

# *Audit Report*

## Public School System Travel of Former Recreational Therapist/ Adaptive Physical Education Specialist

March 28 to October 30, 1995

(Report No. AR-97-03)



***Office of the Public Auditor***  
Commonwealth of the Northern Mariana Islands



# Office of the Public Auditor

Commonwealth of the Northern Mariana Islands

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March 10, 1997

Mr. William S. Torres  
Commissioner of Education  
Public School System  
3rd Floor, Nauru Building  
Saipan, MP 96950

Dear Commissioner Torres:

**Subject: Final Audit Report - Travel of Former Recreational Therapist/  
Adaptive Physical Education Specialist (AR-97-03)**

This is in response to a request from the Legislative Committee on Health, Education and Welfare to review the Public School System's (PSS) travel arrangements with the former Adaptive Physical Education Specialist/Recreational Therapist (Therapist). We examined the travel and personnel records of the former Therapist. Our examination of the travel vouchers was limited to determining her flight arrangements while commuting from Guam to the CNMI. We also conducted interviews and telephone inquiries with the Deputy Commissioner for Administration, the Coordinator for Special Education Programs, and the current Therapist. In addition, we also examined the time cards of the former Therapist from August 1994 to February 1995.

Our review showed that the former Therapist was permitted to commute from Guam to the CNMI using government travel authorizations (TAs) from March 28 until October 30, 1995, although a replacement could have been hired in April 1995. As a result, (1) additional funds amounting to more than \$8,000 were expended for her travel, and (2) the former Therapist was able to spend an average of only 4 to 5 hours per day performing her work because of the travel time incurred.

It appears that poor judgment and management were exercised, which normally cannot be anticipated in the form of policies and procedures because the opportunities for mismanagement are too numerous. However, since the issue has now been identified, we recommended that the Public School Personnel System Rules and Regulations (PSPSR) be amended to prohibit paying the commuting cost of employees (Recommendation 1).

In his letter response dated November 15, 1996 (**APPENDIX C**), the Commissioner did not agree with our recommendation that the PPSRR be amended to prohibit the payment of the costs associated with commuting. According to the Commissioner, to do so could unnecessarily preclude PSS from providing needed services to their students in the future at the lowest possible cost.

Based on the response from the Commissioner, we have modified Recommendation 1, to amend the PPSRR to prohibit the payment of commuting costs unless it is justified by the parties concerned, and approved by the Board of Education.

In addition, attached to the Commissioner's response was a statement from the Special Education Program Coordinator which included a footnote saying that related services providers are considered exempt employees under the Fair Labor Standards Act (FLSA) and are thus salaried employees prohibited from being required to work a minimum amount of time in any day or week.

On August 19, 1992, the United States Department of Labor issued additional regulations on the salary basis test which apply only to the public sector. These regulations state in part, that an employee of a public agency who otherwise meets the requirements of §541.118 shall not be disqualified from exemption under §541.1, 541.2 or 541.3 on the basis that such employee is paid according to a pay system established by statute, ordinance, or regulation, or by a policy or practice established pursuant to principles of public accountability, under which the employee accrues personal and sick leave and which requires the public agency employee's pay to be reduced or such employee to be placed on leave without pay for absences for personal reasons or because of illness of less than one workday when accrued leave is not used by an employee.

Accordingly, we have added Recommendation 2, that the Commissioner of Education inform and direct the Coordinator for Special Education Programs and any other PSS personnel responsible for employee activities to implement personnel policies in conformance with the FLSA and the Department of Labor regulations.

We consider both Recommendations 1 and 2 as open. The additional information or action required to close these recommendations is presented in **APPENDIX D**.

Our office has implemented an audit recommendation tracking system. All audit recommendations will be included in the tracking system as open or resolved until we have received evidence that the recommendations have been implemented. An *open* recommendation is one where no action or plan of action has been made by the client (department or agency). A *resolved* recommendation is one in which the auditors are satisfied that the client cannot take immediate action, but has established a reasonable plan and time frame of action. A *closed* recommendation is one in which the client has taken sufficient action to meet the intent of the

recommendation or we have withdrawn it. Please provide us the status of the recommendation implementation along with the documentation showing the specific actions taken.

Please provide us the status of recommendation implementation within 30 days along with documentation showing the specific actions that were taken. If corrective actions will take longer than 30 days, please provide us additional information every 60 days until we notify you that the recommendations have been closed.

Sincerely,

**ORIGINAL SIGNED**

Leo L. LaMotte  
Public Auditor, CNMI

cc: Governor  
Lt. Governor  
Tenth CNMI Legislature (27 copies)  
Secretary of Finance  
Special Assistant for Management and Budget  
Attorney General  
Public Information Officer  
Press

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**O**ur audit showed that the former Recreational Therapist/Adaptive Physical Education Specialist was permitted to commute from Guam to the CNMI using government travel authorizations (TAs) from March 28 until October 30, 1995, although a replacement could have been hired as early as April 1995. As a result, (1) additional funds amounting to more than \$8,000 were expended for her travel, and (2) the former Therapist spent an average of only 4 to 5 hours per day performing her work because of travel time incurred.

We were requested by the Legislative Committee on Health, Education and Welfare to review the Public School System's (PSS) travel arrangements with the former Adaptive Physical Education Specialist/Recreational Therapist.

According to the Coordinator for Special Education Programs (Coordinator), the former Adaptive Physical Education Specialist worked with children in elementary and secondary schools who had physical or multiple disabilities.

The Coordinator stated that there were approximately twenty-seven disabled children in Saipan, four in Tinian, and three in Rota under the former Therapist's care.

During her employment with PSS, the former Therapist's husband found employment in Guam and decided to move there. The former Therapist wanted to continue working with PSS and she presented two proposals for retaining her services. Under the first proposal, she would resign and contract back her services at \$40 per hour. Under the second proposal, she would continue her employment with PSS at her current salary rate of \$12.56 per

hour. In either case, PSS would be paying the cost of her travel.

The objectives of our audit were to determine the (1) propriety of the decision made by PSS in allowing the former Therapist to commute from Guam to the CNMI using government TAs, and (2) effects, if any, of the former Therapist's travel on her duties and responsibilities as an Adaptive Physical Education Specialist/Recreational Therapist.

