

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE MINUTES

November 10, 2021

The Legislative Performance Audit and Oversight Committee met on Wednesday, November 10, 2021 at 11:00 AM in the LOB Room 210-211.

Members in attendance were as follows:

Rep. Keith Erf
Rep. Ken Weyler
Sen. John Reagan, Vice Chair
Sen. Erin Hennessey
Rep. Lucy Weber
Rep. Mary Jane Wallner
Sen. Bob Giuda
Sen. Jay Kahn

The meeting was called to order by Senator Reagan at 11:00.

VOTE ON ACCEPTANCE OF THE JULY 26, 2021 MEETING MINUTES:

One correction was made to the July 26, 2021 minutes. The correction was made on the top of the first page. Senator Reagan's title was changed from "Chair" to "Vice Chair." There were no other corrections.

Motion by Representative Weyler, seconded by Senator Giuda. Voice vote.

MOTION ADOPTED.

STATUS OF ONGOING PERFORMANCE AUDITS:

Stephen Smith, Director of Audits, provided the Committee with brief updates of ongoing performance audits. The Board of Dental Examiners has some outstanding fieldwork but drafting of the report is ongoing with a draft report ideally completed in January and a presentation to Fiscal in a February or March timeframe. The Child Care Licensing Unit has ongoing fieldwork and report drafting has begun. The draft will hopefully be done before the end of the year with a report to Fiscal in February depending on how the exchange of observations and responses goes. The review of the New Hampshire Retirement System is ongoing with research, gathering background information, and conducting interviews with the New Hampshire Retirement System and the Department of Administrative Services. No completion timeframe was given.

The Bureau of Elderly and Adult Services - Choices for Independence is currently on hold. Auditors had an entrance meeting, and Health and Human Services requested a delay due to workload resource demands and ongoing litigation that touches the current audit topic. Senator Reagan looked for a motion to suspend. Senator Hennessey motioned to suspend the audit. Second by Representative Weyler. Discussion by

Senator Giuda who suggested that the audit be suspended until after close of litigation.

Voice vote.

MOTION ADOPTED.

IDENTIFY NEW TOPICS AND PRIORITIZE AUDIT WORK:

Two topics were received by Jay Henry, Performance Audit Supervisor: Earned Credit (Department of Corrections) and Special Education (Department of Education). There has been no work on either of these, but the LBA needs a topic for the audit team that is currently performing the review of the Retirement System.

Discussion followed regarding Earned Credit. Senator Giuda was unsure if this topic would rise to level of an audit but instead could possibly be addressed by the Department of Corrections. It is unclear who requested the audit; there was suggestion that it was from a member of the Parole Board. Commissioner Hanks for the Department of Corrections was invited to speak about the question. She explained how the courses operated and how credit was awarded once the courses were completed; she emphasized that if it could not be determined who conducted the courses, the applications for credit would not be signed. It was agreed that an audit of this topic would be of no use to the Department. No vote was taken.

Senator Reagan began discussion about Special Education. There was concern about the amount of money spent on special education when parents and children were not receiving appropriate services, even when those services were specifically ordered in individualized education programs. Discussion followed regarding the scope of the question, with emphasis on the dispute resolution process or effective use of dollars. It was suggested that the LBA come back with a preliminary statement to help define the proper scope.

Motion by Senator Hennessey. Second by Senator Giuda. Voice vote.

MOTION ADOPTED.

TABLED AUDIT TOPICS AWAITING FURTHER LPAOC ACTION:

- Retirement System Investments

Senator Giuda motion to terminate. Second by Senator Kahn. Voice vote.

MOTION ADOPTED.

- Mental Health Workforce Development

Discussion was had regarding whether this topic was best for legislative remedy. It was then suggested that this topic mimic the Child Care Licensing audit by looking at licensing requirements and procedures, inclusive of a comparative look at other states.

Motion by Senator Giuda. Second by Representative Weber. Voice vote.

MOTION ADOPTED.

Representative Weber left at approximately 11:40.

- Weatherization Program

The Committee agreed that the topic ought to remain where it is. No vote taken.

