

LEGISLATIVE PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE MINUTES

November 10, 2022

The Legislative Performance Audit and Oversight Committee (LPAOC) met on Thursday, November 10, 2022 at 11:00 AM in the LOB Room 212.

Members in attendance were as follows:

Rep. Keith Erf
Rep. Ken Weyler
Rep. Karen Umberger
Rep. Mary Jane Wallner
Sen. John Reagan, Vice Chair

The meeting was called to order by Senator Reagan at 11:02 AM.

VOTE ON ACCEPTANCE OF THE MAY 10, 2022 MEETING MINUTES:

On a motion by Representative Umberger, seconded by Representative Wallner, that the minutes of the May 10, 2022 meeting be accepted.

MOTION ADOPTED.

STATUS OF ONGOING PERFORMANCE AUDITS:

Stephen Smith, Director of Audits, provided the Committee with brief updates of ongoing performance audits:

- Non-audit review required by Chapter 91:454, Law of 2021 sent to legislative leaders – Confusion over the New Hampshire Retirement System’s healthcare subsidy for certain retirees – we issued a letter on the retirement system healthcare subsidy, dated May 23, that went to legislative leadership. At this point, no further action has taken place.
- Board of Dental Examiners – we finalized this audit, and it will be presented at the upcoming Fiscal Committee. This is a large report, and there are 36 observations in total. Part of the reason it is a large report, is due to the fact it reaches into some of the inner workings of the Office of Professional Licensure and Certification (OPLC). This report will speak to a lot of the concerns LPAOC has had with the OPLC in the past.
- Mental Health Workforce Requirements – we are conducting fieldwork. This involves multiple boards and could potentially be prolonged due to meeting schedules with each board.

- Weatherization Assistance Program – work has been delayed, as this is a small operation, and they are currently in the process of another previously scheduled federal audit. They also received a lot of new money that they needed to work through the process to distribute. Additionally, we have had some turnover on our side. Completion is targeted for February/March.
- Special Education Dispute Resolution Processes – we are conducting fieldwork. There was an issue with receiving email addresses and information from local school districts. We received hesitation, as to whether they had the authority to release this information to us. It was confirmed through federal contacts that we could have access to that information. The scope statement as been approved.
- State Oversight of Special Education – in planning and the scope statement has been approved.
- HB1135 requires a performance audit of Education Freedom Account Program. This will not occur until sometime after the fall of 2023. This date was chosen by the Legislature to provide auditors with enough program activity to assess how the program is operating.

TABLED TOPICS, NEW TOPICS, AND PRIORITIZE AUDIT WORK:

Representative McLean, with Representative Smith, sought an audit of the NH Human Rights Commission. They were part of an interim study committee that found the Commission had long wait times for investigations, with a 300-case backlog, and thought a performance audit would be beneficial.

On a motion by Representative Wallner, seconded by Representative Weyler, that this topic be approved and added to the queue.

MOTION ADOPTED.

The Committee briefly discussed and decided that the Office of Professional Licensure and Certification topic be held off until late next year, as they currently have about ten observations from the dental audit they will be working on.

OTHER BUSINESS:

Senator Reagan congratulated the LBA for receiving the National Legislature Program Evaluation Society 2022 Impact Award for our Adult Parole Board performance audit. The LPAOC will send a letter to the Fiscal Committee, signed by Senator Reagan.

Senator Reagan was thanked for service to this committee over the years.

DATE OF NEXT MEETING AND ADJOURNMENT:

Next meeting will be at the call of the Chair. Senator Reagan adjourned the meeting at 11:21 AM.

STATE OF NEW HAMPSHIRE
OFFICE OF LEGISLATIVE BUDGET ASSISTANT, AUDIT DIVISION
PROPOSED PERFORMANCE AUDIT SCOPE
DEPARTMENT OF EDUCATION, SPECIAL EDUCATION PROGRAM

In May 2022, the Fiscal Committee of the General Court approved a joint Legislative Performance Audit and Oversight Committee request to conduct a performance audit of the efficiency and effectiveness of Department of Education (Department) oversight of the provision of special education. The request also provided this broad topic could be subdivided into more than one audit based on the Audit Division's assessment. We held an entrance conference with representatives of the Department on January 30, 2023, to discuss the second audit scope.

