Report of the Vermont State Auditor

DOUGLAS R. HOFFER
Vermont State Auditor

Agency of Human Services

Process and Documentation Improvements Could Better Support Decision-Making in Employee Misconduct Cases

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Mission Statement

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This means ensuring that taxpayer funds are used effectively and efficiently, and that we foster the prevention of waste, fraud, and abuse.

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Dear Colleagues,

Employee misconduct is a serious matter that can take many forms, including fraud, inappropriately disclosing confidential information, failing to follow a supervisor's order, abusing an inmate or patient, discrimination, sexual assault, and sexual harassment. Decisions on how to handle misconduct cases can have major consequences for both the employee and the State. Employees can lose their jobs, be demoted, or be suspended without pay. The State may incur the financial and operational consequences of paying employees under investigation who are not working (called temporary relief from duty status). The State also risks other detrimental impacts if it does not recognize or redress serious misconduct such as encouraging discrimination or jeopardizing employee safety and efficiency, which could result in substantial civil liability.

We conducted this audit to (1) evaluate how decisions to investigate alleged Agency of Human Services (AHS) employee misconduct are made, (2) assess the extent to which investigations into alleged misconduct by AHS employees are documented and completed in a timely manner, and (3) characterize the types of resolutions to alleged AHS employee misconduct cases and evaluate the processes used to decide which type is appropriate. Our scope was misconduct cases opened in 2014, 2015, and 2016 related to the AHS Department for Children and Families (DCF), Department of Mental Health (DMH), and Department of Corrections (DOC) employees. It included processes and decisions by these departments and the Department of Human Resources (DHR). In general, AHS and its departments are the final decisionmakers in misconduct cases, guided by DHR.

We were unable to evaluate the decisions by AHS departments on whether and by whom investigations of allegations of misconduct were to be conducted due to a lack of documentation. Only those allegations that an appointing authority or designee decided to investigate were recorded and tracked. The investigations themselves were almost always documented in the 55 cases we reviewed and they covered the alleged events and actions. Once the investigations were completed, the appointing authorities or designees at DCF, DMH, and DOC utilized a wide range of resolutions to close the 55 misconduct cases we reviewed. Those resolutions included determinations that the allegation was unsubstantiated, discipline (e.g., reprimand, suspension), and stipulated agreements (a negotiated settlement between the State and employee). However, the process used to decide on these outcomes sometimes lacked documentation about who made the decisions and when, the rationale for the decision to impose a particular type of discipline, and how progressive discipline is being applied. Moreover, in seven cases (13 percent), there was no evidence that either the case was resolved or that the disposition was ever carried out.

In many cases, neither the investigations nor the decisions on dispositions were completed in a timely manner. Only about half of the investigations and a third of the decisions on the disposition of the cases reviewed were completed within targeted timeframes of 60 and 30 days, respectively. There are external and

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internal circumstances that can make these targets unreachable in certain circumstances (e.g., criminal cases, due process procedures), but it is important to resolve allegations of misconduct in a timely manner. The longer it takes to render a disposition decision, the higher the risk that disciplinary action (if applicable) taken by the State could be overturned. The Vermont Labor Relations Board (VLRB) precluded management from disciplining employees for alleged offenses when it found that the State violated the collective bargaining agreement's provision for prompt action.

In addition, the State paid an estimated $2 million in salaries and benefits through December 31, 2016 for 100 DCF, DMH, and DOC employees in temporary relief from duty status for our scope period (DOC accounted for about three-quarters of this amount). Moreover, there were 17 cases (15 in DOC and 2 in DCF) in which it appeared that employees remained in this status longer than necessary. In these cases, the State paid the salaries and benefits of non-working employees after the investigation was completed—sometimes for months.

We made a variety of recommendations to DHR and the selected organizations to improve how they handle employee misconduct cases. The commissioner of DHR provided comments on a draft of this report that were coordinated with the other departments in our scope. The DHR commissioner generally indicated that they do not plan to implement our recommendations because (1) they were not required by State statute, personnel policies, the collective bargaining agreements, and decisions by the VLRB and the courts (called "guiding authorities" in the commissioner's response) and (2) they called for additional documentation that DHR considered burdensome and unnecessary. We disagree. While the State's internal processes should be informed by, and consistent with, the sources named by the commissioner, she cited no evidence that the State is prohibited from developing operational practices to document their critical decisions and significant events, as called for in the State's own internal control standards. Moreover, DHR took issue with our using as criteria in this report the State's own standards and guidance, as contained in misconduct protocols and training materials. We find this position incongruous. Accordingly, we continue to believe that our recommendations to improve the documentation of the State's operational practices and decisions should be implemented. It is our view that choosing to rely on verbal guidance and individuals' memories is misguided and increases the risk of poor decision-making.

I would like to thank the staff at AHS, DCF, DMH, DOC, and DHR for their cooperation and professionalism during this audit. This report is available on the state auditor's website, http://auditor.vermont.gov/.

Sincerely,

Doug Hoffer

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Introduction

Employees may commit misconduct if they deliberately or negligently fail to comply with the requirements of the State workplace. Allegations of misconduct can include fraud, absenteeism, abuse of authority, sexual harassment, discrimination, or criminal activity (on-duty or off-duty). Failure to recognize or redress serious misconduct can have broad and detrimental impacts, such as repeated fraud and abuse, encouraging discrimination, and jeopardizing workplace safety and efficiency, resulting in substantial civil liability. Surveys by the Department of Human Resources (DHR) indicate many State employees believe that there is room for improvement in how the State handles misconduct. For example, in 2016 only 61 percent of State employee respondents agreed with the statement, "I am confident that any misconduct that I report will be handled properly."

Due in part to the survey results, we conducted two concurrent audits of how State government handles employee misconduct.[1] This audit report addresses the largest employer in State government, the Agency of Human Services (AHS). Our audit objectives are to: (1) evaluate how decisions to investigate alleged AHS employee misconduct are made, (2) assess the extent to which investigations into alleged misconduct by AHS employees are documented and completed in a timely manner, and (3) characterize the types of resolutions to alleged AHS employee misconduct cases and evaluate the processes used to decide which type is appropriate.

AHS is comprised of six departments: Department of Disabilities, Aging and Independent Living, Department for Children and Families (DCF), Department of Mental Health (DMH), Department of Corrections (DOC), Department of Vermont Health Access, and the Department of Health. Our scope was misconduct cases opened in 2014, 2015, and 2016[2] related to DCF, DMH, and DOC employees. Much of our analysis is based on 55 misconduct cases we judgmentally chose to test. We focused on these cases because the data in the AHS and DHR investigations units' systems were not sufficiently reliable for performing broader analyses. We address this issue in the Other Matters section. Appendix I contains detail on our scope and methodology. Appendix II contains a list of abbreviations used in this report.

[1] We conducted two audits because AHS has its own investigations unit (AHS IU) while the DHR investigations unit investigates other State entities. See *State Employee Misconduct: Handling of Allegations by the Department of Human Resources and Selected Organizations Needs Improvement in Documentation and Timeliness* on our website. The State Police also have an internal investigations unit, which we did not audit.

[2] Not all misconduct cases undergo an investigation. For example, employees may be disciplined for excessive tardiness without an investigation.

Highlights

Because some State employees appeared skeptical of how the State handles employee misconduct, we conducted an audit to: (1) evaluate how decisions to investigate alleged AHS employee misconduct are made, (2) assess the extent to which investigations into alleged misconduct by AHS employees are documented and completed in a timely manner, and (3) characterize the types of resolutions to alleged AHS employee misconduct cases and evaluate the processes used to decide which type is appropriate.

Objective 1 Finding

It was not possible to evaluate the decisions by AHS departments on whether and by whom investigations of allegations of misconduct were to be conducted, because not all allegations of employee misconduct were logged. Only those allegations that an appointing authority (AA) or designee decide to investigate are recorded and tracked.[3] For those investigations that are opened, the appointing authority may decide to have the AHS investigations unit (AHS IU), department management, or DHR personnel perform the investigation. AHS does not have a policy that specifies the types of investigations that should be performed by the AHS IU. As a result, investigations of allegations that are of the highest priority, such as sexual misconduct, were sometimes handled by department managers instead of the investigators in the AHS IU, who are required to possess a thorough knowledge and understanding of investigative principles, procedures, and techniques.

The AA can decide to place an employee on paid temporary relief from duty (RFD) for up to 30 workdays while investigations are conducted or if in the judgement of the AA, the employee's continued presence at work during the investigation period is detrimental to the best interest of the State, the public, the ability of the office to perform its work in the most efficient manner, or the well-being or morale of persons under the State's care. The State paid an estimated $2 million in salaries and benefits through December 31, 2016 for 100 DCF, DMH, and DOC employees in RFD status for misconduct cases opened in 2014 - 2016 (DOC accounted for about three-quarters of this amount). There were 17 cases (15 in DOC and 2 in DCF) in which it appeared that employees remained in RFD status longer than necessary. In these cases, the State paid the salaries and benefits of non-working employees after the investigation was completed—

[3] An appointing authority is the person authorized by statute or lawfully-delegated authority to appoint and dismiss employees.

sometimes for months—even though it did not appear that the department was considering dismissing the employee.

Objective 2 Finding

Investigation reports that covered the allegation of misconduct were issued in all but two of the 55 misconduct cases reviewed, but the investigations were not always completed timely. The AHS IU attempts to deliver a draft report within 60 days. Eighteen of the 53 cases with investigation reports (34 percent) were completed within half the 60-day period suggested by the AHS IU protocol, while eight of the cases (15 percent) took more than twice as long. AHS IU investigators cited a variety of internal and external factors as to why investigations took longer than 60 days, including that they were working on other cases or that the employee was involved in a criminal case or was not available (e.g., on medical leave).

Objective 3 Finding

The AAs or designees at DCF, DMH, and DOC utilized a wide range of resolutions to close the misconduct cases we reviewed, but the process used to decide on these outcomes sometimes lacked documentation about who made the decisions and when, the rationale for the decision to impose a particular type of discipline, and how progressive discipline is being applied.[4] For example, there was no record kept of meetings that were held to discuss the results of investigations and next steps to be taken. In addition, there was no reliable central source to determine whether an employee had been the subject of previous disciplinary action or had signed a stipulated agreement[5] acknowledging that it was the employee's "last chance." This is important because this information should inform disciplinary action decisions.

For the 55 misconduct cases reviewed, the three most common types of resolution were: (1) disciplinary action, such as suspensions or terminations (29 percent); (2) unsubstantiated misconduct (22 percent); and (3) stipulated agreements (16 percent). However, in seven cases (13 percent), there was no evidence that either the case was resolved or that the disposition was ever carried out (e.g., a written reprimand was not issued). For example, in late 2014, a DOC staff member was put on temporary relief from duty while the AHS IU investigated whether the individual had bypassed security protocols, causing contraband to be introduced into a correctional facility. According to DOC officials, a stipulated agreement was drafted but never signed, and the officials could not explain why. This employee was on RFD for about 6 months and received an estimated $45,900 in salary and benefits in that timeframe. The median time it took to resolve the cases reviewed after the investigation was

[4] The order of progressive discipline is oral reprimand, written reprimand, unpaid suspension, demotion (optional), and dismissal.

[5] This is a negotiated settlement between the State and employee.

completed was 58.5 days (61 days for DCF, 84 days for DMH, and 48.5 days for DOC).

Other Matters

The data in the systems used to track misconduct investigations were not sufficiently complete and reliable for purposes of our objectives. First, there were cases at DOC and DMH that were handled locally and not included in the systems. Second, there were many records with logical anomalies and/or inaccuracies or blanks. Lastly, the systems did not have user manuals that described the fields in the sites nor how these fields were to be populated, which led to inconsistency.

In addition, AHS does not have performance measures pertaining to the length of time to complete employee misconduct investigations or the disposition of these cases. AHS' chief operating officer stated that she plans to begin working on developing expectations with departments regarding the length of time between completion of the investigation and the final disposition of the case, including cases not investigated by the AHS IU. However, even if AHS establishes performance measures pertaining to the completion and disposition of all misconduct cases, unless the problems outlined in the prior paragraph are corrected, we lack confidence that statistics using this system would be correct.

Recommendations

We made a variety of recommendation to the Agency of Human Services pertaining to improving AHS-specific processes. We also made recommendations to improve how decisions to dispose of cases are documented to the three departments in our scope. Other recommendations pertaining to the State's misconduct process as a whole are being made to the Department of Human Resources in our companion report.

Background

Roles Related to Addressing Employee Misconduct

Multiple organizations have a role in decisions to investigate and discipline misconduct by AHS employees. The roles of DHR and the appointing authorities[6] are generally covered by the State's collective bargaining agreements (CBA) with the Vermont State Employees' Association, Inc. (VSEA)[7] and the State's Personnel Policy and Procedure Manual.[8] In general, AHS and its departments are the final decisionmakers, guided by DHR.

- *AHS and its six departments.* The heads of these organizations along with their deputies serve as appointing authorities (AA). AAs or their designees are responsible for deciding (1) whether an allegation will be investigated, (2) the scope of the investigation and the investigator (i.e., internal management, the AHS IU, or DHR staff), and (3) the disposition of the case.

- *AHS investigations unit (AHS IU).* Housed within the AHS central office, this unit conducts labor investigations upon request. The current AHS investigations unit was reestablished in 2014[9] and is comprised of a director and two professional investigators.

- *DHR field operations unit.* This unit provides field support and services to the executive branch via teams embedded within agencies and departments. These teams play a critical role in addressing employee misconduct, including receiving and forwarding allegations, performing investigations, providing advice and recommendations to the AA or designee on the resolution of a case, and drafting documents.

- *DHR labor relations unit.* This unit negotiates, interprets, and administers the CBAs, which include provisions for imposing discipline for misconduct. The director of this unit approves and signs all stipulated

6 An appointing authority is the person authorized by statute or lawfully-delegated authority to appoint and dismiss employees.

