

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

In re: ELIZABETH SARMIENTO,)
 DANIEL OJEDA, and)
 YAZMIN CRUZ,) OEIG Case #11-00952

OEIG FINAL REPORT (REDACTED)

Below is a final summary report from an Executive Inspector General. The General Assembly has directed the Executive Ethics Commission (Commission) to redact information from this report that may reveal the identity of witnesses, complainants or informants and “any other information it believes should not be made public.” 5 ILCS 430/20-52(b).

The Commission exercises this responsibility with great caution and with the goal of balancing the sometimes-competing interests of increasing transparency and operating with fairness to the accused. In order to balance these interests, the Commission may redact certain information contained in this report. The redactions are made with the understanding that the subject or subjects of the investigation have had no opportunity to rebut the report’s factual allegations or legal conclusions before the Commission.

The Commission received a final report from the Governor’s Office of Executive Inspector General (“OEIG”) and a response from the agency in this matter. The Commission, pursuant to 5 ILCS 430/20-52, redacted the final report and mailed copies of the redacted version and responses to the Attorney General, the Governor’s Executive Inspector General and to Elizabeth Sarmiento, Daniel Ojeda and Yazmin Cruz at their last known addresses.

The Commission reviewed all suggestions received and makes this document available pursuant to 5 ILCS 430/20-52.

FINAL REPORT

I. INTRODUCTION

In June 2011, the OEIG received a complaint alleging in part that Illinois Department of Human Services (DHS) Human Resources Specialist Yazmin Cruz engaged in improper hiring practices when she solely conducted interviews for a DHS position.¹ The investigation revealed that Ms. Cruz solely conducted interviews even though two *Rutan*-certified interviewers should have participated. During the course of its investigation, the OEIG also discovered that Ms. Cruz was using State time and resources for non-work related purposes.

¹ [Unfounded allegation redacted.]

The investigation also revealed that DHS Director of Human Resources Elizabeth Sarmiento and Northern Selection Supervisor for Bureau of Recruitment and Selection Daniel Ojeda failed to take steps to ensure that DHS personnel were aware of or fully complied with the requirement in a 2009 administrative order (Administrative Order No. 2 or Order). Further, Ms. Sarmiento, in numerous interviews, failed to make certain that at least two certified *Rutan* interviewers conducted interviews of prospective candidates for *Rutan*-covered positions at DHS. As a result of Ms. Sarmiento's failings, DHS staff under her supervision routinely conducted interviews in a manner that violated the dictates of Administrative Order No. 2.

During the course of the investigation, investigators also learned that Administrative Order No. 2 required the Illinois Department of Central Management Services (CMS) to develop a refresher course to inform interviewers of updated interviewing policies within six months of the Order. However, according to CMS, staffing and resource issues prevented the completion of the refresher course until about three years later.

II. BACKGROUND

A. *Rutan v. Republican Party of Illinois*

In 1990, the United States Supreme Court issued a decision entitled *Rutan v. Republican Party of Illinois*, 497 U.S. 62 (1990). In the *Rutan* decision, the Supreme Court held that State officials could not use political affiliation and support as a basis for hiring decisions relating to certain State positions, which this Report refers to as *Rutan*-covered positions.

B. OEIG Hiring Monitoring Program

In 2009, the General Assembly amended the State Officials and Employees Ethics Act (Ethics Act) and, among other things, expanded the duties of the OEIG to include the review of hiring and employment files to ensure compliance with *Rutan* and applicable employment laws.² Thus, as part of its hiring monitoring program, the OEIG has reviewed various agency hiring practices, including the practices set forth in this Report.

C. Administrative Order No. 1 (1991)

In the wake of the *Rutan* decision, former Illinois Governors issued administrative orders regarding the interview and selection of State employees for *Rutan*-covered positions. For example, former Governor Jim Edgar issued Administrative Order No. 1 (1991), designating CMS as the agency responsible for developing and implementing policies to comply with administrative orders and Supreme Court rulings, like *Rutan*.

Subsequently, CMS began to provide training on the procedure for interviewing and selecting State employees for *Rutan*-covered positions. State employees who complete this CMS training are referred to as *Rutan*-certified interviewers in this Report. Initially, interviews for *Rutan*-covered positions were not required to be completed by more than one *Rutan*-certified interviewer, however, as set forth below, that changed in 2009.

² 5 ILCS 430/20-20(9).