## **FINDINGS AND RECOMMENDATIONS**

### **Expensive Commuting From Guam to the CNMI**

In March 1995, PSS identified a replacement for the former Therapist who could have been available as early as April 1995. Between April and October 1995, however, PSS unnecessarily kept the former Therapist on board and paid for her travel expense from Guam to the CNMI. This occurred because she was considered a valuable employee and efforts to keep her on staff were considered worthwhile. As a result, additional funds totaling more than \$8,000 were expended for her travel.

### **Reduced Work Hours Because of Travel Time Incurred**

Public School Personnel System Rules and Regulations (PSPSR) require employees to follow the standard work week commencing on Monday at 7:30 a.m. and ending on the following Friday at 4:30 p.m. of each week. Based on the twenty-two travel vouchers examined, however, when the former Therapist was commuting from Guam, she arrived at her work station between 8:30 and 10:00 a.m. (because of time spent in clearing immigration and customs, and travel time in going to the school from the airport) and left between 2:35 and 3:35 p.m. (due to travel time from school to the airport, and check-in time requirements). As a result, the former Therapist spent only four to five hours per day, on average, performing her work.

### **Conclusion and Recommendation**

It appears that poor judgment and management were exercised, which normally cannot be anticipated in the form of policies and procedures because the opportunities for mismanagement are too numerous. However, since the issue has now been identified, we recommended that the PSPSR be amended to prohibit paying the cost of commuting.

### **PSS RESPONSE AND OPA'S COMMENTS**

In his letter response dated November 15, 1996 (**APPENDIX C**), the Commissioner of Education disagreed with our findings and conclusions, stating that (1) the draft letter report was seriously

flawed, (2) its final conclusion was not supported by the facts, and (3) the entire report and its conclusions should be discarded. Accordingly, PSS did not concur with our recommendation that the PSPSR be amended to prohibit the payment of the costs associated with commuting.

### **PSS Response on Expensive Commuting From Guam to the CNMI**

PSS claimed that the former Therapist's eventual replacement was not available to come to work for PSS until August 1995 at the earliest. Even if she was available to begin in April 1995, this fact was not known by PSS when it made the decision to keep the former Therapist on her contract and to pay for her commuting costs.

### **OPA Comments**

The conclusion reached by the Office of the Public Auditor that the replacement could have been available in April 1995 was based on the replacement's response to our questions on September 12, 1996 as follows:

1. She could not remember the exact date of interview, probably February or March 1995.
2. Given the choice, she would have at least asked for a month's notice so she could tender her resignation to the hospital that she was working with then.

According to PSS officials, the replacement was identified in March 1995, and with her statement to us that she could resign within a month's notice to the

hospital where she was working, the logical conclusion is that the earliest time she could have worked for PSS was sometime in April 1995, a month after she was identified. In fact, we presented to the replacement a written record of the telephone discussion for her review and concurrence. The replacement reviewed the record, and did not suggest any changes.

Included in the Commissioner's response was a statement signed by the replacement showing different facts than were related to us during our discussion with her. The replacement stated that the earliest employment start date that she would have wished was August 1, 1995. The revised statement of the replacement also said that the actual November 20, 1995 start date fit into her personal and professional obligations at that time.

The introduction of the two additional dates by the current Therapist serves only to make the issue more confusing, but does not make the report inaccurate or give any justification for discarding it. It raises a very serious question about why there is no written recruiting memorandum showing when the replacement would be available. At least two of the dates are inconsistent with both the Deputy Commissioner for Administration's and the replacement's statements to us that the replacement would not have been available until November 1995.

The Commissioner's response further states that the facts known by PSS at the time the decision was made should be the only facts considered by OPA in determining if the decision was

appropriate.

To reiterate, the Coordinator in the February 14, 1995 memorandum to the Commissioner stated that it was agreed that the Special Education Programs would retain the former Therapist through the remainder of the school year and provide for her travel from Guam to the CNMI. It was also agreed that a review of the arrangement would be undertaken at the close of the school year. These facts are also inconsistent with the Commissioner's response that facts known in February are the only facts that should be considered.

Had a written recruiting memorandum been available, and if the question of availability had been ascertained and recorded, and if the arrangement had been reviewed in this light at the end of the school year, the commuting costs could have been mitigated.

However, the February 14, 1996 memorandum also states that the former Therapist was considered a valuable employee and efforts to keep her on staff were considered worthwhile. It appears to us that this statement reflects the motivation for what actually happened.

### **PSS Response on Reduced Work Hours Because of Travel Time Incurred**

In the letter response, the Commissioner stated that the assumption made by the Office of the Public Auditor that the former Therapist's hours of actual work for PSS during the time period she traveled from Guam were reduced from the level she was previously providing is incorrect, invalid and should not be

relied upon. The response also stated that the Auditor failed to calculate all work performed by the former Therapist, and that for the Auditor to assume that providing direct instructional services was the only requirement of the former Therapist's job is a fundamental miscalculation. It further stated that while it was true that the former Therapist provided approximately 4 to 5 hours per day of direct instructional services to her students, it was also true that she spent significant additional time completing the administrative requirements of her position.

In the Coordinator's statement, she stated that, "I have reviewed . . . and found that the average amount of direct services that PSS's related services providers provide was and is approximately five hours per work day." She also stated that for reasons stated, she therefore believed that PSS's students were not adversely affected by the former Therapist's commute, and that her schedule from April to October 1995 was and is consistent with the norm for other related services providers and for all other PSS Teachers.

### **OPA Comments**

There appears to be a misunderstanding about what the draft report said. The draft stated that the former Therapist was able to spend 4 to 5 hours per day, on average, performing her work. This means that the performance of direct instructional services to her students and the administrative requirements of her position was 4 to 5 hours per day. Based on the September 1995 schedule provided to us, we were able to account for only 2 to 3

hours per day where the former Therapist spent her time in the schools. We stated in the report that we could not account for the remaining hours. In this case, we conclude that the former Therapist may have been doing her significant administrative requirements. However, she was also clearing the airports/checking in, renting a car, and traveling to the schools.

It does not appear to us that the former Therapist could have provided approximately 4 to 5 hours per day of direct instructional services as stated by the Coordinator in her statement attached to the Commissioner's response, and that she spent significant additional time completing the administrative requirements of her position. However, her hours of direct instructional services were reduced to 2 to 3 hours, on average, based on the September to October 1995 schedule. After she started commuting from Guam therefore, it appears that the former Therapist could only have spent 1 to 2 hours, on average, completing the significant administrative requirements of her position between 7:30 a.m. to 4:30 p.m., which were her normal working hours.