- Fixed-Wing Aircraft Program

The Committee agreed that the topic ought to remain where it is. No vote taken.

OTHER BUSINESS:

Jay Henry confirmed the requests of the Committee regarding scope statements for Special Education and Mental Health Workforce Development. Special Education was confirmed to require a "mini scope" in which the LBA would provide questions for the Committee to consider so that a more defined audit scope could be determined. Mental Health Workforce Development was confirmed to require a "real scope statement" and the topic would be sent to Fiscal for approval. The Committee confirmed his understanding of scope requests.

Senator Giuda asked about a cost comparison regarding the aircraft program. Jay Henry responded that he notified the Department of Safety, and that the Department would get information together to present to the Committee. This would be accomplished in December or January.

Jay Henry notified the Committee that a letter was prepared for Senator Reagan to sign and send to Fiscal. This letter regarded the Impact Award.

DATE OF NEXT MEETING AND ADJOURNMENT:

Next meeting will be at the call of the Chair. Senator Reagan adjourned the meeting at 11:47.

Sen. John Reagan, Vice Chair

POTENTIAL SPECIAL EDUCATION TOPICS

Federal law requires a free and appropriate public education (FAPE) for students with disabilities in states that choose to participate in, and receive, federal special education funding. New Hampshire law (RSA 186-C) requires all children be provided equal educational opportunity. All children with disabilities must have a FAPE available to them, which must be provided in the least restrictive environment. FAPE emphasizes special education and related services should be designed to meet students' unique needs and prepare them for further education, future employment, and independent living.

According to the latest New Hampshire Department of Education (NHDOE) census data available online, in October 2020 there were 29,195 children and youth, aged three to 21, with disabilities in New Hampshire. Table 1 shows the disabilities identified in October 2020, the number of children and youth designated as having that disability, and its percentage of the total number of children and youth with disabilities.

Table 1

Frequency Of Disability For Children And Youth, October 2020

Disability	Count	Percent of Total
Specific Learning Disabilities	8,948	30.6
Other Health Impairments	5,193	17.8
Developmental Delay	4,433	15.2
Speech Or Language Impairments	3,865	13.2
Autism	3,175	10.9
Emotional Disturbance	1,936	6.6
Intellectual Disability	814	2.8
Multiple Disabilities	386	1.3
Hearing Impairment	201	0.7
Traumatic Brain Injury	91	0.3
Visual Impairments	91	0.3
Orthopedic Impairments	45	0.2
Deaf-Blindness	17	0.1
Total	29,195	100.0

Source: LBA analysis of NHDOE data.

Bureau of Special Education Support

The NHDOE's Bureau of Special Education Support (BSES) within the Division of Learner Support (DLS) is statutorily charged with providing oversight and implementation of federal and State laws that ensure a FAPE for all children and youth with disabilities in New Hampshire. Specifically, the DLS is charged with:

- helping school districts meet their statutory responsibilities regarding the education of children with disabilities;

POTENTIAL SPECIAL EDUCATION TOPICS

- developing and analyzing information on issues and problems of regional and statewide importance, and assisting school districts in managing those issues;
- collecting, organizing, and analyzing data and information about programs, conditions, instruction, and trends in special education in the state; and
- monitoring and maintaining information about national and regional trends, instruction, issues affecting special education, and making the information available to school districts.

The mission of the BSES is to improve educational outcomes for children and youth with disabilities by providing and promoting leadership, technical assistance, and collaboration statewide. The BSES is organized into three offices: 1) Finance and Data Management, 2) Special Education Training and Monitoring, and 3) Special Programs.

The Office Of Finance And Data Management

The Office of Finance and Data Management supports the federal grants received by the BSES, State special education aid, court ordered placement payments, as well as the New Hampshire Special Education Information System (NHSEIS). This office is responsible for all data within the BSES and for the creation and submission of the State Performance Plan and Annual Performance Report to the U.S. Department of Education, Office of Special Education Programs.

