

# LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE MINUTES

April 29, 2024

The Legislative Performance Audit and Oversight Committee met on Monday, April 29, 2024 at 9:00 AM in the LOB Room 212.

Members in attendance were as follows:

Rep. Ken Weyler  
Rep. Gerald Griffin  
Rep. Lucy Weber  
Rep. Keith Erf  
Rep. Mary Jane Wallner  
Sen. Cindy Rosenwald, Chair  
Sen. Carrie Gendreau  
Sen. Rebecca Whitley  
Sen. Howard Pearl  
Sen. Timothy Lang

The meeting was called to order by Senator Rosenwald at 9:00 AM.

## VOTE ON ACCEPTANCE OF THE MARCH 18, 2024 MEETING MINUTES:

On a motion by Senator Lang, seconded by Representative Griffin, that the minutes of the March 18, 2024 meeting be accepted. **MOTION ADOPTED.**

## STATUS OF ONGOING PERFORMANCE AUDITS:

Christine Young, Director of Audits, and Jay Henry, Supervisor of Performance Audits, provided the Committee with brief updates of ongoing performance audits:

- NH Commission for Human Rights – a draft report was sent to the Commission on April 9<sup>th</sup>, and a meeting with the Commission will take place next week to answer any questions. Commission members are scheduled to meet on June 6<sup>th</sup> to discuss the audit report. The audit is anticipated to be presented to the Fiscal Committee in July.
- State Oversight of Special Education – no updates to report since last time, and work is still in progress.
- Education Freedom Account Program – discussions with the Department of Education regarding how to best continue with the performance audit of the program have continued to take place. The scope statement is not ready for presentation as of this meeting. The Department’s review of the contractor should be finished in approximately one month.

## SUSPENDED, TABLED, AND POTENTIAL AUDIT TOPICS:

When asked by Senator Rosenwald how many performance audit topics could be taken on, Director Young stated one.

- Office of Professional Licensure and Certification (OPLC) – Senator Lang suggested leaving this topic alone for the time being, as there is a 96-page bill in progress right now to address some of OPLC’s issues.
- Department of Environmental Services Appeals Process – Senator Lang inquired as to how the appeals process takes place, exactly. Representative Weber noted that the issue seems to be more appropriate for a study committee, rather than an audit, due to its large nature. Senator Rosenwald mentioned a letter sent to her by members of the House Judiciary Committee urging a performance audit of the topic.

Bob Scott, Commissioner of the Department of Environmental Services, and Adam Crepeau, Assistant Commissioner of the Department of Environmental Services spoke, explaining the legal status of where the appeals process is statutorily.

Senator Rosenwald inquired about the contents of the letter received from the members of the House Judiciary Committee, as all four appeals processes were different. Commissioner Scott clarified that each council is aligned with the types of permits and appeals most appropriate for each council, and that their rules are all similar to one another.

Representative Erf asked if the councils are a part of DES or the AG’s office. Commissioner Scott stated they are administratively attached to DES but are otherwise separate. The council members are appointed and reappointed via the Governor and Council approval process.

Mark Dell’Orfano, Assistant Attorney General, spoke, and was asked by Representative Erf if an audit would be within the jurisdiction of the auditors. Each of the councils are governed by their own provisions under RSA 21-O, and are only administratively attached to DES. Auditor jurisdiction is something that would have to be researched further.

Commissioner Scott clarified that the hearing officer from the AG’s office will rule on matters of law, and the councils themselves rule on the facts of the case. Further clarification on the appeals process was given by Commissioner Scott, who stated that while the initial appeal is to the council, an additional appeal would go to the Supreme Court. Assistant Attorney General Dell’Orfano stated they are working on implementing a full-time, permanent hearing officer, and there is little to audit at this point due to changes still being implemented. Representative Weyler and Senator Rosenwald said that the topic does not seem ready for an audit.