Regarding the Commissioner's statement that PSS's students were not adversely affected by the former Therapist's commute, PSS students probably were affected by the commute because the Coordinator told us that the former Therapist had to set priorities so she could spend as much time with her students having extreme disabilities versus those with lesser disabilities.

We had requested a complete schedule of the former Therapist's

activities/schedule while she was commuting from Guam to the CNMI. However, the Coordinator was only able to provide us with her schedule for the months of September and October 1995. In her statement attached to the Commissioner's response, the Coordinator stated that "the former Therapist's schedule from April to October 1995 was and is consistent with the norm for other related service providers and for all other PSS teachers." If a complete schedule from April to October 1995 was available, it should have been provided to us when we asked for it. If such schedule emerged later on, it should have been provided to us when it was discovered. At the very latest, it should have been included with the Commissioner's response. It should be noted that the CNMI Auditing Act grants OPA access to documents upon request. In any event, the former Therapist's schedule for September and October 1995 which was provided to us shows a significantly reduced schedule during the time the former Therapist was commuting.

In addition, a footnote to the Coordinator's statement attached to the Commissioner's response states:

"Related Services Providers and Classroom Teachers are considered professional employees under the Fair Labor Standards Act (FLSA) and are thus salaried employees and prohibited from being required to work a minimum amount of time in any day or week. Rather, the amount of time they are required to work can only be tied to the requirements of the position. To require a minimum threshold would also require payment on an hourly basis along with any necessary overtime compensation."

On August 19, 1992, the United States Department of Labor issued additional regulations on the salary basis test which apply only to the public sector. They state in part:

"Special provisions applicable to employees of public agencies.

(a) An employee of a public agency who otherwise meets the requirements of §541.118<sup>1</sup> shall not be disqualified from exemption under §541.1, 541.2 or 541.3<sup>1</sup> on the basis that such employee is paid according to a pay system established by statute, ordinance, or regulation, or by a policy or practice established pursuant to principles of public accountability, under which the employee accrues personal leave and sick leave and which requires the public agency employee's pay to be reduced or such employee to be placed on leave without pay for absences for personal reasons or because of illness or injury of less than one workday when accrued leave is not used by an employee . . ."

This means that employees on a pay system such that they are required by PSS to be at work from 7:30 a.m. to 4:30 p.m. do not lose their exempt status as Executive, Professional or Administrative because they are required to follow the system (*e.g.*, timing in and out) and are being charged annual, sick, and leave without pay if they are not at work at these times. This misconception in the Coordinator's statement should be corrected.

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<sup>1</sup> Relates to employees exempt from the Fair Labor Standards Act as being Executive, Professional or Administrative.

### **Status of Recommendations**

In view of the Commissioner's response that payment of commuting cost should not be prohibited, we are revising our Recommendation 1, to recommend that the PPSRR be revised to require any payment for commuting expense to be justified and submitted to the Board of Education for approval.

In addition, we are adding Recommendation 2, to recommend that the Commissioner inform and direct the

Coordinator and any other PSS personnel responsible for employee activities to accurately implement personnel policies in conformance with the FLSA and the Department of Labor regulations.

OPA considers the two recommendations open. The additional information or action needed to consider the recommendations closed is presented in

**APPENDIX D.**

# Introduction

## Background

**W**e were requested by the Legislative Committee on Health, Education and Welfare to review the Public School System's (PSS) travel arrangements with the former Recreational Therapist/Adaptive Physical Education Specialist. The former Therapist was hired by PSS from Australia in October 1993 to work as a Recreational Therapist/Adaptive Physical Education Specialist.

### *The Work As An Adaptive Physical Education Specialist*

According to the Coordinator for Special Education Programs (Coordinator), as an Adaptive Physical Education Specialist, the former Therapist worked with children in elementary and secondary schools who had physical or multiple disabilities. According to her, multiple disability means that a person has both a physical disability and a mental incapacity to learn at the same rate as a regular person. She further explained that these children were identified during an Individualized Education Program (IEP) meeting as needing the former Therapist's services. She said that the IEP meeting is participated in by the parent of the disabled child, the principal of the child's school, the regular education teacher, the special education teacher, and the student, if necessary. She also said that the former Therapist assessed the physical skills and participation levels of physically challenged children under her care and worked with the Physical Education (PE) teachers in motivating them to perform physical activities as much like a regular person as possible. For instance, a blind child can learn to catch a ball with a bell inside the ball. She further stated that the former Therapist developed individualized programs for the disabled children under her care and also trained the PE teachers, the regular and special education teachers, so they can implement the programs without her presence. According to her, these programs were designed to achieve a specific goal related to the condition of the particular disabled child.

### *The Work As A Recreational Therapist*

According to the Coordinator, as a Recreational Therapist, the former Therapist was primarily involved with physically challenged high school students ages 14 years and older. According to her, the former Therapist's work was aimed at assisting them to develop lifelong recreational and leisure activities. She further said that since individuals who do not have disabilities are able to utilize their leisure time in various ways, individuals with disabilities need to have similar options.

### ***Responsibility of the Former Therapist***

The Coordinator stated that as the only Adaptive Physical Education Specialist/Recreational Therapist under the Related Services of the Special Education Programs of PSS, the former Therapist was responsible for the disabled children in all fourteen public schools in the CNMI, identified during the IEP meeting as needing her services. Thus, according to her, the former Therapist's work schedule was not like that of most teachers. She said that the former Therapist prepared her own schedule according to the needs of physically challenged children under her care.

### ***Approximate Number of Students Under the Former Therapist's Care***

According to the Coordinator, there were approximately twenty-seven disabled children in Saipan, four in Tinian and three in Rota under the former Therapist's individual care. She said that these children were enrolled in several schools in the CNMI. She also said that the numbers varied within the school year and between schools. According to her, there were times when a disabled child under the former Therapist's care was taken off-island for medication, at which time, services for that child were stopped. She further added that special education teachers would identify in the middle of the school year a disabled child as needing the former Therapist's services. She would then revise her schedule accordingly.

