

MINUTES
AUDIT SUBCOMMITTEE
OF THE
LEGISLATIVE MANAGEMENT COMMITTEE

The Audit Subcommittee of the Legislative Management Committee met in Room W110, State Capitol Complex, Salt Lake City, Utah, February 3, 2005, from 3:30 p.m. until 4:30 p.m.

Committee Members Present:

Speaker Greg J. Curtis, Co-Chairman
President John L. Valentine, Co-Chairman
Senator Mike Dmitrich
Representative Ralph Becker

Legislative Audit Staff:

John Schaff, Auditor General
Rick Coleman, Audit Manager
Tim Osterstock, Audit Manager
Darin Underwood, Audit Supervisor
Darren Marshall, Audit Supervisor
Janice Coleman, Audit Supervisor
Susan Verhoef, , Lead Auditor
Paul Hicken, Lead Auditor
Derek Byrne, Lead Auditor
Brian Dean, Lead Auditor
Deanna Herring, Lead Auditor
Broc Christensen, Performance Auditor
Lynda Maynard, Recording Secretary
Kay Huntoon, Secretary

Other Interested Parties:

Kristin Brewer, Director, Guardian ad Litem
Daniel J. Becker, Court Admin, AOC
Lori Brown, Guardian ad Litem
Craig Bunnell, Guardian ad Litem
Patricia Worthington, Dir., Foster Care Citizens Review Bd
Meredith Mannebach, Dept of Human Services/EDO
Representative Ann W. Hardy
Michelle Swenson, Intern - Representative Hardy
Representative Lorie D. Fowlke
Ashley Johnson, Intern - Representative Fowlke
Representative LaVar Christensen
Mark May, Attorney General's Office
Laura Lee Adams
Sandra Lucas, Citizens Commission on Human Rights.
Lynn Packer, Courtconsult.com
Richard H, Schwermer, Asst Court Administrator
Katie Gregory, courts
Adam F. Trupp, Policy, Plan & Legal Admin, DCFS
Louie Long, Granite School Dist
Martin Bates, Granite School District

Wayne K. Searle, Attorney
Amy Bryson, *Deseret Morning News*
Kirsten Stewart, *Salt Lake Tribune*
Paul Foy, *Associated Press*
Others as Listed

1. Call to Order

President Valentine called the meeting to order at 3:30 p.m.

2. Approval of Minutes

Speaker Curtis made a motion that the minutes from the December 15th meeting be approved. The motion passed.

3a. A Performance Audit of the Office of the Guardian ad Litem

(Report #2005-01)

Presented by Darin Underwood, Auditor Supervisor

The Utah Legislature established the Office of the Guardian ad Litem (GAL) so that minors could receive qualified legal representation in abuse, neglect, dependency and other proceedings before the Utah courts. The GAL has offices in each of the eight judicial districts in Utah, with a staff of 60, including 31 attorney guardians ad litem and 29 support staff. In some of the cases, the GAL office uses volunteers called “CASAs” (Court Appointed Special Advocates) to assist in performing some of their statutory duties.

We were asked to review whether the GAL is performing statutory duties and otherwise functioning as directed by Utah law. We were also asked to identify possible improvements in the GAL program for the Legislature to consider.

Office of the Guardian ad Litem Established in 1994. In Chapter I we introduce the GAL and provide a highlighted history. The mission of the GAL is as follows:

The Office of the Guardian ad Litem is a state office within the Judicial Branch of government which advocates for the best interest of abused and neglected children within the court system. The Guardian ad Litem attorney and [Court Appointed Special Advocate]

CASA volunteers work in collaboration with key agencies and community resources to serve as the child’s advocate and represent what is in the best interest of the child in the court....

GALs are assigned to advocate for children in both Juvenile and District Court cases. The bulk of GAL case assignments are through the Juvenile Courts when there are allegations of abuse or neglect, or when dependency of a minor is an issue. However, GALs are often assigned to District Court cases when the judge believes there may be a question of abuse or neglect of a child involved in divorce or custody disputes, and sometimes in criminal cases when the child is a victim. District Court judges also may appoint a GAL for protective orders and other cases that involve guardianship and best interest issues. For more detail on GAL appointments, please

refer to the statutory provisions cited throughout Chapter I.

Review of GAL Files Confirmed Some Statutory Duties Not Completed. In Chapter II we respond to the audit request to determine whether the GAL is performing all statutory duties in representing minors who are alleged victims in abuse, neglect or dependency cases. While we limited our reviewed to Juvenile Court cases of the GALs, we recognize the importance of the District Court cases. Our review of 35 GAL Juvenile Court case files indicated that the GALs are not documenting or completing some of their statutory duties.

