H09L112622206

ALLEGED MISCONDUCT:
DR. SHIRLEY A. MILES
DIRECTOR, DEPARTMENT OF DEFENSE EDUCATION ACTIVITY

I. INTRODUCTION AND SUMMARY

We initiated the investigation to address allegations that Dr. Shirley A. Miles engaged in various misconduct. Based on multiple complaints to this Office and information gathered in the course of the investigation, we focused our investigation on allegations that Dr. Miles:[1]

- Advocated the hiring of her [redacted] as a teacher, as well as the promotion or advancement of her [redacted] (through a step increase resulting in an increase in starting pay) in violation of Title 5, United States Code, Section 3110 (b) (5 U.S.C. 3110 (b)), "Employment of relatives; restrictions," 5 U.S.C. 2301, "Merit system principles," and 5 U.S.C. 2302, "Prohibited personnel practices";

- Failed to provide fair and equitable treatment to all applicants for employment, including persons with veterans preference, and provided an impermissible preference or advantage to an applicant for employment in violation of 5 U.S.C. 2301 and 5 U.S.C. 2302;

- Traveled for temporary duty (TDY) on flights that were ticketed with fares other than City-Pair fares or lowest available Government fares, in order to obtain seat upgrades, in violation of the Joint Travel Regulations (JTR), Appendix P, "City-Pair Program," and DoD 5500.7-R, "Joint Ethics Regulation (JER)," dated August 30, 1993;

- Claimed and was paid for per diem expenses associated with TDY when such TDY involved local travel in the Department of Defense Education Activity (DoDEA) headquarters commuting area in violation of 31 U.S.C. 3729, "False Claims," the JTR, and the JER;

- Claimed and was credited and paid for time in duty status during a period when she was on annual leave in connection with TDY in violation of 31 U.S.C. 3729 and the JER;

[redacted]

- Engaged in unprofessional conduct and speech at conferences and meetings with subordinates, military members, and members of the public, by using vulgar language, in violation of the JER.

[1] The incoming complaints contained several additional allegations. Based on our inquiry, we determined those allegations did not merit further investigation and discuss them in detail in Section III of this report.

We substantiated six allegations as follows.

- Advocated for and caused the hiring of a relative

We conclude Dr. Miles advocated for and caused the hiring of her [redacted] in violation of 5 U.S.C. 2301, 2302, and 3110, and the JER. We found that [redacted] was selected for a Japanese language immersion teacher position at Kadena Elementary School, Okinawa, Japan. We determined that Dr. Miles used her position and authority to advocate for [redacted] Additionally, we determined that after [redacted] was hired, Dr. Miles intervened in a pay matter on behalf of [redacted] resulting in an annual pay increase of over $7,500. While [redacted] may have been entitled to the pay increase based on her employment offer, education, and experience, Dr. Miles expressly advocated for the increase.

- Provided an impermissible preference or advantage to and selected a personal acquaintance for employment

We conclude Dr. Miles engaged in prohibited personnel practices by providing an unfair advantage to a personal acquaintance for a competitive position with DoDEA and selecting him for the position, in violation of 5 U.S.C. 2301 and 5 U.S.C. 2302. We found that Dr. Miles had a friendship with a senior leader in the Hawaii public school system, who subsequently applied for a competitive position as Superintendent, Japan District, DoDEA-Pacific. Dr. Miles communicated frequently with her staff, the eventual selectee, and his spouse via telephone and email about the position before she selected him for the position.

- Traveled for TDY on flights ticketed with fares other than City-Pair fares or the lowest available Government fare

We conclude Dr. Miles traveled for official business on flights ticketed with fares other than City-Pair fares or the lowest available Government fare in order to obtain upgrades in violation of the JTR, the DoD Financial Management Regulation (DoD FMR), and DoD policy on the use of the Defense Travel System (DTS) for official travel.

- Claimed and was paid for TDY per diem expenses to which she was not entitled

We conclude Dr. Miles claimed and was paid for per diem expenses to which she was not entitled in violation of 31 U.S.C. 3729, the JTR, and the JER, in connection with TDY travel to Marine Corps Base Quantico, Virginia (Quantico), on March 24 and 25, 2010. We found that Dr. Miles traveled from her home in Alexandria, Virginia, to Quantico, in Prince William County, and returned to her home at the end of the duty day. Quantico is in the Washington, DC, local commuting area; therefore, Dr. Miles was not entitled to claim per diem expenses.

- Claimed and was credited and paid for time in duty status when on leave

We conclude Dr. Miles claimed on her time and attendance record that she was in a duty status, rather than on annual leave in May 2009. We found that in May 2009, Dr. Miles traveled

to Japan on official business and took annual leave in conjunction with such travel. Dr. Miles' time and attendance record did not reflect a change in duty status and Dr. Miles was not charged annual leave May 26, 28, and 29, 2009. We found that Dr. Miles did not prepare or self-certify her time records at the time this occurred. We determined that Dr. Miles did not exercise her responsibilities to review her time records and certify them as being correct and accurate. As a result of her failure to do so, she claimed and was credited for being in a duty status for 3 days when she was in a leave status.

- Engaged in unprofessional conduct and speech at conferences and meetings with subordinates, military members, and members of the public, by using vulgar language, in violation of the JER.

We conclude Dr. Miles engaged in unprofessional conduct and speech that was inconsistent with the normal standards of conduct expected of SES members as established by 5 U.S.C. 3131, the JER, and the Office of Personnel and Management (OPM) Guide to Senior Executive Service Qualifications dated October 2006. Witness testimony established that Dr. Miles used coarse and vulgar speech in public and private settings, including expletives. A number of DoDEA employees and contractor representatives joked about her use of vulgar or inappropriate language.

[redacted]

By letter dated February 14, 2011, we provided Dr. Miles the opportunity to comment on the initial results of our investigation. In her response through counsel, dated March 4, 2011, Dr. Miles responded to each initial conclusion, but noted three overarching concerns with our preliminary report. Dr. Miles' response asserted that: our report was "virtually silent" with regard to what Dr. Miles' immediate subordinates told investigators; there was a "dearth of evidence to show that Dr. Miles was personally involved in any alleged wrongdoing that may have been perpetrated by her subordinates; and the preliminary report appears to give significant weight to the testimony of individuals who were biased against Dr. Miles."[2]

[2] While we have included what we believe is a reasonable synopsis of Dr. Miles' response, we recognize that any attempt to summarize risks oversimplification and omission. Accordingly, we incorporated comments from Dr. Miles' response throughout this report where appropriate and provided a copy of the response to the Under Secretary of Defense, Personnel and Readiness, together with this report.

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We interviewed 45 witnesses in this investigation and did not assign a priority to any individual or group of witnesses in compiling our report. We evaluated testimony, other evidence, and standards to reach our conclusions and did not favor the testimony of any witness or group of witnesses over any other.

With regard to Dr. Miles' personal involvement in the alleged violations of standards we note that Dr. Miles is responsible for her travel, travel claims, and time and attendance regardless of whether she or someone else submitted documentation or completed an activity such as scheduling travel. Additionally, we note that as the senior individual in DoDEA Dr. Miles has a responsibility to show herself as one who abides by the standards of conduct that apply to all Government employees.

With regard to purported witness bias against Dr. Miles, we evaluated testimony, other evidence, and standards to reach our conclusions and base those conclusions on the preponderance of evidence.

Dr. Miles' response noted that she came into DoDEA as an "outside hire," and asserted that this upset a number of high-level officials within DoDEA. The response specifically identified Dr. Miles' [redacted] as one who was upset. While we note Dr. Miles' assertion, we relied upon multiple sources of evidence to reach our conclusions and not on the testimony of any single individual.

This report sets forth our findings and conclusions based on a preponderance of the evidence.

II. BACKGROUND

Dr. Miles was hired by DoDEA in 2007 as the Principal Deputy Director and Associate Director for Education (the Principal Deputy). The position was an SES billet and Dr. Miles reported directly to the agency Director, Dr. Joseph Tafoya. Prior to being hired with DoDEA, Dr. Miles was Superintendent of Tempe Union High School District, Tempe, Arizona.

In June 2008 Dr. Tafoya retired and Dr. Miles was selected to be the Director in July 2008.

As Director, Dr. Miles was responsible for an education system consisting of over 190 schools in the United States, Europe, and Asia, with more than 70,000 students. DoDEA employs more than 12,000 employees, including approximately 8,700 educators. DoDEA's organizational structure consists of four major components: Headquarters, DoDEA; Department of Defense Dependent Schools-Europe (DoDDS-Europe); Department of Defense Education Activity-Pacific (DoDEA-Pacific); and Domestic Dependent Elementary and Secondary Schools (DDESS). DDESS encompasses school districts in eight States, as well as in Puerto Rico and Cuba.

In 2009, Dr. Miles initiated a reorganization designed to focus educators' efforts on curriculum, instruction, and assessment with the goal of increasing student achievement. This

increase in achievement was to be measured by improved standardized test scores.[3] The reorganization divided leaders' duties involving logistics and administrative functions from those related to student curriculum, instruction, and assessment. As a part of the reorganization, Dr. Miles created a number of new positions exclusively responsible for either logistical, "bricks and mortar" functions, or curriculum-centric functions. Key goals included removing logistical functions from principals to enable them to spend more of their time in the classroom, using assessment data in training teachers, creating and improving curriculum, and creating standardization of programs, training, and curricula across DoDEA's areas and schools.

Dr. Miles also created a position entitled Area Superintendent for Curriculum, Instruction, and Assessment (Area Superintendent) for each DoDEA region: DoDDS-Europe, DoDEA-Pacific, and DDESS. The Area Superintendents assumed responsibility for managing and supervising the Area Office educational staff and district superintendents, and provided executive leadership in identifying, planning, developing and implementing systemic core educational programs for DoDEA students. Each Area Superintendent was to focus on curriculum development, implementation, and assessment.

In conjunction with the creation of the Area Superintendent positions, Dr. Miles directed that the functions and responsibilities of the SES Area Directors be adjusted to focus exclusively on administration, management, and operation of logistical matters within the school districts under their jurisdiction, including school facilities, equipment, staffing, and supplies. Area Directors remained responsible for serving as primary contacts between DoDEA and senior commanders concerning education issues, but their authority over and responsibility for curriculum and instruction issues was transferred to the Area Superintendents.

As part of the reorganization, Dr. Miles authorized the formation of numerous subject matter task groups and directed that they meet periodically to consider issues and make recommendations to improve DoDEA's delivery of educational services, professional development, technology enhancements, and other matters. In 2008 and 2009, Dr. Miles traveled to DoDEA locations world-wide to explain the reorganization; meet with parents, students, teachers, administrators, and commanders; lead DoDEA conferences; and meet with the members of the task groups.

In April 2009, Mr. Charles G. Toth was appointed as the Principal Deputy Director and Associate Director for Education. Prior to his appointment as the Principal Deputy Director, Mr. Toth served as the Assistant Associate Director of Education, after having been District Superintendent for DoDEA's Korea District.

In June 2010, Dr. Miles was removed as Director and detailed to a special assignment in the office of the Deputy Undersecretary of Defense, Personnel and Readiness.

[3] DoDEA students participate in two primary testing measures: TerraNova, a standardized test that assesses student achievement in reading, language arts, mathematics, science, vocabulary, spelling, and other areas; and the National Assessment of Educational Progress (NAEP), a periodic assessment of student progress in mathematics, reading, science, writing, and other subjects, conducted by the U.S. Department of Education.

III. SCOPE

We interviewed Dr. Miles and 45 witnesses, including DoDEA teachers, administrators and staff employees, DoD employees, union officials, and employees of DoDEA contractors. We reviewed DoDEA documents including recruitment and hiring records, email and other correspondence by and between DoDEA employees, travel records, budget, and other financial documents relating to DoDEA operations and contracts. We also reviewed contractor records, including contract solicitations and notices, purchase orders, contract awards, and other documentation.

We reviewed and considered relevant Federal statutes and regulations relating to the various allegations, including the JER, JTR, Federal Acquisition Regulation (FAR) and other Federal regulations governing merit system principles and prohibited personnel practices.

The incoming complaints alleged Dr. Miles improperly used a Government Purchase Card (GPC) to purchase personal items. We found that in late 2007, Dr. Tafoya authorized an audit of GPC purchases to address concerns about possible misuse of GPCs within DoDEA's headquarters. The audit identified two occurrences in which a DoDEA GPC was used to purchase business cards and correspondence cards for Dr. Miles.

Dr. Miles testified that shortly after she arrived at DoDEA, business cards were purchased for her use. She added that she and [redacted] went shopping together and purchased correspondence cards, which she used as thank you notes and to write to DoDEA employees or military leaders after her visits to a DoDEA school or a military command. Dr. Miles testified that she and the [redacted] also used the GPC to purchase a red leather computer case which she used for official business only. The case cost $467.50, including tax.

Dr. Miles testified Dr. Tafoya notified her that the GPC purchases had not been made in accordance with DoD policy or legal requirements and she was obligated to reimburse the Government for the purchase. We found that Dr. Miles reimbursed the United States Treasury for the amount determined to be due, totaling $1,382.05.

We determined that while Dr. Miles' use of the GPC to purchase business cards and correspondence cards contravened the prohibitions and requirements set forth in the FAR, JER, and DoDEA's GPC Users Manual dated March 15, 2005, DoDEA addressed the issue internally through an audit and Dr. Miles promptly reimbursed the sums DoDEA determined to be due for the unauthorized purchases. Accordingly, we determined not to investigate the matter further.

The incoming complaints also contained a number of allegations against Dr. Miles, including prohibited personnel practices, reprisal, waste or misuse of Government resources, interception of electronic communications, and engaging in prohibited political activity in violation of the Hatch Act.

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Based on the evidence obtained in our investigation, we determined the facts concerning the following allegations did not rise to the level of senior official misconduct and consider them not substantiated.

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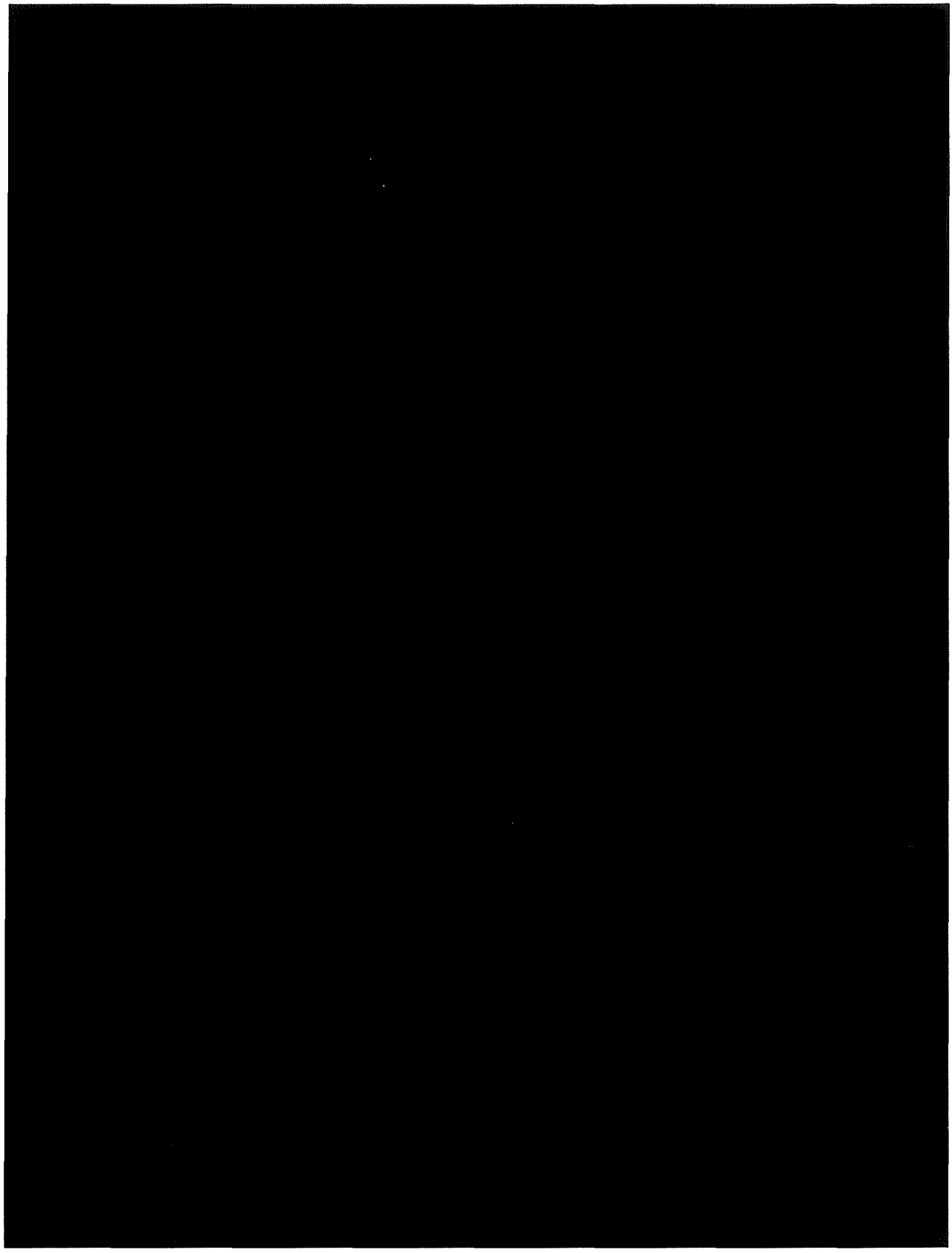
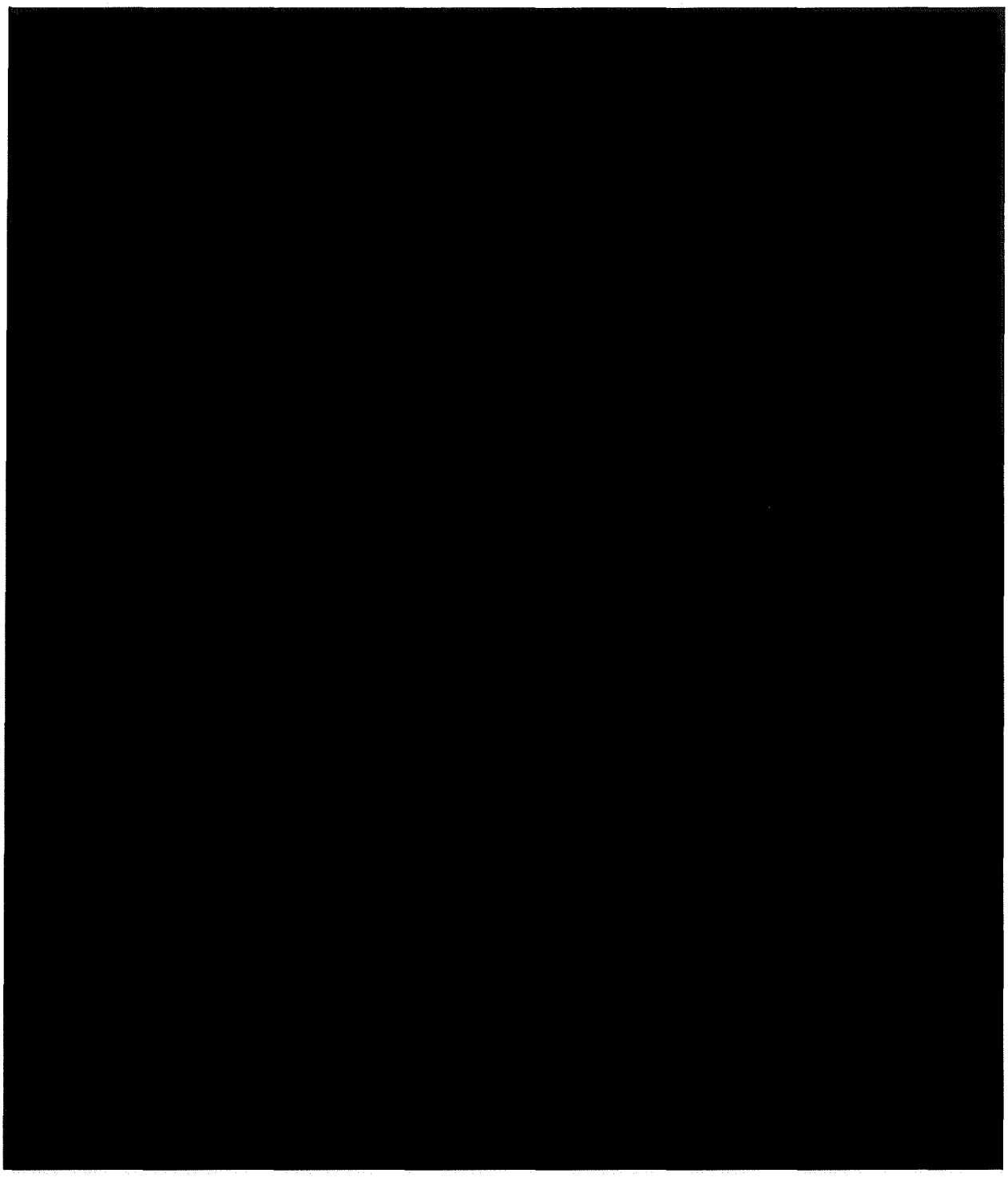
[redacted]

[redacted]





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IV. FINDINGS AND ANALYSIS

A. Did Dr. Miles engage in a prohibited personnel practice by advocating for or causing the hiring of her [redacted] for a kindergarten teaching position in a DoDEA elementary school in [redacted]?

Standards

Title 5, U.S.C., Section 3110, "Employment of relatives; restrictions"

Section 3110(a) (2) defines "public official" as an officer (including the President and a Member of Congress), a member of the uniformed service, an employee and any other individual, in whom is vested the authority by law, rule, or regulation, or to whom the authority has been delegated, to appoint, employ, promote, or advance individuals, or to recommend individuals for appointment, employment, promotion, or advancement in connection with employment in an agency.

Section 3110(a) (3) defines "relative," with respect to a public official, as an individual who is related to the public official, including a [redacted]

Section 3110(b) states a public official may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position

in the agency in which he is serving or over which he exercises jurisdiction or control any individual who is a relative of the public official. An individual may not be appointed, employed, promoted, or advanced in or to a civilian position in an agency if such appointment, employment, promotion, or advancement has been advocated by a public official, serving in or exercising jurisdiction or control over the agency, who is a relative of the individual.

Section 3110(c) states an individual appointed, employed, promoted, or advanced in violation of this section is not entitled to pay, and money may not be paid from the Treasury as pay to an individual so appointed, employed, promoted, or advanced.

5 U.S.C. 2301, "Merit system principles"

Section 2301(b) (1) states recruitment should be from qualified individuals and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.

Section 2301(b) (2) states all employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, sex, or age and with proper regard for their privacy and constitutional rights.

Section 2301(b) (4) states all employees should maintain high standards of integrity, conduct, and concern for the public interest.

5 U.S.C. 2302, "Prohibited personnel practices"

Section 2302(b) states that any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority—

(6) grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment;

(7) appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in section 3110(a) (3) of this title) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in section 3110(a) (2) of this title) or over which such employee exercises jurisdiction or control as such an official;

(12) take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of this title.