### ***Transfer of Residence From Saipan to Guam***

During her employment with PSS, the former Therapist's husband found employment in Guam and decided to move there. The former Therapist wanted to continue working with PSS. In a memorandum from the Coordinator for Special Education Programs to the Deputy Commissioner for Instruction requesting assistance as to the best course of action to take, it was stated that the former Therapist presented to the Coordinator two proposals on how to retain her services. Under the first proposal, she would resign and contract back her services at \$40 per hour. Under the second proposal, she would continue her employment with PSS at her current salary rate of \$12.56 per hour. In either case, PSS would be paying the cost of her travel.

#### **Objectives, Scope, and Methodology**

**T**he objectives of our audit were to determine the (1) propriety of the decision made by PSS in allowing the former Therapist to commute from Guam to the CNMI using government TAs, and (2) effects, if any, of the former Therapist's travel on her duties and responsibilities as an Adaptive Physical Education Specialist/Recreational Therapist.

As part of our audit procedures, we examined the former Therapist's (1) travel authorizations from March to October 1995, (2) time cards from August 1994 to February 1995, (3) pertinent personnel records, and (4) 22 travel vouchers. The 22 travel vouchers were selected judgmentally from the total of 58 travel authorizations of the former Therapist. Our examination of the travel vouchers was limited to determining the flight arrangements of the former Therapist while commuting from Guam to the CNMI. Finally, we also conducted interviews and telephone inquiries with the Deputy Commissioner for Administration, the Coordinator for Special Education Programs and the former Therapist's replacement.

**Prior Audit  
Coverage**

**T**he Office of the Public Auditor (OPA) has conducted various audits of the Public School System. This is a rare case wherein OPA was requested to conduct an audit on the commute of the former Adaptive Physical Education Specialist/Recreational Therapist.

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## Findings and Recommendations

### **Expensive Commuting From Guam to the CNMI**

In March 1995, PSS identified a replacement for the former Therapist who could have been available as early as April 1995. Between April and October 1995, however, PSS unnecessarily kept the former Therapist on board and paid for her travel expense from Guam to the CNMI. This occurred because she was considered a valuable employee and efforts to keep her on staff were considered worthwhile. As a result, additional funds totaling more than \$8,000 were expended for her travel.

### ***Discussion***

In March 1995, PSS identified a replacement for the former Therapist who could have been available as early as April 1995. In a telephone inquiry to the Deputy Commissioner for Administration on August 22, 1996, she told us that a replacement for the former Therapist was identified in March 1995 but was not available until November 1995. When we asked the replacement by telephone conversation on September 12, 1996, however, she told us that she was informed by the person who interviewed and hired her in Minnesota that she would start in November 1995. We also asked her if, given the choice, she would have started immediately. She replied that she would have requested at least a month's time to give adequate notice to the hospital where she was working.

### ***Continued Travel From Guam to the CNMI***

Between April and October 1995, PSS unnecessarily kept the former Therapist on board and paid for her travel expense from Guam to the CNMI. In a meeting between the Coordinator, the Deputy Commissioner for Instruction, the Procurement Officer and the Legal Counsel (documented in a memorandum from the Coordinator to the Commissioner of Education dated February 14, 1995), it was agreed that the Special Education Programs would continue to keep the former Therapist on staff through the remainder of the school year and provide for her travel from Guam to the CNMI. Based on the memorandum, it was also agreed that a review of the arrangement would be undertaken at the close of the school year (second to third week of June), the final day for 190-day contract workers.

### ***Justification of the Arrangement***

This arrangement was made because the former Therapist was considered a valuable employee and efforts to keep her on the staff were considered worthwhile. In her memorandum dated February 14, 1995 informing the Commissioner of the action taken, the Coordinator stated:

" The former Therapist expressed the desire to remain on staff carrying out her duties as Recreational Therapist/Adaptive Physical Education Specialist but wanted to reside in Guam. She offered to resign<sup>1</sup> and contract back her services or to remain on salary and have the Special Education Programs pick up the extra cost of her travel. The former Therapist had demonstrated professionalism and expertise in providing recreational therapy and adaptive physical education services to children and young adults with disabilities under her care. She enjoyed the respect of students, parents, teachers, and other professional staff. The former Therapist was considered a valuable employee and efforts to keep her on staff were considered worthwhile."

**Total Travel Costs Incurred**

As a result of not hiring the replacement when available in April 1995, additional funds were expended for the former Therapist's travel amounting to more than \$8,000. The former Therapist's travel from Guam to the CNMI began on March 28 and continued until October 30, 1995, the end of her employment contract with PSS. From March to October 1995, her total travel cost based on TAs<sup>2</sup> amounted to approximately \$14,400 (**APPENDIX A**), and the former Therapist was able to complete ninety travel days covering fifty-three travel authorizations. A schedule of the additional travel cost, including air-fare, per diem and car rental incurred by the former Therapist from May to October 1995 as a result of PSS not hiring the replacement in April 1995, is as follows:

Schedule of Additional Travel Cost

<u>Details</u>	<u>Amount</u>
Guam to Rota route	\$ 2,430.00
Guam to Rota to Saipan route	2,056.00
Guam to Saipan route	8,490.00
Guam to Saipan to Tinian route	<u>1,498.00</u>
Total travel cost based on TAs of the former Therapist	14,474.00
Less: Travel cost from March 28 to April 30	<u>3,070.00</u>
Total travel cost, May to October 95 when replacement could have been available	\$11,404.00
Less estimated travel cost of replacement from Saipan to Tinian and Rota from May to October 95 if replacement was hired in April 1995 ( <b>APPENDIX B</b> )	<u>3,148.00</u>
Additional travel cost, May to October 95	<u><u>\$ 8,256.00</u></u>

<sup>2</sup> The former Therapist did tender her resignation effective February 17, 1995.

<sup>3</sup> The figures presented are based on the TAs of the former Therapist. The amount per TA represents the best estimate of the travel expense of the former Therapist.

**Reduced Work  
Hours Because  
of Travel Time  
Incurred**

**P**ublic School Personnel System Rules and Regulations (PSPSRR) require employees to follow the standard work week commencing on Monday at 7:30 a.m. and ending on the following Friday at 4:30 p.m. of each week. Based on the twenty-two travel vouchers examined, however, when the former Therapist was commuting from Guam, she arrived at her work station between 8:30 and 10:00 a.m. (because of time spent in clearing immigration and customs, and travel time in going to the school from the airport) and left between 2:35 and 3:35 p.m. (due to travel time from school to the airport, and check-in time requirements). As a result, the former Therapist spent only four to five hours per day, on average, performing her work.

