the State’s accounting system and payroll system and are subject to the requirements of the BAM. Chapter 14 Payroll Compliance, Section 14.2.1 Controls of the BAM requires the following:

*“Organizations are required to maintain and enforce effective internal controls to monitor payroll related transactions. These internal controls must be documented in a Payroll Internal Controls Plan. Controls must include, but are not limited to, the review and approval of all wage payments, preapproval of overtime, docking and leave usage for employees.”*

**Cause:** The conditions above were caused by the following:

- Contemporaneous documentation of hours for certain dates and evidence of the Supervisor’s verification for certain dates was not maintained by the Human Resources Department. Evidence of electronic verifications by the Supervisor was also not maintained for certain dates.

**STATE OF DELAWARE**  
**SCHEDULE OF FINDINGS AND RECOMMENDATIONS; MANAGEMENT'S RESPONSES AND**  
**CORRECTIVE ACTION - CONTINUED**  
**JUNE 30, 2022**

***ORGANIZATION - DELAWARE TECHNICAL COMMUNITY COLLEGE***  
***FINDINGS - CONTINUED***

***Finding Number 8 - Delaware Technical Community College Payroll Was Not Properly Documented, Verified, or Reduced for Hours the Official Spent Serving in an Elected Position Coincident with their Workday - Continued***

**Cause - Continued:**

- The accuracy of the hours worked that were recorded on the Official's timecard was not confirmed prior to being submitted to for processing.

**Effect:** The conditions above have the following effect:

- The College did not comply with the requirements of 29 Del. C., §5822. By not verifying the accuracy and completeness of the Official's timecard, the Official was paid from more than one tax-funded source for duties performed during coincident hours of the workday.
- Because timekeeping records were not provided for certain dates for the dually employed Official, employed full time at the College, it could not be determined whether the Official's pay had been properly prorated or reduced by the College for coincident time on these dates.

**Recommendation:** We recommend the following for Delaware Technical Community College:

- Review its preparation and review processes for dually employed Officials to ensure that timekeeping records are properly reviewed for the completeness and accuracy of coincident time, prior to submission to payroll for processing.
- Reviews its internal control procedures over the maintenance of timekeeping records, especially for those of dually employed Officials, to ensure that all timekeeping records are available for audit and that electronic verifications are maintained.

**View of Responsible District Officials and Planned Corrective Actions:** Refer to Management Response section.

**STATE OF DELAWARE**  
**SCHEDULE OF FINDINGS AND RECOMMENDATIONS; MANAGEMENT'S RESPONSES AND**  
**CORRECTIVE ACTION - CONTINUED**  
**JUNE 30, 2022**

**ORGANIZATION - DELAWARE TECHNICAL COMMUNITY COLLEGE FINDINGS**  
**MANAGEMENT'S RESPONSE & CORRECTIVE ACTION**



August 26, 2024

Belfint, Lyons & Shuman P.A  
Delle Donne Corporate Center  
1011 Centre Road, Suite 310  
Wilmington, DE 19805

Dear Belfint, Lyons, & Shuman P.A.,

Thank you for your review and audit concerning Fiscal Year 2020, 2021, and 2022 as it pertains to the Dual Employment of State of Delaware employees. Both previously dually employed officials are no longer College employees, and have since separated from the College.

The College's Human Resources Department will review its preparation and review processes for dually employed Official to ensure that timekeeping records are properly reviewed for completeness and accuracy of coincident of time, prior to submissions to payroll for processing. Furthermore, The College's Human Resources Department will review its internal control procedures over the maintenance of timekeeping records, especially for those of dually employed Officials, to ensure that all timekeeping records are available for audit and that electronic verifications are maintained.

Thank you for your time and attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Jamesha Wilson".

Ms. Tamesha Wilson  
Director of Human Resources, George Campus

Cc: Ms Janis Beach, Vice President for Human Resources, Office of the President

ORLANDO J. GEORGE, JR. CAMPUS

300 North Orange Street, Wilmington, DE 19801 | 302.857.1000 | dtcc.edu

*An Equal Opportunity/Affirmative Action Institution*

**STATE OF DELAWARE**  
**CONCLUSION**  
**JUNE 30, 2022**

Based on the work performed in connection with this performance audit, we concluded the following:

***Identification of Dually Employed Officials and covered Organizations:*** We identified 24 elected and paid appointed Officials dually employed at seven covered Organizations.

***Objective 1:*** Employee handbooks adopted by covered Organizations complied with the policies required by the Dual Employment Law, except for three covered Organizations whose personnel policies did not include the required provisions for dually employed Officials subject to the requirements and one covered Organization whose personnel policies for dually employed Officials did not meet the requirements, as detailed in the *Schedule of Findings and Recommendations*.

***Objective 2:*** Payroll internal controls were designed in accordance with the requirements to identify and document work hours missed by employees that are also elected or paid appointed Officials, except for three covered Organizations that did not have controls over payroll in place in accordance with the requirements, and one covered Organization whose controls were not designed in a manner that complied with the requirements, as detailed in the *Schedule of Findings and Recommendations*.

***Objective 3:*** Payroll internal controls operated as designed at two of the covered Organizations. We found that four of the covered Organizations did not properly verify and prorate or reduce payroll for coincident time.