



Committee Report, Vol. 14, No. 1

**The State Department of Education's
School-based Teacher-led Assessment
and Reporting System (STARS)**

Performance Audit Section

Legislative Audit and Research Office

February 2007

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I. Key Findings

Key Findings & Recommendations

Legislative Performance Audit Committee Report

The State Department of Education's School-based Teacher-led Assessment and Reporting System (STARS)

The State Department of Education's (Department's) School-Based Teacher-Led Assessment and Reporting System (STARS) provides academic standards, student assessments, and accountability reporting for Nebraska's public school districts. The Department also uses STARS to meet the requirements of the federal No Child Left Behind Act (NCLB) of 2002. In 2006, concerns arose regarding Nebraska's compliance with the requirements of NCLB, and, by association, STARS. As a result, the Legislative Performance Audit Committee directed the Legislative Performance Audit Section to audit STARS. The Committee directed the Section to assess compliance with state statutes and describe the current status of Nebraska's federal approval for NCLB. The Section's findings and the Committee's recommendations based on those findings follow.

COMPLIANCE WITH THE QUALITY EDUCATION ACCOUNTABILITY ACT

The Quality Education Accountability Act (Act) requires the State Board of Education and the State Department of Education to develop academic standards, assessment, and accountability measures. The Committee found that the Board and the Department have complied with some, but not all, of the Act's requirements. The Committee's main findings center around a provision in the Act that requires the Department to select four "model assessments" in designated subject areas. The Department's interpretation of this section of statute differs significantly from that of the Section and the Committee. Specifically, the Section found that:

- the term "assessment" is not defined in the Act, and the Section and the Department disagree on how the term should be interpreted;
- based on legislative intent, the Section interpreted the term "assessment" to mean "test;"
- based upon the Section's interpretation, the Department did not meet the statutory requirement that the consultant select four model assessments in each subject area;
- the Department's interpretation of the four-model assessment requirement in the Act has reduced the potential comparability of test results among the school districts;
- under the Act, school districts are required to adopt one of the model assessments, not choose between adopting a model assessment or adapting their own

- assessments; it is unclear under what circumstances the Legislature intended for districts to adapt their own assessments; and
- the Attorney General's approval of the regulation allowing school districts to use *either* a model assessment *or* their own assessment appears to conflict with a published opinion from that office, which states that districts are required to use the model assessments.

Recommendations

Based on these findings, the Committee recommends that:

- the Department immediately begin the process of identifying four model assessments as required by law; and
- if the Department believes that developing the model assessments is either impossible or undesirable, it should pursue the introduction of legislation to amend the law accordingly.

Also based on these findings, the Committee:

- has introduced a placeholder bill and is considering supporting other legislation to: 1) define the term "assessment" in the Act; and 2) to clarify whether school districts may be permitted to adapt their own assessments in a specific subject area instead of adopting a model assessment in that area; and
- believes that the apparent conflict between statute and regulation may be eliminated if pending legislation is adopted. If it is not, the Committee will consider using the complaint process allowed by the Administrative Procedure Act.

COMPLIANCE WITH THE FEDERAL NO CHILD LEFT BEHIND ACT (NCLB)

In 2006, the Department received notification from the United States Department of Education (USDE) that it was out of compliance with provisions of NCLB and was given *Non-Approved* status for its standards and assessment system. The Department responded to USDE by providing evidence and scheduled the collection of further information that it believes will prove that the Department is in compliance with NCLB by June 2007.

**Legislative Performance Audit Committee
Legislative Audit and Research Office**

February 2007



II. Performance Audit Section Report

Performance Audit Section Report

**The State Department of Education's School-based
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(STARS)**

February 2007

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INTRODUCTION

The State Department of Education's (Department's) School-Based Teacher-Led Assessment and Reporting System (STARS) provides academic standards, student assessments, and accountability reporting for Nebraska's public school districts. The Department also uses STARS to meet the requirements of the federal No Child Left Behind Act (NCLB) of 2002.

Recently, concerns have arisen regarding Nebraska's compliance with the requirements of NCLB, and, by association, STARS. As a result, on 25 July 2006, the Legislative Performance Audit Committee directed the Legislative Performance Audit Section to audit STARS. In general, the Committee directed the Section to assess compliance with state statutes and describe the current status of Nebraska's federal approval for NCLB.

Section I of this report provides an overview of STARS, its administration, and funding. Section II contains our assessment of the Department's compliance with state statutes, and Section III contains our description of the Department's efforts to comply with NCLB. Section IV contains our findings and proposed recommendations.

This audit was conducted in accordance with generally accepted government auditing standards for performance audits. The methodologies used are described briefly at the beginning of each section with further detail included at the end of the report.

SECTION I: The State Department of Education’s School-Based Teacher-Led Assessment and Reporting System

The School-Based Teacher-Led Assessment and Reporting System (STARS) consists of several components relating to educational standards for public schools, the assessment of students’ progress toward meeting those standards, and reporting the assessment results. STARS is administered by the Department of Education (Department).

The Department, a non-code agency, operates under the direction of the State Board of Education (Board), a constitutional body consisting of eight elected members. The Department is administered by the Commissioner of Education, who is appointed by the Board. Five Department staff members coordinate the statewide administration of STARS; however, much of the responsibility for implementation rests with the state’s 254 public school districts.¹

STARS was developed partly through the Department’s own efforts and partly in response to state legislation. Prior to 1998, the Department began developing an educational-achievement assessment system, the concept that would become STARS. During the 1998 legislative session, the Legislature enacted the Quality Education Accountability Act,² which contained requirements relating to the adoption of curriculum standards and assessment of student performance. Although the law remained on the books, the Governor vetoed its funding, and it was not implemented at that time.

In late 1999, the Department officially created STARS and began to distribute informational materials about it to the public school districts. The following year, the Legislature amended the Quality Education Accountability Act. The amended Act, which was funded, generally requires the Department to adopt academic content standards,³ develop a system for assessing student achievement toward meeting those standards, and report the assessment results.⁴

The Department incorporated the amended Act’s requirements into STARS. It also incorporated the requirements of the 2002 federal No Child Left Behind Act—which contains requirements relating to educational standards and assessments—into STARS.

According to the Department, the program is funded with both state general funds and federal funds. For state FY2005-06, the Department spent about \$1.7 million in state general funds and \$2.7 million in federal funds to administer STARS;⁵ the federal total includes implementation expenses at the district level.

Notes

¹ Total number of districts provided by the State Department of Education, 1 November 2006.

² Neb. Rev. Stat. §§ 79-757 to 79-762.

³ Neb. Rev. Stat. § 79-760.01.

⁴ Neb. Rev. Stat. § 79-760(1).

⁵ Expenditure information provided by the State Department of Education, 7 November 2006.

SECTION II: The Board’s and the Department’s Compliance with the Quality Education Accountability Act

In this section, we report the results of our evaluation of whether the State Board of Education (Board) and the State Department of Education (Department) have complied with the requirements of the Quality Education Accountability Act (Act). In conducting this analysis, we reviewed relevant documents and interviewed personnel in the Department.

The Act requires the Board to adopt academic content standards¹ and develop a system for assessing student achievement toward meeting those standards and reporting the assessment results.² The Act also requires the Department to implement certain elements of the assessment and reporting system,³ and the Department uses the School-based Teacher-led Assessment and Reporting System (STARS) to do so.

We found that the Board and the Department have complied with some, but not all, of the Act’s requirements. Our specific findings follow.

Academic Content Standards

Finding: The Board is in compliance with the statutory requirement to adopt academic content standards.