D. Issuance of Administrative Order No. 2 (2009)

In December 2009, Governor Pat Quinn issued Administrative Order No. 2, which reaffirmed the principles of Administrative Order No. 1 (1991), and other post-*Rutan* orders. Additionally, Administrative Order No. 2 mandated new requirements that agencies are required to follow to ensure compliance with *Rutan*. Some of the additional requirements are listed below.

- **Panel Interview Requirement**: Administrative Order No. 2 states in part: “Since multi-member interviewer panels provide greater input and reduce the risk of improper influence in the hiring process for *Rutan*-covered positions, agencies *shall* utilize such panels rather than single interviewers in the interview and evaluation process.”³ A proper panel contains more than one *Rutan*-certified interviewer. A technical advisor, someone who serves as a technical expert, that is not *Rutan*-certified, is not considered a member of the panel for the purpose of determining the number of panel members.⁴
 - **Panel Interview Requirement Exception**: Under limited circumstances, the Director of CMS or his or her designee may approve the use of single interviewers for *Rutan* interviews and evaluations.⁵
- **CMS Refresher Course**: “[N]o later than six months after the date of this Directive, CMS shall develop a Refresher Course for re-certification of *Rutan* interviewers The Refresher Course for interviewers shall review key elements of the State’s *Rutan* compliance program, [and] offer updates as to changes or enhancements in compliance policies and practices Once the Refresher Course is implemented, each *Rutan* interviewer must successfully complete the Refresher Course and be re-certified at least once every 3 years.”⁶

E. State Agency Directors Notified of Administrative Order No. 2

In December 2009, in light of the new requirements, the Office of the Governor (Governor’s Office) sent an email to State agency directors attaching Administrative Order No. 2. DHS and CMS were among the agencies that received the email to which Administrative Order No. 2 was attached. At about the same time, the CMS Bureau of Personnel Chief of Staff forwarded the Order to several DHS and CMS employees, including DHS employees Elizabeth Sarmiento and Daniel Ojeda.

III. INVESTIGATION

A. DHS’s Office of Human Resources Director Elizabeth Sarmiento and DHS’s Northern Selection Supervisor Daniel Ojeda

³ Administrative Order No. 2, Section III.B.2. (emphasis added).

⁴ *See id.*

⁵ Administrative Order No. 2, Section III.B.2.

⁶ Administrative Order No. 2, section III.A.3.

DHS's Office of Human Resources Director Elizabeth Sarmiento reports to the DHS Chief of Staff. Within the Office of Human Resources is the Bureau of Recruitment and Selection (BRS). Ms. Sarmiento oversees BRS.

BRS is divided into regions – Central, Southern, and Northern. BRS staff is responsible for interviewing candidates and selecting the most qualified candidate for open *Rutan*-covered positions.⁷ Daniel Ojeda is the Northern Selection Supervisor for BRS and supervises several employees, including Yazmin Cruz. Mr. Ojeda reports to Ms. Sarmiento.

B. Review of DHS Bureau Chief Position Selection Process

The OEIG obtained and reviewed the hiring files for the *Rutan*-covered position of DHS then-Division of Human Capital Development Bureau of Staff Development Bureau Chief (Bureau Chief),⁸ which was the subject of the instant complaint. The hiring files revealed that on May 18, 2011, Ms. Cruz was the only DHS employee who interviewed candidates for the Bureau Chief position even though it was a *Rutan*-covered position, and therefore, pursuant to Administrative Order No. 2, a panel of at least two *Rutan*-certified interviewers was required to conduct the interviews.

The review of the hiring files also revealed that Ms. Cruz scored the selected candidate with the highest overall interview score and the highest score related to the “knowledge and experience” criteria, based in part on his extended tenure as the acting Bureau Chief.

C. Interview of DHS Human Resources Specialist Yazmin Cruz

On October 7, 2011, the OEIG interviewed DHS Human Resources Specialist Yazmin Cruz, who said she became a *Rutan*-certified interviewer in 2008. Ms. Cruz stated that her job duties included interviewing DHS employment candidates. She stated that Mr. Ojeda is her supervisor.

Ms. Cruz said she interviewed candidates for the Bureau Chief position and scored the selected candidate, who had been the acting Bureau Chief for six or seven years, the highest. Ms. Cruz said she was the sole interviewer for the Bureau Chief position and recalled that her supervisor, Mr. Ojeda, informed her that a hiring division representative was not available and to proceed with the interviews.

During her OEIG interview, Ms. Cruz was asked to review Administrative Order No. 2. After reviewing the Order, Ms. Cruz stated she could not recall ever seeing it before and also said she had never heard of the requirement to have panel interviews. Ms. Cruz was also unaware that CMS approval was needed to deviate from the panel interview requirement. She estimated that she had conducted between 15 and 18 panel interviews, a couple of sole interviews, and between 30 and 35 interviews in which only she and a technical advisor participated.