Facts

The incoming complaints alleged that Dr. Miles asked her staff to find a job in Okinawa, Japan, for Dr. Miles' new [redacted] and pressured subordinate employees in Okinawa to create a teaching position to be filled by her [redacted]

On June 27, 2009, one of Dr. Miles' [redacted][6] Dr. Miles knew [redacted] for several years before [redacted] In 2005 [redacted] applied for employment as a teacher with DoDEA, but was not selected. In early 2009, [redacted] updated her application to include the additional education and experience she had obtained in the 4 years since she first applied for employment. [redacted] selected Okinawa as her first choice for duty location.

[redacted] testified that in early 2009, she told Dr. Miles that she had applied for a teaching position with DoDEA. [redacted] stated that Dr. Miles did not communicate with her about her job application and did not offer to help her with her application for employment.

In early March 2009, Dr. Miles talked with the [redacted] about [redacted] application for employment with DoDEA.[7] On March 19, 2009, the [redacted] sent an email to Dr. Miles informing her that [redacted] application was active in DoDEA's electronic application system and available for consideration for vacancies in kindergarten, grades one through three, and Japanese language immersion. In her email to Dr. Miles, [redacted] stated that [redacted] may be "within reach" to be hired for a Japanese immersion teaching position.[8]

[redacted] further explained that kindergarten and elementary teaching vacancies in Okinawa are filled locally, and that school principals who recruit from the continental United States (CONUS) do so to place teachers in other, hard-to-fill teaching categories such as special education, English as a second language, music, and other specialties. [redacted] advised Dr. Miles that [redacted] chance of being hired from CONUS would be significantly increased if [redacted] added other teaching categories to her application. The [redacted] wrote, "I just don't see how we'll ever be able to hire her as a CONUS hire except for Japanese language immersion." [redacted] requested [redacted] telephone number and offered to call her to determine if [redacted] had any other teaching categories she could add to her application.

Dr. Miles and [redacted] communicated by email several more times on the evening of March 19, 2009, and again on March 20, 2009. On the evening of March 19, 2009, Dr. Miles wrote, "Let's consider her for the Japanese immersion – at least she will have a foot

[6] We refer to [redacted] throughout this report solely by her [redacted]. Therefore, all references to [redacted] refer to and mean [redacted] formerly known as [redacted]

[7] At the time, [redacted] knew that [redacted] had a [redacted] with Dr. Miles [redacted] as Dr. Miles' [redacted] had provided Dr. Miles with [redacted] email address in September 2008.

[8] DoDEA offers a Japanese language immersion program only at Kadena Elementary School in Okinawa. It offers individual Japanese language immersion courses at certain schools on mainland Japan.

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in." Less than 15 minutes later, Dr. Miles again wrote to the [redacted] to advise that she had told [redacted] would call her that evening. Dr. Miles added that [redacted] was "interested in immersion." [redacted] replied and informed Dr. Miles that she was checking to see if DoDEA had a vacancy.

On March 20, 2009, at 4:46 a.m., Dr. Miles emailed [redacted] and stated, "We should be able to find her something." Three hours later [redacted] emailed Dr. Miles and told her she [redacted] would call [redacted] upon returning to the office. She stated she wanted to check the DoDEA vacancies herself. Dr. Miles replied, stating, "Maybe something in Japan. How do young teachers get a job with us? We are never going to bring in new blood!"

On March 31, 2009, Dr. Miles sent an email to [redacted], DoDEA-Pacific ([redacted]), inquiring if [redacted] "held back" any elementary school teaching positions or had any open positions in Okinawa for Japanese language immersion. Dr. Miles wrote, "I have a person who would be perfect and she speaks fluent Japanese and is Okinawan!"

[redacted] responded several hours later and advised Dr. Miles that there was a Japanese immersion program in only one of the Okinawa Elementary schools. She wrote:

> The principal is not expecting any of the teachers to leave; however, several have expressed interest in moving out of the immersion program into a regular classroom. Our elementary vacancies were submitted to the transfer program, but things change and vacancies do come up. If the person you're referencing is qualified/certified and has applied so she would be on the referral list, it's possible that there may be an opportunity later.

[redacted] ended her message to Dr. Miles by asking if the candidate was certified for elementary only, or if she could also teach Japanese at the middle school level. On March 31, 2009, Dr. Miles replied by email and stated that the candidate "is certified in elementary and I don't know if she's certified in Japanese." Dr. Miles closed her reply by asking [redacted] to let her know if a vacancy comes up in Okinawa. [redacted] responded as follows:

> If a vacancy comes up, I'll certainly let you know. The principal at Kadena Elementary School is aware and will keep me informed. If the teacher doesn't have certification in Japanese, she may want to work with ACTFL [American Council on the Teaching of Foreign Languages] to take an oral proficiency exam, if we are still accepting this for certification purposes as we have in the past.

[redacted] testified that the March 31, 2009, email from Dr. Miles was the first contact she ever had with Dr. Miles about teaching vacancies in Okinawa. She added that when she received the email correspondence, she did not know that Dr. Miles had a personal connection to the candidate in question.

On April 9, 2009, the secretary to [redacted] submitted a request for personnel action for a kindergarten teacher position at Kadena Elementary School, with a proposed effective date of August 26, 2009 (the beginning of the 2009-10 school year). The request for personnel action did not identify any particular person to fill the kindergarten position.

On April 25, 2009, [redacted] emailed Dr. Miles that she wanted to assist Dr. Miles in her efforts to change DoDEA "by making sure I provide you with what you can and cannot do." [redacted] added, "I'm here to do my job as your [redacted] but I also want to be a friend and confidant." Dr. Miles responded by email on April 26, 2009. She thanked [redacted] and stated, "I need you there to keep me out of trouble!" Dr. Miles then added the following postscript: "Anything for [redacted] yet? My [redacted] is bugging me, they want to get [redacted] She emailed [redacted] again on May 3, 2009, and asked, "What's up with [redacted] Anything yet?"

On May 4, 2009, Dr. Miles emailed Mr. Toth and told him that [redacted] was "helping [redacted]"[9] She asked Mr. Toth not to do or say anything. On May 5, 2009, Mr. Toth emailed [redacted] whom he knew from previous duty assignments in DoDEA, and requested her assistance in finding a teaching position for [redacted] He wrote:

> [redacted] I have a favor to ask. [redacted] is seeking CONUS employment as a teacher with DoDEA and is seeking placement in an Okinawa District elementary school. The positions she desires are kindergarten, a Japanese immersion classroom teacher position, or an elementary position preferably in the lower grades. Any assistance you can provide in placing [redacted] for SY 09-10 would be greatly appreciated.

In his email to [redacted] Mr. Toth asked her to call him if she needed any additional information concerning [redacted] and her interest in a DoDEA teaching position. Mr. Toth asked [redacted] to provide him with any insight she might have on placement possibilities in Okinawa for [redacted] He concluded his correspondence by stating, "If employment for [redacted] is not going to be possible in Okinawa schools, I will inquire with the Japan DSO [District Superintendent's Office]."

[redacted] testified she called Mr. Toth on May 7, 2009, and discussed [redacted] with him. She stated she told Mr. Toth there were no vacancies in Okinawa at the time, but perhaps one would come up in the future. She added that it would be wonderful if [redacted] was an immersion teacher if a vacancy did occur. However, she told him [redacted] may not be able to be placed in a position due to local candidates or applicants with veteran's preference.

By email on May 8, 2009, Mr. Toth advised [redacted] that he had spoken with [redacted] regarding recruitment for positions in Okinawa. He wrote:

[9] Mr. Charles Toth, Principal Deputy Director and Associate Director for Education, DoDEA, testified that Dr. Miles had discussed [redacted] employment interests with him before she sent the May 4, 2009, email.

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> She [redacted] informed me that at the present time there are no excess ES [elementary school] teachers needing placed. [She] recommended recruiting a Japanese immersion/K-3 teacher even though you may not need an immersion teacher for SY 09-10. This recruitment action will enable you to by-pass vets who could block an employment opportunity.

On May 12, 2009, [redacted] emailed Mr. Toth, subject "Okinawa Elementary Vacancies," and identified two teaching vacancies in Okinawa, at Earhart Elementary School. [redacted] stated, "If we could ask [redacted] to offer Japanese immersion on one of them; we have an excellent candidate that's certified." Mr. Toth forwarded the message to [redacted] with the comment, "For your consideration. For additional guidance, please contact [redacted] or [redacted]

[redacted] replied to Mr. Toth's email on May 13, 2009. She advised Mr. Toth the following:

> Charlie – we were planning to work this at Kadena ES for a KN [kindergarten] position. This is the school where the Japanese immersion program is located. While there isn't an opening now in the immersion program, having another teacher on board at the school who can teach in an immersion classroom will be beneficial to both teacher and school. Should a vacancy in an immersion classroom occur, there will be an internal backfill.

[redacted] also forwarded the above email to [redacted] and the [redacted] In her email, [redacted] stated, "I should have copied both of you on my message to Charlie -- plan to work this through our HR."

On May 18, 2009, [redacted] sent a second response to Mr. Toth's May 12, 2009, email and provided additional information. She wrote that a request for personnel action had been submitted for a position at Kadena Elementary School. [redacted] copied the email to Dr. Miles. Upon receipt of [redacted] email, Mr. Toth forwarded the message to [redacted] and the [redacted] for action.

On May 18, 2009, the supervisory HR specialist for recruitment at DoDEA headquarters emailed [redacted] and stated,

> We received a vacancy today for a kindergarten Japanese immersion position at Kadena ES. [redacted] has been name requested for this position. We will issue the referral list today. There are no veterans on the list.

On May 18 and 19, 2009, HR staff members delivered several referral lists to [redacted] for a kindergarten vacancy at Kadena Elementary School. On May 19, 2009, an HR technician at DoDEA emailed [redacted] and delivered a CONUS referral list for a teaching vacancy at Kadena Elementary for kindergarten language immersion, Japanese. On May 21, 2009, an HR specialist at DoDEA emailed [redacted] and delivered another

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referral notice for the same vacancy. The latter email attached two referral lists, both of which listed [redacted] as an eligible candidate.

On May 21, 2009, Mr. Toth emailed [redacted] and asked, "Has an offer been made to [redacted] The following day, [redacted] responded to Mr. Toth on the [redacted] behalf. [redacted] wrote:

> Charlie - we have not made any CONUS offers yet to teachers. I would recommend that we issue this offer along with others so it doesn't look suspicious.[10]

On May 22, 2009, Mr. Toth emailed Dr. Miles and informed her, '[redacted] position in Oki is set and will be offered as soon as CONUS hiring begins."

On May 26, 2009, at 3:52 p.m., [redacted] responded to the [redacted] at DoDEA by email and announced that he had selected [redacted] to fill the kindergarten Japanese immersion vacancy at Kadena Elementary School. At 3:59 p.m., the same day, [redacted] forwarded [redacted] message to Mr. Toth and Dr. Miles stating, "To keep you updated."

On May 26, 2009, DoDEA's Chief, Educator Staffing Recruitment and Placement ([redacted] emailed [redacted] with copies to [redacted] the HR specialist at DoDEA, and an HR staffing specialist with DoDEA-Pacific ([redacted] located in Okinawa, advising that he was contacting [redacted] and extending a tentative job offer to her as a Japanese immersion kindergarten teacher.

In her application for employment, [redacted] self-certified as qualified to teach Japanese language immersion for elementary grades one through three. [redacted] self-certification was neither prohibited nor uncommon under DoDEA's employment policy and procedures. Under those procedures, once a candidate is selected to fill a vacant position, DoDEA HR professionals examine the candidate's application and supporting documentation to verify that the candidate possesses the requisite certification for the position in question. This certification process does not occur prospectively due to the large numbers of applications DoDEA might receive for any given vacancy.

Following [redacted] selection of [redacted] DoDEA completed its qualification review of her application [redacted] owever, the qualification checklist for [redacted] on file in DoDEA's HR staffing section noted that DoDEA could offer [redacted] the language immersion position contingent upon her successful completion of an OPI in Japanese before traveling to Okinawa.

[10] At the time, [redacted] had yet to select anyone to fill the kindergarten language immersion position.

[redacted]

On June 19, 2009, DoDEA's [redacted] sent a tentative offer of employment to [redacted] The offer notified [redacted] that her employment was contingent upon receipt of official university transcripts prior to [redacted] travel to her overseas duty station. [redacted]

[redacted]

On July 6, 2009, DoDEA's [redacted] emailed Dr. Miles to advise that he had contacted [redacted] and informed her DoDEA would issue an amended offer of employment contingent upon her passing the OPI. [redacted] noted to Dr. Miles that [redacted] was very glad that things had "worked out" with [redacted] appointment.

On July 6, 2009, DoDEA's [redacted] sent an amended offer of employment to [redacted] for the Japanese language immersion position. The offer was contingent upon achieving the requisite proficiency level in Japanese within the first year. The same day, an HR specialist at DoDEA headquarters emailed her HR colleague in Okinawa and explained that [redacted]. She requested her colleague's assistance in obtaining approval for an emergency license for [redacted] so she could be hired into the Japanese language immersion position at Kadena Elementary.

The following day DoDEA's [redacted] followed up on the HR specialist's July 6 email concerning the emergency license for [redacted] The [redacted] advised [redacted] to "make sure to let them know that we have no other qualified applicants." [redacted] forwarded the July 6 and 7 emails to [redacted]

[redacted]

[13] The offer maintained in DoDEA's file contains two different second pages to the five-page offer letter. Each of the pages notes that the offer is contingent upon receipt of transcripts; however, the second version also states that [redacted] starting salary may be increased upon verification of her professional educator employment for 2005-2009. Neither states the requirement to successfully complete an OPI before travel.

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and [redacted] and advised them she would begin the paperwork for approval of an emergency license.

[redacted] sent a separate email to [redacted] later on July 7, 2009, with a draft memorandum requesting emergency licensure for [redacted] She asked [redacted] to revise the request as he saw fit, to print it on school letterhead, sign it, and forward it to [redacted]

[redacted] responded to [redacted] and stated, "We can bring her [redacted] on and delay beginning the Japanese immersion -- which was the plan anyway -- for a year." [redacted] replied to [redacted] as follows:

> I have to bring her on as immersion. I have loads of locally qualified applicants. We absolutely cannot go CONUS for a 0095 kindergarten.

[redacted] responded and asked if Kadena Elementary could bring [redacted] on duty as an immersion teacher without implementing the kindergarten immersion program during [redacted] first school year at Kadena Elementary. [redacted] replied on July 8, 2009, stating that DoDEA could justify hiring [redacted] as a regular classroom teacher under two circumstances: 1) [redacted] pass, or attempt to pass, the OPI during her first year on the job, and 2) she works on the curriculum for kindergarten language immersion during the year. She added:

> Our justification for this action is that in order to implement a Japanese immersion kindergarten class we need to notify the community in advance that a new course is being offered. This allows the school one year to prepare for the new curriculum.
> [redacted] -- what do you think of this justification? Can you add to it?

[redacted] replied to [redacted] on July 8, 2009, and stated, "If [redacted] agrees, we'll go that way."

The formal Request for Educator Emergency License, dated July 7, 2009, stated that [redacted] was "the only qualified CONUS applicant for [Kadena Elementary's] kindergarten, Japanese partial immersion program position." This comment was consistent with DoDEA's [redacted] July 7, 2009, email to [redacted] that DoDEA had no other qualified applicants.

The application documents for the vacant position showed that the foregoing statement was not accurate. The referral lists sent to [redacted] disclosed that one of the referred candidates was a CONUS-based former DoDEA employee, who reported being national board or state certified to teach Japanese language immersion for kindergarten and elementary grades one through six. Additionally, the applicant formerly taught Japanese language and culture at a DoDEA school in Okinawa, and had several years' teaching experience as an elementary school Japanese language immersion teacher and as a high school Japanese language teacher.

On July 14, 2009, [redacted] revised the emergency licensure request and notified [redacted] of his changes. She, in turn, emailed [redacted] asking her to review and sign off on the request. [redacted] responded by email on July 15, 2009, and asked [redacted] to staff the request on her behalf. The request for emergency licensure was approved on behalf of [redacted] and by the Director, DoDEA-Pacific, before being sent to the licensure unit at DoDEA headquarters. The emergency license was approved at DoDEA, and [redacted] was officially placed in the kindergarten position as Kadena Elementary. [redacted] traveled to Okinawa on Government orders and began teaching in August 2009.

Dr. Miles testified that in addition to her email exchange with [redacted] regarding vacancies in Okinawa, she personally spoke to [redacted] about whether a vacancy had opened up yet during DoDEA's Pacific Superintendents' conference in May 2009. Dr. Miles testified that she informed [redacted] she was asking about the vacancy on behalf of [redacted] She added that [redacted] told her there were still no vacancies in Okinawa at the time.

[redacted] testified that when Dr. Miles first contacted her and asked if she held back any positions, she found the question strange, because Okinawa's schools followed DoDEA's teacher transfer policies allowing employed teachers to fill position vacancies internally by transfer before those vacancies are opened to hire by external candidates.

[redacted] also testified that when she first communicated with Dr. Miles about a candidate for a kindergarten language immersion position, she neither assumed nor knew Dr. Miles had a connection with the candidate in question. She added, however, that her deputy later told her she thought the candidate in question was Dr. Miles' [redacted] This occurred before [redacted] was selected.

[redacted] testified that had Dr. Miles not inquired about vacancies and suggested a candidate for kindergarten Japanese language immersion, Kadena Elementary likely would have hired for a non-immersion kindergarten position. She testified that had [redacted] and she not learned from Dr. Miles of the availability of a candidate certified in Japanese for kindergarten, "then we probably wouldn't have even considered thinking in those terms because it's just so danged hard to get someone in that category."

[redacted] further testified she had never experienced the level of interest and involvement from senior leaders at DoDEA headquarters concerning local school vacancies as she experienced concerning the Japanese language immersion position for which [redacted] was hired. [redacted] commented that she could not believe Mr. Toth would put in writing ways to by-pass veterans. Further, [redacted] did not recall previously having received direct communications from DoDEA HR personnel regarding job vacancies in Okinawa. [redacted] described the involvement from DoDEA headquarters as creating a "messy" circumstance for her and [redacted] and stated, "the more email traffic we got, the more -- the more I knew that if I was ever

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questioned about it, I would never be able to say that our intentions were pure."

[redacted] testified that the position filled by [redacted] initially came open as a kindergarten position, not Japanese language immersion. He stated that he first submitted a request for personnel action on April 9, 2009, to fill a kindergarten position coming vacant. He added that he first learned of a potential candidate for the immersion program in April 2009, when [redacted] forwarded Dr. Miles' initial emails to him. At the time, [redacted] did not know that the "perfect candidate" referred to by Dr. Miles was her [redacted] He stated he did not make the connection between [redacted] and Dr. Miles until after he had selected [redacted] to fill the vacancy.

[redacted] also testified that after submitting the request for personnel action to fill the kindergarten vacancy, [redacted] sent him two referral lists on May 18, 2009. Those included candidates who were certified to teach kindergarten only, as opposed to kindergarten and language immersion. The referrals listed more than 20 candidates for the position, including current and former DoDEA employees, family members, locally residing candidates, and veterans. [redacted] added that he later received the referral list for a Japanese language immersion vacancy on which [redacted] was a qualified candidate, after which he reviewed the candidates' applications. He stated he determined that [redacted] was best qualified to fill the vacancy.

[redacted] stated he learned that [redacted] had not qualified as an immersion teacher when he received a copy of DoDEA's [redacted] July 7, 2009, email to [redacted] regarding the results of [redacted] OPI. [redacted] further testified that had [redacted] not been qualified for language immersion, he likely would have hired locally to fill the kindergarten position and would not have made a kindergarten immersion program available to parents. He noted that if the vacancy had been filled as "straight kindergarten," no job offer could be made to a CONUS-based applicant due to the number of people available locally.

Dr. Nancy Bresell, Area Director, DoDDS-Europe, was the Area Director for DoDEA-Pacific at the time [redacted] applied for and was selected as a Japanese language immersion teacher. Dr. Bresell was not involved in the selection of [redacted] She testified that [redacted] contacted her in the late spring or summer of 2009 and expressed concern that "she was being asked to hire" [redacted] whom [redacted] thought was going to be Dr. Miles' [redacted] She added that [redacted] later told her she was receiving guidance from the Deputy [redacted] to circumvent other qualified candidates for the language immersion position. Dr. Bresell testified [redacted] led her to believe she was being asked to create a language immersion position for [redacted] Dr. Bresell stated:

> And I think [redacted] was kind of concerned about it and felt that she was basically being told that that's what she should do. It's my understanding that they asked her to create a kindergarten Japanese immersion program for [redacted] class.

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Dr. Bresell testified she recalled Dr. Miles specifically saying at DoDEA's July 2009 Worldwide Superintendents Conference in Philadelphia, Pennsylvania, that she had not known her [redacted] had applied for a position with DoDEA and she had nothing to do with the selection for the position.

[redacted] was hired effective August 10, 2009. She departed the United States on August 10, 2009, and arrived in Okinawa on August 11, 2009. [redacted] employment record, approved on August 12, 2009, showed that she was hired initially at a Step 1 pay rate, earning basic pay of $45,585.

On August 13, 2009, [redacted] contacted the secretary to the Kadena Elementary Principal regarding her pay status. The secretary emailed [redacted] and provided documents supporting a change to [redacted] pay rate from Step 1 to Step 5, based on [redacted] education and prior elementary experience. The secretary asked what else needed to be done to change [redacted] pay rate. [redacted] responded on August 13, 2009, and advised the secretary that [redacted] pay status had to be addressed at DoDEA Headquarters, since [redacted] was a CONUS hire. On August 13, 2009, [redacted] forwarded the secretary's April 13, 2009, email to DoDEA's [redacted] and asked him to advise if HR had received [redacted] employment verification to adjust her pay rate.

Also on August 13, 2009, Dr. Miles' [redacted] emailed her to let her know [redacted] arrived safely. In his email, he told Dr. Miles that DoDEA headquarters processed [redacted] employment paperwork incorrectly, so that her pay was $10,000 less than what it should have been. Dr. Miles' [redacted] told her that "people at Kadena Elementary can't really speed up the process to get it fixed." He noted that the error would affect [redacted] living quarters allowance, as well, which would affect [redacted]. [redacted] asked Dr. Miles to talk with the [redacted] to resolve the pay issue as quickly as possible.

On August 13, 2009, Dr. Miles forwarded [redacted] email to [redacted] and wrote, "Please help them!" She then responded to [redacted] and wrote, "I can't believe they have screwed up your pay right out of the box. I will take care of it." She then emailed DoDEA's [redacted] and other HR staff members, and stated,

> I hate to step in but since this involves [redacted] I'm asking for your help. Please see if we can fix this right away as [redacted] Thank you for anything you can do for them.

On August 14, 2009, DoDEA HR corrected [redacted] official employment record to adjust her pay rate to Step 5, resulting in a salary increase of more than $7,500. On August 15, 2009, an HR technician at DoDEA Headquarters emailed [redacted] and confirmed that she had amended an offer of employment and emailed it to [redacted][14] [redacted] forwarded the email response to [redacted] secretary, attaching a copy of the amended offer of employment dated August 15, 2009. The amended offer showed a Step 5 pay rate, with a new salary of $53,185.

[14] The email from DoDEA's HR Technician is dated August 16, 2009; however, it was retrieved from an email server in Okinawa, therefore, it had actually been delivered in Arlington, Virginia, on August 15, 2009.