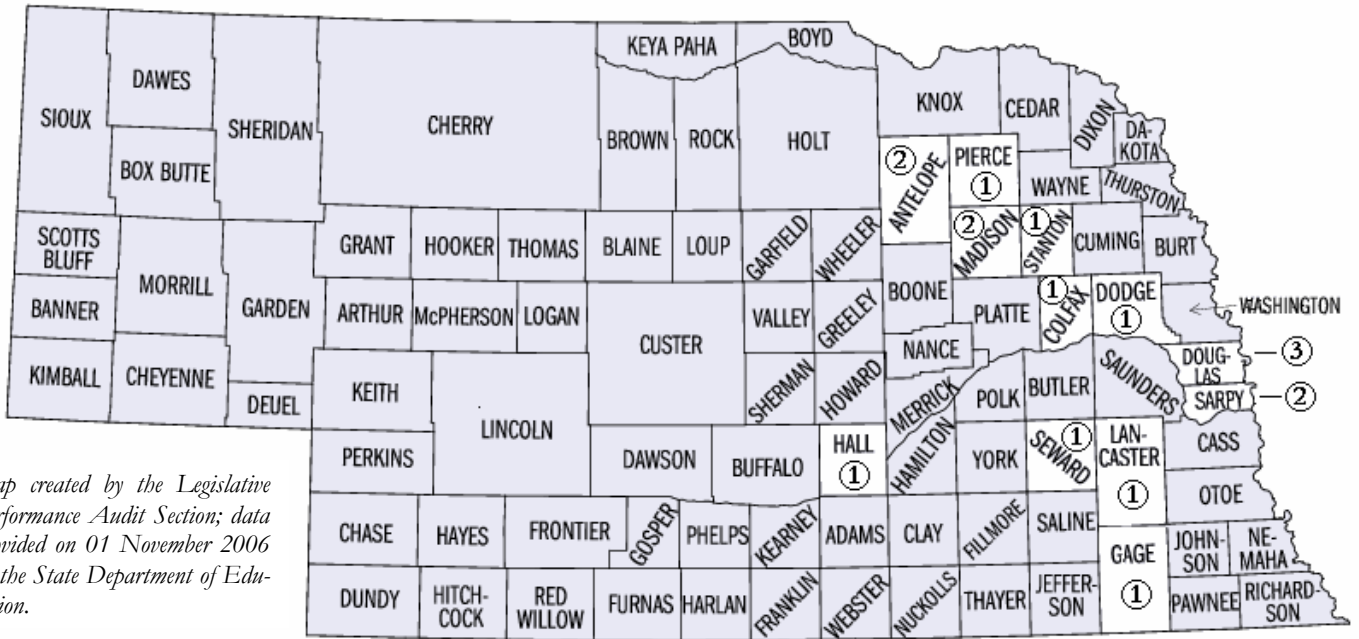
The Act requires the Board to adopt academic content standards for six subject areas: reading, writing, mathematics, science, social studies, and history.⁴ We found that the Board has adopted statewide academic content standards, which are contained in its administrative regulations.⁵ Therefore, the Board is in compliance with this requirement.

Finding: The Board is in compliance with the statutory requirement that academic content standards be clear and measurable.

The Act also requires that the standards adopted “be sufficiently clear and measurable to be used for testing student performance” of content mastery.⁶ We found that the Board has developed academic content standards that comply with this requirement.

The Act also requires each school district to adopt either the state standards or locally developed standards that the Department has determined to be equal to or more rigorous than the state standards.⁷ According to the Department, 237 school districts report assessment results based on state standards, and 17 school districts report assessment results based on local standards that they have adopted.⁸ Map 2.1, on page 4, shows this breakdown.

Map 2.1: State and Local Standards by County in Nebraska



Map created by the Legislative Performance Audit Section; data provided on 01 November 2006 by the State Department of Education.

Counties in WHITE have at least one district reporting results for reading and math based on local academic content standards; the circled number denotes the number of districts doing this as of November 2006.

All school districts in the counties in GRAY report results based on state standards.

School Districts Reporting Results Based on Local Standards	
County	District
Antelope	Elgin Public Schools
	Nebraska Unified District #1 (Clearwater, Orchard, Verdigre)
Colfax	Leigh Community Schools
Dodge	Fremont Public Schools
Douglas	Millard Public Schools
	Omaha Public Schools
	Ralston Public Schools
Gage	Beatrice Public Schools
Hall	Grand Island Public Schools
Lancaster	Lincoln Public Schools
Madison	Madison Public Schools
	Norfolk Public Schools
Pierce	Pierce Public Schools
Sarpy	Bellevue Public Schools
	Papillion/La Vista Public Schools
Seward	Milford Public Schools
Stanton	Stanton Community Schools

Assessment and Reporting System

The Act contains specific assessment and reporting requirements and also sets forth general purposes for the assessment and reporting system.

Assessments

The Act requires the Board to implement an assessment system to measure student performance against the established academic content standards.⁹ The Act requires one statewide assessment for each of three grades relating to writing and multiple assessments relating to reading, mathematics, science, social studies, and history.

Writing Assessments

Finding: The Board is in compliance with the statutory requirement to administer statewide writing assessments.

The Act requires the Board to prescribe a statewide writing assessment and identify three grades to be assessed.¹⁰ The Board selected grades four, eight, and eleven to receive the writing assessments and delegated the authority to develop and administer the assessments to the Department. To implement this requirement, the Department annually administers writing tests, developed by the Department with input from a task force,¹¹ to students in the selected grades. For each grade level, students submit written responses to the Department which are scored at a state scoring center. A random sample of the tests is also scored by an external agency.¹² We found that the Board is in compliance with this portion of the Act.

Assessments for Other Subjects

In addition to the statewide writing assessments, the Act also requires the Board to identify “model” assessments in reading, mathematics, science, social studies, and history, and mandates their use by Nebraska’s public school districts.¹³ The Act requires three steps in the development of model assessments for each subject area. The Act requires:

- 1) School districts to develop their own assessments in each subject area;
- 2) The Department to contract with a consultant to select—from the assessments created by the districts—up to four of the best, or model, assessments in each subject area. The Department must also develop the criteria to be used by the consultant in judging the assessments; and

- 3) Each school district to choose one of the four model assessments per subject to use in its district.¹⁴

The Act does not establish a timeline for the development of these assessments. Because the process for developing the assessments in each subject matter is extensive, the Department has elected to consider one subject area at a time. The Department considered reading in 2000-2001, mathematics in 2001-2002, and revised reading to include speaking and listening in 2002-2003.¹⁵

Development of Four Model Assessments

Finding: The Department did not meet the statutory requirement that the consultant select four model assessments in each subject area.-

For the subject areas considered to date, the Department complied with two out of the three steps required by statute for developing model assessments—it instructed the school districts to develop their own assessments, and it established six criteria to be used in rating the assessments in each subject area. However, we found that the Department did not meet the statutory requirement that the consultant select four model assessments in each subject area.

Instead of developing model assessments, the Department and the consultant “collaboratively decided” to develop four “model practices” for each of the six criteria.¹⁶ The term “model practice” is not mentioned in the Act. However, we reviewed the model practices for reading and would characterize them as guidelines for developing assessments rather than actual assessments themselves.¹⁷ This appears consistent with the Department’s view of the model practices, which it encourages districts to incorporate into their local assessments. (See Appendix B for an example of a model practice.) Since there is no mention of model practices in the Act, we find that the development of those practices does not meet the statutory requirement for the development of four model assessments.

Assessment vs. Test

During the course of this audit, it became evident that our interpretation of the word “assessment” differed substantially from that posited by the Department. We believe that the Legislature intended the use of the word “assessment” throughout the Act to denote an actual test. Conversely, the Department maintains that, in the field of education, the word “assessment” is a term of art, signifying one or more methods of evaluating performance. The Department argues adamantly that, in both common and professional usage, the words “assessment” and “test” have distinctive meanings that preclude their being used interchangeably.

We appreciate that educators do not necessarily equate assessments with tests. Likewise, we acknowledge that the Act offers no definition

of “assessment.” Nevertheless, we find unconvincing the Department’s claim that the assessments required in the Act were not intended by the Legislature to be analogous to tests. We come to this conclusion using two main pieces of evidence.

Finding: The term “assessment” is not defined in the Act, and the Section and the Department disagree on how the term should be interpreted.-

First, although “assessment” is not defined, references within the Act indicate that the Legislature intended the required assessments to be tests. For instance, Section 79-760 of the Act, which sets out the provisions of the assessment system, states that the system “shall *test* student knowledge of subject matter materials covered by the measurable model academic content standards approved by the state board [emphasis added].” Likewise, Section 79-760.01 mandates that the academic content standards adopted by the Board for a minimum of three grade levels be “sufficiently clear and measurable to be used for *testing* student performance with respect to mastery of the content described in the state standards [emphasis added].”