7 The VSEA is the exclusive representative of Vermont State employees for the Non-Management Bargaining Unit, Supervisory Bargaining Unit, and Corrections Bargaining Unit. The Vermont Troopers' Association, Inc. is the exclusive representative for the State Police Bargaining Unit, but the CBA for this unit is not applicable to our audit objectives and scope.

8 Exempt, appointed, or temporary employees are not covered by the CBAs. Certain types of personnel rules and regulations apply to all employees (such as the policy on employee conduct), but other policies that lay out specific procedures to be followed (such as the grievance procedures) also do not apply to exempt, appointed, or temporary employees.

9 Originally created in 2004, the AHS IU investigators had been transferred to a centralized DHR investigations unit in 2010 during a consolidation of human resource functions.

agreements—a negotiated settlement between the State and employee—except for those negotiated by the Office of the Attorney General.

AHS Employee Misconduct Cases, 2014 - 2016

In 2015, the AHS IU began using a SharePoint® system site[10] to track AHS employee misconduct investigations. Prior to this, the AHS IU used the SharePoint® system site maintained by the DHR investigations unit. Both of these sites contain fields pertaining to when an investigation was opened and completed, the allegation, and the type and date of disposition of the case.

Table 1 contains the number of misconduct cases by AHS organization for 2014 – 2016, as contained in the SharePoint® sites. This table also includes a count of employees as of December 29, 2016 to indicate the size of each organization. This table understates the number of misconduct cases because the SharePoint® sites do not contain all cases (see Other Matters section).

Table 1: Number of AHS Employee Misconduct Cases by Organization as Recorded in the SharePoint® Sites, 2014 – 2016

AHS Organization	Employee Count, as of 12/29/16[a]	Misconduct Cases[b]			
		2014	2015	2016	Total
DOC	1,053	76	102	99	277
DCF	1,026	20	15	19	54
DMH	238	13	9	19	41
Department of Health	501	6	5	5	16
Department of Vermont Health Access	315	1	6	8	15
Department of Disabilities, Aging and Independent Living	278	5	3	2	10
Central Office	136	1	0	4	5
Total	**3,547**	**122**	**140**	**156**	**418**

[a] The source of this column is the State's workforce dashboard.
[b] These counts were derived from cases in the SharePoint® sites used by the AHS and DHR investigations units.

We performed procedures to check and adjust for duplicate records in the two SharePoint® systems. Other procedures performed on data in individual records found that they were not sufficiently reliable for our audit objectives. Accordingly, instead of relying on the data in these systems, we judgmentally chose 55 employee cases from the SharePoint® sites to evaluate: 15 DCF cases, 10 DMH cases, and 30 DOC cases spread across the three years of our

[10] SharePoint® is a Microsoft® product that is used to create and manage custom team-focused and project-focused websites to store, organize, share, and access information.

scope (18 cases opened in 2014, 18 in 2015, and 19 in 2016). Appendix I contains a description of how we chose these cases.

Objective 1: Documentation Lacking on Decisions Related to Allegations

It was not possible to evaluate AHS' decisions on whether and by whom investigations of allegations of misconduct were to be conducted because AHS and DHR did not record or log all allegations, only those for which investigations were conducted. Once a decision is made to investigate an allegation, the AA decides the organization to perform the investigation. AHS' investigation protocol does not contain guidance on which organization should be used, and some of the highest priority cases were not handled by the professional investigators in the AHS IU.

An AA may also decide to place an employee in paid RFD status while an investigation is conducted. During 2014 – 2016, DCF, DMH, and DOC authorized 14, 4, and 85 instances,[11] respectively, of paid RFD for misconduct in this period.[12] Many of these employees were kept on RFD status after the completion of the investigation. This is understandable in those cases in which the State is seeking to remove the employee from employment (e.g., dismissal, resignation) because this is the State's harshest penalty. However, in 17 instances employees were kept on paid RFD status for over two weeks past the completion of the investigation even though they were not removed from State service (20 percent of the 86 completed misconduct cases for employees in RFD status). If the State intends to return an employee to work, it is not fiscally prudent to continue to pay the salary and benefits of non-working employee for weeks and sometimes months as decisions on the final dispositions are made.

Employee Misconduct Allegations

Allegations of employee misconduct come from many sources, such as management, co-workers, the public, or inmates in correctional facilities. The severity of allegations is also wide-ranging. For example, the allegations in the 55 cases reviewed included rudeness to a member of the public or a co-worker, sleeping while on duty, inappropriately disclosing confidential

[11] Three employees had two instances in which they were placed in RFD status.

[12] These numbers do not include misconduct cases started in 2013 and continued into 2014 or employees placed in RFD status for non-misconduct reasons, such as fitness for duty evaluations.

information, failing to follow a supervisor's order, falsifying records, abusing an inmate or patient, discrimination, sexual assault, and sexual harassment.

The State's current policy on employment-related investigations require the AA or designee to notify and coordinate with DHR whenever they have reason to suspect that an employee has engaged in misconduct.[13] In addition, under the State's sexual harassment and discrimination policies, all complaints are to be referred immediately to DHR personnel, who are to coordinate with the responsible AA to ensure that a timely and complete review of the complaint is made.[14] Further, the State's internal control standards emphasize the importance of documenting critical decisions and significant events.[15] By recording the information related to such events, management creates an organizational history that can serve as justification for subsequent actions and decisions.

Not all allegations are investigated. A human resources (HR) manager explained that upon receiving an allegation, she gathers additional information to determine whether the allegation may require discipline and discusses the allegation with the manager and AA or designee. The manager added that the AA or designee makes the decision about whether an investigation is warranted. There is no documentation of these discussions nor log of allegations and what, if any, action was taken (unless the decision was to investigate, at which point a record should be added to the AHS IU SharePoint® site and the case tracked).

The DOC commissioner also reported while all allegations are reviewed, tracking all allegations would be challenging because of the volume of complaints received and the low level of many of these complaints. For example, between March 17, 2015 and December 16, 2016, DOC's offender management system recorded 850 inmate grievances related to alleged misconduct by correctional facility staff. According to the DOC official that provided this summary-level information, although the outcome of the grievances should be in the DOC system, there is no report that can be generated from the system that can provide outcome data on specific categories of grievances, such as staff misconduct. DOC also maintains a hotline that can be called with complaints, including alleged staff misconduct. DOC provided a log that showed thousands of calls between 2014 – 2016, but we did not find it usable for tracking allegations. For example, many of the

[13] *Employment Related Investigations* (Personnel Policy Number 17.0, November 3, 2016). The prior version of this policy (dated March 1, 1996) stated that HR personnel should be consulted throughout the course of an investigation.

[14] *Sexual Harassment* (Personnel Policy Number 3.1, March 1, 1996) and *Discrimination Complaints* (Personnel Policy Number 3.3, July 1, 1999).

[15] *Internal Control Standards: A Guide for Managers* (State of Vermont Department of Finance and Management).

calls did not identify specific allegations or individuals about whom the complaint was being made.

Without documentation of all allegations and the actions taken by the departments' AA for each of the allegations, it was not possible to evaluate the appropriateness of decisions not to investigate.

Decisions Related to Investigations of Allegations

Once a decision is made to investigate an allegation, the AA must decide the organization to perform the investigation (i.e., AHS IU, department management, or DHR personnel). AHS organizations that would like the AHS IU to perform an investigation submit a request form to the IU director, who may accept or decline the referral. According to the May 2015 AHS IU referral and acceptance protocol, the unit accepts cases that appear to be of a serious nature and may result in significant discipline. Another factor in deciding who will conduct the investigation is the extent an understanding of the organization's processes is needed. For example, a misconduct case was conducted jointly by a DCF manager and a HR administrator because of the nature of the investigation and that the allegation involved not following specific departmental policies and procedures.

Of the 55 misconduct cases reviewed, 42 (76 percent) were investigated by the AHS IU. The remainder were investigated by the applicable department (6), DHR field operations staff (4), the DHR investigations unit (2), and, in one case, a collaboration of department and DHR staff. It did not take long for these organizations to start investigations; the median number of days that it took from the allegation being reported to the date the investigation was opened was 5 days.[16]

According to the May 2015 AHS IU protocol, its highest priority cases are those in which the employee is accused of, for example, sexual assault, drug or alcohol abuse on duty, sexual harassment, or discrimination.[17] However, the protocol does not require or suggest that the AA request the AHS IU to conduct the investigation in such cases. Without such guidance, allegations of the most serious nature were not always conducted by the professional investigators at the AHS IU. For example, there were misconduct investigations meeting the AHS IU criteria of high-priority allegations that were conducted by DOC managers, including allegations related to sexual misconduct and on-duty intoxication, which were opened after the protocol was instituted.

[16] This median is based on 49 misconduct cases. Documentation was not available to determine the date the allegation was reported in six cases.

[17] The protocol contains a 3-tier prioritization process that is applied to cases assigned to the AHS IU.

In contrast to the AHS investigation protocol, DHR's protocol for investigating employee misconduct cases prescribes which types of cases should be investigated by its investigations unit. Since the AHS IU director and investigators are required to possess a thorough knowledge and understanding of investigative principles, procedures, and techniques, it seems sensible to have them conduct all high-priority investigations unless there is a compelling reason to do otherwise.

Temporary Relief from Duty

According to the CBAs, an appointing authority may relieve employees from duty temporarily with pay for up to 30 work days to (1) permit the appointing authority to investigate or make inquiries into charges and allegations made by or concerning an employee or (2) if in the judgement of the AA the employee's continued presence at work during the investigation period is detrimental to the best interest of the State, the public, the ability of the office to perform its work in the most efficient manner, or the well-being or morale of persons under the State's care.

As shown in Table 2, the State paid an estimated $2 million in salaries and benefits for 100 DCF, DMH, and DOC employees in RFD status between January 1, 2014 and December 31, 2016 related to misconduct cases opened during this same period (three employees were in RFD status on two separate occasions). Seventy-eight percent of this estimate was for DOC employees. The table also provides information on the average number of workdays and average estimated salary and benefits for the 86 misconduct cases that were completed by December 31, 2016 (17 cases were still on-going as of this date).

Table 2: Estimated Salaries and Benefits Paid for DCF, DMH, and DOC Employees in Relief from Duty Status Due to Alleged Employee Misconduct, 2014 – 2016, as of December 31, 2016[a]

Department	All RFD Cases, 2014 - 2016[b]		Completed Misconduct Cases, 2014 – 2016		
	# of Instances of Employees on RFD Status[c]	Total Estimated Salary and Benefits Paid, as of 12/31/16[d]	# of Instances of Employees on RFD Status	Average # of Workdays on RFD Status	Average Estimated Salary and Benefits Paid while on RFD, as of 12/31/16[d]
DCF	14	$392,000	13	94	$30,002
DMH	4	$65,000	3	40	$17,673
DOC	85	$1,579,000	70	69	$18,114
Total	**103**	**$2,036,000**	**86**		

[a] This table does not include those cases that were opened in 2013 and continued into 2014 or those employees placed in RFD status for non-misconduct reasons.

[b] These columns include 17 misconduct cases that started in 2016 that remained on-going as of the end of the year. The estimated payments for these cases is only through December 31, 2016.

[c] Three employees had two instances of being placed in RFD status in 2014-2016.

[d] The estimates in these columns were calculated by multiplying the number of hours on RFD by each employee's pay rate and then multiplying the total by each department's fringe benefit percentage for the appropriate fiscal year. The fringe benefit percentage calculation was derived from the actual fiscal year 2016, 2015, and 2014 salary and fringe benefit amounts in the fiscal year 2018, 2017, and 2016 executive budget recommendations, respectively. Because the fiscal year 2017 fringe benefit amounts were not yet available, we used the fiscal year 2016 percentage for the period July 1, 2016 to December 31, 2016.

There are also operational costs to departments when they place employees on RFD status, since these employees are not available to perform their duties. For example, if an employee on RFD performs critical duties that must continue in his or her absence, such as a correctional officer or nurse, it can disrupt schedules or cause other employees to incur overtime.

According to the CBAs, employees are to be notified in writing if they are temporarily relieved from duty. In addition, the CBAs require DHR to approve RFD periods of over 30 workdays. According to the DHR HR director, there is no required formal process by which the DHR staff need to concur in this decision. In addition, the departments did not send RFD extension letters to employees that covered the whole period of the RFD status in 13 of the 18 applicable test cases (72 percent) reviewed. For example:

- A DCF employee was on RFD between February 5, 2014 and October 31, 2014, but there was only a single letter to the employee authorizing the RFD for the first 30-day period.

- A DOC employee was on RFD between October 6, 2014 and April 30, 2015. The employee was sent letters authorizing the RFD period through

January 16, 2015, but there was no evidence of an extension for the remaining 3.5 months of the RFD period.

Our companion report addresses DHR's controls pertaining to RFD cases and includes recommendations to DHR for improvement.

It also appeared that there were employees who were maintained in RFD status beyond what was needed. It is not surprising that employees who are later removed from State employment (e.g., dismissal, resignation) continued in paid RFD status past the completion of the investigation because the most serious discipline is being considered. However, there were 17 cases (15 in DOC and 2 in DCF) in which the allegation was unsubstantiated or the disposition of the case involved less than removal from State employment but the employees' RFD period extended more than 14 calendar days past the completion of the investigation.[18] This was 20 percent of all completed misconduct cases for employees in RFD status.

Both DOC and DCF officials stated that an employee's RFD status is always considered during the meetings held to decide on the disposition of a case. According to the DOC general counsel, employees remain on RFD past the completion of the investigation when (1) DOC intends to terminate the employee; (2) negotiations are on-going with the VSEA and the State must maintain the ability to terminate the employee in order to effectively negotiate; or (3) the employee's misconduct is such that she or he cannot return to her or his position and alternative duties are not available. A DCF deputy commissioner explained that in its two cases, additional time was needed because of the type of misconduct, and sensitivity of the department's work required careful planning and consideration of an alternative conclusion.

