



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF INSPECTOR GENERAL

MAR 24 2004

INSPECTION MEMORANDUM

To: Philip Maestri
Director, Management Improvement Team

From: Cathy H. Lewis
Assistant Inspector General
Evaluation, Inspection and Management Services

Subject: Review of MIT ACTION Item #126 (ED/OIG I13E0004)

This memorandum provides the results of our inspection of one Action Plan item from the Department of Education's (Department's) Blueprint for Management Excellence. The EIMS group is examining several Action Plan items related to Human Capital. Our objective is two-fold: 1) were the items completed as described; and, 2) as completed, does the action taken help the Department towards its stated Blueprint objective. In this report, we examined item #126 (completed on March 31, 2003), concerning the revision and publication of new "disciplinary standards."

Background:

The Department's policy is to administer a quality personnel program, a main part of which is maintaining high standards of employee conduct. In order to aid in the instruction of disciplinary actions, Human Resources Services (HRS) issued Personnel Manual Instruction (PMI) 751-1. A main piece of PMI 751-1 is Appendix A, *Table for Penalties for Stated Offenses*. This table provides a quick guide to common employee disciplinary problems as well as the appropriate action to take in each case. In November 2001, the Department established a Culture of Accountability Team and it issued a "Report on the Culture of Accountability" in December 2001 noting that employees felt the Department was not handling poor performance effectively. From this report came the recommendation to "develop and implement Department-wide consequences for poor performance and misconduct." At the same time, there was a government-wide push to curb abuse of travel and purchase cards. Both of these reasons led the Department to revise the *Table of Penalties*; the revision was released in March 2003 and the Department announced this *Table* as part of PMI 751-1 on ConnectED on April 28, 2003. A newly revised PMI 751-1, approved on September 5, 2003, includes not only the new *Table of Penalties*, but also combines the previous policies on adverse actions and updates terminology.

Objective 1: Did OM complete the actions needed to complete this item?

The action required by item #126 was to:

“Revise and publicize new ‘disciplinary standards’ to help ensure that discipline is applied consistently.”

The comments field on this item states, “Completed 3/31/03. Management and the union reached agreement on a new Table of Penalties for disciplinary actions, issued March 24, 2003.”

Findings

- The initial *Table of Penalties* issued on August 26, 2002 contained 24 stated offenses. The new *Table of Penalties* issued on March 24, 2003, contains 36 stated offenses.
- The references in the old *Table* to abuse of purchase cards and travel cards are Numbers 23 and 24. However, in the new *Table*, the references to these offenses are Numbers 2 and 4. While the penalties for these offenses have not changed, they are given greater prominence in the document due to their placement.
- Management and the union agreed upon the new *Table of Penalties* in March 2003. However, this new *Table* was not publicized until late April of that year. In addition, the Director of Human Resources Services did not approve the fully revised PMI 751-1 until September 5, 2003. The publication of this document on ConnectED was on October 8, 2003.

Objective 2: Did the actions completed meet the objective “To improve the strategic management of the Department’s human capital?”**Finding**

- OM did revise and publicize new disciplinary standards. While the revision and publication of all new standards was not “completed” by the date under the comments field, it has since been rectified. Unfortunately, one cannot measure that the revision and publication of these standards has accomplished the objective. One of the initial reasons for revising the standards was because employees *perceived* the handling of misconduct was not effective; whether or not this was the case was never fully investigated. However, the action completed was a critical and necessary step in meeting the objective.

Recommendations:

1. Change the “completed” date to October 8, 2003. (The date the newly approved PMI 751-1, containing the new *Table of Penalties*, was announced on ConnectED)
2. The intent of this action item was to standardize the use of disciplinary standards. While OM did complete the action item, we recommend OM attempt to find the true impact these new standards have had.

Departmental Response

We provided OM with a draft report. OM's comments and our response are presented below. OM's response is included in its entirety as an attachment.

Recommendation 1:

OM stated that the “completed” date should be March 23, 2003, the date the *Table of Penalties* was released, not an April date that appears in the MIT documentation, which reflects the date the materials were printed for “official files.”

OIG Response

While the Union and management agreed on the new *Table of Penalties* on March 23, 2003, it was not published until April, was not in the new PMI until September, and was not on ConnectED until October. In order for the new *Table of Penalties* to take effect, and for this action item to be completed, it needed to appear in the newly issued and published PMI, which occurred in October 2003. We have not modified our finding or recommendation.