GAL Policies or Practice Guidelines Are Needed. Determining the extent to which some duties were not completed, however, was difficult because policy standards are lacking. State law requires the GAL director to establish policies for the management of the GAL program. State law also requires GALs to maintain records regarding their representation of a child's best interest. However, interviews with GALs and our file review indicate GALs have an inconsistent understanding of statutory duties and do not maintain adequate documentation.

1. We recommend the Office of the Guardian ad Litem director implement formal program policies and/or practice guidelines which would address:
 - standards for file documentation, and
 - guidance on performing statutory duties and other GAL job functions.

Case Loads Appear to be Outpacing GAL Resources. While we generally concur that GAL case loads are high and rising, we question the internal data of the GAL. We believe the GAL director must accurately track cases and implement management review to determine GAL productivity, case flow, case trends, case lengths and so forth.

Legislative Involvement is Needed. While not a major part of our audit review, we believe the Legislature need to address the concern of high case loads and whether increased funding is needed for the GAL office. The Legislature should also consider a change in the statutory duties of GALs in Juvenile Court cases. In light of our findings in Chapter II that some of these duties are not being performed, and also since some statutory duties may be outdated or unnecessary, it may be time for the Legislature to examine whether or not it is reasonable for GALs to perform such a list of duties in every Juvenile Court case. The Legislature could respond to the suggested list of questions posed in Chapter III, Recommendation 3 which follows. Finally, the Legislature could review the reasons for appointing the GALs in light of the GAL office's expanding use in the District Courts. The Legislature could respond to the suggested list of questions posed in Chapter III, Recommendation 4 which also follows.

1. We recommend the Office of the Guardian ad Litem director implement a reliable case management system to track case loads and provide case statistics, such as case lengths and opened and closed cases, in order to determine individual GAL productivity and accurate case trends.
2. We recommend the Legislature consider whether to provide additional funding to the Office of the Guardian ad Litem for reducing case loads.
3. We recommend the Legislature review, as an interim study item, the statutory duties of the Guardian ad Litem in Juvenile Court cases listed in Utah Code 78-3a-912. Specifically, these questions could be reviewed:
 - Should GALs perform every statutory duty in every Juvenile Court case? If not, which duties should be mandated and which should be discretionary?
 - Are some of the current GAL statutory duties considered outdated, unnecessary, or too redundant to DCFS social-work duties?
 - Should the list of statutory duties be eliminated and in its place have the GALs simply represent the best interests of their clients in accordance with their ethical and professional responsibilities as an attorney?
4. We recommend the Legislature review, as an interim study item, the GAL role in District Court cases. Specifically, these questions could be reviewed:
 - Should the extent of GAL involvement in District Court cases be limited?
 - Should GALs be expected in District Court cases to perform all of the same duties that are expected to perform in Juvenile Court cases?

Legislature Should Study Alternative Oversight Structure. In Chapter IV we conclude that the oversight structure of the GAL should be reexamined by the Legislature. Although the Judicial Council is the statutorily-defined governing body of the GAL, it deliberately provides only limited supervision of the GAL program because there is an ethical problem of judges supervising advocates who appear before them in court proceedings. In the past several years, organizational placement of the GAL program has been studied several times by the judiciary. However, each time it was before them, the Judicial Council voted to retain the GAL program under the judiciary and not recommend changes to the Legislature. This decision was reached to help ensure the status of the GAL would not diminish and thereby negatively affect children.

We believe the GAL program needs an oversight body to provide policy direction and assure that the program is operating in a manner consistent with legislative intent. With the Judicial Council unable to provide adequate oversight for the GAL program, the Legislature should consider options that will provide oversight. Options (which are detailed more closely in Chapter IV) include:

- Move the Office of the Guardian ad Litem to the executive branch, and place it in an existing department.
- Move the Office of the Guardian ad Litem to the executive branch, and make it an independent executive branch agency that reports to an appointed oversight board.
- Move the Office of the Guardian ad Litem to the executive branch, and make it part of the Attorney General's Office.
- Leave the Office of the Guardian ad Litem in the judicial branch, but have it report to a board appointed

by the Judicial Council. Oversight by this new board could at least partially resolve the ethical conflict of having the Judicial Council supervise the GAL.

