

ETA's Response to Draft Report

U.S. Department of Labor

JUL 30 2010

Employment and Training Administration
200 Constitution Avenue, N.W.
Washington, D.C. 20210



MEMORANDUM FOR: ELLIOT P. LEWIS
Assistant Inspector General
for Audit

FROM: JANE OATES *Jane Oates*
Assistant Secretary

SUBJECT: Response to the Office of the Inspector General's (OIG's)
Draft Report, Performance Audit of MINACT, Inc., Job Corps
Center Operator, Draft Report Number 26-10-004-01-370

Thank you for the opportunity to review the OIG draft report on the Performance Audit of MINACT, Inc., Job Corps Center Operator, dated June 17, 2010. Listed below are the OIG's recommendations as well as the response by the Office of Employment and Training, Office of Job Corps (OJC):

- **OIG Recommendation 1** – *“Improve corporate-level controls and monitoring over all centers to identify and correct any non-compliance with applicable Federal regulations, contract agreements, Job Corps requirements, and MINACT policies for managing and reporting financial activity.”*

OJC Response - Concur. The National Director will forward a memorandum through the Atlanta, Dallas, and Chicago Regional Offices to instruct the center operator to improve corporate-level controls and monitoring over the centers for managing and reporting financial activities. They will be instructed to provide training to the appropriate staff member(s) and notify Job Corps of the plan to conduct the training. Also, the memorandum will address identifying and correcting any non-compliance issues and possible control weaknesses in the center operator's policies pertaining to Federal regulations, contract agreements, and Job Corps requirements.

In the event non-compliance issues are identified through data integrity audits, a corrective action plan will be required from the center operator to address these issues.

- **OIG Recommendation 2** – *“Require MINACT to provide the necessary documentation to show Excelsior Springs received all of the services for the \$203,921 in questioned costs, or reimburse the amounts it is not able to support.”*

OJC Response - Concur. The Chicago Regional Office, in coordination with the Regional Contracting Officer, will require the center operator to provide supporting documentation for the questioned costs in the amount of \$203,921, and will determine the

extent of any reimbursements resulting from unsupported questioned costs. If it is determined that unsupported questioned costs are identified, the center operator will be assessed liquidated damages. All information will be forwarded to the OIG.

- **OIG Recommendation 3** – *“Improve controls and monitoring over all centers to identify and correct any non-compliance with Job Corps student misconduct requirements and periodically test those controls to determine effectiveness. The controls and monitoring should ensure FFBs are convened.”*

OJC Response – Concur. The National Director will forward a memorandum through the Atlanta, Dallas, and Chicago Regional Offices to instruct the center operator to revise its current Standard Operating Procedures (SOPs) and policies to ensure corporate oversight and center level controls are in compliance with established student misconduct requirements. The Regional Directors will be advised to inform the center operator that the revised SOPs will need to be submitted for review and approval and must include improving controls and monitoring for the convening of a Fact Finding Board for Level I and II infractions, as specified in the PRH. Further, the OJC will require the aforementioned Regional Directors to instruct the center operator to periodically validate and document the effectiveness of controls. These records will be reviewed during Regional Office center assessments and monitoring visits.

- **OIG Recommendation 4** – *“Periodically validate whether the safety and health programs at its centers are managed in accordance with Job Corps requirements. This includes ensuring all safety and health inspections and committee meetings are conducted and documented as required.”*

OJC Response – Concur. The OJC will require the Atlanta, Dallas, and Chicago Regional Offices to instruct the center operator to periodically validate whether the safety and health programs at the centers are managed in accordance with Job Corps requirements based on the PRH. As a result, the center operator’s Corporate Office should continue to monitor the safety and health programs by conducting annual assessments and monitoring visits. If deficiencies are identified, the center operator will be required to submit a corrective action plan, to the Regional office, within 30 days after the assessment is completed.

Based on the OIG’s finding regarding the lack of monthly safety and health inspections at the Excelsior Springs Job Corps Center, Building #5, scheduled for demolition and occupied by both students and staff during CY 2009, a monitoring trip was conducted by the Contracting Officer’s Technical Representative (COTR) on June 24, 2010. The COTR determined that Building #5 has been completely evacuated and is not being utilized by students or staff at this time.

