

U.S. Office of Personnel Management
Division for Human Capital Leadership & Merit System Accountability
Classification Appeals Program

San Francisco Field Services Group
120 Howard Street, Room 760
San Francisco, CA 94105-0001

Classification Appeal Decision
Under section 5112 of title 5, United States Code

Appellant: [Name of appellant]

Agency classification: Education Services Specialist
GS-1740-11

Organization: [Appellant's organization/location]
U.S. Army Reserve Command
Department of the Army

OPM decision: Education Services Specialist
GS-1740-11

OPM decision number: C-1740-11-01

Robert D. Hendler
Classification and Pay Claims
Program Manager

October 11, 2005

Date

As provided in section 511.612 of title 5, Code of Federal Regulations, this decision constitutes a certificate that is mandatory and binding on all administrative, certifying, payroll, disbursing, and accounting officials of the government. The agency is responsible for reviewing its classification decisions for identical, similar, or related positions to ensure consistency with this decision. There is no right of further appeal. This decision is subject to discretionary review only under conditions and time limits specified in the *Introduction to the Position Classification Standards*, appendix 4, section G (address provided in appendix 4, section H).

Decision sent to:

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Introduction

On December 20, 2004, the San Francisco Field Services Group of the U.S. Office of Personnel Management (OPM) accepted a classification appeal from [name of appellant]. On April 14, 2005, we received the agency's complete administrative report. The appellant's position is classified as Education Services Specialist, GS-1740-11, but he believes it should be graded at the GS-12 level. He works in the [appellant's organization/location], U.S. Army Reserve Command, Department of the Army. We have accepted and decided this appeal under section 5112 of title 5, United States Code (U.S.C.).

This decision is based on a thorough review of all information submitted by the appellant and his agency. In addition, to help decide the appeal we conducted separate telephone interviews with the appellant and his immediate supervisor.

General issues

The appellant is assigned to standard position description (PD) [number], but neither he nor his supervisor believes that it accurately describes the appellant's duties and responsibilities. A PD is the official record of the major duties and responsibilities assigned to a position by an official with the authority to assign work. A position is the duties and responsibilities that make up the work performed by the employee. Classification appeal regulations permit OPM to investigate or audit a position and decide an appeal on the basis of the actual duties and responsibilities currently assigned by management and performed by the employee. An OPM appeal decision classifies a real operating position, and not simply the PD. This decision is based on the work currently assigned to and performed by the appellant.

The appellant's representative makes various statements about the agency's practices in reviewing and evaluating the appellant's position, and bases the appeal, in part, on a comparison of the appellant's position to higher graded positions in the agency that he believes are performing the same work as the appellant. Further, he mentions the appellant's performance rating at the excellent level as an indicator that the appellant can perform at the higher level.

In adjudicating this appeal, our only concern is to make our own independent decision on the proper classification of the appellant's position. By law, we must classify positions solely by comparing their current duties and responsibilities to OPM standards and guidelines (5 U.S.C. 5106, 5107, and 5112). We have considered the representative's statements only insofar as they are relevant to making that comparison and we cannot compare the appellant's position to others as a basis for deciding his appeal. The appellant's performance rating has no bearing on the classification of his positions since the quality of work cannot be considered in determining the grade of a position (*The Classifier's Handbook*, chapter 5). Because our decision sets aside any previous agency decision, the classification practices used by the appellant's agency in classifying his position are not germane to the classification appeal process.

Like OPM, the appellant's agency must classify positions based on comparison to OPM standards and guidelines. However, the agency also has primary responsibility for ensuring that its positions are classified consistently with OPM appeal decisions. If the appellant considers his

position so similar to the other positions that they should warrant the same classification, he may pursue the matter by writing to his agency's human resources office. In doing so, he should specify the precise organizational location, classification, duties, and responsibilities of the positions in question. If the positions are found to be basically the same as his position, the agency must correct the classification to be consistent with this appeal decision. Otherwise, the agency should explain to him the differences between his position and the other positions.

The appellant's representative requested back pay back to July, 2002, the date considered to be when the appellant should have been promoted. However, the U.S. Comptroller General states that an "... employee is entitled only to the salary of the position to which he is actually appointed, regardless of the duties performed. When an employee performs the duties of a higher grade level, no entitlement to the salary of the higher grade exists until such time as the individual is actually promoted." This rule was reaffirmed by the United States Supreme Court in *United States v. Testan*, 424 U.S. 392, at 406 (1976), where the Court stated that "... the federal employee is entitled to receive only the salary of the position to which he was appointed, even though he may have performed the duties of another position or claim that he should have been placed in a higher grade." Consequently, backpay is not available as a remedy for misassignments to higher level duties or improper classifications (CG decision B-232695, December 15, 1989).