Even taking these explanations into consideration, decisions on these cases are taking a long time—12 cases took 60 days or more to resolve after the investigation was completed. For example:

- A DOC employee was placed in RFD status on April 20, 2014 for allegations pertaining to inappropriately sharing information on a criminal investigation. The investigation was completed and submitted to the AA on September 11, 2014. According to the record in SharePoint®, a settlement offer for a suspension was made later that month, which was rejected. Even though DOC was contemplating suspension, not dismissal,

[18] We chose 14 calendar days to provide a reasonable period of time for the AA to decide on the likely disposition of a case. DOC holds staffing meetings (the meeting held to discuss the results of the investigation and the disposition of the case) bi-weekly, and the HR manager for DMH stated that she schedules staffing meetings within two weeks of completion of the investigation report. The HR manager for DCF stated that holding a staffing meeting within two weeks is a goal, but other factors are a consideration.

the employee remained in RFD status until April 14, 2015—a year after being originally placed on RFD status and more than six months after the settlement offer. Ultimately, this employee served a 7-day suspension, and the extra 7 months on RFD status cost the State an estimated $40,000 in salary and benefits.

- A DOC employee was placed in RFD status on November 29, 2015 for insubordination and failure to follow security procedures. The investigation report was completed on February 25, 2016. DOC determined that the alleged misconduct was unsubstantiated, but the employee was not taken off RFD status until after June 17, 2016. The State paid this employee's salary and benefits for 79 working days after the investigation report was issued at an estimated cost of $24,200.

- A DCF employee was placed in RFD status on June 19, 2015 for allegations related to the failure to follow policies and falsifying records. The investigation report was issued on September 10, 2015. The employee's last day in RFD status was March 30, 2016, the day before signing a stipulated agreement that reassigned the employee to another position. The 81 working days that this employee stayed on RFD status after the issuance of the investigation report cost the State an estimated $39,000 in salary and benefits.

AHS has written procedures that address placing an employee in RFD status. However, these procedures do not address revisiting an employee's RFD status after the investigation is completed and the circumstances in which an employee should be removed from this status.[19] The AHS chief operating officer pointed out that misconduct cases can have unique circumstances and noted that due process procedures or stipulated agreement negotiations can be lengthy. These are valid points, particularly for those employees the State intends to dismiss. However, if the State intends to return an employee to work, it is not fiscally prudent to continue to pay the salary and benefits of a non-working employee for weeks and sometimes months as decisions are made on the final dispositions that are less than dismissal. We believe that the direct and indirect costs of keeping an employee in RFD status past the completion of the investigation could quickly exceed the benefit to the State if the department ultimately intends to return the employee to work.

[19] *Management of Internal Controls for AHS Systems and Property: Administration of Changes in Employee Work Status* (AHS 4.01, October 9, 2009).

Objective 2: Almost All Cases Reviewed Had Investigation Reports, but Many Took Over 60 Days to Complete

Investigation reports were completed in 53 of 55 (96 percent) of the 2014-2016 cases reviewed. Moreover, the reports covered the events and actions that were alleged. However, in 25 of the 53 cases (47 percent), the investigation took over two months to complete (eight of these cases, or 15 percent, took over four months to complete). Timeliness of reports is important because the CBAs require the State to act promptly to impose discipline within a reasonable time of the offense. Both internal factors (e.g., working on other cases) and external factors (e.g., misconduct may involve a criminal case) contributed to delays.

Completion of Investigation Reports

Employee misconduct investigations are the unbiased collection of facts. A well-done investigation can help the State defend its actions to the Vermont Labor Relations Board, Human Rights Commission, Equal Employment Opportunity Commission, or the courts. The State's current investigation policy requires investigators to provide reports to AAs.[20] The May 2015 AHS IU protocol requires the investigators in this unit to produce investigation reports to be forwarded to AAs. Further, the State's internal control standards emphasize the importance of documenting critical decisions and significant events. By recording the information related to an investigation, management creates an organizational history that can serve as justification for subsequent actions and decisions.

An investigation report was completed for all but two of the 2014 - 2016 cases we reviewed (96 percent). In one case the employee resigned before the investigation was complete, while in the other DHR did not think that an investigation report was needed. The investigation reports addressed the misconduct being alleged.[21]

[20] The new policy became effective November 3, 2016. The prior policy did not contain this requirement.

[21] In 50 of the 53 test cases with investigation reports, we were provided with documentation that detailed or summarized the allegations under investigation, such as an email from the complainant or DHR personnel. We could not validate that the allegations were addressed in three cases because there was no documentation of the allegation except for the report itself.

Time to Complete Investigations

The CBAs require that the State act promptly to impose discipline within a reasonable time of the offense and, according to State policy, the AA must be reasonably diligent in conducting investigations.[22] AHS does not have an overall target or standard for how long an investigation should take that includes those performed by department management or DHR field operations staff. With respect to investigations performed by the AHS IU, the May 2015 protocol states that the investigators in this unit are to make an effort to complete all interviews and forward a draft of the report to AHS' legal office within 60 days.

For the 53 test cases in which investigation reports were issued, the median length of time between the date the investigation was opened and the date completed[23] was 58 days. Figure 1 shows the number of test cases in 30-day increments from the open date to the completion date.[24] About half of the cases were completed within the 60-day period contained in the May 2015 protocol (18, or 34 percent, were completed within half the 60-day period). However, eight of the cases (15 percent) took more than twice as long as the 60-day target, or over four months. In one of the latter cases, which was investigated by an HR administrator, the employee grieved his dismissal based, in part, that the imposition of discipline was not done in a reasonable amount of time from the alleged offense. To settle this grievance, the State signed a stipulated agreement with this employee and the VSEA that rescinded the dismissal and awarded back-pay, less a 14-day suspension. While the investigation accounted for only part of the delay, this case illustrates the importance of timely investigations.[25]

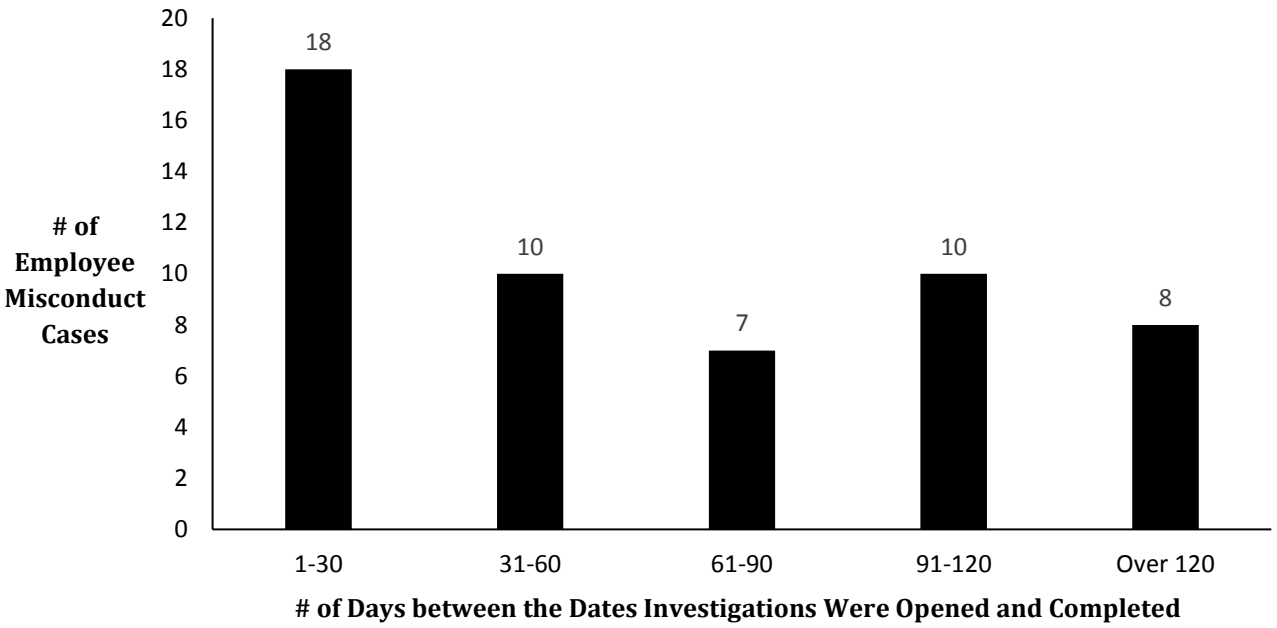
22 *Disciplinary Action and Corrective Action* (Personnel Policy Number 8.0, March 1, 1996).

23 According to the AHS IU director, his organization considers the investigation complete when the report is sent to the applicable HR manager. We used this date in our calculation unless it was not available, in which case we used the date of the investigation report.

24 Because these cases were judgmentally chosen, the results shown in Figure 1 cannot be projected to the universe of misconduct investigations.

25 The investigation took 141 days to complete and the department took a further 128 days to finalize the original decision to dismiss the employee.

Figure 1: Number of Investigations Completed within 30 Calendar Day Increments for Test Cases[a]



[a] The number of misconduct cases in this figure totals 53 because reports were not issued for two investigations, so the time to investigate could not be calculated.

According to the AHS IU investigators, there were a variety of internal and external factors why investigations took longer than 60 days. In seven cases, investigators cited work on other cases as the reason why investigations took longer than 60 days. The complexity of the case and/or the addition of new allegations were other internal factors cited by the investigators. External factors cited included that the employee was involved in a criminal case, the investigator was awaiting the completion of another case, or that the subject or witness was not available for part of the investigation period (e.g., was on medical leave).

Objective 3: Decision-Making Process for Resolving Misconduct Cases Often Lacked Documentation and Sometimes Took Months

Appointing authorities and designees have several ways to resolve misconduct cases, including deciding that the allegation was unsubstantiated, imposing disciplinary action, or agreeing to a stipulated agreement. If an AA

or designee decides to impose discipline, the CBAs and State policy[26] require the State to apply discipline with uniformity and consistency and by utilizing progressively more severe sanctions unless the circumstances warrant bypassing such progressive discipline. Parts of the State's process for reaching decisions on employee misconduct are not documented, making it difficult to tell (1) who is making the decisions and when, (2) the rationale for the decision to impose a particular type of discipline, and (3) how progressive discipline is being applied. Documentation is a critical element in an organization's internal control environment.

Regarding the 55 cases reviewed, the three most common types of resolution were disciplinary action, such as suspensions or terminations (29 percent), unsubstantiated misconduct (22 percent), and stipulated agreements (16 percent). However, in seven cases (13 percent), there was no evidence that either the case was resolved or that the disposition was ever carried out (e.g., a written reprimand was not issued). In addition, the median time it took for the 46 cases with investigation reports and dispositions to be resolved was almost two months, about the same amount of time as it took for investigations to be completed. Timeliness is important because the CBAs require the State to act promptly to impose discipline within a reasonable time of the offense.

Resolution of Misconduct Cases

Once an investigation is completed, the investigation report is forwarded to the AA or designee. Often, but not always, DHR schedules a "staffing" meeting if the AA and DHR believe that it would be beneficial. One exception is DOC, which holds bi-weekly staffing meetings on all AHS IU investigations because of the number of misconduct cases it deals with. Participants in staffing meetings are generally the AA and/or designee, DHR staff, the investigator, and legal representation.[27]

Staffing meetings, when held, are used to discuss the results of the investigation as well as actions to be taken. The various actions that the AA and designees may take (with the assistance of DHR) are to (1) determine that the allegation is unsubstantiated, (2) decide that the employee should receive supervisory feedback, (3) decide that the employee should be disciplined, or (4) negotiate a stipulated agreement.

[26] *Disciplinary Action and Corrective Action* (Personnel Policy Number 8.0, March 1, 1996).

[27] Legal representation can consist of the department's general counsel, DHR's legal unit, and/or the Office of the Attorney General.

Unsubstantiated Allegations

The State's November 2016 revision to its investigation policy requires the appointing authority or designee to notify the subject of the investigation when the investigation has concluded.[28] In addition, the CBA for the Corrections Bargaining Unit (but not the others), states that DOC shall inform the employee of the results of the investigation within 30 days when no disciplinary action will occur.

Supervisory Feedback

This is not considered to be a disciplinary action but serves to put the employee on notice that the misconduct behavior was inappropriate and that further behavior of the same or similar nature may result in disciplinary action.

Discipline

According to the disciplinary action article in the CBAs and the State's discipline policy, the State will (1) apply discipline with a view towards uniformity and consistency, and (2) impose a procedure of progressive discipline. The order of progressive discipline is oral reprimand, written reprimand, unpaid suspension, demotion (optional),[29] and dismissal. The CBAs and State discipline policy also acknowledge that there are circumstances in which progressive discipline may be bypassed or applied for an aggregate of dissimilar offenses. Employees can grieve the issuance of discipline in accordance with the CBAs and the State's grievance procedure.

A set of due process procedures is triggered if the State is considering suspending, demoting, or dismissing an employee.[30] According to DHR training materials, these procedures include issuing a letter to the employee that informs him or her that the State is considering disciplinary action up to and including suspension or dismissal; notifies the employee of the right to representation; documents the relevant policies, provisions, and statutes; and summarizes the investigation and evidence—this is called a "Loudermill"[31] letter. The letter also offers the employee the opportunity to respond in writing or to hold a "Loudermill meeting" with the AA or designee to respond to the allegations.[32] A 12-factor analysis is written and signed by the AA or

28 This requirement was not in the prior version of this policy.

29 The CBAs allow, but do not require, the State to demote an employee when implementing progressive discipline.

30 As of March 2015, DHR guidance is that the due process procedures should be utilized for *any* unpaid suspension, but it leaves it up to individual departments whether to implement this guidance. DOC has elected to implement due process procedures only for unpaid suspensions of five days or more. According to the DOC commissioner, this decision is due to the volume of one and two-day suspensions that it issues and staff resources it takes to perform the Loudermill process.

31 The term "Loudermill" is derived from a U.S. Supreme Court case, *Cleveland Board of Education v. Loudermill* (470 U.S. 532, 1985).

