

JOINT PERFORMANCE AUDIT AND OVERSIGHT COMMITTEE

Legislative Office Building, Room 212

Concord, NH

Monday, March 18, 2024

MEMBERS PRESENT:

Sen. Cindy Rosenwald, Chair

Sen. Timothy Lang

Sen. Howard Pearl

Sen. Carrie Gendreau

Sen. Rebecca Whitley

Rep. Kenneth Weyler

Rep. Lucy Weber

Rep. Gerald Griffin

Rep. Keith Erf

Rep. Mary Jane Wallner

1. Acceptance of the August 11, 2023 meeting minutes

CINDY ROSENWALD, State Senator, Senate District #13:

To open the regular -- irregular meeting of the Joint Performance Audit and Oversight Committee for March 18th. Does anybody who's here have a time limit on when they have to leave which might make us move the agenda around?

{Inaudible}.

CHAIRWOMAN ROSENWALD: Well, if we are not finished by 12:30 -- um -- we're all going out for lunch. Okay. So then we will just go through our agenda.

****** TIMOTHY LANG, State Senator, Senate District #02:

Madam Chair, I move to adopt the minutes of August 11th.

CHAIRWOMAN ROSENWALD: Is there a second?

CARRIE GENDREAU, State Senator, Senate District #01:

Second.

CHAIRWOMAN ROSENWALD: Seconded by Senator Gendreau. Have any discussion on the minutes? Can we take a voice vote? Where's Jay? Can we take a voice vote? Okay. Okay. Good. So if you're in favor of adopting the minutes of August 11th, please raise your hand. And, Representative Erf, you're abstaining? Okay. Great. The minutes are adopted. Thank you.

***** {MOTION ADOPTED}**

2. Status of ongoing performance audits:

CHAIRWOMAN ROSENWALD: So now we're going to turn to the status of ongoing performance audits. We'll start with Mental Health Workforce Licensing. Good morning.

CHRISTINE YOUNG, Director, Audit Division, Office of Legislative Budget Assistant: Good morning, Madam Chair, and Members of the Committee. For the record, I'm Christine Young, Director of Audits for the LBA. And with me is Jay Henry, the Performance Audit Supervisor.

So we'd like to provide an update of the ongoing and the pending performance audits. It's been awhile since we last met. So I will start with the Mental Health Workforce Licensing. The audit is complete and the report was presented to the Fiscal Committee in October.

Moving on to the Special-Education Dispute Resolution Processes, that audit is also complete and the report was presented to the Fiscal Committee last Friday.

New Hampshire Commission for Human Rights, we are near the end of the audit. We've drafted over 20 Observations, and we expect to provide a draft report to the Commission in the next few weeks.

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Regarding the State Oversight of Special-Education, the audit is currently staffed with four performance auditors. We estimate that we're approximately half audit. This is a very large audit scope with numerous federal and state laws. We're expecting a lengthy report with 40 plus Observations. We don't anticipate having a completed draft report until the end of the year.

Moving on to the Secretary of State's Archives and Records. This Committee approved the audit of the Archives at its last meeting in August. The Fiscal Committee approved the topic at their September meeting. We reached out to the Secretary of State's Office in preparation for the upcoming audit, and it was Secretary Scanlan's position that the Archives may not be subject to a performance audit.

He has asked the Attorney General's Office to review whether or not a performance audit can be performed, and we have not received any further information on this. So we are unable to move forward with the audit until we have a resolution to this matter. And I believe there are representatives from the Attorney General's Office here, and I believe Secretary Scanlan is there in the back as well if you would like to hear from -- from either of them.

CHAIRWOMAN ROSENWALD: Well, I think we'd probably like to hear from both of them.

MS. YOUNG: Okay. Great.

CHAIRWOMAN ROSENWALD: So let's start with the Secretary of State.

KEITH ERF, State Representative, Hillsborough County, District #28: Madam Chair.

CHAIRWOMAN ROSENWALD: Yes.

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REP. ERF: {Inaudible}.

CHAIRWOMAN ROSENWALD: Do you -- okay.

REP. ERF: Whatever you want to do.

CHAIRWOMAN ROSENWALD: Just remind me. Okay. Good morning, Mr. Secretary.

DAVID SCANLAN, Secretary of State, State Department: Good morning. Thank you, Madam Chair, and Members of the Committee. I am here today because there is a statutory provision. It's RSA 14:31-a.

SEN. LANG: Dave, can you turn your mic on?

CHAIRWOMAN ROSENWALD: Yeah.

MR. SCANLAN: Yeah, there is a statutory provision that exists in RSA 14:31-a, and it says -- I'm just find it here. I always have trouble finding on a quick glance.

CHAIRWOMAN ROSENWALD: That's what computers are for.

MR. SCANLAN: Anyway, just to paraphrase it, it says that the Constitutional Officer and the conduct of your Constitutional responsibilities are exempt from the requirement of having a performance audit.

And then if you look in the Constitution, I believe it's Article 67, Part 2, it clearly lists the Secretary of State and the Treasurer Constitutional Officers, and then the next Article, 68, says that the records of the State shall be kept in the Office of the Secretary. So, clearly, that's a Constitutional responsibility. And if there's a question about the Secretary of State being a Constitutional Officer and keeping the records of the State as a Constitutional duty, I don't know how it gets any more

basic than that -- um -- in terms of being a Constitutional Officer and having that responsibility.

So I'd like to start my additional comments just by saying that I want to talk about the office first, not about me specifically; but I'm not aware that there has ever been a performance audit of the Secretary of State's Office because when the Legislature in Joint Convention elects a Secretary of State, they assume individually and solely the responsibility that its provided in the Constitution and an oath is -- is sworn to protect that, you know, that responsibility and to do it to the best of your ability.

I may only be here two years. Somebody comes in and succeeds me, then they assume that responsibility. The management style may be different from one person holding that office to the next, and I'm not going to be the one that relinquishes that authority and cedes it to the review of other individuals that may or may not share the same requirements that I have in how that job should be done. Um -- so -- so that's number one.

And number two is from a personal perspective I take that role very seriously and -- and I am accountable to the Legislature because in Joint Convention you place me in this position. And I'm also accountable to the people of the State of New Hampshire. And I have, you know, taken on the duty to meet that responsibility in a fair and impartial way.

The concern that I have is that if you start allowing review of performance that can become very public, and -- and reflects the views of other individuals that do not have that responsibility for records and archives, there is nothing to prevent a performance audit then of the election process. And I have major concern with that, because politics can come into play and, you know, depending upon which party's in power, you know, things

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could take a sharp turn in a bad direction, and there could be undue influence through this process placed on the individual that is responsible for making sure that the elections in this state are fair and impartial. And I think that's one of the reasons why this provision of the Constitution and in the statute exists.

The records and elections, in my opinion, have the same weight of responsibility in this process. If you allow performance audit for one, then you're opening it up to the other, and I think that is very inappropriate.

Um -- I had the benefit of coming into the position of having served under Secretary Gardner for 20 years. And so when I assumed the role, I knew where the areas were in the office that needed to be addressed. And we have been very aggressive addressing the issues that I have seen, not only in Archives, but across the board in all of the Divisions within our Department.

If you have had the opportunity to visit the Archives recently, I would hope that you would notice that the clutter and the appearance of disorganization is gone. That everything is in its place. We have hired a new archivist, State Archivist who is young, professional, and highly trained in the issues related to archives. And through that we are creating a new inventory database that's being upgraded, and the records classification being improved. And security measures are being taken, both in terms of keeping track of who's entering the building and leaving to making sure that important documents are being preserved properly. And I would assume that when I'm no longer doing this job that the person that comes in after me is going to take an assessment of, you know, the status of things and then put their own stamp on what's important and move forward.

I have no problem being transparent. So there's any Member of this Committee, any Member of the Legislature,

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and even the general public that wants to come out, see how things are being run and handled, we're more than happy to exercise that right. But at this point I think it is important that you allow the Constitutional Officer that has the responsibility to exercise it without undo outside influences that may or may not be helpful. I'd be happy to answer any questions.

CHAIRWOMAN ROSENWALD: Questions. Rep. Weber.

LUCY WEBER, State Representative, Cheshire County, District #05: Thank you, Madam Chair, and thank you for taking my question. Um -- I think your points are very well taken, all of them. I guess my question is, and you started to answer it at the end there, if the Legislature has the responsibility for the oversight, but we are not allowed to use the tool that we use for many other uses, and I -- I -- your point about the elections is very well taken. I guess my question is how do we -- um -- exercise that duty in a most professional way, given the volunteer legis -- volunteer nature of our Legislature?

MR. SCANLAN: So the Constitution does not give the oversight to the Legislature. It gives that responsibility to the Secretary of State. There are laws that are passed to develop the procedures that we can follow at the Archives, and we bring those forward when we see needs there.

The Legislature controls the purse strings. They create the budget that allows the Constitutional office to operate, and we are subject to financial audits. I have no problem with that. If -- if -- if the Legislature wants the financial audit tomorrow or this afternoon, then I would say we're ready for you. And I will say that when I came on there was a recently concluded financial audit of the Secretary of State's Office, at least certain portions of it. There were some Observations that needed to be addressed, and I can tell you that -- that I believe that

we have addressed every single one of those items that was outstanding from that audit.

We have brought in -- I have brought in personnel to help with that through my deputies. I brought in Erin Hennessy and Patty Lovejoy. I think most of you know both of them. They both have CPA backgrounds and have been a tremendous help in organizing the recordkeeping and the financial practices in the Department that were, you know, concerns and the Observations in that report. So we made a point to follow through on -- on that. Again, it's just an example that, you know, we're taking the role, the Constitutional role very, very seriously.

CHAIRWOMAN ROSENWALD: Senator Lang.

SEN. LANG: Thank you. So I just want to kind of summarize. We kind of talked about a lot of stuff there. So you're -- the -- the -- the thrust of the argument is that under the Constitution, Part 2, 68, which defines the duties of the Secretary of State, it specifically says the records of the State shall be kept in the Office of the Secretary. So that's your duty, Constitutional duty, as a Constitutional Officer. And the -- the second half of that is under 14:31 which is the Audit Division. The Audit Division shall, and under section (d) there's one particular line in the middle of the paragraph that probably could easily be overlooked, it says there officer shall -- this paragraph shall not apply to Constitutional Officers in the execution of their Constitutional duties.

MR. SCANLAN: That's correct, and that's the line that I was looking for at the very beginning.

SEN. LANG: And that's in section (d). So the argument is that it's obviously a clearly defined duty of yours and the Audit Division statute that we have explicitly exempts Constitutional Officers in the performance of their duties from performance audits.

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MR. SCANLAN: Yes.

SEN. LANG: Okay.

MR. SCANLAN: Thank you.

CHAIRWOMAN ROSENWALD: So I have a question though. And there are some duties and, really, I'm thinking of Vital Records, which the Legislature gave to you in 1991 when it transferred that Division over from Health and Human Services. So that's not really a Constitutional obligation. It was a legislative requirement that the Secretary of State took it over. So the Constitution didn't give you Vital Records, the Legislature did.

MR. SCANLAN: First of all, Vital Records are records of the State. And I will tell you a story about when Bill Gardner was Secretary of State. The records of the State were not kept in his office. They were kept in one of the Divisions of Administrative Services, and there was some issue about the records and how they were being managed. And -- and it ended up as a Court case. And David Souter was the judge. And as the -- as the case was being resolved, Justice Souter said to Bill Gardner, you know, the Constitution says that you are responsible for those records. It doesn't matter that you don't have physical control of them. Ultimately, you are the one that is responsible for them. And it was after that point then that the Archives was created under the Secretary of State's Office and the records of the State are now kept there.

CHAIRWOMAN ROSENWALD: So if -- if we had not moved Vital Records from Health and Human Services, if it was still there, and the legislature -- and this Committee wanted to do a performance audit of Vital Records contained in Health and Human Services, would you have the same objection that we could not do a performance audit of them because they were records of the State, even though you

didn't have the budget, you didn't have the legislative authority to management, you didn't have any control over those records before they were brought in? Would we hear the same?

MR. SCANLAN: I think you might -- you might hear the same argument. You might ask then, well, is there any Division in the Secretary of State's Office that is subject to a performance audit and, you know, clearly, I think Securities Regulation would be an example of one of our Divisions that might be subject to a performance audit.

Uh -- you know, corporations keep State records relative to all the business entities that operate in New Hampshire. Vital Records is, you know, our role in that is keeping the vital statistic records of the citizens of the State of New Hampshire, and then we keep those records.

Now, the information from those records is shared with Health and Human Services through an agreement and through legislative directive, and those procedures are probably subject to a performance audit; but actual keeping of the records is probably a Constitutional responsibility.

CHAIRWOMAN ROSENWALD: So I probably wasn't clear. Prior to 19 -- I'm sorry -- 2001, when we moved Vital Records, would there have been a problem with us doing a performance audit of Vital Records when it was still over at Health and Human Services or was it the moving of that body of records to your office?

MR. SCANLAN: That's a good question, and I -- I just don't know the answer to that. Yeah.

CHAIRWOMAN ROSENWALD: Senator Lang.

SEN. LANG: So, again, I'm listening to the discussion. The follow-up I would have is, again, I think Justice Souter's point. There are State records that were

distributed amongst other agencies that ultimately Justice Souter said are still your responsibility and still your obligation. So the question that the Legislature in 2000 whatever it was realized that these are State records that were not under the control of the Secretary of State and moved them under the control of the Secretary of State I think is probably the point; but I wasn't around back then when that happened. But I think that was probably, again, to Justice Souter's point.

There are a lot of records within the State that we sometimes we have to make sure we get control of. So I don't know if that's an answer other than to say I would say if it's argued that it is a State record, then it is his responsibility, therefore would not be subject to if you qualify it as a State record.

MR. SCANLAN: If I can just add this, too. And for the benefit of the Committee is that the agencies are constantly creating records. And -- and -- and in the process of doing that they're following the statutes that apply to them. And I think in that process certainly is auditable. And then there's a period of time when the agency records are no longer needed, kind of on a day-to-day basis, but they need to be kept for a period of time.

At that point they get transferred to the Archives, and then the Archives holds those records and gives them back to the agencies as needed if a Court case comes up and they need to reference those materials or whatever. And then there is a point that is established by the agency of when those records can be destroyed. And the Archives does take care of that process once the agency signs off on them and says.