1. We recommend the Legislature review, as an interim study item, the oversight structure of the Office of the Guardian ad Litem. This review is necessary because ethical concerns prevent the Judicial Council from providing adequate oversight.
2. Pending legislative action, we recommend the Judicial Council consider ways to improve oversight of the Office of the Guardian ad Litem. One such improvement could be for the Judicial Council to appoint a board of non-judges to oversee the GAL.

Discussion following presentation:

In response to the Guardian ad Litem audit, Kristin G. Brewer, Director, Office of the Guardian ad Litem (GAL), presented the following:

- The Office of the Guardian ad Litem appreciates the courtesy and professionalism of the auditors who worked on this audit.
- The audit provided the GAL office with the opportunity to reflect on the duties assigned by the Legislature to the attorney guardians ad litem in 1994 and to see the need for reevaluation, although there has been much done by the American Bar Association (ABA) in setting duties/standards for attorney guardians.
- The GAL is not completing some statutory duties, due to high caseloads and the statute's lack of fit for attorneys.
- GAL attorney files do not contain documentation of some duties, although the statute does direct that accurate records documenting actions performed on a client's behalf are to be maintained. Documentation of case flow information needs improvement.
- GAL caseloads have increased significantly and caseload has outpaced the resources.
- All recommendations directed to the Office of the Guardian ad Litem will be implemented at the earliest opportunity.

Daniel L. Becker, State Court Administrator, told the Audit Subcommittee that the Administrative Office of the Courts (AOC) agrees that the GAL program needs an oversight board and the matter has been studied—the Judicial Council has studied the placement of the GAL on three separate occasions and has not been able to find a better placement or a more appropriate placement than in the courts. However, it is an issue that needs to be examined and AOC feels that it would be entirely appropriate for the Legislature to conduct an interim study.

Representative LaVar Christensen said that although the audit information is very helpful, he feels that it misses the focus and that the increase in caseloads is symptomatic of the concerns that prompted the audit request.

Representative Christensen said that the duties of the GAL are vaguely defined in the *Utah Code*.

Motion: Speaker Curtis made a motion that the **Performance Audit of the Office of the Guardian ad Litem**(Report #2005-01) be referred to the Judiciary Interim Committee, the Judiciary Standing Committee, the Law Enforcement and Criminal Justice Standing Committee, the Child Welfare Reform Legislative Oversight Committee, the Executive Offices and Criminal Justice Joint Appropriations Subcommittee and the Judicial Rules Review Committee. Also, that the recommendations in the report be referred to as an Interim Study item. The motion passed unanimously.

3b. A Performance Audit of the Utah High School Activities Association

(Report #2005-02)

Presented by Darren Marshall, Auditor Supervisor

Over the past year, the Utah High School Activities Association (UHSAA) has made policy changes to improve the overall consistency in its hearing processes on athletic transfers during a student's high school years. However, there have been continuing questions regarding pre-high school transfers that, due to state open enrollment policies, are outside of UHSAA control. Some people argue that these transfers create unfairness in competition between high schools.

A review of transfers at all grade levels shows that while a few transfers do appear questionable, overall the problem is often one of perception. To some individuals, transfers are perceived to occur more frequently than they do in actuality. There is also a perception of coaches recruiting athletes into their programs, when actually, many transfers occur before high school and are often related to peer relationships. However, due to a lack of information available to the UHSAA and also a lack of comprehensive record keeping on student transfers in the schools, it is difficult to get a true grasp of the actual numbers of student-athletes who transfer.

UHSAA policies and rules are primarily set for athletically-related high school transfers between grades 9 and 12. Lower grade and academically-related transfers are not addressed by the UHSAA nor are they tracked in any way. This situation has created what some believe to be a loophole in the system that, in effect, penalizes student athletes who determine the high school of their choice after junior high school while failing to acknowledge students who make the determination earlier in their schooling.

Scope and Objectives. This report is in response to a legislative request to perform an audit on the Utah High School Activities Association. Our objectives were to:

- Determine avenues of avoiding athletic eligibility transfer rules via junior high transfers
- Evaluate the use of non-school funded facilities and projects that may influence student athlete transfers.
- Review the sufficiency of current enrollment policies.

Misconceptions Surround Utah Student Transfers. There are few instances where student athlete transfers appear to significantly differ from general student population transfers for the same high school. That said, it also appears that Utah High School Activities Association (UHSAA) student-athlete transfer policies do not equally address all student athlete transfers. A key responsibility of UHSAA is to promote fairness in competition by monitoring athletically-related transfers. A significant portion of athletically-related transfers are not recognized under the current policy because they occur outside the purview of the UHSAA, often prior to a student entering high school. As a result of not tracking pre-high school transfers, UHSSA does not have accurate information to review the potentially higher number of athletically-related student transfers.

