

**LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE**

Legislative Office Building, Room

Concord, NH

Tuesday, August 27, 2024

**MEMBERS PRESENT:**

Senator Cindy Rosenwald, Chair

Senator Timothy Lang

Senator Rebecca Whitley

Senator Howard Pearl

Representative Keith Erf

Representative Gerald Griffin

Representative Lucy Weber

Representative Mary Jane Wallner

**1. Acceptance of the April 29, 2024 meeting minutes**

CINDY ROSENWALD, State Senator, Senate District #13 and Chairwoman: Are you ready? Okay. Well, I will open the regular meeting of the Legislative Performance Audit and Oversight Committee. And -- um -- we've got a few things on the agenda this morning. The first is the acceptance of the April meeting minutes.

**\*\*** TIMOTHY LANG, State Senator, Senate District #02: Move to approve as written and presented.

GERALD GRIFFIN, State Representative, Hillsborough County, District #42: Second.

REBECCA WHITLEY, State Senator, Senate District #15: Second.

CHAIRWOMAN ROSENWALD: So moved by Senator Lang, seconded by Representative Griffin. Any changes needed? We don't need a roll call for this.

JAY HENRY, Performance Audit Supervisor, Audit Division, Office of Legislative Budget Assistant: Voice

vote.

CHAIRWOMAN ROSENWALD: Okay. Voice vote. So all in favor please say aye? Any opposed? Motion passes unanimously.

**\*\*\* {MOTION ADOPTED}**

**2. Status of ongoing performance audits:**

CHAIRWOMAN ROSENWALD: Okay, Mr. Henry. You're -- you guys are on.

CHRISTINE YOUNG, Director, Audit Division, Office of Legislative Budget Assistant: Good morning, Madam Chair, and Committee Members. For the record, I'm Christine Young, Director of Audits for the LBA. And with me is Jay Henry, Performance Audit Supervisor. And I'll just go ahead and get started with an update of ongoing and pending audits.

The first one on the list is the New Hampshire Commission for Human Rights. The Commission received a draft copy of our report on April 9th. We met with the Executive Director in May to discuss the report and answer any questions. After that meeting, we received additional information from the Commission resulting in changes to the report. We made the changes, sent the report back to the Commission in June. A July 15th deadline was set for the Commission to send us auditee responses; and, unfortunately, on that day we were informed there was an emergency and the Commission's Executive Director would not be returning to work until the end of August at the earliest. So the audit is currently on pause until we receive auditee responses from the Commission.

Moving on to Special-Education. As you know, the audit scope is broad and the subject matter is complex. The audit is currently staffed with five auditors. We're more than

halfway through field work. We're drafting observations for completed portions of our work. Five observations have already been sent over to the Department, and another set of observations is expected to be drafted by late September. The report will be lengthy with 50 plus observations, and a full draft report is not expected until early 2025 at the earliest.

Moving on to Education Freedom Accounts. We've drafted the Scope Statement. You have that in your materials. Uh -- Paige Lorenz, Performance Audit Manager, is available to present the scope right now for your consideration and approval, if you would like that.

CHAIRWOMAN ROSENWALD: I think we'd like that.

MS. YOUNG: Okay.

CHAIRWOMAN ROSENWALD: It's always great to see Paige.

MS. YOUNG: And we'll be looking for a vote on this.

PAIGE LORENZ, Audit Manager, Audit Division, Office of Legislative Budget Assistant: Good morning. As Christine said, I'm Paige Lorenz, the Audit Manager. Vilay Skidds is still the Auditor-in-Charge. She just couldn't make it to the meeting today.

So on Pages 1 through 5 of the Scope Statement is background information on the EFA Program starting from with the legislative -- the laws that put it into effect. We talk about the roster of students who are there -- um -- how the program was established, and what types of differentiated aid that the students may qualify for on Page 2, and there's four categories of those. These are the same categories that -- uh -- public education students can receive.

We discuss the EFA expenditures that are allowed under the program on Pages 2 to 3, and this is the exact law that is copied and pasted in here.

We go on to discuss the scholarship organization that has contracted with to administer the program. The bullets below that paragraph discuss the payment system that they've established as the scholarship organization.

On Page 4 we discussed the phase-out grants. Those are entirely handled by the Department of Education and the scholarship organization does not have any part in the phase-out grants.

Bottom of Page 4 we discuss the Department's program oversight of the Education Freedom Account Program. We have background on the EFA Administrator position in there. He is majority -- he's mainly responsible for the oversight of the program. Um -- the position wasn't immediately established when the EFA Program went into effect, so there's a little bit of delay on the Department's oversight of the EFA.