On August 18, 2009, Dr. Miles emailed [redacted] to inform her that she had the HR department working on her salary issue. On August 28, 2009, [redacted] emailed Dr. Miles and wrote:

> [redacted] It was so nice to hear from you and I cannot thank you enough for having all my pay matters handled so quickly! My school secretary was surprised that it happened so fast that I almost felt a little guilty.

Discussion

We conclude Dr. Miles advocated for and caused the hiring of her [redacted] in violation of 5 U.S.C. 2301, 2302, and 3110. We found that [redacted] a relative of Dr. Miles, was selected for a Japanese language immersion teacher position at Kadena Elementary School, Okinawa, Japan. This position was newly created and required the applicant to meet specific eligibility criteria for selection. Once selected, [redacted] failed to achieve the required level of certification for the position. Rather than rescind the offer, DoDEA modified the employment offer and allowed [redacted] to meet the program criteria over time. [redacted] reported to Okinawa in August 2009.

5 U.S.C. 2301 requires that selection for a position be based solely on ability and skills and only after fair and open competition. 5 U.S.C. 2302 prohibits any employee who has authority to take, direct others to take, recommend, or approve any personnel action from granting any preference or advantage not authorized by law, rule, or regulation to any applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment. Additionally, public officials may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position a relative if such position is in the agency in which such employee is serving as a public official.

We determined that beginning in March 2009, Dr. Miles initiated, solicited, or accepted the assistance of subordinate employees, including Mr. Toth, [redacted] the [redacted] the Deputy [redacted] and others to create the circumstances which resulted in the hiring of her [redacted]. On several occasions Dr. Miles personally emailed the [redacted] and officials in Okinawa to inquire about vacancies and whether there was "anything for [redacted] yet." Mr. Toth also sent an email to [redacted] a former colleague, requesting a "favor," and suggested a way to hire Dr. Miles' [redacted] and avoid applicants with veteran's preference. [redacted] testified that she had never experienced a similar level of interest in elementary school vacancies by DoDEA senior leaders.

We also determined that prior to Dr. Miles' [redacted] being hired, Kadena Elementary School did not plan to have a kindergarten Japanese immersion program. [redacted] testified that had Dr. Miles not inquired about vacancies in Okinawa and suggested a candidate for an immersion position, Kadena Elementary would not have considered that option. Testimony from the then Area Director, DoDEA-Pacific, corroborated

that [redacted] contacted her about concerns that she was being asked to create a language immersion position for Dr. Miles' [redacted] DoDEA's [redacted] in Okinawa testified that had the kindergarten position not been classified as a language immersion position, DoDEA would not have been able to justify a CONUS hire considering the many qualified candidates in the local area.

Further, we determined that when [redacted] failed to meet the conditions of her original employment offer, her offer was not rescinded. Rather DoDEA's HR specialists, with Dr. Miles' knowledge, modified the original offer to accommodate the lack of appropriate foreign language certification by delaying the immersion class until the following year, despite another qualified applicant on the referral list. By changing the requirements, the other applicant may have been disadvantaged.

Finally, we determined that Dr. Miles used her position and authority to advocate for her [redacted] Upon arriving at Kadena Elementary School, [redacted] believed her entry-level salary was less than originally offered given her education and experience level. Dr. Miles' [redacted] contacted Dr. Miles by email and complained about [redacted] pay problem. Dr. Miles immediately contacted the [redacted] and the DoDEA [redacted] and asked that the issue be resolved. One day later, Dr. Miles' [redacted] pay rate was adjusted upward, resulting in annual pay increase of over $7,500. While [redacted] may have been entitled to the pay increase based on her employment offer, education, and experience, Dr. Miles expressly advocated for the step increase.

Based on the foregoing, we conclude that Dr. Miles advocated for and caused her [redacted] to be hired as a DoDEA employee, and later advocated for her [redacted] promotion after she was hired. Accordingly, we conclude that Dr. Miles' actions violated provisions of 5 U.S.C. 2301, 2302, and 3110 regarding employment of a relative and merit system principles.

Dr. Miles' Response

Dr. Miles, through counsel, asserted she did not "advocate for" or "cause" [redacted] to be hired. Rather, she stated she contacted the Superintendent of Schools in Okinawa, Japan, twice by email inquiring about positions available in the Japanese immersion program, and did not contact anyone else to inquire, intervene, or advocate for her [redacted] Our review of email records established that this statement was inaccurate.

Email records disclosed that Dr. Miles questioned the DoDEA [redacted] several times about the status of [redacted] application for employment with DoDEA. On the evening of March 19, 2009, Dr. Miles wrote in an email, "Let's consider her for the Japanese immersion – at least she will have a foot in." Less than 15 minutes later, Dr. Miles again wrote to the [redacted] to advise that she had told [redacted] the [redacted] would call her that evening.

Later email correspondence revealed Dr. Miles' active interest in the status of [redacted] application. On March 31, 2009, Dr. Miles sent an email to the [redacted], DoDEA-Pacific ([redacted] inquiring if [redacted]

[redacted]t "held back" any elementary school teaching positions or had any open positions in Okinawa for Japanese language immersion. Dr. Miles wrote, "I have a person who would be perfect and she speaks fluent Japanese and is Okinawan!"

On April 26, 2009, Dr. Miles corresponded with the DoDEA [redacted] regarding personnel matters and closed her email by inquiring "Anything for [redacted] yet? My [redacted] is bugging me, [redacted]!!!!" Dr. Miles emailed the [redacted] again on May 3, 2009, and asked, "What's up with [redacted] Anything yet?"

On May 4, 2009, Dr. Miles emailed Mr. Toth and told him that the [redacted] was "helping [redacted] She asked Mr. Toth not to do or say anything. Our review of evidence disclosed that, despite Dr. Miles' request, Mr. Toth took an active role in securing the position for [redacted]

On May 21, 2009, Mr. Toth emailed the [redacted] and asked, "Has an offer been made to [redacted] The following day, [redacted] responded to Mr. Toth on the [redacted] behalf. [redacted] wrote, "Charlie - we have not made any CONUS offers yet to teachers. I would recommend that we issue this offer along with others so it doesn't look suspicious." On May 22, 2009, Mr. Toth emailed Dr. Miles and informed her, '[redacted] position in Oki is set and will be offered as soon as CONUS hiring begins."

We found that after initiating the process to have [redacted] hired as a Japanese immersion kindergarten by contacting [redacted] Dr. Miles communicated with the [redacted] and others regarding the status of [redacted] hiring and her level of compensation. We determined that absent Dr. Miles' actions [redacted] likely would not have been hired as a Japanese immersion kindergarten teacher in Okinawa or had her compensation issue resolved as quickly as it was.

After reviewing and carefully considering the matters presented by Dr. Miles and reconsidering the complete record of testimony, facts, and circumstances particular to the allegation, we stand by our conclusion.

B. Did Dr. Miles engage in prohibited personnel practices by providing an unfair advantage and assistance to specific candidates for competitive positions and selecting such candidates for hire in senior positions within DoDEA?

Standards

5 U.S.C. 2301, "Merit system principles"

The standards set forth in Section A, above, apply.

5 U.S.C. 2302, "Prohibited personnel practices"

5 U.S.C. 2302(b): Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority—

(6) grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment;

(12) take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of this title.

Facts

The incoming complaints alleged that Dr. Miles hired personal friends and acquaintances over other qualified candidates into senior positions in DoDEA.

In early 2009, DoDEA issued a job announcement for Area Superintendent vacancies in Europe and the Pacific.[15] The job announcement was open for recruitment from February 10 to March 9, 2009.[16]

DoDEA's HR staff developed a list of qualified applicants. On April 13, 2009, the [redacted] emailed Mr. Toth and advised him there were 47 qualified applicants for the two Area Superintendent positions, including external candidates and existing DoDEA employees. Among the qualified applicants were a personal friend of Dr. Miles and a former colleague from her tenure as a school district superintendent in Arizona. On May 20, 2009, Dr. Miles selected each of these individuals to fill the respective Area Superintendent vacancies in Europe and Asia. Dr. Miles made her selections after a complete application, evaluation, and review process took place in DoDEA headquarters for both positions.

[redacted]

[redacted]

[16] DoDEA was simultaneously recruiting to fill vacancies for district superintendents in Europe, Korea, and Japan. The job announcement for those vacancies was open from February 1 until March 31, 2009.

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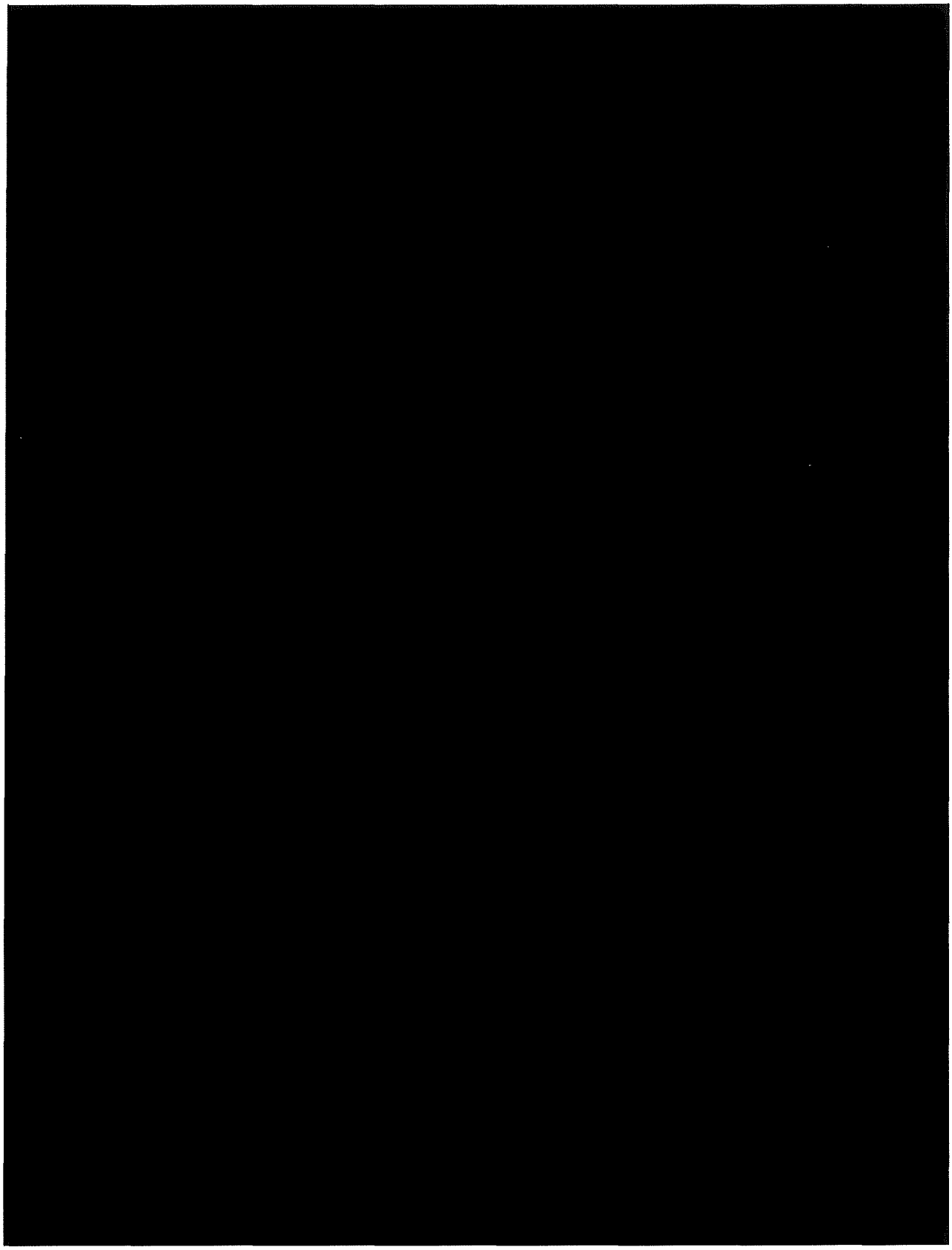

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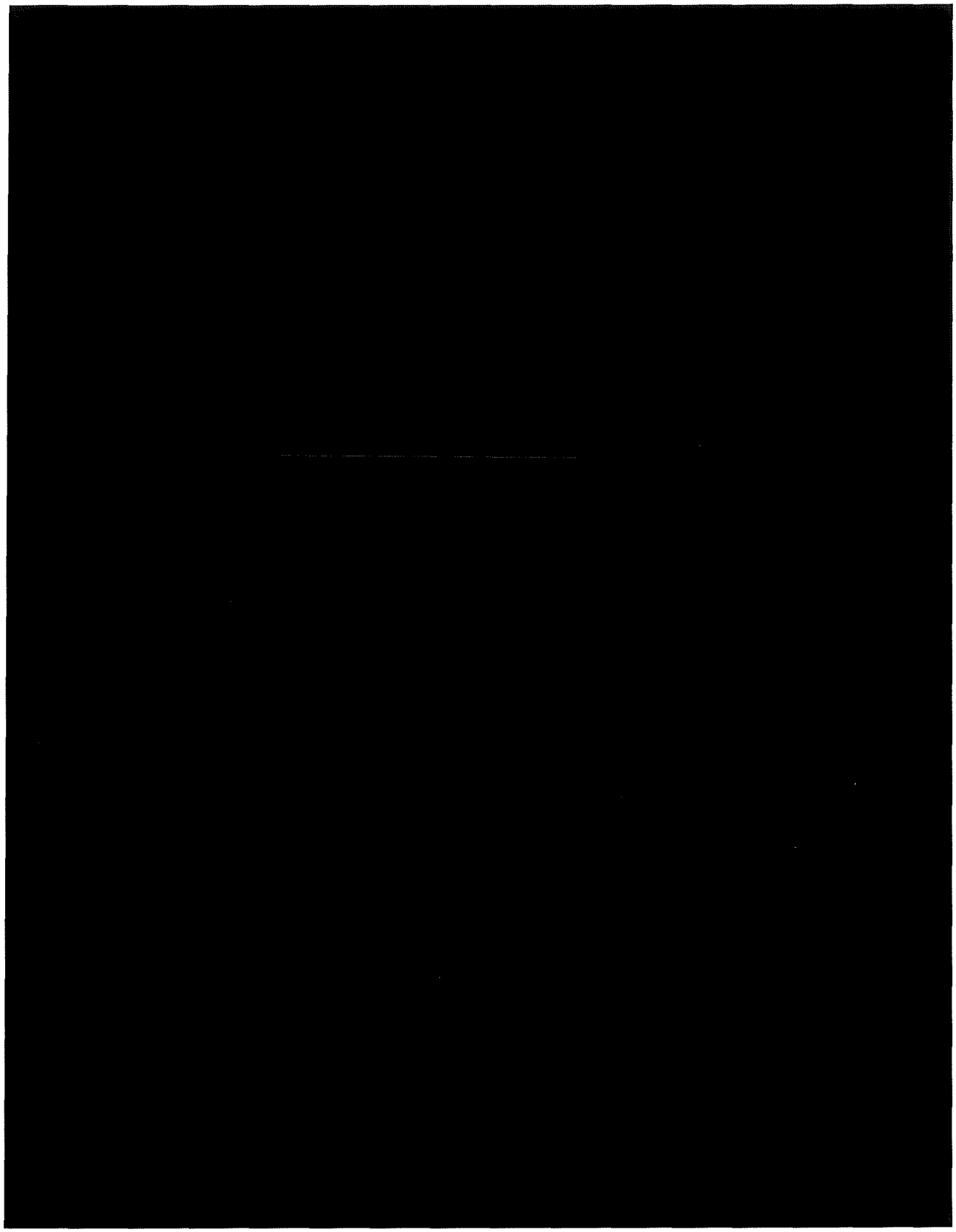

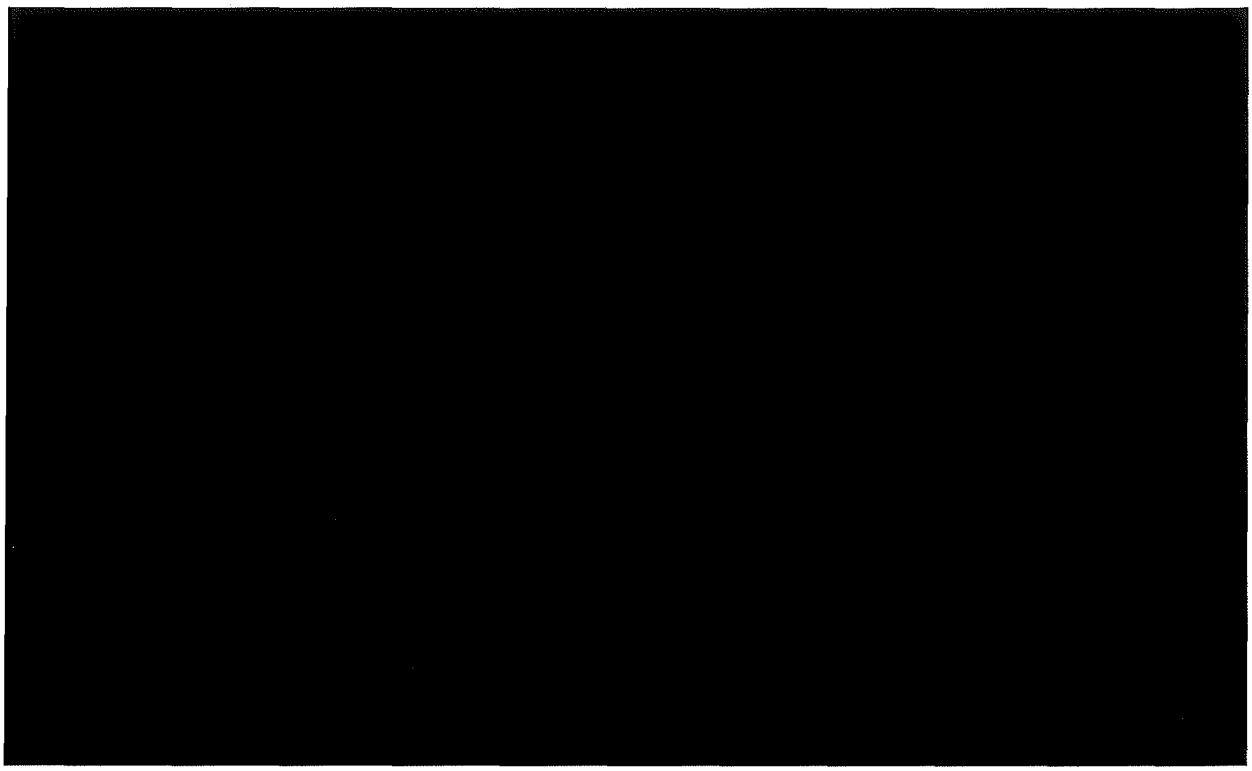

District Superintendent, [redacted], *DoDEA-Pacific*

In early 2009, DoDEA published a job announcement to fill vacancies in Education Program Administrator (District Superintendent) positions in Europe, Asia, and several DDESS districts in the United States.[19] The application period was open from February 1 through March 31, 2009. DoDEA announced the vacancies in professional publications specific to educators and educational administrators, such as Education Week and the journal of the American Association of School Administrators. More than 200 people submitted applications.

Among the applicants was the [redacted] He testified he was personally acquainted with Dr. Miles, having met her on her DoDEA-related visits to Hawaii in 2007 and 2008.

Beginning in early March 2009, Dr. Miles engaged in regular email communication with the [redacted] concerning [redacted] application for employment with DoDEA. The [redacted] served as his personal assistant. On March 3, 2009, she emailed Dr. Miles and delivered a copy of the [redacted] resume for a telephone conference between Dr. Miles and the [redacted] Dr. Miles replied to her email several days after the telephone conference and wrote, "I had a very nice conversation with [the [redacted] Please let me know when he has completed his application. Thanks so much. Aloha!" The [redacted] emailed Dr. Miles on March 9, 2009, that she would email his job application to Dr. Miles as soon as it was completed.

[19] The announcement also sought to fill vacancies for Assistant Superintendent positions in various districts.

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On March 10, 2009, DoDEA's [redacted] emailed the [redacted] and informed her that DoDEA had yet to receive an application from the [redacted] for a superintendent's position. On March 10, 2009, [redacted] contacted DoDEA's educator staffing section to inquire about the status of the [redacted] application. He was informed that no application had yet been received. He contacted the [redacted] and advised her that the [redacted] had not yet applied. On March 12, 2009, Mr. Toth emailed Dr. Miles regarding the superintendent applications. He wrote:

> FYI -- To date DODEA has not received an employment application from [an applicant for a different position] and [the [redacted] If they are interested in current vacancies, they should get their applications submitted so they can be reviewed and rated for consideration.

Dr. Miles responded to Mr. Toth on March 13, 2009, and stated, "How odd? I will email them." She emailed the [redacted] that day and asked her about the status of [redacted] application. Dr. Miles wrote that her staff had informed her they did not have [redacted] application for the [redacted] superintendency yet. She asked, "Did you send it?" The [redacted] responded by email and confirmed that her husband had not yet delivered his application to DoDEA. She added that she and her husband would be working on the application. Dr. Miles replied the next morning, thanking the [redacted] for the information. Dr. Miles emailed Mr. Toth immediately afterward and told him that the [redacted] would deliver his application to DoDEA by the closing date of the job announcement (March 31, 2009).

On March 16, 2009, Mr. Toth emailed the [redacted] and asked him to provide copies of the [redacted] application when it arrived. He added that Dr. Miles had contacted the [redacted] who confirmed that he would submit his application.

On March 19, 2009, the [redacted] emailed [redacted] application to DoDEA's HR department. She emailed Dr. Miles the same day to confirm that she had emailed the application, including a revised and updated resume. She asked Dr. Miles whether she should have emailed the application to another addressee. Dr. Miles responded by email, telling the [redacted] "I don't know for sure. I'll find out." Dr. Miles emailed the [redacted] later on March 19, thanking her and confirming that the application had been delivered to the HR department.

At 4:45 a.m., on March 20, 2009, Dr. Miles emailed [redacted] and the [redacted] forwarding the [redacted] last email from the preceding day. Dr. Miles told them, "I would like to seriously consider his application." Later that morning, the Deputy [redacted] forwarded the [redacted] email to several HR staff members, with blind copies to Dr. Miles and the [redacted] and asked whether DoDEA had received the [redacted] application. One of the staff members responded promptly, advising [redacted] that he had gone through the staffing chief's files and did not see an application for the [redacted] He added that the staffing chief had been out of the office the entire week, therefore, it was possible he had not yet printed the

[redacted] application. [redacted] replied and asked that someone on staff print all the applications in the staffing chief's computer. [redacted] wrote, "I need to be able to respond to Dr. Miles and I really don't want to tell her 'we don't know.'" He received a response about 30 minutes later informing him that the [redacted] was working on the matter with assistance from another HR staff member and would let him know as soon as information was available.

On March 20, 2009, before he had received a response to his query from his [redacted] emailed Dr. Miles in response to her 4:45 a.m. email, and stated:

> Shirley – [the [redacted] applied to the General Superintendent announcement that closes on March 31. We have not paneled or rated any of these applications yet. This is the announcement for Supts and Asst Supts that we'll panel in April and be ready to generate referral lists for any Supt or Asst Supt vacancies throughout DoDDS and DDESS. If you want to consider him for the Korea Supt vacancy, we need to make a referral from this announcement of the top candidates after the rating. We can't pull one application out of this announcement and rate/refer it alone.