32 The purpose of this meeting is to give employees the opportunity to disagree with the employer's version of facts, identify witnesses who support the defense, identify mitigating circumstances, and offer any other arguments that may be appropriate.

designee after this meeting and documents the decision as to whether to impose discipline and, if so, what level of discipline to impose. The factors are based on case law and include considerations like the nature and seriousness of the offense, the employee's past discipline, and consistency with penalties in the same or similar types of cases (see Appendix III for the complete list).

Stipulated Agreement

This is a negotiated settlement between the State and employee and reflects an agreement to forgo due process procedures and the grievance process. Such agreements pertaining to misconduct can state that it does not constitute an admission of fact, wrongdoing, contractual interpretation, or violation by either party.[33] According to DHR training materials, a stipulated agreement is often a favorable resolution for both parties because there is a certainty of outcome, it is non-precedent setting, and allows creativity of outcome.

At times the resolution of a case is not made by the AA or designee, such as when the employee voluntarily resigns or retires before the process has been completed.

The State's internal control standards emphasize the importance of documenting critical decisions and events as well as documenting policies and procedures.[34] According to the standards, by recording information of critical events, management creates an organizational history that can serve as justification of subsequent actions and decisions. In addition, written policies and procedures set forth the fundamental framework and underlying methods and processes employees rely on to do their jobs. Without this framework of understanding by employees, conflict can occur, poor decisions can be made, serious harm to an organization's reputation can be done, and the efficiency and effectiveness of operations adversely affected.

The State's process for reaching decisions on employee misconduct cases can make it difficult to tell (1) who is making the decisions and when, (2) the rationale for the decision to impose a particular type of discipline, and (3) how progressive discipline is being applied. In particular, no written record is kept of the staffing meetings. The AHS IU SharePoint® site included a field to record the date of the staffing meeting. The staffing meeting date field was generally filled in for the DOC misconduct cases, but not the DCF and DMH

[33] This statement was included in each of the nine stipulated agreements executed in the test cases reviewed. Of the nine stipulated agreements, two stated that the disposition in the agreement constituted discipline (e.g., a disciplinary suspension), five indicated that a final discipline decision had not been made, one indicated that an investigation had been completed and did not address discipline, and one stated that it was a last and final warning for the particular type of misconduct (sleeping while on duty).

[34] *Internal Control Standards: A Guide for Managers* (State of Vermont Department of Finance and Management).

cases, even when we were told that a meeting had been held.[35] In addition, in about 40 percent of the 39 test cases in the AHS IU SharePoint® site, the person who executed the disposition (e.g., signed the written reprimand, issued the supervisory feedback, or signed the notification that the investigation was closed without further action), was not an appointing authority or designee listed in the site. Although these individuals were in management positions, because there was no record of the staffing meetings, we could not tell whether they made the decision or simply executed the decision.

In addition, under case law, each disciplinary action is considered in the context of the 12 factors and, according to DHR training documents, it is helpful for employers to take them into consideration before a disciplinary action is imposed. DHR and department officials told us that the 12 factors are considered and discussed when considering imposing discipline, but there was not always documentation of how the factors were applied. In the 16 cases reviewed in which discipline was imposed, only five cases (31 percent) had written, approved 12-factor analyses (in an additional three cases the analysis was drafted, but not approved). In the remaining eight cases, the disciplinary actions were an oral or written reprimand and suspensions of less than five days by DOC (this department does not implement due process procedures for suspensions of less than five days). According to the HR director, the document of record for lower level discipline actions is the written feedback or written reprimand itself. In the eight cases without a 12-factor analysis, the letters imposing the discipline explained the nature and seriousness of the offense. However, the letters generally did not address the other 12-factor elements (e.g., the consistency of the penalty with others that committed the same or similar offense). Accordingly, they did not support whether and how the factors were considered in deciding on the specific discipline.

A DMH case illustrates how a lack of documentation hinders the ability to evaluate decision-making. The subject employee was accused of insubordination, and after the completion of an investigation, the appointing authority sent a Loudermill letter stating that the department was contemplating serious discipline up to and including dismissal. DHR guidance is that such letters be issued when considering suspensions, demotions, or dismissals. According to the appointing authority, a Loudermill meeting with the employee was held, but a 12-factor analysis was not completed. DMH found the employee's actions to be insubordinate, but instead of taking the types of disciplinary action contemplated by the Loudermill letter, the employee's supervisor (not the appointing authority), issued supervisory

[35] This analysis only included those 39 test records in the AHS IU SharePoint® site. We did not include the 16 test cases (all opened in 2014) that were recorded in the DHR investigations unit's SharePoint® site because it did not include the same fields as the AHS IU site.

feedback. When asked for an explanation for why discipline was not imposed, the appointing authority stated that if during the Loudermill meeting an employee and DMH believe that rehabilitation can be accomplished, that process is undertaken. However, the potential for rehabilitation is only one of the 12 factors that are to be considered in imposing discipline. At our request, the appointing authority provided emails and other documentation he had on this case, but none of this material recorded DMH's rationale at the time of the decision to reconsider issuing serious disciplinary action.

Another area in which documentation was sometimes lacking was how progressive discipline was applied, which requires knowledge of an employee's disciplinary history. In DOC misconduct cases, DHR staff provided attendees of staffing meetings with a written personnel summary of the employee, including past discipline. According to DOC officials, this is a useful practice that helps them make decisions. DHR staff did not provide a written summary of the employee's discipline history to DCF or DMH, except if the discipline being considered required a written 12-factor analysis. However, a 12-factor analysis is completed late in the process (after the Loudermill process) and only applies to suspensions, demotions, and dismissals. DHR personnel explained that they provide prior discipline information verbally during staffing meetings.

Even if we assume that DHR personnel always provide an employee's prior disciplinary history during staffing meetings, the gathering of this information may not be complete. Specifically, there was no reliable central source to determine whether an employee had been the subject of previous disciplinary action or had signed a stipulated agreement that states, for example, that it is the employee's "last chance."

According to DHR training materials, the SharePoint® sites maintained by the AHS and DHR investigations units are the sources that should be used to collect data on prior comparable conduct and discipline. However, the sites do not include all misconduct cases (see Other Matters section of this report). Other sources of this information—the discipline module in the State's human resources system and employees' personnel files—were also incomplete. For example, according to the DHR director of field operations, the discipline module is not consistently used. Also, the module does not include stipulated agreements. There were also cases in which employees' personnel files did not include disciplinary action or stipulated agreements.[36]

[36] At the employee's request, letters of reprimand that are more than two years old and in which no other discipline has resulted shall be removed. Suspensions of three or fewer days shall be removed at the employee's request after five years if the employee has no other discipline in that time period. In comments on a draft of this report, the DHR commissioner stated that DHR is prevented from considering an employee's past discipline once it is removed from the official personnel file as a result of the applicable CBA.

Without assurance that an employee's discipline history is complete, the AA or designee risks making an inappropriate decision.

Table 3 summarizes the outcomes in the 55 cases in our review. The alleged misconduct was unsubstantiated in 12 cases (22 percent). Discipline was imposed for substantiated allegations in 16 cases (29 percent of total test cases). The State negotiated stipulated agreements with the employee in nine cases (16 percent). The settlements in the nine stipulated agreements varied, including resignations, a voluntary retirement, demotions, suspensions, sexual harassment training, and "last chance" warnings for similar misconduct (some stipulations had a combination of such outcomes).

Table 3: Summary of Outcomes of 55 Test Cases in 2014 - 2016, by Department

Disposition Type	Number of Test Cases			
	DCF	DMH	DOC	Total
Disposition Taken by or Negotiated by the State:				
Unsubstantiated misconduct	3	2	7	12
Supervisory feedback	2	3	1	6
Stipulated agreements	2	2	5	9
Disciplinary action:				
Oral reprimand	1	0	2	3
Written reprimand	1	0	2	3
Suspension	2	0	2	4
Demotion	0	0	1	1
Termination	2	1	2	5
Subtotal	**13**	**8**	**22**	**43**
Voluntary resignation by employee while process was on-going	1	1	3	5
Unfulfilled disposition decision	1	0	2	3
No evidence of disposition decision	0	1	3	4
Total	**15**	**10**	**30**	**55**

In seven cases (13 percent), there was no evidence that the AA or designee had decided on a disposition of the case or the disposition had not been carried out. For example:

- In 2015, co-workers accused a DCF district office employee of sexual harassment. The AHS IU completed the investigation in about a month and the AA or designee decided to issue a written reprimand. According to DCF and HR officials, the HR staff was busy and the reprimand was never issued.

- In June 2015, a DMH employee was accused of failing to report to work for scheduled shifts and theft of food from the staff lounge. The HR manager for DMH completed the investigation in September 2015. There is no evidence of a final disposition in this case. According to the HR manager, this occurred due to a miscommunication with DMH regarding whether the employee had resigned.[37]

- In November 2014, a DOC staff member was put in paid RFD status while the AHS IU investigated whether the individual had bypassed security protocols, leading to contraband being introduced into a correctional facility. There is no evidence of a final disposition of this case. According to DOC officials, a stipulated agreement was drafted but never signed. The officials could not explain why there was no final disposition. This employee was on temporary relief from duty for about six months and received an estimated $45,900 in salary and benefits in that timeframe.

Time to Resolve Misconduct Cases

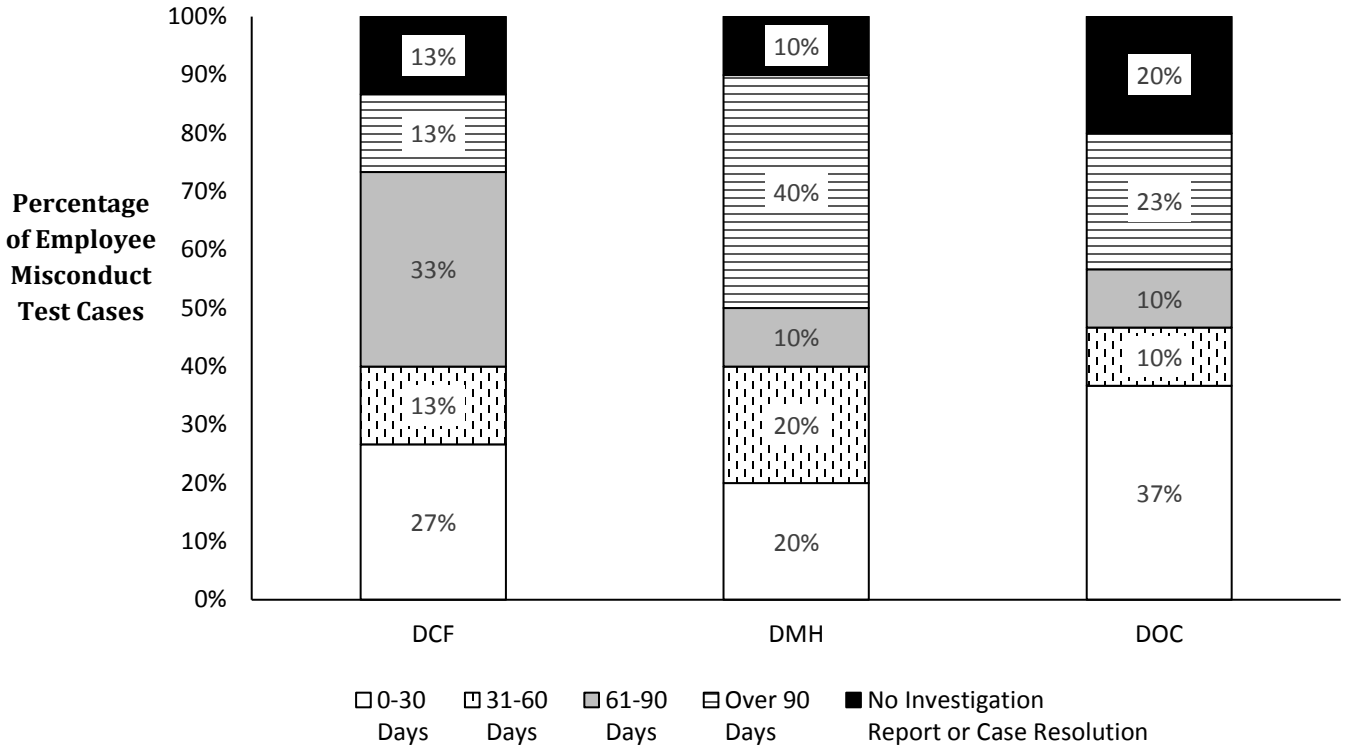
There is no specific timeframe in the CBA or personnel policies in which the State needs to reach a disposition in a case nor has AHS set an expectation that the disposition of a case will be completed within a certain period of time. A January 2015 memo from the DHR director of field operations indicates that the targeted completion date of cases post-investigation is 30 calendar days.

For the three departments in our scope, the median time between the completion of the investigation and the final disposition decision or employee resignation during the process was 58.5 days for the test cases.[38] There were significant differences in the number of days to final disposition in the three departments for the cases we reviewed—61 days for DCF, 84 days for DMH, and 48.5 days for DOC. Since these cases were judgmentally chosen, these calculations cannot be projected to the universe of misconduct cases. Figure 2 shows the percentage of test cases in 30-day increments from the investigation completion date to the final disposition decision date for each department. Only about a third of the cases were resolved within the 30-day target.

[37] According to the HR manager, a few weeks after the investigation report was issued the employee tendered his resignation, which he was later allowed to rescind. The HR manager stated that neither she nor the appointing authority were aware of the employee's continued employment. The HR manager could not find documentation regarding the resignation or its rescission.

[38] For this calculation, we did not include the seven cases in which there was no disposition decision or the disposition was unfulfilled nor did we include the two cases in which there was no investigation report.