***Discussion***

PSPSRR Chapter 4200 [Compensation], Section 4216 [Standard Work Week] states that the standard work week is scheduled to commence on Monday at 7:30 a.m., and to end on the following Friday at 4:30 p.m. of each week.

Based on the time cards of the former Therapist from August 1994 to February 1995, she was able to maintain a reasonable five-day, forty-hour workweek and perform home visits and sessions in the public schools of the CNMI when needed. Her time card showed for instance, that she timed in at 7:30 a.m. at Gregorio T. Camacho Elementary School and timed out at 4:30 p.m. at William S. Reyes Elementary School.

***Review of 22 Travel Vouchers***

Based on 22 travel vouchers that we examined or 42% of her total travel authorizations, the former Therapist's work hours were reduced when she resided in Guam and commuted from Guam to the CNMI. She arrived at her work station between 8:30 and 10:00 a.m. (because of travel time, time consumed in clearing immigration and customs, and travel time from the airport to the school) and left between 2:35 to 3:35 p.m. (due to travel time from the school to the airport and check-in time requirements).

### *Flight Schedule of Former Therapist*

Based on the travel vouchers examined, the average time the former Therapist left Guam and arrived at her destinations were:

Trip	Day No.	Left	Time	Arrived	Time
Guam to Rota (One-day trips)	1	Guam	7:45 am	Rota	8:15 am
		Rota	4:15 pm	Guam	4:45 pm
Guam to Rota to Saipan (Three-Day trips)	1	Guam	7:45 am	Rota	8:15 am
		Rota	2:30 pm	Saipan	3:00 pm
	3	Saipan	3:10 pm	Guam	3:50 pm
Guam to Saipan (One or Two-day trip)	1	Guam	8:00 am	Saipan	8:30 pm
	2	Saipan	3:10 pm	Guam	3:50 pm
Guam to Saipan to Tinian (Two-day Trip)	1	Guam	8:00 am	Saipan	8:30 am
		Saipan	9:30 am	Tinian	9:40 am
		Tinian	3:00 pm	Saipan	3:10 pm
	2	Saipan	4:10 pm	Guam	4:40 pm

Based on the 22 travel vouchers, the former Therapist usually took the:

1. 7:45 a.m. flight from Guam to Rota . We examined ten of the eighteen travel vouchers for Guam to Rota route. In all 10 travel vouchers, the former Therapist left Guam for Rota on the 7:45 a.m. flight.
2. 4:15 p.m. flight from Rota to Guam. On the return flight, there were four instances where the former Therapist took the 4:15 p.m. flight, two instances where she took the 2:30 p.m. flight, and one exceptional case where the plane left at 7:15 p.m. because of bad weather.
3. 8:00 a.m. flight from Guam to Saipan. Of the twenty-two travel vouchers examined, there were nine travel vouchers for the Guam to Saipan route. These comprised 30% of the travel authorizations for the Guam to Saipan route. Based on these 9 travel vouchers, there was one instance each where the former Therapist took the 7:00 a.m. and 7:30 a.m. flights from Guam to Saipan, two instances each where she took the 6:30 a.m. and 8:40 a.m. flights, and three instances where she took the 8:00 a.m. flight.
4. 3:10 p.m. return flight from Saipan to Guam. Based on the 15 trips sampled, there were ten instances where the former Therapist took the 3:10 p.m. return flight from Saipan to Guam and five instances where she took the 4:10 p.m. return flight.

Finally, in going to Tinian, the former Therapist had to travel from Guam to Saipan first, then from Saipan to Tinian, and back again, thereby consuming additional travel time.

As a result, on average, the former Therapist spent only 4 to 5 hours per day performing her work. We requested a schedule of the former Therapist's activities while she was in the CNMI but the Coordinator was not able to provide us with one. However, she was able to give us a copy of the former Therapist's schedule for September and October 1995. Based on the September 1995 schedule, the former Therapist was regularly providing services/sessions two to three hours per day in the following schools in Saipan: Oleai Elementary School (OES), San Vicente Elementary School (SVS), William S. Reyes Elementary School (WSR), San Antonio Elementary School (SAS), Hopwood Junior High School (HJHS) and Marianas High School (MHS). No other information was available as to how the former Therapist spent the rest of her time.

**September 1995 Schedule of Former Therapist**

Below is the former Therapist's schedule for September 1995.

Sep	WSR	OES	MHS	HJHS	SVS	SAS
5				Hydro <sup>3</sup>		Hydro
6	R O T A					
7	9:15 - 11:00am	12:20 - 1:20pm				
8			9:15 - 10:15 am	11 am - 12 nn	1:30 - 2:30pm	
11	T I N I A N					
12			1:00 - 2:00 pm	Hydro		Hydro
13	R O T A					
14	9:15 - 10:45am	12:20 - 1:20pm				
15			9:15 - 10:15 am	11 am - 12 nn	1:30 - 2:30 pm	
18					1:00 - 2:00 pm	
19			1:00 - 2:00 pm	Hydro		Hydro
20	R O T A					
21	9:15 - 10:45am	12:20 - 1:20pm				
22			9:15 - 10:15am	11 am - 12 nn	1:30 - 2:30 pm	
25	9:10 - 10:20am				1:00 - 2:00 pm	
26			1:10 - 2:00 pm	Hydro		Hydro
27	R O T A					
28	9:15 - 10:45am	12:20 - 1:20pm				
29			9:15 - 10:15 am	11 am - 12 nn	1:30 - 2:30 pm	

<sup>4</sup> Hydro as in hydrotherapy. This means conducting therapy by the use of water. By this, the physically challenged students are either brought to the beach or to the pool for therapy. We were not able to obtain information as to what time or how many hours were spent for therapy.

### ***Activities of Former Therapist While in Rota***

Based on three Rota trip reports attached to the travel vouchers, while in Rota, the former Therapist (1) conducted basketball with 2 high school students and then hydrotherapy (April 19, 1995), (2) visited the high school students and then did hydrotherapy (May 17, 1995), and (3) spent a short time with the high school students as the plane was late, and talked to the vice-principal regarding her concern about one of the students (May 24, 1995). No information was available as to how the former Therapist managed her time while in Tinian.