On December 3, 2009, a directive was released to the Job Corps community reminding center operators that center safety committees must meet in accordance with the PRH

Chapter 5, Section 5.14, R2.g. The directive instructed that meeting minutes and agendas must be maintained on file for 3 years. Please refer to Attachment 1.

In accordance with the PRH Chapter 5, Management, 5.15, Safety Inspections, Observations, and OSH Program Review, dated December 3, 2009, “*All occupational safety and health inspections and observations must be: Documented and maintained on center for a period of 5 years, then destroyed.*” Please refer to Attachment 2.

Attachment 1: Directive: Job Corps Program Instruction No. 09-28, dated December 3, 2009.

Attachment 2: PRH Chapter 5, Management, 5.15, Safety Inspections, Observations, and OSH Program Review, dated December 3, 2009.

- **OIG Recommendation 5** – “*Improve the effectiveness of training and supervisory oversight to staff responsible for complying with Job Corps’ safety and health programs.*”

OJC Response – Concur. The OJC supports the recommendation to provide training and supervisory oversight in complying with Job Corps’ safety and health programs. The OJC will require the Chicago Regional Office to request the center operator to submit staff training verification, and Center Operator Procedures (COPs), for Excelsior Springs Job Corps Center, to reflect improvement in the area of training for the safety and health programs. Also, the Chicago Regional Director will require that the center operator submits quarterly reports describing the validation process, including documentation that the required committee meetings and inspections occurred in order to demonstrate improvement in the area of supervisory oversight.

- **OIG Recommendation 6** – “*Determine whether additional unallowable costs were charged at all MINACT operated centers without the required approvals and support, and require reimbursement as appropriate.*”

OJC Response – Concur. The Atlanta, Dallas, and Chicago Regional Offices, in coordination with the Regional Contracting Officers, will determine whether additional unallowable costs were charged without the required approvals and support for the MINACT operated Job Corps centers. If it is determined that additional unallowable

costs are identified, the center operator will be assessed liquidated damages. The initial determination letter will be forwarded to the OIG.

- **OIG Recommendation 7** – *“Ensure the reliability of Job Corps’ CIS data pertaining to student misconduct indicators such as Level I and II infractions and FFBs at all MINACT operated centers.”*

OJC Response – Concur. The OJC will require the Atlanta, Dallas, and Chicago Regional Offices to instruct the center operator to provide training and oversight to staff in order to assess student misconduct appropriately, record infractions correctly, and convene FFBs when required, for Level I and II infractions as specified in the PRH. In addition, the OJC will require the Regional Offices to request the center operator to submit COPs for approval and staff training verification. The center operator will be instructed to conduct periodic reviews of Job Corps’ CIS data and security logs to determine whether student misconduct infractions were appropriately assessed based on the PRH.

Attachments

ATTACHMENT 1

- 1) Directive Job Corps Program Instruction No. 09-28, dated December 3, 2009.

December 3, 2009

DIRECTIVE:	JOB CORPS PROGRAM INSTRUCTION NO. 09-28
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TO: ALL JOB CORPS NATIONAL OFFICE STAFF
ALL JOB CORPS REGIONAL OFFICE STAFF
ALL JOB CORPS CENTER DIRECTORS
ALL JOB CORPS CENTER OPERATORS
ALL NATIONAL TRAINING AND SUPPORT CONTRACTORS
ALL OUTREACH, ADMISSIONS, AND CTS CONTRACTORS

FROM: LYNN A. INTREPIDI
Interim National Director
Office of Job Corps

SUBJECT: Job Corps Center Occupational Safety and Health Committees

1. **Purpose.** To remind the Job Corps community of the requirement to establish and maintain center occupational safety and health (OSH) committees.
2. **Background.** In accordance with 29 Code of Federal Regulations 1960 (29 CFR 1960), Basic Program Elements for Federal Employee Occupational Safety and Health Programs and Related Matters, all federal agencies are required to implement a safety and occupational health program that includes establishing agency and establishment level safety committees (Subpart F). Additionally, the U.S. Department of Labor Manual Series (DLMS) 4, Chapter 800, DOL Safety and Occupational Health Program, paragraph 830 requires DOL agencies, including Job Corps, to establish safety committees. Job Corps Policy and Requirements Handbook (PRH) Chapter 5, Section 5.14, R2.g establishes the requirements for center safety and occupational health committees, including:
 - a. roles and responsibilities;
 - b. committee membership;
 - c. meeting intervals; and
 - d. documenting and maintaining meeting minutes.