Position information

The appellant is responsible for planning, developing, directing, and conducting the U.S. Army Reserve Continuing Education System program throughout the [appellant's organization] Area of Responsibility which covers three states. He determines educational needs through evaluation of present programs and services, command-generated programs, U.S. Army Reserve (USAR) goals and objectives and advises the [appellant's organization] unit commanders accordingly. The appellant advises reservists and other military members or their spouses in finding courses and appropriate technical schools to meet the students' educational goals, and negotiates with educational institutions to admit and/or credit students' knowledge and skills previously acquired. He coordinates with many schools, institutions and universities in order to offer appropriate programs and services, and serves as a Test Control Officer for Army Personnel Testing and Defense Activities for Non-Traditional Educational Support (DANTES) test programs. The appellant also acts as Contracting Officer Technical Representative (COTR) for special or centrally funded Army contracts. He oversees the work for four contract workers: one Tuition Assistance Program Director; one Tuition Assistance Counselor, and two Education Services Counselors. Additionally, he plans, prepares, executes, and monitors funding for tuition assistance and operations. The budget for the appellant's education program in Fiscal Year 2005 was approximately \$2.6 million.

The results of our interviews and other material of record furnish more information about the appellant's duties and responsibilities and how they are performed. The appellant believes that his PD is not completely accurate because it does not fully address his budgetary and related fiscal requirements, negotiation and coordination with representatives of educational institutions, and oversight of contract staff. However, we find that the PD adequately describes his primary

duties and is sufficiently accurate for classification purposes. Therefore, we incorporate the appellant's PD by reference into this decision.

Series, title, and standard determination

The agency has classified the appellant's position in the Education Services Series, GS-1740, titling it Education Services Specialist, and the appellant does not disagree. Like the appellant's position, the GS-1740 series includes professional positions which administer, supervise, promote, conduct, or evaluate programs and activities designed to provide individualized career-related or self development educational plans. We concur with the agency's series and title determination.

There are no grade-level criteria provided in the GS-1740 position classification standard (PCS). Instructions in the PCS direct that nonsupervisory Education Services Specialist positions that manage an education services program are evaluated by reference to the criteria in the Grade Evaluation Guide for Positions of Managers of Operating Education Programs (Guide). Although the appellant oversees the work of several contract employees, he is not their official supervisor and his position does not meet the basic coverage requirements specified in the General Schedule Supervisory Guide for titling and grade level evaluation.

Grade determination

The Guide uses three factors to evaluate positions: (1) Factor 1 – Student Load, (2) Factor 2 - Variety and Complexity of Instructional Activity, and (3) Factor 3 – Level of Responsibility. Our evaluation with respect to these factors follows.

Factor 1. Student Load

Student load is defined as the average number of students enrolled and participating in education and training courses provided by the program manager at the facility itself, at other institutions, and through facility arrangement by correspondence. Ordinarily, four to eight quarters are used to determine the average student load. Each participating student is counted only once for each quarter, regardless of how many courses he or she may be enrolled in during the quarter.

In the appellant's case, the student load figures covered by his military installation include reservists, some spouses, and some ROTC students. For fiscal year (FY) 2005 the average student load (from four quarters) for college courses and technical schools was 657. Each student was counted only once during each quarter – 343 AA candidates, 212 BA/BS candidates, 53 MS/MA candidates and 49 technical students. The sum of 657 falls just outside of Degree A where the range is 300-600, but is much closer to Degree A than Degree B's range of 800-1600. Degree A is credited and 2 points are assigned.

Factor 2. Variety and Complexity of Instructional Activity

The purpose of this factor is to evaluate the scope and difficulty of program management in terms of the amount and diversity of instructional activity provided by the education or training

facility. This instructional activity is measured in terms of the variety and complexity of courses and goal-oriented programs that have resulted from the active efforts of the education program manager. Factor 2 is comprised of two sub-factors: (a) Course Range and Variety, and (b) Program Complexity.

Factor 2 measures the number and variety of courses provided through the education program that have resulted from the active efforts of the program manager. For courses and programs provided *at the facility*, “active efforts” involves work such as conducting surveys of education needs; developing or obtaining course curriculum, content, and instructional materials; negotiating for an educational institution to provide a course at the facility; arranging for necessary classroom space, supplies, and equipment; recruiting for, or arranging for, the participating institution to provide qualified instructors; and coordinating with the facility librarian to provide necessary library services.