The Office Of Special Education Training And Monitoring

The Office of Special Education Training and Monitoring provides specific trainings to the fields related to special education, such as physical or occupational therapies, and oversees school district monitoring and the school district determination process. This office works closely with school districts to ensure compliance with the Federal Reporting Indicators related to the provision of services for students with disabilities. All program approvals for public schools, private academies, and private providers of special education are processed through this office.

The Office Of Special Programs

The Office of Special Programs encompasses the various special education programs the BSES supports to improve outcomes for students with disabilities. These programs include Universal Design for Learning, Educational Surrogate Parents, Individual Education Program (IEP) Facilitation, and Accessibility. Accessibility includes work around visual impairments, deaf and hard of hearing issues, and assistive technology. This office also supports the work conducted for the State Professional Development Grant and the State Systemic Improvement Plan.

Potential Special Education Performance Audit Topics

Below are four topics (A-D) covering major functions of the State's special education responsibilities that could be audited individually. An audit of dispute resolution processes (A) was the original topic discussed by the committee. Topics B and C could be separate or combined audits (high-cost children and special education data). Topic D could focus on the DLS or BSES, or one of the offices mentioned above.

POTENTIAL SPECIAL EDUCATION TOPICS

A. Dispute Resolution Processes

The NHDOE offers both informal and formal dispute resolution for resolving differences of opinion regarding the provision of special education services.

Neutral Conference

The neutral conference consists of an informal, abbreviated presentation of the case facts and issues by the parties to a neutral party who is responsible for reviewing the strengths and weakness of the case and issuing a recommendation. The parties agree to the selection of the neutral party. Each party submits all documents relevant to their case to their agreed-upon neutral party and the parties are prohibited from outside communication with the neutral party. At the neutral conference, the parties or their representative must be present and must have the authority to authorize settlement. At the conclusion of the conference, the neutral party must issue an oral opinion to the parties, containing a suggested settlement or disposition and the reasons for their decision. If the parties agree, the conclusions are incorporated into a written binding agreement and signed by each party. If the parties do not agree, the neutral party documents only the date and the participants in the conference and advises the NHDOE that the conference had taken place.

Mediation

Mediation attempts to resolve conflicts between parents and a school district. In mediation, either party may be accompanied and advised by individuals with special knowledge or training with respect to the needs of children with disabilities. A mediation request must be made in writing to the NHDOE Commissioner and must specify the issue, or issues, and the relief sought. An informal mediation conference is held no more than 30 calendar days following receipt of the written request to the Commissioner. The mediation conference will determine the issues, explore options, and attempt mediation within the limits of New Hampshire law. The role of the mediator is to facilitate communication, define the issues, and explore alternatives, while remaining neutral. If the mediation results in agreement, the conclusions are incorporated into a written binding agreement signed by each party. If mediation does not result in an agreement between the parties, the mediator must document the date and participants in the meeting but must not make any other record of the mediation.

Administrative Due Process Hearing

The Administrative Due Process (ADP) Hearing provides a more formal resolution process. The ADP Hearing is used when any action against a local school district seeks to enforce substantive and procedural special education rights under State or federal law. A request for an ADP Hearing is directed to the NHDOE, which will appoint hearings officers to provide an impartial appeals process. Requests for an ADP Hearing must be submitted within two years of the date the violation occurred or when the violation should have been reasonably discovered. Notwithstanding the two-year time limit, any action against a local school district to recover costs of a unilateral special education placement must be commenced by requesting an ADP Hearing from the NHDOE within 90 days of the unilateral placement. According to federal law, an appeal from a final ADP Hearing

POTENTIAL SPECIAL EDUCATION TOPICS

decision may be made to a court of competent jurisdiction within 120 days from receipt of the final decision.

A performance audit of NHDOE's dispute resolution processes has never been completed.

A performance audit could look at the efficiency and effectiveness of NHDOE's dispute resolution processes and would include how these dispute resolution processes are paid for.