- Contract Management by the Department of Health and Human Services (DHHS) – Representative Weyler questioned the bidding process of State contractors. Representative Weber responded and said this issue could be solved via an information request by the LBA, rather than an audit.
- Interplay between DHHS Division of Children, Youth, and Families (DCYF) and the Bureau of Children’s Behavioral Health – Senator Lang brought up an issue that involved a child being in the emergency room for nearly 60 days without receiving services, questioning if there was a potential bottleneck. Senator Whitley noted the great deal of overlap between DCYF and the Bureau, and wanted to ensure that the systems were consistent, as many children are being placed out of state by the Bureau instead of DCYF. A potential scope for this audit may involve how those out of state placements are made, in addition to how out of home decisions are made when involving the Bureau. Related to this is the question of who is paying for this, as funding for the Bureau in part comes from residential placements and children who are pushed into the Medicaid system due to a lack of coverage from private insurance companies. Representative Weber supported Senator Whitley’s comments.
- The Doorway Program – Senators Lang and Rosenwald noted the amount of money being invested by the State in this program. Senator Rosenwald outlined issues that could potentially be covered such as how many clients are being served, the time between client appearance and treatment or interaction with a provider, and how many provider interactions are via the phone or in person.

On a motion by Senator Lang, seconded by Senator Rosenwald, to move forward with the Interplay between DHHS Division of Children, Youth, and Families and the Bureau of Children’s Behavioral Health audit first, with the Doorway Program audit second. **MOTION ADOPTED.**

Director Young asked the committee if any topics should be removed from consideration. Senator Lang stated the Department of Environmental Services Appeals Process and the Office of Professional Licensure and Certification topics were moving targets, and should be removed for the time being. Senator Pearl also questioned whether Public Access to Bodies of Water should remain on the list as well.

On a motion by Senator Lang, seconded by Senator Pearl, the topics of the Department of Environmental Services Appeals Process, the Office of Professional Licensure and Certification, and Public Access to Bodies of Water were terminated from consideration. **MOTION ADOPTED.**

The following audit topics remained on the list of potential audits:

- Bureau of Elderly and Adult Services, Choices for Independence – this audit is currently suspended due to ongoing legal proceedings.

- DHHS Bureau of Developmental Services
- DHHS Contract Management

DATE OF NEXT MEETING AND ADJOURNMENT:

Next meeting is at the call of the Chair. Senator Rosenwald adjourned the meeting at 9:49 AM.

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Sen. Cindy Rosenwald, Chair

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**PROPOSED SCOPE STATEMENT  
PERFORMANCE AUDIT OF EDUCATION FREEDOM ACCOUNT PROGRAM**

In June 2021, the Legislature passed the Education Freedom Account (EFA) program as part of the State budget. RSA 194-F became effective on August 24, 2021. The law created EFAs to hold the funds allocated to parents of an EFA student to pay for qualifying education expenses. To be eligible for an EFA, a student must be a New Hampshire resident who is eligible to enroll in public elementary or secondary school, and whose annual household income is at or below 350 percent of the poverty guidelines when the student applies for the program. Prior to August 2023, the income threshold was 300 percent.

RSA 194-F authorizes a scholarship organization, approved by the Department of Revenue Administration, to be responsible for administering and implementing the EFA Act. The New Hampshire Education Department (NHED) contracts with the Children’s Scholarship Fund (CSF) to administer and implement the EFA program. According to State laws, NHED is required to adopt rules to administer the EFA program, while the CSF is required to adopt policies and procedures. CSF is also responsible for determining whether a student meets eligibility requirements to participate in the EFA program and for approving qualified educational expenses.

State law requires the scholarship organization develop a standard application form and procedures for accepting applications. The scholarship organization must approve the application if the student is found eligible and funds are available. Parents are also required to sign an agreement to provide the student an education in the core knowledge domains, not enroll the student full-time in their resident district public school, to provide an annual record of educational attainment, to use funds only for qualifying educational expenses, and comply with EFA program rules and requirements. Table 1 summarizes NHED’s data on EFA students by school year.

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**Table 1**

**EFA Students By School Year**

<b>2021-2022</b>	<b>2022-2023</b>	<b>2023-2024</b>
1,635	3,025	4,211
Source: LBA summary of unaudited NHED Education Freedom Account “Fact Sheets.”		