Below that we discussed the audit scope. We lead in with the statutory language that requires the audit, and our scope question would be how effectively did NHED oversee the EFA Program during State Fiscal Years 2022 through 2024. We have a pretty detailed bolded list of our objectives and some of the methods we'll be using to fulfill those objectives. Our audit period will be State Fiscal Years 2022 through 2024. However, we may have to look at a time period outside of the audit period in order to understand relevant matters within the audit period. So it's not completely limited to 2022 through 2024.

As of today, we expect to have a final report to Fiscal in the Spring of 2025. We summarize the scope limitations at the bottom of Page 6. The scope limitations have not changed since our March 18th LPAOC meeting. There

is a -- part of that first paragraph is certain documents that we will not be able to possess in -- we will not be able to obtain that are in the possession of the scholarship organization. We have spoken to the Department and -- uh -- it will be up to their discretion to request documents from the scholarship organization.

And the last paragraph is the Department's position on the authority to audit the scholarship organization, which was also discussed at the March 18th meeting. And I can answer any questions you may have.

CHAIRWOMAN ROSENWALD: Questions from the Committee? Senator Whitley.

SEN. WHITLEY: Thank you, Madam Chair. Thanks for bringing this to us today. So it doesn't seem like there has been any progress from, you know, sort of our conversations from March 18th about, you know, what was required in the law and -- um -- you know, so the DOE's hesitancy to assist the LBA; is that correct?

MS. LORENZ: We are still working with them on the documents they'll be able to request on our behalf. Uh -- it depends on what we're looking at. The details -- as far as we can tell, the details of what we discussed at the March 18th meeting are largely unchanged. So anything that the Department has done for its oversight we won't be able to independently verify by going to the scholarship organization to obtain those similar materials or assess the potential risks that we would normally do in a regular audit. We can identify potential risks, but unless we go into the scholarship organization and obtain source documents, we won't be able to assess that full risk.

SEN. WHITLEY: Follow-up.

CHAIRWOMAN ROSENWALD: Follow-up.

SEN. WHITLEY: So considering what the -- uh -- requirement was in the law that required the audit, sort of the DOE's sort of unwillingness to, you know, give access or even request access from the scholarship organization to that primary program data, do you feel like the LBA is sort of not able to comply with the law because of that limitation?

MS. LORENZ: We're -- we're going to comply with the law to the extent that we can. Once we publish the report, we do put scope limitations in the report of the details of what stopped us from going through the full scope of what we usually audit in a program. So we will be able to fulfill the statutory requirement. I think we just won't get as far as we do in our normal audits.

SEN. WHITLEY: Follow-up.

CHAIRWOMAN ROSENWALD: Follow-up.

SEN. WHITLEY: So on Page 6 when you're talking -- and thank you for identifying these limitations. I think that's really helpful for us. On Page 6 where you talk about the scope limitations, halfway through that paragraph you say in the scope limitations, quote, preliminary discussions with NHED indicate most documents pertaining to the EFA Program are solely in the possession of CSF, and then give some examples. And then, lastly, that Department of Education does not currently possess documents associated with initial EFA applications, documents used for determining eligibility for differentiated aid and annually verifying residency or specific items purchased by each student with the EFA funds.

So can you expand on, you know, I understand the Department's position that the audit can only look -- the auditors can only look at what the Department of Education has. It's clear what they have and what they do have and what they don't have. Can you expand on sort of your

conversations about the Department's willingness, the Department of Education's willingness to, you know, directly request what is necessary to complete the audit?

MS. LORENZ: Sure. So what we'll do is we -- we're developing our audit plan at this point, and we are going to go forward with our plan as if we did have full access to the documentation. And as we progress with our audit plan, we still do not know what exactly the Department has versus what the scholarship organization has. So we will still request all the documentation you would need, and then we'll have to rely on the Department to let us know what is unavailable and go forward from there.

SEN. WHITLEY: Great. And last question.

CHAIRWOMAN ROSENWALD: Follow-up.

SEN. WHITLEY: Has the Department of Education indicated whether they'd be willing to request that information that you're going to request?

MS. LORENZ: It is going to be their discretion. If it directly impacts their oversight responsibilities or something that we identify in laws, rules, or the contract that they should have, they have stated they're willing to reach out to the scholarship organization for those items.

SEN. WHITLEY: Thank you.

CHAIRWOMAN ROSENWALD: Further questions. Yes, Representative Wallner.

MARY JANE WALLNER, State Representative, Merrimack County, District #19: So recently there was a compliance report that came forth, and it was looking at a very small number of students in the -- in the program. I'm wondering how will the LBA's auditors use that information in this

audit.