Our second piece of evidence, the legislative history of LB 812—the bill amending the Act—reveals clearly that the Legislature intended for the Act to give rise to a system of statewide assessments through which student achievement could be tracked and measured. During floor debate, the senators used the words “assessment” and “test” interchangeably. In fact, a close reading of the history reveals that they referred to the required evaluations regularly as “tests”. Moreover, when asked during Select File debate to elaborate upon “the difference between a test and an assessment,” then-Chairperson of the Education Committee, Senator Ardyce Bohlke, stated that over the years the word “test” had been replaced with the word “assessment,” but that the words mean the same thing.¹⁸

The Department argues that it is improper to rely upon legislative history to understand statutory language that is clear and unambiguous on its face. While concurring wholeheartedly with the general application of this sound rule of statutory interpretation, we disagree that it is applicable in this particular instance. Professional educators are free to attach a specific meaning to the word “assessment” for use within the confines of their area of expertise; however, neither the public at large nor their elected representatives are bound by such a definition. Rather, as set out in another important rule of statutory interpretation, language used in statute is to be given its “plain and ordinary and meaning,” and considered in its “popular sense.”¹⁹

According to the Department, a “test” is “a paper and pencil measure that is usually a one-time only administration.” An “assessment” is “a system of measures, usually many and in multiple formats...”²⁰ While these definitions may reflect the education profession’s meaning of these two words, they are in no way absolute or unequivocal. *Webster’s New World Dictionary* defines “test” as “an examination, experi-

ment, or trial, as to prove the value or ascertain the nature of something.”²¹ The definition that the dictionary gives for “assessment” is merely “the act of assessing.”²² The verb “assess” is defined primarily in terms of property valuations and taxation; however, an ancillary definition for the word is “to estimate or determine the significance, importance, or value of; evaluate.”²³ Given the generality of these dictionary definitions, it is clear that the plain, ordinary, and popular meaning of the word “assessment” in the Act is far more ambiguous than the Department claims—and it certainly does not exclude being reasonably interpreted to mean a test.

In fact, the Department’s subsequent implementation of the writing assessment requirement in the Act provides tacit recognition of the true legislative intent behind the use of the word “assessment.” Section 79-760(1) calls for the Board to adopt “an assessment and reporting plan and begin implementation of the assessment and reporting system in the 2000-01 school year beginning with the assessment of reading and writing.” To comply with this requirement, the Board relies upon a series of annual written tests. It appears inconsistent for the Department to insist, therefore, that “assessment” means “test” for the purpose of evaluating student reading and writing skills but something entirely different when applied to other academic disciplines.

As mentioned already, we believe that the legislative history to LB 812 reveals that the Legislature intended an assessment made pursuant to the Act to take the form of an actual test. Though the Department disputes this, the findings contained in this audit are reflective of that interpretation.

The Use of Model Versus Locally Developed Assessments

With no model assessments to choose from, school districts could not meet the Act’s requirement that they select model assessments. Instead, they have continued to use their locally developed assessments.

The Commissioner of Education (Commissioner) argues that the Act permits the use of local assessments in place of the model assessments and, consequently, the districts are in compliance with this portion of the Act.²⁴ We disagree with the Commissioner’s interpretation.

The relevant portion of the Act states that:

“Districts shall thereafter adopt one of the four model assessments and may, in addition, adapt their locally developed assessments.”²⁵

According to the general rules of statutory construction set out in the Nebraska Revised Statutes, the word “shall” indicates “mandatory or ministerial action.”²⁶ When the word “may” appears, however, “permissive or discretionary action is presumed.”²⁷ Following these rules, the above provision requires that districts select one assessment from among the four model assessments. Although this provision grants some flexibility to the districts in adapting their local assessments, it does not permit them to use a locally developed assessment *in place of* a model assessment.

The Attorney General has issued an opinion supporting this interpretation. He states:

“We believe that § 79-760(1) clearly directs school districts to adopt one of the model assessments identified by the assessment experts as receiving the highest rating. The sentence [in statute]. . . states that the assessment experts shall identify up to four model assessments, and then the following sentence states that school districts shall thereafter adopt one of the four model assessments.”²⁸

The Act’s legislative history also supports this interpretation. For example, during floor debate on the bill that became the Act, then-chairperson of the Education Committee, Senator Ardyce Bohlke, described how the process would work for the subject of reading:

“Every school district would be allowed to develop their own assessment in reading. At the end of the year all those reading exams would be turned into a national institute that does testing. They would review those and they would come back with a recommendation of the [four] tests in the state that would be the best tests. *From thence forward, schools would select one of those tests, so there would no longer be the possibility of 150 or 200 tests or exams, there would be the possibility of [4]* [emphasis added].”²⁹

We note that interpretation of this provision is somewhat complicated because the administrative regulation adopted to implement the provision contradicts the clear requirement that districts must use the model assessments. This regulation states:

“For each subject area, the district reviews model assessments and procedures identified by the Department pursuant to section 79-760 R.R.S., and *either adopts a model assessment and procedures or adapts locally*

developed assessments and procedures to a model [emphasis added].”³⁰

Finding: The Attorney General’s approval of the regulation allowing school districts to use *either* a model assessment *or* their own assessment appears to conflict with that office’s published opinion, which states that “§ 79-760(1) clearly directs school districts to adopt one of the model assessments...”

As required by the Administrative Procedure Act, which governs the regulation promulgation process, the Attorney General reviewed this regulation for constitutionality and statutory authority, ultimately approving its promulgation by the Department.³¹ Therefore, the Attorney General’s approval of this regulation allowing school districts to use *either* a model assessment *or* their own assessment appears to conflict with the office’s published opinion, which states that “§ 79-760(1) clearly directs school districts to adopt one of the model assessments...”³²

With the permission of the Legislative Performance Audit Committee, the Attorney General’s Office (AGO) reviewed the portion of the Section’s report dealing with this apparent conflict.³³ An AGO representative disagreed with the Section’s assertion that “our [the AGO’s] opinion and the approval of the regulation are in conflict.” Specifically, the representative explained: “[T]he focus of our opinion does not specifically discuss the second clause of that sentence.”³⁴

The AGO appears to be suggesting that if it *had* considered the second clause of the relevant sentence (the clause that allows districts to adapt their local assessments), their opinion might have interpreted the statute as allowing districts to choose from either the model assessments *or* modified versions of their own assessments, as the regulation permits. We find this suggestion questionable. The published opinion states definitively that school districts must choose from among the model tests. If the second part of the sentence is relevant to the interpretation of the first part of the sentence, the opinion should have discussed it. Consequently, the Section maintains that the regulation and statute differ, and the discrepancy between those two legal authorities is problematic.

Despite this disagreement, departmental regulations cannot supersede unambiguous statutory language. Common rules of statutory interpretation dictate that the legislative intent behind statutory language is to be found, when possible, in the “plain and ordinary” meaning of the statutory language itself,³⁵ indicating that no other interpretation is needed—as the Nebraska Supreme Court has observed—to “ascertain the meaning of statutory words which are plain, direct, and unambiguous.”³⁶ Because the Court has determined that the “last expression of legislative will is the law,”³⁷ neither legislative histories nor administrative regulations can supersede or supplant it.

Finding: Districts are required to adopt one of the model assessments, not choose between adopting a model assessment or adapting their own assessments.

Consequently, based on the plain language of the statutory requirement, the relevant Attorney General’s opinion, and the Act’s legislative history, we find that districts are required to adopt one of the

model assessments, not choose between adopting a model assessment or adapting their own assessments. In addition, although an administrative regulation allowing districts either to adopt a model assessment or adapt a locally developed assessment was properly promulgated, the regulation does not supersede the “plain and ordinary” meaning of the statutory language that requires districts to select from among the model assessments.

Finding: It is unclear under what circumstances the Legislature intended for districts to adapt their own assessments.

We acknowledge that it is unclear under what circumstances the Legislature intended for districts to be permitted to adapt their own assessments. The plain meaning of this provision is difficult to discern in light of the requirement that districts adopt model assessments. In addition, neither the Attorney General’s opinion nor the legislative history provide any guidance on interpreting this provision.³⁸ The plain meaning of the statutory language does make clear, however, that no such adaptation alters in any way the primary duty of the districts to adopt model assessments.