So there -- there is a transition of what happens with records when other agencies are performing their responsibilities, and then those records get transferred to

the Archives for proper keeping. And many of the records are permanent. That's why we have to keep adding additions on to the back of the building to store all of those records. But -- um --

CHAIRWOMAN ROSENWALD: Representative Weber.

REP. WEBER: I think my question's been taken care of. Thank you, Madam Chair. Thank you.

CHAIRWOMAN ROSENWALD: Representative Weyler.

****** KENNETH WEYLER, State Representative, Rockingham County, District #14: I move that we remove this from the list of performance audit --

SEN. LANG: Second.

REP. WEYLER: -- suggestions.

CHAIRWOMAN ROSENWALD: Any further discussion? Senator Whitley.

REBECCA WHITLEY, State Senator, Senate District #15: I think before we take that vote we were going to hear from the Attorney General.

CHAIRWOMAN ROSENWALD: Hear from the AG's Office. If you would withdraw your motion.

REP. WEYLER: Yes, I'll withdraw the motion till we hear from the AG.

CHAIRWOMAN ROSENWALD: Thank you, Mr. Scanlan. Good morning.

CHRISTOPHER BOND, ESQ., Associate Attorney General, Office of Attorney General, Department of Justice: Good

morning. Thank you. For the record, Chris Bond, Associate Attorney General.

Uh -- so, yeah, our office was asked by the Secretary of State's Office to take a look at this. Um -- we certainly appreciate the -- the important oversight function that the LBA provides, but we also -- it's important for us to make sure that we give meaning to every statutory enactment. And, really, what we grappled with was RSA 14:31 -- excuse me -- 14:31-a, Roman I, subset (d) that Senator Lang just quoted from that this paragraph shall not apply to Constitutional Officers in the execution of their Constitutional duties. Um -- and as also noted by Secretary Scanlan, the Constitution does provide that keeping of records is a Constitutional function that the -- that the Secretary does.

So I -- I appreciate the discussion that you just had and, Senator Rosenwald, your hypothetical about if the documents had been left with Vital Records, for example, had been left, I -- I'm also not prepared to answer that. But just in thinking about it seems to me if this body, the Legislature, gives duties via statute to an agency to do something with records that they could audit that function. So if they've -- if they've asked an agency to do something, in that case DHHS, then they could do the performance audit of that. And I think as Secretary Scanlan was mentioning, they can give statutory obligations to the Secretary of State's Office as in Securities and those would be auditable functions, too.

So I think there could have been a performance audit of some aspects of the DHHS recordkeeping; but when the Secretary of State, who as the Secretary notes always has a role with the records, that role, whether -- whether that records are primarily housed at DHHS or at the Secretary of State's Office cannot by operation of 14:31-a be audited.

I do think -- and also another problem we identified in looking this through is that the audit terms are pretty broad just to say Archives. There could be particular statutory obligations embedded within. But the overall breadth is such that we think it would be the auditors in a very awkward position to be trying to discern on the fly in the midst of an audit what constitutes a Constitutional function of recordkeeping and what constitutes a statutory. So in weighing all that, we came down in our analysis on the side that 14:31-a prevents the performance audit of the recordkeeping function of the Secretary of State.

CHAIRWOMAN ROSENWALD: May I just ask you one other question?

ATTORNEY BOND: Certainly.

CHAIRWOMAN ROSENWALD: When we do our budgeting, unlike with the Judicial Branch, we do kind of line item budgeting of the Secretary of State's Office.

ATTORNEY BOND: Interesting.

CHAIRWOMAN ROSENWALD: Um --

ATTORNEY BOND: Yeah, so it's funny you mention that. So one of the cases -- there's not a lot of case law, as you know, and I did take the opportunity to look at a prior meeting of this group where you had talked about the Senate research that had been done and there's not a statutory definition of some of these terms. But in looking for case law that there was a Supreme Court case, *Daniels v. Hansen* and they were looking at the Constitutional function of Sheriff's Offices. And in that case the County Commissioners set a budget and in the budget they eliminated two deputy sheriffs positions. And the Supreme Court basically said you can set the budget, County Commissioners, but you can't decide how many Sheriff's deputies there are. That's the Sheriff's Constitutional

obligation. So they were held in that case not to be able to have a line item budget because it encroached on the function.

Now, they could shrink the budget if they wanted to and maybe compel the result they were looking for, but they couldn't specifically direct the Sheriff to do that. So I don't know if that's the closest analogous thing I could think of; but -- uh -- uh -- uh -- that's an interesting conundrum.

CHAIRWOMAN ROSENWALD: Thank you. Senator Lang.

SEN. LANG: So, again, the question is a financial audit would be completely okay, but a performance audit in the case of records in this case would not be. We're budgeting money to an agency. We can make sure that the money's being spent appropriately, whether it's the Secretary of State's Office or not. That's not a function of recordkeeping for the State. It's a function of their -- of a financial audit. So if we had a financial audit, we could do that but --

ATTORNEY BOND: My understanding is 14:31-a, (d) is that speak -- that speaks to performance audits or -- or yeah, so -- and that's the limitation here that's operative, so yeah.

SEN. LANG: Yeah. Thank you.

CHAIRWOMAN ROSENWALD: Any other questions?
Representative Wallner.

MARY JANE WALLNER, State Representative, Merrimack County, District #19: Thank you. {Inaudible}. That would {Inaudible} archives. {Inaudible}.

ATTORNEY BOND: Well, I -- so that's an interesting question, too. And -- and I might want to take a look at it

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further before I gave a definitive answer. But off the top of my head the towns, municipalities, they're all subsections of the State. So all their records are arguably State records. So they all sort of like the Secretary was leaning into the fact that even if records are housed at another agency, they're still the responsibility of the Secretary. I think that that would hold true for municipalities and subsets of the State, as well as for Executive Agencies.

CHAIRWOMAN ROSENWALD: Further questions.
Representative Weyler, you want to bring your motion back?

****** REP. WEYLER: Thank you, Madam Chair. I move that the subject of Secretary of State's Archives and records be removed from the performance audit suggestions.

SEN. LANG: I'll second that.

CHAIRWOMAN ROSENWALD: Okay. Any further discussion? If you're in favor of this motion would you please raise your hand. Six. And if you're opposed? Four. The motion is adopted, six to four. Thank you.

***** {MOTION ADOPTED}**

ATTORNEY BOND: Thank you.

CHAIRWOMAN ROSENWALD: Yes, Representative Erf had a question about the Special-Education Dispute Resolution.

REP. ERF: Thank you, Madam Chair. So I started on this Committee when Senator Reagan was still the Chair. It might have been his final meeting. And he was, I believe, a driver or at least a strong proponent of the whole special-education audit. And at that meeting in my recollection he was very clear that the issues that he was trying to address were from his perspective primarily at the -- the District level as opposed to at the Department

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of Education level. And in going through the audit we just released on Friday -- um -- I believe there were over 300 complaints from parents that were referenced in that audit that had been brought to the State level. And my understanding about the difficulty of that is that it's pretty difficult. You've got to be a pretty persistent parent to push all the way through to getting your complaint heard at the State level, which leads me to believe that there may be many more complaints that at -- at the District level that are not being appropriately dealt with.

I'm also led to believe that there are concerns about federal funding or the loss of federal funding if Districts are not appropriately addressing these kinds of complaints. And after the last -- our last meeting, not the August meeting because I was not present at that one but the one prior to that when I -- I'm pretty sure that's the meeting at which the Scope Statement or statements were authorized for lack of a better word, and this discussion came up at that point. And during the meeting my recollection is that, well, we'll start with what we have -- what you're doing.

So subsequent to that I spoke with Steve Smith, who I'm not mistaken that's your predecessor. And I expressed my concern about the fact that we weren't looking -- weren't considering looking through to the District level. And he indicated that if it appeared that was necessary, that we'd come back and -- and look at it. And I realize, obviously, we have had a change of administration in the LBA, but it would seem that your audit that was just released on Friday demonstrates that, in fact, there is an issue at the District level, a pretty serious issue at the District level that -- that we should -- the auditing group should be addressing to determine if we also have problems at that level. And I would want to encourage the Committee to -- I understand the one audit is completed and I'm not, to be honest, I'm

not exactly clear the distinction between the two; but given that one is still ongoing, it would seem that it would be appropriate to expand that scope to include looking through to the District level. Thank you, Madam Chair.

CHAIRWOMAN ROSENWALD: Would the LBA like to respond?

JAY HENRY, Performance Audit Supervisor, Audit Division, Office of Legislative Budget Assistant: Hello. My name is Jay Henry. I'm the Performance Audit Supervisor for the LBA. The current special-ed. audit that's ongoing is looking at the rest of the Department of Education's Special-Ed. Bureau and all their work. So the audit that we just finished was just at the very end of special-education. It's when there was a conflict between a parent and -- and the school over IEP or something like that.

This other audit is everything else. And we're about halfway through that audit. It's likely to be over 40 Observations. It's going to be one of those thick audits. And we still probably have another almost a year to finish up that audit. So to add on another giant layer of the locals would probably not -- this wouldn't be the -- the audit to add it onto or we'll never finish this topic.

The other thing I think I'll -- I'll mention is that this oversight of the District Offices or District schools -- School Districts, I think we see that the Department has much more of a role in that than they've been using over the years. And I think you're going to find that in this next audit that there could have been more oversight by the State over the whole process. And I think you see that a little bit also in the -- the audit that we just finished.

So that -- that may address some of the issues that you have. Plus, going to the School Districts that gets

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into going outside of the State Agency, and we have a limitation on how many non-State entities that we can audit over a five-year term. It's like, I think, five over five years. So we're -- we're very limited in what non-State entities we can go down to.

REP. ERF: {Inaudible}.

CHAIRWOMAN ROSENWALD: Of course.

REP. ERF: Do you agree that the audit you've produced demonstrates that there is an issue at the District level with the satisfaction of these complaints from parents regarding a special-education?

MR. HENRY: I don't know if we -- I would -- well, we have we said about 300 complaints that over I think a two-year period, the audit period. That's out of 30,000 kids who are -- have an IEP. So, you know, it's a small percentage of all kids. What, you know, one concern is not everyone, maybe not every parent is taking advantage of the dispute resolution process, and I think that's -- that's -- that's true. Um -- but I think -- first, I think the State needs to get its sort of house in order. I mean, if you go through our -- the audit, you just saw a lot of it is informing parents and schools of what should be happening and -- and that's like a first step in trying to improve that process.

REP. ERF: Follow-up.

CHAIRWOMAN ROSENWALD: Yes.

REP. ERF: Okay. So if I understand what you're saying, it's incumbent upon the State to try to reach out to all the parents -- 30,000 I guess you're referring to -- to push on their end to deal with the Districts, the local Districts, rather than there be any effort to push on the Districts to obey the law, the Federal Law, which could

potentially lead to loss of funding if not followed. Is that an accurate representation?

MR. HENRY: No. I think it's both parents and schools. I think the schools are also not, you know, they're looking at the Department. They're looking at the Department's website looking for information and, you know, that's where we found some problems with it. So it's -- it's not just for the parents, but it's for the whole -- all the stakeholders involved in special-ed.

CHAIRWOMAN ROSENWALD: Representative Weber.

REP. WEBER: Thank you. And this has been an interesting waltz through Chapter 14:31-a; but I think it is equally clear from the language here that you're only allowed, the authority of the Legislative Budget Assistant, to conduct post-audits on non-State Agencies shall be limited to five entities in a five-year period. And, of course, each individual School District is its own entity.

So I think that what I'm hearing in this discussion is that the first step is for the Department of Education to, in accordance with the recommendations already made and some that are being made, to ensure that they are appropriately exercising the supervision powers that they already have, that have already been given to them, in terms of ensuring that the individual Districts are doing their job and that's the way to start addressing the problem. And, obviously, there's more work to be done after that.

CHAIRWOMAN ROSENWALD: Senator Whitley.

SEN. WHITLEY: Thank you, Madam Chair. And just to build off what Representative Weber was saying, I just want to bring back into the conversation something that we raised with you last meeting or the meeting before about, you know, just because the audit is sort of limited in

scope to just the Department of Ed, that does not mean we won't be getting information about the Districts that, you know, perhaps are not meeting their requirements under Federal Law. And -- but that's assuming that the Department of Ed is fulfilling its robust monitoring authority that it does have under Federal Law.

This Committee may remember that there is very -- um -- detailed requirements in federal special-ed. law about what the DOE is supposed to be doing at the District level in terms of monitoring enforcement. And so I just wanted to confirm again that, you know, your work is also looking at what, you know, DOE fulfilling its monitoring authority. And if that is the case, I mean, it should sort of bring up those Districts; is that correct?

MR. HENRY: (Nodding head.)

MS. YOUNG: Nodding head.

CHAIRWOMAN ROSENWALD: Senator Lang.

SEN. LANG: I think Senator Whitley just hit my point. My point was I think in the audit you just said that there's authority that the Department's not using that it can use that would probably resolve some of the local issues, and I think it's now time that it's been identified that the Department can use that authority and maybe that will start resolving some of the issues.

So I think that's what you said, if I'm not mistaken, is that there's authority the Department's not using on local school boards or local school districts that it could, and you pointed it out. Hopefully, they'll take that to heart and start doing that, which will resolve some of the local issues, I think.

CHAIRWOMAN ROSENWALD: We're going to get a big audit, a thick one, at the end of the year is what I heard?

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REP. ERF: Madam Chair.

CHAIRWOMAN ROSENWALD: Yes.

REP. ERF: Might it be possible to see if the Department has any response to what we've been hearing here.

CHAIRWOMAN ROSENWALD: Yes. If there are no more questions of the LBA on this issue. Okay. Don't go away. Does the Department -- good morning, Commissioner.

FRANK EDELBLUT, Commissioner, Department of Education: Good morning. For the record, Frank Edelblut, Commissioner of Education. And I'm not trying to have a Ground Hog Day here because we spent quite a bit of time talking about the Scope. At the time we spoke about the Scope I was quite clear that I believe that the audit as it was configured was not responsive to the concerns that originally put this audit on the table to begin with when Senator Reagan was being responsive to a number of issues that individual families from the field brought to us. We appreciate that the LBA believes we have this super power. We have yet to find a district that agrees with that or a district attorney that agrees with that. So while they believe that we somehow can just ask for this information or demand this information, you know, heretofore it has not been forthcoming.