B. Special Education Aid Costs (Office of Financial and Data Management)

The State has little control over local special education expenditures. School districts are obligated to follow regulations issued by the federal and State governments. Appropriate services for each student with an educational disability, pursuant to the standards set by the federal and State governments, are formally incorporated into a student's IEP. These IEP-required services drive the costs, which are paid by the school district. In New Hampshire, local school districts fund most school costs, including special education, through property taxes.

The last performance audit in the area of special education costs was our Special Education Catastrophic Aid program issued in July 1999.

A performance audit could look at the sources and uses of special education funds and efficiency and effectiveness of NHDOE's management of special education costs in New Hampshire, grant management, collection of financial data from local school districts and other entities, and rate setting.

C. Data Collection And Analysis (Office of Financial and Data Management)

Statute required the NHDOE to collect, organize, and analyze data about programs, conditions, instruction, and trends in special education in the state. The computer-based special education database and retrieval system called NHSEIS maintains personally identifiable data for program development, monitoring, compliance, and reporting to the State Board of Education, the New Hampshire Legislature, and the U.S. Department of Education.

A performance audit of this issue has never been done.

A performance audit could evaluate the efficiency and effectiveness of NHDOE's data collection and analysis activities

POTENTIAL SPECIAL EDUCATION TOPICS

D. Assisting School Districts To Meet Their Special Education Responsibilities

Statute required the NHDOE, through its DLS, to help school districts meet their responsibilities regarding the education of children with disabilities, develop and analyze information on issues and problems of regional and statewide importance, assist school districts in managing these issues, and monitor and maintain information about national and regional trends. It is not readily apparent from its website how the DLS or BSES accomplishes these responsibilities.

A performance audit of this issue has never been done.

A performance audit could identify how the DLS efficiently and effectively helps school districts with educating children with disabilities; develops, analyzes, and assists school districts with managing statewide and regional issues; and monitors and maintains national and regional trends.

Note to LPAOC members: This pre-scope document has not undergone the level of review provided to our audit reports and is primarily based on information available from online sources.



State of New Hampshire

DEPARTMENT OF SAFETY
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STEVEN R. LAVOIE, CPA, CGMA
DIRECTOR OF ADMINISTRATION

Memo

To: Legislative Performance Audit and Oversight Committee
Fr: Steven R. Lavoie, Director of Administration *SKL*
Date: February 22, 2022
Re: NH State Police Aircraft Own vs. Lease Considerations

The New Hampshire State Police (NHSP) own and operate a Cessna 182T fixed wing aircraft which is used for traffic enforcement and emergency response during natural disasters, homeland security threats, and other urgent law enforcement missions. The accompanying spreadsheet shows that the overall cost of owning and operating the aircraft is more than covered by the related enforcement revenues. Changes to any program require an assessment of the financial and operational impacts. The following must be considered when making any buy vs. lease decisions in the law enforcement environment.

NHSP Cessna 182 Background

The New Hampshire State Police purchased its Cessna 182T and related radio equipment for \$400,385 on July 11, 2008. This aircraft has been in service for nearly 14 years with full-time pilots and Tactical Flight Officers (TFOs). NHSP aircraft and pilots are on call 24/7/365 and all have impressive safety records with over 20 years of flight experience. Because aircraft largely retain their value for many years (unlike cars and boats), this aircraft is currently an asset with a value (based on recent internet searches of sites including www.controller.com) of approximately \$380,000.

Owning the aircraft provides several benefits:

- a. Owning the aircraft gives the State Police (the operational commander) maximum flexibility in terms of conducting flight operations, in meeting contingencies (such as natural disasters, homeland security threats, and urgent law enforcement missions) which may require a surge in operations and flight hours. Leasing an aircraft would come with a limit on flight hours, with any hours above that limit coming at an increased cost to the State. Similarly, the State Police, as owners, can adjust operations (temporary reductions in flight hours) to control when time-based maintenance intervals come due. As an example, the State Police could control flight operations where needed to move or shift costs across fiscal years. In a lease, those maintenance evolutions are already built into the cost of the lease.
- b. The NH State Police, as a governmental entity, operates its aircraft as Public Aircraft Operations under Federal law and regulation. As such, it is responsible for the oversight of its air operations, airworthiness of the aircraft, and operational requirements. The State has maximum control of its liability where it owns the aircraft and employs the crew.

