

**United States Department of Justice
Federal Bureau of Prisons - Office of Internal Affairs**

Report of Investigation

OSC File Number DI-13-1188

Subject: ALLEGED VIOLATION OF LAWS, RULES, OR REGULATIONS AND GROSS MISMANAGEMENT AT THE FEDERAL MEDICAL CENTER, LEXINGTON, KENTUCKY

(1) Summary of the Information with Respect to Which the Investigation was Initiated

This investigation was initiated based upon a whistleblower disclosure alleging that employees at the United States Department of Justice (DOJ), Federal Bureau of Prisons (BOP), Federal Medical Center (FMC), Lexington, Kentucky, are responsible for violations of laws, rules, or regulations and engaged in gross mismanagement. The Office of Special Counsel (OSC) received these allegations from Ellis B. Garrison, Vocational Training Instructor, at FMC Lexington, Kentucky, who consented to the release of his name.

In brief, the allegations involved the following:

- FMC Lexington Education Services Department instructors failed to spend 50% of their work hours in direct classroom instruction, as required by agency rules;
- FMC Lexington Education Services Department, with full knowledge of Education Department management, improperly used tutors as primary instructors in the General Education Development (GED) and English as a Second Language (ESL) programs, in violation of agency rules; and
- FMC Lexington Education Services Department employees violated rules and regulations regarding the administration of the Inmate Apprenticeship program by failing to monitor and verify the hours inmates claim to devote to on-the-job vocational training and classroom instruction and issuing apprenticeship completion certificates to inmates who failed to meet the program's training and instruction requirements.

(2) Conduct of the Investigation

On February 20, 2013, OSC referred this matter to the Attorney General for investigation. On March 5, 2013, the BOP Office of Internal Affairs (OIA) contacted Garrison by telephone and reviewed his complaint with him. Garrison provided the OIA with additional information related to the complaint. During this interview, Garrison agreed to mail copies of documents he had concerning the apprenticeship programs to the OIA, which were then received and reviewed by the OIA. On March 20, 2013, the OIA contacted Garrison again by telephone and discussed

his specific concerns related to the apprenticeship program. Between March 5, 2013, and April 30, 2013, the OIA reviewed available records for 236 inmates currently in an apprenticeship program at FMC Lexington and spoke with U.S. Department of Labor (DOL) staff concerning the apprenticeship programs at FMC Lexington. On April 30, 2013, the OIA visited FMC Lexington to conduct interviews and to review relevant documents. The OIA conducted interviews of ten BOP employees, two Department of Labor employees, and 11¹ inmate tutors. Additionally, institution records and previous audits/reviews were examined, and apprenticeship job detail inspections were conducted.

(3) Summary of Evidence Obtained from the Investigation

Background:

FMC Lexington is located in Lexington, Kentucky. This administrative BOP facility² has been in operation since 1929. Female offenders are housed at the Satellite Prison Camp; male offenders who require chronic care for medical/surgical and psychiatric conditions are housed at the main facility.

Vocational Training Instructor Ellis Garrison's initial complaint to the OSC concerned violations related to the inmate apprenticeship programs at FMC Lexington. Garrison stated he was later contacted by an attorney from the OSC, to whom he provided approximately eight documents which revealed that inmate training hours were not being verified by the detail supervisor, that some of the requirements under the Department of Labor's work process schedules were difficult for inmates to meet, and that the apprenticeship programs were not being tracked or coordinated according to Department of Labor standards. Garrison stated that the OSC attorney questioned him about the use of inmate tutors as primary instructors. Garrison said he informed the OSC attorney this was, in fact, the practice at FMC Lexington (based on his personal observations) for classes in the GED and ESL programs, and that instructors spend less than 50% of their time in direct classroom instruction.

