

Office of
LEGISLATIVE AUDITOR GENERAL
State of Utah

REPORT NUMBER 2005-03
February 2005



**A Limited Review
of the
USOE's Use of the
Superintendent's Discretionary Fund**

The use of the Superintendent's Discretionary Fund by the Utah State Office of Education (USOE) does not appear concerning. Based on a limited expenditure review, fund expenditures appear reasonable. Also, it does not appear that expenditures from this fund circumvented legislative intent. Of particular concern was the possibility that funds allocated for a specific legislative purpose could end up in the Discretionary Fund and be spent for another purpose. However, not all funds placed within the Discretionary Fund lose their identity. Some funds are designated for specific purposes.

This review was sparked by events surrounding Senate Bill 154 that was passed by the 2003 Legislature. Senate Bill 154 carried its own appropriation (\$1.8 million) as well as intent language concerning how this money was to be spent by the USOE. Approximately \$1.2 million of the appropriation was to be used to complete a pilot program in competency-based education. The necessity of doing this pilot program became uncertain and the money was not spent by the USOE.

The 2004 Legislature decided to take the unspent fiscal year 2003 appropriation of \$1.2 million from the USOE and return it to the Uniform School Fund. To do this, the Legislature, following the Legislative Fiscal Analyst's advice, created a line-item that withdrew the \$1.2 million from the USOE budget while added \$350,000 to the USOE budget for the Jean Massieu School. Thus, the net effect to the USOE was a line-item withdrawal of \$850,000 rather than \$1.2 million. The Governor vetoed this line-item. As a result, the \$1.2 million was not withdrawn from USOE and the Jean Massieu School did not get its \$350,000 from this source.

At the May 2004 Executive Appropriations meeting, USOE officials proposed the following solution to Jean Massieu's funding problem: the USOE would use \$350,000 of the retained \$1.2 million to provide funding for the Jean Massieu School. From the USOE's perspective, the Legislative Fiscal Analysts had essentially done this when the Jean Massieu payment was netted from Senate Bill 154's funding in the vetoed line-item. Further, since Senate Bill 154's funding was retained by the USOE and the pilot study was unlikely to be performed, this \$1.2 million would ultimately be moved into the Superintendent's Discretionary Fund for general use. The USOE's proposal was rejected by the Executive Appropriations Committee.

Further, the Executive Appropriations Committee was concerned by the implication within the USOE's proposal. The proposal appeared to imply that legislative appropriations having specific intent language could end up in the Superintendent's Discretionary Fund and be used for a purpose other than the intended one. Consequently, a review of the Superintendent's Discretionary Fund and its use was requested.

In conducting this review, two objectives were established:

1. To determine if expenditures within the Superintendent's Discretionary Fund seem reasonable and;
2. To determine if the Superintendent's Discretionary Fund has been used to circumvent legislative intent.

Executive Appropriations was concerned that appropriations having a specific intent might end up in the Discretionary Fund.

Fund Expenditures Appear Reasonable

The expenditures made from the Superintendent’s Discretionary Fund appear reasonable. Our review of purchase orders revealed no expenditures that appeared out of place for USOE.

The Superintendent’s Discretionary Fund houses USOE’s carry-forward money generated from unspent legislative appropriations. The USOE retains unspent legislative appropriations because their appropriations come from the Uniform School Fund and *Utah Code* 53A-17a-105(7) states that appropriations made from the Uniform School Fund may not be closed out by the state fiscal officer. So, the USOE retains their unspent balances. At the end of each fiscal year, unspent balances (i.e., carry-forward) from five broad accounts—Board, Board Priorities, Data and Business, Student Achievement, and Law and Education—are placed into the Superintendent’s Discretionary Fund.

Figure 1 shows activity within the Fund for fiscal years 2001 through 2004.

Figure 1. Activity within the Superintendent’s Discretionary Fund—FY 2001 through FY 2004.

	FY2001	FY2002	FY2003	FY2004
Beginning Balance	\$ 800,596	\$ 1,863,777	\$ 596,054	\$ 126,614
Discretionary Expenditures	-347,491	-1,033,370	-316,192	-112,292
Designated Expenditures	-26,932	-816,085	-265,540	-0-
Year-end Carry-forward	1,437,604	581,732*	112,292	3,188,583**
Ending Balance	\$1,863,777	\$ 596,054	\$ 126,614	\$ 3,202,905

* In FY 2002, the potential year-end carry-forward was \$1,090,894. However, because of state budget concerns, \$509,162 of this amount was returned to the Uniform School Fund.