MS. LORENZ: Yeah, we just received that as well this past Friday. So we haven't gotten a chance to look over everything. We are reviewing it to determine what we can work off to independently verify information. Any work papers the Department used they've been willing -- that they've retained from that, they've been willing to share those with us. So we'll get access to those.

As far as our audit work, it will not directly impact what we have planned -- um -- because it's the Department's work and they had access directly. So we won't be able to independently verify what they did. But it is a good starting point in the types of issues that they identified.

REP. WALLNER: One more question.

CHAIRWOMAN ROSENWALD: Follow-up.

REP. WALLNER: So I guess I'm trying -- will you -- do you anticipate having any interviews or conversations with the scholarship organization?

MS. LORENZ: It is our understanding that we will not have access to the scholarship organization staff.

REP. WALLNER: Thank you.

CHAIRWOMAN ROSENWALD: Further questions. Yes. Senator Lang.

SEN. LANG: Thank you. But to be clear, the Department of Education has said they'd cooperate as you're reviewing their oversight responsibility and how they've implemented oversight over the child scholarship fund, and are willing to provide any documentation to show what policies, procedures, and rules they have that have been put into place, including documentation where they've executed oversight over that and validated that oversight.

MS. LORENZ: Correct.

SEN. LANG: Thank you.

CHAIRWOMAN ROSENWALD: I have a question. So I think I heard you say you just won't have access to information to validate the Department's responses. So I'm trying to think of the usual performance audits I look at and there might be -- I remember one from Lottery, for example, that said they weren't locking the drawing room door. Um -- was some years ago. And so you would have had a way to validate whether they were or were not locking the room where they drew the tickets. But in -- so you can look at their procedures and policies for oversight, but you won't be able to verify that they were getting the information to comply with those policies?

MS. LORENZ: Correct. It appears that we won't be able to verify their practice conforms to their policies and procedures.

CHAIRWOMAN ROSENWALD: So we'll take their word for it.

MS. LORENZ: We will report what the Department reports; but that would be one of the areas but we know it a goal implementation that we were unable to independently verify.

CHAIRWOMAN ROSENWALD: So what kind of observations would you be able to report to the Legislature?

MS. LORENZ: I believe we'll be able, like I said, to go through the requirements in State Law, and we will be able to identify areas of risk that the Department should be looking at. We will not be able to assess the extent of that risk that exists.

So we can point out areas that the Department should

be monitoring but currently is not or there are no controls or we have concerns about. We'll gather as much evidence as we can to support those and just, like I said, in a normal audit we would be able to do some kind of sample at the source and put numbers in place of how big that risk is.

CHAIRWOMAN ROSENWALD: So if -- just I guess one more question. The auditee gets to respond.

MS. LORENZ: The auditee, being the Department, not the scholar --

CHAIRWOMAN ROSENWALD: Yeah.

MS. LORENZ: Yes.

CHAIRWOMAN ROSENWALD: They will respond to the observations.

MS. LORENZ: Correct.

CHAIRWOMAN ROSENWALD: They have to respond?

MS. LORENZ: They -- I don't know anybody who has not provided responses. I believe they have to have an opportunity to respond. They do not have to put responses in the report.

CHAIRWOMAN ROSENWALD: So we don't know if they'll respond?

MS. LORENZ: I -- we've had a few audits with them so far and they've never not responded. So I'd be surprised if they did not.

CHAIRWOMAN ROSENWALD: Okay.

MS. LORENZ: Yeah.

CHAIRWOMAN ROSENWALD: Great. Senator Whitley, and then --

SEN. WHITLEY: Thank you, Madam Chair, and thank you for going through this with us again. It does feel like not much has changed since March. And at that meeting a number of the Members of this Committee, all of whom are legislators, you know, this is a bi-partisan Committee expressed concerns that, you know, our job as elected officials, as legislators, and more specifically this Committee's job, is to make sure that public dollars are being used appropriately. And in this case I just want to clarify this is a situation where millions, upon millions of public dollars are being put into a program operated by a private organization, and due to the Department of Education's unwillingness to allow the legislative -- the legis -- you know, the LBA to go in and audit directly this organization that is utilizing and giving out public dollars -- um -- you know, do you have concerns that, you know, we're being -- our role as, you know, the public puts trust in us to make sure that public dollars are being used appropriately. Do you have any concerns based on the way that this has proceeded that we're not going to be able to do that?

MS. LORENZ: So far we're working with the Department and doing what we are statutorily required to do. I think after the report comes out or if the Oversight Committee or the legislators see there are concerns that they may have, it's their authority to be able to put something in place for that -- um -- I believe.