Recommendation 2:

OM stated that “consistent handling of conduct problems cannot be clearly quantified” and that different components to each situation might lead to different penalties. Further, OM did not concur with the recommendation that it should conduct an employee survey to determine whether the new standards have had its intended effect. OM concurred that information about the results of the Department's actions were important and useful, yet OM suggested that it identify the most cost-effective and useful approach for assessing the results of the *Table of Penalties*.

OIG Response

While we agree that all penalties for the same offense will vary with different circumstances, all penalties should fall within the minimum/maximum range noted on the new *Table of Penalties*. If not, there is no reason for OM to issue a Table for guidance purposes. We do agree that OM should decide the best method to assess the results of the *Table of Penalties* and have reflected this change in the recommendation.



UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D.C. 20202- _____
January 7, 2004

To: Cathy H. Lewis
Assistant Inspector General
Evaluation, Inspection and Management Services

From: Phillip Maestri, Director
Management Improvement Team

Subject: Draft Inspection Memorandum (December 3, 2003)
Review of MIT Action Item Number 126 (ED/OIG I13E0004)
"Revise and publicize new disciplinary standards"

Thank you for the opportunity to review and comment on a draft version of this inspection memorandum.

Comments on Background and Findings

The draft memo makes reference to the "Report on the Culture of Accountability" (December 2001), noting that employees thought the Department was not handling poor performance effectively. At the same time, there was a government-wide push to curb abuse of travel and purchase cards. The Culture of Accountability team recommended that OM "develop and implement Department-wide consequences for poor performance and misconduct."

One component of this recommendation became Blueprint Item 126: "Revise and publicize new disciplinary standards to help ensure that discipline is applied consistently." Please note that the action addresses only misconduct. The Table of Penalties provides guidance to managers and supervisors on appropriate penalties for misconduct—it is not intended to address performance problems. Performance is addressed through performance appraisals. Employees with performance problems, after a process, are downgraded or removed and in some instances reassigned, but not subject to the penalties presented in the table. The draft memo does not clearly make this distinction.

In March 2003, OM issued a revised Table of Penalties with updated charges and penalties. When considering how the action item contributed to meeting the overall objective, please note that consistency of penalties is promoted in other ways. ED's regions and headquarter offices discuss penalty consistency for similar actions, and the human resources specialists throughout the country are well aware of the need to ensure consistency within an organization in order to prevail before any third party review.

Please also note that the Table of Penalties was released March 23, 2003. The draft memo references an April release date. We think the OIG analysts may have used an April date that appears in the MIT documentation, which reflects the date the MIT printed copies for the official files. The March 23 release date appears in the top right hand corner of the table.

Response to recommendations

The draft memo recommends: “To ensure it has had the desired effect of standardizing the use of disciplinary standards, we would suggest that OM should conduct a survey to determine whether the new standards are having the intended effect.” OM does not concur with this recommendation, as proposed.

The draft memorandum finds, “Unfortunately, one cannot measure that the revision and publication of these standards has accomplished the objective. One of the initial reasons for revising the standards was because employees *perceived* the handling of poor performance was not effective; whether or not this was the case has not been researched by survey or some other tool.”

First, it would help to make the distinction between conduct and performance here. While the larger Culture of Accountability report discusses both, this action addresses the handling (and perceived handling) of *conduct* problems. (OM and the EMT are addressing Department results in handling poor *performance* through improved performance assessment, in other Blueprint Action items.) Therefore, OM’s response will address the conduct-related matters.

Second, the Department will need to consider the most efficient and accurate approach to measuring changes in the actual or perceived handling of conduct problems. This must take into consideration that:

- Consistent handling of conduct problems cannot be clearly quantified. Each disciplinary action has different components, with mitigating and aggravating factors in each action. Each proposing and deciding official is charged with assessing the specific facts of each case and making determinations on mitigating and aggravating factors (see Douglas v. Veterans Administration, 5 MSPR 280, April 10, 1981). While human resource specialists make recommendations consistent with Department-wide guidance, the final choice of action rests with the manager taking the disciplinary action. Differences in penalties may be appropriate depending on the specific facts.
- The original recommendation was not based on a survey—the Culture of Accountability Team used qualitative research as the basis of its recommendations. Therefore, there is

The MIT concurs that information on the results of actions the Department has taken on Blueprint for Management Excellence is useful. The MIT and OM suggest that the OIG recommendation be stated in such a way to allow OM to identify the most cost-effective and useful approach to assessing the results of the "Table of Penalties." OM will consider how discussions with managers and analysis of existing data can provide information on the results of this action.