A regularly scheduled program review of FMC Lexington's Education Services department occurred February 26-28, 2013. A "program review" is a comprehensive audit to determine policy compliance and program quality. Program reviews are conducted by the BOP Program Review Division (PRD). Program reviews typically occur every three years for all departments at all BOP facilities, although they occur more frequently if significant problems were identified in a prior program review.

At the time of the 2013 program review, the FMC Lexington Education Services Department was led by a Supervisor of Education (SOE), Meridith Burt, who supervised seven teachers (one of which is assigned to the Camp), four vocational instructors (one of which is the

1 As of April 24, 2013, there were 12 inmate tutors. One inmate has been released from custody and not interviewed.

2 "Administrative" facilities are correctional institutions with a special mission and are designed to house inmates of all security levels.

apprenticeship program coordinator³), one education specialist and one education technician. At the time of the program review there were two vacant teacher positions.⁴

Allegation 1. Mr. Garrison alleged that FMC Lexington Education Services Department instructors failed to spend 50% of their work hours in direct classroom instruction as required by agency rules.

BOP Program Statement 5300.21, Education, Training and Leisure Time Program Standards, requires all full-time teachers and education specialists to spend at least 75% of their 40-hour workweek in instruction or in work related to instruction, with a minimum of 50% of their work hours spent in direct classroom instruction.

Garrison informed the OSC, based on his personal observations, that nine out of ten⁵ full time instructors and teachers fail to spend 50% of their work day in direct classroom instruction.

The FMC Lexington's Education Services 2013 program review did not support Garrison's assertions to the extent he alleged. The PRD examined departmental schedules, staff schedules and classroom schedules, and ultimately determined that all instructors -- save one -- met the 50% time requirement. The program review revealed that one education specialist on staff did not spend at least 50% of his time in direct class instruction.

During the OIA visit to FMC Lexington, SOE Meridith Burt and GED Coordinator and Teacher Robin Rutherford were interviewed about the percentage of direct classroom of instruction by teachers or education specialists. Burt identified one particular education specialist as having failed to spend at least 50% of his time in direct classroom instruction. Burt said she was not aware of any other instructor who failed to meet this requirement. Burt explained that because she had two staff vacancies in the department, she needed to utilize staff to provide coverage in other important educational areas. In that regard, Burt utilized the particular education specialist to maintain and supervise the "inmate resource center" in the evenings. As a result of the inmate resource center coverage by this particular education specialist, his classroom instruction time was reduced to less than 50 percent of his work time.

GED Coordinator Rutherford stated that he had been unaware of any instructor not spending at least 50% of their time in direct classroom instruction. Rutherford stated that this issue had not been brought to his attention as a problem. Rutherford stated that he only became aware of the one particular education specialist's reduced classroom time as a result of the February 2013 program review.

3 The apprenticeship coordinator is a collateral duty typically assigned to an Education Services employee.

4 As of June 3, 2013, the department had two additional vacancies due to another teacher deployed to active military duty and the retirement of a vocational instructor.

5 This was based on the staff complement of the Education Services department which existed when Garrison contacted the OSC (six teachers and four vocational instructors).

An additional six teachers/instructors responsible for teaching GED were interviewed and stated that they spent at least 50%, if not more, of their time in direct classroom instruction.

The one education specialist identified during the program review as having failed to spend at least 50% of his time in direct classroom instruction was interviewed. He confirmed that Burt altered his schedule so coverage could be provided for the "inmate resource center" during the evening hours.

Because one instructor did fail to spend at least 50% of his work time in direct classroom instruction, a violation of BOP policy did occur. However, the investigation did not support Garrison's initial claim that nine out of ten instructors failed to spend at least 50% of their time in direct classroom instruction.

Allegation 2. Mr. Garrison alleged the FMC Lexington Education Services Department, with full knowledge of Education Services Department management, improperly used tutors as primary instructors in the General Education Development (GED) and English as a Second Language (ESL) programs in violation of agency rules.