⁷ DHS BRS Website, *available at* <http://www.dhs.state.il.us/page.aspx?item=38138> (last accessed July 30, 2013).

⁸ The Division of Human Capital Development is now called Family and Community Services.

D. Interview of DHS BRS Northern Selection Supervisor Daniel Ojeda⁹

On October 7, 2011, the OEIG interviewed DHS BRS Northern Selection Supervisor Dan Ojeda. Mr. Ojeda stated that he supervises Ms. Cruz and he assigned Ms. Cruz as an interviewer for the Bureau Chief position. Mr. Ojeda also said it was Ms. Cruz's decision to conduct the interview alone. Mr. Ojeda later said he asked if another employee wanted to participate in the interview with Ms. Cruz, but the employee declined. Mr. Ojeda said he thought he may have told Ms. Cruz to conduct the interview on her own.

During the interview, Mr. Ojeda stated that neither DHS nor *Rutan* polices mandated the use of more than one interviewer. Mr. Ojeda was then asked to review Administrative Order No. 2, including the section that states:

[a]gencies *shall* utilize such panels rather than single interviewers in the interview and evaluation process. (emphasis added).

After reviewing the document, Mr. Ojeda said that he believed the word "shall" does not mean "must."¹⁰ Mr. Ojeda also stated that no one told him whether one interviewer could or could not be used, and that there were no discussions about Administrative Order No. 2. Mr. Ojeda said that DHS frequently used sole-interviewers because of staffing issues.

According to Mr. Ojeda, DHS met the requirements of Administrative Order No. 2 by offering hiring divisions the opportunity to participate in the interview or by sending a technical advisor. He acknowledged, however, that a "panel" only included participants who were *Rutan*-certified and scored the interviews, not technical advisors who are not *Rutan*-certified. Mr. Ojeda said that he did not obtain permission from CMS to utilize single interviewers. He also said, however, that CMS knew how many interviewers participated in DHS's interviews because each interviewer signs the Candidate Evaluation Form.

E. Interviews of Director of Human Resources Elizabeth Sarmiento

The OEIG interviewed DHS Director of Human Resources Elizabeth Sarmiento twice, first on October 7, 2011, and again on February 29, 2012. Ms. Sarmiento stated that she has been the Director for approximately six and one-half years and that her duties include overseeing certain bureaus within DHS, including BRS. Ms. Sarmiento said she supervises Mr. Ojeda and

⁹ The OEIG also interviewed a former DHS BRS Selection Manager for the Southern Region (former Manager). The former Manager stated that she did not recall receiving Administrative Order No. 2, and that Administrative Order No. 2 was not followed when she was in her position. She also estimated that only 20% of the interviews conducted used a panel of *Rutan*-certified interviewers.

¹⁰ The Deputy General Counsel for CMS Bureau of Personnel informed the OEIG that the word "shall" in Administrative Order No. 2 means that panel interviews are required and that the Order's provision in which an agency may seek an exception to panel interviews further reveals that panel interviews are required, otherwise an exception would not be needed if panels were simply suggested. The CMS Deputy General Counsel also stated that maintaining procedures like multi-member panels makes it less likely that allegations of fraud or favoritism would be filed against the State because there is more documentation and consistency in the interviews.

she is the person responsible for ensuring that DHS adheres to proper hiring procedures, including compliance with hiring directives and administrative orders.

i. Initial Interview of Elizabeth Sarmiento

On October 7, 2011, Ms. Sarmiento was asked about her knowledge of the interview procedures used by Ms. Cruz and Mr. Ojeda in the selection of the Bureau Chief, specifically the use of a single *Rutan*-certified interviewer. Ms. Sarmiento said she did not know that Ms. Cruz was the sole interviewer in the Bureau Chief interviews and added that *Rutan* did not prohibit single interviewers. When shown Administrative Order No. 2, including the aforementioned section that required panel interviews in *Rutan*-covered positions, Ms. Sarmiento said that DHS “normally” made the option to use a panel available to hiring divisions, but also panel interviews did not “normally” occur. According to Ms. Sarmiento, it was Mr. Ojeda’s “call” whether to use more than one *Rutan*-certified interviewer in interviews for *Rutan*-covered positions.

