

**Office of the Inspector General
Los Angeles Unified School District**

**Special Review of
Unemployment Insurance Claims
For Adult Education Teachers**

OA 21-1274

February 26, 2021



Los Angeles Unified School District Office of the Inspector General

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February 26, 2021

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RE: Special Review of Unemployment Insurance Claims

Dear Ms. Del Cueto and Ms. Sawyer:

This is our report on Unemployment Insurance Claims for Adult Education teachers. The objectives of the special review were to (i) review the standard contract provided to teachers and determine whether the terms clearly stated that teachers were not allowed to file for unemployment benefits during school recess periods, (ii) determine whether the California Employment Development Department notified the District of each unemployment claim before the claimant received payment of unemployment insurance benefits, (iii) determine how the District held the employee accountable who claimed unemployment insurance benefits that the employee was not entitled to, and (iv) determine whether any preventative methods existed Districtwide to remind teachers not to apply for unemployment insurance benefits during school recess periods.

Our review found that the standard contract provided to Division of Adult and Career Education (DACE) teachers, the Offer of Employment, and the Collective Bargaining Agreement between the United Teachers of Los Angeles (UTLA) and LAUSD were not clear and contained conflicting terms and conditions. The District did not implement a formal process to hold employees who claimed benefits that they were not entitled to accountable and no controls existed to remind ineligible teachers not to apply for unemployment insurance benefits during school recess periods.

We appreciate your continued support of our services.

Sincerely,

Austin E. Onwualu

Austin Onwualu, CPA, CGMA, CIG
Deputy Inspector General, Audits

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c: Anthony Di Grazia, Director, Labor Relations

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EXECUTIVE SUMMARY

We have conducted a review of Unemployment Claims for Adult Education teachers at the Los Angeles Unified School District. The objectives of the review were to (i) review the standard contract provided to teachers and determine whether the terms clearly stated that teachers were not allowed to file for unemployment benefits during school recess periods, (ii) determine whether the California Employment Development Department notified the District of each unemployment claim before the claimant received payment of unemployment insurance benefits, (iii) determine how the District held the employee accountable who claimed unemployment insurance benefits that the employee was not entitled to, and (iv) determine whether any preventative methods existed Districtwide to remind teachers not to apply for unemployment insurance benefits during school recess periods.

We focused our review on the Division of Adult and Career Education (DACE) teachers due to the high percentage of unemployment insurance claims from DACE teachers. For the period July 1, 2018 through June 30, 2019, approximately \$1.1 Million was charged to the District's unemployment fund account for DACE teachers or approximately 23% of total benefit charges to the District's fund account. We found the following:

- The standard contract provided to DACE teachers, the Offer of Employment, and the Collective Bargaining Agreement between the United Teachers of Los Angeles (UTLA) and LAUSD were not clear and contained conflicting terms and conditions. Under current LAUSD protocols, EDD benefit payments to DACE teachers are decided in an arbitrary manner.
- We were able to validate that the District was notified of only a few unemployment claims in a timely manner during the review period. Most of the claims were not available for review. For FY 2018, 12 of 18 (67%) unemployment insurance claims were not on file for review. For FY 2019, 8 out of 11 (73%) claims were not on file.
- The District did not implement a formal process to hold employees who claimed benefits that they were not entitled to accountable. Employees were not provided with copies of District policies relevant to claiming unemployment insurance benefits, which was recommended by the Employment Development Department (EDD) as a best practice.
- No preventive methods existed to remind ineligible teachers not to apply for unemployment insurance benefits during school recess periods.

We made 11 specific recommendations to the Human Resources Division, the Office of the Business Manager, and the Office of Labor Relations. Our findings and recommendations are detailed in the Results of Review section of this report.

INTRODUCTION

The Division of Risk Management and Insurance Services, managed by the District's Business Manager, protects the assets of the District by identifying risks, developing and managing programs to control and minimize losses, and promoting safe, healthy and secure learning and work environments.

The Human Resources Division, provides recruitment, retentions, and support services to the Los Angeles Unified School District (LAUSD). The stated mission of the Human Resources Division is: “To staff all schools and offices with qualified certificated employees who will educate and support our diverse student populations.”

The District partnered with a third party vendor, Equifax Workforce Solutions, during FY 2018 and FY 2019¹, to manage the large volume of EDD requests, as outlined in LAUSD’s interoffice correspondence dated May 29, 2014 (see Exhibit 1).

The EDD manages the unemployment insurance program for the State of California. The unemployment insurance program provides temporary payments to individuals who are unemployed through no fault of their own and meet the eligibility requirements. The concept of reasonable assurance of employment after the summer recess is an important concept in the decision to grant unemployment insurance benefits to DACE teachers. Section 1253.3(g) of the Unemployment Insurance Code references reasonable assurance as follows:

(g) For purposes of this section, “reasonable assurance” includes, but is not limited to, an offer of employment or assignment made by the educational institution, *provided that the offer or assignment is not contingent on enrollment, funding, or program changes* [emphasis added]. An individual who has been notified that he or she will be replaced and does not have an offer of employment or assignment to perform services for an educational institution is not considered to have reasonable assurance.

Education Code, Section 44910 refers to instructors in classes conducted at regional occupational centers or programs that shall not result in or contribute to probationary or permanent status (tenure) or longevity.

The EDD website² states the following requirements to file an unemployment insurance claim:

- Totally or partially unemployed.
- Unemployed through no fault of your own.
- Physically able to work.
- Available for work.
- Ready and willing to accept work immediately.