Leasing an aircraft suited for NHSP missions:

- a. The Cessna 182T is well-suited for the NHSP missions it is assigned – while there are other models of light fixed wing aircraft which could provide the proper platform, research was limited to Cessnas. Research showed that the availability of equivalent models for leasing is very limited in this region, with no C-182T (or equivalent aircraft) listed for lease.
- b. Nearly all Cessnas listed for lease were twin-engine turboprops or larger jet aircraft envisioned for commercial operations, and wholly inappropriate for NHSP operations. Cessna 172s were listed, but are entirely too small and inadequate for NHSP missions.
- c. The pool of available lessors could shrink given the NHSP requirements for installation of law enforcement-specific equipment necessitating that a lessor's aircraft be customized.
- d. Note that variable costs for maintenance and overhaul are incurred regardless of whether an aircraft is leased or owned. This is because the lessor has to factor those costs into its leasing rate for when the aircraft is returned (or alternatively, shift the costs to the lessee).
- e. Leasing is generally most attractive to private companies because of the added benefit of positive tax implications and effects on balance sheets for those companies.
- f. At the end of an operating lease, the aircraft is simply returned to the lessor (although there would be a cost to the State to remove State equipment and restore the plane to standard civil configuration), while an owned aircraft represents an asset which could be sold.
- g. In a lease, the State would need to meet the lessor's timeframe for scheduled maintenance, surrendering flexibility on timing maintenance.

Leasing an aircraft and operations (pilots):

- a. Yes, but only while absorbing substantial risk and losing a large amount of control. NHSP contacted several State and Local agencies with aircraft programs. None of the agencies contacted (Maryland State Police, Delaware State Police, NY City Police, San Diego Police, San Diego Fire) leases out its aircraft operations (where the aircraft and pilots are leased), as it adds to the burden of agency oversight while reducing the agency's flexibility.
- b. New Hampshire State police aircraft execute Public Aircraft Operations (PAO) under Federal statutes and FAA regulations. See 49 U.S.C. Secs. 40102(a)(41) and 40125 and 14 C.F.R. as well as FAA Advisory Circulars on both maintenance and operations. Under these laws and rules, certain civil and oversight regulations do not apply to public aircraft operations (meaning these operations are not subject to standard FAA oversight). Both law enforcement and military aircraft operate under these rules.
- c. Leasing an aircraft and pilot reduces the NHSP's operational flexibility for being available 24/7 and recall, absent paying additional fixed fees for this capability, which would include paying for more than one pilot. In addition, flying for the NHSP would require background checks and additional training for any leased pilot beyond standard FAA requirements.
- d. Leasing an entire aircraft operation (aircraft & flight crew) for PAO actually increases the burden on NHSP administration and oversight by placing additional requirements on NHSP as the government operator. Specifically, "[t]he government entity conducting the PAO is responsible for oversight of the operation, including aircraft airworthiness and any operational requirements imposed by the government entity. ***The government agency contracting for the service assumes the responsibility for oversight of a PAO.***" FAA Advisory Circular 00-1.1A, Par. 7.e. This means that although the operation is "leased out," the State retains full oversight of, and responsibility for, the aircraft and crew conducting the mission. In addition, the State must determine before every flight whether the flight qualifies for PAO (which may vary between missions and/or training flights).

Comparison to other state law enforcement aviation operations:

- a. As noted above, Maryland State Police, Delaware State Police (DSP), NY City Police Aviation, San Diego Police Aviation (SDPD), and San Diego Fire Aviation all own their aircraft for the reasons noted above. Delaware State Police and the City of San Diego are the closest in size to NHSP operations, and like the NHSP, both DSP and SDPD employ their own pilots and TFOs, but contract maintenance out (which shifts the administrative burden and associated personnel costs to the maintainer) while retaining maximum control over their own aircrew, aircraft, and operations.
- b. Like NHSP, Maryland State Police uses civilian pilots with sworn TFOs. As the accompanying statistics show, this minimizes flight crew costs by avoiding having a sworn trooper (with all associated training, salary and retirement costs) as a pilot.