Ms. Sarmiento stated DHS violates Administrative Order No. 2 because it is unrealistic to use more than one interviewer for all of the interviews DHS conducts. She said that DHS is short-staffed and is unable to conduct panel interviews for every position. Ms. Sarmiento said, for example, when interviewing for an Office Coordinator position, DHS usually conducts interviews using one *Rutan*-certified interviewer and a technical advisor. Ms. Sarmiento said it would be unusual for DHS to conduct an interview with only a single *Rutan*-certified interviewer, without at least a technical advisor. In any event, Ms. Sarmiento said that DHS has never requested permission from CMS to conduct interviews with only one *Rutan*-certified interviewer, but added that CMS has never questioned DHS’s hiring paperwork, which reflects the number of interviewers that participated in a particular interview DHS conducted.

ii. Subsequent Interview of Elizabeth Sarmiento

On February 29, 2012, the OEIG again interviewed Ms. Sarmiento. Ms. Sarmiento said that Mr. Ojeda used poor judgment by conducting interviews with only one interviewer and that the Bureau Chief was selected improperly because only one interviewer was used.¹¹ Ms. Sarmiento stated that she asked Mr. Ojeda why only one interviewer was present and he stated that he asked another employee to participate but that employee declined. Ms. Sarmiento stated that the selection of the Bureau Chief was the only instance of which she is aware when DHS had only one person conducting interviews because there is always a technical advisor or panel involved in the interview process. Ms. Sarmiento stated that she allowed the position to be filled because “the program area needed someone” and the position was important. According to Ms. Sarmiento, DHS management decided to proceed with the finalizing of the Bureau Chief position.

Ms. Sarmiento said that the DHS program areas for which the candidate is being hired are given the option to either send a technical advisor to participate in the interview or request a panel when filling vacant positions. When asked why program areas were given the choice to send a technical advisor (in light of Administrative Order No. 2’s panel requirement), Ms.

¹¹ Investigators requested Mr. Ojeda’s disciplinary file to determine whether he was disciplined for the manner in which Bureau Chief interviews were conducted and were informed that no disciplinary file exists.

Sarmiento said, “because we are short staffed.” Ms. Sarmiento stated that she operates “by the book” to protect DHS from litigation over hiring improprieties. Ms. Sarmiento stated she did not engage in any intentional wrong-doing, and non-compliance with Administrative Order No. 2 was an oversight.

Ms. Sarmiento confirmed that in 2009 she received and reviewed Administrative Order No. 2, which mandated the use of panel interviews. Ms. Sarmiento said that she forwarded this Order to the appropriate DHS division directors in 2009. Ms. Sarmiento stated that perhaps she should have sent an email with instructions to use panel interviews, but she did not. Ms. Sarmiento said she understood Administrative Order No. 2 when she received it, did not contact anyone with questions regarding Administrative Order No. 2 or its implementation, and said there have not been discussions with her supervisors regarding DHS’s need for panel interviews.¹²

Ms. Sarmiento confirmed that DHS follows Administrative Order No. 2 only in some instances, specifically, when program areas request the use of a panel in the interview process. Ms. Sarmiento was asked what steps she has taken to enforce Administrative Order No. 2 since her first OEIG interview and replied that she made Mr. Ojeda aware that he cannot conduct interviews with only one interviewer, rather, he at least needs to use a technical advisor. However, Ms. Sarmiento confirmed that Administrative Order No. 2 nevertheless requires the use of a panel comprised of *more than one* *Rutan*-certified interviewer. Ms. Sarmiento said she is trying to schedule *Rutan* training at DHS.¹³

F. DHS Employee Hires that Occurred Post-Administrative Order No. 2

The OEIG requested from DHS a list of DHS employees hired from December 2009 (when the Order was issued) through April 2012 in which only one *Rutan*-certified interviewer conducted the interview or one in conjunction with a technical advisor.

In response, the OEIG received an email from a DHS BRS Human Resources Specialist. The email states:

“Attached below is the listing of DHS hires made by Bureau of Recruitment & Selection, either solely or solely / with technical advisor. . . . [I]n the listing, almost all of BRS’ interviews are conducted with technical advisors present.”

The attachment is entitled “Hires by DHS’ Bureau of Recruitment & Selection Non-panel interviews with candidate start dates from 12/10/09 to 6/04/12.” A review of the attachment revealed the names of hundreds of DHS employment candidates.

G. Elizabeth Sarmiento’s Post-Interview Actions

¹² Ms. Sarmiento said she contacted the CMS Bureau of Personnel Chief of Staff prior to her second OEIG interview and was informed that at least two *Rutan*-certified interviewers must participate in interviews for *Rutan*-covered positions unless DHS has prior written approval from CMS to conduct interviews with only one *Rutan*-certified interviewer.