I would also just like to point out there's incorrectness in terms of the limitation on the LBA. If you read their statute, they are not limited in terms of five entities when it's a reference to school districts, because those are political subdivisions, right? They are part of the State. And so that statute does not limit them in that regard is our understanding of the statute. So just as they're explaining to me how my statutes work, I'm going to explain to them I believe how their statutes work. And,

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again, you know, we think that the -- here's what happens is so they're auditing all of the information that comes to me, right, which is a very small subset of the issues relative to special-education that happen in the field. And we don't even know about many of these issues because they never come to our attention. We don't see those issues coming in.

If a School District -- um -- you know, is not providing appropriate services and persuades a parent that it's okay or to just be quiet or go away, we're not going to know about that. We don't get the complaint. Like if we get these 300 complaints, we deal with them with the tools that we have. But the concern that was raised initially was all of the stuff that doesn't reach us because of potentially poor oversight, poor implementation at the District level. And so I think that was the original intent from Senator Reagan. I think that's the original intent from the constituents who had reached out. But we understand that we've had this hearing. But so those are my comments relative to the conversation here today.

CHAIRWOMAN ROSENWALD: Thank you.

SEN. LANG: {Inaudible} one question.

CHAIRWOMAN ROSENWALD: Yes, Senator {Inaudible}.

SEN. LANG: So just one question.

MR. EDELBLUT: Actually, one second.

MELISSA WHITE, Division Director, Division of Learner Support, Department of Education: Melissa White, Division Director for Learner Support. I think just one key point I wanted to add is that the State contributes \$225,000 for the administration of special-education to the Department. So the only part that the State is contributing to the operation, this includes the dispute resolution and all

that other of pieces of special-education, is \$225,000. So we are, at times limited in our focus because we have to prioritize the Federal requirements because the Federal Government is paying to meet those requirements. So I think it's just key to delineate how much the State is actually contributing.

SEN. LANG: My simple question was around reporting, right? So is there -- is there a requirement of the School District to report the number of complaints and at all to the -- to the Department? Like we have received a thousand complaints from parents on relative to special education. Is there any kind of reporting requirement that we have so we can gauge whether what three -- how 300 ratios to the total number of complaints that were received?

MS. WHITE: Thank you for the question. We do not collect that number. What we do collect is that they have a special-education dispute resolution process that they can provide to us and so we can look at that. That must be implemented; but we do not go in and look at their actual number of complaints.

CHAIRWOMAN ROSENWALD: Where was the hand? Rep. Weyler? No. Senator Whitley.

SEN. WHITLEY: Thank you, Madam Chair, and thank you again for coming up. Can you describe how you -- so what I'm hearing is that you don't hear about the problems at the District level unless you get a complaint from a parent. Can you describe to us about how you all comply with the IDA regulations about establishing requirements for State monitoring enforcement and annual reporting? How do you comply to those requirements if you're only hearing complaints that they come to you?

MR. EDELBLUT: Yep, we do do monitoring and I'm going to let Melissa speak to that. But I was thinking I would share an example of, you know, so that you see how kind of

actual things sort of unfold in the field and how it may or may not come to us.

So -- and this is a complaint that we received, but it was after quite a bit of process that had already taken place. So there was a particular family. The mother had a kindergartner who had gone through kindergarten. At the end of the school year she believed that there was some issues with her young child. Not necessarily sure how to articulate those but was concerned about them, and asked the school to hold her child back. And in typical fashion the school did not hold the child back and insisted that the kid move along to first grade. How the parent, again, believing that there were issues with her child that she wanted to deal with, pulled the kid out of school and started home educating the student.

During the period of home education and, again, this is all hindsight, we didn't know none of this is happening, right? So there's this conflict at the School District. I want my kid to stay back. School says no. Parents pulled out. Department has no knowledge of this taking place.

While this kid is home schooling, Mom continues to be concerned about the development of the child. While she's home schooling in January of that year, so initially pulled out in like the late August, September time frame, goes out on her own dime and has some neurological evaluations performed relative to her child because she's that concerned about the development of her kid.

She continues to home school. She's not making progress. She's concerned about her child. She re-enrolls her child into special education or into the public school system and she asks for evaluations. She brings her neurological evaluations to the District. In about the May time frame they convene a team to look at this child and determine what's up, and they say not eligible for special-education, but we will do some evaluations.

The parent asked for a specific evaluation, say I need this type of an evaluation because I think this is the appropriate one. The school says we don't do those, but we'll do these evaluations. So the school did those evaluations and came back and concluded in August that the child was not eligible for special education based on those evaluations. They did not perform the evaluation that the parent had asked for.

Child continues in school and in the fall they -- we get around to completing the evaluations for the child that the mother was seeking and by January the child has an IEP and is getting the supports and services that they need. And so my concern is -- and then the parent files a complaint with me, probably I think I'm dealing with it at this point in time so, you know, months later at this point in time, right? Like so I'm in March now.

And so my concern is that until that parent filed a complaint with me that the special-education process had not been followed, I would have no knowledge of that process not necessarily being followed. Even in our monitoring of the School District, we're not going and looking at every individual case. We're looking at the policies and procedures that the School District has in place. And so if that School District -- and our job is not to second guess the IEP team per se, but here's an example of how is it that we as a District, and I don't -- I don't have any authority to override the District even in this complaint, but how is it that, you know, a parent on four separate occasions raises red flags and says something's not right, can somebody help me, and the system is not responsive to it. So those are the concerns that I have. And then specific to your question I'll let Melissa talk about, you know, our school monitoring process.

MS. WHITE: The Special-Education Bureau oversees the monitoring for meeting all of the IDEA requirements. And

so we do have a robust team internally that is conducting that monitoring. There was a different system that was set in place in a different monitoring process. We have since Beckey Fredette, the Director of Special-Education, and myself have come into our positions, we've re-evaluated that system and we are working with the U.S. Department of Education, and specifically the Office of Special-Education Programs at the Federal level to re-evaluate our monitoring system and to implement a more robust system and we're working on --

MR. EDELBLUT: Just to give you a little bit of background on that. So, essentially -- so Santina used to run the Special-Education Department. She'd been running it for 15 years and she had a certain monitoring protocol that she was following that had been approved by U.S. Ed. Santina left, went to a District, and we hired Beckey Fredette who's now running the Department. She came in. She says I think there's a more effective way to do it. And so what she's referring to is the changeover in like between 2018 and 2020 of the monitoring system.

SEN. WHITLEY: Follow-up.

CHAIRWOMAN ROSENWALD: Yes.

SEN. WHITLEY: Thank you. So, Commissioner, you said that monitoring is sort of limited. You can't look at individual files. That it's limited to just policies. But the requirements under IDA is that your monitoring actually has to focus on improving educational results and functional outcomes for all children with disabilities. So how do you comply with that requirement?

MR. EDELBLUT: So you misunder -- yeah. So you just misunderstood.

SEN. WHITLEY: If you're only looking at policy.

MR. EDELBLUT: Yeah, so if --

SEN. WHITLEY: Hold on. How can you do that if you're not actually looking at individual cases because they're pretty rigorous requirements?

MR. EDELBLUT: Yeah. So what I was referring to when I made that statement was the example that I talked about. So I would like to lean in on that specific example and ask the school to, you know, do something specific about it. But, in fact, we only are able to in that complaint process identify technical non-compliance as opposed to the fact that we have a kid who's not getting the supports and services that we need. And I don't know if you want to go into the detail about the actual monitoring because it includes files obviously.

MS. WHITE: So when we're looking at improvement results for special-education students specifically, we do look at -- rely pretty heavily on our assessment data. And so we'll go in and look at that assessment data and then we have a process where, for example, if we notice a specific school is having results that are maybe below average or they're not making a lot of improvement with their special-education subpopulation, we will go in and work through targeted support interventions to do, and it's a specific TSI CSI process where schools are identified. We will go in. We will work with those schools. We hire contractors to work with those schools.

One of the ones we use right now is WestEd. They have a pretty robust system that they will go in and work with that team to specifically the leadership and also the teachers in that school to look specifically at that subpopulation and say, okay, what are, you know, the trends that we're noticing? What interventions can we help you to implement? What changes need to be made at that school level in order to support those students and that list is available on our website. We identify those schools on an

annual basis. So that is one of the ways that we work in particular with our special-education monitoring process.

What we have in place now is looking maybe more specifically. Let's say, for example, we have a School District that has over 1% of their population identified as needing -- having intensive cognitive needs. Usually the Federal Department of Education identifies no more than 1% of your special education population is identified. So if we notice the School District has more, we will go in, we will work with them to ensure that they're properly identifying students. Maybe there are students that don't necessarily qualify and we work with them. So that's an example of some sort of targeted support that we will go in and give on that specific issue.

But if we're looking at that student level, like one student in a District with an issue, we may not know some specifics around that unless we have a complaint coming from a parent, and then it might be specific to that student.

So it -- it varies across the board; but, for the most part, we have systems in place in different programs that look at the special-education needs.

MR. EDELBLUT: And if I may just again, you know, I've already vetted my concerns about the way that this audit is scoped and I appreciate the conversation, so.

CHAIRWOMAN ROSENWALD: Can I ask you, you made a surprising point about the amount of money the State budgets, 225,000, to oversee special-education, which doesn't sound like a lot. Has the Department ever asked for an increase in that line?

MR. EDELBLUT: Yes. So the increases that we've sought in special-education when I first got to the Department we were funding special-education for the Districts at about

72%. We sought, and I think with the help of Representative Weyler, excuse me, were awarded additional funds up to 34 million. So now we are fully funding that at the District -- District level.

CHAIRWOMAN ROSENWALD: I'm sorry. I meant the Department's --

MR. EDELBLUT: So we have not.

CHAIRWOMAN ROSENWALD: -- management.

MR. EDELBLUT: No, we have not sought any oversight. Actually, the thing that we've advocated for is really to provide additional supports to the field because we think that's the priority funding.

CHAIRWOMAN ROSENWALD: Do you feel you have the resources to oversee those local issues that Representative Erf is concerned about?

MR. EDELBLUT: So the -- it would be difficult to oversee some of those State laws because a lot of these are State funded items. And so we don't have the ability to oversee those with Federal funds unless there's an overlap between a State obligation and the Federal obligation. Again, so our approach has been how do we provide more resources to provide services to students is what we've been seeking.

CHAIRWOMAN ROSENWALD: Thanks. Rep. Weber.

REP. WEBER: My turn for Ground Hog Day.

MR. EDELBLUT: Okay.

REP. WEBER: What I'm hearing in Representative Rosenwald's question is that we have a very small amount of specific State funding for specific State monitoring and

oversight. And what I was hearing her ask you, and what I want to know the answer to is do we need to be changing that amount so that there is a more robust ability in your Department to do the monitoring that we have been talking about? It's nothing to do with the overall --

MR. EDELBLUT: Understood.

REP. WEBER: -- Federal funding. It's just our State funding and State oversight.

MS. WHITE: Absolutely. And if we're looking at also introducing new legislation that has new requirements within special-education that are not mirrored in Federal Law, then we have to allocate funding for us in order to do that. The 225,000 includes complaint investigators. So we're having to use that fund also to contract for those complaint investigators that are specific to the dispute resolution process.

CHAIRWOMAN ROSENWALD: And I think what I heard was the Department has not asked for more resources.

MR. EDELBLUT: The additional funding we sought has only been through the field.

CHAIRWOMAN ROSENWALD: Right. Representative Weber.

REP. WEBER: So there might be a request in another budget cycle to make that function more robust?

MS. WHITE: Thank you for the question. I think in looking at the dispute resolution audit, in addition to the special education audit, that will help us to then prioritize what our needs could be. I think we do want to take a look at.

MR. EDELBLUT: So expect a prioritized need is what she just said.

CHAIRWOMAN ROSENWALD: Excellent. Any further questions on this audit topic which is halfway through? Thank you.

MR. EDELBLUT: Thank you.

CHAIRWOMAN ROSENWALD: Don't go away. Okay. What's next, Jay? Are we moving on to the required audit of the Education Freedom Account Program?

MR. HENRY: Excuse me. I just have one thing, one sort of housekeeping thing.

CHAIRWOMAN ROSENWALD: Yeah.

MR. HENRY: The -- the audit that you decided to stop, the Secretary of State's audit of the Archives, that went through Fiscal. The last time that this body stopped an audit they also sent a letter to Fiscal informing them of that. So I -- I just want to make you aware that we should -- the Chair should write a letter to give to Fiscal informing them that this audit has been discontinued.

CHAIRWOMAN ROSENWALD: Do you have a template?

MR. HENRY: I will -- I will get one for you. Thank you.

CHAIRWOMAN ROSENWALD: Thank you. And we just met in Fiscal. So you've got almost four weeks. Thank you.

MS. YOUNG: Okay. Moving on to the Education Freedom Accounts Audit, Chapter 297, Laws of 2022, which was effective on October 1st of '23, and we did provide the members with a hand-out on that. That requires a performance audit of the Education Freedom Account Program. The law requires us to submit a Scope Statement to this Committee for review and approval. We had an entrance conference with the Department on January 9th. We currently

have three auditors assigned to that audit who've been busy gathering information to plan for the audit and to start work on developing that Scope Statement.

During the information gathering process, we ran into a challenge, something that we call a scope limitation in auditing, that we wanted to inform the Committee about as it does significantly affect our ability to move forward with the audit as directed in the law, and I'll explain now.

The Department contracts with a third party, the Children's Scholarship Fund, to administer the program. Contract provisions state that all data, including reports, files, computer programs, notes, letters, papers, and documents, et cetera, under the contract are the property of the State and are owned by the Department. The scholarship organization's required to provide that information to the Department as requested by the Department in accordance with the contract. This includes any data that the scholarship organization has developed, acquired, or obtained while administering the program.

These provisions appear to allow the Department to request information from the scholarship organization for the Department's own oversight activities and for purposes of the audit. It's the Department's position that the Chapter Law only gives our office the authority to audit the Department's oversight of the program. So according to the Department, the law does not give the LBA the authority to audit the scholarship organization because the law does not specifically mention the contractor.

The Department is willing to provide us with all program documentation that it has in its possession, but it will not assist with obtaining the data and documents needed for the audit from the scholarship organization, as according to the Department this would violate the

separation of powers between the Legislative and Executive Branches.

This creates a substantial scope limitation on the audit. Much of the items listed in the Chapter Law in items A through G cannot be audited without access to the State records and documents in the possession of the scholarship organization.

If the Committee would like some further details on what items we would not be able to audit, I have the senior manager here that could go down the list and let you know which items we would not be able to audit.