**Funds Available To EFA Students**

Once a student is determined eligible, laws require the NHED Commissioner to transfer the per pupil adequate education grant amount, plus any differentiated aid that would have been provided to the public school for that student, from the State Education Trust Fund to the scholarship organization. State law sets the fund disbursement cycle at four times each school year in September, November, January, and April. To receive funding for each particular disbursement

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cycle, students must appear on the scholarship organization’s report of eligible EFA students, which must be submitted to NHED one month before each disbursement date. Reports are used by NHED to calculate the appropriate amount of EFA funding CSF receives for each student. At the end of each school year, NHED performs a reconciliation which is intended to identify unused funds that must be returned to the State because the student graduated, re-enrolled in their local public school during the school year, or left the program for other reasons. For the 2021-2022 and 2022-2023 school years, approximately \$290,200 and \$707,400 in unused EFA funds were returned to the State, respectively, for an average of 4.1 percent of appropriated funds. State law requires unused EFA funds to revert to the Education Trust Fund and be allocated to fund other EFAs.

Pursuant to RSA 198:40-a, all eligible EFA students receive the base adequate education aid which, during the 2023-2024 school year, was \$4,100.00. Prior to the 2023-2024 school year, students received \$3,708.78 in base adequate education aid. EFA students could also receive differentiated aid, in addition to the base adequate education aid, if they qualified. RSA 194-F:4, IV requires the scholarship organization, “in cooperation with the department, determine eligibility for differentiated aid subject to any applicable state and federal laws.” Students could qualify for the following differentiated aid:

- *Free Or Reduced Price Meals* – During the 2023-2024 school year, students eligible for free or reduced-price meals received an additional \$2,300.00. Prior to the 2023-2024 school year, students qualifying for this differentiated aid received \$1,893.32.
- *English Language Learner (ELL)* – During the 2023-2024 school year, students eligible for ELL differentiated aid received an additional \$800.00. Prior to the 2023-2024 school year, students qualifying for this differentiated aid received \$740.87.
- *Special Education* – During the 2023-2024 school year, students eligible for special education received an additional \$2,100.00. Prior to the 2023-2024 school year, students qualifying for this differentiated aid received \$2,037.11.
- *Third Grade Reading Proficiency* – During the 2021-2022 and 2022-2023 school years, students scoring below the proficient level on the third-grade reading component of the State assessment were eligible to receive an additional \$740.87 in differentiated aid, if they were not eligible to receive any other differentiated aid. This aid category was repealed in July 2023 and was not available for students during the 2023-2024 school year.

Based on our preliminary review of unaudited NHED data, almost half of EFA students during each of the three school years qualified for one or more differentiated aid category.

**EFA Expenditures**

State laws require EFAs be used for qualifying education expenses for the EFA student, including:

- (a) Tuition and fees at a private school.
- (b) Tuition and fees for non-public online learning programs.
- (c) Tutoring services provided by an individual or a tutoring facility.

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- (d) Services contracted for and provided by a district public school, chartered public school, public academy, or independent school, including, but not limited to, individual classes and curricular activities and programs.
- (e) Textbooks, curriculum, or other instructional materials, including, but not limited to, any supplemental materials or associated online instruction required by either a curriculum or an education service provider.
- (f) Computer hardware, Internet connectivity, or other technological services and devices, that are primarily used to help meet an EFA student's educational needs.
- (g) Educational software and applications.
- (h) School uniforms.
- (i) Fees for nationally standardized assessments, advanced placement examinations, examinations related to college or university admission or awarding of credits and tuition and/or fees for preparatory courses for such exams.
- (j) Tuition and fees for summer education programs and specialized education programs.
- (k) Tuition, fees, instructional materials, and examination fees at a career or technical school.
- (l) Educational services and therapies, including, but not limited to, occupational, behavioral, physical, speech-language, and audiology therapies.
- (m) Tuition and fees at an institution of higher education.
- (n) Fees for transportation paid to a fee-for-service transportation provider for the student to travel to and from an education service provider.
- (o) Any other educational expense approved by the scholarship organization.