Recently, several Job Corps centers have been rated poorly during the annual OSH program review and cited in U.S. Department of Labor Office of Inspector General (OIG) audits for failure to document safety committee meeting minutes and agendas. PRH Chapter 5, Section 5.14, R2.g.5 requires centers to maintain meeting minutes and agendas for 3 years and to make them available upon request.

3. **Action.** Job Corps centers shall review and implement the safety committee requirements outlined in PRH Chapter 5, Section 5.14, R2.g. **Center safety committees must meet monthly or as needed in accordance with the PRH.** Meeting minutes and agendas must be maintained for 3 years and easily accessible during the annual OSH program review and OIG audit. Meeting minutes should include:

- a. a list of attendees;
- b. an agenda of items discussed; and
- c. action items.

Copies of the meeting minutes should be posted prominently in staff and student gathering areas or made available upon request.

For more information about safety committees, see the attached *Best Practices Guide for Safety Committees*, developed by the Maine Municipal Association Risk Management Services, Loss Control department. An electronic copy of the guide is available at <http://www.memun.org/RMS/LC/bestprac/SafetyCommittees.pdf>

Addressees are to ensure that this Program Instruction is distributed to all appropriate staff.

4. **Expiration Date.** Until superseded.

5. **Inquiries.** Direct all inquiries to Marsha Fitzhugh at (202) 693-3099 or fitzhugh.marsha@dol.gov, Kelley Clark at (202) 693-3089 or clark.kelley@dol.gov, or Heather Edmonds at (202) 693-3774 or edmonds.heather@dol.gov.

Attachment

Best Practices Guide for Safety Committees

ATTACHMENT 2

- 1) PRH Chapter 5, Management, 5.15, Safety Inspections, Observations, and OSH Program Review, dated December 3, 2009.

5.15 SAFETY INSPECTIONS, OBSERVATIONS, AND OSH PROGRAM REVIEW

PURPOSE

- P1. To ensure that students and staff work and live in environmentally healthy surroundings.
- P2. To provide a training, living, and working environment that ensures the occupational safety and health of students and staff.

REQUIREMENTS

R1. *Imminent Danger*

Imminent danger exists when a condition or practice presents a danger that could reasonably be expected to cause death or serious physical harm. If such a situation exists and is observed, the student(s) and staff in danger must be immediately removed from the area and not permitted to return until the problem is corrected. The safety officer must immediately notify the center director of the hazard and recommend corrective action. The center director must take appropriate action(s) to correct the hazard. If the hazard cannot be corrected promptly by the center, the center director must consult the appropriate Regional Office and/or the National Office of Job Corps for advice and assistance in correcting the hazard. The action recommended by the safety officer and the resulting action taken must be documented in writing and maintained on center for a period of 3 years.

R2. *Required Inspections and Observations*

- a. All occupational safety and health inspections and observations must be:
 - 1. Conducted by appropriate center staff in accordance with 29 CFR 1960.25 and DLMS 4 Chapter 800, paragraph 825.
 - 2. Submitted according to Exhibit 5-2, Plan and Report Submission Requirements.
 - 3. The responsibility of the center safety officer, managers, supervisors, and instructors.
 - 4. Documented and maintained on center for a period of 5 years, then destroyed.
- b. Observations on a daily basis, and weekly or monthly inspections are required for all center:
 - 1. Buildings
 - 2. Facilities
 - 3. CTT facilities
 - 4. CTST projects
 - 5. Academic classrooms
 - 6. Cafeterias

7. Dormitories
8. Health services
9. Administrative offices
10. Recreation areas
11. Gymnasiums
12. Swimming pools
13. Child development center facilities, including playgrounds
14. Equipment
15. Vehicles used to transport students