CHAIRWOMAN ROSENWALD: Rep. Weber.

REP. WEBER: So my brain just started to bounce. Thank you for taking my question.

MS. YOUNG: Sure.

REP. WEBER: Am I understanding that the Department has taken the position that because a function that was originally given to the Department has been contracted out, as the Department may of course do, that we now have no authority to do the audit because of a separation of powers argument? That seems to me to be very attenuated. And I realize you're probably not the person to ask, and I certainly will ask that question of the Department as well. But it -- the mind boggles.

CHAIRWOMAN ROSENWALD: And the DOJ is still sitting in the back, I think.

REP. WEBER: Right.

MS. YOUNG: This -- this audit is different from other performance audits because the authority to perform the audit is in a separate Chapter Law. It doesn't follow the

normal process that we would typically follow in conducting a performance audit where the Committee would give us an audit topic, and then we would go ahead and perform that audit.

This particular audit was established under that Chapter Law, and I think the Department's position is that because the Chapter Law doesn't specifically mention that scholarship organization that our office does not have the authority to audit the scholarship organization.

CHAIRWOMAN ROSENWALD: Follow on.

REP. WEBER: So would I be correct in thinking that under that argument that this body would have the authority to expand the scope of what was put into statute to make it clear that the organization would be required to provide the information needed for an appropriate audit?

MS. YOUNG: I think it could require an Amendment to the Chapter Law in order for us to obtain those -- those records to perform the audit and review the items in A through G listed in the Chapter Law.

CHAIRWOMAN ROSENWALD: Yes. And then Rep. Weyler.

REP. WEBER: Thank you very much. Thank you for going with me on the journey. But one of the things I was thinking to make things somewhat easier, because we all know how long the process takes to amend a statute, as opposed to having this body make a decision, could this body choose to not -- not amend the statute, but simply require additional steps to be taken?

MS. YOUNG: I think that could potentially be an option. You know, there's a couple of different options, I think. One could be we could complete the audit of this Chapter Law based on what information we can audit, and then issue a report to comply with the Chapter Law. That

report would be very limited, because we -- we can't review much of the information that's held by the scholarship organization. I think possibly another option is to have this Committee come up with a new audit scope and have the audit scope include a review of the documents at the scholarship organization. I'm not sure if there's other legal issues that you'd have to consider in doing that -- um -- but that would be the Committee's decision.

REP. WEBER: Thank you very much.

CHAIRWOMAN ROSENWALD: Rep. Weyler.

REP. WEYLER: Thank you, Madam Chair. Having read all your audits for the more than 20 years, I don't recall any that ever delved into a contractor. And many of our functions, especially in DES or DHHS are done with contractors. And we rely on the Agency to monitor the contractors. And so this would be an expansion that I'm not in support of to go after contractors and get down to that level that is done by much of the State work but is not looked at by the Audit Division so much as by the Department that gives the contracts. So I'm not in support of -- of this bill trying to go into that level, and I don't think it's correct. Thank you.

CHAIRWOMAN ROSENWALD: Representative Griffin.

GERALD GRIFFIN, State Representative, Hillsborough County, District #42: It would -- thank you, Madam Chair. It would seem to me that the contract would have to specifically call for that ability. Otherwise, I don't -- I don't see how you get into a contractor's organization. I would think from a financial standpoint you might be able to obtain their audit report and rely on that; but on a performance basis, I would think you'd have to have specific language in the contract in order to be able to do that.

CHAIRWOMAN ROSENWALD: Representative Weber.

REP. WEBER: I'm informed, without having been able to check it, that the Chapter Law when this was passed specified that the -- how the scholarship organization is to be audited, and I wonder if that changes anybody's opinion about anything? But the issue of transparency here is clearly first and foremost in everybody's mind.

CHAIRWOMAN ROSENWALD: Representative Erf.

REP. ERF: Could she just clarify that?

REP. GRIFFIN: I think an audit typically is -- I'm a CPA so I'm pretty familiar with audits. And, typically, an audit is a financial audit. And I would think it would be proper to ask the -- the organization to send a copy of their financial audit. But when you get into performance audits, I think that's a whole different ball game.

CHAIRWOMAN ROSENWALD: Rep. Weber.

REP. WEBER: If I may? What we were told was that unless the statute had specifically authorized looking at the scholarship organization, it could not be done. And what I'm asking is if anybody has taken a look at the Chapter Law, because I certainly haven't to see if it contains such a specific authorization.

CHAIRWOMAN ROSENWALD: It doesn't.

REP. WEBER: It doesn't.

SEN. LANG: Right. So, again, if you look at 1135, which is on here, the question is on Line 3, right? It says that the Audit Division of Legislature shall complete a performance audit of the Department of Education. So the question is going to take another step down, not given the explicit authority, and I guess I'm agreeing with

Representative Wheeler here that you don't -- you can't take that step down. We've authorized only the data that's within their control and we can do performance audit on that data; but I'm not sure there's legislative authority to take a step down.

CHAIRWOMAN ROSENWALD: But -- so what I'm confused about is I don't see any directive in that Chapter Law that wants us to look at the contractor. The intention of the statute, which by the way went through the House on a consent calendar and a voice vote in the Senate, was very clearly to monitor the Department. And as I'm looking at A through G -- um -- so A is initial and continued eligibility of participants. Doesn't the Department presumably have a procedure that we could audit as to whether or not they were maintaining proper oversight of people being eligible? And B is controls for determining qualifying expenditures. I'd be shocked if the Department did not have a policy and procedure for that. And just looking at all of them, they're basic management oversight of a program that I think we expect all of our departments to have on every program.

MS. YOUNG: Representative, if I may? I'd like to ask the Senior Manager to come up and just go through the list of items that we would not be able to audit without further access to the records at the scholarship organization.

CHAIRWOMAN ROSENWALD: Okay. Senator Lang has a question.

SEN. LANG: Yes. Well, it's not a question. It's just a statement. Again, under 194-F, Roman numeral XV, says the Department shall adopt rules that are necessary for the administration of this chapter. And the chapter is EFA Program and the Scholarship Program. So I -- I would anticipate that a performance audit would look at the rules that they've adopted for the administration of that program and whether or not they're following those rules that go

along with that. So there is some provision, again, within the agency and its rules that's done to implement the law and a performance audit whether or not it's following, A, the law and, B, the rules.

CHAIRWOMAN ROSENWALD: Well, in order to do that, you'd think that the Department would have to get information from a contractor.

SEN. LANG: Possibly. Again, that's up to the Agency. And, again, if it's information within the Agency, I think they'd be obligated to turn it over. It's information outside the Agency, I'm not sure they're obligated to chase it down because, again, we're doing that step down into another layer of auditing that isn't even authorized by the statute. Again, the authorization, the 1135 authorizes us to audit them, not the scholarship program.

CHAIRWOMAN ROSENWALD: Right, but the contract makes clear that all of the data about this program belongs to the State. Yes, good morning.

VILAY SKIDDS, Senior Performance Audit Manager, Audit Division, Office of Legislative Budget Assistant: I'm sorry. I don't know who asked the question about the Department's monitoring, but we have asked about the Department's monitoring --

CHAIRWOMAN ROSENWALD: Could you introduce yourself.

MS. SKIDDS: Oh, I'm sorry. I'm Vilay Skidds, the Senior Audit Manager that's been put on this audit.

As I was saying, we have asked the Department about their monitoring efforts, and right now those efforts are in its infant stages. But currently the EFA Administrator, he hasn't been in his position for -- it's been about a year, and he has started some monitoring. So right now he has been looking at some of the eligibility pieces, but he

hasn't finished with his report yet. So we haven't gotten that report. And as far as the second piece, qualifying expenditures, he has just started that process. So we don't have access to their monitoring pieces yet, because they're not complete, so.

CHAIRWOMAN ROSENWALD: So it doesn't say when the audit has to be done, just that the law went into effect October 1st.

MS. YOUNG: Correct.

MS. SKIDDS: And like Christine had said, I can go through some of the pieces that we won't be able to look at --

CHAIRWOMAN ROSENWALD: Hm-hum.

MS. SKIDDS: -- based on the current situation. So you all have a copy of HB 1135 or Chapter 297 in front of you. So I'll just go through each of those points.

So the first piece is the initial and continued eligibility of participants. So without the information that's at the scholarship organization we wouldn't be able to determine whether policies, procedures, and other internal guidance that is used by the scholarship organization conformed to State laws or rules. We would not be able to determine whether participants were eligible to receive the base EFA grant. We would not be able to review participants continued eligibility to participate in the EFA program, including whether participants continue to meet residency, age requirements. We would not be able to perform audit work to determine whether students who were not previously enrolled in public school were eligible to receive initial differentiated aid, and we would not be able to perform work to review a participant's continued to meet requirements for differentiated aid each year.

Um -- continuing on to Item B, Controls for Determining Qualifying Expenditures. We would not be able to determine whether policies, procedures, other internal guidance that are used by the scholarship organization conformed to laws, State laws or rules. We would not be able to determine whether specific purchases and expenses for individual EFAs aligned with statutes and rules.

Item C, Identification and Recovery of Ineligible Disbursements. We would not be able to determine whether, again, policies, procedures conform to State laws and rules. We would not be able to determine whether participants receiving EFA funds met all eligibility criteria at the time of application or continued to meet eligibility criteria for receiving differentiated aid. So a lot of the same limitations that we've outlined in A and B apply to this one as well.

Item D, Procedures and Controls for Transferring Funds to the Scholarship Organization. We would not be able to determine whether funds were paid to students who did not meet all eligibility requirements at time of their application. We would not be able to determine whether funds transferred to the scholarship organization were distributed to -- were credited to the correct individual EFAs.

Item E: Procedures and Controls for Phase-Out Grants. This is an area that the Department -- um -- does so we don't foresee limitations in this area.

Um -- Item F, public par -- Public Reporting of Participation Student Outcomes and Expenditures. Student outcome data is not maintained at the Department so we wouldn't be able to review those. And then item G, Demographics of Qualifying Applicants, the municipalities, states of residence, grade level, type of location -- type and location of educational programs during those two years. We would not be able to identify the type and

location of the educational programs the students are currently enrolled in, and we would not be able to determine whether students still reside in the municipality they did when they initially applied for an EFA.

CHAIRWOMAN ROSENWALD: Questions. Senator Whitley.

SEN. WHITLEY: Yeah. Thank you for this information. You know, it is pretty -- it takes my breath away a little bit that the State is -- our taxpayers are spending millions and millions and millions of dollars on a program that's a -- that's going to a private organization and it's a complete black box, and that you're telling us that we have absolutely, practically no opportunity to, you know, exercise our duties to make sure that taxpayer dollars are being spent appropriately. It sounds like that's what you're telling us.

MS. YOUNG: Yes. Um -- and I'd also like to add that the scholarship organization is willing to assist with the audit, as long as they receive the Department's prior written approval, which is required under Section 10.3 of the contract. Otherwise, according to the scholarship organization, they cannot permit access to the data as it would violate the contract. Um --

CHAIRWOMAN ROSENWALD: What page is that of the contract? Do you know? That's all right.

SEN. LANG: {Inaudible}.

CHAIRWOMAN ROSENWALD: So did I hear you say that the management of this program at DOE is just new?

MS. SKIDDS: Oh, I'm sorry. I'm sorry. So the EFA Administrator, the position was authorized I believe June or July of 2022. And -- um -- the EFA Administrator was hired at the end of March 2023. So he's been here about a year.

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CHAIRWOMAN ROSENWALD: So it's still early.

MS. SKIDDS: Correct.

CHAIRWOMAN ROSENWALD: Hm-hum. Questions.
Representative Erf.

REP. ERF: Thank you, Madam Chair. Actually, a couple of comments and a motion, if I might. So I just want to point out that if I heard you correctly, you're talking about expanding the scope of the audit, whereas in the previous comments, the previous discussion about special-education that seemed to be out of the realm of consideration, which is number one. And, number two, here you want to go and audit the contractor, a third party, private third party. Again, going back to the previous conversation about special-education, you explicitly stated, and it may not have been the two of you, but the organization that you wouldn't consider auditing what were actually government entities in terms of the local school districts. So I just -- you don't need to respond to that unless you want to.

MS. YOUNG: I just wanted to clarify. You mentioned that our office wanted to audit the contractor. I'm not quite sure that's the situation. I think our, you know, intent here was just to let you know that we cannot continue with much of the audit, unless we were given access to that information. And that is -- that's the decision of the Committee. So I just wanted to clarify that.

REP. ERF: Follow-up.

CHAIRWOMAN ROSENWALD: Okay. Follow-up.

REP. ERF: Thank you for that clarification, because that's -- that actually goes to my point that you didn't

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want to audit the contractor. And, yet, when we talk about the school boards, you specifically don't want to audit -- I mean, not school boards, the school districts, you specifically don't want to audit the contractors. So that's fine. I think I've made my point and you made your point which is fantastic. May I make a motion, Madam Chair?

CHAIRWOMAN ROSENWALD: I'd like to hear from the Department.

REP. ERF: Okay. Thank you.

CHAIRWOMAN ROSENWALD: And also the Attorney General's Office first. Thank you. Representative Weber has a question.

MR. EDELBLUT: That's okay. I'm going to have some comments first I think it be to start us off because I think there's some information that is inaccurate that's out on the table that I think I can clarify. Thank you. And 12:30 is at-risk at this point. Don't you -- so --

CHAIRWOMAN ROSENWALD: If you didn't make comments, questions, perhaps 12:30 wouldn't be at-risk.

MR. EDELBLUT: Okay. I'm going to hand out a handout. So make sure you get one of these handouts. If you might, it is a section of the contract that was referred to a number of times, and I will get to that. You don't have to grab it immediately. But -- um -- in essence, part of the conversation here comes down to the ownership of data. Who's -- who owns this data that is being sought.

The enabling legislation in 1135, and I'm happy to go through that in a couple of different ways with you -- um -- seems quite clear the Legislative Budget Assistant shall complete a performance audit of the Department of Education, Education Freedom Account Program. This is an audit of the Department. It is not an audit of

the vendor of the Department. This audit needs to be directed at the processes at the Department, and I'm happy to go through 1135 and explain to you why I believe that they can meet the obligation -- their obligation under 1135 auditing the Department. And, really, the Constitutional argument which I'll reference again a couple different times comes from, you know, the Legislative Branch ordering the Executive Branch to seek information that it does not own from a vendor, right? And so that is really what we see as one of the substantive problems here.