¹³ Subsequent OEIG interviews with CMS reflected that there is currently a waitlist for *Rutan*-certification training.

In September 2012, an investigator spoke with the DHS BRS Human Resources Specialist regarding the abovementioned list of DHS employees that were interviewed by a sole *Rutan* interviewer. During the telephone conversation, she stated that Ms. Sarmiento emailed a directive a few months prior that stated that at least two *Rutan*-certified interviewers were to participate in any interviews of *Rutan*-covered positions. The investigator subsequently obtained a copy of the email that Ms. Sarmiento circulated, on March 1, 2012, the day after Ms. Sarmiento's second OEIG interview. Ms. Sarmiento sent an email to Mr. Ojeda and others regarding panel interviews. The email stated in part: "Effective immediately, DHS will conduct panel interviews for all *Rutan*-covered hires. The panel must consist of at least two (2) but no more than four (4) *Rutan*-certified interviewers who will be responsible for the scoring and selection process."

The CMS Bureau of Personnel Chief of Staff informed investigators during her interview (discussed below) that in March 2012, Ms. Sarmiento and another DHS employee met with her and the former CMS Bureau of Personnel Deputy Director. At that time, DHS requested an exemption from Administrative Order No. 2's panel requirement because panels required too many staff members and were time intensive.¹⁴ CMS denied the request for an exemption.

IV. CMS'S IMPLEMENTATION OF THE *RUTAN* REFRESHER COURSE

Administrative Order No. 2 also required CMS to develop within six months a refresher course to inform interviewers of updated interviewing policies. The refresher course, which, in part, educates employees on Administrative Order No. 2 and how it impacts interviews for *Rutan*-covered positions, was not put in place until April 2013, approximately three years after the six-month deadline. The OEIG interviewed CMS personnel, as well as a former Associate General Counsel (AGC) for the Governor's Office, regarding the three-year delay.

According to the Bureau of Personnel Chief of Staff, CMS reviews the hiring documents of *Rutan*-covered positions and checks to see that the forms are properly completed,¹⁵ but each agency, not CMS, is responsible for its own hiring and selection. She also confirmed that the Bureau of Personnel was responsible for implementing the *Rutan* refresher course, along with the CMS Bureau of Communications and Computer Services (BCCS).

The OEIG interviewed the CMS Acting Assistant Director (CMS Assistant Director), who said that, within three months of starting at CMS as the Deputy Director of the Bureau of Personnel, he learned that CMS had failed to meet the deadline for the refresher course. The CMS Assistant Director also said that when he learned that CMS missed the deadline, he called a meeting with CMS personnel to learn what steps were being taken to implement the course, and

¹⁴ An email dated October 29, 2012 reflects that CMS records show that DHS has "610 [*Rutan*]-certified employees."

¹⁵ The OEIG interviewed the CMS Bureau of Personnel Division Manager for the Division of Transactions, Records, and Backwage Claims to determine what review CMS conducts of agency hiring forms. She stated that she checks hiring forms for *Rutan* compliance, but that when she reviews the Candidate Evaluation Form, she only confirms that "at least one" of the signatures on the form is a *Rutan*-certified individual. This procedure would not identify whether hires complied with the panel interview requirement mandated by Administrative Order No. 2.

at the meeting, CMS personnel discussed the course, including who would work on specific areas and who would work with BCCS.

According to the CMS Assistant Director, the reason the *Rutan* refresher course was delayed was because BCCS did not have enough staff and time dedicated to creating the website. He said the BCCS Deputy Director is responsible for staffing at BCCS, but BCCS did not have the budget to hire additional staff. The CMS Assistant Director said he notified the CMS Director about the delays in implementing the refresher course during weekly meetings.

The CMS Assistant Director said it was “widely known” at CMS and the Governor’s Office that CMS was unable to make the deadline in accordance with Administrative Order No. 2. The CMS Assistant Director recalled a few communications he had with Governor’s Office staff regarding the six-month deadline. He said he mentioned to the Chief Operations Officer that CMS still needed to complete the *Rutan* refresher course, and her response was akin to, “try to get it done quickly.” The CMS Assistant Director said he may also have mentioned it to an AGC for the Governor’s Office during a telephone call, and the AGC acknowledged his statement that the deadline was not met, but did not give a positive or negative response.

The CMS Assistant Director stated that there was no formal extension of the six-month deadline requested or received from the Governor’s Office. In addition, the CMS Assistant Director said he could not recall any communication regarding the refresher course that was initiated by the Governor’s Office, and the Governor’s Office did not pressure CMS to complete the refresher course.