According to BOP Program Statement 5300.21, Education, Training and Leisure Time Program Standards, inmate tutors/aids cannot serve as the primary instructors for the GED or ESL programs. They can only assist BOP staff or contract instructors with instruction delivery.

According to Garrison, inmates -- not staff instructors -- are used to teach classes the majority of the time. Burt stated that BOP staff serve as the primary instructors for GED and ESL classes, and that inmate tutors are used to assist and supplement staff instruction. Rutherford stated that BOP staff prepare and coordinate the GED and ESL lesson plans. Rutherford stated that inmate tutors are not used as primary teachers/instructors, but rather supplement the staff and assist the student inmates.

The PRD interviewed two teachers and three inmate tutors during the February 2013 program review. All staff and inmates interviewed verified that inmate tutors are not being used as primary instructors.

An additional 11 inmate tutors were interviewed by the OIA and questioned as to their roles and participation as inmate tutors. All 11 inmates stated that staff serve as primary instructors. The inmates stated they serve as supplemental tutors to help other inmates on an individual basis with material they have difficulty understanding. An additional six GED teachers/instructors were interviewed by the OIA. All six stated that inmate tutors are not used as primary instructors. Rather, the tutors are used to supplement what is taught and help students who have difficulty with the subject matter.

The investigation did not reveal any evidence to support Garrison's claim that inmate tutors are improperly used as primary instructors in the GED and ESL programs.

Allegation 3. FMC Lexington Education Services Department employees violated rules

and regulations regarding the administration of the Inmate Apprenticeship programs by failing to monitor and verify the hours inmates claim to devote to on-the-job vocational training and classroom instruction and issuing apprenticeship completion certificates to inmates who failed to meet the program's training and instruction requirements.

A. Background on the Apprenticeship Program and Role of the Apprenticeship Coordinator

BOP Program Statement 5353.01, Occupational Education Programs, describes the apprenticeship programs for inmates. This Program Statement allows apprenticeship programs for inmates in those areas of the institution which have the potential to meet the requirements and standards of the Bureau of Apprenticeship and Training (BAT), Department of Labor.

The Program Statement also states that the Supervisor of Education will review apprenticeship opportunities in all areas of the institution and appoint an Education Services staff member to serve as an Apprenticeship Coordinator. BOP's Vernon Shackelford, Vocational Training Instructor, serves as the Apprenticeship Coordinator at FMC Lexington. Stephen Steed, from the Office of Apprenticeships at the Department of Labor, serves as the institution's point of contact for apprenticeship programs, and has fulfilled that role since 2005.

BOP Program Statement 5353.01, Occupational Education Programs, requires the Apprenticeship Coordinator to:

Conduct apprenticeship committee meetings at least twice a year, with at least one meeting conducted at the institution. Minutes from these meetings will also be prepared and maintained for three years.

In addition, the BOP Standardized Position Description for a Vocational Training Instructor states the following:

- Incumbent may serve as apprenticeship program coordinator with responsibility for coordinating the various occupational training programs and classes, as well as responsibilities which include development, review and evaluation of the vocational trades program.
- Ensures the training program(s) are implemented and delivered in compliance with Bureau policies, Department of Labor, and Bureau of Apprenticeship and Training regulations, and the standards established by other certifying agencies and organizations.
- May serve to coordinate Trade Advisory Committees and semi-annual apprenticeship meetings.

The Standardized Position Description for a Vocational Training Instructor further states:

- May be responsible for maintaining records for each or all vocational and apprenticeship courses and maintain waiting lists for vocational training programs.
- Knowledge Required by the Position: Knowledge to interpret and facilitate inter-departmental communications and programming of education needs.
- Guidelines:
 - The guidelines include Bureau program statements, institution supplements, manuals, textbooks, publications, and Department of Labor guidelines for apprenticeship programs. When guidelines appear to be in conflict, problems may be referred to the supervisor for resolution.
 - The incumbent must continuously identify and assess conditions and elements of learning activities which impact overall program progress and effectiveness, and must evaluate the vocational/apprentice programs in terms of efficiency, objectives, and achievements.