Identified deficiencies must be corrected promptly. Weekly and monthly inspections, and hazards identified during daily observations, must be documented; records of inspections and actions taken to correct deficiencies must be maintained by the center safety officer for 3 years, and made available upon request.

c. Daily Observations

1. Food service supervisors must check food preparation and food serving areas of cafeterias.
2. Residential advisors must check dormitories, snack bars, and canteens and document their findings in a log book.
3. The safety officer, and CTT and academic managers/instructors, must check classrooms/shops (including CTST projects), motor vehicles, and all equipment to be used by students and staff.
4. Child development supervisors must check the child development center, equipment and toys, and the playground.
5. Recreation supervisors/staff must check the gymnasium, exercise equipment, and other frequently used recreation areas.

d. Weekly Inspections

The center safety officer must inspect:

1. All food service facilities, including cafeterias, culinary arts facilities, snack bars, and canteens.
2. Gymnasiums, exercise equipment, and swimming pools during times of operation.
3. CTT facilities and CTST projects.

e. Monthly Inspections

The center safety officer must inspect:

1. Dormitories

2. Child development center
3. CTT facilities and CTST projects (see Chapter 3, Section 3.2)
4. Academic classrooms
5. Health services
6. Administrative offices, warehouses, and other buildings occupied by students and staff

f. Quarterly Inspections

Centers must arrange for quarterly environmental health inspections by qualified non-center personnel in the following areas:

1. Food service facilities
2. Residential facilities
3. Training facilities
4. Educational facilities, including offices, classrooms, recreational facilities, and wellness center
5. Water supply and distribution facilities, when not a part of municipal systems
6. Wastewater treatment facilities, except for septic systems, which must be inspected annually, and municipal sewer systems, which are exempt from this requirement
7. Child development center, where appropriate

Centers must submit quarterly environmental health reports and necessary corrective action, simultaneously, to the Regional Office and the National Office of Job Corps within 7 days of receipt. (See Exhibit 5-2, Plan and Report Submission Requirements.)

g. CTST and Other Projects

The center safety officer and appropriate instructor must inspect all CTST projects daily. The center safety officer must inspect and approve all final CTST projects, on and off center, before site occupancy and project completion. Inspection checklists, photographs, and associated corrective actions must be maintained on center indefinitely and made available upon request.

R3. Annual Occupational Safety and Health (OSH) Program Reviews

- a. The annual occupational safety and health (OSH) program review is conducted in accordance with Executive Order 12196, Title 29 Code of Federal Regulations (CFR) part 1960, Department of Labor Manual Series (DLMS) 4, Chapter 800, and the Job Corps Policy and Requirements Handbook (PRH). The review verifies that each center has implemented the safety and health program outlined in the PRH and identifies any outstanding occupational health and safety issues. The review consists of an on-site visit including opening and closing conferences, walk-through of facilities, document verification, and student/staff interviews.

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MINACT's Response to Draft Report



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June 30, 2010

Mr. Elliot P. Lewis
Assistant Inspector General for Audit
U.S. Department of Labor
Office of Inspector General
Washington, D.C. 20210

RE: Draft Audit Report No. 26-10-004-01-370 – Performance Audit MINACT,
Inc., Job Corps Center Operator

Attention: Mr. Ray Armada

Dear Mr. Armada,

Enclosed are MINACT's comments to the draft report referenced above. We are requesting that original source documentation be returned. We also have a concern that the discussion draft report was distributed to regional directors prior to our opportunity to discuss the report and prior to our opportunity to comment.

Sincerely,

A handwritten signature in blue ink that reads "Sam Devore".

Sam Devore
EVP

 "MAKING THE AMERICAN DREAM A REALITY"

MINACT Comments on OIG Report Number: 26-10-004-01-370

Objective 1 - Did MINACT ensure compliance with Job Corps requirements for managing and reporting financial activity?

MINACT's non-compliance with Job Corps requirements resulted in questioned costs totaling \$203,921.

Finding 1 — MINACT did not always ensure compliance with Job Corps requirements for managing and reporting financial activity for each of the two areas reviewed — non-personnel and personnel expenses.