RSA 194-F requires the scholarship organization to approve qualified educational expenses and allows the scholarship organization to contract with a private entity to develop a payment system. RSA 194-F also allows the scholarship organization to retain up to ten percent of EFA funds for administrative fees. While the NHED does not have documentation for CSF's calculation of administrative fees, during the 2021-2022 school year, the CSF could have retained up to \$900,000 in administrative fees and up to \$1.5 million in 2022-2023. CSF contracts with ClassWallet to administer the payment system; however, CSF staff review and approve all expenses before they are paid. Parents or guardians of EFA students have access to an online portal which allows them to make purchases from vendors in the digital marketplace, to request an invoice be paid, and request reimbursement for out-of-pocket expenses. EFA expenses are paid through one of three features in ClassWallet:

- *Digital Marketplace* – Allows parents or guardians to purchase items from a variety of pre-approved online vendors. Once ordered, the item is placed in a queue for CSF staff to review and approve. Once approved, the item is shipped to the student. All returns must be initiated through the marketplace and refunds are deposited back into the student's EFA.
- *Direct Pay To Approved Vendors* – Allows parents or guardians to submit an invoice from an approved vendor for payment. Payment is made from the student's EFA account in ClassWallet directly to the vendor, eliminating the need for parents or students to pay the

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vendor out-of-pocket for the item or service. As of August 2024, the CSF website listed over 1,500 approved vendors.

- *Reimbursement To Parents* – Allows parents or guardians to submit an itemized receipt for reimbursement, which must be approved by CSF staff. Receipts must provide proof the item or service has already been paid.

**Phase-Out Grants**

RSA 194-F:10 requires NHED to pay phase-out grants to school districts based on the reduction in adequate education grants the district would have received for an EFA student. School districts receive 50 percent of the adequate education aid they would have received in the first year a student left the school district and 25 percent in the second year. Similar to the method NHED uses for paying adequate education grants, phase-out grants are paid to school districts the year after the student leaves the public school; therefore, school districts were paid their phase-out grant at the beginning of the 2022-2023 school year for students who left during the 2021-2022 school year.

Table 2 shows EFA expenditures for SFYs 2022 through 2024.

**Table 2**

**EFA Expenditures By State Fiscal Year**

<b>Expenditures</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>
EFA Accounts	\$ 9,004,046	\$ 15,242,920	\$ 23,759,935
Phase-Out Grants <sup>1</sup>	N/A	643,939	887,840
EFA Administrator <sup>2</sup>	N/A	31,107	132,570
<b>Total</b>	<b>\$ 9,004,046</b>	<b>\$ 15,917,966</b>	<b>\$ 24,780,345</b>

Notes:

<sup>1</sup> Similar to adequate education grants, phase-out grants are paid to school districts the year after an EFA student leaves the public school. For example, phase-out grants for students who left their district public school during the 2021-2022 school year (i.e., SFY 2022) were paid in SFY 2023. No phase-out grant payments were made in SFY 2022.

<sup>2</sup> Expenditures include salary and benefits. The EFA Administrator position was created July 1, 2022, and was filled in March 2023. Therefore, there were no expenditures in SFY 2022 and SFY 2023 expenditures were only for the last three months of the fiscal year.

Source: LBA analysis of NH FIRST data.

**NHED EFA Program Oversight**

When the EFA program was created in 2021, RSA 194-F did not authorize funding to hire staff for the administration of the program. As a result, for almost the first two years of the EFA program, NHED did not have staff solely dedicated to program implementation or oversight and no

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compliance monitoring procedures were performed. An EFA Administrator position was created in July 2022, and filled in March 2023. Once filled, the Administrator started drafting policies and procedures, performing a risk assessment, developing the new EFA contract, calculating EFA grants and phase-out grants, performing the annual reconciliation to identify unused EFA funds, collecting program data, and performing other program-related duties. In August 2023, the Administrator began monitoring for compliance with program eligibility and qualifying expense requirements. As of August 14, 2024, NHED had neither formalized its compliance monitoring policies and procedures nor completed any monitoring reports.