The OEIG interviewed one of the then-AGCs for the Governor’s Office; however, she was unaware of anyone at the Governor’s Office charged with overseeing the implementation of administrative orders or the refresher course outlined in Administrative Order No. 2. The then-AGC had no knowledge of anyone seeking an extension for the implementation of the refresher course. The then-AGC said the first time anyone communicated with her about the refresher course was March or April 2013, when she received an email from the CMS Assistant Director regarding the implementation of the refresher course.

The OEIG obtained and reviewed emails exchanged among CMS staff revealing that CMS had begun creating the refresher course as early as November 2010, and that the CMS Assistant Director was requesting action be taken to implement the refresher course. For example, in June 2012, the CMS Assistant Director emailed the CMS Bureau of Personnel Division of Statewide Services Manager: “we have to be sure that we get the *Rutan* refresher out first... it’s been overdue since 2009...beyond that, we’ll need to see what else BCCS has in front as a ‘priority.’” In October 2012, the CMS Assistant Director emailed the CMS Director and the Chief Administrative Officer regarding the refresher course, informing them that he would work with BCCS to “make sure they have everything they need to get this done, but we really need it completed a.s.a.p.”

V. YAZMIN CRUZ’S PERSONAL USE OF STATE TIME AND RESOURCES

A. Yazmin Cruz’s Email Account and Secondary Employment

During the course of this investigation, the OEIG obtained and reviewed Ms. Cruz's State email account. That review reflected that Ms. Cruz was a co-owner of a business, and between January and August 2011, she sent and received numerous emails regarding her business and other non-work related topics.¹⁶

B. Interview of Yazmin Cruz Regarding her Use of State Resources

During her October 7, 2011 interview, Ms. Cruz acknowledged that she sent excessive non-work emails, including emails about her business, during State time. After reviewing DHS's email policy, which states that the email system is for DHS business only, Ms. Cruz said that she believed she violated DHS's email use policy. Ms. Cruz also admitted that she used a State fax machine for non-State business on a few occasions.

VI. ANALYSIS

As noted above, in the wake of the *Rutan* decision, Illinois Governors issued various administrative orders regarding the interview and selection of State employees for *Rutan*-covered positions. Prior to Administrative Order No. 2, agencies were not required to have more than one *Rutan*-certified interviewer participate in interviews for *Rutan*-covered positions. However, Administrative Order No. 2 (2009) not only reaffirmed the principles of Administrative Order No. 1 (1991), and other post-*Rutan* orders, but also mandated new requirements agencies are required to follow to ensure compliance with *Rutan*. One new requirement involved panel interviews, the other involved the creation of a refresher course.

A. Elizabeth Sarmiento Failed to Implement Administrative Order No. 2.

As the DHS Director of Human Resources, Ms. Sarmiento confirmed that she is responsible for ensuring that DHS adheres to proper hiring procedures, including compliance with hiring directives and administrative orders. Administrative Order No. 2 mandates that multi-member panels of *Rutan*-certified interviewers be utilized when interviewing candidates for *Rutan*-covered positions. In limited circumstances, an agency may seek approval from the CMS Director or his or her designee to conduct those interviews with a single interviewer.

Ms. Sarmiento received Administrative Order No. 2 in December 2009 and distributed it to her staff, including Mr. Ojeda, in that same month. The OEIG investigation revealed that Ms. Sarmiento, and the staff she oversees, did not utilize the panel interviews the Order requires. Ms. Sarmiento, Mr. Ojeda, and Ms. Cruz each separately informed OEIG investigators that DHS

¹⁶ DHS policy states that "[e]mployees who engage in outside, paid employment must file as early as possible, but at least within five (5) working days of commencing outside employment, a Report of Secondary Employment form (IL444-4119) with their immediate supervisor." DHS Employee Handbook, Section V, p. V-8. During her October 7, 2011 interview, OEIG investigators questioned Ms. Cruz about her secondary employment and her use of State resources for non-State business. Ms. Cruz confirmed that she co-owned a business that was not profitable. Ms. Cruz stated that any earnings were reinvested back into the business. It is unclear whether a business owner who does not earn a profit engaged in "paid employment" per DHS policy. Therefore, the OEIG declines to make a finding against Ms. Cruz for failure to complete a secondary employment form.

routinely conducted interviews for *Rutan*-covered positions with only one *Rutan*-certified interviewer. Indeed, when the OEIG requested from DHS the number of DHS hires for *Rutan*-covered positions from December 2009 through April 2012 that were interviewed by only one *Rutan*-certified interviewer, whether as a sole interviewer or in conjunction with a technical advisor, DHS responded with a list of hundreds of individuals. The OEIG did not find evidence that DHS requested permission from CMS to utilize a single *Rutan*-certified interviewer from December 2009 through February 2012.