According to the Coordinator, the former Therapist was able to spend more time in Rota where she had only 3 students and less time in Saipan where she had 27 students. According to her, this was because there were more flights available from Guam to Rota. From the 90 travel days that the former Therapist had from March 28 to October 30, 1995, she spent eighteen days or 20% in Rota and sixty-three days or 70% in Saipan. According to the Coordinator, the former Therapist could not spend as much time in Saipan as she needed. She said that in Saipan, she had to set priorities so she could spend as much time with her students having extreme disabilities versus those with lesser disabilities.

### **Conclusions and Recommendations**

Because PSS opted to keep the former Therapist on board until October 31, 1995 even though a replacement was available in April 1995, PSS expended more than \$8,000 for her travel from Guam to the CNMI. Also, because the former Therapist was commuting from Guam to the CNMI, she was able to spend an average of 4 to 5 hours performing her work.

It appears that poor judgment and management were exercised, which normally cannot be anticipated in the form of policies and procedures because the opportunities for mismanagement are too numerous. However, since the issue has now been identified, we recommended that the PSPSRR be amended to prohibit paying the cost of commuting.

## **PUBLIC SCHOOL SYSTEM RESPONSE AND OPA COMMENTS**

In his letter response dated November 15, 1996 (**APPENDIX C**), the Commissioner of Education disagreed with our findings and conclusions, stating that (1) the draft letter report was seriously flawed, (2) its final conclusion was not supported by the facts, and (3) the entire report and its conclusions should be discarded. Accordingly, PSS did not concur with our recommendation that the PPSRR be amended to prohibit the payment of the costs associated with commuting. PSS contended that the Public Auditor's Office should not officially adopt its draft audit report and should instead find that PSS made an appropriate decision when it agreed to pay for the former Therapist's commute from Guam.

### **PSS Response on Expensive Commuting From Guam to the CNMI**

In the letter response, the Commissioner stated that the assumption made by the Office of the Public Auditor that the former Therapist's eventual replacement was available and wished to begin employment with PSS in April 1995 was incorrect, invalid and should not be relied upon. PSS claimed that the former Therapist's eventual replacement was not available to come to work for PSS until August 1995 at the earliest. Even if she was available to begin in April 1995, this fact was not known by PSS when it made the decision to keep the former Therapist on her contract and to pay for her commuting costs.

### **OPA Comments**

The conclusion reached by the Office of the Public Auditor that the replacement could have been available in April 1995 was based on the replacement's response to our questions on September 12, 1996 as follows:

1. She could not remember the exact date of interview, probably February or March 1995.
2. Given the choice, she would have at least asked for a month's notice so she could tender her resignation to the hospital that she was working with then.

According to PSS officials, the replacement was identified in March 1995, and with her statement to us that she could resign within a month's notice to the hospital where she was working, the logical conclusion is that the earliest time she could have worked for PSS was sometime in April 1995, a month after she was identified. In fact, we presented to the replacement a written record of the telephone discussion for her review and concurrence. The replacement reviewed the record, and did not suggest any changes.

### ***Statement of Replacement***

Included in the Commissioner's response was a statement signed by the replacement showing different facts than were related to us during our discussion with her. The replacement stated that the earliest employment start date that she would have wished was August 1, 1995. The revised statement of the replacement also said that the actual November 20, 1995 start date fit into her personal and professional obligations at that time. The introduction of the two additional dates by the current Therapist serves only to make the issue more confusing, but does not make the report inaccurate or give any justification for discarding it. It raises a very serious question about why there is no written recruiting memorandum showing when the replacement would be available. At least two of the dates are inconsistent with both the Deputy Commissioner for Administration's and the replacement's statements to us that the replacement would not have been available until November 1995.

### ***Facts Known By PSS at the Time of Decision***

The Commissioner's response further states that the facts known by PSS at the time the decision was made should be the only facts considered by OPA in determining if the decision was appropriate. To reiterate, the Coordinator in the February 14, 1995 memorandum to the Commissioner stated that it was agreed that the Special Education Programs would retain the former Therapist through the remainder of the school year and provide for her travel from Guam to the CNMI. It was also agreed that a review of the arrangement would be undertaken at the close of the school year. These facts are also inconsistent with the Commissioner's response that facts known in February are the only facts that should be considered.

Had a written recruiting memorandum been available, and if the question of availability had been ascertained and recorded, and if the arrangement had been reviewed in this light at the end of the school year, the commuting costs could have been mitigated.

However, the February 14, 1996 memorandum also states that the former Therapist was considered a valuable employee and efforts to keep her on staff were considered worthwhile. It appears to us that this statement reflects the motivation for what actually happened.

### **PSS Response on Reduced Work Hours Because of Travel Time Incurred**

In the letter response dated November 15, 1996, the Commissioner stated that the assumption made by the Office of the Public Auditor that the former Therapist's hours of actual work for PSS during the time period she traveled from Guam were reduced from the level she was previously providing is incorrect, invalid and should

not be relied upon. The response also stated that the Auditor failed to calculate all work performed by the former Therapist, and that for the Auditor to assume that providing direct instructional services was the only requirement of the former Therapist's job is a fundamental miscalculation. It further stated that while it was true that the former Therapist provided approximately 4 to 5 hours per day of direct instructional services to her students, it was also true that she spent significant additional time completing the administrative requirements of her position.

In the Coordinator's statement, she stated that, "I have reviewed . . . and found that the average amount of direct services that PSS's related services providers provide was and is approximately five hours per work day." She also stated that for reasons stated, she therefore believed that PSS's students were not adversely affected by the former Therapist's commute, and that her schedule from April to October 1995 was and is consistent with the norm for other related services providers and for all other PSS Teachers.

### **OPA Comments**

The conclusion reached by the Office of the Public Auditor that the former Therapist's hours of actual work for PSS during the time period she traveled from Guam were reduced from the level she was previously providing was based on (1) our examination of the time cards of the former Therapist and her travel records, and (2) her September and October 1995 schedule provided to us.