CHAIRWOMAN ROSENWALD: Could you speak into the mic, Paige?

MS. LORENZ: Sorry. I'm always afraid I'm too close to it. I was just saying that after this we will be able to fulfill the statutory obligations that are given to us and we will provide a report. If there are remaining concerns

once that report comes out, it's pretty much the legislators' authority to take extra steps to address those things. So from our end there aren't any preliminary concerns, and we don't influence policy directly. So once you have the report, I think you'll have a better idea of those concerns.

CHAIRWOMAN ROSENWALD: Senator Lang and then Representative Weber.

SEN. LANG: I just want to be careful in our -- in our portrayal of the Department of Education, right? I mean, I think the last sentence on Page 7 really states what's going on in the ability of data and no amount of laws that we pass can that invalidate another law. So it's clear here, it says in addition to the Department of Education, the Attorney General, State's lawyers, represent his interpretation of the State standard contract which is required to be used by all State Agencies in contracting services, does not consider the data collected or generated by a contractor to be the property of the State.

Doesn't give us the right to override that law if we pass another law, right? So we'd have to deal with how the State contracts are written to deal with contract law. But I want to be clear that if the Agency, if the Department of Education did oversight, you have a list of things on Page 6, one of which is identifying, recovering ineligible EFA disbursements made to students, ensuring phase-out grants are paid to school districts appropriately, ensuring that students receive the correct amount. If the Agency performed oversight activity and collected data to validate that they were doing what they were supposed to do, you all have access to that data.

MS. LORENZ: Correct.

SEN. LANG: So, again, I want to be careful not portraying the Department of Education is not cooperating. They're cooperating within the terms of the law that

they're allowed to cooperate, is even identified by the Attorney General, so. And I think you'll be able to do your report based on that. And if we need to adjust the contract to not to deal with maybe bad language in our contract law, then we can deal with that.

CHAIRWOMAN ROSENWALD: Representative Weber and then Griffin.

REP. GRIFFIN: Thank you, Madam Chair. I'd like to ask how many people and how much effort are we putting in? In other words, how many people for how many weeks is this audit going to take or is it estimated to take?

MS. LORENZ: Our current team is myself, Vilay Skidds, and one staff auditor. So three of us. With our anticipation is to get it to Fiscal Spring of 2025, depending -- we're finishing the audit plan within the next couple months. Once the audit plan is finished, we'll have a better idea of what to expect for a date for the report's release.

REP. GRIFFIN: Thank you.

CHAIRWOMAN ROSENWALD: Representative Weber.

LUCY WEBER, State Representative, Cheshire County, District #05: I think my question was really somewhat on the same lines as Senator Lang's of just being sure that -- seems to me there're two issues here. One is tax dollars and -- but that's almost more of a financial audit than a performance audit. And that what -- so what you're going to be looking at, if I'm correct, is the actual oversight provided by the Department of Education, and what procedures and practices they are using to comply with their statutory duty to oversee the program; is that correct?

MS. LORENZ: Yeah.

REP. WEBER: Okay. Thank you.

CHAIRWOMAN ROSENWALD: Representative Wallner.

REP. WALLNER: Thank you. The scholarship organization is a non-profit organization. And is there a fiscal audit that's available because that organization as a non-profit would have to be doing regular audits?

MS. LORENZ: They do receive financial audits annually and those are publicly posted and have been provided.

REP. WALLNER: Okay. And those would be something that you would have access to and you would look at --

MS. LORENZ: Yes.

REP. WALLNER: -- during this? Thank you.

CHAIRWOMAN ROSENWALD: Wait. But -- but I have -- okay. So question. Yes, Representative Erf.

KEITH ERF, State Representative, Hillsborough County, District #28: Thank you, Madam Chair. So can you speak to the other special-education audit that you're doing with the Department of Education and whether or not the auditors have been able to go to the local school districts kind of analogous to the CSF Foundation to determine whether, in fact, they are following the law that you're reporting on with regard to the Department of Education?

MS. LORENZ: I can't speak to the special-education audit. If you want to ask about local school districts, I believe Jay has a little bit more information on what was decided for going to the local schools for the special-education audit.

MR. HENRY: Hello. My name is Jay Henry. I'm the Performance Audit Supervisor for the LBA Audit Division. With the special-ed. audit, the big special-ed. audit which Christine has talked about, we're talking it's going to be big, 50 observations. Really that is focused just on the Department and is not going out to audit locals. I -- I think we've talked about this before. It's -- looking at the program, we're sort of better to look at the State first because they're the ones setting up the program, running the program, and should be managing the program. And if there's -- if we have issues with what the State is doing, you know, you can imagine, you know, what's happening at the locals. You know, they're just reacting to what the State's doing. You know, I think the -- if the Legislature wanted maybe after this audit to do more at the local level that might be good; but I think there'd be -- have to be a lot of changes at the -- at the State level first.