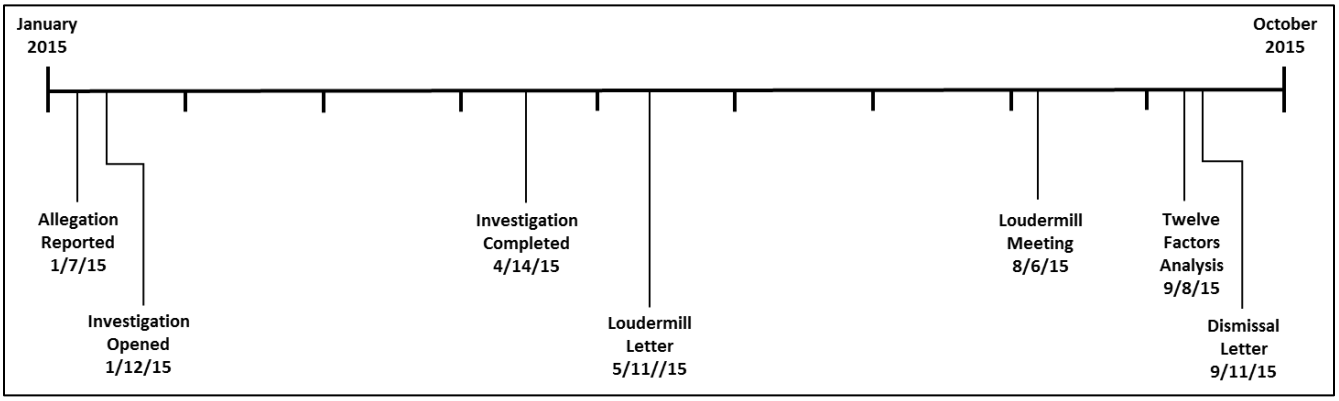
Figure 2: Days Between Investigation Completion to Final Disposition Shown as a Percentage of 30-day Increments for DCF, DMH, and DOC Test Cases[a]



[a] Regarding the segment entitled "No Investigation Report or Case Resolution," there were two cases with no investigation reports (one each for DCF and DOC) and seven cases without a resolution (one for DCF, one for DMH, and five for DOC).

In all but one of the 13 cases that took over 90 days, a stipulated agreement was negotiated and/or due process procedures were started (e.g., a Loudermill letter had been sent). This is consistent with comments made by DCF, DMH, and DOC officials that scheduling and negotiations were often the cause of dispositions that took over 30 days to achieve. To illustrate the time that due process procedures can take, Figure 3 shows the timeline for a case that went through each of the due process procedures and ultimately resulted in a termination for misconduct and gross misconduct.

Figure 3: Timeline of an Employee Misconduct Case with Due Process Procedures



For misconduct cases involving discipline, the CBAs require that the State act promptly to impose discipline within a reasonable time of the offense. According to State policy, the AA must be reasonably diligent in taking disciplinary action, which DHR also considers to be good labor relations practice. The longer it takes to render a disposition decision, the higher the risk that disciplinary action taken by the State could be overturned. According to the Vermont Labor Relations Board (VLRB), it has precluded management from disciplining employees for alleged offenses when it has found that the CBA provision for prompt action was violated. The median time it took to complete the 16 test cases that resulted in discipline (date allegation reported to final disposition) was 99 calendar days, or a little over three months (the range was 48 days to 329 days).[39]

Other Matters

During the course of our audit we came across other issues related to the completeness and accuracy of the records in the SharePoint® sites and the lack of reporting of performance measures related to misconduct cases.

SharePoint® Data

For the first year after the AHS IU was reestablished (2014), the unit used the DHR investigations unit's SharePoint® site. The AHS IU began using its own

[39] The two cases on the extreme edges of the range illustrate the variety of misconduct cases. The case that took 48 days to resolve was a DCF case involving the inappropriate use of the Internet on state systems that resulted in an oral reprimand. The case that took 329 days to resolve was also a DCF case and involved alleged off-duty criminal activity. One of the reasons that this case took so long was that the employee was incarcerated for several months (the employee was not paid while incarcerated). This employee was eventually convicted of a felony and dismissed from State employ.

SharePoint® site in January 2015.[40] Of the 55 cases in our review, 39 were contained in the AHS IU's SharePoint® site and 16 were contained in the DHR investigations unit's site.

According to the DHR and AHS IU employee misconduct investigation protocols, misconduct investigations conducted by the investigations units, department staff, or DHR staff should be entered into the applicable site. Nevertheless, these SharePoint® sites did not contain all of AHS' misconduct cases, especially DOC[41] and DMH cases handled locally. For example, only 24 of 78 (31 percent) DOC employee suspensions for misconduct in 2014 – 2016 were listed in the SharePoint® sites. In addition, employees who received oral and written reprimands at DOC correctional facilities due to misconduct were not always listed in the sites. We were unable to document the extent that DOC misconduct cases resulting in reprimands for misconduct were not listed in the SharePoint® sites because this information was generally not tracked for the period of this audit. However, a tracking spreadsheet for one of the facilities showed 19 oral or written reprimands issued in 2014 - 2016 that were not listed in the SharePoint® sites.

In July 2015, DMH established a time and attendance protocol for the Vermont Psychiatric Care Hospital and Middlesex Community Therapeutic Residence. This protocol contains standard disciplinary penalties for tardiness, attendance, and unauthorized off-payroll absences. For example, for the third occurrence in which the employee is found to be abusing sick leave or exhibiting a pattern of absence, the employee is to be given an oral reprimand, the fourth occurrence a written reprimand, and so forth, up to and including dismissal. DMH started issuing reprimands under this protocol in September 2016, but these cases were not recorded in the AHS IU SharePoint® site.

Even those records of misconduct cases that were listed in the SharePoint® sites were not sufficiently reliable for purposes of our audit objectives. For example, there were many records with logical anomalies, such as 27 records in which the case status field showed that the case was closed, but the case disposition field was blank or indicated that the investigation or disposition process was ongoing. In another 17 records, the case status field listed the case as open or having been referred to the AA, but the case had been resolved. Moreover, the SharePoint® records of 51 of the 55 cases reviewed (93 percent) had one or more errors (inaccuracies or blanks) in fields critical

[40] Data entry into the AHS IU SharePoint® system is a shared responsibility between the AHS IU and DHR staff.

[41] DOC officials stated that correctional facilities can issue discipline that is less than a five-day suspension without an AHS IU investigation. In addition, on June 26, 2015, the DOC director of facility operations issued a memo to correctional facility superintendents providing the feedback and discipline actions that should be taken when addressing employee tardiness.

to our objectives, such as case status, whether it was an RFD case, case disposition, and disposition date.

One reason why there were so many fields with missing or inaccurate data is that neither site has a user manual that describes the fields in the site and the values that are expected to be contained in these fields. The AHS IU SharePoint® site includes a document that describes how to (1) navigate the AHS IU SharePoint® site, (2) add, edit, and search for a case, and (3) generate a report.[42] The manual does not define the fields nor provide guidance on the values that should be selected and when (e.g., it shows that there are drop down menus, but does not show the options or provide guidance as to which option to choose).

The lack of user manuals that describe and define the fields in the site caused data to be entered inconsistently. For example, in some records the case disposition field contained a description of how the case was resolved (e.g., resignation, unsubstantiated misconduct), while in others the field was blank or just said "closed" or "substantiated."

Performance Measures

AHS does not have performance measures pertaining to the length of time to complete employee misconduct investigations or the disposition of these cases. Not surprisingly, AHS does not track these data points.

The director of the AHS IU completes and sends to the AHS chief operating officer an annual report containing the number of misconduct investigations the unit performed by investigator and department. The report also contains the average number of days of cases in which the investigation of employees in RFD status remained open. This report does not contain data on (1) investigations conducted by the departments or DHR field operations staff, (2) statistics on how long it takes to investigate cases, or (3) statistics on how long it takes to resolve cases. For example, the AHS IU protocol states that "within sixty days of acceptance, the AHS IU Investigator will make an effort to complete all interviews and forwards [sic] a draft of the report to AHS Legal," but the AHS IU annual report does not report the extent to which this target is being met. According to the director of the unit, this is a goal and not a standard established by law, statute, policy, or the CBAs. In addition, the director stated that the focus of the AHS IU is RFD cases, and he reports statistics to AHS' chief operating officer related to these types of cases.

[42] *AHS Investigation Unit SharePoint Site How-to: AHS-IU SharePoint Online Guideline* (Agency of Human Services).

According to the AHS chief operating officer, AHS has determined that it wants greater oversight of cases once they leave the AHS IU. The chief operating officer added that she will begin working on developing expectations with departments regarding the length of time between completion of the investigation and the final disposition of the case, including cases not investigated by the AHS IU.

Even if AHS establishes performance measures pertaining to the completion and disposition of all misconduct cases, unless the problems outlined in the prior subsection are corrected, we lack confidence that statistics using this system would be correct. For example, of the 39 cases reviewed that were in the AHS IU SharePoint® site, 28 (72 percent) of the records had inaccurate or blank disposition date fields. Without complete and accurate dates in this field, AHS is not positioned to determine whether it is meeting whatever expectations it establishes regarding the timeliness of case dispositions.

Conclusions

Addressing alleged employee misconduct is a serious and sometimes complicated matter that may need at least three State organizations to reach closure—the applicable AHS department, DHR, and the AHS IU. Decisions on how to handle misconduct cases can have major consequences for both the employee and the State. Employees can lose their jobs, be demoted, or be suspended without pay, and the State may pay employees who are not working (RFD status). Regarding the latter, for misconduct cases opened in 2014, 2015, and 2016, we estimate that the State paid $2 million in salaries and benefits for employees in RFD status in the three departments in our scope. Some of these costs may have been borne unnecessarily as there were 17 cases in which the allegation was unsubstantiated or the disposition of the case involved less than removal from State employment and the employees' RFD period extended more than 14 calendar days past the completion of the investigation.

Some parts of the process for handling employee misconduct were well documented, such as the issuance of investigation reports. Others lacked documentation, such as how allegations not resulting in investigations were handled as well as the basis for some dispositions. Moreover, there was no reliable central source to determine whether an employee had been the subject of previous disciplinary action or had signed a stipulated agreement that states that it is the employee's "last chance." Since an employee's prior disciplinary history is a factor in deciding whether to issue a disciplinary action and, if so, what type of action, the lack of a central source for this data could adversely affect the appointing authority or designee's decision. In addition, it is important that investigations and dispositions be completed in

a timely manner. Only about half of the investigations and a third of the decisions on the disposition of the cases reviewed were completed within targeted timeframes of 60 and 30 days, respectively. There are external and internal circumstances that may make these targets unreachable in certain circumstances (e.g., criminal cases, due process procedures). Nevertheless, the lack of performance measures that are also being tracked that pertain to the length of time to complete employee misconduct investigations or the disposition of these cases suggests that not enough attention is being given to this area.

Recommendations

We are not making recommendations to DHR in this report; see our companion report for all DHR recommendations.

With respect to AHS and the three departments in our scope, we make the recommendations in Tables 4 – 7.

Table 4: Recommendations to the Secretary of the Agency of Human Services

Recommendation	Report Pages	Issue
1. Develop and implement criteria that specify the types of allegations that should be investigated by the AHS IU.	14	The May 2015 AHS IU protocol does not require or suggest that the AA request the AHS IU to conduct investigations that address high-priority allegations.
2. Develop procedures for revisiting an employee's RFD status after the investigation is completed and guidelines on when the employee should be removed from RFD status if departments are not considering removing the employee from State employment.	17-18	There were 17 cases (15 in DOC and 2 in DCF) in which it appeared that employees remained in RFD status longer than necessary. In these cases, the State paid the salaries and benefits of non-working employees after the investigation was completed—sometimes for months—even though it did not appear that the department was considering dismissing the employee.
3. Modify the AHS IU SharePoint® system or develop a new system to be a repository of allegations, investigations, and resolutions of all employee misconduct decisions, and include edits to help ensure that records are complete and accurate.	13, 30-31	It was not possible to evaluate AHS' decisions on whether and by whom investigations of allegations of misconduct were to be conducted because AHS and DHR did not record or log all allegations, only those for which investigations were conducted. In addition, the AHS IU SharePoint® site did not include all employee misconduct cases. The site also contained numerous logical anomalies and records that contained inaccuracies and blank fields.
4. Modify the manual for the AHS IU SharePoint® site to include descriptions of each field and expected values.	32	The AHS IU SharePoint® site manual does not describe the fields in the site and the values that are expected to be contained in these fields.

Recommendation	Report Pages	Issue
5. Develop one or more targets for when investigations are expected to be completed regardless of the organization of the investigator, and track the extent to which this target is being met. There could be multiple targets to address in certain circumstances, such as when the employee is in RFD status.	32-33	AHS does not have performance measures pertaining to the length of time to complete employee misconduct investigations or the disposition of these cases. The director of the AHS IU completes and sends to the AHS chief operating officer an annual report describing the number of misconduct investigations the unit performed by investigator and department. This report does not contain data on (1) investigations conducted by the departments or HR staff, (2) statistics on how long it takes to investigate cases, or (3) statistics on how long it takes to resolve cases.
6. Develop one or more targets for when AAs or designees are expected to finalize the disposition of a case, and track the extent to which this target is being met. There could be multiple targets to address, for example, whether due process procedures were initiated or stipulated agreements were negotiated.	32-33	See recommendation number 5.

Table 5: Recommendations to the Commissioner of the Department for Children and Families

Recommendation	Report Pages	Issue
1. In conjunction with DHR, develop a process to document the decisionmaker for each disposition of an employee misconduct case, when the decision was made, and confirmation that the disposition was carried out. This could be done by recording this information in the AHS IU SharePoint® site.	24-25, 27	There is no written record of the staffing meetings and the dates of these meetings were not always recorded in the AHS IU SharePoint® site. In about 40 percent of the 39 test cases in the AHS IU SharePoint® site, the person who executed the disposition (e.g., signed the written reprimand, issued the supervisory feedback, or signed the notification that the investigation was closed without further action), was not an appointing authority or designee as listed in the site. Since there was no record of the staffing meetings, we could not tell whether these individuals made the decision or simply executed the decision. In addition, there were misconduct cases in which there was no evidence that the AA or designee had decided on a disposition of the case or the disposition had not been carried out
2. When considering imposing discipline in an employee misconduct case and in conjunction with DHR, document the rationale used in the decision-making process, including how the 12 factors were applied.	25	DHR and department officials told us that the 12 factors are considered and discussed when considering imposing discipline, but there was not always documentation of how the factors were applied.