But, again, just to give you a little background. January 9th we had our initial opening meeting. The LBA Audit Division first gave us a request for information for documents that are not owned or in the possession of the State. And, you know, the Department communicated to the auditors at that time that we believe that the audit scope included the Department and not the vendors of the Department.

February 13th, the Department communicated that we would not be seeking documents that were not property of the State and not in the possession of the State. We further communicated that the Department could not be compelled to seek such information, right. The audit -- the LBA auditors don't get to come over to the Executive Branch to say we want you to go get something that's not yours. In effect, this is that separation of powers argument.

On February -- when they were no -- they were -- that was on February 13th. On February 27th, without the knowledge, no knowledge by the Department, the auditor sent an e-mail directly to the Children's Scholarship Fund indicating that they believed that they had authority to obtain this information. Didn't talk to the Department, didn't seek our advice or whether we believed that we owned it or didn't. And we believe that the auditors wrongfully stated that all data in the possession of the Children's

Scholarship Fund were the property of the State and subject to the audit.

On March 8th, as a result of the faulty information that the auditors provided to the Children's Scholarship Fund, the Children Scholarship Fund stated that if the Department gives us permission, then we can give this to you. But, again, we don't even believe that it is our information so we can't take, you know, we don't need to grant permission for that as I'll walk you through the contract in a moment. And then, finally, on -- on March 14th, the Children Scholarship Fund clarified to us their position that the materials were not the property of the State and not subject to delivery of the State. And, quite frankly, just the auditor's inquiry into the Children Scholarship Fund created a bit of organizational turmoil.

I'd now like you to turn your attention to the handout that I gave you. And, again, the relevant question here is whether the student and family data in the possession of the Children Scholarship Fund is the property of the State.

New Hampshire Ed -- the Department believes that such data is not the property of the State. When the enabling legislation for this program was first established, the Legislature deliberately separated the functions of the State, New Hampshire Department of Education, and a scholarship organization to whom much of the responsibility for the administration of the program was delegated. The statute is quite clear about the various obligations for each of those entities.

Given this direction in the Legislature, New Hampshire -- the Department of Education entered into a contract with the Children's Scholarship Fund. The terms of this contract establish that at a minimum, personally identifiable data generated by this contract is the property of the Children's Scholarship Fund or not, but certainly not the State's property. If this were not the

case, New Hampshire Department of Education would have required a number of contractual provisions relative to the protection of personal identifiable information, including all of the DoIT contract specifications, and the Governor and Council would have required such things as well.

Finally, in its ongoing relationship with the Children's Scholarship Fund, including monitoring the program, thank you, Senator Rosenwald, you know, the Children's Scholarship Fund has continued to assert that this is not property of the -- the State.

Now in -- on February 27th, the auditors sent an e-mail and made an assertion that the data held by the Children's Scholarship Fund was property of the State. Such assertion contradicts New Hamp -- the Department's understanding of the contract and contradicts these actions, the legislative actions, as well as the actions of how we've operated for the first three years. And if you'll notice, in the e-mail that the auditor sent initially -- and I'll pull this up -- they point to paragraph 10.1, which is in the handout that you have. You all have 10.1. And if you read 10.1, 10.1 states a very broad, you know, casts a very broad net.

It says as used in this agreement, the word data shall mean all information and things developed or obtained during the performance of or acquired or developed by reason of this agreement, including but not limited to all studies, reports, files, formula, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analytics, graphic representations, computer programs, computer print-outs, notes, letters -- I assume that could mean e-mails -- memorandum, papers, and documents all whether finished or unfinished. And then in the second thing, if you read -- if you continue, the assertion was that, well, this is data; therefore, must be property of the State. And so they go to 10.2. And it says all data and any property which has been

received from the State or purchased with funds provided for that purpose under this agreement, shall be the property of the State and shall be returned to the State upon demand or upon termination of this agreement for any reason. And then they point in three that the data can be disclosed upon written approval.

So NH's understanding of this contractual provision which is consistent with both its and the actions of the Children's Scholarship Fund to date are that the property does not belong to the State. It reads look at care -- at 10.2 very carefully. It reads all data and property which has been received from the State or purchased with funds provided for that purpose under this agreement.

And that is a very standard contractual term. Um -- notice that it doesn't say all data, comma. It says all data and property which has been received. So it's modified there. So Vilay seems to think that all data in 10.1, as well as any property which has been received from the State or purchased with funds provided for that purpose under this agreement, is property of the State. And this contradicts common sense, quite frankly. It results in just an absurd application under the contract which no one's going to believe, right? They're basically saying -- imagine if I went to all of my contractors and said all the e-mails that you ever wrote about this contract, those are the property of the State. Every note that you took in a meeting relative to this contract that becomes property of the State. That's not, can't possibly be the meaning associated with this. And everybody knows in a typical contract, right, you have a contract. And we're saying like all data that we give you, and all data that we pay for you to develop, that's the property of the State, not all data associated with this contract.

And so New Hampshire believes that all data and property are modified by received from the State or purchased, blahbably-blah. Such reading is the practical

application of the language that any data provided to the vendor or purchased on behalf of the contract can be demanded by the State and must be returned to the State upon termination. And this understanding is also grammatically correct. Again, it doesn't state all data, comma, and any property, but states all data and property, without the comma, establishing that the modifier of which has been received from the State or purchased with funds provided for that purpose applies to both data and property, right? They're not trying to sweep up everything that's ever happened at the -- at the, you know, from the agreement. And, quite frankly, this entire thing could have -- if the auditors had communicated with us and talked to us, we could have clarified this for them.

And so imagine the absurd application. That would mean that I have a contract with Tutor.com. Can I go to Tutor.com and say, like, I want all of the personal identifiable information of every student and teacher that has ever done tutoring? Of course I can't, right? I didn't provide that data. How about if I go to Discovery.com. I have 1.2 million teachers and educators using that program across the state. Am I allowed to go to Discovery and say I want every single e-mail that's ever been written? I think that that's an absurd application of this contract. And -- and, quite frankly, doesn't make any sense.

And then I just want to -- I want to step back again as well and just reflect on additional scoping relative to this audit. I was shocked to learn the other day that the auditors have sought access from the Department's Food and Nutrition Program under the premise that they can learn something from how schools qualify students for free and reduced and reduced price meal eligibility. And, quite frankly, I don't know why they're there. They have now sought and met with my reading specialist. They've sought and met again with special-education as if those guys haven't been audited twice already is enough. And so -- like I just am concerned that we are almost feels

like a little bit of a fishing expedition. I'm going to tell you how they can meet their obligations in a moment.

But then the last thing that I will talk about is, and this was quite disturbing, is that it was communicated to staff of the Department that when the auditors want to interview with staff members, it is not permissible to have their supervisor present. And the belief was that they didn't want the supervisor present because maybe they would not say something. They would be, you know, feel like they have to be nefarious or something.

Quite frankly, we're trying to work with the auditors to make sure that we roll out an effective program that serves the needs of the students. And I -- I take offense at that -- um -- you know, kind of a policy. And I've worked in this field for many, many years and I can tell you that, of course, you want the aud -- the -- if a supervisor thinks they need to be there to make sure that the auditors get accurate information that should be the case. If the supervisor thinks that the individual is -- has, you know, been in the job long enough to be able to do it, they can go ahead and do it.

But now if I come back to 1135, you know, the audit is of the Department, and if you look through these things the initial and continued eligibility of departments. We have a monitoring program that is monitoring both the initial and the continued eligibility of individuals in the Department and we are doing that. We have controls to determine that the expenses that are being approved are qualified. We have procedures and controls for transferring funds to the scholarship or, actually, I skipped one. Controls for determining qualifying expense, identify and recover ineligible expenses. Every year we go through a very extensive reconciliation with the scholarship organization. And they're happy to come in. They can see all the documentation we have relative to that and they can take a look at it.

Um -- you know, procedures and controls for transferring funds to the scholarship organization. Again, I have to authorize that transfer. I sign off on it. There is plenty of documentation that takes place at the Department relative to my sign-off to make sure that the amount of funds that we're transferring is the appropriate amount, and then the subsequent reconciliations to make sure that we know where those funds ended up.

You know, public reporting in terms of participation, student outcomes and expenditures, we have quite a bit of public reporting. We release demographic reports on a regular basis. So I believe that there is plenty of audit available, and I believe that they can meet their obligations. And we believe that the statute does not allow them to go to a vendor and seek information that is not the property of the State. Um -- and so those are my -- my comments.

CHAIRWOMAN ROSENWALD: Before I --

MR. EDELBLUT: Okay.

CHAIRWOMAN ROSENWALD: -- recognize Senator Whitley for a question --

MR. EDELBLUT: Yes.

CHAIRWOMAN ROSENWALD: -- I just want to say that I think all of us in this room have deep respect for the professionalism of the LBA, both the Budget Division and the Audit Division. And I am sure you are not implying anything other than that.

MR. EDELBLUT: Absolutely not. A hundred percent. I have the same respect and I actually think that this can be a real opportunity to try and make sure that we're implementing a program, a new program for the State in its

infancy, so to speak, to be able to make sure that we set it on a right course from the beginning. And I share that -- that interest, and I'm happy to kind of work toward that. I am concerned when there are engagements with my staff, there are engagements with vendors that seem to go beyond that and -- and lack some degree of communication.

CHAIRWOMAN ROSENWALD: Senator Whitley.

SEN. WHITLEY: Thank you, Madam Chair. That was in my opinion a full scale attack on the LBA, and I would like them to come up and respond please, because I think that's very appropriate before we do additional question.

CHAIRWOMAN ROSENWALD: Before we do that, I just want to ask you about Section 10.2.

MR. EDELBLUT: Yes.

CHAIRWOMAN ROSENWALD: The way I read it that little or in the second line is little but it's incredibly powerful, because it puts equal weight on what comes before it and what comes after it, because it is not a restrictive clause. So all data and any property which has been received from the State is one; and two, or has been purchased with funds provided for the purpose under this agreement. It has equal weight to shall be the property of the State. So I -- I think you're misreading it grammatically, which we could -- we could argue grammar, but I'd probably spend more time teaching writing than you.

ELIZABETH BROWN, ESQ., General Counsel, Department of Education: Actually, I am --

CHAIRWOMAN ROSENWALD: Could you introduce yourself.

ATTORNEY BROWN: I can. Elizabeth Brown, I'm Counsel for the Department of Education. And I actually think your reading actually aids the Department even more than our

prior reading. Because if you read that, if that is or purchase with funds for the State, it has to be data or property received from the State. And I'm going to take a little step back and I actually will then will give you all a handout because this statute is very different.

The way the program for the EFA program was designed by the Legislature is very different than probably any other program that is being administered in the State. The Department has a couple of obligations under this statute, and the scholarship organization by design, and the Legislature designed this program and gave the scholarship organization a number of duties and responsibilities with respect to administering the program. And you can see that very clearly in 194-F:4, Roman numeral -- F:1, Roman numeral VII, which basically says the scholarship organization is the Department that implements and administers the one -- the program.

So I think this is -- this is a bit different and this is why it is important to understand that this whole program is set up by the Legislature in order to bifurcate the information. Because the scholarship organization is receiving, like, because I don't think this is made -- this point has been made here either by the legislators or by my Commissioner, the type of information that the scholarship organization has is deeply personal and deeply private, and I believe that is why the Legislature in their prudence decided to bifurcate this.

The information that the EFA administrator has, the scholarship organization has, is student level data and tax returns from our taxpayers in order to determine whether or not they're eligible. That is not the kind of information that our Department manages ever. We don't have student level data. We don't have individual taxpayer information. And I actually think our taxpayers might be somewhat offended if they found out that we had general access to that information.

This was put behind the -- the protections of the scholarship organization in order to keep that information private and to keep it out of the hands of the government. That was done by design.

So I just want to make sure that I -- that I actually believe your reading is also consistent with our reading. That that information, those tax returns and that student information is not government information and that data does never become data of the Department, because we did not purchase it. And it was provided directly by individual taxpayers and parents to the scholarship organization in order to determine their children's eligibility for the program, and that was all by the design of the Legislature.

If I could, I would hand out 194-F copies just for your information. If you can please take one.

CHAIRWOMAN ROSENWALD: So you wouldn't be able to get the identified data on where -- where the students lived or what the income levels were?

ATTORNEY BROWN: So the 800 rules, and we may be answering this slightly differently, but so one of our obligations under 194-F was to develop administrative rules. We did that. The administrative rules that are applicable to the EFA program you can find in Ed 800. Under Ed 800 there are certain reporting requirements of the scholarship organization back to the Department, and includes much of the information that you are asking for.

CHAIRWOMAN ROSENWALD: So you can get the information for the audit. We're -- it's clear that the bill that was passed does not ask for an audit of the scholarship organization. It asks for an audit of the Department's oversight. That's clear. I don't think anyone is suggesting that there's an intention to go beyond this.

MR. EDELBLUT: So we agree.

CHAIRWOMAN ROSENWALD: I -- I don't see that anywhere. Who had a question? Oh, Senator Lang, and then Weber, and then {Inaudible}.

SEN. LANG: I just have a procedural question about where we're going with this Committee and this conversation. Because, again, this is a statutory audit, right? So it's not whether or not we want to do the audit. We have to do the audit.

CHAIRWOMAN ROSENWALD: We have to.

SEN. LANG: We have to do the audit, right?

CHAIRWOMAN ROSENWALD: {Inaudible}.

SEN. LANG: Right now we're trying to play parent between two siblings it sounds like between the LBA and the -- and the DOE and trying to referee what is in Scope and what's out of Scope. So I guess my question is what's the role of this Committee in this conversation? Um -- we've approved the Scope. LBA has it. They should complete the audit as much as they can with the data that they're willing to provide. If they want to do something with the Department, then that's their obligation to do it. I'm just trying to understand what our role is in this conversation.

CHAIRWOMAN ROSENWALD: Well, I think our -- our -- um -- charter is to ask for a performance audit that look at how departments are implementing the will of the Legislature. And the Legislature's will was go do this program. So it's certainly our right to ask for information on how the Department's asking how it's implementing it, so.

SEN. LANG: Can I -- again, this is a question of process, not necessarily a question of -- as I read this again -- no, you're correct. Normally, under the statute for Performance Audit Committee we recommend audits so Fiscal Committee who goes about it. That's the normal process. We're outside of normal process because now we have a statute that requires a performance audit that isn't in here. Even if we wanted to say no, we can't because we have a law that says we're compelled to do one. And so we can't say no to the audit.