BACKGROUND

According to Department data, there were nearly 31,000 special education students in New Hampshire as of October 2022. Over \$91 million was budgeted for special education in State fiscal year (SFY) 2022. Nearly \$56 million (61.1 percent) were federal funds while over \$35 million (38.9 percent) were general funds. Over \$84 million (92.5 percent) were budgeted for local education agencies' expenses and nearly \$7 million (7.5 percent) were budgeted for State expenses.

Federal laws and regulations created a regulatory framework with broad objectives and numerous procedural requirements. The State's special education program was required to comply with federal requirements, but had flexibility to determine how to comply with procedural requirements and achieve expected results. State laws and rules operationalized federal requirements and added to them. The State's special education program was expected to prepare special education students for: 1) further education, 2) employment, and 3) independent living. Local agencies were to provide special education services to eligible students consistent with the State's framework.

The Board of Education (Board) had a governance and standard-setting role that included special education. It was to: 1) provide management, supervision, and direction over public schools; 2) regularly review and make recommendations on all Department programs and activities; and 3) advise the Department on its goals, information collection, and any other aspect of education. The Board's broad rulemaking authority included authority to adopt rules: regulating the special education program, on evaluating the program, necessary for efficient administration of local agencies, and enabling State compliance with federal law.

The State Advisory Committee on the Education of Students/Children with Disabilities (SAC) was intended to advise the Commissioner on: special education issues, unmet needs, the development of corrective action plans to address federal monitoring findings, and the development and implementation of policies on the coordination of services. It was also to: 1) promote communication and cooperation, 2) review funding, 3) report annually on the status of special education, 4) comment on the State plan and proposed rules, and 5) assist with federal reporting.

The Department was responsible for providing general supervision for elementary and secondary schools statewide, including special education. As the key control point for the State-federal

**PROPOSED PERFORMANCE AUDIT SCOPE
SPECIAL EDUCATION PROGRAM**

relationship, the Department functioned as the pass-through entity for federal grants. It made sub-grants to local agencies. It had to:

- oversee operation of federal award-supported activities and monitor each local agency to assure compliance with federal requirements and achievement of performance expectations;
- monitor the operations of local agencies, special education centers, chartered public schools, private organizations, and State programs for compliance with State and federal laws;
- collect, organize, and analyze information on local agencies, conditions, instruction, and trends;
- measure and report on program performance;
- develop and analyze information on issues and problems, and assist local agencies in dealing with them;
- evaluate local agencies' risk of noncompliance, and impose additional conditions upon a risky local agencies when appropriate;
- identify aberrant performance, help optimize local agency performance, and remediate noncompliance; and
- take enforcement action against persistently noncompliant local agencies.

The Department was expected to control and optimize its own operations. Management was responsible for designing integrated control systems to help achieve objectives, operate efficiently and effectively, report reliable information, and comply with laws and rules. Controls can help assure accountability and encompass the plans, methods, policies, and procedures used to fulfill the Department's purpose and accomplish goals and objectives. The Department monitored federally-established metrics, which demonstrated the State inconsistently met performance goals. These goals were primarily procedural compliance or near-term results-oriented.

AUDIT SCOPE

We propose to design the audit of the second subdivision of this topic to answer the following question:

How effective was the Department's general supervision of the State's special education program in producing expected outcomes during State fiscal year 2022?

To address this question, we plan to:

- review relevant State and federal laws, regulations, rules, declaratory rulings, orders, plans, procedures, guidance, and similar materials;
- review relevant audits, guidance, and related materials from other states and national organizations;
- review relevant information collected by the Committee to Study Special Education Dispute Resolution Options and the Burden of Proof in Due Process Hearings

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Conducted by the Department of Education (HB 581, 2021 Session/Chapter 158, Laws of 2021);

- interview Department managers and staff with responsibilities over the special education program;
- obtain perspectives from stakeholders outside the Department;
- observe Board and SAC meetings; and
- obtain, review, and analyze relevant records.

We will examine Department management controls and other relevant matters outside the audit period when they affect program operation during and after the audit period. We will also examine Board, SAC, and other agencies' management controls when they affect program operation. We will not, among other things, directly audit local agencies' compliance with State or federal special education requirements.

We anticipate completing this audit and presenting the final report to the Fiscal Committee in early calendar year 2024.