Table 6: Recommendations to the Commissioner of the Department of Mental Health

Recommendation	Report Pages	Issue
1. In conjunction with DHR, develop a process to document the decisionmaker for each disposition of an employee misconduct case, when the decision was made, and confirmation that the disposition was carried out. This could be done by recording this information in the AHS IU SharePoint® site.	24-25, 27	There is no written record of the staffing meetings and the dates of these meetings were not always recorded in the AHS IU SharePoint® site. In about 40 percent of the 39 test cases in the AHS IU SharePoint® site, the person who executed the disposition (e.g., signed the written reprimand, issued the supervisory feedback, or signed the notification that the investigation was closed without further action), was not an appointing authority or designee as listed in the site. Since there was no record of the staffing meetings, we could not tell whether these individuals made the decision or simply executed the decision. In addition, there were misconduct cases in which there was no evidence that the AA or designee had decided on a disposition of the case or the disposition had not been carried out.
2. When considering imposing discipline in an employee misconduct case and in conjunction with DHR, document the rationale used in the decision-making process, including how the 12 factors were applied.	25	DHR and department officials told us that the 12 factors are considered and discussed when considering imposing discipline, but there was not always documentation of how the factors were applied.
3. Develop a process, in conjunction with DHR, to ensure that all employee misconduct cases and resolutions are recorded in the AHS IU SharePoint® site.	31	In July 2015, DMH established a time and attendance protocol for the Vermont Psychiatric Care Hospital and Middlesex Community Therapeutic Residence. This protocol contains standard disciplinary penalties for tardiness, attendance, and unauthorized off-payroll absences. DMH started issuing reprimands under this protocol in September 2016, but these cases were not recorded in the AHS IU SharePoint® site.

Table 7: Recommendations to the Commissioner of the Department of Corrections

Recommendation	Report Pages	Issue
1. In conjunction with DHR, develop a process to document the decisionmaker for each disposition of an employee misconduct case, when the decision was made, and confirmation that the disposition was carried out. This could be done by recording this information in the AHS IU SharePoint® site.	24-25, 27	There is no written record of the staffing meetings and the dates of these meetings were not always recorded in the AHS IU SharePoint® site. In about 40 percent of the 39 test cases in the AHS IU SharePoint® site, the person who executed the disposition (e.g., signed the written reprimand, issued the supervisory feedback, or signed the notification that the investigation was closed without further action), was not an appointing authority or designee as listed in the site. Since there was no record of the staffing meetings, we could not tell whether these individuals made the decision or simply executed the decision. In addition, there were misconduct cases in which there was no evidence that the AA or designee had decided on a disposition of the case or the disposition had not been carried out.
2. When considering imposing discipline in an employee misconduct case and in conjunction with DHR, document the rationale used in the decision-making process, including how the 12 factors were applied.	25	DHR and department officials told us that the 12 factors are considered and discussed when considering imposing discipline, but there was not always documentation of how the factors were applied.
3. Develop a process, in conjunction with DHR, to ensure that all employee misconduct cases and resolutions are recorded in the AHS IU SharePoint® site.	31	Only 24 of 78 (31 percent) DOC employee suspensions for misconduct in 2014 – 2016 were listed in the SharePoint® sites. In addition, employees who received oral and written reprimands at DOC correctional facilities due to misconduct were not always listed in the sites.

Management's Comments and Our Evaluation

We sent a draft of this report to AHS, the departments in our scope, and DHR for comment. On June 6, 2017, the commissioner for the Department of Human Resources provided a response to the draft that stated that it included specific comments from AHS and the departments in our scope. The commissioner's response is reprinted along with our evaluation of these comments in Appendix IV.

Our companion report contains all of our recommendations to DHR.[43] In some cases, the commissioner's response to this report addressed

[43] This report is contained on our website and is entitled *State Employee Misconduct: Handling of Allegations by the Department of Human Resources and Selected Organizations Needs Improvement in Documentation and Timeliness*.

recommendations made in our companion report. We chose to assess her comments in their entirety and not ignore comments that pertained to recommendations in our companion report. However, we added a notation alongside the reprinted letter in Appendix IV if the recommendation referenced by the commissioner pertained to our companion report.

The commissioner's response stated that we had raised some important issues that will be carefully reviewed and considered. However, in general, her comments on specific elements of the report indicated that DHR does not plan to implement our recommendations. In summary, the major objections to our recommendations were that they (1) were not required by State statute, personnel policies, the CBAs, and decisions by the VLRB and the courts (called "guiding authorities" in the commissioner's response) and (2) called for additional documentation of decisions that DHR considered burdensome and unnecessary. We disagree with the commissioner's comments. Specifically, while the State's internal processes should be informed by, and consistent with, the sources cited by the commissioner, she cited no evidence that the State is prohibited from developing operational practices to document their critical decisions and significant events, as called for in the State's own internal control standards.

The commissioner also commented that our report suggested new standards not required by the guiding authorities. We disagree with this characterization. We utilized as criteria the guiding authorities cited by the commissioner as well as the State's business practices as contained in: (1) the AHS IU protocol for handling employee misconduct, (2) DHR training documents, (3) communications with DHR management clarifying the State's practices, and (4) timeliness targets or benchmarks set by AHS and DHR. Thus, we did not suggest new standards, rather we utilized operational practices that AHS or DHR had established themselves.

These operational practices are important supplements to the guiding authorities cited by the commissioner as these materials can go beyond the requirements in the State's personnel policies and CBAs. For example, the personnel policies pertaining to due process requirements (e.g., the Loudermill process)[44] and the CBAs require that these due process procedures be implemented when contemplating dismissing an employee. However, in the March 2015 training materials, DHR stated that the Loudermill process should be used when contemplating a suspension or a demotion, as well.

[44] *Disciplinary Action and Corrective Action* (Personnel Policy Number 8.0, March 1, 1996) and *Due Process Requirements (Loudermill Process)* (Personnel Policy Number 8.1, March 1, 1996).

The AHS section of DHR's comment letter addressed each of our recommendations to the Secretary of AHS (but not those to the departments, which were addressed by DHR). In several cases AHS indicated that they may implement improvements, but did not explicitly commit to implementing any of our recommendations.

The intent of our recommendations is to improve the State's operational practices for handling alleged employee misconduct. Accordingly, we continue to believe that the recommendations contained in this report and our companion report should be implemented. See Appendix IV for more detail on our evaluation of the commissioner's comments.

Appendix I
Scope and Methodology

To address all objectives, we reviewed a variety of criteria, including the:

- State Employees Labor Relations Act
- Collective Bargaining Agreements between the State and the VSEA for the Non-management, Supervisory, and Corrections bargaining units
- State Personnel Policy Number 2.3, *Rules and Regulations for Personnel Administration*
- State Personnel Policy Number 3.1, *Sexual Harassment*
- State Personnel Policy Number 3.3, *Discrimination Complaints*
- State Personnel Policy Number 5.6, *Employee Conduct*
- State Personnel Policy Number 8.0, *Disciplinary Action and Corrective Action*
- State Personnel Policy Number 8.1, *Due Process Requirements (Loudermill Process)*
- State Personnel Policy Number 9.1, *Immediate Dismissal*
- State Personnel Policy Number 10.0, *Grievance Procedure*
- State Personnel Policy Number 17.0, *Employment Related Investigations* (both the March 1996 and November 2016 versions)
- AHS IU Referral and Acceptance Protocol for Employee Misconduct Investigations

We also discussed the employee allegation, investigation, and discipline process with various DHR officials, including the HR director, director of field operations, and the HR managers for DCF, DMH, and DOC. In addition, we obtained information from the director of the AHS IU, the AHS chief operating officer, and appointing authorities at DCF, DMH, and DOC. Lastly, we reviewed summaries of cases adjudicated by the Vermont Labor Relations Board.

To obtain information on the investigations opened between January 1, 2014 and December 31, 2016, we downloaded summary-level files from the AHS IU and DHR investigations unit's SharePoint® sites. We adjusted these files to remove duplicates and other records not relevant to the scope of the audit.

We also performed procedures to confirm the validity of the download and assess the reliability of the data in these sites. We determined that the SharePoint® systems were not reliable for purposes of our audit objectives because they were incomplete and inaccurate. Because these were the only systems that tracked employee misconduct investigations, we chose to use the systems for limited purposes, but not to draw broad conclusions using only the data from the systems.

Once we had an unduplicated list of misconduct investigations from the SharePoint® sites, we summarized this list by department and chose the AHS departments to be in our scope. We chose to perform audit work at DCF, DMH, and DOC because they had the most misconduct investigations identified in the SharePoint® files.

With respect to Objective 1, we also obtained a file from the State's payroll system of all employees in RFD status between 2014 – 2016, the days and hours that they were on this status, and their pay rate.[45] We removed the cases from this file that were not applicable to our audit scope (e.g., 2013 cases, non-misconduct cases) and traced the remainder to our files of the investigation records in the AHS IU and DHR investigations unit's SharePoint® sites.[46]

Our work for Objectives 2 and 3 primarily related to choosing and reviewing 55 employee misconduct cases (15 for DCF, 10 for DMH, and 30 for DOC). We judgmentally chose these cases to obtain a mixture of (1) investigations performed by the AHS IU, DHR, and the departments and (2) case dispositions. We also ensured that there was a distribution of cases across each year of our scope (18 cases in 2014, 18 cases in 2015, and 19 cases in 2016). However, since these cases were judgmentally chosen, these results cannot be projected to the universe of misconduct cases.

For each of the cases, we obtained the detailed records from the relevant SharePoint® site. We also obtained copies of the (1) allegations, (2) investigation reports, (3) RFD letters, (4) Loudermill letters, (5) 12-factor analyses, and (6) disposition documentation (e.g., suspension letters). We made inquiries of the relevant HR managers and department staff, including appointing authorities or designees, about these cases. The appointing authorities or designees included a commissioner, deputy commissioners, correctional superintendents, and division directors. We also confirmed that dispositions involving discipline or stipulated agreements were in the

45 We did not assess the reliability of this data.

46 We found two DOC employees placed on RFD status for alleged employee misconduct that did not have a corresponding record in the SharePoint® sites. We did not perform additional work on these two cases since they were not material to our audit objectives and it was already known that the SharePoint® sites were not complete.

employee's personnel file and that the action had been taken in the State's payroll system (e.g., that the employee had been suspended or dismissed).

We performed our audit work between November 2016 and May 2017 at the state office complex in Waterbury. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II
Abbreviations

AA	Appointing authority
AHS	Agency of Human Services
AHS IU	Agency of Human Services Investigations Unit
CBA	Collective bargaining agreement
DCF	Department for Children and Families
DHR	Department of Human Resources
DMH	Department of Mental Health
DOC	Department of Corrections
GAGAS	Generally accepted government auditing standards
HR	Human resources
RFD	Temporary relief from duty
VLRB	Vermont Labor Relations Board
VSEA	Vermont State Employees' Association, Inc.

Appendix III
12-Factors Considered During Discipline Decisions

Personnel Policy Number 8.0, *Disciplinary Action and Corrective Action* states that under case law, each disciplinary action is considered in the context of 12 factors, as follows.

1. The nature and seriousness of the offense, and its relation to the employee's duties, position and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated.

2. The employee's job level and type of employment including supervisory or fiduciary role, contacts with the public and prominence of the position.

3. The employee's past disciplinary record.

4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability.

5. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties.

6. Consistency of the penalty with those imposed upon other employees for the same or similar offenses.

7. Consistency of the penalty with any applicable agency table of penalties. (The State does not currently use any form of table of penalties.)

8. The notoriety of the offense or its impact upon the reputation of the agency.

9. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question.

10. Potential for the employee's rehabilitation.

11. Mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter.

12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

Our companion report contains all of our recommendations to DHR.[47] In some cases, the commissioner's response to this report addressed recommendations made in our companion report. We chose to assess her comments in their entirety and added a notation if the recommendation referenced was in our companion report.

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MEMORANDUM

TO: **Doug Hoffer,** State's Auditor

FROM: Beth Fastiggi, DHR Commissioner

DATE: **June 6,** 2017

RE: **Comments to Draft Audit Report No 17-04 - State Employee Misconduct**

Thank you for the opportunity to comment on your office's draft report regarding State employee misconduct investigation and disciplinary processes. You raise some important issues and they will be carefully reviewed and considered.

Please find below specific comments from Agencies and Departments included in your draft report.

1. Guiding Authorities. The requirements of the disciplinary process are governed by State statutes (3 V.S.A. § 926; 3 V.S.A. § 1003), Personnel Policies issued by the Secretary of Administration, agreements collectively bargained between management and labor unions (CBAs), and decisions of the Vermont Labor Relations Board (VLRB) and Vermont courts. These authorities are hereinafter collectively referred to as "the guiding authorities." While this process as managed by the State could benefit from some of the practices which were identified in the draft reports, current processes, all of which may be grieved, generally result in actions that are upheld by the Vermont Labor Relations Board (VLRB) and the Vermont courts, who have the subject matter expertise and legal authority to judge them.

2. Audit Standards: Generally accepted audit practice is to measure an organization against standards and requirements set by the guiding authorities or recognized best practices (for example, Federal procedures developed in managing the Federal civil service, applying similar laws.) However, throughout this report, the Auditor has suggested new standards which are not required by the guiding authorities or compared to recognized best practices. The Auditor has also utilized internally-created informal goals that actually exceed the standards for timeliness and documentation imposed by guiding authorities, in a manner never intended when the goals were created. For example, one draft report states "the data systems used to track misconduct investigations were not sufficiently complete and reliable *for the purposes of our objectives*" (emphasis added), rather than finding that the agencies did not meet the requirements set by the guiding authorities.

This characterization of auditing standards is incorrect. See comment 1 on page 52.