Dr. Miles replied about an hour later and wrote, "[redacted] I want his [the [redacted] app. for [redacted]. I am not happy about the Korea candidates. I would like to look at the others. I only found one I wanted to interview out of the 15."

On March 24, 2009, the [redacted] emailed an HR recruitment staffing specialist in DoDEA's HR department, and re-submitted [redacted] application. She wrote she was sending the information as a result of the staffing specialist having contacted the [redacted] and stated that she was sending diplomas and [redacted] Declaration for Federal Employment under separate cover.

On March 27, 2009, the [redacted] emailed Dr. Miles and forwarded her March 24 message to the staffing specialist. Her email to Dr. Miles stated, in part:

> Sorry to bother you with this. I just wanted to be sure you knew that we sent everything as requested by and to [the staffing specialist]. I requested a confirmation that these emails were received and called her as well and left a phone message. We have not heard back from her either way. Thus, I am sending to you. We want to be sure that DoDEA has everything for [the] application.

Dr. Miles replied on March 27, 2009, and wrote, "Thank you. I'll take care of it!" Immediately after emailing the [redacted] Dr. Miles emailed [redacted] She wrote, "I think we have all we need from [redacted] On Monday, March 30, 2009, the Deputy [redacted] forwarded the [redacted] March 24, 2009, email to his HR [redacted] and members of the staffing section. The [redacted] wrote that a staff member had informed him the application was received.

He added, "I'm sending this to you to make sure that we're not missing anything on [the [redacted]

On March 31, 2009, the closing date of the job announcement, Mr. Toth emailed the [redacted] regarding the [redacted] application for the [redacted] superintendent's position. He stated:

> I hate to bother you with this, but Shirley wants me to move on two applications that are supposedly on file in HR now. She is interested in interviewing [a candidate] for the Isles assistant superintendent position and [the [redacted] for the [redacted] Superintendent vacancy. If the applications for these two are on file, could I have a copy for review and I will set up the interviews.

[redacted] responded on March 31, 2009. He provided Mr. Toth with DoDEA's ranking factors for evaluation of the applications, together with copies of the requested applications. [redacted] email to Mr. Toth included the following comments:

> Charlie – none of the Superintendents and Assistant Superintendents have been rated yet. . . . After the candidates are rated, they must be ranked and we must observe veterans preference in hiring. I hope it does not work out this way, but it is possible that either or both of these individuals may be blocked by a veteran. We cannot pull 2 applications like this from all of the applicants and refer and select them.
>
> Here are the individuals' resumes, but an interview at this point is improper and we could not appoint these individuals until they've been rated, ranked and referred along with other candidates. If we receive any complaint about the selection of either individual, an interview for consideration before the applications have been rated and referred along with the other best qualified candidates will be viewed as a violation of merit system principles and Federal Staffing requirements. . . .

The following week, Dr. Miles and the [redacted] discussed the [redacted] application. She wrote to Dr. Miles on April 5, 2010, to ask on [redacted] behalf about the application process, including how long it would take to notify everyone. She asked if Dr. Miles needed anything else from the [redacted] Dr. Miles replied on April 6, 2009, and stated:

> We have everything: just sifting through the applications. [The [redacted] is at the top of my list but we do have to look at the other applications. The [Federal Government] process does take some time so please be patient. It took me nearly six months to hire my Deputy! It won't take that long for the superintendents but it will be at least one more month. Thank you for being the "go between"! :-) Shirley

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The [redacted] responded several hours later and thanked Dr. Miles for writing. In her email, she told Dr. Miles, "Personally we're on pins and needles, ("fired up and ready to go!") but know patience is a virtue. Yes, we can....be patient." Dr. Miles replied on April 7, 2009, "No worries!"

DoDEA convened a rating panel on April 27, 2009, to evaluate the applications and rate the qualified candidates. The rating panel included district superintendents representing each of DoDEA's geographic areas. The rating panel met from April 27-29, 2009, at DoDEA headquarters and reviewed and rated each of the qualified candidates' applications.

The rating panel scored the [redacted] application as within the top 15 qualified candidates. Another candidate was an Air Force veteran and former DoDDS teacher and a retired public school district superintendent, who had a 5-point veteran's preference (the veteran). The rating panel rated the veteran's application within the top 10 applications; after accounting for the 5-point preference, the veteran's application was the second highest rated application of all qualified candidates for the positions.[20]

In early May 2009, [redacted] instructed the HR staffing section to prepare referral lists showing the top 15 internal and external candidates for the [redacted] superintendent vacancy. The [redacted] the veteran, and several other candidates were referred to Dr. Miles for consideration. Dr. Miles reviewed the applications of the candidates on the referral lists and selected nine candidates to interview.[21] The [redacted] and the veteran were among the external candidates to be interviewed. The [redacted] scheduled interviews for June 8-9, 2009.

On May 18, 2009, the [redacted] emailed Dr. Miles and invited her to the [redacted] retirement celebration in Hawaii on June 27, 2009. Dr. Miles responded on May 20, 2009, declining the invitation. She wrote, "Congratulations! I 'heard' he has a job interview when I return from Japan."

On May 28, 2009, the [redacted] emailed the [redacted] and confirmed a telephonic interview for the job on June 9, 2009. The [redacted] also emailed the veteran and other candidates for the position to confirm their telephonic interviews.

Following the interviews of all candidates, Dr. Miles selected the [redacted] to fill the vacancy for the [redacted] superintendent position. On June 29, 2009, DoDEA mailed a formal offer of employment to the [redacted] to serve as the Superintendent, [redacted]

At 5:54 p.m., on June 29, 2009, after the formal offer of employment had been mailed, [redacted] emailed Dr. Miles and Mr. Toth, with copies to the [redacted] and an

[20] The rating panel scored the veteran's application as 92. With a 5-point veteran's preference, his application scored as 97. The rating panel scored the [redacted] application as 86.

[21] Dr. Miles had identified a tenth candidate she wanted to interview for the vacant positions, but he did not submit an application. Therefore, only nine applicants were interviewed.

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HR staffing specialist, regarding Dr. Miles' selection of the [redacted] for the [redacted] Superintendent position. [redacted] wrote:

> [The veteran] is a veteran who was ranked higher than [the [redacted] for consideration for District Superintendent positions. To select [redacted] we must document the reasons we are bypassing the veteran.
>
> I have prepared a justification based on the interview documentation and his resume. If you concur, with this, we'll include it with the case file documentation. If you have any recommendations to make this stronger, I would welcome them.

The draft justification stated that the veteran did not provide a "coherent or responsive" answer to one of the interview questions. It also stated the veteran did not possess "a knowledge or understanding of current educational technology." Finally, it stated the veteran's experience "does not provide [the veteran] with the depth or breadth of knowledge of school level programs, problems, and issues necessary to effectively manage a district the size of the [redacted]."

At 10:40 p.m. on June 29, 2009, Dr. Miles replied, "Wow [redacted] I couldn't have said it better!" The following day, [redacted]r wrote to the [redacted] and stated, "I think we can go with the justification and move forward with notifying [the veteran] of his non-selection. I haven't heard back from Charlie [Toth] yet, but if he has any recommendations to strengthen the bypass justification, I'll include them in the final memo."

We were unable to obtain documentation providing a rationale for the decision to bypass the veteran in favor of the [redacted] other than the draft justification prepared by the HR Deputy Director. Further, neither Dr. Miles nor any other witness provided a substantive explanation for the grounds upon which the bypass justification was reached.

[redacted] testified Dr. Miles had the prerogative to select the [redacted] for the position whether or not she knew him in advance, if she considered all the qualified candidates and made a determination he was the best candidate for the position. He added that where a veteran is among the qualified candidates for a position and a non-veteran is selected, there must be compelling reasons for the selecting official to justify bypassing the veteran. He confirmed that he had been tasked to prepare the memorandum seeking approval to bypass the veteran, but stated that the justification itself would have to have come from Dr. Miles as the selecting official. He added he could not specifically recall what the reasons were for not selecting the veteran.

Dr. Miles testified she first met the [redacted] when she traveled to Hawaii with Dr. Tafoya. Dr. Miles further testified that she would see the [redacted] whenever she visited Hawaii on business. She stated that she had known the [redacted] for a number of years before he applied for the [redacted] Superintendent position. She added that she met [redacted] on one of her visits, but she could not recall when the first meeting occurred.

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Dr. Miles could not recall why [redacted] and Mr. Toth had emailed her to update her on whether the [redacted] had applied for the position, but that it was a normal course of business to find out how many people had applied for a position, who had applied for a position, and what was happening with a particular vacancy. She added that she had inquired about the status of the [redacted] application, because the [redacted] had asked her about the position and she wanted to know if he had applied.

Dr. Miles stated that had any other applicant asked her and written to her, she would have responded to them just as she did with the [redacted] When asked if any other applicant did so, she responded with the names of three other applicants for positions, none of whom was a candidate for the Japan Superintendent position.[22]

When presented with Mr. Toth's March 31, 2009, email to the [redacted] regarding the [redacted] application for employment, Dr. Miles testified that she had not had any discussions with Mr. Toth about having the [redacted] fill the vacant position. She stated she had merely talked with Mr. Toth about the application and added that Mr. Toth "knew that [the [redacted] was applying, because he had met [the [redacted] as well."

Dr. Miles testified that she could not recall the veteran's application. She stated, "I don't even remember [the veteran]." She added she did not recall what it was about the [redacted] application that stood out compared to the veteran's application, and she could not recall the circumstances under which the veteran was bypassed in connection with her selection of the [redacted] When asked whether the bypass justification memorandum was something that [redacted] put together or something that contained Dr. Miles' specific reasons for not hiring the veteran, Dr. Miles responded, "Well, I didn't write it." She added that her comment to [redacted] "I couldn't have said it better," indicated she had no objections to the memorandum and that her HR staff could process it in the normal course of business.

Discussion

We conclude that Dr. Miles engaged in prohibited personnel practices when she participated in the hiring of the [redacted] as the District Superintendent, [redacted], in violation of 5 U.S.C. 2301 and 2302. [redacted]

[redacted]

[redacted]

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District Superintendent, [redacted]*, DoDEA-Pacific*

We conclude Dr. Miles provided an unfair advantage to the [redacted] for a competitive position, Superintendent, [redacted], DoDEA-Pacific, and selected him for the position, in violation of 5 U.S.C. 2301 and 2302.

We found that Dr. Miles and the [redacted] had developed a personal relationship well before the [redacted] applied for a position with DoDEA. We found that Dr. Miles determined to select the [redacted] to fill the [redacted] vacancy before she had considered any applications for the position. Beginning in early March 2009, Dr. Miles afforded the [redacted] and [redacted] in particular, full access and assistance in ensuring that the [redacted] timely submitted an application for the [redacted] position. This, in and of itself, would not be improper, particularly had she extended similar opportunities to other applicants for the position. However, we found no evidence that other applicants were extended the same courtesies. We were not persuaded by Dr. Miles' suggestion that she would have afforded other applicants the same access, and that the [redacted] was the recipient of her courtesies and personal involvement in the application process because his [redacted] had been able to make contact with her.

Additionally, we found that Dr. Miles personally involved herself and her senior leaders in ensuring that the [redacted] submitted his application before the position vacancy closed. We found no evidence that she did the same for any of the other qualified applicants for the position. For example, after the [redacted] notified Dr. Miles that [redacted] had submitted his application, Dr. Miles asked the [redacted] directly to confirm the status of the application. The [redacted] in turn, involved not less than four HR staff members in determining whether the [redacted] actually submitted an application for the position.

We found Mr. Toth made multiple inquiries about the [redacted] application and informed the [redacted] that Dr. Miles wanted to "move on" the [redacted] application and interview him for the [redacted] position. We further found that Dr. Miles intended to consider the [redacted] application specifically for the [redacted] vacancy.

We found that the [redacted] had concerns early in the job application process about Dr. Miles' interest in the [redacted] for the [redacted] When Mr. Toth wrote to the Deputy [redacted] advising that Dr. Miles wanted to move on the [redacted] application, the Deputy [redacted] responded that the [redacted] could not even be interviewed for the [redacted] until after DoDEA had rated and ranked all of the applications for the superintendent vacancies. He noted that veterans preference must be observed in the hiring process. He informed Mr. Toth that while he hoped it did not work out that way, it was possible a candidate with preference could block the [redacted] from being hired into the position.

We found that DoDEA received an application from the veteran, an applicant with a 5-point veterans preference, and that the rating panel ranked him higher than the [redacted] without considering the veterans preference. Dr. Miles selected the [redacted] over the veteran. Again, this is not impermissible so long as the selection is appropriately justified by the selecting official, specifically, Dr. Miles.

We found no evidence documenting the grounds on which the veteran was bypassed, other than the draft bypass justification that [redacted] prepared for Dr. Miles'

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signature. Further, we find it significant in the context of the selection process that the [redacted] mailed DoDEA's formal offer of employment to the [redacted] before Dr. Miles or Mr. Toth approved or commented on the draft bypass justification concerning non-selection of the veteran. [redacted] testified that the draft justification had to have been based on information Dr. Miles provided to him in her capacity as selecting official. However, he added he could not recall receiving any such specific information. Dr. Miles testified she did not provide [redacted] with any input for the justification.

We determined Dr. Miles' intent was evidenced by her personal involvement concerning the [redacted] application and her expressed interest in selecting him for the [redacted] before the vacancy announcement had closed and other applications had been properly considered. For example, on March 4, 2009, almost a month before the [redacted] announcement closed, Dr. Miles advised the [redacted] that the [redacted] position was filled. Additionally, on March 31, 2009, the closing date of announcement, and before the applications had been reviewed and rated, Mr. Toth emailed the [redacted] and advised that Dr. Miles wanted to interview the [redacted] for the [redacted] Finally, in an email dated April 6, 2009, Dr. Miles wrote the [redacted] that the [redacted] was "at the top of my list."

Dr. Miles' Response

Dr. Miles stated that all three candidates for the position of Superintendent, [redacted] DoDEA-Pacific, went through the same hiring process -- namely, they were evaluated by both a rating panel and an interview panel, and noted that the [redacted] was chosen at the end of that process. She also stated that the [redacted] was an "acquaintance," and not someone she had known for "years."

Regarding the length of their relationship, we reviewed testimony from Dr. Miles and the [redacted] with regard to their first meeting. In response to our question, "When did you first meet [the [redacted] Dr. Miles responded, "It was with Dr. Tafoya, so it had to be in 2008, I think." [redacted] confirmed he first met Dr. Miles during Dr. Tafoya's tenure as Director, DoDEA. He stated they first met in "'07 [or] '08, around there." Based on our review, we accept Dr. Miles' assertion that she had not known the [redacted] for "years," and note that they first met in 2007 or 2008 when Dr. Miles was the Deputy Director, DoDEA. Consideration of this fact did not alter our conclusion on this allegation.

Regarding whether Dr. Miles afforded the same treatment to all applicants, a review of emails disclosed that on March 4, 2009, before the application window closed, Dr. Miles advised another potential applicant for the [redacted] that [redacted] are filled." Email records also disclosed that Dr. Miles engaged in an extended exchange of emails with [redacted] of the selected applicant regarding the status of his application and selection for an interview.

Although Dr. Miles asserted she would have provided the same level of support to anyone who requested it, we found no evidence that she did, or that she attempted to refer the requester to an appropriate office in DoDEA to respond to the requests. Given her position as

the selecting authority we find her assertion that she did not provide an unfair advantage to the selected candidate unpersuasive.

Dr. Miles also wrote that she did not recall the veteran bypass justification because the event took place 2 years ago. Our review of the veteran bypass action disclosed no evidence documenting the grounds on which the veteran was bypassed, other than the draft bypass justification that [redacted] prepared for Dr. Miles' signature. Further, we find it significant in the context of the selection process that the [redacted] mailed DoDEA's formal offer of employment to the [redacted] before Dr. Miles or Mr. Toth approved or commented on the draft bypass justification concerning non-selection of the veteran.

After reviewing and carefully considering the matters presented by Dr. Miles and reconsidering the complete record of testimony, facts, and circumstances particular to the allegation, we stand by our conclusion.

C. Did Dr. Miles travel for TDY on flights ticketed with fares other than City-Pair fares or the lowest available Government fare in order to obtain upgrades?

Standards

JTR, Volume 2, "Department of Defense Civilian Personnel," dated June 1, 2009

Paragraph C1058, "Obligation to Exercise Prudence in Travel," requires that the traveler exercise the same care and regard for incurring Government travel expenses as a prudent person traveling at personal expense.

Paragraph C2000-A, "Travel and Transportation Policy," requires travelers to use economy/coach-class transportation accommodations unless otherwise specifically authorized under the JTR. It further states that City-Pair airfares should be used for transportation where it is offered. Paragraph C2000-A.5, provides that a traveler is personally financially responsible for any additional expense accrued by not complying with paragraph C2000-A.

Paragraph C2000-C, "TDY Travel Involving non-PDS Location(s)," states that when an employee's TDY travel is to or from a non-permanent duty station (PDS) location, the traveler is responsible for any excess travel or transportation cost, and the constructed cost for each leg of travel must be based on Government "YCA" City-Pair contract fares, if available.

Paragraph C2001-A.2(a), states that the use of City-Pair airfares is to the Government's advantage, and such airfares should be used for official air travel. Paragraph C2001A.2(b) provides that the use of non-contract air service may be authorized only when under specific, enumerated conditions and if specific authorization and justification is shown on the travel order.

Paragraph C4564, "Employee's Leave Canceled or Interrupted," provides that an employee who is required to perform TDY at a place away from the permanent duty station to which the employee has traveled for personal reasons, is authorized per diem, as well as transportation expenses for the return trip which exceed those which the employee otherwise would have incurred if the employee had not been required to perform the TDY. However, the

paragraph also states that if the TDY requirement is known before departure on leave, the employee is reimbursed actual travel expenses not to exceed the constructed round-trip cost between the permanent duty station and TDY location, and adds that City-Pair airfares are not authorized for use to and from the leave location if the TDY requirement is known before leave is begun.

Paragraph C4564, Sub-paragraph G, "TDY Directed at Leave Status Termination," provides that an employee on authorized leave away from the PDS who is directed, at leave termination, to proceed to a TDY location and upon TDY assignment completion to return to the PDS, is authorized per diem and transportation expenses only to the extent travel relating to the TDY assignment exceeds the direct route travel constructed cost from the leave location to the PDS. It also states that if, in relation to the place at which the employee is on leave, the TDY location is located in a routing direction through and beyond the employee's PDS, the allowable per diem and transportation expenses are limited to that for roundtrip travel between the PDS and the TDY location.

Appendix P, "City-Pair Program"

The City-Pair Program requires DoD travelers on official business to use City-Pair contract carriers unless a specific exception applies.[23] Part II, Paragraph B.2, prohibits a traveler from choosing not to use a contract carrier because of personal preference, frequent flyer clubs, and other reasons. It states that such action violates the City-Pair contract and Department policy and regulations.

Part I, Paragraph A.6, provides specific exceptions to the use of contract carriers, including the following travel conditions which must be certified by the traveler or authorizing official on the travel order or authorization:[24]

- Space or scheduled flight is not available in time to accomplish the travel purpose, or contract service would require the traveler to incur unnecessary overnight lodging costs that would increase the total trip cost;
- The contract carrier's flight schedule is inconsistent with explicit policies of individual federal departments and agencies to schedule travel during normal working hours; or,
- A non-contract (DoD-approved) U.S. certified carrier offers a lower airfare available to the general public, the use of which results in a lower total trip cost to the Government, to include combined costs of transportation, lodging, meals, and related expenses.

Part I, Paragraph A.7, mandates specific requirements for a traveler's use of non-contract fares. It expressly states that carrier preference is not a valid reason for using a non-contract

[23] The Joint Travel Regulations provide that regulations applicable to the contract City-Pair Airfare Program are found in Defense Transportation Regulation 4500.9-R (DTR), Part I, Chapter 103, paragraphs A2 and B2. Appendix P is an edited extract from the regulation.

[24] See DTR, Part I, Chapter 103, paragraph B.2.

airfare. Additionally, one of the foregoing exceptions in Paragraph A.6 must be met, the use of non-contract airfare must be approved on the travel order/authorization, and

- If airfare is restricted, non-refundable, or has specific eligibility requirements, the traveler must know or reasonably anticipate that the ticket will be used; and

- The traveler's agency must determine that the proposed non-contract transportation is practical and cost-effective for the Government.

Part II, Paragraph D.3, defines City-Pair airfare rates as follows:

- YCA Fare: Guaranteed Government Services Agency (GSA) economy/coach class City-Pair airfare which is a highly discounted unrestricted airfare. If the Government contract City-Pair carrier offers a lower cost capacity-controlled coach class contract fare than the unrestricted YCA fare, the traveler should use the lower cost capacity-controlled fare when it is available and meets mission needs.

- CA Fare: Limited capacity, GSA coach/economy class City-Pair airfare which is a capacity controlled airfare with a deeper discount preferred by the Government.

Part II, Paragraph D.3, additionally provides that when a CA fare is available, the ability to use personal frequent-flyer or mileage reward points in connection with official travel is not a valid reason to request YCA airfare. If a traveler elects to use a YCA fare when a lower cost capacity-controlled coach class contract fare is available and the cost exceeds the cost of the lower cost capacity-controlled fare, the traveler is financially responsible to the Government for the cost difference between the YCA airfare and the lower capacity-controlled airfare.

DoD 7000.14-R, "DoD FMR," dated January 3, 2011, Volume 9, Chapter 2, "Defense Travel System"

Section 020302 provides that the traveler is responsible for preparing initial authorizations, amendments and post trip vouchers using DTS. Additionally, it provides that the traveler also is liable for any false or fraudulent written or oral statements under the False Claims Act (18 U.S.C. 287, 18 U.S.C. 1001, and 31 U.S.C. 3729).

Memorandum dated March 28, 2008, by Under Secretary of Defense, Personnel and Readiness, Subject: Mandatory Use of the Defense Travel System (DTS).

Following a travel study conducted as required by the FY 2007 John Warner Defense Authorization Act, the Under Secretary of Defense, Personnel and Readiness, mandated the use of DTS as the single, online travel system used by DoD, for all travel functions supported by the system and those that will be supported by DTS in the future, as they become available.

Facts

The incoming complaints alleged Dr. Miles showed a blatant disregard for the travel regulations established by the JTR by predominantly flying on United Airlines, ensuring she traveled on an upgradeable fare, and scheduling TDY travel so that she could upgrade her flights.

As the Director, Dr. Miles traveled frequently to DoDEA locations around the world for site visits, conferences, meetings with military commanders and senior leaders, and when emergent issues required her attention. In a December 20, 2008, email to an acquaintance, Dr. Miles commented that she flies "business class" most of the time on her business trips.

Travel authorizations for all employees within DoDEA, except the Director, were reviewed for approval by the Resource Management Division (Resource Management) in DoDEA's Directorate for Finance and Business Operations (F&BO). When Dr. Miles was the Principal Deputy Director, [redacted] reviewed and approved her travel authorizations. Only the Director, who was a designated self-certifying official under the JTR, was exempt from such review.

[redacted] testified that when Dr. Miles became Director and was authorized as a self-certifying official, [redacted] no longer reviewed and approved her travel orders. As a self-certifying official, Dr. Miles had the authority to approve her own travel, but she did not have the authority under the JTR to approve her own travel vouchers and authorize disbursement of funds upon the completion of travel.