The PRD's report on their February 2013 program review noted that there are multiple apprenticeships available to inmates. However, because the apprenticeship programs are accredited by an outside agency (in this case, the Department of Labor), the Program Review Division does not have specific program review steps to determine compliance. Stephen Steed, the DOL representative responsible for conducting compliance reviews of apprenticeship programs at FMC Lexington, stated that due to budgetary constraints, he has not visited FMC Lexington to conduct a compliance review since assuming his position in 2005.

Meridith Burt has served as the Supervisor of Education since December 2011. She stated that since she has been the SOE, there has not been an apprenticeship committee meeting or meeting with other departments to discuss or review the apprenticeship programs at FMC Lexington. Shackelford has been the Apprenticeship Coordinator since 1996. Shackelford stated that there has not been an apprenticeship committee meeting since 2007.

During the investigation, the Standards of Apprenticeship for FMC Lexington were reviewed. These standards outline the basic requirements for the apprenticeship programs at FMC Lexington, outline the apprenticeship committee's responsibilities and duties, as well as reiterate the Department of Labor and BOP criteria and program requirements related to the apprenticeship programs. Of particular note,

- The Standards of Apprenticeship for FMC Lexington has not been updated since 1996. Appendix 1 is the cover page from this document.

- Each apprenticeship program has a "Work Process Schedule" (WPS), approved by the Department of Labor, which provides a description of the program, on-the-job-training requirements and number of required hours (in each area) needed for completion of the apprenticeship program. Appendix 2 is an example (the "Material Coordinator" WPS) of a record used at FMC Lexington.
- Each apprenticeship program has a corresponding "On the Job Training (OJT) Record." This record tracks the number of hours earned each month for the required skill areas, total number of hours to date for each area, and total number of program hours. Appendix 3 is an example (the "Material Coordinator" OJT Record) of a record used at FMC Lexington.

According to Shackelford, "We do not have trade advisory committee meetings or any type of formal meetings and/or review of the programs or progress of the inmates." The trade advisory committee would normally review each apprenticeship program to determine the suitability of a WPS and to determine if the program requirements are able to be achieved by inmates. Since there has not been a trade advisory committee meeting within the past six years, documentation does not exist to support any type of initial and/or continuing review of apprenticeships, jobs, programs or WPSs.

During the site visit to FMC Lexington, Shackelford reviewed the 25 WPSs and reported that there are approximately 13 areas in various WPSs that are either too difficult for and/or otherwise incapable of inmate achievement. Depending on the specific type of on-the-job-training required by the inmate to fulfill the apprenticeship requirements, BOP policy limits and/or prohibits inmates from working directly in these more difficult areas. The only way inmate work would be permissible for some of these areas is if adjustments or changes by the trade advisory committee are recommended, specific training outlines are established, and these changes are approved by the Department of Labor.

Because of the lack of trade advisory committee meetings, and the lack of meaningful review of the apprenticeship programs, there was a general lack of oversight in FMC Lexington of its apprenticeship program. This lack of oversight violated BOP policy.

B. Documentation of Inmate Credit Hours in the Apprenticeship

Credit hours earned by BOP inmates in apprenticeship programs are tracked in the BOP's SENTRY⁶ system. BOP Program Statement 5300.21, Education, Training and Leisure Time Program Standards, states:

The start date for tracking apprenticeship training hours in the SENTRY-based Education Courses (EDC) category is the actual date when the state or local apprenticeship training bureau or council accepts an inmate into the apprenticeship program.

⁶ SENTRY is a real-time information system for processing sensitive but unclassified (SBU) inmate information and for property management. Data collected and stored in the system includes information relating to the care, classification, subsistence, protection, discipline, and programs of federal inmates.