The question is what the audit contains and so we're subject to 1131 -- 1135, Roman numeral II, says the Legislative Budget Assistant shall submit an Audit Scope Statement to Legislative Performance Audit Committee for review and approval and submit the final report to the Oversight Committee and dah, dah, dah. We've already done our part, right? We've already reviewed the Scope. We've already reviewed. So now it's just up to the Agencies to do it -- uh -- what we've said. I guess I'm trying to understand are we talking about now revising the Scope after we've already approved it? Is that the discussion?

CHAIRWOMAN ROSENWALD: I don't think so. No.

SEN. WHITLEY: Madam Chair.

REP. WEBER: This came through by statute.

CHAIRWOMAN ROSENWALD: Right. Senator Whitley.

SEN. WHITLEY: Madam Chair, to clarify, I think what we are doing right now we -- right. We have -- the Scope is decided not by us. The Scope is what it is. But this is a very important conversation because we're hearing from the LBA that the Department of Ed is sort of blocking the information that they need to conduct the audit. That's what we're discussing right now. And maybe we need to get the LBA back up to sort of confirm that. But what I'm

hearing is that we have a very clear Scope. We're not arguing about Scope. But LBA is saying that they cannot get the information that they need to complete it without cooperation from the Department of Ed.

MR. EDELBLUT: And to be clear, our position is that we don't own nor do we have access to that data.

SEN. LANG: Again, Madam Chair, I go back to what's our role here. The Scope's been defined by statute. The Agencies are going through it. What vote could we possibly take in this Committee to change anything in the outcome of this conversation?

SEN. WHITLEY: Our role is public discourse so the public needs to hear about this.

CHAIRWOMAN ROSENWALD: I mean, the contract clearly states that the State owns the data. I mean, I just don't think there's another way to read it because of that or whether or not the Department chooses to ask for it, it's a completely different issue. I don't know why you wouldn't, but --

MR. EDELBLUT: So, respectfully, we disagree and we have sought legal counsel as well as the Attorney General's Office and -- and information on this, so.

CHAIRWOMAN ROSENWALD: Okay. Representative Weber.

REP. WEBER: Well -- sorry. Following up on Senator Lang's point. We have two different things going here. We have the audit as it was mandated by statute, which has to be completed in some format. And at that point this Committee or even before it is completed this Committee has the authority to ask for different audits, different parameters, different conditions. So if -- if -- I think that that is our -- our remedy if -- if we want to do some changes. I mean, it sounds to me like there's every

opportunity here to get a third branch of government involved in deciding who has the authority to say who can do which and one would fervently hope that that is not necessary. Uh -- because I, personally speaking only for myself, would fervently hope that with a program of this size and scope and importance and expense that the Department would take the pro -- the -- the position that transparency is paramount. And when I say that I am not asking for individual's tax returns or anything else.

The Audit Division audits all kinds of incredibly personal sensitive information from all kinds of sources all the time. And they have professional standards that require them to keep anything that is confidential confidential. It's only what they use in evaluating whether the statutory mandates put on an Agency are being followed. So that's just personal opinion, and I'm having let it out, I'm going to leave it there and hope that we hear from the Audit Division, because I think the position of the Department of Education is sufficiently clear, whether I agree with it or not.

MR. EDELBLUT: And so, again, we don't believe we own the data. We believe that they can meet the obligations of the statute auditing the Department as it's enumerated in statute.

REP. ERF: Madam Chair.

CHAIRWOMAN ROSENWALD: {Inaudible} LBA back.

REP. ERF: Madam Chair. Before you get to the LBA, shouldn't we hear from the AG's Office.

MR. EDELBLUT: The AG's Office is here, too.

CHAIRWOMAN ROSENWALD: {Inaudible} LBA back first.

SEN. LANG: One more question for the Commissioner.

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CHAIRWOMAN ROSENWALD: Yes, one more question.

SEN. LANG: So, again --

CHAIRWOMAN ROSENWALD: Now you're putting {Inaudible}.

SEN. LANG: You're under that 10.2. You're more than willing that any data that you've given to the -- to the scholarship commission you're willing to share with the -- with the LBA because that's your data.

MR. EDELBLUT: Correct. My data we 100% will be providing all of that information as requested.

SEN. LANG: Thank you.

CHAIRWOMAN ROSENWALD: I'll just mention that I've seen a Bureau of Elderly and Adult Services Performance Audit, which also deals -- that Department deals with Social Security numbers and income and very sensitive personal health information, and there's never been a question of -- um -- making any individual's information public through that audit. So the LBA like to respond to those charges?

MICHAEL KANE, Legislative Budget Assistant, Office of Legislative Budget Assistant: Yes. I'll -- I'll provide a response. But, first my name is Michael Kane, the Legislative Budget Assistant. Just a couple things. We don't take anything as an attack, personally I don't. I talked to my staff. We do operate as an office. Any decision that our auditors make I take personal responsibility for.

If there's a disagreement with the Department, we reach out. I have had discussions with the Attorney General's Office to make sure that we're both parties are on the same page. Um -- I do not want to characterize DOE

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as blocking our access to any information. I think it's a very important question. I think Christopher Bond's behind me, but it's a -- it's a very important what you were talking about the provision of the contract and information that's really contractual law. What is the -- what are the rights of the -- in the -- the access of the actual contractor, but what does the Department have access to. That is a legal question we have to be very careful with.

There in -- just to point out, we're not moving forward with anything today. We're providing you with an update. We do have to come back pursuant to that Chapter Law to have you approve a Scope before we move forward. We're very, very early in the process. This is a very important conversation to have as we move forward. What information are we able to access. And I think the Attorney General can kind of clarify that. Um -- and then after that, we have to work very closely with the Department to get that information as our auditor had stated.

The Department of Education does have an oversight. They do have a new employee who is performing a lot of the work who has been there for under a year. As you said, Senator Rosenwald, there was an effective date, but there's no deadline. There's no demand date when this has to be done by, when we have to start. I think there are a lot of things that are still going on right now that have to be clarified.

I do just want to point out to the Department, to the Commissioner, and to his employees, we really do appreciate the efforts they've taken over the last two years. We have been there over two years on various audits -- uh -- were directed by you, as well as the Legislature. We really appreciate them working with us and providing the information. Um -- it's a lot of information that we ask. The audit process is very difficult. It's very difficult for the audit team to perform their daily functions on top of monitoring legislation, court cases, and everything, and

we respect that. So we do appreciate everything that they've provided to date. We hope going forward that we can continue to work on this audit and comply with the statute as we are required.

I would have, if Christopher Bond's here, just have him to come up to kind of go over kind of just the details in the contract relative to property and who owns it. And I don't know if you wanted to comment.

MS. YOUNG: {Inaudible}.

MR. KANE: Good. Okay.

CHAIRWOMAN ROSENWALD: Great. Thank you. Mr. Bond.

ATTORNEY BOND: I'm in trouble when I'm Christopher and not Chris. So Chris Bond, Associate Attorney General. So unlike the last time I was up here with the Secretary of State thing, it's certainly not our position that this isn't unauditable thing. And I certainly understand a lot of the angst and frustration about not getting materials that folks think are necessary to audit the program. The -- I think part of the difficulty, and I think it's been touched on by Attorney Brown and by Commissioner Edelblut, is the way 194-F is structured.

The scholarship organization is a specific identified entity in the statute that has its own specific responsibilities. So it is a lot different. I note early parts of the discussion when I was listening people were talking about, you know, a vendor of the Department. It's -- lots of times Agencies will have a function and to perform that function they will -- they will do an RFP and they will get an outside entity.

In this instance it was mandated that they do it that way, and the statute has specific functions for that specific vendor. I mean, they did do an RFP process and

pick the vendor and that met with that mechanism; but that is a statutorily defined entity that has statutory duties in and of itself separate from the Department. But the -- the -- the session law that created this audit is specifically auditing the Department. So I think that is what's causing a lot of the -- the angst. The Department's role in the administering of this program is actually quite limited and more limited than you might imagine. So I know you've got a copy of 194-F, and I'd encourage you to take a look at it, and I think that might be creating some of the friction here.

But in terms of this -- this -- this contractual issue, I think leaving aside for the moment the merits of whether or not the data we're talking about falls under 10.2 or not, I think the issue that we identify at the AG's Office is the -- the scholarship organization has contractual privity with the Agency, not with the LBA. So if the LBA auditors have a different interpretation of the statute than the Department, and they think the Department's wrong, that's a -- certainly a valid audit finding to do. But the -- the -- the thing that we find potentially problematic is for the auditors to sort of stand in the shoes of the Department and exercise rights the Department has under their contract with a third party.

So that -- and that's sort of where -- um -- when the Department reached out to us early on and said they're, you know, they're asking us to collect -- to get data that we don't have that we don't think we have access to, you know, we -- we responded that, yeah, it would not be appropriate for you to -- it's not appropriate for the auditors to be exercising authority that the Agency has. But -- but it's certainly appropriate for the auditors to identify that the Agency is not exercising authority that they think they have contractually, if that was part of their oversight obligation.

So I don't know if I'm being clear, but I -- I my -- my point is just that it's -- this dispute about what the contract allows access to is certainly an auditable thing, and the auditors and the Department may end up disagreeing and that may well end up being what the audit ends up being fundamentally about. But where the LBA doesn't agree with the Agency, they don't have the ability to stand in the shoes of the Agency and gain contractual privity with the third party, in this case the scholarship organization.

CHAIRWOMAN ROSENWALD: So the more I look at 10.2, the more ungrammatical it is and there's a missing comma.

ATTORNEY BOND: There is a missing comma, yeah.

CHAIRWOMAN ROSENWALD: After property.

ATTORNEY BOND: Yep.

CHAIRWOMAN ROSENWALD: Right?

ATTORNEY BOND: And I -- and I feel compelled to point out that this language is from the State's P-37. So this is essentially in every single contract that we have with every vendor.

CHAIRWOMAN ROSENWALD: So it's ungrammatical; but if you imagine that comma placed where it should be, the all data is the property of the State because it's been bought with State funds. Whether the Department exercises its authority to get that information I think is --

ATTORNEY BOND: Yeah. I mean, I think --

CHAIRWOMAN ROSENWALD: -- what's discussable.

ATTORNEY BOND: Yeah. The difficulty for me is I don't know exactly what information has been requested; but,

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certainly, I think I heard the Commissioner say in response to Senator Lang's question that there is some data the scholarship organization has that the Commissioner understands does fall under this because any information -- any data that the Department gave it, so any information that the scholarship organization received from the State, that would be information that they could get back.

I think the push back is on certain data that's collected directly from recipients that is neither provided by the State nor purchased with funds provided under this agreement. So I -- I think that's where the friction is; but I'm not exactly familiar with the scope of the data that the LBA is looking for. But I'm just thinking more fundamentally going back to sort of process, if the LBA and the Agency don't agree on what that contractual provision says, and -- and maybe the LBA thinks it's perfectly clear it means this other thing, that's a valid audit finding, but it's not -- it's not a mechanism to compel the Agency to take any specific action. Even if it's action that theoretically the Agency should be taking, it's not the LBA's purview to compel that action.

CHAIRWOMAN ROSENWALD: Got it. Rep. Weber.

REP. WEBER: So that's a perfect lead into my question which is if the LBA cannot compel that -- um -- I'm assuming, without knowing, it is our duty to figure out how to compel that. And my question to you is as an Assistant Attorney General is how if this Committee desires that information and believes that -- and this is all hypothetical -- if this Committee believed that the Department of Education was incorrect in their interpretation, what would the remedy be? How would we fix that problem?

ATTORNEY BOND: Well, that's a great question, and I certainly understand why you want to know that. I'm not

prepared to answer that today. I haven't looked into your authorities to compel that kind of information.

I do think if there were a legitimate dispute, contractual dispute -- was it you who mentioned a third party, the third branch of government needing to step in at some point? I mean, hopefully, we don't get to that point; but, I mean, that's a possibility. I mean, generally that's -- courts are there to resolve contract disputes. But it would be an interesting frame here, especially if the scholarship organization and the Agency had the same interpretation, and it was essentially a third party with a different understanding.

Um -- but -- uh -- and, also, because this is part of our standard language that is in basically all State contracts, unless modified, there may be some case law in this, too. There may be; but, again, it would depend on the specific data which I'm not -- I have not looked at what -- what the specific requests are for information to know. But I do know that we have in the past interpreted this as being limited to data provided by the Agency or purchased with funds. And -- and vendors push back on that a lot and ask for clarification a lot because they're very concerned. They often bring expertise and knowledge and intellectual property to the table, and they want to make sure that this isn't read so broadly that it scoops all that stuff up, so.

CHAIRWOMAN ROSENWALD: Thank you. Yes, Senator Lang.

SEN. LANG: So, again, the way I read is if the State -- if -- if they use State funds to buy a study, the study trending in, you know, early childhood education.

ATTORNEY BOND: I'm sorry, I missed the first part of that.

SEN. LANG: So if -- if -- if the scholarship association --

ATTORNEY BOND: Oh, yeah.

SEN. LANG: -- had used State funds to buy a study about education in some form that would be discoverable and available for this purpose; right?

ATTORNEY BOND: Yes.

SEN. LANG: Because that's direct. But a child applying for the program wouldn't be funds -- wouldn't be funded -- wouldn't be something that was bought by State dollars.

ATTORNEY BOND: Right. And it wouldn't be data or property received from the State.

SEN. LANG: Correct. So that would be outside of the scope of the contract.

ATTORNEY BOND: Yeah, yeah. But -- - but again, even if -- even if it were, say there was this study, this hypothetical study that the scholarship organization paid for, I agree in that scenario the Department would be able to get that information from the scholarship organization. But if the Department told the LBA auditors we can't get that information, I still don't think it would be correct for the auditors to reach out to the scholarship organization to get it. I think that would be the basis of an audit finding saying the Department is not doing their job here. They have this clear contractual right to get this information that they should be getting to oversee the program and they're not doing it. That's the way I envision that playing out.

SEN. LANG: Right. But the demographic data that we talked about, right, a child applying for is not purchased data.

ATTORNEY BOND: Right, right.

SEN. LANG: It's not -- so, therefore, it's outside the scope of the definition of data and from the State.

ATTORNEY BOND: Yes.

SEN. LANG: Thank you.

CHAIRWOMAN ROSENWALD: Representative Weber. Oh, sorry. It's {Inaudible}.