Response to Finding 1 – Non-Personnel Expenses: The Office of Inspector General (OIG) indicated that non-personnel expenses lacked assurance goods and services were properly approved, received and processed.

With regard to professional health subcontractors, the Job Corps Policy and Requirements Handbook, Chapter 6.12, requires Job Corps centers to ensure that health services staffing is in compliance with the staffing levels presented in Exhibit 6-5; that Job Corps centers must provide at least the minimum acceptable hours based on student population design. In addition; through a Job Corps Technical Assistance Guide; the National Office of Job Corps provides prototype professional health subcontracts for use by center operators. As a result, professional health services are actually acquired based on availability to provide services. However, MINACT, as well as the Government through its health and wellness assessment, asserts that actual services were provided by professional health services subcontractors. Through this audit period, the Excelsior Springs Manager of Wellness properly reviewed and approved monthly invoices submitted by professional health subcontractors. After review of monthly invoices, if additional information is needed, the Manager of Wellness makes such a request which was noted by the OIG auditors. Collaborating documentation for monthly invoices includes daily calendars and individual student health files. Even though timesheets for professional health subcontractors are not required by the FAR or the PRH; MINACT will require completion of individual timesheets on a go-forward basis based on this audit.

Through an existing memorandum of understanding with the Excelsior Springs Public School, the Excelsior Springs Center was able to engage the services of the IT provider to set up a computer lab. The invoices for services rendered were reviewed and approved by the Excelsior Springs Director of Administration. As a result of this partnership, the Excelsior Springs Center received technical support from the local school district which was provided. As this vendor was familiar with the IT systems on center, the center called the vendor to provide specific services on an as needed basis when the IT staff person was not available due to FMLA status.

Excelsior Springs placed fifteen advertisements and the vendor published fifteen advertisements, which were supported by documentation including copies of the advertisements. The advertisements were purchased in blocks of five and vendor billing listed five dates in sequential weeks. However, if advertisement is no longer

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necessary; e.g., due to a large number of applications received, position is filled, etc; advertisement was deferred to a future date. As a result, advertisement purchasing was much more effective and efficient.

As to seven transactions; beverages (1), medical supplies (1), IT support services (4), computer software (1) and advertising (1); MINACT believes adequate justification exists which demonstrates best value.

Although not properly documented, the sole source justification for beverages includes that the woman owned small vendor was selected because they provide a greater variety of juices including 100% juice content. The audit report states that justification was the provision of the dispensing machine at no additional cost.

In terms of medical supplies, the vendor utilized is the only locally owned and operated pharmacy in Excelsior Springs, Missouri. Quantities for prescriptions are difficult to forecast and cost differences are minimal. To utilize the services of the pharmacy vendor closest to the center ensures that needs are met in the most effective, economical and timely manner.

As to the four IT support services transactions, which are also discussed above, the services were on an as needed on-call basis to a local vendor who possessed special knowledge of the center systems based on the installation of the computer equipment and systems for the local school district provided computer lab. At the time of these calls the center did not have knowledge of future needs for these services, since the return of the IT staff person was not known.

The computer software cited is for acquisition of the Plato Software which is primarily for high school credit recovery.

Regarding the purchase of advertising, it is not practical to assume that this should be competitively procured considering the different markets and reach of different media. The vendor identified focused on the job applicant market. We purchased 15 ads and received fully documented value for 15 ads.

It is our intent to convene a workshop for purchasing specialists and Directors of Administration to address the documentation requirements for all procurements.

Response to Finding 1 – Personnel Expenses:

We disagree with the auditors' assertion that the PRH requires 100% independent verification and supervisory reviews for 100% of timesheet and payroll transactions. As noted in the report the auditors did not discover any inappropriate personnel expenses.

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Objective 2 - Did MINACT ensure compliance with Job Corps requirements for center safety and health programs?

MINACT could not provide adequate assurance its safety and health programs effectively protected Job Corps students.

Finding 2 — MINACT did not always ensure compliance with Job Corps requirements for managing center safety and health programs for each of the three areas reviewed — student misconduct, and safety and health inspections and committee meetings.