"PEED"⁷ SENTRY transactions identify the date an inmate enters a particular apprenticeship program, the total number of hours credited for the inmate in the program, and the date the program ends. As the Apprenticeship Coordinator, Shackelford is responsible for tracking the monthly Apprenticeship OJT Records and entering the apprenticeship hours into SENTRY. Appendix 4 is an example of a "PEED" SENTRY transaction for an inmate enrolled in the Nursing Assistant Apprenticeship program at FMC Lexington.

The OIA investigation revealed that, at FMC Lexington, inmates in the programs track their own hours and their detail supervisors (BOP employees) are supposed to verify the hours by signing their Apprenticeship OJT Records. Shackelford admitted there have been times when he has given inmates credit for hours which inmates recorded on the OJT Records but which were not signed/verified by detail supervisors. Appendix 5 is an example of an Apprenticeship OJT Record for an inmate enrolled in the Nursing Assistant apprenticeship program.

The Department of Labor's Stephen Steed stated FMC Lexington is required to maintain documentation for each inmate apprentice for five years from the last date of activity in the program. Steed provided guidance to Shackelford (email dated February 10, 2011) wherein he explained that a "recap" sheet showing the OJT total hours suffices to track the progress and completion of an apprenticeship program by an inmate. Pursuant to this guidance, monthly Apprenticeship OJT Records are not maintained. Rather, only the most current or final OJT Record is maintained. Therefore, there is no reasonable way to determine how many monthly OJT Records were signed/verified by detail supervisors.

FMC Lexington Institutional Supplement 5251.06, Inmate Work and Performance Pay; Inmate Vacations, states:

- The normal inmate workday is a minimum of seven hours with an appropriate lunch period.
- Inmates will be paid for the hours worked (time spent on the job with acceptable performance) including any emergency work performed after the regularly scheduled workday.
- Each inmate should be scheduled to a normal workweek of approximately thirty-five hours.
- It is the responsibility of each Department Head and Detail Supervisor to ensure inmates are not allowed to fill out, process, or handle inmate pay sheets. These sheets shall be filled out by staff.

During the site visit to FMC Lexington, the records of several inmates who had a high number of OJT hours recorded in SENTRY were reviewed. The investigation revealed several instances in which the total number of OJT hours could not have been accurate given the number of hours inmates likely were able to actually work on their respective work details. The table

⁷ "PEED" SENTRY transactions comprise inmates' electronic education transcripts.

below contains data for two inmates as examples. The fourth column reflects the total number of OJT hours recorded in SENTRY. The remaining three columns depict the number of actual hours recorded in the Inmate Performance Pay (IPP) system, and the number of possible hours worked if the inmates worked a 35 or 40 hour week, respectively.

Inmate	Apprenticeship Program	Dates in PEED (SENTRY)	# of Hours Recorded in PEED (SENTRY)	# of Hours Recorded in IPP for Corresponding Dates	# of Possible Hours if Worked a 35 Hour Week	# of Possible Hours if Worked a 40 Hour Week
Inmate A	Cook	8/16/10 to 8/21/12	5000	3888	3710	4240
Inmate B	Automobile Mechanic	9/26/08 to 12/1/2010	4800	3787	3990	4560

Shackelford was asked to review the records of inmates who had a high number of OJT hours recorded. He stated, "It is fair to say that inmates work an average of seven hours a day, or about 140 hours a month." Shackelford added, "There are times when an inmate can work up to eight hours a day and/or 160 hours a month, especially in UNICOR." Shackelford reviewed various OJT Records which revealed inmates recorded eight hour work days and/or recorded hours as working weekends and/or holidays. Shackelford stated, "I have entered hours into SENTRY without signatures/verification from the detail supervisor."

The investigation illustrated that inaccurate hours were reported by inmates, and insufficient verification of work records occurred. This violated BOP policy.