For courses and programs conducted at institutions *outside of the facility*, “active efforts” on the manager’s part include conducting surveys of needs; persuading the institution to establish a course or program specifically for the students of the facility (these may be specialized courses that have not previously been given by the institution); working with the institution in developing course or program content to ensure that the needs of students are met; and arranging for tuition assistance. For credit to be given for courses conducted outside the facility, a manager must have made efforts to persuade an institution to establish specialized courses or courses that have never before been given and/or work with an institution to develop course or program content.

Factor 2 (a) Course Range and Variety

The Guide defines “course” as a definite and distinctive subdivision of a broad subject field that normally can be carried by a single instructor through a school semester or other representative training period. Each course involves common learning objectives for the group of students enrolled in it.

This sub-factor credits courses conducted during a school year (or calendar year) that are different in subject or level (e.g., French I, French II, Spanish I, Spanish II). Duplicates, repeats, or slight variations or modifications of courses are not creditable. Courses that are designed for individual rather than group study are not counted (e.g., correspondence courses, on-the-job training courses) unless the program manager was actively involved in developing the course content, training materials, etc. Courses that are given at outside institutions that are part of a broader instructional program and which have not, individually, resulted from active efforts of the program manager, are not credited under this sub-factor. In this situation, the overall instructional program may be credited as one course. Creditable courses given at the facility are counted, even though they are part of an instructional program.

There are no courses given at the facility. For courses offered outside the facility, we did not count each individual course as creditable, since the appellant did not have to engage in active efforts, to the extent described in the Guide, to make the courses available. However, we gave credit for these courses under the Guide’s caveat of crediting the overall instructional program as one course. We did not credit the courses such as: marching band, composition for non-native

speakers, cooking theory, deep sea diving equipment, beginning rock climbing, fly-fishing, pruning, rigging, snowboarding, etc., since they are designed as individual studies, which are specifically excluded under this sub-factor.

In Fiscal Year 2005 there were 1,143 courses in the appellant's program offered outside the facility. These were covered by 86 separate and distinct instructional programs. Because the appellant did not engage in active efforts to the degree described in the Guide to make these courses available, we have not separately credited each course, but rather credited each overall instructional program as one course, resulting in 86. A total of 86 falls within the range described at Degree C (80-125) of the Guide and equates to 6 points.

Factor 2 (b) Program Complexity

This sub-factor measures the extent to which the nature and variety of goal-oriented instructional programs add substantially to the difficulty of the overall instructional activity. The Guide defines goal-oriented programs as collections or groups of courses combined into integrated curricula to accomplish specific education or training goals. Goal-oriented programs lead to generally recognized certificates, diplomas, or degrees. For purposes of the Guide, a goal-oriented program must consist of at least five discrete courses. The sub-factor takes into account learning levels, defined in the Guide as levels of education and training that reflect significant differences in terms of the basic kinds of program planning, instructional and testing methodology, materials needed, and counseling approaches. Learning levels include primary, intermediate, secondary (high school), undergraduate, graduate, and occupational/vocational.

Instructional programs are credited under this subfactor when they are given at the facility under the administrative control of the program managers. If programs are provided outside of the facility at other institutions, they are credited if the establishment results from the active efforts of the program manager. In crediting instructional programs under this subfactor, each is counted only once. For example, two baccalaureate programs in English are counted as one program, even if they are given by different institutions. Also, each learning level is counted only once.

At Degree A (2 points), goal-oriented instructional programs are standardized or well-established with few, if any, complexities. The instructional activities typically include a small number of programs (e.g., 1 to 3) at 1 to 3 learning levels.

At Degree B (4 points), program coverage represents a moderately increased variety and complexity of instructional program activity. Typically, programs for adults at this degree include 5-8 goal-oriented instructional programs for students at 3 or 4 different learning levels, several of which are provided at the facility.

The appellant's position meets Degree A. Although there are three learning levels and more than a small number of goal-oriented instructional programs offered through his program, like Degree A they are all standardized and well-established, with specific curricula specified by the educational institutions in order to award undergraduate and graduate degrees, or vocational certificates.

The position does not meet Degree B. While we recognize that the appellant's program covers in excess of 8 goal-oriented instructional programs, unlike Degree B he does not manage a facility-based educational delivery program requiring that several instructional programs be furnished at the facility. In addition, the courses and programs offered are solely developed and delivered by outside institutions and contract providers, and are well-established and standardized. Because that is the case, his position lacks the administrative and program demands characteristic of facility based programs where the manager (e.g., director of an education services center at a military installation), is directly involved with course development and program content, particularly for those presented at the facility.