Reporting Results

Finding: The Department is in compliance with the statutory requirement that it report aggregate test results.

The Act requires the Department to report the aggregate results of the required assessments (as noted earlier, we have interpreted the Legislature’s use of the term “assessment” in statute to be synonymous with the term “test”). However, the Act does not specify the format in which the results should be reported.³⁹ We found that the Department uses two formats to report test results as required by the Act. Consequently, we found that the Department is in compliance with this requirement.

Finding: The Department’s State of the Schools Report Web site provides a large amount of data in a user-friendly format.

The Department annually reports the results of assessments administered by school districts in its State Report Card and the State of the Schools Report. The State Report Card is a widely distributed summary document that shows the performance average of all Nebraska public school students in reading, writing, and mathematics. The results are separated by grade and demographic groups. The State of the Schools Report—available on the Department’s Web site—provides not only statewide results information, but also results by district and by school in a user-friendly format. Demographic information is available at all levels.

Purposes of the Assessment and Reporting System

According to the Act, the purposes for the assessment and reporting system are to:

- 1) Determine how well public schools are performing in terms of their students’ achievement related to the model state academic standards;

- 2) Report the performance of public schools based upon the results of the above determination;
- 3) Provide information for the public and policymakers on the performance of public schools; and
- 4) Provide for the comparison of Nebraska public schools to their peers and to school systems of other states and other countries.⁴⁰

We found that the Department's assessment and reporting system generally meets these purposes. Student achievement, as it relates to the model state academic content standards, is determined by local assessments and evidenced by the results submitted by the districts to the Department and published on the State of the Schools Report Web site. The results provided in the State of the Schools Report and the State Report Card meet the purposes of reporting performance results and of providing information to the public and to policymakers on the performance of public schools.

Finding: The Department's interpretation of the four-model assessment requirement in the Act, has reduced the potential comparability of the assessment results among the school districts.

The information made available by the Department may also be used for some comparisons among Nebraska schools. However, the Department's interpretation of the four-model assessment requirement in the Act, has reduced the potential comparability among school districts. If all districts selected assessments from four assessments in each subject area, the results would be much more comparable. Instead, the potential exists for each of the 254 school districts to develop their own assessment in each subject area. Although the Department does not track the actual number of assessments in use,⁴¹ some districts do use the same assessment.⁴² Therefore, it is safe say that there are fewer than 254 assessments in use for each subject area, but there are likely to be far more than the four per subject area required by the Act.

Finding: While the Department has made available some descriptions of methodologies for making comparisons of student performance from the data reported, given the large amount of data, the Section encourages the Department to provide as much assistance as possible to help the public understand the data available.

Another issue complicates this potential reduction in comparability. Although the Department makes available a large volume of student demographic and assessment data and some descriptions of comparison methodologies, we found that it does not make available a detailed description of all comparison methodologies, which school districts and, especially, policymakers could use for making suitable comparisons from the data reported.

We also found that the Department provides for state-to-state comparisons through Nebraska's participation in the National Assessment of Educational Progress (NAEP). The Department does not currently provide for comparisons between Nebraska schools and schools in other countries; however, the Department has provided a

reasonable explanation that such comparisons are problematic because of the variations in the educational systems themselves.

Notes

¹ Neb. Rev. Stat. § 79-760.01.

² Neb. Rev. Stat. § 79-760(1).

³ *Ibid.*

⁴ Neb. Rev. Stat. § 79-760.01.

⁵ NAC Title 92, Ch. 10, Appendices A-D.

⁶ Neb. Rev. Stat. § 79-760.01.

⁷ Neb. Rev. Stat. § 79-760.02.

⁸ Standards information provided by the Department 1 November 2006.

⁹ Neb. Rev. Stat. § 79-760(1).

¹⁰ Neb. Rev. Stat. § 79-760(1).

¹¹ STARS Update #1, May 2000, pg. 6.2.

¹² STARS Update #19, *2005-2006 Statewide Writing Assessment Planning Information*, pp. 2-5.

¹³ Neb. Rev. Stat. § 79-760(1).

¹⁴ *Ibid.*

¹⁵ Impara, Buckendahl, and Plake, *Final Report - Evaluating Nebraska's District Assessment Portfolios and Recommending Model Assessments for Reading: 2000 – 2001*, Buros Institute for Assessment Consultation and Outreach - A Division of the Buros Center for Testing, University of Nebraska-Lincoln, November 2001. Buckendahl, Impara, and Plake, *Final Report - Evaluating Nebraska's District Assessment Portfolios and Recommending Model Assessments for Mathematics: 2001 – 2002*, Buros Institute for Assessment Consultation and Outreach - A Division of the Oscar and Luella Buros Center for Testing, University of Nebraska-Lincoln, October 2002. Buckendahl, Impara, Plake, Ferdous, and Haack, *Final Report - Evaluating Nebraska's District Assessment Portfolios and Recommending Model Assessments for Reading, Speaking, & Listening: 2002 – 2003*, Buros Institute for Assessment Consultation and Outreach - A Division of the Oscar and Luella Buros Center for Testing University of Nebraska-Lincoln, November 2003.

¹⁶ Buckendahl, Impara, Plake, Ferdous, & Haack, *Final Report Evaluating Nebraska's District Assessment Portfolios and Recommending Assessments for Reading, Speaking, & Listening: 2002-2003*, November 2003, pg. 3.

¹⁷ Impara, Buckendahl, and Plake, *Report on Model Assessments for Reading 2000-2001*, September 2001, pp. 4-29.

¹⁸ Legislative History, LB 812 (2000), 3 April 2000, pg. 12438.

¹⁹ *Shipler v. General Motors Corporation*, 271 Neb. 194, 216-217, 710 N.W.2d 807, 829-830 (2006).

²⁰ Letter from Commissioner of Education to Senator Chris Beutler, 6 November 2006, pg. 2.

²¹ Webster's New World Dictionary, 2nd Edition. New York: Simon & Schuster, 1982.

²² *Ibid.*

²³ *Ibid.*

²⁴ Conversation with Douglas Christensen, Commissioner, Department Legal Counsel, Director of Statewide Assessment, Administrator of Federal Programs, and Assistant to the Commissioner, State Department of Education, 16 October 2006.

²⁵ Neb. Rev. Stat. § 79-760(1).

²⁶ Neb. Rev. Stat. § 49-802(1).

²⁷ *Ibid.*

²⁸ Atty. Gen. No. 03001 (January 2, 2003).

²⁹ Legislative History, LB 812 (2000), 3 April 2000, pg. 12427. Senator Bohlke's comments were made during the first amendment that proposed model assessments; in that amendment, the total number of model assessments was five. The Act was later amended to reduce that number to four.

³⁰ NAC Title 92, Ch. 10, 005.01D.

³¹ Neb. Rev. Stat. § 84-905.01.

³² Atty. Gen. No. 03001 (January 2, 2003).

³³ The Committee's permission was needed because, by law, the report contents are confidential unless a majority of the Committee approves release of some or all of the report. (Neb. Rev. Stat. § 50-1210(1).)

³⁴ Letter from the Office of the Attorney General, 18 December 2006. AGO representatives stated that AGO only reviews rules and regulations for "constitutionality and statute authority" and not for conformity with the State Constitution or state statutes. AGO also contends that since its review of the portion of Title 92, Chapter 10 at issue occurred before the issuance of the Attorney General's opinion cited above, there is no disparity in meaning between the regulations and the meaning of the relevant clause of statute as stated in the issued opinion.

³⁵ *Shipler v. General Motors Corporation*, 271 Neb. 194, 216-217, 710 N.W.2d 807, 829-830 (2006).

³⁶ *Nebraska Liquor Distributors, Inc. v. Nebraska Liquor Control Commission*, 272 Neb. 390, 393, 722 N.W.2d 10, 13 (2006).

³⁷ *Aligent Health Bergan Mercy Medical Center v. Haworth*, 260 Neb. 63, 71, 615 N.W.2d 460, 467 (2000).