The EDD website states that a base period is a specific 12-month term the EDD uses to see if a claimant earned enough wages to establish an unemployment insurance claim. The weekly benefit amount ranges from \$40 to \$450. The EDD website³ also states that a claimant may file for regular unemployment insurance if a claimant loses their job or had their hours reduced through no fault of the claimant and meet all eligibility requirements. One EDD webpage titled FAQs – School Employees⁴ asks the question, “Is a school employee eligible for unemployment insurance benefits during a recess period?” The FAQ answers as follows:

“Yes, if you meet any of the following criteria:

¹ The agreement with Equifax was terminated as of December 1, 2020 by the Office of the Business Manager.

² <https://edd.ca.gov/unemployment/Eligibility.htm>

³ <https://edd.ca.gov/unemployment/qualify.htm>

⁴ <https://edd.ca.gov/Unemployment/FAQ - School Employees.htm>

- You have enough non-school wages in the base period to establish a valid claim. A base period is a specific 12-month term that we use to determine if you earned enough wages to establish an Unemployment Insurance (UI) claim.
- You are available to work for a school employer who has said they may call you to work during the recess period.
- You do not have reasonable assurance to return to work after the recess period ends.
- Your employment depends on enrollment, funding, or program changes.”

The District offers employment to a DACE teacher in a document titled Offer of Employment. This document is usually signed by the employee before the next school year begins. In 2018, the Offer of Employment included the following terms,

“The contract of employment offered in conjunction with this offer letter is subject to provisions of the Collective Bargaining Agreement between the Los Angeles Unified School District, all rules and regulations of the Board of Education and all provisions of laws and regulations of the State of California.”

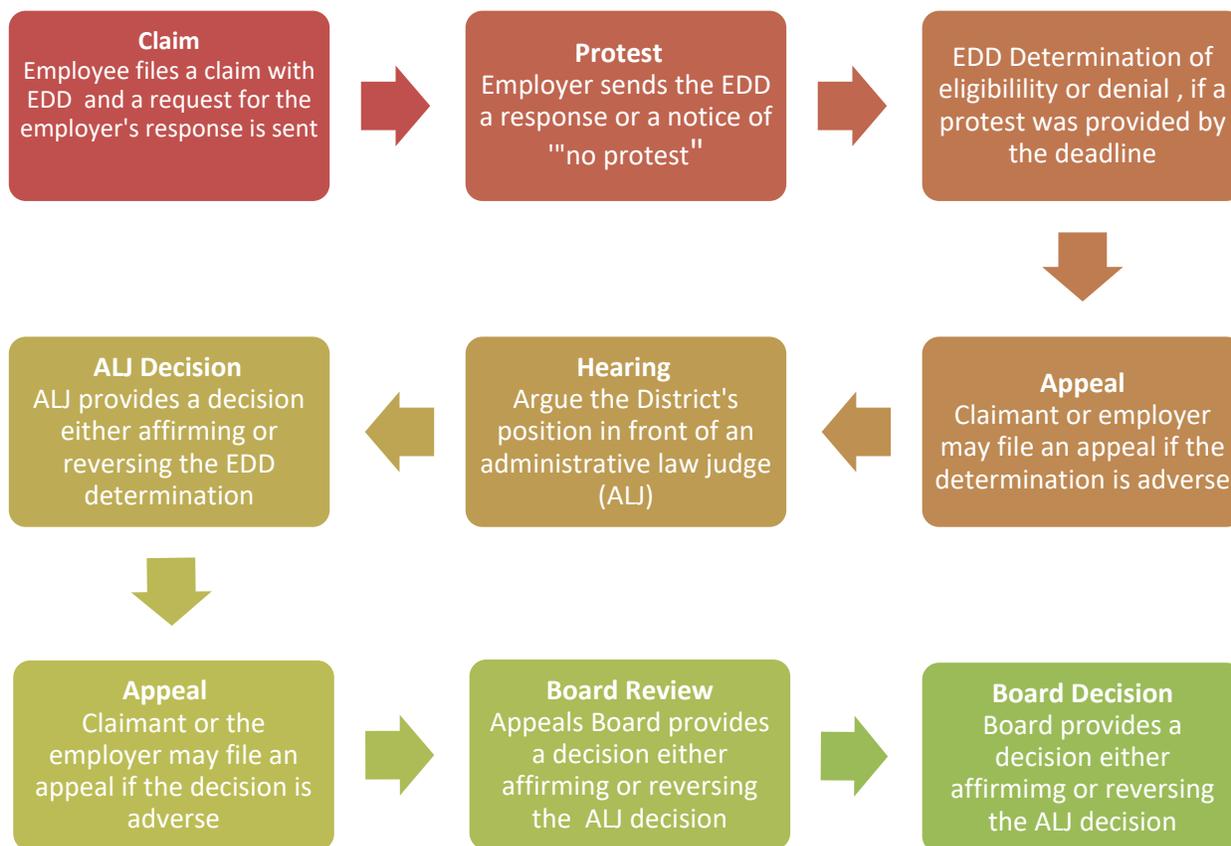
In 2019, the Offer of Employment was changed and included the following terms,

“The contract of employment offered in conjunction with this offer letter is subject to provisions of the Collective Bargaining Agreement between the Los Angeles Unified School District and United Teachers Los Angeles.”

Several terms and conditions within the Collective Bargaining Agreement are relevant to the subject of unemployment insurance benefits for DACE teachers. Terms and conditions are shown in Exhibit 1 at the end of this report and in the Results of Review section.

The Office of the Business Manager provided a summary of the Unemployment Claims Process as seen below in Figure 1.