Ms. Sarmiento stated that DHS is unable to comply with Administrative Order No. 2 because it lacks the resources to conduct panel interviews and that the requirement is “unrealistic.” This statement may be true, but until meeting with the OEIG regarding compliance with *Rutan*, it does not appear that DHS even attempted to comply with Administrative Order No. 2 or to educate its staff about its requirements. In fact, it was not until after her second OEIG interview that Ms. Sarmiento emphasized the panel requirement with DHS staff and sought an exemption from the panel requirement from CMS (which, as set forth above, was denied). Ms. Sarmiento’s recent steps to comply with Administrative Order No. 2, while a positive step forward, do not change her past failings. Notwithstanding the fact that DHS may lack the resources necessary to follow the requirements of Administrative Order No. 2, the OEIG finds that DHS has not complied with the Order. Because Ms. Sarmiento, in her capacity as the Director of Human Resources, allowed only one *Rutan*-certified interviewer to conduct interviews for *Rutan*-covered positions, the allegation that she failed to implement Administrative Order No. 2 is **FOUNDED**.

B. Daniel Ojeda Failed to Ensure Proper Procedures for the Interviews for the Bureau Chief Position.

Mr. Ojeda supervises Ms. Cruz, and would be responsible for ensuring that Ms. Cruz properly conducts interviews for *Rutan*-covered positions. The investigation revealed that, although Mr. Ojeda received Administrative Order No. 2 in December 2009, he allowed Ms. Cruz to conduct non-panel interviews for a *Rutan*-covered position. Mr. Ojeda did not obtain permission from CMS before allowing non-panel interviews for a *Rutan*-covered position. Therefore, the allegation that Mr. Ojeda failed to ensure the proper interview procedures for the Bureau Chief position, thereby causing Administrative Order No. 2 to be violated, is **FOUNDED**.

C. CMS Lacked the Resources and Personnel Necessary to Timely Implement the *Rutan* Refresher Course.

Administrative Order No. 2, which was issued in December 2009, required that “[n]o later than six months after the date of this Directive, CMS shall develop a Refresher Course for re-certification of *Rutan* interviewers The Refresher Course for interviewers shall review key elements of the State’s *Rutan* compliance program, offer updates as to changes or enhancements in compliance policies and practices, and include an evaluative component to ensure that those taking the Refresher Course continue to have an appropriate knowledge of the compliance guidelines and procedures.”

In April 2013, almost three years after the deadline, CMS implemented the *Rutan* refresher course. The OEIG investigation reflects that CMS was working to complete the refresher course throughout the three-year period, but that staffing and resource issues prevented the timely completion of the course.

As stated in Administrative Order No. 2, the refresher course served as an important component of ensuring that *Rutan*-certified interviewers have “appropriate knowledge of the compliance guidelines and procedures.” The CMS Deputy General Counsel for Bureau of Personnel also stated that multi-member panels result in increased documentation and consistency in interviews, and therefore, a decreased risk of allegations of fraud or favoritism against the State. In light of the importance and stated purpose, the OEIG recommends that the Governor’s Office undertake greater diligence in planning for the implementation of new procedures it mandates pursuant to its Administrative Orders, and to ensure the allocation of adequate personnel and financial resources regarding the implementation of the orders.

D. Yazmin Cruz Abused State Time and Resources.

DHS policy provides that DHS computers, fax machines, and email system are for State business only, and may not be used for personal communications.¹⁷ Additionally, DHS policy prohibits employees from using State time or resources for “any outside paid or non-paid employment.”¹⁸

The OEIG investigation revealed that Ms. Cruz sent and received numerous non-work related emails, the majority of which related to her outside business. During her OEIG interview, Ms. Cruz stated that she used her State email account for non-work related purposes, her use was excessive, and she violated DHS policy. Ms. Cruz also stated that she used DHS fax machines on a few occasions for non-work related purposes. Because Ms. Cruz used DHS equipment for non-work related purposes, the allegation that she violated DHS’s email and fax machine usage policies is **FOUNDED**.

Additionally, Ms. Cruz confirmed that she sent emails from her State email account regarding her outside business on State time. Thus, because Ms. Cruz used State time and resources for her outside business, the allegation that she violated DHS policy is **FOUNDED**.