REP. ERF: Follow-up.

CHAIRWOMAN ROSENWALD: Yes, follow-up.

REP. ERF: So despite the fact that the Committee when they originally requested that audit a couple years ago when I was initially on this Committee, specifically requesting that the local Districts be audited because they were the source of the problem that the parents were reporting, the Performance Audit Committee chose not address that; correct?

MR. HENRY: Well, if I remember the Scope Statement itself that they agreed on, this Committee, it was more focused at the State level.

REP. ERF: Follow-up.

CHAIRWOMAN ROSENWALD: Follow-up.

REP. ERF: I understand that. But the initial request by the Chairman at that time was broader than the Scope Statement that you put forward once that Chairman was no longer the Chairman.

MR. HENRY: If I remember, it sort of grew that -- this whole topic. It started out, if I -- Senator Reagan was the Chair of a Special Committee. He was also the Chair of this Committee. And it started off with the dispute resolution was the first thing that he wanted us to do, and we actually did that audit. Paige was the in-charge of that audit. But then as they kept talking about special-education, it grew as far as the -- the things they wanted us to look at. So that's how we came -- and the locals were discussed, but I think it was determined, you know, we really got to look at the State program itself first.

CHAIRWOMAN ROSENWALD: Um -- Senator Pearl.

HOWARD PEARL, State Senator, Senate District #17: Thank you. I figured I might as well chime in. Everyone else has. So the -- the issue here seems to be that this data, that some of the data is owned by an independent contractor and not by the State. Is -- have -- have you run into this issue previously in audits that you've tried to do; and, if so, how have you worked through it?

MR. HENRY: That's more finan -- some financial audits?

MS. YOUNG: Yeah. I mean, I don't recall ever running into -- um -- an issue of this magnitude. I mean, we do audit departments that have contracts with third parties. Um -- but in this situation because the scholarship organization essentially runs most of the program, it is different. And, you know, we have worked through minor scope limitations before, and we've always been able to come to an agreement and -- um -- obtain the records that we need to obtain in order to perform the audit. This is a little different with the program being established in the

chapter law, and directing us to do an audit through the Chapter Law versus, you know, this Committee directing us to do an audit that is not established in the Chapter Law. So it is a little bit different.

SEN. PEARL: Follow-up.

CHAIRWOMAN ROSENWALD: Yes, follow-up.

SEN. PEARL: So is there a process where the contractor themselves can be audited? Who would have the authority to do that?

MS. YOUNG: I mean, that would be an independent CPA firm or another audit firm. We historically have not audited entities that are not State Agencies.

SEN. PEARL: Thank you.

CHAIRWOMAN ROSENWALD: Okay.

MR. HENRY: Except we do have in our statute there's a weird sort of provision about being able to look at non-state entities. I think it's like up to five over a five-year period, something like that, with the idea that I think they knew State funds are going down, you know, to the local level. And we have looked at other programs like the CAP Programs. You know, money from the State will go to these -- the CAP Programs to do various functions for the State or the Federal Government. You know, some of the Federal funds go down. And we have been able to audit, you know, those programs or receive information from those programs. But it also may be that their contracts that they have with the State are stronger or have language that allow -- allow the Department to -- the Department to have those contracts, you know, access to data.

SEN. PEARL: Okay. Thank you.

CHAIRWOMAN ROSENWALD: So we've all seen the contract for this program, and it states pretty clearly that all that data belongs to the State. Did the Attorney General oppose the contract when it came before the Executive Council?

MR. HENRY: Not to my knowledge.

MS. YOUNG: Not to our knowledge, no.

CHAIRWOMAN ROSENWALD: So they were okay with the fact that --

MR. HENRY: Well, I think they reviewed --

CHAIRWOMAN ROSENWALD: Like in Medicaid, the State really owns all the data, even though most of Medicaid is managed by private entities. This is not a unique -- the State owns the data contract.

MR. HENRY: Yeah. To me, it's an interpretation of the State contract and, you know, we had our initial view of it. We thought it would look, oh, boy, they can ask for all this data. If they ask for it, we can look at it. We can audit it. They saw it as no, the program's set up to be away from the State, run by -- run by the scholarship program and, you know, there was sort of a separation there.

CHAIRWOMAN ROSENWALD: Hm-hum.