Figure 1
Summary of Unemployment Claims Process



RESULTS OF REVIEW

A. Review the standard contract provided to teachers and determine whether the terms clearly stated that teachers were not allowed to file for unemployment benefits during school recess periods.

Our review focused on unemployment insurance claims filed by Division of Adult and Career Education (DACE) teachers because of the high number of claims filed during the summer recess in FY 2018. The Office of the Business Manager provided data for the number of unemployment insurance claims filed by DACE teachers, in FY 2018 and FY 2019 as follows:

- 321 out of 880 (36%) DACE teachers filed unemployment insurance claims in FY 2018.
- 205 out of 843 (24%) DACE teachers filed unemployment insurance claims from July 1, 2019 through December 31, 2019.

According to data provided by the Office of the Business Manager, approximately 526 teachers from the Division of Adult and Career Education (DACE) filed for unemployment insurance benefits for the 18-month period from June 1, 2018 through December 31, 2019. A total of \$1,114,529 was charged to the District's unemployment fund account for DACE teachers or

approximately 23% of total benefit charges.⁵ We randomly selected 20 employees by using statistical sampling for detailed testing and analyzed the following documentation: (i) EDD determinations and notifications, (ii) claimant employment information, (iii) employment contracts executed between DACE teachers and LAUSD, and (iv) other supporting documentation.

We found that the standard contract provided to DACE teachers, the Offer of Employment, and the Collective Bargaining Agreement between the United Teachers of Los Angeles (UTLA) and LAUSD were not clear and contained conflicting terms and conditions. The Human Resources Division, in collaboration with the Office of the Business Manager, had sent additional correspondence to DACE teachers regarding reasonable assurance of employment with the District that further confused non-tenured DACE teachers and conflicted with California laws and regulations, and the Collective Bargaining Agreement. In addition, conflicting language existed between contracts and Offers of Employment to DACE teachers and the provisions of the Collective Bargaining Agreement related to employee basis.

We reviewed 20 DACE teacher’s claims for unemployment insurance benefits filed with the EDD. Eight of the 20 employees (40%) claimed unemployment insurance benefits for FY 2018 and FY 2019.

Table 1 shows pertinent facts about each teacher’s employment status and the decision rendered by EDD or an Administrative Law Judge.

Table 1
Testing Results of 20 DACE Teachers and Claim Decisions
July 1, 2018 - December 31, 2019

Sample #	Year of Claim	EDD Claim Decision	Tenured (Y/N/NA)	No. of Work Hours Offered	Full-time or Part-time
1	2018	Approved	No	30	Full-time
2	2018	Denied	No	10	Part-time
	2019	Approved	No	10	Part-time
3	2018	Approved	Yes	30	Full-time
4	2018	Denied	No	10	Part-time
5	2018	Denied	Yes	20	Full-time
6	2019	Approved	No	0	N/A
7	2018	Approved	No	30	Full-time
8	2018	Denied	Yes	30	Full-time
9	2018	Denied	No	26	Full-time
10	2019	No Determination ⁶	No	30	Full-time
11	2018	Approved	No	10	Part-time
	2019	Approved	No	15	Part-time
12	2018	Approved	No	35	Full-time
13	2018	Denied	Yes	30	Full-time

⁵ Total amount charged for unemployment claims for all employees was \$5,045,335 for FY 2018 and \$3,237,540 for FY 2019.

⁶ No determination was made by the Administrative Law Judge because the employee claimed benefits in a non-recess period.

Sample #	Year of Claim	EDD Claim Decision	Tenured (Y/N/NA)	No. of Work Hours Offered	Full-time or Part-time
	2019	Denied	Yes	30	Full-time
14	2018	Approved	No	25	Full-time
	2019	Approved	No	30	Full-time
15	2018	Approved	No	30	Full-time
16	2018	Approved	No	30	Full-time
	2019	Denied	No	30	Full-time
17	2018	Denied	N/A	18	Part-time
	2019	Approved	N/A	N/A	Part-time
18	2018	Denied	Yes	20	Full-time
	2019	Denied	Yes	20	Full-time
19	2018	Denied	No	38	Full-time
20	2018	Approved	Yes	30	Full-time
	2019	Denied	Yes	30	Full-time
Total Claims Examined		28			
N/A = Not Available					

Based upon our analysis, we found the following:

- 1) Fourteen (14) of the 28 claims (50%) were approved by EDD or an Administrative Law Judge and DACE teachers received unemployment insurance benefits during the summer recess. Thirteen (13) of 28 claims (46%) were denied and DACE teachers did not receive benefits during the summer recess. One of 28 claims was rendered as “no determination” by an Administrative Law Judge.
- 2) Of the 14 claims **approved** for unemployment insurance benefits:
 - Eleven teachers (or 79%) were not tenured teachers, 2 teachers (14%) were tenured, and EDD records were not available for review for 1 teacher.
 - Four teachers (29%) were offered part-time hours by the District after the summer recess, and 9 teachers (64%) were offered full-time hours.
 - Four teacher’s claims (29%) were approved due to reduced hours in the District’s Offer of Employment as compared to the prior employment period.
- 3) Of the 13 claims **denied** for unemployment insurance benefits:
 - Seven teachers (54%) were tenured teachers, 5 teachers (38%) were not tenured, and EDD records were not available for review for 1 teacher.
 - Three teachers (23%) were offered part-time hours after the summer recess and 10 were offered full-time hours.
 - One teacher’s unemployment claim was denied by an Administrative Law Judge based in part on one incorrect fact that the teacher was salaried at the current rate of \$70,000 per year. According to the District’s Offer of Employment, the DACE teacher was paid 30 hours per week at a rate of \$58.46 per hour and was not tenured.