Response to Finding 2 – Part I – Student Misconduct: The Office of Inspector General (OIG) judgmentally selected and tested 107 potential student misconduct incidents. Of the 107 potential student misconduct incidents, OIG indicated that a Fact Finding Board should have been convened as to twelve (12) incidents.

Pursuant to the Job Corps Policy and Requirements Handbook, Chapter 3.4, R3, Centers shall conduct investigations, fact-finding boards and review panels. As a result of thorough investigation, MINACT believes that coherent and appropriate sanctioning was maintained and that the Center was consistent in their application with the levels of infraction as outlined in Exhibit 3-1 of the Job Corps Policy and Requirements Handbook. However, OIG opined that supporting documentation did not adequately outline the rationale for modifying the original sanction applied by individuals other than the Student Personnel Officer. While we disagree with this opinion but given this conclusion, and as part of MINACT's commitment to continuous improvement, we have scheduled corporate training with all Student Personnel Officers during the week of July 26th. This training will focus on, among other things, specific documentation requirements to support any changes that may occur in sanctioning. In addition, and as a means of ensuring on-going compliance at all MINACT operated Centers, we will institute random SPO folder audits. These audits, which will begin in July of this year and be conducted by the MINACT Executive Director of Ethics & Compliance, will assess the adequacy of the extant documentation in support of any change in assigned sanctioning. When and where inadequate documentation is determined to exist, a plan for corrective action will be immediately developed and implemented. It will be the joint responsibility of the Center Director and Operational Vice President to ensure that appropriate accountability and implementation is enacted on a go-forward basis.

Response to Finding 2 – Part II – Safety and Health Inspections: The OIG concluded that safety and health inspections were not performed. As to the weekly inspections, 98 out of 104 were performed; and as to monthly inspections, 102 out of 120 were

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MINACT Comments on OIG Report Number: 26-10-004-01-370

performed. Of the inspections not performed most of these were directly associated with Building Five (which had been targeted for demolition and which had extremely limited continuing use by the Job Corps Center during calendar year 2009).

With regard to the health and safety hazards in Building Five identified by the OIG, it should be noted that the Culinary Arts program was relocated to its present location over a decade ago and the Culinary Arts storage room contained a limited amount of rarely used equipment; that the potential asbestos hazards identified as a student locker area used to store student clothing was a room which contains encapsulated asbestos; that the areas identified with multiple tripping hazards and hanging and exposed ceiling tiles were used on a temporary basis for ROTC training. The ROTC classroom was moved to new facilities during the third week of January. On June 24, 2010, the Government provided funding through Contract Modification Number 28 for demolition of Building Five which is expected to be razed by December 31, 2010. **To include pictures of the condemned building and to categorize the areas pictured as “high traffic” is misleading and unnecessarily inflammatory.**

With regard to quarterly environmental health inspections of food service facilities, residential facilities and training facilities, the Government of Clay County, Missouri did conduct quarterly inspections of food service facilities during calendar year 2009. However, due to budgetary challenges, Clay County decided to discontinue quarterly inspections of the non-food service facilities at the Job Corps center. Center management engaged in numerous discussions with Clay County officials to restore inspection of non-food service facilities and believed that inspection service could be restored. However, restoration of service took longer than anticipated given Clay County financial circumstances that impacted availability of county staff to conduct the inspections. After meeting with the Director of the Clay County Public Health Center, Clay County agreed to restore quarterly environmental health inspections of all areas effective April 2010. As part of our commitment to continuous improvement, MINACT has scheduled corporate training with all Managers of Safety, Security and Fire Prevention during the week of July 12th. During corporate training MINACT will focus on reviewing procedures to ensure more adequate oversight in the future.

Response to Finding 2 – Part III – Safety and Health Committee Meetings: The OIG concluded that 11 of 12 monthly safety and health committee meetings were held; however, the safety and health committee meeting was not held in December 2009. Even though the month contains the student winter break, a safety and health committee meeting could have been held earlier in the month of December. As part of our commitment to continuous improvement, MINACT has scheduled corporate training with all Managers of Safety, Security and Fire Prevention during the week of July 12th.

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During corporate training MINACT will re-emphasize the importance of monthly meetings including the months which contain the student summer and winter breaks.