REP. WEBER: I'm just, again, bewildered by the assertion that the State has not purchased this property, because the State's funding the entire program. So all funding for everything is coming from the State. Um -- but, again, that is something that I assume that the LBA is going to discuss in their findings and -- and can go on from there. I just want to make -- make it known that, you know, it's not like this is an organization of the kind you were discussing where they bring intellectual property or a specific type of -- of data management or anything else to the table. This is all data that is purchased with State funds, because it's the State that's funding the entire program.

CHAIRWOMAN ROSENWALD: So we're going to go to Senator Lang. Then we're going to go to Representative Erf, and then we're going to go Pearl and Whitley.

SEN. LANG: Again, I -- I have the same interpretation as the Attorney General, I believe.

CHAIRWOMAN ROSENWALD: Representative Erf.

REP. ERF: Hope we -- {Inaudible}. Might I make my motion now?

CHAIRWOMAN ROSENWALD: No, 'cause there's more hands up. Senator Pearl.

HOWARD PEARL, State Senator, Senate District #17: Thank you. So I guess my question is, and I'm trying to understand the State money portion. Is the fulfilling a or awarding a grant considered purchasing information with State money or purchasing something with State money?

ATTORNEY BOND: I mean that -- that wouldn't be my understanding. I mean, if -- if we took that interpretation that any time there was a grant anything an Agency -- an entity did would -- would -- it would pull a lot of things in that I don't think the word purchase implies if we were to do it that broadly.

SEN. PEARL: If I may follow-up.

CHAIRWOMAN ROSENWALD: Follow-up.

SEN. PEARL: Well, that's -- that's kind of what I'm thinking. So I guess I'm trying to draw the line as to what we're purchasing with State money and where we're awarding a grant. I guess that's kind of where I'm trying to because the -- the Education Freedom Accounts are a grant that we provide these students. So what -- what does the State entitled to own of that information for that student?

ATTORNEY BOND: Under -- under this contract or under the program?

SEN. PEARL: I guess either or. I'm trying to get a handle on exactly where we're going.

ATTORNEY BOND: So I do think -- I mean, I do think there's a distinction here. I mean, we're focused here on a

particular section of the P-37 and what it means. So we're talking about the rights, contractual rights between an agency and a third party that they've contracted with here. But then there's also the program.

So, as I said, the RSA 194-F describes specific statutory functions to the scholarship organization. So there certainly may be a vehicle there for this body to get at that information, but not through a Chapter Law that's advising or that -- that is asking for an audit of the Department of Education where the only mechanism is this -- is this contractual provision.

So I -- I -- it's not -- it's not as if 10.2 means the State could never look at this. There may be a way and I agnostic on that because I haven't looked into it, but looking at the structure of 194 there may be other avenues here, including a direct audit of the scholarship organization potentially; but this isn't that. And so but I think with here, you know, the fact that they're administering the program, I mean, the information that I understand to be at issue, but I'm not a hundred percent sure because I haven't seen the actual data requests or infor -- or document requests. But the information that is subject would be information that is provided by individuals to the scholarship organization, not -- not paid for by the scholarship organization which is what a purchase would imply.

SEN. PEARL: So if I may just kind of finish the train of thought here. So, essentially, if I'm understanding you then that the information that the scholarship foundation or Children's Scholarship Fund has on individual applicants because they're receiving a grant would not necessarily be subject and considered property of the State.

ATTORNEY BOND: Not -- not under 10.2 purchase language, but possibly statutorily in a different mechanism possibly. Yeah.

SEN. PEARL: Thank you. Just want to make sure I got my head around --

CHAIRWOMAN ROSENWALD: Senator Whitley.

SEN. WHITLEY: Thank you, Madam Chair. I -- I just want to reorient to the Committee and also, you know, to you that we're talking about \$24 million of taxpayers' dollars. That's potentially going to be even more if the Governor signs a bill increasing the income eligibility. That is a lot of money in a very resource scarce state. And so this interpretation is troubling, as you can understand, because we do have an obligation to make sure that taxpayer dollars are being spent appropriately. And so what I'm hearing from the LBA, and also from your interpretation, is that we're not able to determine whether these dollars are being spent appropriately, whether \$24 million of taxpayer dollars is being spent appropriately. We're not able to do that. That's what I'm hearing.

ATTORNEY BOND: Not through the mechanism of a performance audit of the Department of Education's administering of the program but possibly through another mechanism.

CHAIRWOMAN ROSENWALD: Thank you. I just would point out --

SEN. LANG: So to be clear, the answer's yes we can but this is wrong. The way we're going about it, it's not proper.

ATTORNEY BOND: I -- yes, maybe. I haven't looked into it; but I expect --

SEN. LANG: Yes, maybe. Thank you.

ATTORNEY BOND: The answer is always it depends, but yes, my -- not -- not through this mechanism.

SEN. LANG: Right.

CHAIRWOMAN ROSENWALD: So the \$24 million is this year?

ATTORNEY BOND: Yep.

CHAIRWOMAN ROSENWALD: Last year was 18, and the first year was, I don't know, eight or nine.

ATTORNEY BOND: Again, my point to maybe this answer to Senator Lang is not --

CHAIRWOMAN ROSENWALD: The DOJ is saying we can't figure out if these funds are being spent as the Legislature intended them.

ATTORNEY BOND: I don't think the program is unauditible, but we don't think this Chapter Law gets to the scholarship organization through the vehicle of this vendor contract.

SEN. LANG: Thank you.

CHAIRWOMAN ROSENWALD: Thank you.

ATTORNEY BOND: All right. Thanks.

CHAIRWOMAN ROSENWALD: Okay. I don't think we need a motion though, because it's a statutory audited and statutorily required.

REP. ERF: So is it clear at this point that -- clear to you at this point that the Ed -- Department of Education's perspective is the one that will be followed and that there'll be no need to press out to the Children Scholarship Fund?

CHAIRWOMAN ROSENWALD: I think it's clear that the legislation requires an audit of the Department, not of the contractor. That part's clear to me.

REP. ERF: Okay. I mean, I agree with that if that's where we are.

CHAIRWOMAN ROSENWALD: Yep. I -- I just --

REP. WEBER: I don't think there's any --

CHAIRWOMAN ROSENWALD: Follow-up.

SEN. LANG: So, again, I think and -- and to Mike's point I was going to speak to next is that at this point we're still developing a Scope that has to come back to us by the number two understanding what that scope is now with the understanding of all the conversation we just had with the AG and everything else. So we're still going to hear about this again when they bring it forward for a vote. So we still got to get a scope of work within the confines that we just discussed.

MR. KANE: Absolutely. And I just want to thank Chris Bond for that clarification.

CHAIRWOMAN ROSENWALD: Mr. Bond.

MR. KANE: Mr. Bond. Chris Bond. So it's very early on. If there's a disagreement, this is not an audit finding by any means. We're not even in there with the Scope or anything. We have conversations with agencies that we may disagree at first. But then hearing from an attorney, we -- we may change our mind, and it's very clear we like to get that. So it's very, very early. We're not -- I just wanted to clarify we're not putting an observation out today. We're not even in there. We're just gathering information. We're learning ourselves. And so I just -- I

appreciate this conversation for my behalf and our auditors behalf to just understanding everything that goes into this. So thank you.

CHAIRWOMAN ROSENWALD: But we have just discussed it for an hour and a half.

SEN. LANG: Next step is that they'll bring it on some -- they'll bring it sometime forward and we'll be talking about it again.

SEN. WHITLEY: Looking forward to it.

CHAIRWOMAN ROSENWALD: Okay. But we're not done. So wait, there's more. Suspended, Tabled, and Potential Audit Topics. And I'd note that I think you all got an e-mail from Representative Lynn suggesting an audit topic. Oh, well, Jay, did you bring copies of Bob Lynn's letter?

MR. HENRY: {Inaudible}.

CHAIRWOMAN ROSENWALD: I have it.

SEN. LANG: It's in the book. {Inaudible}.

CHAIRWOMAN ROSENWALD: Yeah, I have it because --

SEN. WHITLEY: {Inaudible}.

CHAIRWOMAN ROSENWALD: Okay. Okay.

MR. HENRY: Do you want Representative Smith to address the letter?

CHAIRWOMAN ROSENWALD: Well, yes. If everyone has seen it. Okay. Yes. Marjorie, come on up. No, same subject, Environmental Services Dispute Resolution. Aren't you glad you're not on this Committee?

MARJORIE SMITH, State Representative, Strafford County, District #06: Actually, I'm sad that I'm not on this Committee. Um -- Madam Chair, you can take the girl out of finance, but you can't take finance out of the girl, and I love this Committee. And it is, I believe, one of the most important committees that we have in the Legislature, although it is unknown to many people.

Several -- almost two years ago now the Judiciary Committee asked you to consider a performance audit for the Human Relations Commission and we're waiting patiently for the results. Um -- this time we came -- we're coming to you because we had a bill that came to us and the prime sponsor of the bill had to leave, understandably, not expecting to take the whole day here. It concerns the Department of Environmental Services. Each of the departments we know as the way we have the government structured are large, they're very complex. They have lots of subdivisions, lots of barriers of responsibility and -- um -- it makes it very complicated to run those departments.

The Department of Environmental Services has four different units that handle hearings and appeals, and the rules of each one of those units differs one from the other -- um -- and which makes it a very, very complex problem to be able to administer. Um -- Representative McWilliams came to us because of a concern about what was happening with situations relating to housing. We know how important housing is. We don't have enough housing -- um -- and she had a number of concerns. One of them was that in at least one of those four separate lines there could be a complaint filed, a decision reached and then, if you want to appeal the decision, you have to go to the very same people who made the decision, and that seemed to be a little strange. It didn't make sense. And as we've looked further into the legislation, we realized that how the Department was trying to coordinate each of these disparate -- oh, dear, did I offend the Chair? Oh.

REP. ERF: {Inaudible}.

REP. SMITH: Oh, okay. Sorry. Was -- was -- made no sense. If it's okay with you, Madam Chair, I would like to ask one of my colleagues, Representative Manos, who worked very closely on the underlying bill to come and join me and talk about why we think the existing procedure doesn't make any sense.

The bill would have put in place yet an entirely different level that would have created the opportunity for a de novo hearing, you know, beginning at the beginning again. None of that made sense, and we concluded that the Department might benefit from some help that would come from a performance audit so that they could better do what we asked them to do.

CHAIRWOMAN ROSENWALD: And is Representative McWilliams --

REP. SMITH: Representative Manos is right here.

CHAIRWOMAN ROSENWALD: And so is Representative McWilliams.

REP. SMITH: Oh, I'm sorry. I saw you leave, but I didn't see you come back. Yes, so if I could ask the two of them to come up, would that be acceptable?

CHAIRWOMAN ROSENWALD: It would be if the Committee is willing to stay.

REP. SMITH: Thank you very much, Madam Chair.

CHAIRWOMAN ROSENWALD: It seems like the House you're supposed to have left apparently.

REP. GRIFFIN: They had another -- {Inaudible} Finance. Finance met at 12.

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REBECCA MCWILLIAMS, State Representative, Merrimack County, District #27: Just our turn. You know how it is. We waited our turn.

CHAIRWOMAN ROSENWALD: Thank you. Welcome.

ZOE MANOS, State Representative, Rockingham County, District #12: Thank you. I'm Representative Manos from Stratham. Um -- Representative McWilliams did draft this bill and sponsored it. It was heard by the Judiciary Committee. I think one of the major points is that there are four separate Councils to which you can appeal a DES decision. They're the Air Resources Council, the Wetlands Council, the Water Council, and the Waste Management Council. And they hear appeals and they review administrative rules.

During the testimony on the bill we heard from the supervisor I believe it was of one of the Councils.

REP. MCWILLIAMS: I believe it was Wetlands.

REP. MANOS: Wetlands Council. And we learned during the course of the hearing that each of these Councils has different standards for their appeals, they have different rules, and so you can get an inconsistent outcome on an issue depending on which Council you're in front of.

In addition to that, once there's hearing, your appeal right is to the Supreme Court, and there's no process. Part of the problem is introducing new scientific evidence. And so there's no opportunity for that to occur. But I think the main point here is that you can have different outcomes depending on the topic and the subject matter. And so we're seeking the performance audit to look at those systemic issues, and how this can be better handled.

The outcome on the Committee was a recommendation for interim study. And so we -- the Committee as a whole will -- it hasn't gone to the floor yet, but that may be the potential outcome on the floor; but we're interested in getting the review of the broader issues.

CHAIRWOMAN ROSENWALD: So I guess I have a question for Representative Smith. Bob Lynn's letter says all the Divisions of DES, but the discussion has been about the four hearings and appeals council. So are you looking for a performance audit on these four different Councils or on all of the Divisions with DES, which I'm guessing are more than four?

REP. SMITH: If I could, Madam Chair. The problem that came to us seemed to indicate that each -- what we thought at first was one area was quickly multiplied really by Department itself saying bringing to our attention that it wasn't just one, it was all of that. I know because of my -- the high regard which I hold LBA that if you were to agree to let them, you know, begin to look at this they would -- and I know from past experience and, you know, that they would say the best way to do this would be to look at one or look at across the board or however. And what our concern was to help the Department do the best possible job in their hearing and appeal process, and I would leave it, although I noticed the head of LBA isn't looking at me. He's groaning at the thought that I {Inaudible}, but we were hoping that, you know, from their perspective they could say this is how to narrow this looks so that it makes the most sense. And I don't know if Representative McWilliams has something to add to that?

REP. MCWILLIAMS: Thank you for the question and thank you for the commentary. I think that we want to keep it broad for now and possibly narrow during the investigation. I think that there's a lot that could come out just from the initial conversation with the inner workings of how this is managed across the four different departments and

certainly inconsistency is not the goal. I think fairness is the goal and, of course, justice having brought this to Judiciary is also the goal.

CHAIRWOMAN ROSENWALD: Thank you. Representative Weber.

REP. WEBER: Could you just give me the name of the four councils again, please?

REP. MCWILLIAMS: Oh, sure. Air Resources, Wetlands, Water, and Waste Management.

REP. WEBER: Very, very slowly because I am old and have arthritic fingers.

REP. MCWILLIAMS: My apologies, Representative Weber.

REP. WEBER: I've gotten Air.

REP. MCWILLIAMS: Air.

REP. WEBER: The whole name.

REP. MCWILLIAMS: Air Resources Council.

REP. WEBER: Yep.

REP. MCWILLIAMS: Water Council.