### ***Meaning of "Performing her Work"***

There appears to be a misunderstanding about what the draft report said. The draft stated that the former Therapist was able to spend 4 to 5 hours per day, on average, performing her work. This means that the performance of direct instructional services to her students and the administrative requirements of her position was 4 to 5 hours per day. Based on the September 1995 schedule provided to us, we were able to account for only 2 to 3 hours per day where the former Therapist spent her time in the schools. We stated in the report that we could not account for the remaining hours. In this case, we conclude that the former Therapist may have been doing her significant administrative requirements. However, she was also clearing the airports/checking in, renting a car and traveling to the schools.

It does not appear to us that the former Therapist could have provided approximately 4 to 5 hours per day of direct instructional services as stated by the Coordinator in her statement attached to the Commissioner's response, and that she spent a significant additional time completing the administrative requirements of her position. However, her hours of direct instructional services were reduced to 2 to 3 hours, on average, based on the September to October 1995 schedule. After she started commuting from Guam therefore, it appears that the former Therapist

could only have spent 1 to 2 hours, on average, completing the significant administrative requirements of her position between 7:30 a.m. to 4:30 p.m., which were her normal working hours.

### ***Effect of the Former Therapist's Travel on Her Schedule***

Regarding the Commissioner's statement that PSS's students were not adversely affected by the former Therapist's commute, PSS students probably were affected by the commute because the Coordinator told us that the former Therapist had to set priorities so she could spend as much time with her students having extreme disabilities versus those with lesser disabilities.

### ***Schedule of Former Therapist From April to October 1995***

We had requested a complete schedule of the former Therapist's activities/schedule while she was commuting from Guam to the CNMI. However, the Coordinator was only able to provide us with her schedule for the months of September and October 1995. In her statement attached to the Commissioner's response, the Coordinator stated that "the former Therapist's schedule from April to October 1995 was and is consistent with the norm for other related service providers and for all other PSS teachers." If a complete schedule from April to October 1995 was available, it should have been provided to us when we asked for it. If such schedule emerged later on, it should have been provided to us when it was discovered. At the very latest, it should have been included with the Commissioner's response. It should be noted that the CNMI Auditing Act grants OPA access to documents upon request. Nevertheless, the former Therapist's schedule for September and October 1995 which was provided to us shows a significantly reduced schedule during the time the former Therapist was commuting.

### ***Fair Labor Standards Act***

In addition, a footnote to the Coordinator's statement attached to the Commissioner's response states:

"Related Services Providers and Classroom Teachers are considered professional employees under the Fair Labor Standards Act (FLSA) and are thus salaried employees and prohibited from being required to work a minimum amount of time in any day or week. Rather, the amount of time they are required to work can only be tied to the requirements of the position. To require a minimum threshold would also require payment on an hourly basis along with any necessary overtime compensation."

On August 19, 1992, the United States Department of Labor issued additional regulations on the salary basis test which apply only to the public sector. They state in part:

"Special provisions applicable to employees of public agencies.

(a) An employee of a public agency who otherwise meets the requirements of §541.118<sup>5</sup> shall not be disqualified from exemption under §§541.1, 541.2 or 541.3<sup>5</sup> on the basis that such employee is paid according to a pay system established by statute, ordinance, or regulation, or by a policy or practice established pursuant to principles of public accountability, under which the employee accrues personal leave and sick leave and which requires the public agency employee's pay to be reduced or such employee to be placed on leave without pay for absences for personal reasons or because of illness or injury of less than one workday when accrued leave is not used by an employee . . ."

This means that employees on a pay system such that they are required by PSS to be at work from 7:30 a.m. to 4:30 p.m. do not lose their exempt status as Executive, Professional or Administrative because they are required to follow the system (e.g. timing in and out) and are being charged annual, sick, and leave without pay if they are not at work at these times. This misconception in the Coordinator's statement attached to the Commissioner's response should be corrected.

### **Status of Recommendations**

In view of the Commissioner's response that payment of commuting cost should not be prohibited, we revised our original Recommendation 1, to recommend that the PSPSRR be revised to require any payment for commuting expense to be justified and submitted to the Board of Education for approval.

In addition, we added Recommendation 2, that the Commissioner inform and direct the Coordinator and any other PSS personnel responsible for employee activities to implement policies in conformance with the FLSA and the Department of Labor regulations.

We consider both Recommendations 1 and 2 as open. The Commissioner of Education should reconsider and implement Recommendation 1, and a copy of the amended PSPSRR should be provided to OPA. For Recommendation 2, a copy

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<sup>5</sup> Relates to employees exempt from the Fair Labor Standards Act as being Executive, Professional or Administrative.

of the directive of the Commissioner to personnel responsible for employee activities to implement personnel policies accordingly should be provided to OPA.