³⁸ The Attorney General's opinion makes no mention of the provision that permits districts to adapt their own tests. In addition, we found only one discussion in the legislative history on this issue, and it suggests that the intention may have been to permit a district to modify its own test if that test were sufficiently similar to one of the model tests. While the discussion explored this possible inter-

pretation, there is no definitive statement that this is the interpretation the Legislature intended. Legislative History, LB 812 (2000), 3 April 2000, pg. 12441.

³⁹ Neb. Rev. Stat. § 79-760(1).

⁴⁰ Neb. Rev. Stat. § 79-760(2).

⁴¹ Telephone conversation with Director of Statewide Assessment, State Department of Education, 6 November 2006.

⁴² For example, according to a study conducted for the Department some districts join together in consortia—such as school districts within an Educational Service Unit—to develop and use one test for a subject area. Isernhagen, *Charting STARS, Voices from the Field*, September 2005.

SECTION III: Nebraska and the No Child Left Behind Act

In this section, we report the results of our examination of the history of Nebraska's efforts to comply with the federal No Child Left Behind Act (NCLB) and the state's current approval status. In conducting this examination, we reviewed relevant documents and interviewed personnel in both the State Department of Education (Department) and the United States Department of Education (USDE).

The No Child Left Behind Act

Signed into law in January 2002,¹ NCLB is a re-authorization of the Elementary and Secondary Education Act of 1965. NCLB contains changes intended to reform educational practices, including: stronger accountability measures; greater flexibility in the use of federal funds; and more choices for parents of children from disadvantaged backgrounds.¹ The end goal of NCLB is for all students to be proficient in reading and mathematics by the 2013-14 school year.²

NCLB requires states to comply with a federally determined schedule of plan submissions and approvals to align their practices with the provisions of NCLB. To meet the goals set by NCLB, states are required, among other things, to set standards for student achievement, administer assessments in reading and mathematics, and hold schools accountable for assessment results.³ Under NCLB, the USDE rates state systems with a scale that ranges from *Fully Approved* to *Not Approved*, with stages in between denoting a need for more evidence or further review of the program. Figure 3.1, on page 14, lists the current USDE approval stages, with descriptions.

Nebraska and NCLB

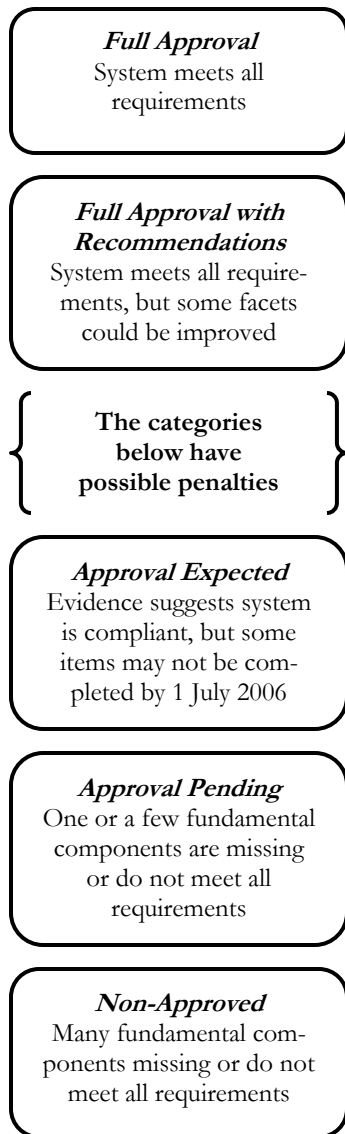
As mentioned in Section I, the Department uses the School-based Teacher-led Assessment and Reporting System (STARS) as the framework for implementing the requirements of NCLB. It is important for the Department to gain federal approval of its system because the state receives a significant amount of federal grant money to implement various aspects of NCLB. In the current two-year federal grant cycle, Nebraska received over \$89 million dollars in NCLB grants.⁴

Following is a description—from 2002 to the present—of the Department's efforts to gain NCLB approval.

Accountability Plan Approval

In January 2003, states were required to submit an accountability plan to USDE, which included evidence that the state had implemented academic content standards, assessments, reporting procedures, and “statewide systems for holding schools and districts accountable for the achievement of their students.”⁵ The Department submitted the state’s accountability plan to USDE and received notice in June 2003 that the plan had received approval.⁶

Figure 3.1: USDE Approval Categories for State Standards and Assessment Systems (Current as of November 2006)



Approval of Standards and Assessments

In addition to the accountability plan approval process, USDE required all states to undergo a federal peer review for specific approval of their standards and assessments.⁷ USDE uses experts in the fields of standards and assessments to conduct the reviews of state-submitted evidence.⁸ Nebraska underwent peer reviews in 2005 and 2006.

In 2005, the reviewers found that the state’s standards and assessment system did not comply with most of the NCLB requirements.⁹ USDE requested additional evidence to resolve the identified non-compliance issues.

In 2006, USDE determined that the state was still out of compliance with many NCLB requirements and that it was unlikely Nebraska’s system would achieve compliance in the 2006-07 school year.¹⁰ As a result, Nebraska received *Non-Approved* status, and USDE stated that it would withhold \$126,741, which is 25 percent of certain administrative funding the state receives under NCLB.¹¹ The USDE also provided the Department with a list of the areas in which Nebraska needed to improve. (Appendix C contains the list.)

Nebraska’s Response to Non-Approval

In response to receipt of Nebraska’s *Non-Approved* status, the Commissioner of Education publicly criticized the USDE peer review practices and announced that the Department would challenge the *Non-Approved* status.¹² Subsequently, the Department requested that the USDE reconsider Nebraska’s status and provided a timeline for addressing the areas in need of improvement noted by USDE.¹³ The Department assured USDE that all but two of the problem areas would be addressed by September 2006.¹⁴ The other two items noted by USDE are scheduled for completion on 15 June 2007.¹⁵

In September 2006, USDE responded favorably to the Department’s request and changed Nebraska’s approval status to *Approval Pending*. USDE noted that although Nebraska was still not meeting one or

more NCLB requirements, it appeared the state could resolve these issues by the end of the 2006-07 school year. The status change prevented the withholding of federal funds; however, Nebraska has been placed under *Mandatory Oversight*, meaning the Department must provide bi-monthly reports to USDE, starting in November 2006, on its progress in implementing its plans to attain full compliance.¹⁶

Remaining Steps to Ensure Approval by USDE

Finding: The Department believes it will meet the final two requirements to obtain approval from USDE.

As noted above, in order to have its standards and assessments system approved by USDE, the Department must prove it has completed two additional tasks by 15 June 2007. First, the Department must complete on-site peer reviews for all public school districts in the state by the end of the 2006-07 school year. Second, it must demonstrate that it has the ability to collect, disaggregate, and report student data to NCLB requirements. The Department believes it will meet both requirements.

Department staff state that they are scheduled to complete the on-site peer reviews by the end of April 2007. USDE staff stated that the peer reviewers commended the Department for its planned review process and noted that USDE has “every reason to believe that Nebraska’s evidence submitted in June will be sufficient.”¹⁷

Meeting the data requirement, according to the Department, has been challenging given the limitations of their current computer system. Department staff stated that completion of a new system, currently in its second year of operation as a pilot program, would allow for improved handling of the required data. Staff stated that even if the data system does not contain enough statewide information to produce a report that meets NCLB requirements by the June 2007 deadline, they believe they will be able to produce a report using other methods and show that the data system will be capable of doing so in the future. USDE staff did not comment on the Department’s reporting capabilities.

Possible Approval Status Outcomes

According to a USDE representative, if USDE determines that the Department’s proof of the above tasks meet USDE’s requirements, it will grant Nebraska *Approved* status for its standards and assessments system.¹⁸ If USDE determines the Department’s submission does not meet USDE’s requirements, it will assign Nebraska *Non-Approved* status.

In a letter to the Department earlier this year, USDE outlined the possible consequences of receiving *Non-Approved* status. The state could be subject to any or all of the following:

- The Department could be required to enter into a Compliance Agreement with USDE to bring the state into full compliance within two years;
- The Department could have significant limitations placed on the flexibility of funding granted by USDE; or
- USDE could withhold certain NCLB administrative funds, which total more than \$600,000.^{19,20}

USDE has made no projections regarding when it will issue its final determination on Nebraska's approval status.