We present two cases based on decisions rendered by two Administrative Law Judges for a better understanding of criteria for a valid claim of unemployment insurance benefits for DACE teachers:

Case 1: Tenured DACE Teacher Claimed Unemployment Insurance Benefits - Denied

The claimant's package included a signed and executed *Offer of Contract Employment as a Probationary or District Intern Teacher*, which states that "A contract for a probationary employee automatically continues in effect for each succeeding school year thereafter until terminated by resignation or by action of the Board of Education." This sentence provided reasonable assurance of employment annually if the teacher passed probation, unless the teacher resigned from the position or was subject to an action of the Board of Education, such as a reduction in force/layoff.

The Administrative Law Judge denied the teacher's claim for unemployment insurance benefits and indicated that there was a conflict in the evidence over whether the claimant's position was contingent on funding, enrollment, or class cancellation. The claimant was subject to a Collective Bargaining Agreement between the United Teachers of Los Angeles, and the LAUSD which indicated that "M" basis employees who teach in one-year contracts that terminate by June 30 of each school year could have their contracts otherwise terminate due to lack of funding, low class enrollment, program changes or other comparable reasons. Although the claimant contended that s/he was still an M basis employee, the claimant was no longer "M" basis, but rather was now a tenured "C" basis teacher as indicated on time sheets s/he signed and the contract.

The employer is bound by the terms of the contract it signed with tenured teachers such as the claimant, by the Education Code and case precedents, to find the claimant alternative work and pay the teacher in any event. Contract section 5.0 indicates that once adult education instructors obtain tenured status, such as the claimant, the District has an ongoing obligation to offer assignments to the claimant. California Education Code section 44955 indicates that tenured teachers, such as the claimant, can only stop working if they are laid off due to a lack of work or discharged for cause. In the present case, the claimant had reasonable assurance of working in the same or similar capacity following a traditional recess. The claimant is therefore ineligible for benefits under section 1253.3.

We observed that the Administrative Law Judge discovered a conflict in the evidence based upon: (1) the employee's contention that s/he was an "M" basis employee and could have his/her contract terminate due to lack of funding, low class enrollment, program changes or other comparable reasons, (2) the 2014 probationary contract providing evidence that the DACE teacher was tenured and (3) the Collective Bargaining Agreement that referenced the M basis.

We asked the Human Resources Division whether there was a definition for the "M basis" and were referred to the Office of Labor Relations for an explanation. The Office of Labor Relations stated that the "M basis" existed many years ago and "sometimes the contract language does not keep up with the changes. About 2½ years ago, LAUSD attempted to update the language in the contract because the "M Basis" no longer existed but were unsuccessful at changing the language in negotiations." In summary, the District could not change the language unilaterally in the Collective Bargaining Agreement because the District must always bargain in good faith.

These conditions occurred because: (i) DACE teachers may not be aware that they were tenured because annual Offers of Employment do not identify those DACE teachers who were tenured,

and (ii) the Collective Bargaining Agreement made reference to an outdated work schedule that had not been used in several years, creating confusion for DACE teachers.

The impact of unclear language in the Collective Bargaining Agreement and the Offer of Employment may lead to confusion among tenured DACE teachers who perceive uncertainty about the future of their employment following a summer recess. These uncertainties may lead to an increased number of claims for unemployment benefits during the summer recess, and more burdensome hearings to attend by DACE teachers and the Office of the Business Manager.

Recommendation A-1:

We recommend that the Human Resources Division should revise and update the templates for an employment contract and an Offer of Employment and clearly state whether the DACE teacher is tenured or not in both documents. If the teacher is tenured, the contracts should cite the California Education Code, Section 44955, to indicate that tenured teachers can only stop working if they are laid off due to a lack of work or discharged for cause. The District should provide a copy of the original contract indicating that the teacher is tenured, at the request of any DACE teacher.

Recommendation A-2:

We recommend that the Office of Labor Relations negotiate with UTLA to amend the Collective Bargaining Agreement and remove all references to the “M” Basis in Article XXI and replace the language with current District policy language, such as the “C” basis.

Case 2: Non-tenured DACE Teacher Claimed Unemployment Insurance Benefits - Approved

We examined the claimant’s package which included a signed and executed *Offer of Assignment* which stated that the contract of employment offered was subject to provisions of the Collective Bargaining Agreement, all rules and regulations of the Board of Education, and all provisions of laws and regulations of the State of California. We also examined a separate contract titled *Offer of Contract of Employment* which states in part that “this contract becomes effective (service under it shall commence) on 7/1/2019 and **shall be in a non-tenure earning probationary status** [emphasis added], as defined by the District pursuant to Education Code 44910 and follow the Certificated Single Track C Basis calendar (including the exclusion of all recess periods and unassigned days as set forth in the calendar).

In a decision by the California Unemployment Insurance Appeals Board, an Administrative Law Judge wrote in part that the issue in this claim for unemployment insurance benefits was whether the claimant had reasonable assurances of continuing employment. The claimant received a notification of reasonable assurances and signed a contract to teach classes during the fall term. However, as an Adult Education non-tenured instructor the claimant’s employment was contingent on enrollment. The claimant had been advised that if enrollment fell below a certain level a class will be cancelled. If the class was cancelled the claimant was not paid and did not receive another assignment. The claimant would be out of work. The classes can be cancelled at any time. The claimant’s employment was always contingent on enrollment even after s/he signed the contract.