Dr. Miles developed her travel schedule with the input of headquarters staff and leadership in DoDEA's three geographic areas. Many travel requirements, such as conferences, were scheduled and annotated on Dr. Miles' calendar well in advance. Some travel occurred with relatively little advance notice. When Dr. Miles determined it was necessary to travel to a particular location at a particular time, she would confirm the requirement with her EA, who then would make all necessary travel arrangements, including air transportation and lodging. Dr. Miles testified she normally received her travel itinerary from her EA shortly before departing on official business.

DoDEA's official travel was serviced by Carlson Wagonlit Travel (CWT), a global travel services company. CWT is a Government contractor that has provided travel services to DoDEA and its employees for a number of years, including all times relevant to this investigation.

Mr. Kevin Kelly, Director, F&BO, testified that in early 2008 he began to have concerns about travel by DoDEA employees and felt that travel in DoDEA as a whole was "out of control." Mr. Kelly testified he believed employees had simply been booking travel as they wanted, without regard to DoD travel requirements and regulations. He found that employees routinely called CWT to schedule travel and did not use DTS as required by DoD policy. As a result, he issued three travel bulletins to all DoDEA headquarters staff in May, June, and August 2008, to provide policy guidance to DoDEA employees.[25] Mr. Kelly testified that the travel bulletins were intended to supplement applicable travel regulations, policies, and guidance, and to establish local rules for using DTS. The bulletins included references to applicable travel regulations.

The first travel bulletin, dated May 30, 2008, addressed the following topics:

[25] Mr. Kevin Kelly testified the travel bulletins were not targeted at Dr. Miles. Dr. Miles was not the Director at the time Mr. Kelly issued the first two bulletins.

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- TDY must be necessary and the number of travelers appropriate for the mission. Mr. Kelly wrote that often DoDEA appeared to send more employees to a conference or other event than might be necessary;

- Travel routes cannot be chosen for the convenience of the traveler;

- DTS is not intended to accommodate travel selections based on a traveler's personal choice without regard for costs. If travelers are unable to book tickets through DTS, they are to contact designated commercial travel office representatives. They are not to contact CWT directly; and

- Seat upgrades, such as those obtained through frequent flyer miles, must not result in a cost increase for the flight. Mr. Kelly noted that in some instances flight schedules had been cancelled and re-booked at a higher fare in order for a passenger to upgrade seats.

The second travel bulletin, dated June 5, 2008, stated that travel requests will not be processed unless it is clear that the travel is the most cost-effective option. He noted that Resource Management will review each TDY travel request for accuracy and the least cost to the Government. He added that Resource Management will question obvious cost overruns, which could cause travel orders not to be completed.[26] Mr. Kelly's second travel bulletin also addressed conference planning and site selection in some detail.

The third travel bulletin, dated August 1, 2008, identified the requirement that official travel, not processed through DTS, must be arranged through an available contracted commercial travel office (CTO). Mr. Kelly noted that recent incidents were reported where a DoDEA traveler bypassed the local CTO in scheduling TDY travel, resulting in airfare that exceeded the amount the Government would have paid had travel been scheduled through the CTO. Mr. Kelly explained that under such circumstances the JTR prohibits reimbursement of the excess transportation costs paid by the traveler. He noted that it was each traveler's responsibility to follow applicable travel regulations.

[redacted] testified that she booked Dr. Miles' TDY travel until the Spring of 2009, by using both DTS to find and schedule flights and by contacting DoDEA's point of contact in CWT. We obtained and reviewed with representatives of CWT travel documentation for 29 trips in 2009-2010.[27] During that time period, Dr. Miles traveled extensively within the United States, Europe, and Asia. Of the 29 trips we reviewed, we identified the following occasions where tickets were not booked using the lowest Government airfare available:

- *February 16, 2009, Washington, DC (Dulles International Airport) to San Francisco, California.* Dr. Miles traveled with United Airlines, at a round-trip fare of $922.20.

[26] We discussed the allegations relating to conference planning in Section III of this report.

[27] The identified trips include instances in which a trip constituted the return leg of extended travel in connection with Dr. Miles' official travel during TDY.

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The City-Pair airfare for the same route was $169.00 each way, for which tickets were available. The City-Pair travel was not direct, however, while the United Airlines flight was direct and non-stop. Dr. Miles' travel authorization for the TDY states, as justification for the non-contract fare, that the traveler is authorized to use non-contract air carrier and non-contract airfare.

- *June 2, 2009, Washington, DC (Dulles) to Frankfurt, Germany.* Dr. Miles traveled to Germany to attend and speak at the Bamberg High School commencement exercises. Dr. Miles traveled on United Airlines. Booking notes made by CWT at the time stated that a lower airfare was available for the flight, but that the fare was declined because the traveler wanted to upgrade.

- *June 28, 2009, Las Vegas, Nevada, to Naples, Italy.* Dr. Miles was on personal leave in Las Vegas at the end of June 2009 in order to attend her [redacted] She initiated official travel from Las Vegas to Munich, Germany, via Denver, Colorado. Dr. Miles was traveling to the Navy Leadership Conference in Naples, Italy. Dr. Miles' flight from Denver to Munich was on an upgradeable ticket. [redacted] testified that the DoDEA employee who called to book the flight strongly requested the early issuance of a ticket, not a reservation, for Dr. Miles. The early issuance of a ticket enables the traveler to get on the airline's upgrade list. [redacted] added that early ticketing was out of the norm under DTS policy, which provides for tickets to be issued 3 business days before the scheduled travel.

- *July 14, 2009, Las Vegas, Nevada, to Philadelphia, Pennsylvania.* Dr. Miles traveled from Las Vegas to Philadelphia to attend the Military Child Education Coalition Conference and the DoDEA Worldwide Superintendents' Conference. CWT's booking notes for the flight show that a lower Government fare was available for the flight and that Dr. Miles' EA was notified of the Government airfare. CWT's booking notes also show that Dr. Miles' EA declined the lower airfare and advised CWT that the reason for the declination was that the passenger needed to be on the selected flights.

CWT's travel documentation for Dr. Miles showed other occasions on which Dr. Miles' United Airlines tickets were upgradeable but were purchased at the lowest available Government fare.

Mr. Kelly testified he learned of Dr. Miles' planned February 2009 travel to San Francisco aboard a United Airlines flight and he contacted her to express his concerns. He emailed Dr. Miles on February 11, 2009, and wrote in part:

Shirley, There is a travel issue burning here that concerns me. While we have agreed that when you, Charlie [Mr. Toth] or I travel we can bypass DTS contract carriers if the cost is not that great a difference. In the case of travel to San Francisco the cost differentiation is approx $600. I feel that this is [too] great a

> differential to ignore. I recommend both you and Charlie change your tickets to a contract carrier.
>
> I think [redacted] believes you and Charlie require all their flights to be booked on United regardless of the cost factor. This makes it look as if you are flying for the purpose of frequent flyer miles, which is prohibited.

Dr. Miles replied to Mr. Kelly's email the same day, thanking him for his comments. She wrote:

> I believe because we travel so much that we have the right to be comfortable when we fly. Also, I think it is a waste of my time and therefore the [Government's] time and money for me to not fly a direct route. I know, in [redacted] nine years, he always flew United. I'm not saying I'm flying for the miles but you, Charlie and I are different from the rest of the team because our jobs require us to fly most of the time. After two full weeks of travelling by plane, train, and automobile, I want to fly to San Fran. directly; no stops.

Dr. Miles' calendar showed that prior to her February 16, 2009, travel to San Francisco, she had attended DoDEA's Worldwide Counselors Conference and Principals Conference, in Leipzig, Germany, from February 2-6, 2009, and conducted DoDEA task force meetings in Germany the following week, prior to returning to the United States on Saturday, February 14, 2009.

In June 2009 Dr. Miles was scheduled to travel to the Kingdom of Bahrain to visit DoDEA's school there, participate in the commencement exercises, and attend meetings concerning DoDEA's provision of education services in Bahrain. She decided to travel to Bahrain with DoDEA's [redacted]. Dr. Miles and [redacted] planned to travel from Washington, DC, to Bahrain via Dubai, and take personal leave en route.

In April 2009, [redacted] assistant created a travel authorization for the trip and booked a flight for him to Bahrain through Dubai. The airfare exceeded $5,900. After reviewing the authorization [redacted] contacted CWT and inquired about the normal route and related costs. CWT responded that the Government fare was approximately $2,300, for travel to Bahrain via Frankfurt, Germany.

[redacted] disapproved the travel authorization for [redacted] and informed his assistant. Upon receipt of the disapproved travel authorization, [redacted] assistant met with [redacted] and stated that [redacted] was traveling with Dr. Miles, and Dr. Miles intended to travel through Dubai. The Budget Chief responded that while she had no say over Dr. Miles' travel, she would not approve the travel authorization for [redacted] to fly to Bahrain via Dubai. Shortly thereafter, the [redacted] cancelled his travel through Dubai, and both he and Dr. Miles booked travel to Bahrain through Frankfurt. The airfare for the trip was less than $2,500 each.

In May 2009, [redacted] went to [redacted] and told her she no longer wanted to sign Dr. Miles' travel authorizations. Shortly thereafter, one of [redacted] points of

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contact at CWT called her and asked what was going on with the Director's travel.[28] [redacted] responded she was not aware of anything and asked what CWT's concern was. She was told [redacted] was calling CWT to book flights for Dr. Miles, and was telling CWT that Dr. Miles had to be on specific flights. When CWT pointed out there were cheaper flights available for Dr. Miles' travel, [redacted] would reject the less expensive fares and advise that Dr. Miles had to be on the specific flight she had requested.

[redacted] informed the [redacted] of CWT's call and the concerns regarding Dr. Miles' travel. [redacted], in turn briefed Mr. Kelly. Mr. Kelly directed that she and [redacted] meet with CWT to determine what was happening and what CWT's travel notes actually stated.

On May 22, 2009, [redacted] and [redacted], traveled to CWT to discuss DoDEA's travel policies and procedures. [redacted] testified she reviewed various CWT notes regarding specific TDY trips in which Dr. Miles (through [redacted] rejected lower fare flights in order to obtain tickets that could be upgraded, including Dr. Miles' June 2009 travel to Frankfurt, and her July 2009 travel to Philadelphia.

[redacted] testified that CWT concluded Dr. Miles' flights were being scheduled so as to ensure she obtained upgradeable tickets instead of capacity-controlled tickets (which could not be upgraded). [redacted] also testified that she had learned from CWT that DoDEA employees responsible for booking travel for travelers at DoDEA headquarters called CWT directly to book flights rather than using DTS to arrange flight schedules.

The week after [redacted] met with the CWT representative, she prepared documentation for Mr. Kelly at his request. The documents included references to the use of DTS, excerpts from or references to the JTR, the City-Pair rules, and other documents. On June 2, 2009, Mr. Kelly and Dr. Miles met, along with [redacted] the [redacted] and [redacted] Mr. Kelly briefed Dr. Miles regarding the travel issues that had come to his attention, including CWT's concerns, and examples of specific travel that had raised questions.

[redacted] testified that Dr. Miles questioned all of the attention that had been focused on her travel and asked why her travel was being treated differently than that of her predecessor, Dr. Tafoya. She added that [redacted] responded that the issues raised related to Dr. Miles' travel, not Dr. Tafoya's, and that the effort being made was intended to keep Dr. Miles out of trouble. [redacted] testified he recalled Dr. Miles saying in response that she did not want to do anything that was not legal or permitted by the JTR regarding her travel.

[redacted] testified that it had been made clear to her that Dr. Miles wanted to be booked on United Airlines and that she had been directed to schedule flights for Dr. Miles on United Airlines. [redacted] could not say specifically when Dr. Miles ever told her expressly to book flights on United Airlines, but it was clear that Dr. Miles wanted to fly with that carrier.

[28] [redacted] testified she believed [redacted] called her specifically because of the costs associated with the initial scheduling of the Bahrain trip for Dr. Miles and the [redacted]

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She continued that she routinely argued with CWT representatives to ensure Dr. Miles was able to obtain a flight in a fare category that was upgradeable, even though she believed she was scheduling Dr. Miles' travel in violation of the JTR. She stated that, as a result, she rarely booked Dr. Miles on a City-Pair fare, and that booking Dr. Miles on the upgradeable ticket was often two or three times more expensive than the City-Pair fare for the same travel.

[redacted] also prepared Dr. Miles' travel authorizations and travel vouchers for payment. She stated Dr. Miles neither reviewed nor signed her authorization or voucher documents. [redacted] testified that she used DTS to schedule Dr. Miles' travel, but she was able to use it in a way to avoid the less expensive, non-upgradeable flights. She stated:

> If I knew she had to travel, say, on January 15th, but even though I knew about it in December, I'd wait until like January 10th. I'd check every day. I'd go into DTS and check flights and check flights. And pretty soon you could see where, "Okay, now I can book her on, now I can do it today, because all flights on the cheaper airlines are booked out. They're gone."
>
> That's how I could get around it, get around doing -- booking a flight. Because normally if you were going TDY, you're not going to wait until 5 days before. You're going to, as soon as you know you're pretty much going to book your flight and make sure you have it. But I would be very vigilant about checking the DTS every day.

[redacted] also testified she could not recall when Dr. Miles told her she should call United Airlines to request upgrades for Dr. Miles' flights, but she knew that as soon as she had booked Dr. Miles on a flight, she was supposed to call United Airlines and get Dr. Miles upgraded or placed on the upgrade list. She explained that since Dr. Miles was a United Airlines "1-K Member," she [redacted] would simply call United Airline's 1-K desk, provide the reservation number, and request an upgrade for Dr. Miles. United Airlines 1-K status is reserved for frequent fliers who travel 100,000 or more miles in a calendar year. United provides complementary seat upgrades from Economy to Economy Plus on all flights for 1-K members. Dr. Miles testified that she had earned approximately 300,000 miles with United Airlines during her travel on official business.

In mid-2009, Mr. Kelly determined that there were no checks and balances relating to Dr. Miles' travel because [redacted] planned the flights and booked them, certified Dr. Miles' travel authorization, then took care of travel vouchers when the travel was complete. Mr. Kelly stated he informed Dr. Miles and her Chief of Staff that F&BO would not accept any future travel paperwork that did not have different signatures on it. Mr. Kelly testified that when he brought these matters to Dr. Miles' attention she responded, "I don't actually book my travel. So if something is going wrong, it's because my admin person is not doing it right." He added he found this to be a problem because Dr. Miles would not permit anyone within F&BO to review and approve her travel, but could then claim she was not at fault if something went wrong because she did not schedule her own travel.

Dr. Miles testified that her first concern regarding official travel always was to ensure that the travel was being scheduled in accordance with the JTR. She was unable to offer an

explanation concerning the specific 2009 travel we refer to above. She noted that the February 2009 travel to San Francisco immediately followed a several week period when she had been traveling considerably to and from Europe. She added that in consideration of the amount of traveling she had been doing, she thought it was appropriate to travel to San Francisco directly, rather than on a non-direct flight. This was consistent with Dr. Miles' comments to Mr. Kelly several days before the travel, in which she told him she wanted to fly to San Francisco directly.

Dr. Miles testified that she had traveled to Las Vegas at the end of June 2009, to attend her [redacted] She paid her own way from Washington to Las Vegas, and left for the [redacted] on Friday, June 26, 2009. She testified that because of the confluence of [redacted] date and the requirement that she travel to Europe for the Navy Leadership Conference, Dr. Miles required that her travel be arranged for departure from Las Vegas, rather than return first to Washington, DC.

Discussion

We conclude Dr. Miles traveled for official business on flights ticketed with fares other than City-Pair fares or the lowest available Government fare in order to obtain upgrades in violation of the JTR, the DoD FMR, and DoD policy on the use of DTS for official travel.

CWT records indicated that between 2009 and 2010, Dr. Miles traveled on official business more than 25 times. [redacted] scheduled her travel as often as possible on flights ticketed with fares other than the City-Pair fare or lowest available Government fare. We also found that [redacted] scheduled Dr. Miles to travel on United Airlines whenever possible in order that Dr. Miles could obtain upgrades through her United Airlines frequent flyer travel benefit program. We found that [redacted] would manipulate the DTS system to attempt to book tickets for official travel after the lowest available Government fare seats had been sold and, thereby, to obtain upgradeable tickets for Dr. Miles.

We determined that Dr. Miles traveled on official business on flights that were not booked using the City-Pair or otherwise lowest Government fare available. On several occasions in 2009, Dr. Miles traveled on official business using tickets that were not scheduled using the lowest available fare at the time they were booked. For example, when Dr. Miles traveled to San Francisco in February 2009, she did so on a non-stop United Airlines flight, at an expense to the Government $584.00 greater than the City-Pair fare would have been to travel to San Francisco. The JTR specifically prohibits the scheduling of travel for the convenience of the traveler. We found no provision in the JTR or elsewhere authorizing the Director, DoDEA, to approve her own travel using a non-contract carrier or on a non-contract fare, when a less expensive contract carrier or contract fare was available.

We found that the Director, F&BO, issued travel advisories to DoDEA employees about travel on official business after becoming concerned that official travel by DoDEA employees was "out of control." We further found that the Director, F&BO, cautioned Dr. Miles directly about specific travel she had scheduled for herself as a self-certifying official, and that Dr. Miles did not welcome his guidance.

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We determined that DoDEA's flight scheduling practices for Dr. Miles and other personnel in 2009 caused concerns for CWT. CWT representatives inquired into travel scheduling for Dr. Miles and other DoDEA officials, resulting in a June 2009 meeting involving Dr. Miles and other DoDEA officials to address the matter. We found that on the evening following the meeting at DoDEA Dr. Miles traveled from Washington, DC, to Germany, to speak at the Bamberg High School commencement exercises. She traveled on an upgradeable ticket on United Airlines even though a lower airfare was available. CWT noted that the lower fare was declined because Dr. Miles wanted an upgrade.

We found that in July 2009, Dr. Miles traveled on official business from Las Vegas, Nevada, to Philadelphia, Pennsylvania. CWT's booking notes for her flight showed CWT notified [redacted] that a lower Government fare was available for the travel. The EA declined to accept the lower fare and advised CWT that Dr. Miles had to be on the selected flights. We found no evidence to indicate that Dr. Miles' need to be on the selected flights was based on reasons other than convenience – be it travel schedules, issues relating to layovers or total travel time, or other similar matters. Regardless, the JTR prohibits scheduling travel primarily for the convenience of a traveler. Further, the JTR requires advance authorization and justification for the use of non-contract air service. We found no evidence of such justification or authorization being provided or issued.

We also found that Dr. Miles traveled occasionally on official business from a leave location away from her PDS, in Arlington, Virginia. On one occasion, for example, relating to the [redacted] and her need to travel on official business from Las Vegas, Nevada, to Naples, Italy, Dr. Miles was aware of the TDY requirement before departing her PDS for Las Vegas, her leave location. The Government incurred additional costs in connection with Dr. Miles' travel from her leave location, as opposed to her PDS, to Germany (the initial landing point for Dr. Miles' international flight). Moreover, the travel leg from Denver, Colorado, to Munich, Germany, was booked on an upgradeable ticket with United Airlines.

The JTR provides that when an employee is required to travel on official business and departs from a leave location away from the employee's PDS, if the employee knew of the TDY requirement before departing on leave, she is reimbursed only actual travel expenses not exceeding the constructed round-trip cost between the PDS and the TDY location. Additionally, City-Pair fares are not authorized for use to and from the leave location if the TDY requirement were known before leave is begun. Further, per diem expense reimbursement is limited as well to that for roundtrip travel between the PDS and TDY location.

The JTR requires a Government traveler on official business to exercise care and prudence in incurring Government travel expenses. The JTR additionally requires that City-Pair airfares be used for transportation where offered. While the JTR authorizes exceptions to the use of City-Pair fares under specific enumerated conditions, it requires that the specific authorization and justification be shown on the traveler's travel orders. Appendix P of the JTR expressly prohibits a traveler from choosing an air carrier based on personal preference or convenience, frequent flyer clubs, or other reasons.

The JTR and FMR provide that a traveler is personally responsible for additional expenses to the Government accrued by not complying with the Government's travel and

transportation policy, and that the traveler is responsible for preparing initial authorizations and post-trip vouchers using DTS.

It is uncontroverted that Dr. Miles did not prepare her own travel authorizations and post-travel vouchers. Additionally, we determined that she permitted and encouraged [redacted] to schedule travel in a manner to maximize the opportunity for Dr. Miles to obtain upgradeable tickets. We conclude Dr. Miles failed to exercise prudence in official business travel on the Government's behalf, traveled for official business on flights ticketed with fares other than City-Pair or the otherwise lowest available Government fare, in order to obtain upgrades, in violation of the JTR, the DoD FMR, and DoD policy on the use of DTS for official travel.

Dr. Miles' Response

Dr. Miles wrote that all of her travel arrangements were made by [redacted], an employee with nearly a decade's worth of experience navigating the Government's travel process and its rules and regulations.

Dr. Miles's assertion is consistent with other witness testimony. However, as noted in the Standards section above, the DoD FMR provides that the traveler is responsible for preparing initial authorizations, amendments, and post-trip vouchers using DTS. Accordingly, Dr. Miles, not [redacted] is responsible for her travel arrangements.

[redacted] estified that it had been made clear to her that Dr. Miles wanted to be booked on United Airlines and that she had been directed to schedule flights for Dr. Miles on United Airlines. She testified she routinely argued with CWT representatives to ensure Dr. Miles was able to obtain a flight in a fare category that was upgradeable. As a result she stated she rarely booked Dr. Miles on a City-Pair fare.

[redacted] explained that when she scheduled Dr. Miles' travel using DTS she was able to use DTS in a way to avoid less expensive, non-upgradeable flights. She stated she would check flight availability in DTS every day until she was sure all flights on the cheaper airlines were booked out, and added, "That's how I could get around it."

After reviewing and carefully considering the matters presented by Dr. Miles and reconsidering the complete record of testimony, facts, and circumstances particular to the allegation, we stand by our conclusion.

D. Did Dr. Miles claim and receive per diem reimbursement for official travel in the local commuting area of her Permanent Duty Station (PDS)?

Standards

31 U.S.C. 3729, "False Claims"

The Statute states that any person who knowingly presents or causes to be presented a false or fraudulent claim for payment or approval is liable to the Government for a civil penalty

of not less than $5,000 and three times the amount of damages the Government sustained as a result of the act.

JTR, Volume 2, "Department of Defense Civilian Personnel," dated June 1, 2009

Part H, "Local Travel in and around PDS or TDY Location," Paragraph C2400, "General," provides that designated officials may authorize specified transportation expense reimbursement incurred by a traveler conducting official business in the PDS or TDY local area. Per diem reimbursement is not included in the specified expenses. The paragraph defines "local area" as the area within the PDS or TDY limits and the metropolitan area around the PDS or TDY area served by common carriers, and within the local community area of the PDS or TDY area.

Paragraph C4552-C.1.a, "Per Diem at the PDS," "Per Diem Not Allowed," prohibits the payment of per diem for TDY within the PDS limits or at or in the vicinity of the employee's residence from which the employee commutes daily to the official station, except as otherwise authorized in Paragraph C4552-D.

Paragraph C4552, "General Rules Regarding Per Diem," paragraph D, "TDY at Nearby Places outside the PDS," provides that per diem is not authorized when an employee performs TDY in the vicinity, but outside of, the employee's PDS, unless the employee is TDY for 12 or more consecutive hours or overnight lodging is required.