Notes

¹ *A Guide to Education and No Child Left Behind*, U.S. Department of Education, pg. 13. Accessed on 28 September 2006 from: <http://www.ed.gov/nclb/overview/intro/guide/guide.pdf>

² *No Child Left Behind: A Toolkit for Teachers*, U.S. Department of Education. Accessed 31 October 2006 from: <http://www.ed.gov/teachers/nclbguide/nclb-teachers-toolkit.pdf>

³ *No Child Left Behind: A Desktop Reference*, U.S. Department of Education, pg. 9.

⁴ Grant information received from the Department, 2 November 2006. The total noted is from the federal grant period that runs from July 2006 until September 2008.

⁵ *No Child Left Behind: A Desktop Reference*, U.S. Department of Education, pg. 10.

⁶ Letter dated 10 June 2003 from Rod Paige (USDE) to Douglas Christensen (Department).

⁷ Letter dated 22 October 2004 from Raymond Simon (USDE).

⁸ *Standards and Assessments Peer Review Guidance: Information and Examples for Meeting Requirements of the No Child Left Behind Act of 2001* (28 April 2004), U.S. Department of Education. Accessed on 1 November 2006 from: <http://www.ed.gov/policy/elsec/guid/saaprguidance.doc>

⁹ Letter dated 9 December 2005 from Henry Johnson (USDE) to Douglas Christensen (Department).

¹⁰ Letter dated 30 June 2006 from Henry Johnson (USDE) to Douglas Christensen (Department).

¹¹ Letter dated 30 June 2006 from Henry Johnson (USDE) to Douglas Christensen (Department).

¹² Memorandum dated 5 July 2006 from Douglas Christensen (Department) to all Nebraskans.

¹³ Letter dated 28 July 2006 from Douglas Christensen (Department) to Henry Johnson (USDE).

¹⁴ The Department forwarded the information promised to USDE on 7 September 2006.

¹⁵ Timeline of Completed Evidence accompanying letter dated 28 July 2006 from Douglas Christensen (Department) to Henry Johnson (USDE).

¹⁶ Letter dated 15 September 2006 from Henry Johnson (USDE) to Douglas Christensen (Department).

¹⁷ E-mail from the Office of Elementary and Secondary Education - U.S. Department of Education, 1 November 2006.

¹⁸ Telephone conversation with staff from the Office of Elementary and Secondary Education - U.S. Department of Education, 23 October 2006.

¹⁹ Letter dated 24 April 2006 from Henry Johnson (USDE).

²⁰ Administrative funding total for the Department's current Title I federal grant provided by the Department, 2 November 2006.

***III. Committee Findings and Recommendations
and Fiscal Analyst's Opinion***



Performance Audit Committee Recommendations

On 26 January 2007, in accordance with Neb. Rev. Stat. sec. 50-1211(1) of the Legislative Performance Audit Act, the Legislative Performance Audit Committee convened to consider the findings and recommendations contained in the Performance Audit Section's draft report entitled *The State Department of Education's School-based Teacher-led Assessment and Reporting System (STARS)* and the State Department of Education's response to that report. The Committee adopted the following recommendations

The State Board of Education's (Board's) and State Department of Education's (Department's) Compliance with the Quality Education Accountability Act (Act)

Finding 1: The Board is in compliance with the Act's requirements that it: adopt clear and measurable academic content standards (pg. 3); administer statewide writing assessments (pg. 5); and report aggregate results from the writing assessments and assessments of other subject areas (pg. 11). In addition, the Section found that the Department's State of the Schools Report Web site provides a large amount of data in a user-friendly format (pg. 11).

Recommendation: None.

Finding 2: Based upon the Section's interpretation of the term "assessment," which reflects legislative intent, the Department did not meet the statutory requirement that the consultant select four model assessments in each subject area. (pg. 6).

Discussion: The Department agrees that it did not have its consultant select model assessments. Instead, the Department and the consultant "collaboratively decided" to develop four "model practices" for each of the criteria developed to rate model assessments. The Department believes that the model practices meet the statutory requirement for model assessments, arguing that in the field of education the term "assessment" means one or more methods of evaluating performance and is not the same as the term "test."

Finding 3: The term "assessment" is not defined in the Act, and the Section and the Department disagree on how the term should be interpreted (pg. 7).

Discussion: During the course of this audit, it became evident that the Section's interpretation of the word "assessment" differs substantially from that posited by the Department. Performance audit staff believe that the Legislature intended the use of the word "assess-

ment” throughout the Act to denote an actual test. Conversely, the Department maintains that, in the field of education, the word “assessment” is a term of art, signifying one or more methods of evaluating performance. The Department argues adamantly that, in both common and professional usage, the words “assessment” and “test” have distinctive meanings that precludes their being used interchangeably.

The Section appreciates that educators do not necessarily equate assessments with tests. Nevertheless, it finds unconvincing the Department’s claim that the assessments required in the Act were not intended by the Legislature to be tests.

Recommendations: The Committee agrees with the Section’s interpretation of the term “assessment,” and recommends that the Department immediately begin the process of identifying four model tests as required by law. If the Department believes that developing the model tests is either impossible or undesirable, it should pursue the introduction of legislation to amend the law accordingly.

The Committee has introduced a placeholder bill and is considering supporting other legislation to define the term “assessment” in the Act.

Finding 4: The Department’s interpretation of the four-model assessment requirement in the Act has reduced the potential comparability of test results among the school districts (pg. 12).

Recommendation: None.

Finding 5: Under the Act, school districts are required to adopt one of the model assessments, not choose between adopting a model assessment or adapting their own assessments (pg. 10).

Finding 6: It is unclear under what circumstances the Legislature intended for districts to adapt their own assessments (pg. 11).

Recommendation: The Committee has introduced a placeholder bill and is considering supporting other legislation to clarify whether school districts may be permitted to adapt their own assessment in a specific subject area instead of adopting a model assessments in that area.

Finding 7: The Attorney General’s approval of the regulation allowing school districts to use *either* a model assessment *or* their own assessment appears to conflict with that office’s published opinion, which states that “§ 79-760(1) clearly directs school districts to adopt one of the model assessments...” (pg. 10).

Discussion: After the Attorney General has approved regulations, the methods for addressing and remedying any apparent inconsistencies between the regulation and relevant statute are limited. Under the Administrative Procedure Act, court action or an official complaint made by the Legislature’s Executive Board are the only available recourses.¹ Court action, at least in this case, seems impractical. A complaint filed by the Executive Board is more feasible; however, it is worth noting that such a complaint will only lead to the resolution of a discrepancy if the agency with which the complaint is filed chooses to initiate a change in the regulation. Authority for actually changing the regulation, without a change in statute, rests with the agency.

Recommendation: If introduced legislation does not remedy the situation, the Committee will consider using the complaint process allowed by the Administrative Procedure Act.

Finding 8: While the Department has made available some descriptions of methodologies for making comparisons of student performance from the data reported, given the large amount of data, the Section encourages the Department to provide as much assistance as possible to help the public understand the data available (pg. 12).

Recommendation: The Committee will consider requesting, or if necessary amending introduced bills to require, the Department to produce and distribute a guide that outlines legitimate methods for comparing performance results both between schools in one district and among districts.

The State Board of Education’s (Board’s) and State Department of Education’s (Department’s) Compliance with the No Child Left Behind Act (NCLB)

Finding 9: The Department believes it will meet the final two NCLB requirements to obtain approval from the United States Department of Education (pg. 17).

Recommendation: None.

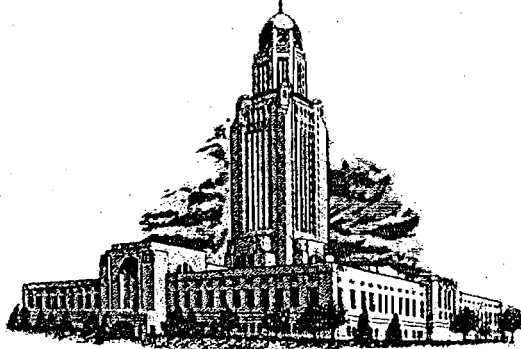
Notes

¹ Neb. Rev. Stat. §§ 84-911 and 84-907.07(10).