The Judge stated that in this decision, although the claimant was a school employee the claimant did not receive reasonable assurance of continued employment even after s/he signed a contract for the upcoming semester because the claimant's employment was always contingent on enrollment. Because the claimant's employment was contingent on adequate class enrollment the claimant did not receive reasonable assurances of continued employment and therefore the claimant was not subject to the provisions of code section 1253.3. Accordingly, the claimant was eligible for benefits under code section 1253.3 during the nine weeks beginning June 10, 2018 and ending August 11, 2018, and the department's initial adverse ruling was reversed.

We noted that the Administrative Law Judge rendered a decision for the claimant/DACE teacher even though the District's Offer of Contract of Employment stated that "*the employee understands that there are no contingencies, such as funding, enrollment, or program changes that would reduce the assigned hours or the term of employment as recorded above.*" The District's statement carried no weight in the eyes of the law regarding reasonable assurance of employment. The reasons for the decision were focused on the facts of the claim: An Adult Education non-tenured instructor and the condition that the claimant's employment was contingent upon enrollment.

In the District's *Offer of Contract of Employment*, Education Code Section 44910 was referenced. Section 44910 states the following:

Education Code, ARTICLE 2. Employment [44830 - 44929] (Article 2 enacted by Stats. 1976, Ch. 1010.) 44910. Service by a person as an instructor in classes conducted at regional occupational centers or programs, as authorized pursuant to Section 52301, shall not be included in computing the service required as a prerequisite to attainment of, or eligibility to, classification as a permanent employee of a school district.

This section shall not be construed to apply to any regularly credentialed teacher who has been employed to teach in the regular educational programs of the school district and subsequently assigned as an instructor in regional occupational centers or programs, nor shall it affect the status of regional occupational center teachers classified as permanent or probationary at the time this section becomes effective.

Section 44910 clearly shows that instructors teaching classes at regional occupational centers do not accrue service time or eligibility towards becoming a permanent employee of a school district. Therefore, non-tenured DACE teachers do not enjoy reasonable assurance of employment after the summer recess.

We note that the main differences between Case 1 and Case 2 were the concepts of tenure and permanent/non-permanent status of employment. As long as a DACE teacher was: (i) in a non-tenured position, (ii) the hours worked as a DACE teacher do not result in or contribute to probationary or permanent status (tenure) or longevity, and (iii) the non-tenured teacher was categorically funded at a regional occupational center or program, the teacher had no reasonable assurance of employment after the summer recess per California laws, regulations, and the Collective Bargaining Agreement.

We observed that under current LAUSD protocols, EDD benefit payments to DACE teachers are decided in an arbitrary manner. We found that several claims for unemployment insurance benefits were approved by various Administrative Law Judges, regardless of various statements made by the District that attempted to assure the DACE teacher that they had reasonable assurance of

continued employment. These statements by the District were included in the Offer of Assignment, Offer of Contract of Employment and the Notification of Reasonable Assurance

These conditions were due in part to the idea that if the District included statements of reasonable assurance in critical documents (such as an Offer of Assignment), then the District had met the legal threshold of reasonable assurance of employment after the summer recess. Based on some decisions rendered by Administrative Law Judges, these statements were insufficient and California laws/regulations, and the Collective Bargaining Agreement superseded the District's statements.

Recommendation A-3:

We recommend that the Human Resources Division should reconsider reasonable assurance statements written into critical documents sent to non-tenured DACE teachers.

We took note that one administrator in the Office of the Business Manager requested an Administrative Law Judges to vacate EDD decisions that were in favor of the claimant/DACE teacher several times, whether the teacher was tenured or non-tenured, or funded by general funds or time-sensitive categorical funds. We also found that the District had appealed EDD decisions, but appeals were canceled due to the nonappearance of the District administrators in front of the Administrative Law Judge.

These conditions occurred because only one District representative was available for hearings involving DACE teachers and scheduling conflicts occurred often. Many appeals requested by the Office of the Business Manager and hearings were due to the lack of adequate documentation in the system application maintained by the Human Resources Division. The District representatives did not always know at the time of the EDD notifications whether a DACE teacher was non-tenured or tenured based on an executed employment contract, because the documentation was not available in the system application. In addition, the EDD gave a short window of time for the District to provide information about the employee or lose any rights to appeal the EDD's decision.

Recommendation A-4:

We recommend that the Human Resources Division should update the system application with all contracts for tenured DACE teachers prior to June 30, 2021, so that District representatives will know whether to appeal an EDD decision immediately or not. The system application should be maintained and updated on a regular basis by uploading signed documents such as the Offer of Employment, Offer of Contract Employment, and Offer of Assignment.

Recommendation A-5:

We recommend that the Office of the Business Manager should assess whether to pursue appeals based upon: (i) the employment status of the DACE teacher (tenured vs. non-tenured), and (ii) whether the number of hours offered to the teacher was a reduction from the prior contract period.

B. To determine whether the California Employment Development notified the District of each unemployment claim before the claimant received payment of unemployment insurance benefits.

We were able to validate that the District was notified of only a few unemployment claims in a timely manner during the review period. The majority of the claims were not available for review.