JTR, Appendix A, "Definitions and Acronyms," defines "Permanent Duty Station," as the employee's permanent work assignment location and the building or place where an employee regularly reports for duty. Paragraph B.3 defines Arlington County, Virginia, as a PDS.

DoD 5500.7-R, "JER," dated August 30, 1993

Section 2635.101 of the JER, "Basic obligation of public service," states that public service is a public trust. This obligation is further described in Section 2635, Subpart G of the JER, "Misuse of Position," which includes the following provisions:

Section 2635.704(a), "Use of Government property," states, "An employee has a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes." Consequently, employees have an affirmative responsibility to conserve resources.

Section 2635.704(b) (1), "Definitions," states that Government property includes any form of real or personal property in which the Government has an ownership, leasehold, or other property interest as well as any right or other intangible interest that is purchased with Government funds, including the services of contractor personnel.

DoD 7000.14-R, "DoD FMR," Volume 9, Chapter 4, "Transportation Allowances"

Section 0408, "Local Travel in and around Permanent or Temporary Duty Stations" provides in paragraph 040801, "General," that local directives should clearly define the local area in which transportation expenses may be authorized or approved for conducting official business, and that when two or more installations are in close proximity, the senior commander or senior service commander should determine the local area.

DoD Directive 4515.14, "Washington Local Commuting Area," dated December 29, 1998

Paragraph 2, "Applicability and Scope," states that the Directive applies to all permanently assigned DoD employees in the National Capital Region (NCR).

Paragraph 3.1, "Washington Local Commuting Area," defines the local commuting area to include Arlington and Prince William counties and the City of Alexandria, Virginia.

Paragraph 3.3 defines the NCR to include the County of Arlington, Virginia, and all municipalities located in the County.

Facts

During the course of our investigation, DoDEA's [redacted] alleged that Dr. Miles had traveled to Quantico, Virginia, on official business and had received per diem for the TDY in violation of the JTR. Quantico is located in Prince William county.

We obtained a copy of Dr. Miles' travel voucher concerning her official travel to Marine Corps Base Quantico (Quantico). On March 24 and 25, 2010, Dr. Miles traveled on official business to Quantico to visit the DDESS schools located on the base. Dr. Miles testified that her travel was in keeping with her desire to visit all DoDEA schools or school districts during her tenure as Director. Dr. Miles added she used a rental vehicle to travel between her home, in Alexandria, Virginia, and Quantico. The approximate distance from Dr. Miles' home in Alexandria to Quantico is 24 miles.

Dr. Miles testified that she drove from her home to Quantico each morning, and returned to her residence at the end of the duty day. She added that she rented a car for the travel, rather than drive her personal vehicle, because she was concerned about her vehicle's reliability for the travel.

Dr. Miles' travel voucher showed that [redacted] created the voucher on April 23, 2010, to seek reimbursement for Dr. Miles' expenses associated with the official travel to Quantico. The voucher included per diem expenses and charges paid by Dr. Miles for the rental vehicle. The voucher sought reimbursement of $196.73 -- $127.73 for the rental car and $69.00 in per diem expenses. DoDEA's Chief of Staff approved the voucher the same day and it was submitted for payment. The voucher documentation contained an express warning against falsification of an item in an expense account including a notice of a possible fine and criminal sanctions.

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The disbursement records showed that the Government paid $127.73 directly to Dr. Miles' Government Charge Card for the rental car expenses, and $69.00 directly to Dr. Miles. DoDEA travel report records showed that DoDEA disbursed payment totaling $196.73 in connection with Dr. Miles' travel voucher for the TDY.

Dr. Miles testified that [redacted] prepared the travel voucher. She added that she did not review or approve it. It was approved by [redacted]. Dr. Miles stated she was not aware that she could not claim per diem expenses for the travel in the local commuting area.

Discussion

We conclude Dr. Miles claimed and was paid for per diem expenses to which she was not entitled in violation of 31 U.S.C. 3729, the JTR, and the JER.

We found that [redacted] submitted a claim for reimbursement in connection with TDY travel from her home, in Alexandria, Virginia, to Marine Corps Base Quantico, Virginia, on March 24 and 25, 2010. Dr. Miles traveled to Quantico, then returned to her residence each afternoon or evening. Her travel claim included rental car charges and per diem expenses totaling $196.73. We also found that Dr. Miles did not personally review her travel voucher on which she claimed entitlement to per diem reimbursement.

The JTR authorizes reimbursement for travel (the rental car), but not per diem. Quantico, in Prince William County, is within the Washington local commuting area, therefore, per diem is not authorized to be paid unless the TDY lasts 12 or more consecutive hours or overnight lodging is required.

We determined that Dr. Miles was improperly paid for per diem expenses to which she was not entitled. Her travel to Quantico was within the local Washington commuting area, and did not require that she be on duty 12 or more consecutive hours or obtain lodging at Quantico. We determined Dr. Miles was personally responsible and liable for the contents and accuracy of her TDY claim. Accordingly, we conclude that Dr. Miles submitted a false claim for reimbursement because she did not exercise personal oversight for the travel claim and did not review it before it was submitted and approved.

Dr. Miles' Response

Dr. Miles wrote that the travel claim in question was prepared and submitted by [redacted] and approved by the Chief of Staff. She added she "can only conclude that [redacted]

Dr. Miles provided no evidence to support her assertion tha[redacted].

As noted above, the DoD FMR provides that the traveler is responsible for preparing initial authorizations, amendments, and post trip vouchers using DTS. Accordingly, Dr. Miles, not [redacted] is responsible for her travel voucher.

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After reviewing and carefully considering the matters presented by Dr. Miles and reconsidering the complete record of testimony, facts, and circumstances particular to the allegation, we stand by our conclusion.

E. Did Dr. Miles claim to be in duty status while on annual leave?

Standards

31 U.S.C. 3729, "False Claims"

The standard set forth in Section D, above, applies.

DoD 5500.7-R, "JER," dated November 29, 2007

The standards set forth in Section D, above, apply.

DoD 7000.14-R, "DoD FMR"

Volume 8, Chapter 2, "Time and Attendance," provides that timekeepers shall ensure that employees attest to the accuracy of the current pay period's time and attendance. Such attestation requires the employee's written or electronic signature or initials affirming the correctness of time and attendance data.

Paragraph 020210, "Temporary Duty (TDY)," requires that an employee document the hours worked and hours of leave on the time and attendance document for the pay period during which the employee is TDY.

Paragraph 020302, "Certification of Absences," provides that employees shall initial or sign for absences from duty or submit an approved application for leave.

Paragraph 020303, "Verification of Leave Charges," requires employees to confirm officially each leave charge, except for administrative leave, absence without leave charges, suspension, or holiday absences.

Facts

During the course of the investigation, DoDEA's [redacted] informed us that time and attendance records for Dr. Miles indicated she may have claimed to be on duty status when she was on annual leave in conjunction with TDY. The pay period in question related to Dr. Miles' travel to Japan to attend DoDEA educator conferences.

We obtained travel records and Dr. Miles' time and attendance record relating to Dr. Miles' travel to Japan from May 18 to May 29, 2009. On May 18, 2009, Dr. Miles traveled to Japan to attend the DoDEA-Pacific Superintendents' Meeting scheduled for May 19-20, 2009, and to conduct site visits on May 21-22, 2009, at DoDEA's schools located in Yokosuka, Japan. Additionally, Dr. Miles was invited to attend a Component Commanders' Conference in Tokyo scheduled for May 27, 2009.

Dr. Miles testified she took annual leave in conjunction with her official business in Japan from May 25-29, 2009. During that period, she returned from leave to official duty on May 27, 2009, to attend the Component Commanders' Conference. Dr. Miles resumed annual leave on May 28, 2009, and departed Japan on May 30, 2009.

Dr. Miles testified [redacted] prepared the travel voucher for the trip. Dr. Miles' travel voucher showed that she claimed per diem or lodging expense reimbursement for May 18 through May 21, 2009, and again on May 27, 2009, when she attended the Component Commanders' Conference. The travel voucher showed that Dr. Miles claimed annual leave on May 23-May 26, 2009, and again on May 28-29, 2009.[29] In addition to lodging and per diem, Dr. Miles claimed expenses for taxi fare totaling $160.55. Dr. Miles' travel voucher also showed she was paid per diem expenses totaling $339.50 for May 30, 2009, her travel day for return to the United States.

On August 6, 2009, DoDEA's [redacted] reviewed Dr. Miles' travel voucher, approved it, and submitted it for payment. DTS travel records show Dr. Miles' voucher was paid on August 13, 2009.

Dr. Miles' time record for the 2-week pay period of May 24 through June 6, 2009, showed that Dr. Miles claimed duty status the entire period, except for the Memorial Day holiday on May 25, 2009.

Dr. Miles testified tha[redacted] prepared her time records. She stated that she did not certify her time records at the time, and only began doing so after [redacted] left DoDEA for a new Government position.[30]

Discussion

We conclude Dr. Miles claimed on her time and attendance record that she was in a duty status, rather than on annual leave for 3 days in May 2009. We found that while traveling to Japan on official business, Dr. Miles took annual leave in conjunction with her trip. Dr. Miles testified she was in a leave status on May 26, 28, and 29, 2009. However, Dr. Miles' time record did not reflect this change in status and Dr. Miles was not charged leave. We also found that Dr. Miles did not prepare or self-certify her time records at the time this occurred.

Volume 8, Chapter 2, of the FMR requires employees to submit accurate time and attendance records and to accurately account for TDY time as being on duty or in leave status. Employees are obligated to verify that the information submitted on their time and attendance records is correct, and that leave charges are accurate.

We determined that Dr. Miles did not exercise her responsibilities to review her time records and certify them as being correct and accurate. As a result of her failure to do so, she

[29] May 23-24, 2009, was a weekend. May 25, 2009, was Memorial Day. However, Dr. Miles was obligated to show her status as being on leave on her travel voucher to avoid receiving payment for lodging and per diem expenses during that time.

[30] [redacted] left DoDEA in July 2009.

claimed and was credited for being on duty status on May 26, 28, and 29, 2009, days on which she took personal leave.

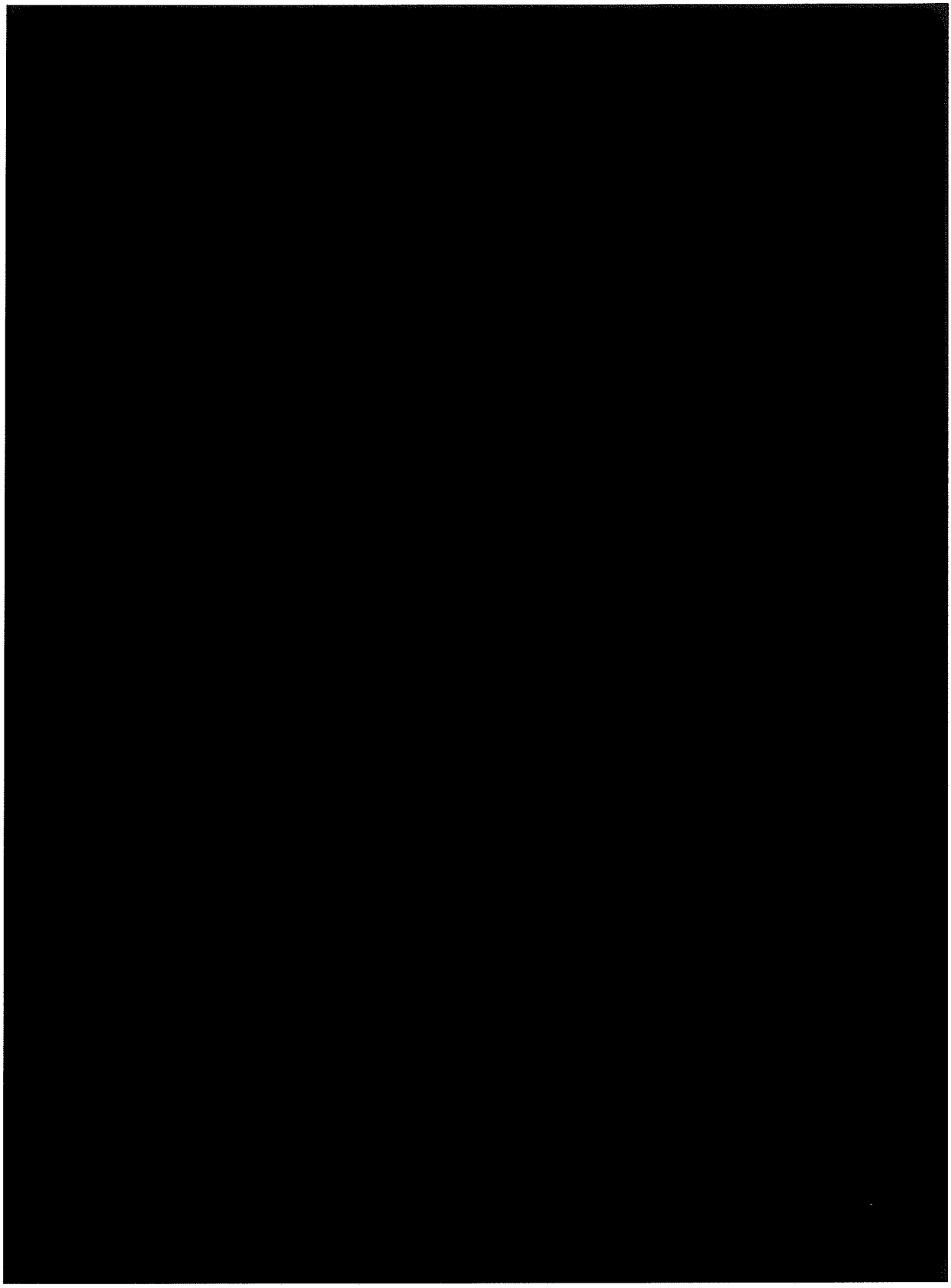
Dr. Miles' Response

Dr. Miles enclosed with her response a memorandum for the record, dated July 31, 2009, that recorded that [redacted] was aware that Dr. Miles took leave in conjunction with TDY to Japan in May 2009. She also enclosed copies of her itinerary and travel orders that reflected she would be on leave for the days in question. Dr. Miles added that she "believed that she did not have to recheck the work of [redacted] and [redacted]."

We note that Dr. Miles is responsible for the accuracy of her time and attendance records. We found that Dr. Miles had two opportunities to ensure that her records for the pay period in question were accurate: first, when her time card was prepared and submitted; and second, after her leave and earning statement reflected she was not charged for the days of leave at issue. Although Dr. Miles believed she did not have to recheck the work of her subordinates, the responsibility for accuracy of her records remained with her.

After reviewing and carefully considering the matters presented by Dr. Miles and reconsidering the complete record of testimony, facts, and circumstances particular to the allegation, we stand by our conclusion.

[redacted]



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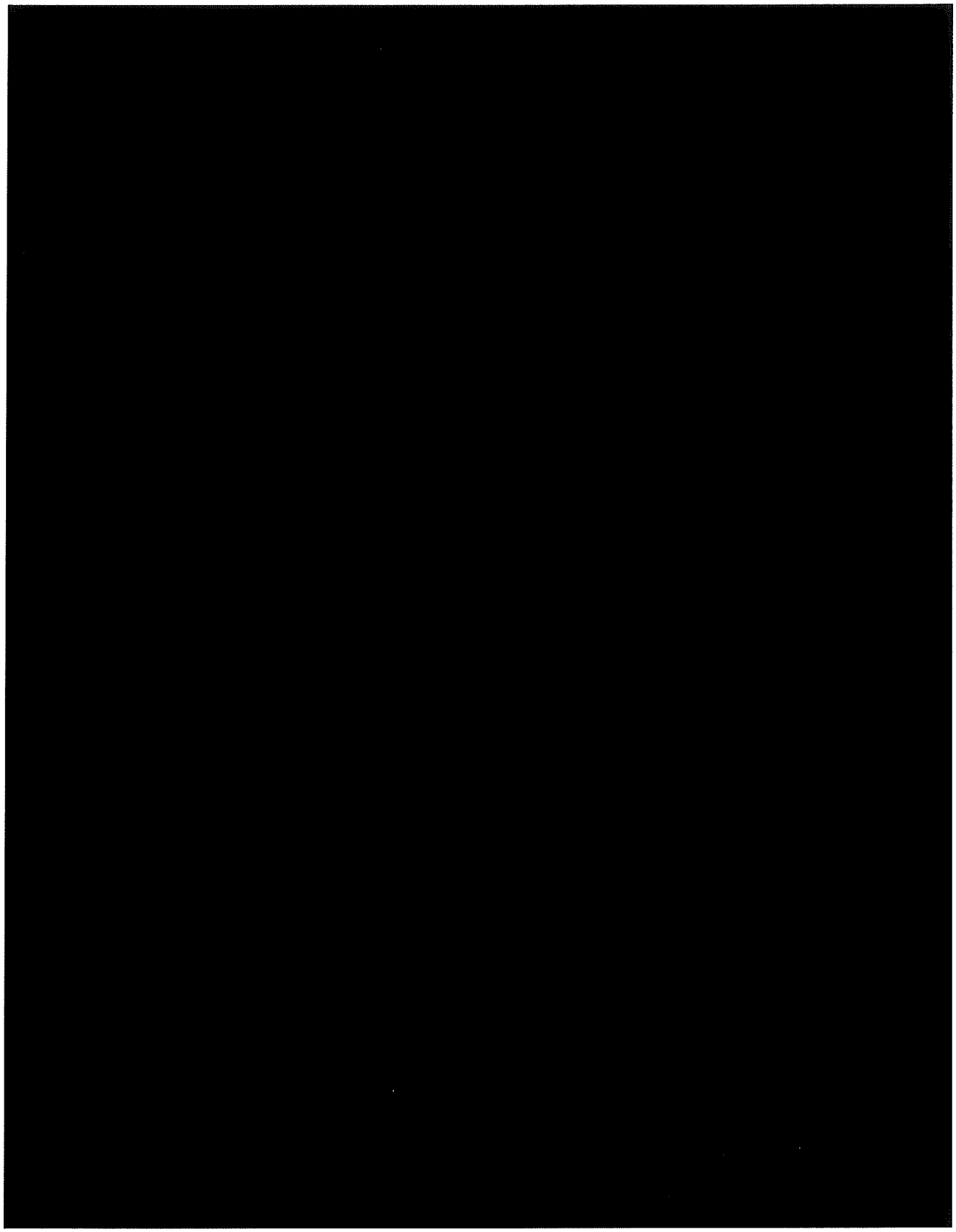

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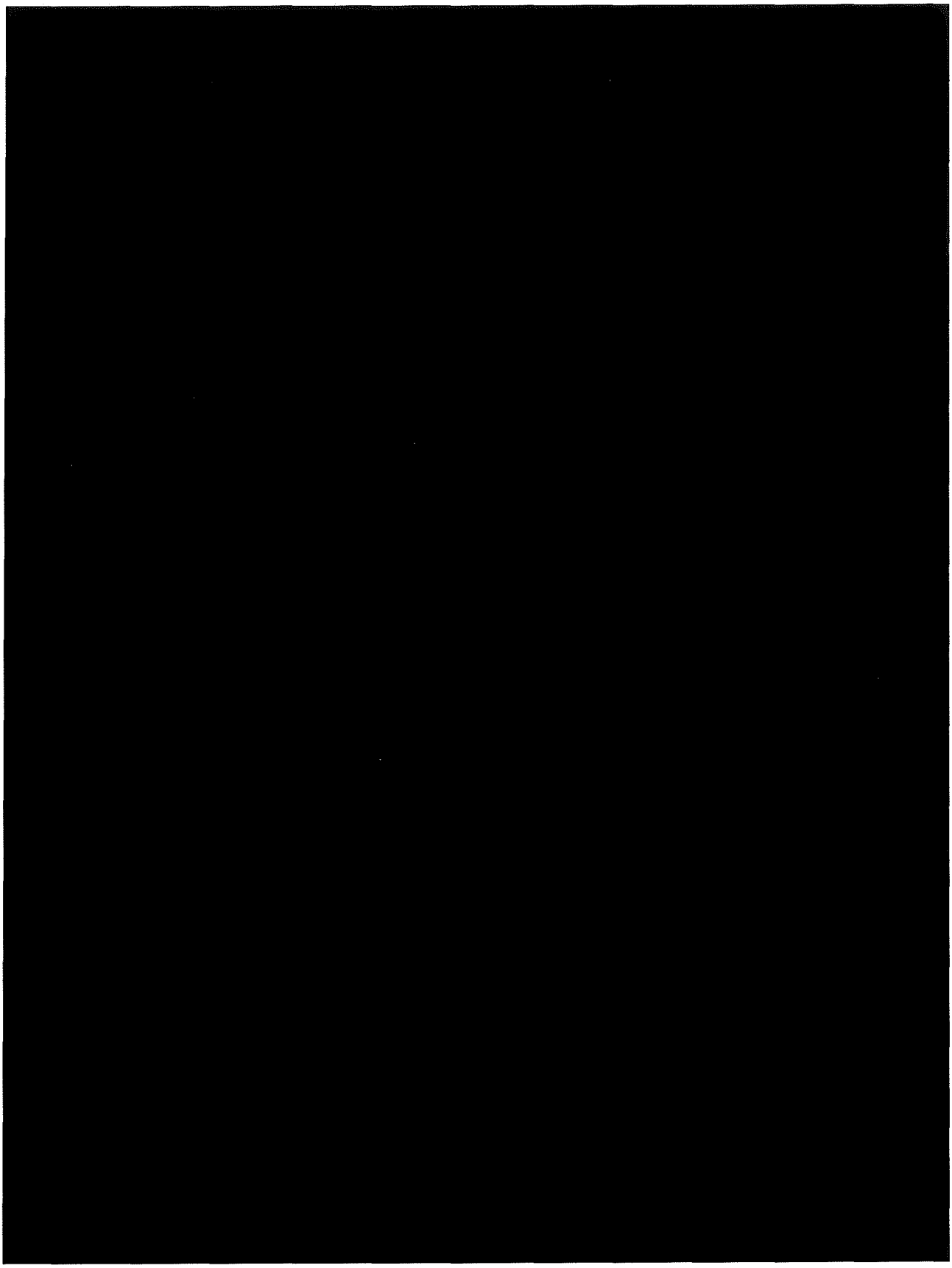