[47] This report is contained on our website and is entitled *State Employee Misconduct: Handling of Allegations by the Department of Human Resources and Selected Organizations Needs Improvement in Documentation and Timeliness.*

3. Relief from Duty (RFD): The State seeks to minimize the amount of time employees are placed in this paid leave status while disciplinary action is pending. The State does not have the option of placing classified employees on unpaid leave, and there are many circumstance in which it is in the State's best interest to remove the employee from the workplace pending potential disciplinary action. The length of time an employee is on RFD is often due to factors beyond the State's control, for example an employee with access to vulnerable adults who is under criminal investigation for abuse may be on RFD to protect that vulnerable population until the criminal investigation is complete. Also, once an investigation is completed due process requirements must be followed prior to making a decision which may be prolonged by factors beyond the State's control. Regardless of the level of discipline ultimately imposed, returning the employee to work while the decision is pending is not generally prudent and must be made on a case-by-case basis. DHR agrees that additional steps may be taken to ensure that employees are removed from RFD status as soon as possible. DHR already provides such guidance verbally on a case by case basis, as required due to the specifics of each case and expects to continue to use verbal guidance to communicate to the AAs.

See comment 2 on page 53.

Recommendation in companion report.

See comment 3 on page 53.

4. Timeliness: DHR provides the following comments regarding the timeliness of the investigative and disciplinary processes.

The report states in part "…the lack of overall performance measures that are tracked pertaining to the length of time to complete employee misconduct investigations or the disposition of these cases suggests that not enough attention is being given to this area" and "investigations were not always completed timely." However, the internally-established benchmarks (60 days for investigations, later adjusted for the DHRIU to 90 days, and 30-days for post-investigation decisions) are not an appropriate measure of "timeliness" as the term is customarily used in the context of employee discipline. The benchmarks were voluntarily adopted to assist the organizations in managing the processes, with the full knowledge that many situations would require more time. They are not imposed by any of the guiding authorities, who have not set rigid time standards due to the variations in circumstances that make such standards counterproductive. Rather, these bodies (the VLRB and Vermont courts) evaluate each case on its own facts to determine whether the State has been timely in imposing discipline. Rigid standards could potentially lead to rushed investigations and poor decision-making if strict time standards were imposed. Due process requirements, scheduling challenges with multiple parties including labor unions and other representatives, and settlement negotiations may all properly lengthen the disciplinary process and, as noted, many delays are outside the control of the investigator or decision-maker, such as an ongoing criminal investigation, or employee illness. VLRB decisions during the audit period show only one case in which the VLRB found State-imposed discipline untimely, and in that case the Vermont Supreme Court overturned the VLRB's ruling and upheld the State's action, finding no prejudice to the employee. Such results should be the measure of performance, rather than arbitrary time standards. Therefore, DHR supports informal benchmarks set internally to encourage forward movement of the disciplinary process, but not as a performance measure.

See comment 4 on page 53.

See comment 5 on page 53.

See comment 6 on page 53.

See comment 7 on page 54.

5. Documentation: The report referred to documentation which was in some way "lacking," for example "Objective1: Documentation Lacking on Decisions Related to Allegations," and "Objective 3: Decision-making Process for Resolving Misconduct Cases Often Lacked Documentation and Sometimes Took Months." However, most of the documentation considered "lacking" is not required by the guiding authorities, as is described in particular categories below.

- *SharePoint*: In the past few years DHR and AHS have made great improvements in record-keeping related to the investigatory and disciplinary process, above and beyond those which are required by the guiding authorities, in order to improve the disciplinary process for customers, employees, and HR practitioners. This includes the creation of investigations SharePoint sites that have grown to incorporate additional aspects of the misconduct process. This developmental process will continue with plans for a single misconduct database and DHR agrees that improving the completeness and accuracy of the database is an important goal. However, most of the recommended documentation requirements, some of which are explored in more detail below, are burdensome and unnecessary, and in some cases contrary to the efficient and proper functioning of the disciplinary process. While, as noted in the draft report, a minority of employees indicated concerns about State disciplinary processes in a survey, the courts and the VLRB have generally supported management actions in this sphere, indicating that additional documentation requirements are not necessary.

See comment 8 on page 54.

- *Method of Investigation*: All misconduct allegations involve unique facts and circumstances, and decisions about whether to investigate them must be flexible to reflect this complexity. For example, some allegations of sexual harassment, such as an unwelcome touching, may be severe, yet require a minimal and relatively simple investigation, more quickly and easily accomplished by HR personnel. Conversely, non-"priority" investigations may be complex and require more expertise. Overly specific polices for such complex processes are often counter-productive and must be approached with flexibility. DHR prefers its current approach to consider each allegation on a case-by-case basis and select the most appropriate manner of investigation based upon the circumstances present, but will continue to assess where more specificity can be brought into the process. Additionally, tracking all allegations that come to DHR's attention, even if not ultimately investigated, is an appropriate goal and one that DHR has in place, but there will always be a *de minimus* level that makes tracking an unnecessary burden.

See comment 9 on page 54.

- *Rationale for decision making*. At this point in time, DHR does not expect to implement the recommendations to require documentation for decisions related to investigation or the imposition of discipline beyond those currently required by the guiding authorities, but will continue to evaluate where additional documentation may be of value. For example, the Auditor recommends in all cases consideration of the "12 factors" must be documented which is not a requirement of the guiding authorities. DHR agrees the State should *consider* the "12 factors" when imposing discipline.[1] In serious disciplinary actions DHR has determined that the best

This misrepresents recommendations in this and our companion report. See comment 10 on page 54.

[1] From Personnel Policy 8.0: *The Twelve Factors*. Under the case law, each disciplinary action is considered in the context of twelve factors which are typically relevant to evaluating the appropriateness of a penalty. Since such factors will be used to evaluate the propriety of an action which is the subject of a grievance, it is helpful for the

practice is to document in writing the appointing authority's consideration of the "12 factors" and the practice should be followed to the extent feasible. However, there is no external requirement that the State document its consideration of the 12 factors for all cases and there has been no finding by the VLRB during the audit period that the State failed to consider the 12 factors as required. Particularly for lower-level disciplinary actions, such requirements are unduly burdensome and would unnecessarily delay the process.

- *Case "Staffing"*: In all cases, once the investigation is complete DHR will forward the report to the appointing authority and discuss with the appointing authority whether it appears that misconduct has occurred and whether discipline should be pursued. This conversation can be a simple phone call between DHR personnel and the appointing authority, or the appointing authority can invite others to participate in the conversation. This process is sometimes referred to as a "staffing." DHR does not expect to implement the recommendation that all staffing discussions be documented. Many of the conversations which take place as part of the disciplinary process are protected by attorney-client and attorney work product privileges. These protections are in place for purposes of public policy, including the free and open discussion of sensitive matters which could lead to litigation. Once discipline is imposed the State has the burden of showing just cause before the VLRB and/or courts and may do this in a variety of ways, including live testimony. Creating additional documentation in these matters is burdensome, unnecessary, and is contrary to current statutory and collectively-bargained processes for evaluation. The courts and the VLRB determine the type and quality of evidence required to sustain a disciplinary action.

This misrepresents recommendations in this and our companion report. See comment 11 on page 54.

See comment 12 on page 54.

- *Progressive Discipline and Uniformity and Consistency*: While DHR understands the requirement to consider uniformity and consistency when making disciplinary decisions, DHR does not expect to implement the recommendation to require "DHR staff to provide a written summary of the subject employee's discipline history to staffing meeting attendees, including past discipline" in all cases. The guiding authorities have not set requirements for documenting how progressive discipline and uniformity and consistency requirement are considered or applied, nor have they prescribed the manner in which DHR advice is presented.[2] In order to ensure that management properly considers past employee misconduct and complies with requirements to consider uniformity and consistency, DHR attempts to capture all allegations in the SharePoint database, and as well as disposition by misconduct type, so a comparison can be made for uniformity and consistency purposes. This method is combined with a review of an employee's official personnel file (OPF) to ensure past discipline is captured. DHR is prevented from considering an employee's past discipline once it is removed from the OPF by applicable CBAs. By their very nature, stipulated agreements are not, and should not be, considered when

Recommendation in companion report.

See comment 13 on page 55.

employer to take them into consideration before a disciplinary action is imposed. Such factors duplicate some issues already discussed, but can serve as a reminder of matters which should be considered.

[2] From Personnel Policy 8.0: *Uniformity and Consistency of Discipline.* The contract provides that the State will "apply discipline or corrective action with a view toward uniformity and consistency." Appointing authorities should take into consideration, when deciding on an appropriate action, what action was taken against other employees in similar circumstances. However, the contract should not be taken to mandate rigid standards of uniformity.

See comment 14 on page 55.

This mischaracterizes recommendations in this and our companion report. See comment 15 on page 55.

determining uniformity and consistency as they are non-precedential and often based on factors outside of the required disciplinary considerations, for example, litigation costs.

- *Documentation requirements for Appointing Authorities*: The Auditor made several recommendations for recordkeeping requirements to be carried out by Appointing Authorities. DHR does not expect to implement these recommendations. State of Vermont personnel functions were consolidated to a centralized model in 2009, and DHR was given responsibility for maintaining all personnel records. While some AAs may wish to maintain their own records, DHR, as the "official" keeper of personnel records, believes maintaining a duplicate or shadow personnel records system, is not efficient nor should it be necessary.

Agency of Human Services Comments

The Agency of Human Services agrees with the comments provided by the Department of Human Resources. This is an opportunity to increase our collaboration and integration of information.

Recommendation: *"Develop and implement criteria that specify the types of allegations that should be investigated by the AHS IU."*

See comment 16 on page 55.

Response: Paragraph #4 AHS IU Protocols 2015 state: "The AHS IU will determine if the AHS IU will accept the referral for investigations. The AHS IU will accept cases that appear to be of a serious nature and may result in significant discipline."

Developing predetermined criteria, without having the details of a particular allegation, inherently limits the decision-making ability of the AHS IU Director and/or and the Appointing Authority. The AHS IU Protocol currently requires the AHS IU to accept cases of a serious nature. The AHS IU Director needs to be able to review each misconduct referral independently to determine who should be assigned the investigation. The AHS IU Director should be able to determine if the allegation warrants the expertise of a professional investigator or have less complex investigations assigned to DHR staff or an AHS Manager.

AHS would consider a model where every allegation of misconduct be reviewed by the AHS IU Director. Currently, the AHS IU Director only has knowledge of misconduct cases, if there is a referral sent to the AHS IU Director, if the AA directly contacts the AHS IU Director about suspected misconduct, or if a DHR Manager/Administrator informs the AHS IU Director of an allegation. Many times, allegations of misconduct do not come to the attention of the AHS IU Director. When Investigations are not assigned to the AHS IU, there is inconsistent data entry to track each investigation. There are several potential reasons for cases not being entered into the SharePoint site; however, lack of training or knowledge is not a viable reason for not entering a new investigation. Each DHR Manager/Administrator on at least one occasion, has entered an investigation into the SharePoint site. There are only six required fields to open a case and the required fields are self-explanatory. If the required fields are not completed, the case cannot be opened in the system.

It is important that all allegations of staff misconduct are tracked and reviewed for accountability, uniformity, and consistency. Because the AHS IU conducts misconduct investigations for each AHS Department, it would be logical for the AHS IU Director to monitor, review, and ensure that all of the allegations of staff misconduct get entered into SharePoint. Cooperation and collaboration between the AA, DHR, and the AHS IU are paramount in getting this task completed.

Recommendation: *"Develop procedures for revisiting an employee's RFD status after the investigation is completed and guidelines on when the employee should be removed from RFD status if departments are not considering removing the employee from State employment."*

Response: AHS recognizes the burden RFD status places on the employee, the AA, and other staff affected by a co-worker on RFD status. AHS would prefer to return an employee to work and remove them from RFD status; when a decision has been made to either substantiate the allegation of misconduct or unsubstantiate the allegation. However, it is important to note, once the investigation has been completed and provided to the AA; several processes must occur, per the Collective Bargaining Agreement, before a decision can be made to remove an employee from State employment.

See comment 17 on page 55.

When the AA reviews the report, and believes the employee committed severe misconduct and faces significant discipline (suspension or termination), the employee has the right to a Loudermill hearing in response to the allegations. If, after the Loudermill hearing, the AA is still considering significant discipline, the AA is required to complete the 12 factors before making a decision on the level of discipline. AHS does not want to return an employee from RFD status prematurely, without going through the proper steps, outlined in the CBA. In many cases, the AA cannot make a decision on whether they are going to terminate an employee until after the investigation is complete. If the AA determined the outcome without following due process, they would be in violation of the CBA.

AHS recognizes there are several ways to shorten the amount of time a State employee is on RFD. Shortening the amount of time an employee is on RFD can potentially be accomplished by focusing on timely scheduling staffing meetings, completing Loudermill letters, scheduling Loudermill hearings, etc. Additional focus on timeframes and ensuring the completion of next steps, should limit the amount of time employees are on RFD. Clearly, if a case is determined by the AA to be unsubstantiated at a staffing prior to a Loudermill hearing, that employee shall return to work as soon as possible.

All misconduct cases have unique circumstances that can delay timely resolution: from the time the investigative report is provided to the AA, to when the Loundermill letter is written and sent to the employee, to when the Loudermill meeting is scheduled, and to the completion of the 12 Factor Analysis. Additionally, one factor that often delays the resolution of cases is negotiating stipulated agreements with the employee. Stipulated agreements are a common step used for resolving severe misconduct cases. Again, establishing guidelines and monitoring the negotiation process by the AA and DHR point of contact can be established to help resolve RFD cases in a timely fashion.

Recommendation: *Modify the AHS IU SharePoint system or develop a new system to be a repository of allegations, investigations, and resolutions of all employee misconduct decisions, and include edits to help ensure that records are complete and accurate.*

Response: The current AHS IU SharePoint site has the ability to be a repository for all misconduct allegations, investigations, and resolutions of all employee misconduct. AHS would consider some minor modifications to the SharePoint site. Modifications could be developed to determine if the misconduct allegation was accepted for investigation or declined. AHS may consider using the SharePoint site to track all misconduct allegations, investigations and resolutions. For this to occur, there needs to be a cooperative effort on the part of the AA, DHR and the AHS IU to ensure the information is always being reported to the AHS IU Director and entered into the SharePoint site. The AHS IU is not notified or consulted at the conclusion of misconduct cases. DHR would have to take responsibility for documenting the conclusion of a case or providing the information to AHS IU for documentation.