MR. HENRY: And so, you know, we're -- we're abiding by sort of their interpretation of how the contract and the law is. I think there's -- you're still going to get a good audit out of it. It just won't be as thorough as --

CHAIRWOMAN ROSENWALD: As (Inaudible).

MR. HENRY: -- as normally would have, yeah.

CHAIRWOMAN ROSENWALD: Senator Whitney.

SEN. WHITLEY: Thank you, Madam Chair. You know, you indicated that, you know, it's fairly unusual for this non-profit private entity to, you know, run a State-funded program so, you know, so deeply. So the depth of how much, you know, how little involvement the DOE has. So, essentially, that means that the DOE has delegated, you know, pretty much all of its authority to the -- to this non-profit organization and that, to me, has resulted in a, you know, coupled with their, as you said, the DOE's interpretation of the contract, that has resulted in a very, very troubling lack of transparency for a significant amount of State dollars.

Um -- it -- does the LBA -- so my question is does the LBA have the capacity or would you need something additional from this Committee regarding, you know, sort of maybe the Legislature's own interpretation of the contract and what, you know, the DOE is obligated to request or not request? 'Cause I -- I guess, you know, my understanding is that -- that, and I -- and I understand why, you are -- you are relying on the Department of Education's interpretation, and -- but that's the Executive Branch. We're the Legislative Branch. And so I'm wondering if, you know, there needs to be some additional review of this.

MR. HENRY: Yeah, I don't -- I don't think that's the auditor's role. I mean, that's more of a legislative function. Um -- again, if -- if the -- this Committee wanted a different audit, you know, we're doing a Chapter Law audit. This Committee could come up with its own audit, its own scope and if they wanted, I guess, to expand what we're doing; but you still may run into problems of interpretation. And it gets messy and that's, you know, that's why we're sort of -- we don't have -- we can do what we can do, but we can't push, you know, sort of past that.

CHAIRWOMAN ROSENWALD: Well, to follow-up on that. You said this audit would be available in the Spring.

MR. HENRY: If all goes well.

CHAIRWOMAN ROSENWALD: Budget season. So do you have any sense of whether it will be available during the House phase or the Senate phase or not before the budget is completed?

MR. HENRY: I think we have to -- once -- once you decide what the scope of the audit is, so whether you approve it as written or if you change the scope, that would affect how long it takes. And but once that's done, we -- we write our audit plan and that's really where we try to get a good estimate of when we think we're going to get this done if everything runs smoothly. So right now we're just sort of, you know, we're estimating Spring of 2025. And I don't, you know, it's a broad time. I know that, because we're not quite sure how long it's going to take and it's also the interaction we have with the Department once we give them observations. And right now we have no clue if it's going to be one or 20 observations, you know. And the more observations, the more time it takes for us to write, the more time it takes for them to respond. You know, it's like Special-Ed. the reason why that one's taking so long.

CHAIRWOMAN ROSENWALD: Right. And that's big. You've told us that's going to be like this.

MR. HENRY: Yeah.

CHAIRWOMAN ROSENWALD: And, also, we should note that Spring in New Hampshire lasts for about three days now. So, I mean, you're probably going to miss the Spring window.

MR. HENRY: Should -- should be mud season, right? That -- that would be --

CHAIRWOMAN ROSENWALD: Right. Okay. Mud season.

Senator Lang.

**\*\*** SEN. LANG: I move we approve the scope and I'd like to speak to my motion.

CHAIRWOMAN ROSENWALD: Is there a second? Second by Representative Weber.

SEN. LANG: So, again, I think until we deal with the contract law conflict, I think this is the oversight which is the great thing to look at. See they have a response, the Department of Education has a responsibility of oversight, are they performing their oversight? And if they have performed their oversight, did they perform it properly. I think it's the appropriate thing to do, and I think it's a pretty clean vote.

CHAIRWOMAN ROSENWALD: Representative Weber, did you want to speak to your motion? Any other comments? Ready for a vote? The motion is to approve the Scope Statement on DOE's oversight of the EFA Program. All in favor say aye? Any opposed? The motion is adopted unanimously and thank you very much.

**\*\*\* {MOTION ADOPTED}**

CHAIRWOMAN ROSENWALD: Yes. The next one -- let me just announce now that I am not going to be voting on this next one, and I'll explain why once LBA talks about what the issue is.

MS. YOUNG: Okay. So on to DHHS's out-of-state placements.

This audit was to evaluate the interplay between the different agencies and bureaus within the Department of Health and Human Services in certifying out-of-state juvenile residential facilities.