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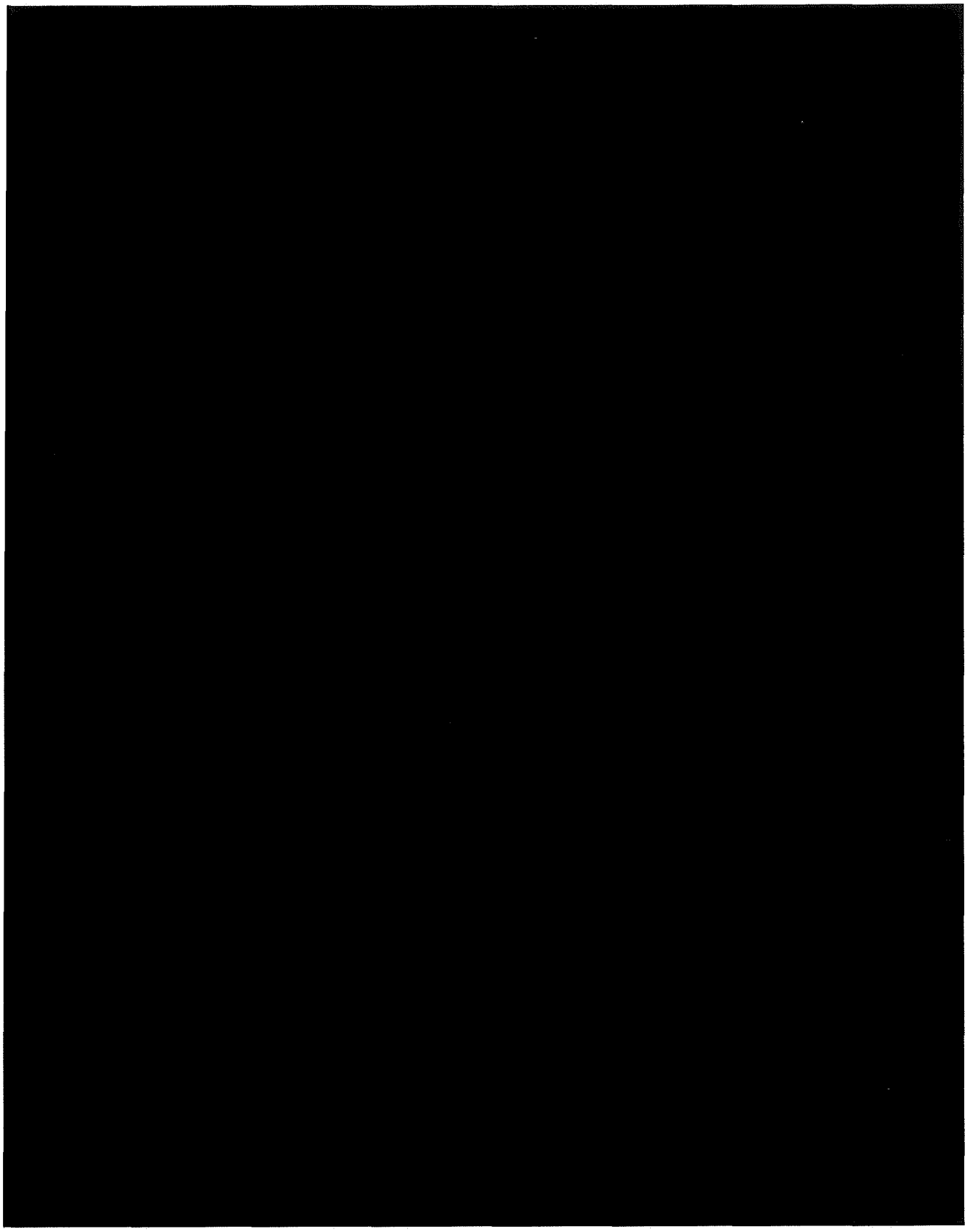

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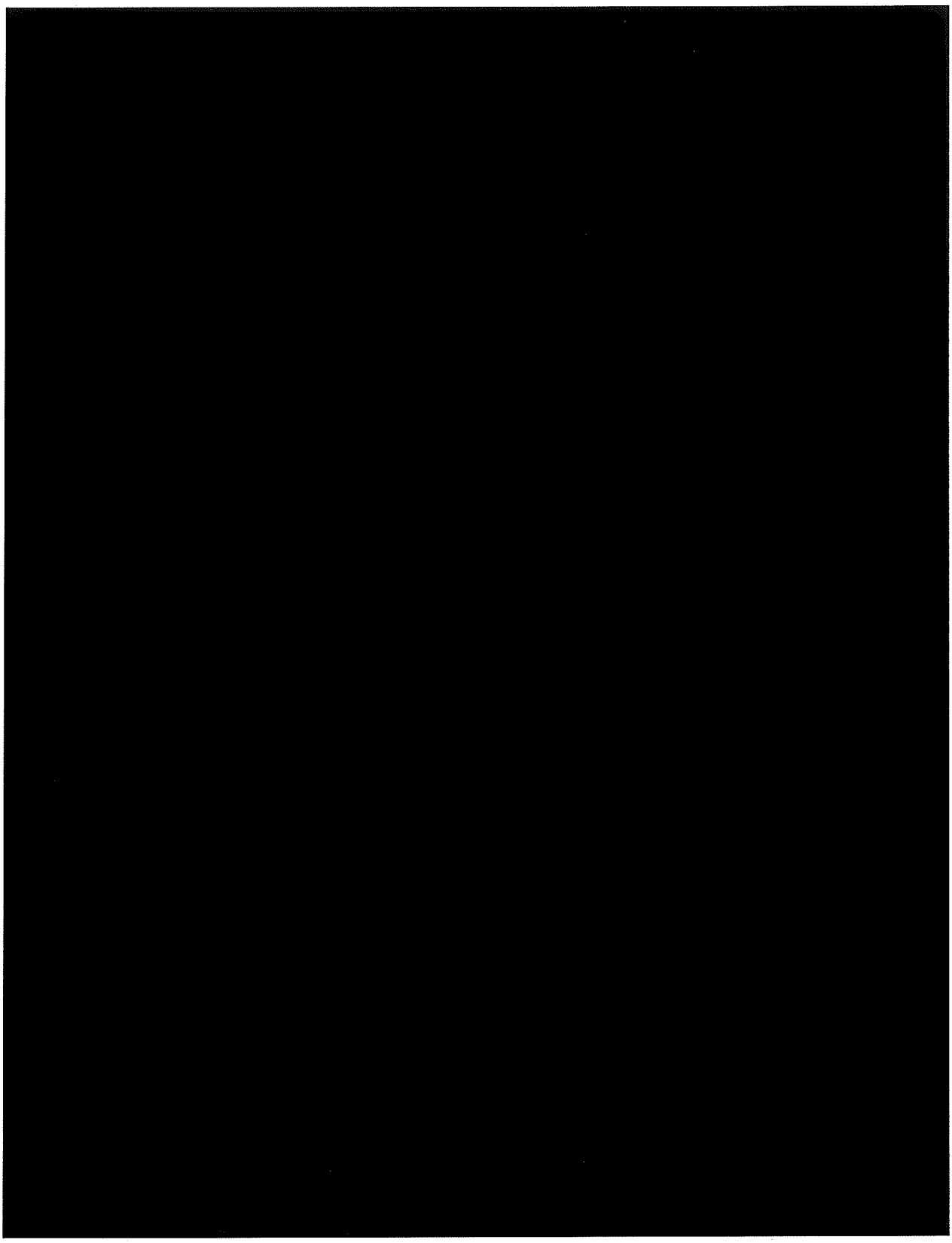

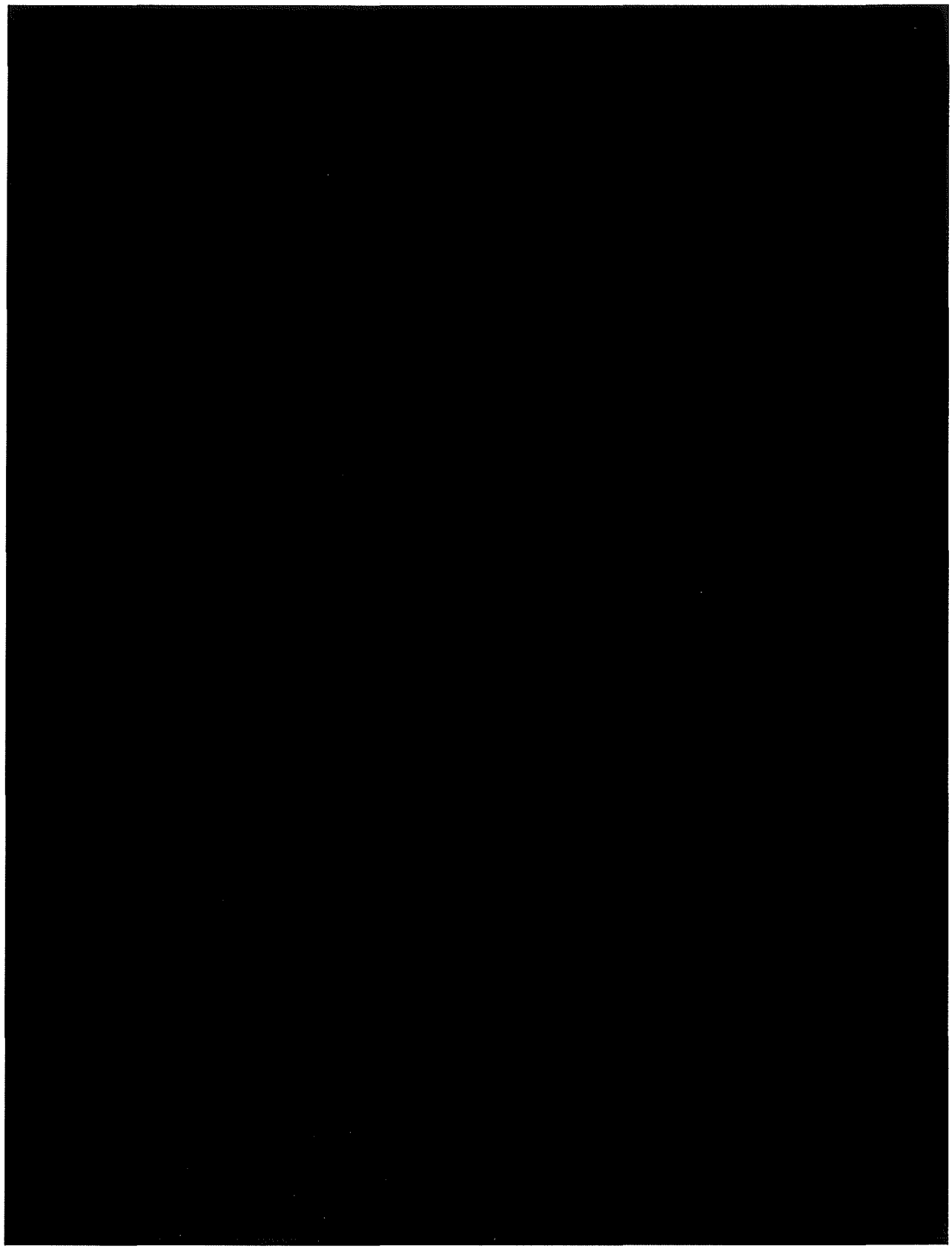

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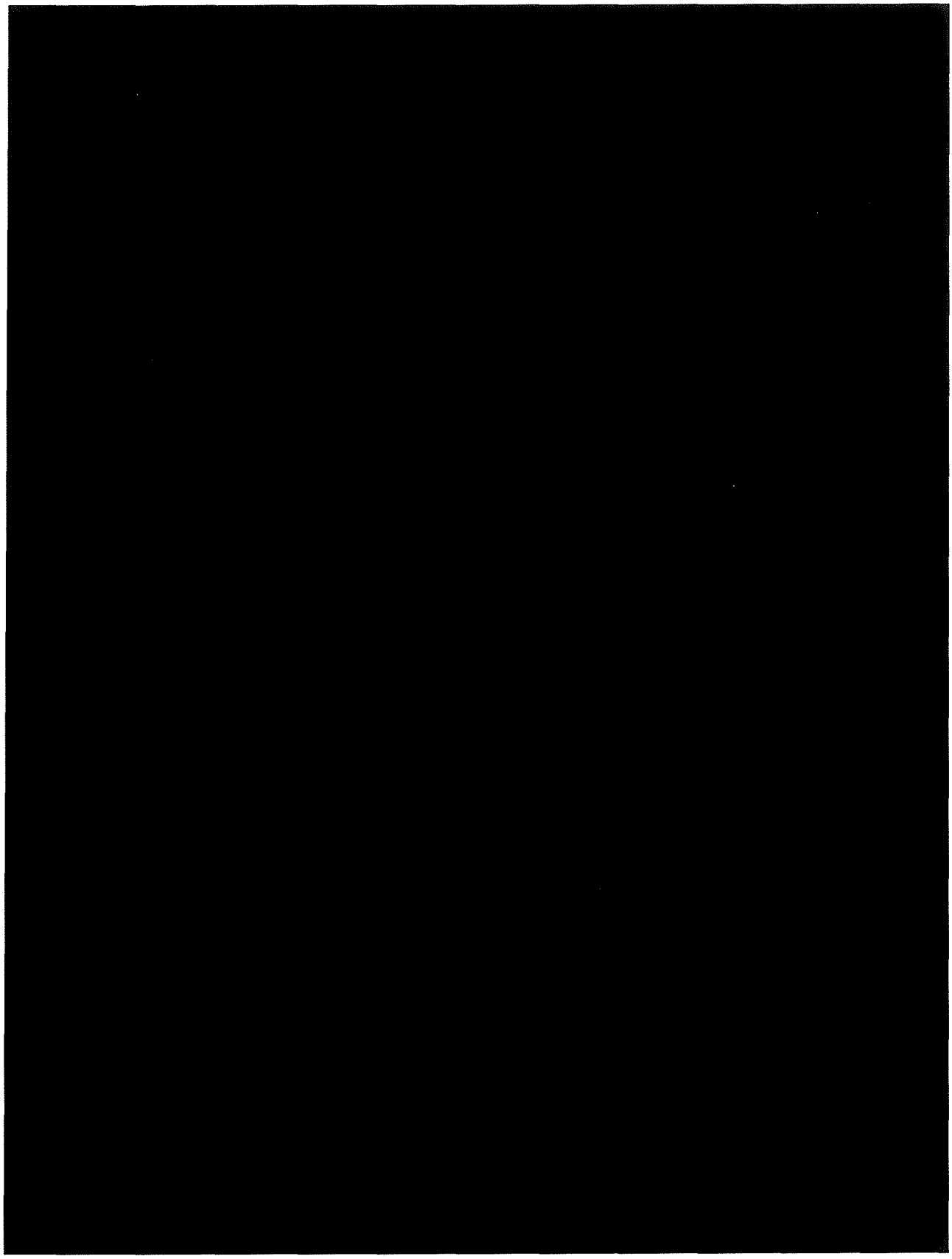

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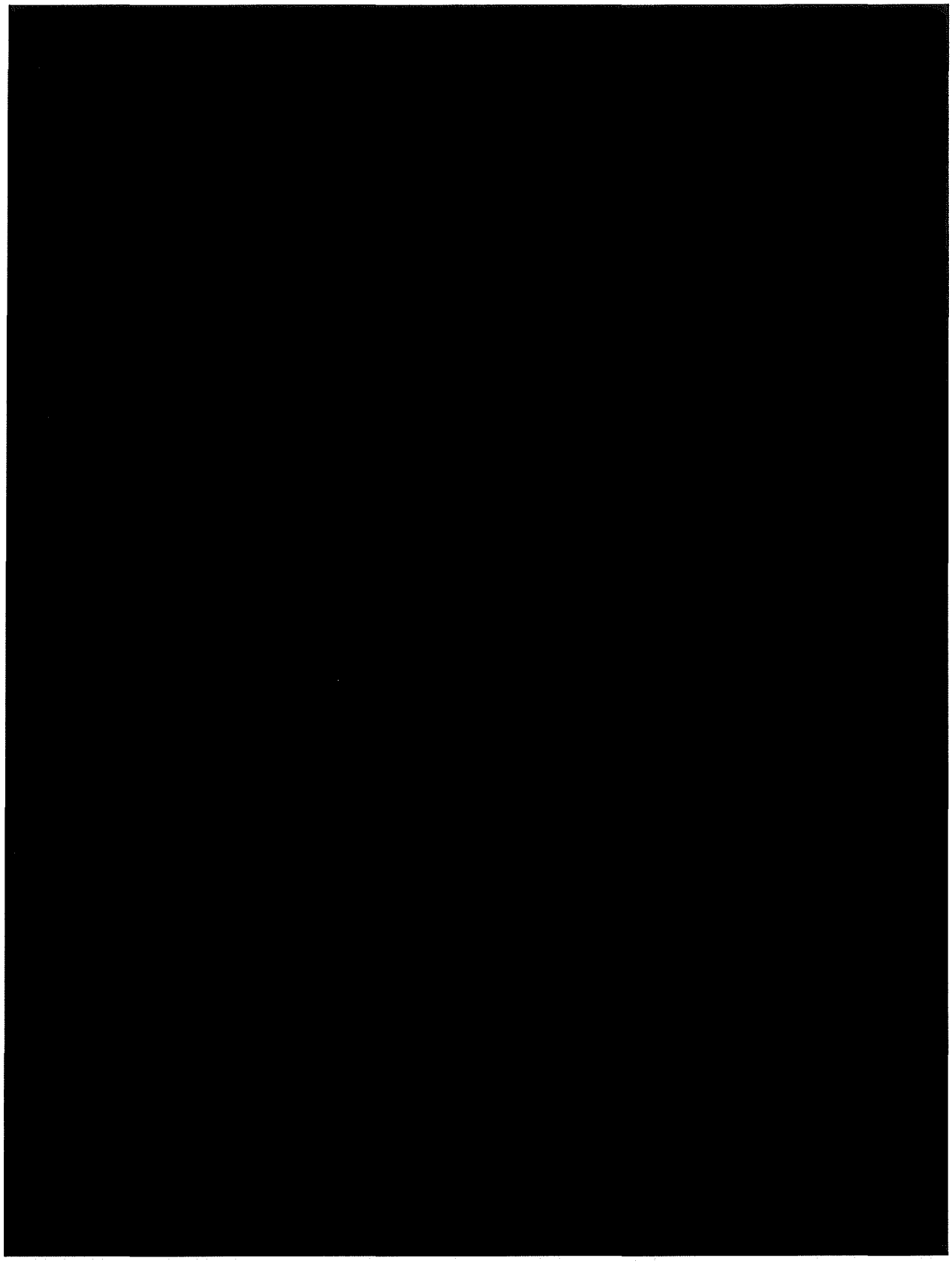

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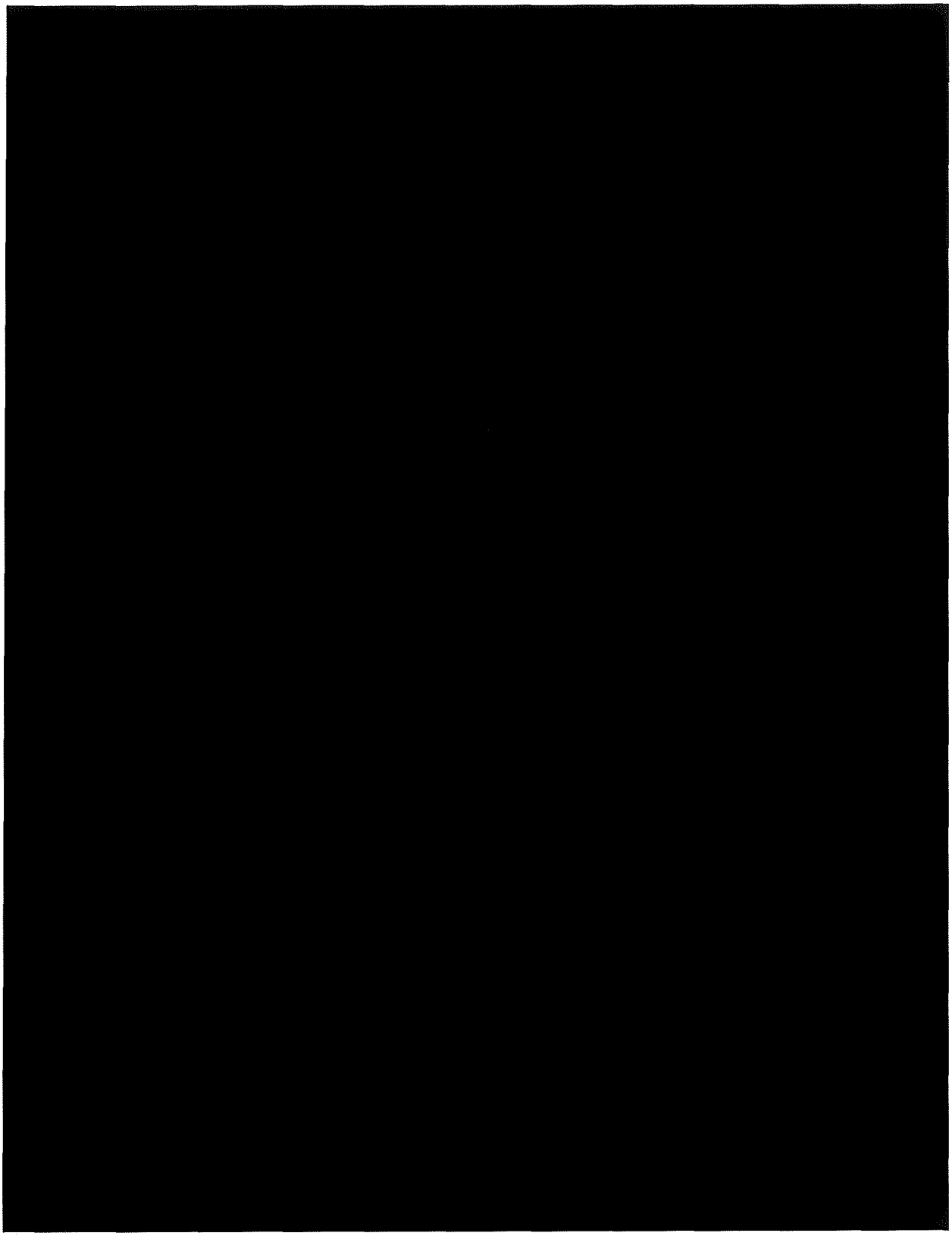

G. Did Dr. Miles engage in conduct that was unprofessional, abusive, or otherwise not in keeping with standards of conduct expected of Government employees and members of the Senior Executive Service?

Standards

5 U.S.C. 3131, "The Senior Executive Service"

5 U.S.C. 3131 established the Senior Executive Service "to ensure that the executive management of the Government of the United States is responsive to the needs, policies, and goals of the Nation and otherwise is of the highest quality."

DoD 5500.7-R, "JER," dated August 30, 1993

Chapter 12, "Ethical Conduct," states that DoD employees should consider ethical values when making decisions as part of official duties. In that regard, the Joint Ethics Regulation sets forth primary ethical values of "fairness," "caring," and "respect" as considerations that should guide interactions among DoD employees. It elaborates on those characteristics as follows:

- Fairness involves open-mindedness and impartiality. "Decisions must not be arbitrary, capricious, or biased. Individuals must be treated equally and with tolerance."

- Caring involves compassion, courtesy, and kindness to "ensure that individuals are not treated solely as a means to an end."

- Respect requires that employees "treat people with dignity. Lack of respect leads to a breakdown of loyalty and honesty."

OPM "Guide to Senior Executive Service Qualifications," dated October 2006

The Guide sets forth essential leadership qualifications and underlying competencies for members of the Senior Executive Service within the Federal Government. The introduction to the Guide states that leaders must be able to apply "people skills" to motivate their employees, build partnerships, and communicate with their customers. The Guide establishes leadership competencies identifying the personal and professional attributes critical to success by SES employees. Additionally, the Guide identifies the following five Executive Core Qualifications (ECQs) for SES personnel: Leading Change, Leading People, Results Driven, Business Acumen, and Building Coalitions.

Appendix A to the Guide sets forth the underlying leadership competencies that demonstrate each ECQ. The "Leading People" qualification requires competence in managing and resolving conflict, as well as in creating a culture that fosters team commitment, spirit, pride, and trust. Additionally, Appendix A expressly defines critical leadership competencies to include treating others with courtesy, sensitivity, and respect, showing consistency in words and actions, and modeling high standards of ethics.