The following EDD forms were critical to employers managing unemployment insurance claims:

1. The Notice of Unemployment Insurance Claim filed, form DE 1101CZ, is mailed to the claimant's most recent employer at the time the claim is filed, and is the initial notification to the employer that a claim for unemployment insurance benefits has been filed.
2. To be timely, the response to the DE 1101CZ must be returned to the EDD within 10 days of the mail date shown on the form. It must be returned to the EDD address printed on the DE 1101CZ. It is important to respond timely to the DE 1101CZ in order to have the potential to protect the employer's unemployment insurance tax account from charges⁸.
3. When an employer fails to respond timely to a DE 1101CZ or DE 1545R, or is otherwise not entitled to a Notice of Determination, DE 1080EZ, after responding to the DE 1101CZ or DE 1545R, the employer may be sent a Response to Employer Communication, DE 4614. The DE 4614 explains why a DE 1080EZ is not being sent. The DE 4614 is appealable.
4. The Notice of Determination⁹, DE 1080EZ, is the notice mailed to employers to advise of EDD's eligibility decision. This notice also advises the employer whether the employer's unemployment insurance tax account will be charged and provides instructions for appealing an unfavorable decision. This notice is sent only when the employer responded timely, and in writing, to the DE 1101CZ, the DE 1545R, or by letter. The EDD considers eligibility information whenever it is communicated to the EDD, but the employer is notified of the outcome only when the employer submitted the information timely and in writing.
5. A Notice of Wages Used for unemployment insurance claims, DE 1545R, accompanied by the Explanations and Instructions, DE 1545RI, is mailed to base period employers when the EDD makes the first payment on the claim. The notice states the claimant's weekly and maximum benefit amount and the employer's potential liability. The EDD mails this notice to the address on file with the EDD for the employer's unemployment insurance tax account¹⁰.

Per the EDD handbook titled, "*Managing Unemployment Insurance Costs*"¹¹, SIDES is a secure and timely method for employers or agents or third-party administrators (TPA) to electronically receive and respond to the DE 1101CZ. SIDES streamlines communication between employers or agents/TPAs and the EDD by sending an electronic request to an unemployment insurance claimant's former employer with the reason for job separation and the last date worked provided

⁸ EDD Handbook for School Employers, page 34

⁹ Ibid, Page 39

¹⁰ Ibid, Page 36

¹¹ Managing Unemployment Insurance Costs (DE 4527), Rev.7, Page 15

by their former employee. This allows employers/TPAs to provide complete, accurate, and timely separation information to the EDD to assist the EDD in making benefit payments to eligible claimants. SIDES was developed through a strategic partnership between the U.S. Department of Labor (USDOL), the National Association of State Workforce Agencies (NASWA), and state unemployment insurance agencies to enhance communication between employers/TPAs and state unemployment insurance agencies, reduce errors that are common with paper forms, and provide employers with a standardized format to ensure that the required information is communicated to the EDD.

Based on our analysis of 20 unemployment insurance packages received from the Office of the Business Manager, for the period covering June 2018 through December 31, 2019, we found the following:

- 12 of 18 (67%) unemployment insurance claims (Form DE 1101CZ) in FY 2018 were not on file for review. Therefore, we were unable to determine whether the District received 12 claims or not for FY 2018. We were able to verify that 6 of 18 (33%) claims were received by the District.
- 8 out of 11 (73%) unemployment insurance claims (Form DE 1101CZ) in FY 2019 were not on file. Therefore, we were unable to determine whether the District received the claims (DE 1101CZ) or not for FY 2019. We were able to verify that 3 of 11 (27%) claims were received by the District.
- For FY 2018, we tested whether the District responded to DE 1101CZ within 10 days of the mail date shown on the form. We found that 18 out of 18 (100%) unemployment insurance claims were either not submitted within 10 days to EDD or response dates could not be determined because forms were not available for review.
- For FY 2019, we found that 11 out of 11 (100%) unemployment insurance claims were either not submitted within 10 days or response dates could not be determined because forms were not available for review.
- For FY 2018 and FY 2019, all Notices of Wages for unemployment insurance claims were missing from each package.
- For FY 2018, 5 out of 18 (28%) EDD Notices of Determination were not on file.
- For FY 2019, 2 out of 10 (20%) EDD Notices of Determination were not on file.

These conditions occurred because:

- (1) Several documents could not be located or were not responded to in a timely manner, such as the Notice of Unemployment Insurance Claims Filed (DE 1101CZ), Notice of Determination (DE 1080EZ), and Notice of Wages.
- (2) Equifax/Third Party Administrator did not provide the documents to the District at all or delivered them with a short time or no time to respond to EDD. The administrator at the Office of the Business Manager recently stated that the contract with Equifax ended on December 1, 2020.

- (3) The District did not maintain good recordkeeping or oversee and monitor the work of Equifax in a diligent manner. It did not promptly respond with accurate detailed information.
- (4) The District did not streamline communication by leveraging SIDES, an application sponsored by the EDD.

As a result of the above conditions there was a higher potential for errors and financial loss to the District. The impact of the District not responding timely to EDD is losing the right to appeal EDD decisions. For the missing DE 1545R documents, the District may not have verified the employment of the claimants during the quarters shown and could have lost the opportunity to question any errors or differences.

Recommendation B-1:

We recommend that the Office of the Business Manager should verify and respond to EDD form DE 1545R promptly.

Recommendation B-2:

We recommend that the Office of the Business Manager promptly respond to unemployment insurance claim notices with accurate information with as much detail as possible and attend hearings as requested by EDD.

Recommendation B-3:

We recommend that the Office of the Business Manager leverage the State Information Data Exchange System (SIDES), which is a secure and timely way for employers or agents/ third party administrators to electronically receive and respond to the form, DE 1101CZ.

C. To determine how the District held the employee accountable who claimed unemployment insurance benefits that the employee was not entitled to.

The District did not implement a formal process to hold employees accountable who claimed benefits that the employee was not entitled to.