RSA 194-F:4, X requires the scholarship organization to, at a minimum, conduct random audits of individual EFAs annually. Administrative rules require the scholarship organization to contract with an unaffiliated auditor to conduct risk-based audits of EFA accounts at least annually, and submit audit plans and reports to NHED. The CSF receives annual financial statement audits performed by an independent external auditor. However, NHED is unaware whether required annual audits of individual EFA accounts have been conducted.

**Audit Scope**

Chapter 297, Laws of 2022, requires the LBA to “complete a performance audit of the department of education, education freedom account program.” It requires the audit include, but not be limited to, a review of the following areas:

- (a) Initial and continued eligibility of participants.
- (b) Controls for determining qualifying expenditures.
- (c) Identification and recovery of ineligible disbursements.
- (d) Procedures and controls for transferring funds to the scholarship organization.
- (e) Procedures and controls for the phase-out grants.
- (f) Public reporting of participation, student outcomes, and expenditures.
- (g) Demographics of qualifying applicants by 2020-2021 municipality and state of residence, grade level, and type and location of educational program, and their 2021-2022 municipality of residence, grade level, and type and location of educational program.

To accomplish the requirements in State law, and given the lack of access to primary program data and information, this performance audit will be limited to answering the following question:

***How effectively did NHED oversee the EFA program during SFYs 2022 through 2024?***

Specifically, we will assess whether NHED had adequate controls over CSF’s process for:

- determining initial and continued eligibility of students to participate in the EFA program;
- determining initial and continued eligibility of students to receive differentiated aid;
- ensuring each EFA student’s account is credited with the correct amount of EFA funds;
- ensuring EFA funds are only used for qualified educational expenses;
- identifying, reporting, and addressing cases of suspected misuse of EFA funds; and
- ensuring educational service providers are compliant with program requirements.

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We will also assess whether NHED had adequate controls over:

- monitoring the scholarship organization’s compliance with program requirements;
- monitoring the CSF and ClassWallet contracts;
- ensuring students receive the correct amount of EFA funds;
- identifying and recovering ineligible EFA disbursements made to students;
- transferring EFA funds to the scholarship organization;
- ensuring administrative fees paid to CSF are appropriate;
- ensuring phase-out grants were paid to school districts appropriately;
- public reporting of participation, student outcomes, and expenditures; and
- reporting demographic information for participating EFA students by school year.

To address these objectives, we will:

- review relevant State and federal laws, relevant contracts, as well as NHED rules, policies, and procedures to identify program requirements;
- review calculations performed by NHED staff to determine appropriate EFA grant amounts to students and phase-out-grants to school districts were disbursed;
- review information in NHED’s student database;
- review publicly available information on the EFA program;
- interview NHED staff knowledgeable about program elements;
- obtain and review other NHED information, as needed.

While the audit period will encompass SFYs 2022 through 2024, we may examine NHED management controls and other relevant matters outside the audit period when they affect program operations during and after the audit period. We anticipate completing this audit and presenting the final report to the Fiscal Committee in Spring 2025.

### **Scope Limitations**

Early in our planning work, NHED communicated to the LBA Audit Division that its interpretation of Chapter 297, Laws of 2022, only gives the LBA the authority to audit NHED’s *oversight* of the EFA program. It does not give the LBA authority to audit any documents, records, data, reports, files, memoranda, or documents which are not the property of, nor in the possession of, NHED. NHED stated the auditors will be given access to all documentation in NHED’s possession regarding the EFA program. Preliminary discussions with NHED indicate most documents pertaining to the EFA program are solely in the possession of CSF. For example, NHED does not currently possess policies, procedures, internal memoranda, or internal guidance developed by CSF to implement the program. NHED does not currently possess documents associated with initial EFA applications, documents used for determining eligibility for differentiated aid or annually verifying residency, or specific items purchased by each student with EFA funds.

According to the NHED Commissioner and legal counsel, NHED cannot be compelled to request this information from the CSF for LBA audit purposes, as requiring NHED to request these items from CSF would violate the separation of powers between the Legislative and Executive branches.

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In addition, the NHED and the Attorney General representative's interpretation is that the State's standard contract, which is required to be used by all State agencies when contracting for services, does not consider data collected or generated by the contractor to be the property of the State.