Athletic transfers, in total, do not differ significantly from non-athletic transfers for the 2003 and 2004 school year periods. There are, however, some instances particular to specific sports in some schools that are questionable. We found that in looking at four different sports there were one or two schools that appear to have a greater percentage of athletes that transfer in than one might expect when looking at the out-of-boundary student population for the same school. The raw data and methodology can be found in Appendix A.

Some out-of-boundary student athletes transfer into junior high schools which feed into the high school they desire to attend. In doing so, they are outside of the UHSAA's oversight; therefore, the association does not receive an accurate picture of the number of out-of-boundary athletes playing at high schools.

The UHSAA's student athlete transfer policy allows students a hearing in which, if the hearing panel concludes the student is not in violation, the student may transfer schools during high school without loss of athletic eligibility. Unfortunately, the reasons students use to transfer schools may or may not be legitimate. The UHSAA hearing panel must then decide whether a student receives some penalty or none. In our observation, it appears that if a student is aware of the loopholes in the system, whether it is an academic or hardship-related reason, the student may transfer schools while avoiding penalties.

1. We recommend that the UHSAA continue to monitor student athletic transfers and make changes to policy as they see fit.

Monitoring Could Improve with Better Record Keeping. Record keeping is inconsistent from high school to high school and school district to school district, making it difficult to obtain comparable information on student histories and school finances used in athletic programs. If a program is desired by the Legislature to monitor student athlete transfers and athletic funding, then it is necessary to have timely and complete analysis of student records and athletic contributions. In some instances, we were able to find the information we needed after some searching; however, in others we were completely unable to acquire any data. To track student athletes and the transfer rates, better record keeping is needed. Further, better record keeping may be needed for future UHSAA policy revisions and development.

1. We recommend that if the legislature elects to monitor student athlete transfers, then a statewide policy pertaining to the length of time student records are kept ought to be in place.

Discussion following presentation:

Representative Ann W. Hardy, responded to the audit findings by suggesting that the percentages show in the audit do not make a lot of difference if a high school quarterback moves to another school and the school he transferred from loses a key player—percentages can be very deceptive when looking at the overall problem of student athletes transferring from one school to another. Representative Hardy said the basis of the audit request was that the Utah High School Athletics Association (UHSAA) is not treating all transfer athletes the same. She concluded by saying that the audit shows there are problems that need to be monitored and that basic changes in the transfer policy need to be addressed.

Motion: Speaker Curtis made a motion that the **Performance Audit of the Utah High School Activities Association** (Report #2005-02) be referred to the Education Standing Committee. The motion passed unanimously.

4. Audit Requests

John Schaff, Auditor General, give a brief explanation of the Audits-in-Process sheet that was given to the members of the Audit Subcommittee. He explained to them what audits had been prioritized by the previous Audit Subcommittee members and which audits have been assigned to audit teams. John also gave a brief description of the new audit requests received: The Administrative Office of the Courts (AOC); and the School and Institutional Land Administration (SITLA).

President Valentine explained to the new Audit Subcommittee members that it was their responsibility to prioritize each audit request—by either adding it to the Future Audits list and assigning it a number or putting the request under the Previous Requests category and, thereby, giving the subcommittee time to consider the request further.

Speaker Curtis said that he had received a couple of new requests for audits but hadn't given them to the Auditor General to be include in the New Requests category and requested John's assistance in handling these requests.

Motion: Senator Dmitrich made a motion that the request for an audit of the **School & Institutional Land Administration** be put under Future Audits and placed as number 4 on the priority list; also, that the request for an audit of the **AOC Purchasing Process** be placed under Future Audits and prioritized as number 5; thus moving the **UPASS** audit request from number 4 to number 6, and maintaining its *Hold* status. The motion passed unanimously.

Motion: Senator Dmitrich made a motion that the request for an audit of **Box Elder County Public Safety** be removed from the Audits in Process list and the request for an audit of the **Centrally Assessed Property** be moved to the Future Audits List and prioritized as number 6, further moving the **UPASS** audit request to number 7. The motion passed unanimously.

5. Adjournment

President Valentine adjourned the meeting at 4:30 p.m.

NOTE: The following audit reports were released on February 28, 2005, after polling the Audit Subcommittee and receiving their approval.

- **Review of the USOE's Use of the Superintendent's Discretionary Fund (Report # 2005-03)**
- **Best Practices in Using Technology in Public Education (Report #2005-04)**