Degree A is credited to this sub-factor and 2 points are assigned.

Factor 3. Level of responsibility

This factor measures the nature and extent of initiative and originality required, the extent of the authority and freedom permitted the program manager by higher authority, and the difficulty and responsibility of work contacts and relationships within and outside the agency. It considers the nature and extent of supervision and guidance given by higher authority and by applicable guidelines and precedents and the judgment required to follow, select, and adapt such guidelines. It takes into account significant contributions made by the program manager (and approved by higher authority, as necessary) in the way of changes and innovations to improve and advance the education program.

At Degree A (2 points), managers carry out programs that are mainly covered by guidelines and precedents set by the agency headquarters or by a higher command. Courses and programs are prescribed or recommended by higher authority and/or are essentially the same as other existing models. Initiative and judgment are confined primarily to the selection and interpretation of applicable guides and precedents and to planning the details for implementing the education program within those guides. Contacts are typically of a harmonious or routine nature with the following characteristics:

- Obtaining and furnishing factual information;
- Discussing the normal run of school and student problems with groups of parents or community representatives;
- Arranging for supportive services such as transportation and health care for students, tuition assistance for programs given at outside institutions, or comparable services to meet facility needs;
- For courtesy purposes.

At Degree B (4 points), program managers frequently modify and improve existing program activities by updating course content and instructional methodology or provide additional program or course activity with broad guidelines established by higher authority. In either case, the changes are largely based on, or adapted from, similar activities and models developed elsewhere. Initiative and judgment are required to determine the need for change, adapt existing models to the local situation, and implement the new or revised programs. Contacts, which

typically involve a substantial variety of individuals and groups, have the following characteristics, or equivalent:

- Recurring contacts with other schools or training facilities similar to those of the program manager's own facility to discuss common problems and ways to solve them;
- Numerous contacts with education and training institutions for the purpose of negotiating agreements for participating in established programs;
- Numerous contacts with students' parents or guardians to discuss difficult student problems; and
- Regular continuing contacts with outside individuals and local civic groups to improve the usefulness of community facilities for educational and recreational purposes.

The appellant's level of responsibility meets Degree A. Like Degree A, the instructional, academic and occupational programs are mainly covered by guidelines set by agency headquarters through the Army Continuing Education System. Courses and programs are mostly prescribed at higher levels, and the appellant plans and implements the command's educational program within the parameters set by the agency's educational program. This may require that he write specific supplemental command guidance and local operating procedures as they pertain to implementation of the educational program.

Although the appellant's position contains some aspects of Degree B, it fails to fully meet that level. While he has regular contacts with a variety of individuals from education and training institutions for purposes of negotiating training agreements, resolving problems, and marketing the command's educational program, unlike Degree B he is not involved with modifying and improving program activities by updating course content and methods of instruction, or developing additional instructional programs or course activity within broad guidelines established by higher organizational levels. Although he demonstrates initiative and judgment in performing his daily tasks, this is not done within the context of adapting existing educational models to the local situation.

This factor meets Degree A and 2 points are assigned.

Summary

The factors, the degree, and the points awarded for the appellant's position are summarized as follows:

<i>Factor</i>	<i>Level</i>	<i>Points</i>
1. Student Load	Degree A	2 points
2a. Course Range & Variety	Degree C	6 points
2b. Program Complexity	Degree A	2 points
3. Level of Responsibility	Degree A	<u>2 points</u> 12 points

According to the grade-level determination table in the Guide, positions credited within the range of 8-12 points equate to GS-11 level.

The Guide acknowledges there may be positions that have patterns of program characteristics, delegations of responsibility, or other special characteristics that differ from the criteria and examples provided. Occasionally a position will have particular features that may influence the grade-level evaluation upward or downward. In order to affect the grade-level evaluation, the special characteristics must meet all of the following conditions.

- a. They are inherent in the position as regular and recurring situations;
- b. The basic evaluation factors do not take them into account;
- c. They significantly increase or decrease the position's total responsibility and complexity;
and
- d. Their impact causes the total position clearly and substantially to exceed or fall short of the grade level provided in the conversion chart.

Our fact-finding disclosed no special characteristics differing from the criteria and examples provided. Therefore, the grade of the appellant's position is not impacted by the above factors and the final grade is GS-11.

Decision

The appellant's position is properly classified as Education Services Specialist, GS-1740-11.