State of Nebraska

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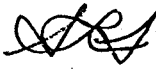
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LEGISLATIVE RESEARCH

MEMO

TO: Martha Carter
FROM: Sandy Sostad 
RE: Performance Review of STARS
DATE: December 7, 2006

This memo is written pursuant to your request for an opinion as to whether the State Department of Education can implement the recommendations from the performance review of the School-based Teacher-led Assessment and Reporting System (STARS) within its current appropriation.

Finding 2 determines that the Department is not in compliance with the statutory requirement that it have its consultant select four model tests in each subject area. The report recommends that the Department immediately begin the process of identifying four model tests. If the Department believes the development of model tests is either impossible or undesirable, then legislation should be pursued to amend the law accordingly.

Since 1999, the Department has invested considerable fiscal and personnel resources into the initiation, design, and implementation of STARS. The current assessment and reporting system is based upon the use of locally developed assessment systems designed to measure the attainment of either state standards or locally adopted standards deemed to exceed state standards. Thus, it is assumed the Department believes the development of model tests is undesirable and will opt to have legislation introduced to amend the law.

If, however, the Department is required to select four model tests in each of five subject areas there will be an unknown fiscal impact for the Department, school districts and ESU's depending upon timelines established for implementation. In 2006-07, the state provides approximately \$1.6 - \$2.1 million of general funds to support assessment and reporting. The majority of the

general funds are used for assessment coordination, the statewide writing assessment, data system support and the state report card. An additional estimated \$6.4 million of federal funds from various sources (NCLB, SPED, etc.) are used for STARS. The federal funds are granted to school districts for the development of assessments, used for the statewide writing assessment, used by ESU's and schools for staff development relative to assessments, and to fund administration of the NAEP examination. Annual federal and state support for assessments has ranged from an estimated \$3 million per year in 1999-00 to an estimated high of \$10 million in 2004-05. Using budgeted figures for the current year and the last two years, an estimated average of approximately \$9 million of state and federal dollars was or is being spent for STARS each year. The investment in the current assessment system has been substantial and expensive.

Reporting of student performance pursuant to STARS has been done on a phased-in basis. In 2006-07, schools will begin the initial reporting of student performance in social studies as well as the statewide writing exam. In 2007-08, reporting in the subject area of science will begin. Federal funds granted to school districts and ESU's, ESU core services funds, along with local resources, have been used incrementally to build the assessment system that is currently in place.

It is assumed it may be possible to redirect the usage of current state and federal resources to hire a consultant to select four model tests in each of five subject areas. If this could be accomplished on a phased-in basis by subject area, then existing state and federal resources of approximately \$8 million per year plus ESU and local resources may be sufficient to redesign and implement a substantially different assessment system than is in place. However, if immediate implementation is required it is assumed considerably more fiscal and personnel resources than are currently available at the state and local levels would be needed. Additional resources may also be necessary to run STARS simultaneously with the model test system for a period of time. Implementation of model tests could not be accomplished with the existing appropriation of the Department.

The recommendation for the Department to seek an Attorney General's opinion to resolve the conflict between that office's opinion and rules and regulations can be accomplished within the existing appropriation. However, if the result of the opinion is that school districts may not adapt their own tests in specific subject areas, then there likely will be a fiscal impact for school districts to adopt alternative assessments.

Finding 6 determines that the Department does not make available a description of methodologies for making legitimate comparisons of student performance from the data reported. The recommendation is for the Committee to seek legislation to require the Department to produce and distribute a guide for comparing performance between schools within a district and among districts.

The Department currently publishes a guide showing how to compare schools using the State of the Schools report. If this guide is not sufficient for comparison purposes, it is assumed the guide could be revised to address the concerns of the reviewers. The department should be able to make revisions to the guide within its existing appropriation.



IV. Background Materials

BACKGROUND MATERIALS

The “background materials” provided here are materials (in addition to the Section’s report) that were available to the Committee when it issued the findings and recommendations contained in Part III of this report. They include:

- the Section’s draft findings and recommendations (provided for context);
- the agency’s response to a draft of the Section’s report;
- the Section Director’s summary of the agencies’ response;
- Appendix A: Audit Methodology;
- Appendix B: Criteria and Model Practices; and
- Appendix C: Non-Approved Status Letter.

Performance Audit Section Draft Findings and Recommendations (November 2006)

In this section, we present our findings and recommendations based on the analyses discussed in Sections II through III.

The State Board of Education's (Board's) and State Department of Education's (Department's) Compliance with the Quality Education Accountability Act (Act)

Finding 1: The Board is in compliance with the Act's requirements that it: adopt clear and measurable academic content standards; administer statewide writing tests; and report aggregate results from the writing tests and tests of other subject areas. In addition, we found that the Department's State of the Schools Report Web site provides a large amount of data in a user-friendly format.

Recommendation: None.

Finding 2: The Department is not in compliance with the statutory requirement that it have its consultant select four model tests in each subject area.

Discussion: The Department agrees that it did not have its consultant select model tests. Instead of developing model tests, the Department and the consultant "collaboratively decided" to develop four "model practices" for each of the six criteria. The Department believes that the model practices meet the statutory requirement for model assessments, arguing that in the field of education the term "assessment" means one or more methods of evaluating performance and is not the same as the term "test."

Recommendation: The Legislative Performance Audit Committee (Committee) should recommend that the Department immediately begin the process of identifying four model tests as required by law. If the Department believes that developing the model tests is either impossible or undesirable, it should pursue the introduction of legislation to amend the law accordingly.

Finding 3: Under the Act, school districts are required to adopt one of the model tests, not choose between adopting a model test or adapting their own tests.

Finding 4: It is unclear under what circumstances the Legislature intended for districts to adapt their own tests.

Finding 5: The Department's failure to identify model tests as required by the Act has reduced the potential comparability of test results among the school districts.

Recommendations: The Committee should recommend that the Department immediately seek an Attorney General's opinion to resolve the conflict between that office's opinion #03001 and NAC Title 92, Ch. 10, 005.01D.

In addition, the Committee should consider introducing legislation to clarify whether school districts may be permitted to adapt their own test in a specific subject area instead of, or in addition to, adopting a model test in that area.

Finding 6: The Department does not make available a description of methodologies for making legitimate comparisons of student performance from the data reported.

Recommendation: The Committee should consider requesting, or if necessary introducing legislation to require, the Department to produce and distribute a guide that outlines legitimate methods for comparing performance results both between schools in one district and among districts.

The State Board of Education's (Board's) and State Department of Education's (Department's) Compliance with the No Child Left Behind Act (NCLB)

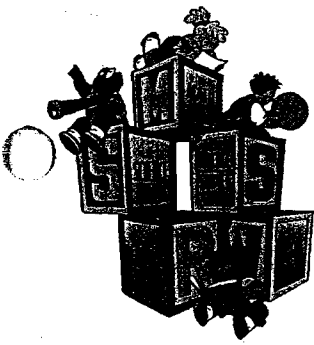
Finding 7: The Department believes it will meet the final two NCLB requirements to obtain approval from the United States Department of Education.

Recommendation: None.

NEBRASKA DEPARTMENT OF EDUCATION

Douglas D. Christensen, Commissioner
Polly Feis, Deputy Commissioner

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December 7, 2006

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LEGISLATIVE RESEARCH

Ms. Martha Carter, Legislative Auditor
Legislative Audit and Research Office
P.O. Box 94945
Lincoln, NE 68509

Dear Ms. Carter:

Please consider this letter as the Nebraska Department of Education's Department's response to the Performance Audit Team's Draft Audit Report. We strongly disagree with three of the Audit Team's findings. The reasons for our disagreement, along with our proposed alternative findings, are discussed below.

I.

Finding #2

"The Department is not in compliance with the statutory requirement that it have its consultant select four model tests in each subject area"

The NDE strongly disagrees with **Finding #2** for the following reasons:

a. Finding #2 is Improperly Worded as a Conclusion of law.

This "finding" is actually a conclusion. The statement that the Department "is not in compliance with" a statutory requirement is a conclusion of law that can be made only by a court. The Audit Team has no authority to make such a conclusion. **Finding #2**, if it is to be retained, should be worded as a finding of inconsistency, rather than a conclusion of noncompliance.

b. Finding #2 is Improperly Worded as Based on a Statutory Requirement.