Facts

The incoming complaints alleged that Dr. Miles engaged in offensive behavior that was intimidating, hostile, and harassing to DoDEA employees.

As Director of DoDEA, Dr. Miles visited DoDEA's Areas, school districts, and schools to inspect facilities, confer with educators and administrators, attend DoDEA conferences, and meet with military leaders and parents. Dr. Miles also met in smaller settings with DoDEA educators, administrators, and leaders. In many instances, whether at DoDEA conferences or at meetings attended by DoDEA employees and members of the public, Dr. Miles had the opportunity to make oral comments.

Numerous witnesses reported that Dr. Miles used inappropriate speech, vulgar expressions, and profanity in addressing people individually or in group settings. Additionally, witnesses testified that on several occasions Dr. Miles addressed groups of educators in a manner and using words that conveyed a racial animus against whites and, particularly, white males and in favor of minorities. Witnesses testified that Dr. Miles would be unduly coarse and harsh in her speech, particularly in smaller group settings or in one-on-one meetings. Several witnesses testified that Dr. Miles used profanity including, for example, the f-word. Other witnesses testified that Dr. Miles did curse, but did not recall her ever using the f-word. Dr. Miles denied doing so. She testified that she cursed rarely and, if she did, she would use a word such as "hell" to describe her frustration with a situation. She stated she did not curse at people.

The former Area Director for DDESS stated that in her experience with Dr. Miles, she heard Dr. Miles use the "f-word" and other curse words regularly. She found Dr. Miles' speech to be coarse, inappropriate, and not consistent with core values expected of a senior Government leader in DoDEA.

The Area Director of DoDEA Pacific testified that Dr. Miles "loves the f-word. She uses it quite a bit." She added that she did not like Dr. Miles cursing all the time. She stated that in one meeting she attended with Dr. Miles in Korea, she made a notation in her personal notes for each time Dr. Miles cursed. She added she stopped counting after Dr. Miles cursed for the ninth time.

The Area Director of DoDDS-Europe testified that she heard Dr. Miles use "pretty mild curse words" on occasion, that Dr. Miles peppered her speech with "that kind of language," and had done so in front of DoDEA employees. She added she had not heard Dr. Miles use such language in front of military personnel, only DoDEA employees. She also testified that Dr. Miles swore during a telephone call she had with her and, while she found Dr. Miles speech to be unprofessional, it did not particularly bother her. The Area Director added, however, that she had never spoken in such a manner to any of her employees.

Mr. Kelly testified that Dr. Miles has used "a lot of profanity." He added that while Dr. Miles may have used the f-word in general terms, he did not recall her ever directing the word at any particular person. He testified that he had not observed Dr. Miles use profanity in larger group settings. Mr. Kelly stated he had heard stories from other employees that Dr. Miles cursed in large meetings, but he had only observed her use such language in small settings.

DoDEA's [redacted] testified he had observed Dr. Miles say some "salty things," including the occasional f-word. He added that such use would generally be under her breath and not directed at any person in particular, and would be in the vein of asking, "What the 'F' is going on? What happened?"

DoDEA's [redacted] testified that Dr. Miles' language is vulgar and that she puts up very few filters. She added that Dr. Miles seemed not to be concerned about who her audience was in terms of her language choice. The former [redacted] stated that in addition to using vulgar language, Dr. Miles' speech was inappropriate. She testified that during a discussion she had with Dr. Miles about an employee's suitability to work on a specific project, Dr. Miles made inappropriate comments about the employee at a volume that could be heard by Dr. Miles' entire staff. According to the [redacted] Dr. Miles said:

> That woman is out of her mind. She's insane. The best thing to do is get rid of her ass. She needs to be fired. She suffers from all sorts of mental illness. You know she's on medication. You know she's taking drugs for this. She's unstable.

The former [redacted] acknowledged that while Dr. Miles had a certain amount of freedom as a manager, she found her to be verbally abusive to her staff.

DoDEA's [redacted] testified that he had heard Dr. Miles use "swear words" at times. He added that it was generally in a room of trusted people with whom she works, such as Mr. Toth, [redacted], and himself. He described the context of such word choice as usually involving something that may have gone not well in a district, that a superintendent may have done, or that a general officer may have complained about. The [redacted] described Dr. Miles' use of curse words as not being directed at particular persons, but, instead, as

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adjectives or adverbs. He noted that Dr. Miles would swear at times or say something such as, "They're fucking idiots. Why don't they do this?"

[redacted] who initially met Dr. Miles during her December 2008 visit to UNLV, testified he had breakfast with Dr. Miles and her friend during the first Virtual School meeting between DoDEA and UNLV, in Philadelphia in July 2009. He described Dr. Miles as being foul-mouthed. He testified that he was surprised by her language and found it to be odd. He added that his joke about it was, "If she hasn't said the 'F' word it's because she hasn't finished her sentence yet."

[redacted], who was involved in the University's Virtual School contract, testified that he knew Dr. Miles used profanity, for example, at the Philadelphia Virtual School meeting. He added he also participated in a meeting with Dr. Miles in which he found her to be extremely rude and mean. He stated that the meeting in question, which involved a contractual dispute between DoDEA and UNLV, was the most bizarre meeting he had ever attended in his life. He added he would "retire tomorrow" if he had to attend another meeting like it. The [redacted] testified that Dr. Miles berated [redacted], spoke to her like a third grader, and told her she would go on C-Span and make UNLV look terrible. He added that DoDEA's procurement staff had to stop the meeting temporarily.

[redacted] testified that she traveled to DoDEA headquarters in the spring of 2010, with two professors and UNLV's contracting officer, at DoDEA's request to meet with Dr. Miles.[34] She stated that Dr. Miles actually met the UNLV members at the entrance of DoDEA's headquarters and escorted them into the building. She noted that Dr. Miles was gracious, pleasant, and congenial. She added that, after a wait of about an hour, the meeting began. She testified that after the discussion began, Dr. Miles "unleashed" on her. She stated that in her professional career she had never been spoken to in the way Dr. Miles spoke to her during the meeting. [redacted] testified that when she responded to a comment by Dr. Miles and stated she wanted to correct a factual error, Dr. Miles looked at her, closed her notebook, and walked out of the meeting and did not return.

The [redacted] characterized Dr. Miles' comments, in terms of the relative level of vitriol, as a "10" on a scale of 1 to 10. The [redacted] described the Dr. Miles who unleashed on her in the meeting and the Dr. Miles who had escorted her into the building as "two different people."

The Area Superintendent for DDESS testified that Dr. Miles improved on her language choices by the end of 2009 and the beginning of 2010, but beforehand it had been "coarse, very coarse." She described Dr. Miles' speech as uncalled for and very unprofessional. She recalled a particular telephone conversation with Dr. Miles, in which Dr. Miles yelled and swore at her. She described the conversation as follows, "Every other word was 'F this' and 'F that.' And I've never been spoken to like that, ever. And there was no point in arguing with her. It wasn't true what she was saying, but you don't argue with it."

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The DDESS Area Superintendent testified that Dr. Miles contacted her the following day and apologized, stating she "kind of got out of control." She added that Dr. Miles had used the f-word on other occasions, which she [the Area Superintendent] found to be totally unprofessional.

Witnesses described an incident in February 2009, at DoDEA's Worldwide Counselors Conference or Worldwide Principals Conference, in Leipzig, Germany, in which Dr. Miles engaged in public conduct that was variously described as "highly unprofessional," "outrageous," and "awful."[35]

The Area Director, DoDEA-Pacific, testified she had never been so embarrassed about a boss as she was during a video teleconference (VTC) between Dr. Miles and several DoDEA employees, located in Leipzig, and DoDEA's [redacted] and several of his staff members, in Arlington, Virginia. She stated that she had never heard such foul language as she heard then, and added that Dr. Miles' conduct was "so unprofessional and so negative that if I had been he and been an IT person, I'm sure something would have happened with the [VTC] system and I would not have listened to it anymore." She added that what she observed was "not anything that any superior should ever do to anybody, let alone somebody who is trying to do what they've been asked to do."[36]

[redacted] DoDEA-Pacific, also attended the Leipzig conference and was present for the VTC involving Dr. Miles and [redacted]. She testified that the experience was the worst she had seen with Dr. Miles. She described the VTC as concerning certain IT issues affecting the conference. She stated that Dr. Miles "lambasted" [redacted] used curse words, and effectively threatened job termination if similar IT difficulties happened again. She added that Dr. Miles' conduct, which took place before DoDEA employees and a union representative, was highly unprofessional for a leader such as Dr. Miles.

DoDEA's [redacted] testified he could not recall much about the Leipzig matter. However, he testified that as a result of his experiences with Dr. Miles, he approached each day at work as if he were in almost a "Sybil-type relationship."[37] He stated that on some days Dr. Miles was extremely nice and very personable, and on others he would go to a meeting where "it was almost like lighting a stick of dynamite."[38]

[redacted] testified that he had heard Dr. Miles use what he described as "light" curse words, such as "damn" and "shit," and he did not recall her using the f-word. He noted that he could not recall Dr. Miles looking directly at him and cursing. He described the context as Dr. Miles cursing more at "an initiative," or an "intangible object." He stated that he noticed in

[35] The conferences were back-to-back, February 1-6, 2009.

[36] The Area Director, DoDEA-Pacific, also testified that it seemed to her Dr. Miles did not care who else was with her or heard what she said at the time.

[37] When asked, [redacted] confirmed that his reference was to the well-known character from the book by the same name, Sybil (who was treated for multiple personality disorder).

[38] [redacted] in DoDEA testified similarly, that in her experience with Dr. Miles it was almost as if there were two different Dr. Miles. She stated that Dr. Miles would try to be on best behavior after she had been reprimanded for foul language or where she was being observed, and that in private settings that was not the case. She added that Dr. Miles used foul language and regularly brought up race issues.

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the spring of 2009 that she no longer cursed or yelled. Instead, the pitch of her voice would go up and she would comment that her blood pressure was going up.

[redacted] described Dr. Miles' communication style as being equivalent to using a bullwhip to force an end result that, in and of itself, is good. He described the style as "fear and intimidation that sometimes attains – gets everyone to the goal versus leadership." He added that while there are times when harsh discipline or harsh words may be required, discipline should be targeted. He noted that Dr. Miles threatened adverse employment consequences in dealing with employees' actions and used the following metaphor to describe its effect:

> It'd be the equivalent of firing a gun at the wall and the gun leaves, you know, a half-inch hole. It's, it's different when, when you fire a Gatling gun at the wall. And the Gatling gun just sort of leaves an overarching image in everyone's mind; not even as disciplinary, more as, "You must achieve this goal or these are the actions that will be waiting for you if you don't achieve this goal."

DoDEA's [redacted] testified that she had witnessed Dr. Miles use foul language at "all hands" meetings at DoDEA headquarters. She stated that Dr. Miles did not use the "f-word," but her language was inappropriate for the audience.

Several witnesses testified about an inappropriate comment that Dr. Miles repeated on many occasions in public meetings. The comment followed a story Dr. Miles told concerning a life lesson she and her siblings learned from her father, a retired Army veteran and Command Sergeant Major. According to the witnesses, Dr. Miles would close her story by telling the assembled people, variously, that "the world does not revolve around your asshole," or "your asshole is not the axis of the world." Dr. Miles often accompanied her comment by using the index finger of one hand and simulating a rotating or spinning motion above the palm of the other hand.[39]

The former Area Director of DDESS stated that during Dr. Miles' first introduction to the DDESS principals and assistant principals at a DDESS Principals Conference in Peachtree City, Georgia, she used coarse language in a presentation before about 70 people. She elaborated by stating that Dr. Miles made comments that – in her opinion – were disparaging to white employees. She added that Dr. Miles made the comment to those employees that "the world does not revolve around your ass."

DoDEA's [redacted] testified he was at DDESS headquarters on separate business at the time Dr. Miles addressed the principals and assistant principals. He stated that Dr. Miles made the graphic depiction, which he called the "twirly," during her comments. He added that when he entered the conference room, which was standing room only, he leaned over to one of his colleagues and said, "I'll bet you a dollar she does the twirly." He stated that about 10 minutes later, Dr. Miles did so. He added that he made a second bet with his employee that Dr. Miles would not use the phrase "Old Sarge" during her comments. She did about 5 minutes after he made the bet.

[39] For purposes of the remainder of this report, we refer to Dr. Miles' hand motion in this report as the "graphic depiction."

The [redacted] testified specifically that the graphic depiction meant, "The world does not revolve around your ass," and that the author of that statement was Dr. Miles. He added that he had heard Dr. Miles make the statement or had observed her make the hand motion between 8 and 10 times.

The Area Director, DoDEA-Pacific, testified that the quote Dr. Miles uses in speeches which she [the Area Director] most hates was "the world does not – your ass is not the axis of the world." She added that Dr. Miles made that statement in a speech at which a 3-star general was present, and when the general heard the statement he "looked straight down at his feet." When asked if she recognized the graphic depiction, the Area Director responded that she did and identified it as "the axis business."

DoDEA's [redacted] testified she heard Dr. Miles make the statement that the world does not revolve around one's ass because Dr. Miles made that statement "all the time." She noted she heard the comment several times in staff meetings, and added, "I don't know if axis was in there. I don't have the exact wording but definitely the A-word was in there." When asked, the [redacted] confirmed that the reference to the "A-word" was "asshole," not "axis."

DoDEA's [redacted] testified that the statement, "the world doesn't revolve around your asshole," was Dr. Miles' father's saying. He added:

> That's what she says. She'll say, "Old Sarge would say." She always says "Old Sarge," which is her father, a retired Army sergeant major. She would always say, "And Old Sarge would say your ass doesn't," -- you know. That's her father's.

Mr. Toth, the Principal Deputy, testified that he was bothered by some of Dr. Miles' coarse language to groups of people. Mr. Toth added that he was a direct recipient of Dr. Miles's statement about the world not revolving around one's ass. He stated the following regarding Dr. Miles' speech:

> Shirley said a lot of things that she should have never said and the manner in which she said them, and she wouldn't take the best advice folks could give her that, you know, that's a message that's really a negative message. It's just not sitting well with people.
>
> The coarse language, on numerous occasions personally, and I know through other persons just as close or closer to Shirley than I was, there was over a period of time a pull back from the coarseness of that language to the point where it just totally disappeared. Unfortunately it was too late because it was a part of her repertoire through her initial movement around the globe as the DoDEA director and, you know, she said it in front of the parents, she said it in front of teachers, she said it in front of administrators and commanders.

Dr. Miles testified that she does not yell or curse when she is angered. She stated that she cursed rarely, and never in a manner that was directed at any person. Dr. Miles testified that

when she is angry, she becomes "metered" in her speech. She added that she does not use the "f-word" or the word "shit." She said she might use the word "damn."

Dr. Miles testified that she uses a lot of "sargeisms" when she speaks. "Sarge" is Dr. Miles' father. She testified that she told a story about "Old Sarge" to highlight an important lesson about the importance of children and the need to focus on children. As Dr. Miles described the story, her father asked her when she was a young child what the imaginary line was that went through the center of the earth. She replied, the axis. She testified he then told her, "Well, your ass is not the axis of the world." She added that whenever she or a sibling would go to her father to complain about something, he would not speak, but would simply make the hand motion meaning, "It doesn't rotate around you. You don't even come to me with whining."

Dr. Miles testified that she stopped telling this story after complaints made their way to her attention. She noted that no one complained directly to her. She added she has not done so since she was the Principal Deputy. She testified she stopped because "a couple of folks said they didn't like that I used the word 'ass.'"

Discussion

We conclude Dr. Miles engaged in behavior that was inconsistent with the standards of conduct expected of members of the Senior Executive Service as established by 5 U.S.C. 3131, the JER, and OPM. Multiple witnesses testified that Dr. Miles' behavior was inappropriate for a senior Government official. Witnesses testified to their shock or surprise at Dr. Miles' speech and provided specific instances where Dr. Miles used profanity or lost her composure while interacting with her staff or other individuals external to the Department. DoDEA employees and contractor representatives joked about her use of vulgar or inappropriate language. Several witnesses also testified that Dr. Miles' speech improved in the early months of 2010.

5 U.S.C. 3131 establishes general standards of leadership for employees who are members of the SES. The JER also outlines the expectation that government employees should treat others with dignity and respect. The OPM Guide requires members of the SES to apply "people skills" to motivate their employees, build partnerships, and communicate with their customers. SES employees are expected to be tactful, compassionate, sensitive, and respectful.

We determined that Dr. Miles' comportment and speech were inconsistent with that expected of a member of the SES. Witness testimony established that Dr. Miles used coarse and vulgar speech in public and private settings, including curse words. Several senior DoDEA staff members and individuals from UNLV involved with the Virtual Schools program were extremely offended by her behavior. Dr. Miles' conduct was not indicative of the high standards expected of a member of the SES.

Dr. Miles' Response

Dr. Miles conceded that in small, informal settings she sometimes will use coarse language, particularly among friends. She also conceded that she occasionally cursed, when upset, in her cabinet meetings which were attended by only her Deputy, Chief of Staff, and Chief of Finance. She denied however, using coarse language, to include the f-word, in public settings.

Dr. Miles noted that given her extensive speaking history, the lack of complaints about her language, and the lack of any formal complaints by DoDEA employees argued against our conclusion that she engaged in unprofessional conduct and speech by using vulgar language. Dr. Miles also asserted that if the allegations of vulgar language were true, she would not have received the positive evaluations and performance awards she had received, and that her most recent performance award of $15,000 was further evidence that she did not act inappropriately.

We were unpersuaded by Dr. Miles' assertions that because the actions described by witnesses were apparently never reported to her supervisors she did not act inappropriately. We found that the preponderance of witness testimony described witnesses' shock or surprise at Dr. Miles' speech. Additionally, witnesses provided specific instances where Dr. Miles used profanity or lost her composure while interacting with her staff or other individuals external to the Department.

After reviewing and carefully considering the matters presented by Dr. Miles and reconsidering the complete record of testimony, facts, and circumstances particular to the allegation, we stand by our conclusion.

VI. CONCLUSIONS

A. Dr. Miles advocated for the hiring of her [redacted] as a teacher, as well as the promotion or advancement of her [redacted] (through a step increase resulting in an increase in starting pay), in violation of 5 U.S.C. 3110 (b), "Employment of relatives; restrictions," 5 U.S.C. 2301, "Merit system principles," and 5 U.S.C. 2302, "Prohibited personnel practices."

B. Dr. Miles provided an unfair advantage to the [redacted] for a competitive position, Superintendent, [redacted] DoDEA-Pacific, and selected him for the position, in violation of 5 U.S.C. 2301, "Merit system principles," and 5 U.S.C. 2302, "Prohibited personnel practices."

C. Dr. Miles violated provisions of the JTR, Appendix P, "City-Pair Program," and the JER by traveling TDY on flights that were ticketed with fares other than City-Pair fares or the lowest available Government fares.

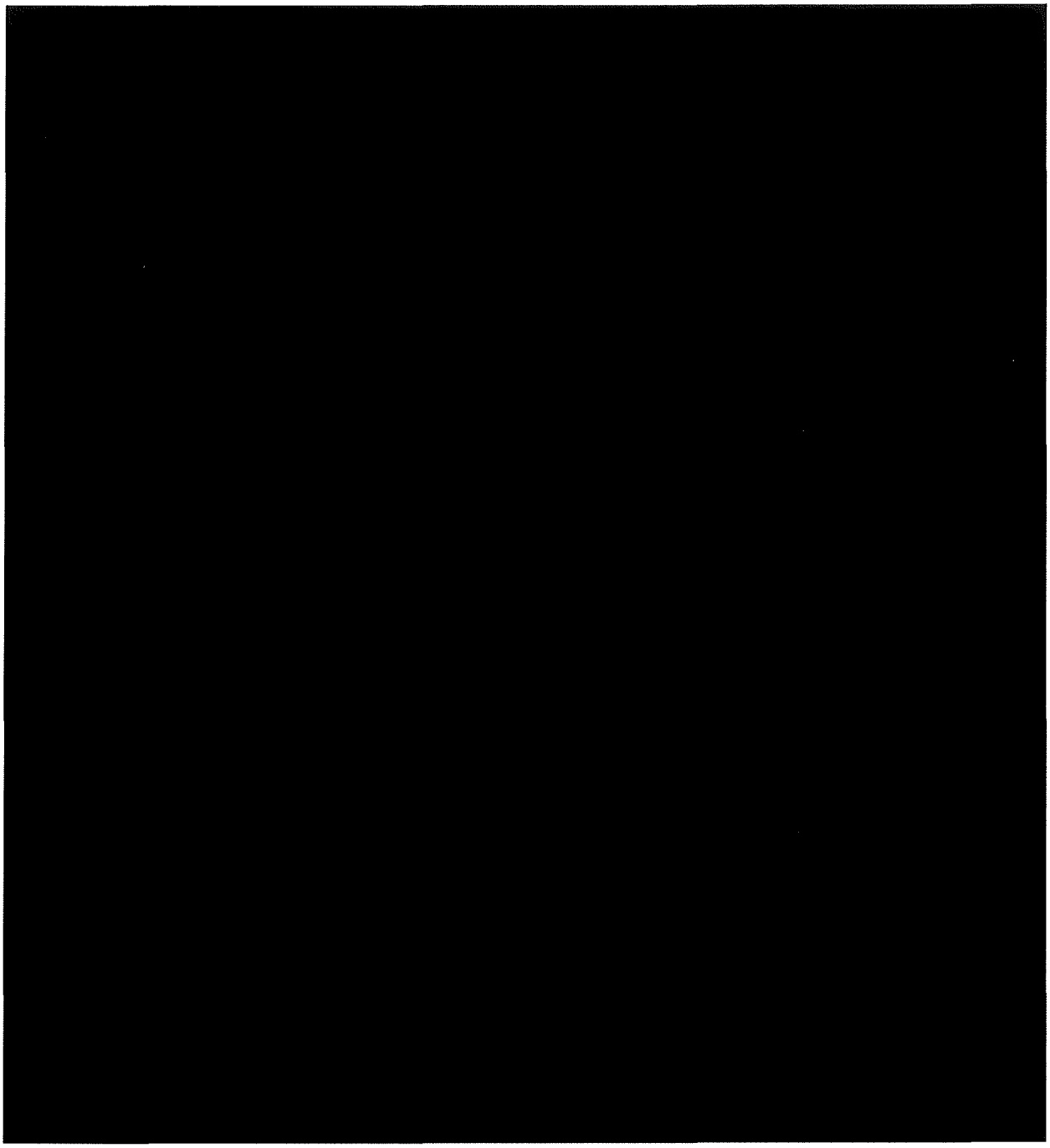
D. Dr. Miles claimed and was paid for per diem expenses associated with TDY when such TDY involved local travel in the DoDEA headquarters commuting area, in violation of the JER.

E. Dr. Miles claimed and was paid for time in duty status during a period when she was on annual leave in connection with TDY in violation of 31 U.S.C. 3729 and the JER.

[redacted]

G. Dr. Miles engaged in behavior that was inconsistent with the standards of conduct expected of members of the Senior Executive Service as established by 5 U.S.C. 3131, the JER, and OPM.

VII. OTHER MATTERS



VII. RECOMMENDATIONS

A. We recommend that the Under Secretary of Defense, Personnel & Readiness, consider appropriate corrective action with respect to Dr. Miles, to include obtaining reimbursement to the Government of unauthorized travel expenses and per diem payments and reconciliation of Dr. Miles' leave account.

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