As noted above, the NHSP has already invested in the upfront costs to acquire and up-fit the existing Cessna 182T fixed-wing aircraft for operational use. Moving to a lease model would sacrifice operational flexibility and provide little to no cost savings over the long-term. When replacement is required, NHSP will consider all available options including lease to own options, to find the most cost effective and operationally sound model to continue the program.

Department of Safety
 Fixed Wing Aircraft Enforcement Program
 Financial Summary - FY19 - FY21

Operational Summary	2019	2020	2021
Enforcement Flights	127	107	120
Enforcement Flight Hours	429.2	365.7	382.1
Enforcement Events	4,802	5,003	4,633

Financial Summary	2019	2020	2021
Revenues			
Estimated Fines Assessed ¹	\$1,190,896	\$1,240,744	\$1,148,984
Total Revenues	\$1,190,896	\$1,240,744	\$1,148,984
Expenditures			
Pilot Salary & Benefits ²	\$19,958	\$17,005	\$17,768
Trooper Salary & Benefits ³	\$73,187	\$62,359	\$65,156
Fixed-Wing Plane Cost ⁴	\$99,149	\$85,814	\$89,258
Cruiser Cost ⁵	\$7,726	\$6,583	\$6,878
Total Expenditures	\$200,020	\$171,761	\$179,059
Excess of Revenues Over Expenditures	\$990,876	\$1,068,983	\$969,925

Notes

¹ Assumes 80% of events result in an average fine of \$310. Final payment amount may differ from assessment.

² Pilot salary & benefits is \$46.50/hr.

³ Trooper salary & benefits is \$56.84/hr x 3 Troopers per hr.

⁴ Fixed Wing Plane Maintenance and Fuel cost is \$210/hr +\$9,017/year for storage.

⁵ Cruiser use maintenance and fuel cost is \$6/hr.

**OFFICE OF STRATEGIC INITIATIVES
WEATHERIZATION ASSISTANCE PROGRAM**

The Office of Strategic Initiatives (OSI) operates the Weatherization Assistance Program (WAP) with grants from the US Department of Energy. The OSI subcontracts with New Hampshire's Community Action Agencies, which are responsible for operating and delivering weatherization services at the local level. Application to the WAP is made to local Community Action Agencies. The overall goal of the WAP is to serve low-income households most vulnerable to high-energy costs and who do not have the means of making cost-effective energy conservation improvements to their homes. The program reduces heating and cooling costs for low-income families, particularly for the elderly, people with disabilities, and children, by improving the energy efficiency of their homes while ensuring their health and safety.

The OSI, whenever possible, collaborates with the electric and natural gas utilities' energy efficiency programs to enhance the weatherization services provided to low-income households in New Hampshire. According to the OSI's State fiscal year 2021 budget, the WAP planned to serve 250 clients at a cost of \$1.667 million.

Eligibility and benefits for the WAP are determined by gross household income (total income including tips, interest/dividends, pensions, and all wages or salaries before deductions), number of household members, and vulnerability to heating costs. The maximum gross household income by number of people in the household is currently established at 200 percent of the Federal Poverty Guideline for the WAP. Homeowners and renters, including renters whose heat is included in their rent, are eligible. Once an applicant is determined income eligible, the application is placed on a waiting list. An energy auditor will contact the applicant to schedule a time to perform a comprehensive home energy audit. The audit includes diagnostic testing, performed by an OSI or Building Performance Institute certified energy auditor, and will help determine if the building qualifies for weatherization. If the building is determined to be qualified, the energy auditor will then develop an energy audit report that will identify all cost-effective energy saving improvements. From this list, qualified improvements will be installed based on order of highest savings. Typical high priority measures include: attic air sealing, installing attic insulation, installing wall insulation (where none exists), and air sealing and/or insulation of basements and crawl spaces.

A performance audit could look at the efficiency and effectiveness of the WAP, whether goals are achieved, oversight of the program, or customer satisfaction.