** The FY 2004 year-end carry forward includes \$1.6 million designated for SB 154 implementation.

Not all funds within the Discretionary Fund are spent in a discretionary fashion. Some funds are designated for specific purposes.

Discretionary Fund expenditures are made based on USOE program directors' application for funds and subsequent approval from the Fund's oversight committee. Figure 1 also show that, in addition to discretionary expenditures, the Discretionary Fund also houses funds ear-marked for specific purposes. Expenditure of these funds are denoted as "designated". These designated expenditures will be discussed later. Figure 2 outlines the general categories of discretionary expenditures.

Figure 2. Discretionary Expenditures for FY 2001 through FY 2004.

	FY2001	FY2002	FY2003	FY2004
Wages and Benefits	\$ 0	\$ 21,249	\$ 0	\$ 0
Travel	1,949	1,971	1,158	1,960
Current **	175,835	128,981	53,644	54,316
Computer Equipment	20,106	717,963*	63,555	56,015
Provided to Districts & Universities	149,601	247,439	346,811	330,845
Total Discretionary Expenditures	\$ 347,491	\$1,033,370	\$ 316,192	\$ 112,291

* This entire expenditure was for the COGNOS database system, a necessary tool for tracking, segregating, and reporting student test scores for U-PASS and No Child Left Behind.

** Current expenditures include conventions and workshops, teacher training and consultants.

Over this four-year period, we sampled 21 payment vouchers representing expenditures of approximately \$1.1 million. None of the sampled expenditures appeared questionable. In general we found:

- out-of-state travel expenditures associated with the national Teacher of the Year Awards.
- current expenditures for in-service training for teachers and contributions to educational associations.

The largest single discretionary expenditure occurred in FY 2002 to purchase COGNOS, a database system necessary for both U-PASS and No Child Left Behind.

- computer expenditures for some hardware and software purchases for USOE programs when budgets were inadequate. (The COGNOS database purchase in fiscal year 2002 was the largest computer expenditure.)
- funding passed through to districts responding to a USOE Request for Proposals and to universities to support reading and writing workshops.

Not all funds placed in the Superintendent’s Discretionary Fund lose their identity. Some carry-forward funds housed in the Discretionary Fund are designated to stay within specific programs.

Circumvention of Legislative Intent Is Not Apparent

The unspent balances from two legislative appropriations were not placed into the Superintendent’s Discretionary Fund to be spent on discretionary items. Instead, the unspent funds maintained their program identity and were designated for specific expenditures.

During the time period reviewed, we tracked the funds provided for two 2000 General Session bills to test possible circumvention of legislative intent. The first was House Bill 168 entitled “Uniform Data Collection within the State’s Public Education System” and the second was House Bill 177 entitled “Assessing, Reporting, and Evaluating Student Performance”.

As identified in Figure 1, not all of the expenditures noted were discretionary (i.e., petitioned for by agency personnel and decided by the fund’s oversight committee.) Instead, some expenditures were designated for specific purposes either because the money was designated for a particular program or because a program’s budget had identified a need. The balances for both House Bill 168 and 177 are included in these designated expenditures. Specifically—

- in fiscal year 2001, \$26,932 was designated for a trust lands specialist;
- in fiscal year 2002, \$371,500 was designated for House Bill 168 (Uniform Data Collection) implementation while \$444,500 was designated for expenditure within Student Achievement programs, and lastly;

The unspent funds of House Bills 168 and 177 were designated within the Superintendent’s Discretionary Fund for implementation of those bills.

- in fiscal year 2003, \$75,000 was designated for House Bill 168 implementation while \$190,500 was designated for House Bill 177 (U-PASS) implementation.

So, while both House Bills 168 and 177 had unspent funds, these funds did not lose their identify within the Superintendent's Discretionary Fund. Instead, the funds were used specifically in the implementation of House Bills 168 and 177. In our opinion, the USOE's treatment of the unspent funds associated with these two bills does not support circumvention of legislative intent.

In summary, expenditures made from the Superintendent's Discretionary Fund appeared reasonable. Further, no apparent circumvention of legislative intent was found within the Superintendent's Discretionary Fund.