VII. CONCLUSIONS AND RECOMMENDATIONS

As a result of its investigation, the OEIG issues these findings:

- **FOUNDED** – Elizabeth Sarmiento, in her official capacity, failed to fully implement Administrative Order No. 2 when she allowed numerous interviews for *Rutan*-covered positions to be conducted by only one *Rutan*-certified interviewer.

¹⁷ DHS Employee Handbook, Section V, pp. V-12-15. DHS Directive, Rules of Employee Conduct, 01.02.03.040 (stating, “An employee shall not use state equipment for inappropriate purposes or for personal gain”).

¹⁸ *Id.* at V-8. DHS Directive, Secondary Employment, 01.02.03.120 (stating “An employee may not use Department time, equipment, resources or personnel in any outside paid or non-paid employment”).

- **FOUNDED** – Daniel Ojeda, in his official capacity, failed to fully ensure that DHS followed Administrative Order No. 2 when he allowed interviews for a *Rutan*-covered position to be conducted by only one *Rutan*-certified interviewer.
- **FOUNDED** – Yazmin Cruz violated DHS policy when she used DHS resources for non-work related purposes.
- **FOUNDED** – Yazmin Cruz violated DHS policy when she used DHS time and resources to work on her outside business.

Based on the abovementioned findings, the OEIG recommends that Elizabeth Sarmiento be disciplined, that Daniel Ojeda be disciplined, and that Yazmin Cruz be counseled.

As set forth above, the OEIG further recommends that the Governor’s Office undertake appropriate measures to implement the procedures mandated by its Administrative Orders.

No further investigative action is needed and this case is considered closed.

Date: **September 30, 2013**

Office of Executive Inspector General
for the Agencies of the Illinois Governor
69 W. Washington Street, Ste. 3400
Chicago, IL 60602

By: **Christine P. Benavente**
Assistant Inspector General

Elizabeth P. Whelan
Investigator, #123



Pat Quinn, Governor

Illinois Department of Human Services

Michelle R.B. Saddler, Secretary

Office of the Secretary
401 South Clinton Street • Chicago, Illinois 60607
100 South Grand Avenue East • Springfield, Illinois 62762

October 24, 2013

Mr. Ricardo Meza
Executive Inspector General
Office of the Executive Inspector General
For the Agencies of the Illinois Governor
69 West Washington Street, Suite 3400
Chicago, Illinois 60602

RE OEIG Complaint #11-00952

Dear Executive Inspector General Meza:

The Illinois Department of Human Services received the referenced OEIG report and have implemented all your recommendations.

Elizabeth Sarmiento was given a verbal reprimand. She had nothing in her history that would have demanded more serious discipline at this time. The verbal reprimand will be reflected in her personnel file. In addition, Ms. Sarmiento has tendered her resignation which will be effective November 4, 2013.

With respect to Daniel Ojeda, who is now the supervisor of Mr. Ojeda, proceeded with progressive discipline. Mr. Ojeda was offered and declined representation from the Union. Although Mr. Ojeda had not been disciplined before, he was provided a verbal reprimand which will be reflected in his file. He understands the reason for the discipline and understands the need to follow protocol under Administrative Order #2.

In the case of Yazmin Cruz, also administered a counseling regarding adherence to Administrative Order #2. Ms. Cruz was also requested to file a Secondary Employment Form and warned to no longer use State resources for her secondary employment. Ms. Cruz also declined representation from the Union.

Finally, DHS also send out a memo to all staff regarding the protocol under Administrative Order #2 to ensure that all of our Rutan Interviews are done with a two-person panel of certified interviewers. We will be sure to adhere to these procedures and are working to ensure that we have more Rutan Interviewers at the agency and also will require all those trained in the past to participate in a Rutan refresher course.

Sincerely,

Michelle R.B. Saddler
Secretary

Office of Executive Inspector General
for the Agencies of the Illinois Governor
www.inspectorgeneral.illinois.gov

OEIG RESPONSE FORM

Case Number: 11-00952

Return By: 20 Days of Receipt of Report

Please check the box that applies. (Please attach additional materials, as necessary.)

We have implemented all of the OEIG recommendations. Please provide details as to actions taken:

We will implement all of the OEIG recommendations but will require additional time. We will report to OEIG within _____ days from the original return date.

We do not wish to implement any of the OEIG recommendations. Please provide details as to actions taken, if any, in response to OEIG recommendations:

Signature

GRACE HONEY DUFFIN
Print Name

Chief of Staff,
IL Department of Human Services
Print Agency and Job Title

10/31/13
Date