We scheduled an entrance conference for July 31st. Soon after that during the planning for the audit, we came across a Federal lawsuit against the Governor and DHHS officials over the placement of foster care children in residential facilities. While it appears the lawsuit doesn't specifically relate to the two juveniles who were placed in Tennessee, there could be some overlap. A similar issue happened a few years ago with our performance audit of DHHS's Bureau of Elderly and Adult Services, and that audit is still pending now.

Government Auditing Standards require us to evaluate the effects of legal proceedings on an audit. So after discussing the matter with DHHS, we and DHHS officials believe the audit could interfere with the lawsuit and vice-versa, the lawsuit could interfere with the audit. Because of the lawsuit we canceled the entrance conference, and we're suggesting that it might be best to suspend the audit of out-of-state placements until the legal proceedings have concluded.

So we're looking for a vote on this now, unless the Committee would first like to hear from somebody from the Department of Health and Human Services who could provide some more information on how the issue in the lawsuit could intersect with the audit.

CHAIRWOMAN ROSENWALD: Okay. And so the rest of my explanation is that I have a family member who's involved with the foster care lawsuit. So I will not be voting on this. Would the Committee like to hear from DHHS?

SEN. LANG: Madam Chair, I'm okay with the idea. This is a past practice of the AG -- of us, obviously, so I don't know that we need to hear from anybody else. I think we continue the past practice.

CHAIRWOMAN ROSENWALD: Senator Whitley.

SEN. WHITLEY: I -- I would agree regarding the lawsuit and also the Governor just last Friday signed SB 417, which directly relates to the Department's placement of children out of -- out-of-state and in-state. So -- um -- that law needs to be implemented, too. So I would agree to the suspension.

CHAIRWOMAN ROSENWALD: So --

\*\* SEN. LANG: Move to suspend.

CHAIRWOMAN ROSENWALD: Is there a second?

SEN. PEARL: Second.

CHAIRWOMAN ROSENWALD: Seconded by Senator Pearl. Any further discussion? And I will not be voting. All in favor say aye? Any opposed? And one abstention. Thank you.

\*\*\* **{MOTION ADOPTED}**

MS. YOUNG: Okay. Moving on to the Doorway Program. We've not started this audit yet, but we intend to start in the next month or so, as soon as staff is available to begin that audit. And now we can move on to agenda item number 3 if that's okay, Madam Chair?

CHAIRWOMAN ROSENWALD: Sure.

### **3. Suspended, tabled, and potential audit topics:**

MS. YOUNG: So there are three potential audit topics on the list, one of which is currently suspended, as I mentioned. That was for BEAS. Are there any other topics that you'd like to add to the list? If so, we'd be happy to discuss.

CHAIRWOMAN ROSENWALD: Any thoughts? Didn't we hear some suggestion and about something out of Environmental Services that we decided not to go forward with? Do you

remember that? (Inaudible).

CHAIRWOMAN ROSENWALD: Do you remember -- you do?

SEN. LANG: So, again, I think this had to do with their appeals process is what we were talking about. And the idea of, again, but they've -- they're one of the few that actually have moved the appeals process outside their agencies to the Attorney General's Office where a lot of agencies do the appeals process within. Like Safety does their own appeals process --

CHAIRWOMAN ROSENWALD: Oh, yeah.

SEN. LANG: -- within the Department of Safety. And so I think we decided that because that's already been kind of the model, I think maybe going forward we want to look at there was no need to do the audit of their appeals process.

CHAIRWOMAN ROSENWALD: Yes, Representative Weber.

REP. WEBER: The other one that we suspended last time along with the one that was just described was the public access to bodies of water, and we -- we suspended both of those for consideration. They'd been sort of hanging out there for a while and recently decided to take them off.

CHAIRWOMAN ROSENWALD: So there are a couple other --

REP. WEBER: But that reflected in the minutes.

CHAIRWOMAN ROSENWALD: Yeah. There's a couple items on this list. DHHS Contract Bureau and BDS, including possibly reviewing system redesign and its effects on billing and services and/or housing practices. Any have any thoughts? Senator Whitley.

SEN. WHITLEY: Yeah. On the latter I think we're still awaiting a report, is that correct, on the system redesign

on BDS?

CHAIRWOMAN ROSENWALD: I am not sure where that system redesign stands. They started it. They stopped it.

SEN. WHITLEY: Okay.

CHAIRWOMAN ROSENWALD: I -- I don't actually know where it is; but -- um -- there were -- there was federal litigation --

SEN. WHITLEY: Right.

CHAIRWOMAN ROSENWALD: -- again. So maybe that's not a great topic; but how do we feel about contract management?