The EDD publication titled, “*Managing Unemployment Insurance Costs*,”¹² provides a list of best practices to minimize unemployment insurance costs and it states:

“Cost Controls. To help control UI costs, it is suggested that employers follow these business practices:

1. Keep good employment records.
2. *Provide employees with copies of company policies.* [Emphasis added]
3. Give written warnings when necessary and document dates and reasons for warnings.
4. Permit employees to take leaves of absence when possible.
5. Document when a leave is granted, the time period of the leave, and any leave extensions.

¹² Managing Unemployment Insurance Costs, DE 4527, Rev. 7, page 14, https://edd.ca.gov/pdf_pub_ctr/de4527.pdf
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6. Document when a leave of absence is denied.
7. Keep turnover to a minimum.
8. Conduct and document exit interviews.
9. Respond to EDD claim notices accurately, timely, and in detail.”

Unemployment Insurance Code Section 1257(a) states:

“An individual is also disqualified for unemployment compensation benefits if:

- (a) He or she willfully, for the purpose of obtaining unemployment compensation benefits, either made a false statement or representation, including, but not limited to, using a false name, false social security number, or other false identification, with actual knowledge of the falsity thereof, or withheld a material fact in order to obtain any unemployment compensation benefits under this division.”

We made inquiries of key personnel and found that neither the Human Resources Division, nor the Office of the Business Manager, had provided employees with copies of District policies relevant to claiming unemployment insurance benefits.

Without formal written policies and procedures related to unemployment insurance claims, accountability and transparency could be weakened from the perspective of employees, schools, and District departments.

Recommendation C-1:

We recommend that the Human Resources Division should create and implement a policies and procedures manual specifically for District employees regarding when it is appropriate to file for unemployment insurance benefits. The policy should set policy objectives, establish line of responsibilities, and describe how claims are to be monitored.

D. To determine whether any preventive methods existed Districtwide to remind teachers not to apply for unemployment benefits during school recess periods.

No preventive methods existed to remind ineligible teachers not to apply for unemployment insurance benefits during school recess periods.

The EDD publication titled, “*Managing Unemployment Insurance Costs*,”¹³ provides a list of best practices to minimize unemployment insurance costs as stated above.

Through meetings and inquiries of key personnel within the Office of the Business Manager and the Human Resources Division, we found that no effective preventive methods existed Districtwide related to employees who were ineligible for unemployment insurance benefits.

These conditions occurred due to: (i) untimely responses to EDD, (ii) the lack of clear language in the employment contract and other critical documentation, and (iii) conflicting language between the Collective Bargaining Agreement and employment contracts.

¹³ Ibid

As a result of the above conditions, there was an increased likelihood of more claims being filed, a higher number of unfavorable decisions from EDD and appeals, and a culture that possibly encouraged ineligible DACE teachers to file for unemployment insurance benefits.

Recommendation D-1:

We recommend that the Office of the Business Manager should provide training periodically to Support Services employees regarding EDD unemployment insurance procedures, specifically, unemployment insurance claims management, responses to EDD, school employee regulations, unemployment insurance benefits during summer recess periods, and the concept of reasonable assurance.

Recommendation D-2:

We recommend that the Office of the Business Manager should develop a more effective tracking method designed to: (i) monitor all EDD decisions, (ii) improve response time to EDD, and (iii) generate management reports to facilitate better decision-making.

REVIEW TEAM

This special review was conducted by the Office of the Inspector General's Audit Unit team:

Katharine Monishi, Audit Manager
Esther Gabriel, Principal Auditor
Mistram Reyes, Jr., Senior Auditor

SCOPE AND OBJECTIVES, AND METHODOLOGY

SCOPE AND OBJECTIVES

The objectives of the special review were to: (i) review the standard contract provided to teachers and determine whether the terms clearly stated that teachers were not allowed to file for unemployment benefits during school recess periods, (ii) determine whether the California Employment Development Department notified the District of each unemployment claim before the claimant received payment of unemployment insurance benefits, (iii) determine how the District held the employee accountable who claimed unemployment insurance benefits that the employee was not entitled to, and (iv) determine whether any preventative methods existed Districtwide to remind teachers not to apply for unemployment insurance benefits during school recess periods.

We conducted our review in accordance with the Statement on Standards for Consulting Services established by the American Institute of Certified Public Accountants. The review covered the period from July 1, 2018 through June 30, 2019 and the period July 1, 2019 through December 31, 2019.

METHODOLOGY

To accomplish our review objectives, we: (i) reviewed pertinent LAUSD terms and conditions in critical employment documents, sections of the California Education Code and Unemployment Insurance Code, and the Collective Bargaining agreement between LAUSD and UTLA; (ii) conducted internal control questionnaires with key personnel to obtain an understanding of the current processes and controls related to unemployment insurance claims received by the District; (iii) interviewed key personnel to obtain an understanding of the unemployment insurance claims process; (iv) randomly selected a sample of 20 DACE employees, by using statistical sampling for detailed testing; (v) reviewed and analyzed the following documentation: (1) the determinations and notifications by the EDD, (2) claimant employment information, (3) employment contracts executed between DACE teachers and LAUSD, and (4) other supporting documentation.

**Applicable Citations from the California Education Code,
California Unemployment Insurance Code, and
the Collective Bargaining Agreement between the LAUSD and UTLA**

Applicable Sections of the Education Code

Education Code, Section 44910 refers to instructors in classes conducted at regional occupational centers or programs that shall not result in or contribute to probationary or permanent status (tenure) or longevity and it states:

“Service by a person as an instructor in classes conducted at regional occupational centers or programs, as authorized pursuant to Section 52301, shall not be included in computing the service required as a prerequisite to attainment of, or eligibility to, classification as a permanent employee of a school district.”