C. Certification of Apprenticeship Program Completion

Once an inmate completes an apprenticeship program, Shackelford is responsible for entering the information into the Department of Labor database "RAPIDS" (Registered Apprenticeship Partners Information Data System). The Department of Labor then issues a Certificate of Completion of Apprenticeship based on the information Shackelford enters into RAPIDS. Once the Department of Labor issues the certificate to Shackelford, he signs the certificate (Shackelford is the only FMC Lexington staff member authorized to sign the certificate) and issues it to the inmate. Appendix 6 is a sample certificate from the Department of Labor.

In sum, the investigation revealed sufficient evidence BOP policy was violated, in that Shackelford failed to ensure that various inmate apprenticeship programs were in compliance with applicable standards. Inmate OJT hours were not verified by supervisors, inmates recorded a higher number of hours than they could have possibly worked, and some inmates were given credit for experience which BOP policies limit or prohibit. In addition, BOP policy was violated in that Burt and Shackelford failed to ensure trade advisory committee meetings were held which would have provided oversight and input into the apprenticeship programs, OJT, and WPSs. In addition, FMC Lexington, through Shackelford, issued certificates of completion to inmates with incomplete apprenticeship accomplishments.

(4) Violation of Laws, Rules, or Regulations

Allegation 1.

The investigation revealed insufficient evidence to support Garrison's claim that nine out of ten Education Services instructors at FMC Lexington did not spend at least 50% of their work time in direct classroom instruction. However, the investigation did confirm the PRD's February 2013 finding that one education specialist did not spend at least 50% of his time in classroom instruction, due to the instruction of the Supervisor of Education to provide coverage in other areas. Thus, there was one instance of a violation of applicable BOP policy.

Allegation 2.

The investigation revealed insufficient evidence to support Garrison's claim that inmate tutors are improperly used as primary instructors in the GED and ESL programs at FMC Lexington.

Allegation 3.

The investigation revealed sufficient evidence to support Garrison's claim that Education Services employees violated BOP policy regarding the administration of the Inmate Apprenticeship programs by failing to monitor and verify the hours inmates claim to devote to on-the-job vocational training and classroom instruction and crediting some inmate OJT hours for experience which BOP policy limits or prohibits inmates from engaging in. The investigation also revealed a general lack of oversight of the apprenticeship program at FMC Lexington.

(5) Action taken or planned as a result of the investigation

(A) Changes in agency rules, regulations or practices.

As required by BOP Program Statement 1210.23, Management Control and Program Review Manual, FMC Lexington was required to respond to the "deficiency"⁸ related to Allegation 1 (i.e., that the education specialist did not spend at least 50% of his work time in direct classroom instruction) and ensure that controls are in place to prevent recurrence. On April 10, 2013, the PRD received FMC Lexington's response and accepted the corrective measures and plan of action to correct the discrepancy. The specific plan of corrective action was to adjust the education specialist's class times and responsibilities so that he meets the requirement of spending at least 50% of time in direct classroom instruction. In addition, the Associate Warden responsible for FMC Lexington's Education Services department has scheduled a follow-up review the week of July 8-12, 2013, to ensure compliance in this area.

⁸ "Deficiency" is a term used by the PRD to denote a finding of policy non-compliance.

FMC Lexington is organizing a work group to review all the apprenticeship programs to ensure compliance with DOL standards.

FMC Lexington will re-institute the required semi-annual apprenticeship committee meetings to ensure review, compliance and oversight of the apprenticeship programs.

Emphasis will be placed on verification/certification of inmate OJT hours and WPSs.

- (B) Restoration of any aggrieved employee.

Not applicable.

- (C) Disciplinary action against any employee.

Disciplinary action will commence for employees Meridith Burt and Vernon Shackelford for their failures to ensure (Burt) and maintain (Shackelford) adequate oversight and implement effective systems of control with regard to the Inmate Apprenticeship programs.

- (D) Referral to the Attorney General of any evidence of criminal violation.

Not applicable.