MR. HENRY: I just -- I'll just mention, I think contract management Representative Weyler was one of his topics. And then at the next meeting the Department came in, Department officials, and they had actually had developed a contract management system. There was a handout and they -- so, you know, it was something that I don't think Representative Weyler knew about it initially.

CHAIRWOMAN ROSENWALD: Okay.

MR. HENRY: I mean, it's something that can be audited; but I think we were -- I was surprised that they had actually come up with the, you know, come up with a system which would probably, we'll say, auditors would like, you know.

CHAIRWOMAN ROSENWALD: So we don't need that one?

MR. HENRY: We don't need an audit right now; but we'd like to have some ready to go. I mean, as you can tell, we've got some audits that are ongoing. We're talking about the Spring. In fact, that's probably the earliest that the next audit topic after we start the Doorway's audit.

CHAIRWOMAN ROSENWALD: Okay.

MR. HENRY: So we don't have to have one today; but we're always looking for something to put on the list so you guys can consider it. I think we're also coming up to the end of the session or there'll be a new Committee in January. So whether you want to leave -- leave a clean slate or have some stuff sort of for us to do, you know, before you -- before this Committee, you know, dissolves, I guess.

CHAIRWOMAN ROSENWALD: So are you going to have anything to bring us back before organization day?

MR. HENRY: I think the only one that might be would be the Doorway's Scope Statement. If we can get that done, I'll say December; but, you know, it all depends on when they start the work and how -- how big the scope is and everything.

CHAIRWOMAN ROSENWALD: Representative Weber and then Senator Lang.

REP. WEBER: That was -- I think you've just answered most of my question. But -- uh -- given that the Doorway's is already in the pipeline, it would perhaps -- I don't know if it's at all possible for that to happen before December 5th when everything changes or December whatever it is this year.

MR. HENRY: It will start before. Like we're planning on starting it -- um -- next month.

REP. WEBER: But my -- my point is that if we were to have a vote on a Scope Statement --

MR. HENRY: Oh.

REP. WEBER: -- it would be helpful to have it in November so we could vote on it end of November, which is always problematical anyway, because then we have organization day and reorganization, and you're going to have to wait for the appointees.

MR. HENRY: Yeah.

CHAIRWOMAN ROSENWALD: And that takes --

REP. WEBER: And that takes some time because, you know, leaders from both parties have to be elected. And then, you know, it -- it just --

MR. HENRY: Well, that may motivate us to get it done.

REP. WEBER: That was my precise point. If -- if there was any way of getting -- of focusing on getting that done so that then you have that on your plate --

MR. HENRY: Ready to work on.

REP. WEBER: -- ready to work on. And then in January, you know, we will be reconstituted and -- and -- um -- ready to start work on whatever comes next. But it sounds to me like have you a fair amount on your plate anyway.

MR. HENRY: Yes; but we -- we'll have some people freed up to start, right, the Doorway one.

REP. WEBER: Okay.

CHAIRWOMAN ROSENWALD: Senator Lang.

SEN. LANG: That was a similar point. I was saying and we can use November to bring in topics at that point to kind of queue up for the next Committee that comes on board. Here's the idea.

MR. HENRY: So think of (Inaudible).

SEN. LANG: Yeah, so they're not walking in blind. And so if we can, again, use November like to -- to her point, to Representative's point to bring forward the Doorways, vote on it, and maybe bring some ideas in for potential topics for number three there again -- um -- we can recommend for the next Committee.

CHAIRWOMAN ROSENWALD: So I would like to suggest that we meet the first week in December, because it's organization day week and everybody will be around. I mean, we have --

SEN. LANG: Have to be before organization day because some people may be not be on Committee anymore.

CHAIRWOMAN ROSENWALD: Well, yes; but, I mean, there's Monday and Tuesday.

REP. WEBER: I was going to say it has to Monday or Tuesday because we all become unpersons at midnight.

CHAIRWOMAN ROSENWALD: That's true.

REP. WEBER: Just like Cinderella.

CHAIRWOMAN ROSENWALD: Right. We're going to leave our glass slippers behind. But we know that people who have been elected will be around that week. So, in the meantime, think of anything that you're constituents suggest or that you think needs a performance audit. And -- um -- if there's no other business, we can adjourn the meeting and it looks like it's ten past two. However, it's 10:48. Thank you very much.

MS. YOUNG: Thank you.

(Meeting concluded.)

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C E R T I F I C A T E

I, Cecelia A. Trask, a Licensed Court Reporter,  
do hereby certify that the foregoing transcript is a  
correct transcription from the official YouTube  
audio/video recording of the proceeding in the  
above-entitled matter to the best of my professional  
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*Cecelia A. Trask*

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Cecelia A. Trask, RMR  
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