Education Code, Section 44955(b) states in part:

Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render.

Applicable Sections of the Unemployment Insurance Code

Article 1 Eligibility and Disqualifications¹⁴ states:

- (b) Benefits specified by subdivision (a) based on service performed in the employ of a nonprofit organization, or of any entity as defined by Section 605, with respect to service in an instructional, research, or principal administrative capacity for an educational institution are not payable to any individual with respect to any week which begins during the period between two successive academic years or terms or, when an agreement provides instead for a similar period between two regular but not successive terms, during that period, or during a period of paid sabbatical leave provided for in the individual’s contract, *if the individual performs services in the first of the academic years or terms and if there is a contract or a reasonable assurance that the individual will perform services for any educational institution in the second of the academic years or terms* [emphasis added].

Applicable sections of the Collective Bargaining Agreement between UTLA and LAUSD

2.0 Employment Contracts: Adult Education funded employees who are assigned more than eighteen hours per week are covered either by probationary or permanent contract status.

2.1 All personnel in categorically funded programs shall be employed under binding individual (“M” basis) employment contracts which shall not conflict with the provisions of this agreement.

¹⁴ Unemployment Insurance Code, Article I, [1251-1265.9], Section 1253.3(b)
Unemployment Insurance Claims Review

2.2 All "M" Basis contracts of employment shall be terminable at any time prior to expiration, but only for lack of funds, elimination or reduction of the educational offering, insufficient enrollment or attendance, or other good cause.

3.0 Non-Contract Personnel-Release During Term of Assignment:

a. All part-time (18 hours or less per week) Adult Education funded personnel may be released during their term of assignment only for the reasons stated in Section 2.2 above.

4.0 Staffing Procedures for Part-time and Other Untenured Positions: For initial staffing purposes all part-time (18 hours or less per week) and other untenured full-time positions or courses are to be filled as set forth below.

4.9 Personnel do not have an implied right to employment beyond their assigned term.

5.0 Staffing Procedures for Tenured Positions: All new or vacant positions of more than 18 hours per week identified as tenured positions shall be posted by June 1 for the fall semester and January 5 for the spring semester and filled at the discretion of the site administrator.

a. Thirty hours per week (120 hours per pay period) is recognized as the full time equivalency (FTE) for all Adult Education funded classifications in which tenure is earned (currently ESL, Academic Parenting, Programs for Older Adults, Adults with Disabilities and Teacher Counselors).

b. The Division acknowledged that once tenure is acquired, it shall have an on-going obligation to offer assignments at the number of hours held by the employee when tenured.

LAUSD Interoffice Correspondence Dated May 29, 2014

INTEROFFICE CORRESPONDENCE
 Los Angeles Unified School District
 Office of the Superintendent

TO: All Principals **DATE:** May 29, 2014
FROM: Michelle King, Deputy Superintendent
 School Operations 
SUBJECT: CALIFORNIA EMPLOYMENT DEVELOPMENT DEPARTMENT (EDD)

Throughout the year, the District receives requests from the California Employment Development Department (EDD) to provide employee work-related documentation to determine unemployment insurance benefits for claimants. To manage the large volume of EDD requests, the District has partnered with a third party vendor, Equifax Workforce Solutions.

While District employees filing unemployment insurance claims have been informed to complete the work location section of the unemployment insurance application using the address below, many still complete it using their most recent worksite address:

Los Angeles Unified School District
 c/o Equifax Workforce Solutions
 P.O. Box 23020
 Oakland, CA 94623-2302

As a result, your school may receive a request from the EDD for employee work documentation. Should you receive such a request, please immediately forward the request to Equifax Workforce Solutions via fax or email to:

Fax number: 888-823-0234 or
Email (as attachment): Sandra.sinift@equifax.com

**Please include a coversheet indicating that the correspondence is from LAUSD.*

Employee unemployment insurance benefit-related requests from the EDD are time-sensitive and require immediate response. By forwarding the requests to the fax/email listed above you are helping to ensure our employees receive a speedy and accurate response to their claim.

Attached is an informational flyer which can be copied and posted at convenient locations throughout the worksite for employees to view.

Thank you in advance for your cooperation and assistance with this important matter. If you have any questions, please contact the Office of the Chief Operating Officer at 213-241-4133.

Attachment
 c: Dr. John E. Deasy
 ESC Administrators of Operations

Know about fraud, waste, or abuse?

Tell us about it.

Maybe you are a school district employee, a parent or just a concerned citizen. Regardless, you can make a difference!

Maybe you know something about fraud, waste, or some other type of abuse in the school district.

The Office of the Inspector General has a hotline for you to call. You can also email or write to us.

If you wish, we will keep your identity confidential. You can remain anonymous if you prefer. And you are protected by law from reprisal by your employer.

Whistleblower Protection

The Board approved the Whistleblower Protection Policy on February 12, 2002. This policy protects LAUSD employees who make allegations of improper governmental activity from retaliation or reprisal. To assure the reporting of any activity that threatens the efficient administration of the LAUSD, reports that disclose improper governmental activities shall be kept confidential.

General Contact Information

Office of the Inspector General
333 S. Beaudry Avenue, 12th Floor
Los Angeles, CA 90017
Phone: (213) 241-7700
Fax: (213) 241-6826
<https://achieve.lausd.net/oig>

Fraud, Waste and Abuse Hotline

(866) 528-7364 or (213) 241-7778

inspector.general@lausd.net