Recommendation: *Develop a user manual for the AHS IU SharePoint site that includes descriptions of each field and expected values.*

See comment 18 on page 56.

Response: There is an AHS IU user manual. It is contained on a link called AHS IU Documents. The fields are self-explanatory for anyone that has permission to use the site and is an HR Manager/Administrator.

Recommendation: *Develop one or more targets for when investigations are expected to be completed regardless of the organization of the investigator, and track the extent to which this target is being met. There could be multiple targets to address in certain circumstances, such as when the employee is in RFD status.*

See comment 19 on page 56.

Response: AHS agrees with DHR that there are so many variables that impact the investigative process that it is impossible to establish a timeliness benchmark for every situation. The unit voluntarily adopted 60 days for investigations and 30 days for post-investigation decisions, understanding that many delays are outside the control of any of the involved parties. AHS will support increased vigilance to bring cases to closure.

Recommendation: *Develop one or more targets for when AAs or designees are expected to finalize the disposition of a case, and track the extent to which this target is being met. There could be multiple targets to address, for example, whether due process procedures were initiated or stipulated agreements were negotiated.*

See comment 20 on page 56.

Response: AHS IU has voluntarily established the target of 30 days to finalize the disposition of a case. The unit will support efforts to track cases to ensure every effort is made to complete cases as soon as feasible.

SAO Evaluation of Management's Comments

The following presents our evaluation of comments made by the DHR commissioner.

Comment 1.	The commissioner's comments are inaccurate. She suggests that generally accepted government auditing standards (GAGAS) limit the criteria available to auditors to legal authorities and recognized best practices, but this is not correct. GAGAS §6.37 states that auditors should identify criteria relevant to the audit objectives. Examples of criteria cited in the standard include not only laws and requirements, but also policies and procedures, the purpose or goals set by officials of the audited entity, measures, expected performance, defined business practices and benchmarks. During the course of the audit and as described in both the body of the report and the scope and methodology outlined in Appendix I, we considered the criteria in the documents described as guiding authorities in the commissioner's comments as well as (1) business practices as contained in the AHS protocol for handling employee misconduct, DHR training documents, and communications with DHR management clarifying the State's practices and (2) timeliness targets or benchmarks set by AHS and DHR. Accordingly, it is not accurate to state that we established new standards, rather we utilized those criteria that AHS and DHR had established themselves. The comment letter cited a specific example in the "Other Matters" section on the reliability of the SharePoint® data in which we describe the systems used to track misconduct investigations as not sufficiently reliable for purposes of our audit objectives. GAGAS §6.16 – §6.22 and §6.23 – §6.27 requires auditors to gain an understanding of internal controls and information system controls, respectively, that are significant to the audit objectives, which includes assessing the relevance and reliability of information. GAGAS §7.15 requires that we describe in the report the limitations or uncertainties with the reliability or validity of the evidence in conjunction with our findings and conclusions. In accordance with these standards, we developed and implemented procedures to determine the completeness and accuracy of the SharePoint® system sites, found deficiencies and, as explained in the report, adjusted our methodology so as not to rely on these systems, and reported on the weaknesses found. That the commissioner cites our reporting on the reliability of the SharePoint® systems as an example of alleged misapplication of auditing standards seems particularly incongruous given the evidence. The systems contained 372 records of misconduct cases in the three AHS departments in our scope between 2014 and 2016, but at DOC alone there were at least 73 additional misconduct cases not entered into the systems. In addition, 44 of the misconduct records in SharePoint® for the three departments (12 percent) contained logical anomalies, such as the case status field listing the case as open, but the case was resolved. Lastly, 51 of the 55 cases reviewed contained errors (inaccuracies or blanks) in fields such as case status and case disposition.

Comment 2.	Our report acknowledges that there are circumstances in which the CBAs allow an AA to relieve an employee from duty with pay as a misconduct case is being addressed, and we did not take issue with decisions that resulted in employees kept in RFD status after the investigation was completed if those employees subsequently left State employ (e.g., were dismissed). However, in 17 cases (20 percent of all completed misconduct cases with employees in RFD status in the three departments in our scope) the allegation was unsubstantiated or the disposition of the case involved less than removal from State employment, yet the employees' RFD period extended weeks and sometimes months past the completion of the investigation. For example, in three cases, the State continued to pay the employee for not working after the investigation was completed—in one case for about 3.5 months—and the disposition decision was that the allegation was unsubstantiated. In addition, according to SharePoint® records, in at least three other cases a suspension or demotion was offered to the employee to settle the case months before the employee was returned to work, which indicates that the State was not contemplating dismissal. We do not believe that taxpayers should be responsible for paying an employee not to work once the investigation is completed if there is reason to believe that the employee will ultimately be returned to work.
Comment 3.	Relying on verbal guidance is a high-risk practice that makes it more likely that mistakes will be made or cases will not be addressed in a timely manner. Moreover, the State's internal control standards state that documentation of policies and procedures is critical to the daily operation of a department, without which poor decisions can be made and the effectiveness of operations adversely affected.
Comment 4.	This report compared the time it took to complete investigations to a 60-day target contained in the AHS IU protocol, as the DHR protocol was not applicable in this instance. We did not recommend "rigid standards," instead stating that there could be multiple targets to address variations in circumstances. Tracking actual results to targets or benchmarks is an important evaluation tool to assess whether activities are being performed as desired and whether changes to a process need to be made in order to improve efficiency and effectiveness.
Comment 5.	This report addresses the types of factors contributing to delays as described in the commissioner's comments—see the timeliness sections in both the Objective 2 and Objective 3 findings.
Comment 6.	The commissioner's comments regarding the VLRB's decisions are misleading since the State can negotiate a settlement before a case is decided by the VLRB. For example, in 2014 an employee submitted a grievance to the VLRB of his dismissal due to misconduct that was based, in part, on the assertion that the imposition of discipline was untimely. The State signed a stipulated agreement with this employee settling the grievance that rescinded the dismissal and imposed a 14-day suspension with back-pay from the date of the dismissal until the effective date of the agreement that totaled about $17,000. Concerns over timeliness can also affect the decision to impose discipline. In another case a written reprimand did not get issued due to a lack of timeliness. As DHR indicated earlier in the paragraph, timeliness benchmarks were adopted to assist organizations in managing the misconduct processes. We agree with the importance of setting such benchmarks, but believe that it is important to measure the extent to which they are being met. Indeed, DHR's comments are inconsistent with its own practice. Specifically, for at least the last two years DHR has established and reported publicly as part of the State's programmatic performance measure budget report, measures related to the length of investigations performed by the DHR investigations unit.

Comment 7.	Throughout section 5 of the commissioner's response, she indicates that documentation of decisions and their underlying rationale is not required or is burdensome and unnecessary. This is contrary to the State's internal control standards, which call for documenting critical decisions and significant events. According to the standards, by recording such decisions and events, management creates an organizational history that can serve as justification for subsequent actions and decisions. The standards also state that documentation should be complete, accurate, and recorded timely. Contrary to the State's standards, we found that a variety of critical decisions and events pertaining to employee misconduct allegations were not documented, including (1) whether to investigate allegations, (2) the party responsible for dispositions, (3) the rationale for the decision to impose a particular type of discipline, and (4) how progressive discipline is being applied. We added references to the State's internal control standard to the report to specify the State's documentation expectations.
Comment 8.	This comment is not relevant to this audit, as the report does not address AHS's or DHR's methods of investigation.
Comment 9.	Neither AHS nor DHR recorded or logged all allegations, only those for which investigations were conducted.
Comment 10.	The commissioner misrepresented our recommendation. We did not recommend that consideration of the 12 factors be documented in all cases. Instead, we recommended that when considering the imposition of discipline in an employee misconduct case, the three departments in our scope, in conjunction with DHR, document the rationale used in the decision-making process, including how the 12 factors were applied. Less than a third of the cases we reviewed included discipline.
Comment 11.	The commissioner misrepresented our recommendation. We did not recommend that staffing discussions be documented, but rather that decisions be documented. Specifically, we recommended that the applicable department, in conjunction with DHR, develop a process to document who the decisionmaker was for each disposition of an employee misconduct case, when the decision was made, and confirmation that the disposition was carried out. In addition, we do not believe that relying on live testimony is a good strategy, as an individual's memory may not be reliable. For example, in one case the AHS IU SharePoint® site listed the disposition of a case as "case staffed," but neither the appointing authority nor the HR manager recalled that there was a disposition to this case. In addition, there was no documentation of a disposition of the misconduct case in this individual's personnel file. After receiving a draft of this report, the department found that this case had been resolved via a stipulated agreement and provided it almost four months after we first asked for disposition documentation.
Comment 12.	We disagree with the commissioner's assertion that additional documentation is "contrary to current statutory and collectively-bargained processes for evaluation." While these requirements may not mandate additional documentation, the commissioner cited no evidence that the State is prohibited from developing practices to document their critical decisions and significant events, as called for in the State's internal control standards.

Comment 13.	We found that there was no reliable central source to determine whether an employee had been the subject of previous disciplinary action or had signed a stipulated agreement that states, for example, that it is the employee's "last chance." According to DHR training materials, the SharePoint® sites maintained by the AHS and DHR investigations units are the sources that should be used to collect data on prior comparable conduct and discipline. However, the sites did not include a substantial number of misconduct cases and had significant inaccuracies, including incorrect case dispositions. There were also cases in which employees' personnel files did not include documentation of the disciplinary action imposed or the stipulated agreements. As pointed out by the commissioner, the CBAs allow certain disciplinary action to be removed from the official personnel file. However, as stated in the report, such circumstances are very limited. For example, an employee may request that suspensions of three or fewer days be removed after five years if the employee has no other discipline in that time. Nevertheless, we added to the report DHR's assertion that it is prevented from considering past discipline in these types of circumstances.
Comment 14.	Our comments in the report on the consideration of stipulated agreements pertained to the application of progressive discipline, not the uniformity and consistency of disciplinary decisions. In particular, some stipulated agreements explicitly state that it is the employee's "last chance." For example, in one case the agreement states that it "shall also act as a Last and Final Warning for misconduct related to … [employee name] and VSEA further acknowledge and agree that should [employee name], in any way, engage in future misconduct related to … such action(s) shall establish just cause for dismissal." In another case, the disciplinary history section of the 12-factor analysis for a dismissal disposition cited a prior stipulated agreement in which the employee had agreed that any future related acts of misconduct would be just cause for his dismissal. Lastly, stipulated agreements sometimes explicitly state that the action agreed to (e.g., suspension) constitutes discipline. Accordingly, it behooves the State to have a reliable central source to identify such agreements, as well as other disciplinary actions in the event the employee engages in future misconduct.
Comment 15.	The commissioner mischaracterized our recommendations. We recommended that the departments develop processes, in conjunction with DHR, to document decisions and their rationale. We did not specify that such documentation be maintained outside of DHR's normal recordkeeping processes. Since the appointing authorities or designees in the departments are responsible for the decisions, we believe that they should be responsible for documenting their decisions and rationales, but not necessarily for maintaining these records. Nothing in the recommendation precludes DHR from still serving as the recordkeeper.
Comment 16.	The AHS IU protocol states that it "will accept cases which appear to be of a serious nature and may result in significant discipline." However, in its comments on the draft report, AHS itself acknowledges that many times allegations do not come to the attention of the AHS IU director. Developing criteria for which types of allegations should be investigated by the AHS IU would mitigate the risk that the AHS IU is not investigating cases that are of a serious nature and may result in significant discipline. In addition, the DHR protocol pertaining to employee investigations includes criteria for the types of allegations that the DHR investigations unit are to investigate. AHS could use similar criteria for the AHS IU.
Comment 17.	Our report commented on the length of time that employees remained in RFD status after the investigation was completed only in those circumstances in which the employee was not dismissed. For example, in three of the 17 cases in which it appeared that the employee remained in RFD status longer than necessary, the SharePoint® records specifically stated that the department had attempted to negotiate an agreement for a less than dismissal (in two cases the State offered a suspension and in the other case, a demotion). We believe that the direct and indirect costs of keeping an employee in RFD status past the completion of the investigation could quickly exceed the benefit to the State if the department ultimately intends to return the employee to work.

Comment 18.	The AHS IU SharePoint® manual referenced in the comments describes how to (1) navigate the AHS IU SharePoint® site, (2) add, edit, and search for a case, and (3) generate a report. The manual does not define the fields nor provide guidance on the values that should be selected and when (e.g., it shows that there are drop down menus, but does not show the options or provide guidance as to which option to choose). We disagree that the fields are self-explanatory since data was entered inconsistently. Moreover, in its comments on the draft report, AHS agrees that there is inconsistent data entry. Nevertheless, we clarified in the report that there is a manual and what it does, and does not, include and modified the recommendation.
Comment 19.	AHS misinterpreted the intent of our recommendation. The primary focus of the recommendation is for AHS to establish one or more targets for the timely completion of investigations, apply it to all organizations conducting investigations, and track the extent to which the target is being met. Currently, the AHS May 2015 protocol for handling employee misconduct cases states that the investigators in the AHS IU are to make an effort to complete all interviews and forward a draft of the investigation report to AHS' legal office within 60 days. This target applies only to this unit and not to the other organizations that perform investigations (i.e., department management or DHR field operations staff). In addition, the AHS IU annual report did not include statistics on the extent to which this target is being met. Regarding the statement that the AHS IU adopted a 60-day standard for investigations and a 30-day standard for post-investigation dispositions, the AHS IU's May 2015 protocol includes the standard for investigations, but not for dispositions. See comment 20 for additional information.
Comment 20.	Based on follow-up communications with the AHS chief operating officer and director of the investigations unit, the statement that the AHS IU has adopted a 30-day target for the completion of the disposition of a case was an error and there is no support for this statement.