REP. WEBER: Yep.

REP. MCWILLIAMS: Wetlands Council.

REP. WEBER: Yep.

REP. MCWILLIAMS: Waste Management Council.

CHAIRWOMAN ROSENWALD: At least they're all councils.

REP. WEBER: Thank you very much.

CHAIRWOMAN ROSENWALD: Okay. Thank you.

REP. MCWILLIAMS: Sure.

CHAIRWOMAN ROSENWALD: What does the Committee want to do? Senator Pearl.

SEN. PEARL: I think it might be best to take this up at our next meeting when we have our full complement again so that we can have all of the members be able to weigh in.

CHAIRWOMAN ROSENWALD: Okay.

REP. WEBER: I was going to ask following up on that that I understand the initial desire for a broad look, but -- um -- broad looks take many times many auditors and are very expensive. So anything that Members of the Judiciary Committee could do between now and our next meeting to help us really closely articulate what it is we're looking at, because -- um -- I understand that the overall drive is fundamental fairness and the conflicts between the four Councils. But not knowing how they're interworked myself very well, it would be really helpful if you can do anything to pinpoint more clearly the areas that we need to look at so that we can start with -- um -- a beginning directive that will then evolve into a Scope Statement going forward. So -- uh -- thank you.

REP. SMITH: If I could add just one thing. The initial concern was -- that's okay. The initial concern had to do with housing. And it was from that area that we then realized the problem was much greater. So the question is do you look at the greater issue or do you look at, you know, do you look at the whole body or do you look at the toe? And -- and that -- that's the concern and that's why the letter was worded the way it was, Madam Chair. But -- and I also want to make clear that Representative

McWilliams is not on Judiciary. She brought the bill to us. And it was -- uh -- you know, Judiciary Committee that -- that then went on from -- from there.

CHAIRWOMAN ROSENWALD: Senator Lang.

REP. SMITH: But so that's -- that's my concern.

CHAIRWOMAN ROSENWALD: Thank you. Senator Lang.

SEN. LANG: So my topic's to Mike. So we -- we just closed out at least two audits with the third one be done in the next three to four weeks. And my question is do we need to add anything to your list so your people can continue to work?

MR. KANE: Thank you for the question. Christine and Jay will be able to provide that to you, because they have some ideas. I think they are looking for topics because we do not have the Secretary of State audit anymore. I think the EFA is going to move. You know, we have a lot of work to do before we start. So if Jay Henry could come up and just talk to you about that.

CHAIRWOMAN ROSENWALD: Senator Pearl.

SEN. PEARL: Thank you. One of the thing is I realize the four Councils have different appeals processes, but there may be a reason for that. Perhaps it would be good to hear either from the Commissioner of DES or perhaps Director Wimsatt. They could speak to maybe why there's four different appeals processes. That might clear some of the concern.

CHAIRWOMAN ROSENWALD: Yeah, that would be a good idea. Jay.

SEN. PEARL: Prior to -- prior to putting together a --

MR. HENRY: Well, I just talked to Steve Grady, our in-charge who did the Wetlands Audit back a few years ago, and part of that was the Wetlands Council. And so there was -- I think there was about a chapter that talked about the Wetlands Council. But he told me they didn't really get involved in the hearings process. However, he did mention that the reason why there's each Council has like different rules or procedures they were separated. They were glued together at one point to become the Department of Environmental Services. So that's probably the reason why each Council does it their own way.

SEN. PEARL: Sure. I just thought that might be a valuable piece of information if we're going to put a Scope together to perhaps understand.

CHAIRWOMAN ROSENWALD: Let's invite Commissioner Scott to the next meeting.

MR. HENRY: The only other thing when I was listening, you know, we're auditors. We're doing how well did the program run, efficiency, effectiveness. Policy, meaning changing how you're going to organize all these -- these Councils, that may -- may be beyond what our traditional Scope is. So what, you know, deciding what we should look at, which may help you with policy, but I don't know if it's our duty to say here's the best way for these Councils to operate. I mean, we may be able to look at other states and, you know, give you some information; but, you know, we try not to go over that line of suggesting policy to the Legislature.

CHAIRWOMAN ROSENWALD: I'm still interested in a Performance Audit of the Doorway Program. Because it's -- we keep hearing that overdoses are going up. I think they're -- and deaths. In most places deaths are going down, not necessarily in Manchester and Nashua. But would be good to, I think, know how quickly and efficiently

people are hooked up with treatment services. Because the purpose of this statewide program is to get people quickly connected with treatment services. Can people afford it? How long is the wait? How many calls go to the nighttime and weekend Call Center rather than the Monday through Friday daytime operation? So I think that's still worth looking at as well. And that program has been operating for at least for five years. We haven't looked at it.

SEN. LANG: Again, I want -- first, we got to find out how much work they need so we have an idea of what we're going to vote on and what might be because, for me, I have a different priority and that's the DHHS and Children's Behavioral Health, right? So but first let's find out what they have room for.

3. Suspended, tabled, and potential audit topics:

MS. YOUNG: Okay. Thank you. So there's a long list of audit topics here that are suspended, and we're hoping to tidy up this list a little bit and sort of prioritize. So we'd like to hear from the Committee on each one of these, if possible.

The first one was Bureau of Elderly and Adult Services. This topic was suspended more than two years ago in November of 2021 due to a legal proceeding. We haven't received an update on this. So just wondering if there's further discussion on this. Do we want to keep this topic on the list or remove it?

CHAIRWOMAN ROSENWALD: Has that litigation resolved? No. I don't think so.

REP. WEBER: I'd like to keep it.

MS. YOUNG: Okay.

REP. WEBER: Understanding it's not going forward at the moment.

MS. YOUNG: Okay. Next is the public access to bodies of water. That was tabled as it was noted there might be another Committee responsible for this topic. Do we have any further discussion? Do we want to keep it on the list or remove it?

SEN. LANG: My guess is we should probably -- we should probably, knowing that we want to either remove things or not, we probably got to do a little research. So I'm not sure you're going to get any votes to remove anything from the list today.

MS. YOUNG: Okay.

SEN. LANG: But knowing that you do want to remove things, we can start looking at them and see which items and where they stand and look to the next meeting as to making a recommendation for what items we want to ultimately remove off the list totally. At least that be my recommendation to the Chair.

SEN. PEARL: May I comment?

CHAIRWOMAN ROSENWALD: Yes, Senator Pearl.

SEN. PEARL: Well, some of us are somewhat new to this Committee having only been on a little over a year. I really don't know the history on many of these things and it's difficult for me to say, yeah, remove it or, yes, keep it on. Is there a possibility that you can at least give us some type of a briefing as to what each one, you know, like a simple paragraph that would say like the Office of the OPLC one, it was tabled but what -- what, in general, was it trying to look at. Because it's real hard to know whether I want to remove it or not.

MS. YOUNG: Sure. I'm also new to the Committee; but, yes, we can certainly provide a little update on that and give you a summary of what the topics were.

SEN. PEARL: I think that be very beneficial to many of us trying to decide whether we want to keep these or remove.

MS. YOUNG: Okay, absolutely.

CHAIRWOMAN ROSENWALD: I don't expect we're going to make any decisions.

MS. YOUNG: Okay.

SEN. LANG: But if you could tell us how much space you have so next meeting if you want to move something forward we have an idea of how much work you want.

MS. YOUNG: Sure. So we have one performance audit manager that will be freeing up probably in April. So we are looking for one topic now that the Archives Audit is off the list. We will definitely need at least one topic very soon.

SEN. LANG: Madam Chair, for my purposes, again, having that recent case with the child with having being stuck in the ED room for ages -- whoops -- he's all set now but --

CHAIRWOMAN ROSENWALD: When the wind stop.

SEN. LANG: Yeah. So my -- my -- my -- and thank you for your help on that case to get that child taken care of. But I'm interested in interplay between DHHS and the Behavioral Health, Mental Health Services component. Moving that forward is a big topic for me. It's not an area I've usually focused on; but now that I've had my eyes opened to it, I'm -- I'm really interested in how the State's managing this process and how we're getting our children,

especially the mental health services children, the services they need as fast as possible. And so, for me, that would be a topic that I'd be really interested in moving forward. Thanks. Next meeting if -- if everybody agrees.

CHAIRWOMAN ROSENWALD: But this is about the interplay between --

SEN. LANG: Right. I think that's part of the problem we had a little bit, yeah, so.

CHAIRWOMAN ROSENWALD: We may want to want to revise that topic.

SEN. PEARL: Well, again, that's where I think having a little one paragraph.

CHAIRWOMAN ROSENWALD: Right, because that was not {Inaudible}.

SEN. LANG: Right. So anyway, yeah.

CHAIRWOMAN ROSENWALD: Great. Okay. So --

REP. WEBER: Sounds like we need another meeting quite quickly.

CHAIRWOMAN ROSENWALD: We need a meeting certainly by early April.

SEN. PEARL: How about April Fool's Day? Wouldn't that be fun?

CHAIRWOMAN ROSENWALD: So I -- let's see.

REP. WEBER: I could do that.

CHAIRWOMAN ROSENWALD: I'm available. The 15th is going to be tougher for me. I'm available on the 1st.

REP. WEBER: 15th is Commission on Aging. I -- I made an exception for today, but I'd like not to miss it twice.

CHAIRWOMAN ROSENWALD: When is that?

REP. WEBER: That's the 15th.

CHAIRWOMAN ROSENWALD: Okay.

REP. WEBER: I could do -- I could do the 8th. The 8th is the eclipse, folks. I don't want to mess up that for anybody.

CHAIRWOMAN ROSENWALD: The morning of the 8th but not the afternoon.

REP. WEBER: Anybody needing to get up to the North Country may be upset about that. What was the problem with the 1st?

CHAIRWOMAN ROSENWALD: Ninety-six percent coverage right here in Concord. Does the 8th work in the morning?

SEN. WHITLEY: You talking about April 8th?

REP. WEBER: It certainly works for me.

SEN. WHITLEY: You're talking about April 8th?

CHAIRWOMAN ROSENWALD: Yeah. Morning.

SEN. WHITLEY: Yeah, before ten. Well --

CHAIRWOMAN ROSENWALD: I know. We have meetings but -- Howard.

SEN. PEARL: I'm fine with it, but I think Representative Weber may be making a point that maybe some folks that take the day off to go see the eclipse. And I don't know if that affects who we have available.

CHAIRWOMAN ROSENWALD: Okay.

SEN. LANG: Give me a second.

SEN. PEARL: That was all I was thinking. I'm personally not going anywhere.

SEN. WHITLEY: Could we do the 9th before one?

CHAIRWOMAN ROSENWALD: I could do --

SEN. LANG: We have Education.

CHAIRWOMAN ROSENWALD: Yeah.

SEN. PEARL: Yeah, I can't -- I can't do any Tuesday or Wednesdays.

REP. GRIFFIN: Monday's the best day.

REP. WEBER: Monday's the best. What was wrong with April 1st?

CHAIRWOMAN ROSENWALD: You're fooling, right?

REP. WEBER: No. Why don't we just do it April 1st and get it over with.

SEN. WHITLEY: I'm not available, but please don't work around me if everyone else is available.

REP. GRIFFIN: The 1st is good for me.

CHAIRWOMAN ROSENWALD: I mean, the 1st is good for me.

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SEN. LANG: Same.

REP. WEBER: I'm really sorry; but I think, you know, we have a birthday and an unavailability so maybe that's not the best.

SEN. PEARL: We can always sing "Happy Birthday" to Senator Gendreau on the 1st.

REP. WEBER: What was the problem with the 22nd?

CHAIRWOMAN ROSENWALD: Of {Inaudible} next week?

REP. WEBER: No, the 22nd of April.

SEN. LANG: Looking for early April so we can get them because we took --

CHAIRWOMAN ROSENWALD: Right.

SEN. LANG: We need to give them the work.

MS. YOUNG: Madam Chair.

CHAIRWOMAN ROSENWALD: Yes.

MS. YOUNG: I just wanted to let you know that we could possibly put off receiving a topic for like a -- for a month, 30 days. So it's not -- we don't need it in two weeks. So I just want to let you know that in case you --

REP. WEBER: So if we met on the 22nd would that be okay of April?

SEN. WHITLEY: Or the 15th.

REP. WEBER: The 15th was Commission on Aging for me and somebody else had a problem with it, too.

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CHAIRWOMAN ROSENWALD: I can only meet in the afternoon on the 22nd, if that works. All right. We're back to April 1st. Let's look at that.

SEN. PEARL: April 1st is fine with me.

REP. WEBER: And with me.

CHAIRWOMAN ROSENWALD: April 1st is fine with me, although I have to be in Derry at three.

MS. YOUNG: The other --

REP. WEBER: Please let's not go till three.

CHAIRWOMAN ROSENWALD: No.

MS. YOUNG: If I could also mention the other consideration is we were thinking at the next meeting we could possibly have the Scope Statement for the Education Freedom Account Program now that we've received clarification today about -- about the Scope of the audit. But if we do schedule the meeting for April 1st, we might be a little short on time for having the Scope Statement at that meeting. So I'll just give you that information and let you decide.

SEN. WHITLEY: How about the 29th? What about April 29th?

REP. WEBER: I'm good for the 29th.

SEN. WHITLEY: 29th's good for me.

CHAIRWOMAN ROSENWALD: The 29th works.

REP. WEBER: Okay. We have a plan. What time?

CHAIRWOMAN ROSENWALD: In the morning. Ten.

SEN. PEARL: Nine?

CHAIRWOMAN ROSENWALD: Nine.

REP. WEBER: Be here at nine.

SEN. GENDREAU: You guys don't have to travel as far.

CHAIRWOMAN ROSENWALD: We're not going to meet at nine because poor Senator Gendreau. We could meet at 9:30.

SEN. GENDREAU: Nine -- nine is fine.

CHAIRWOMAN ROSENWALD: Really?

SEN. GENDREAU: Seriously. Yeah, nine is fine.

CHAIRWOMAN ROSENWALD: Okay. Is 9 o'clock --

REP. WEBER: Nine's fine for me. I've been doing it for a long time.

CHAIRWOMAN ROSENWALD: The 29th. The 29th at 9:00 a.m. Mike Kane's going to have to get up early. With that, I think we can adjourn. Thank you all very much.

MS. YOUNG: Thank you, Madam Chair.

REP. WEBER: Thank you, Madam Chair. Thank you all.

(The meeting adjourned.)

C E R T I F I C A T E

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

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NH LCR #00047