**APPENDIX A**

**SCHEDULE OF FORMER THERAPIST'S TRAVEL  
MARCH 28 TO OCTOBER 30, 1995**

TA DATE	TA #	ROUTE		DATE		No. of Days	TRAVEL COST (\$)			TOTAL
		FROM	TO	FROM	TO		TKT	PER DIEM	CAR	
03/02	T51218	Guam	Rota/Ret	03/29	03/29	1	110	15	55	180
03/02	T51222	Guam	Rota/Ret	04/05	04/05	1	110	15	55	180
04/03	T51564	Guam	Rota/Ret	04/19	04/19	1	110	15	55	180
04/03	T51631	Guam	Rota/Ret	04/26	04/26	1	110	15	55	180
04/03	T51661	Guam	Rota/Ret	05/03	05/03	1	110	15	55	180
05/23	T52366	Guam	Rota/Ret	06/28	06/28	1	110	15	55	180
05/23	T52423	Guam	Rota/Ret	07/05	07/05	1	110	15	55	180
05/23	T52446	Guam	Rota/Ret	07/12	07/12	1	110	15	55	180
05/24	T52450	Guam	Rota/Ret	07/19	07/19	1	110	15	55	180
-	T52813	Guam	Rota/Ret	08/30	08/30	1	92	15	55	162
-	T52829	Guam	Rota/Ret	09/06	09/06	1	92	15	55	162
-	T52854	Guam	Rota/Ret	09/13	09/13	1	92	15	55	162
-	T60006	Guam	Rota/Ret	10/04	10/04	1	92	15	55	162
-	T60008	Guam	Rota/Ret	10/11	10/11	1	92	15	55	162
		Guam	Rota/Ret			14	1,450	210	770	2,430
05/18	T51895	Guam	Rota/Spn/Ret	05/17	05/19	3	179	170	165	514
05/18	T51896	Guam	Rota/Spn/Ret	05/24	05/26	3	179	170	165	514
05/23	T52078	Guam	Rota/Spn/Ret	05/31	06/02	3	179	170	165	514
05/23	T52123	Guam	Rota/Spn/Ret	06/07	06/09	3	179	170	165	514
		Guam	Rota/Spn/Ret			12	716	680	660	2,056
02/28	T51219	Guam	Saipan/Ret	03/28	03/28	1	135	15	55	205
03/02	T51221	Guam	Saipan/Ret	03/30	03/31	2	135	85	55	275
03/02	T51220	Guam	Saipan/Ret	04/03	04/04	2	135	85	55	275
03/02	T51223	Guam	Saipan/Ret	04/06	04/07	2	135	85	55	275
04/03	T51563	Guam	Saipan/Ret	04/17	04/18	2	135	85	110	330
04/03	T51571	Guam	Saipan/Ret	04/20	04/21	2	135	85	110	330
04/03	T51630	Guam	Saipan/Ret	04/24	04/25	2	135	85	110	330
04/03	T51632	Guam	Saipan/Ret	04/27	04/28	2	135	85	110	330
04/03	T51660	Guam	Saipan/Ret	05/01	05/02	2	135	85	110	330
04/03	T51659	Guam	Saipan/Ret	05/08	05/09	2	135	85	110	330
04/03	T51657	Guam	Saipan/Ret	05/11	05/12	2	135	85	110	330
04/03	T51678	Guam	Saipan/Ret	05/15	05/16	2	135	85	110	330
04/03	T51679	Guam	Saipan/Ret	05/22	05/23	2	135	85	110	330
05/23	T52079	Guam	Saipan/Ret	05/30	05/30	1	135	15	55	205
05/23	T52077	Guam	Saipan/Ret	06/05	06/06	2	135	85	110	330
05/23	T52365	Guam	Saipan/Ret	06/29	06/30	2	135	85	110	330
05/23	T52422	Guam	Saipan/Ret	07/06	07/07	2	135	85	110	330
05/23	T52447	Guam	Saipan/Ret	07/13	07/14	2	135	85	110	330
05/24	T52448	Guam	Saipan/Ret	07/18	07/18	1	135	15	55	205
05/24	T52449	Guam	Saipan/Ret	07/20	07/21	2	135	85	110	330
-	T52811	Guam	Saipan/Ret	08/29	08/29	1	73	15	55	143
-	T52812	Guam	Saipan/Ret	08/31	09/01	2	73	85	110	268
-	T52828	Guam	Saipan/Ret	09/05	09/05	1	73	15	55	143
-	T52830	Guam	Saipan/Ret	09/07	09/08	2	73	85	110	268
-	T52855	Guam	Saipan/Ret	09/14	09/15	2	73	85	110	268
-	T52891	Guam	Saipan/Ret	09/18	09/19	2	73	85	110	268
-	T52893	Guam	Saipan/Ret	09/21	09/22	2	73	85	110	268
-	T60007	Guam	Saipan/Ret	10/05	10/06	2	73	85	110	268
-	T60101	Guam	Saipan/Ret	10/23	10/24	2	73	85	110	268
-	T60106	Guam	Saipan/Ret	10/26	10/27	2	73	85	110	268
		Guam	Saipan/Ret			55	3,430	2,200	2,860	8,490
05/23	T52367	Guam	Spn/Tin/Ret	06/26	06/27	2	175	85	110	370
05/23	T52444	Guam	Spn/Tin/Ret	07/10	07/11	2	175	85	110	370
10/06	T52853	Guam	Spn/Tin/Ret	09/11	09/12	2	175	100	110	385
-	T60005	Guam	Spn/Tin/Ret	10/02	10/03	2	113	100	110	323
06/01	T52125	Saipan	Tinian/RET	06/05	06/05	1	50	0	0	50
		Guam	Spn/Tin/Ret			9	688	370	440	1,498
<b>T O T A L</b>						<b>90</b>	<b>6,284</b>	<b>3,460</b>	<b>4,730</b>	<b>14,474</b>

**APPENDIX B**

**Estimated Travel Cost of Replacement from Saipan to Rota and Tinian  
May to October 1995 Had the Replacement Been Hired in April 1995**

Route A: Travel from Saipan to Rota

Air ticket		
Air fare Saipan to Rota/back	\$112.00	
Multiply by the number of TAs/ May to Oct. 95	<u>14</u>	\$1,568.00
Per diem		
Per diem: Saipan to Rota	15.00	
Multiply by the number of TAs/ May to Oct. 95	<u>14</u>	210.00
Car rental		
Car rental	55.00	
Multiply by the number of TAs/ May to Oct. 95	<u>14</u>	770.00

Route B: Travel from Saipan to Tinian

Air ticket		
Air fare Saipan to Tinian/back	\$ 50.00	
Multiply by the number of TAs/ May to Oct. 95	<u>5</u>	\$ 250.00
Per diem		
Per diem: Saipan to Tinian	15.00	
Multiply by the number of TAs/ May to Oct. 95	<u>5</u>	75.00
Car rental		
Car rental	55.00	
Multiply by the number of TAs/ May to Oct. 95	<u>5</u>	<u>275.00</u>

Total estimated travel cost \$3,148.00

**APPENDIX C**

Appendix C (Pages 19-27), which contains the response of the Commissioner of Education and affidavits from the Recreational Therapist and the Special Education Program Coordinator, was intentionally omitted to reduce this publication's file size.

If you wish to obtain a copy of Appendix C, contact the Office of the Public Auditor or send email to "librarian@opacnmi.com."

**APPENDIX D****STATUS OF RECOMMENDATIONS**

<b>Recommendations</b>	<b>Status</b>	<b>Additional Information or Action Required</b>
1. Amend the PPSRR to include the prohibition of the payment of commuting costs unless the payment is justified by the parties concerned and approved by the Board of Education.	Open	Provide OPA a copy of the amendment to the PPSRR.
2. The Commissioner of Education to inform and direct the Coordinator of the Special Education Programs and any other PSS personnel responsible for employee activities to implement personnel policies in conformance with the FLSA and the Department of Labor regulations.	Open	Provide OPA a copy of the directive of the Commissioner to the Coordinator and any other PSS personnel responsible for employee activities to implement personnel policies in conformance with the FLSA and the Department of Labor regulations.