From our conversation on November 28, 2006, I understand that **Finding #2** is actually based on the Audit Team's reading of the legislative history of the amendments made by LB 812 (Laws, 2000) to Section 79-760(1) of the Quality Education Act. **Finding #2**, if it is to be retained, should be worded as based on the Audit Team's interpretation of legislative history, rather than as based on the statutory requirement.

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c. Finding #2 Misstates the Statutory Requirement.

The relevant portion of Section 79-760(1) of the Quality Education Act requires as follows:

“...Following the first assessment in each subject area, except writing, the State Department of Education shall contract with independent, recognized assessment experts to review and rate locally developed assessments. The department shall identify the criteria for rating the model assessments. The assessment experts shall identify not more than four model assessments receiving the highest ratings. ...” [79-760(1) *Emphasis added*]

If the Audit Team wishes to base **Finding #2** on the statutory requirement, then it should state that requirement accurately. The Audit Team’s statement is not accurate. Section 79-760(1) states that model assessments are required, not model tests.

d. The Department has Done What the Act Requires with Regard to Model Assessments.

First, I wish to emphasize that the terms “test” and “assessment” are not interchangeable. The Quality Education Act does not require “tests”. The noun “test” or “tests” does not appear anywhere in the Act. The Act requires “assessments.” Both the dictionary definitions and the technical definitions of these terms are different. The term “assessment” is used consistently throughout the Act. The statutory language is clear and unambiguous. The term “assessment” is not vague on its face. There being no ambiguity with regard to this term as it is used or on its face, recourse to legislative history in construing it is inappropriate.

It is a recognized principal of statutory construction that courts only resort to legislative history when the language of a statute is ambiguous (see Morgensen v. Board of Sup’rs, 679 N.W. 2d 413, 268 Neb. 26 (2004)). I note that the term “assessment” appears several times in the Department’s Rule 10. The term is not defined in Rule 10; yet the Attorney General’s Office approved the Rule without finding that the term is unconstitutionally vague. There is simply no legal basis for claiming that the term “assessment” is ambiguous on its face or as used in the Act. There is no legal basis for resorting to legislative history to determine the meaning of the term.

In addition, I note that the purpose of the assessment and reporting system, as spelled out in Section 79-760(2)(c) and (d) is to “[P]rovide information for the public and policymakers on the performance of public schools” and to “[P]rovide for the comparison of Nebraska public schools to their peers.” Contrary to the Draft Report (page 6, last paragraph), it is not a purpose of the system to provide “test results.” The statutory language cited in footnote #18 on page 6 of the Report does not justify reading the term “assessment” as “test”.

Letter to Ms. Martha Carter
December 7, 2006
Page Three

Absent a statutory definition and without resorting to legislative history, how is the term "assessment" defined? It is a recognized principal of statutory construction that courts will give words in statutes their common meaning (see Tyson Fresh Meats, Inc. v. State, 704 N.W. 2d 286, 270 Neb. 535 (2005)). For the determination of the "common meaning" the courts resort to dictionary definitions. Courts examine the various dictionary definitions offered for a word and apply the one that fits the context of the statute. With regard to the word "assessment", Webster's New World College Dictionary, Fourth Edition, defines the noun "assessment" as "the act or instance of assessing." The verb "assess", from the Latin *assessus* meaning "to sit beside", is defined, most relevantly, as "to estimate or determine the significance, importance, or value of; evaluate." In contrast, the noun "test" is defined, most relevantly, as "a set of questions, problems, or exercises for determining a person's knowledge, aptitude, or qualifications; examination." It is evident from these definitions that the terms are not interchangeable. While an assessment may include a test; a test is not necessarily an assessment.

It is also a recognized principal of statutory construction that courts give deference to an agency's reasonable interpretation of a statute that does not conflict with its plain meaning (see AT&T Communications of the Midwest v. U.S. West Communications, Inc., 143 F.Supp. 2d 1155 (2001)). This is especially true when the Legislature has failed to take any action to change such an interpretation (see Capitol City Telephone, Inc. v. Nebraska Department of Revenue, 264 Neb. 515, 650 N.W. 2d 467 (2002)). The Department has, for the last six years, consistently interpreted and implemented the Quality Education Act using the current professional definition of "assessment". The dictionary definition of "assessment" is consistent with the Department's professional definition. I have described the professional and discipline-based distinction between "test" and "assessment" in my letter to Ms. Angela McClelland dated November 6, 2006; in my letter to you and Senator Beutler dated November 21, 2006; and during our meeting on November 28, 2006. The distinction is as follows:

"Test" is generally understood to mean a paper and pencil measure that is usually a one-time only administration. A test has specific answers to specific questions that are largely recall of content. On the other hand, an "assessment" is a system of measures, usually many and in multiple formats which may or may not include paper-pencil tests. "Assessments" are inclusive of practices that are measures of learning with multiple instruments over time and may include but not be limited to any, or all, of the following: performances and demonstrations, artifacts and documents, project, rubrics, observations and portfolio9s (Stiggins, Wilam, Popham, Wiggins, et. al)

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The following may help make the difference more clear.

TEST

- *Paper-Pencil*
- *Content-based*
- *One-time or single administration*

ASSESSMENT

- *Not limited to paper-pencil*
- *Multiple measures, such as performances, demonstration, artifacts, documents, projects, rubrics, observation, portfolios*

The use of the term "test" in **Finding #2** and throughout the Draft Audit Report distorts the meaning of the Quality Education Act and leads to a false interpretation of the requirements of the Act.

Secondly, the language of the Act at Section 79-760(1) requires that the State Department of Education do the following:

"Following the first assessment in each subject area, except writing, the State Department of Education shall contract with independent, recognized assessment experts to review and rate locally developed assessments."

"The department shall identify the criteria for rating the model assessments."

In fulfillment of these requirements, the Department contracted with the Buros Institute and has identified six criteria.

Section 79-760(1) requires in addition that "[T]he assessment experts shall identify not more than **four model assessments** receiving the highest ratings." The Buros Institute recommended the models as cited in their 2001 report (Buros, November 2001), as attached to this letter. Based on the text of the report (Buros, November 2001, p. 12-13), the expert opinion of the Institute outlines the decision process and rationale. The Department followed the recommendation of the Buros Institute as provided for in the Act. The Buros Report (p. 24) identifies the model assessments that were selected. That rationale was also outlined in a letter to Ms. Angela McClelland on November 6, 2006; in my letter to you and Sen. Beutler dated November 21, 2006; and in our meeting on November 28, 2006 and is as follows:

We selected models of practice and models of assessment. We did not select models of testing.

Attached is page 24 of the Buros report you cited. This page documents the selection of the four models in each of the categories that are criterion measures of good assessment practice. Some districts were rated "Exemplary" in many of the 6 criteria. However, no district, even though some were rated "Exemplary" overall,

had what was determined to be model practices in all six criteria. (Buros, 2001, p. 22)

The listing of the "District(s) that are illustrative of the model" provided districts with three possible options. One, the district could select any one of the models and adopt that assessment system across all six criteria. Two, the district could select models from each of the criteria assembling model practices across the six criteria. Three, the district could use either option one or two and implement the "adapt" language of the Act to fit the model or models into the work they were doing. Now, six years later, option three has become the preferred practice.

We identified models of assessment based on the report of the Buros Institute where the reasons are outlined on page 22 of the report you cited in your letter. We implemented the Buros Institute recommendations for best practice.

Third, the legislative history of the amendments to the Quality Education Act made by LB 812 (Laws, 2000) is generally in agreement with the Department's interpretation and implementation of the Act. Even if, for the sake of argument, resort to the legislative were appropriate, the history contains many statements supporting the use of model assessments rather than tests. From its introduction in 1999 through its passage in 2000, Senator Ardyce Bolke, the Introducer of LB 812, repeatedly described the purpose of the bill as amending the Act to require locally developed assessments consisting of multiple measures of student competency rather than a single statewide test in reading, in math, in science and in social studies. Senator Bolke explained that locally developed assessments would involve the use of criterion-referenced tests in addition to norm-referenced tests chosen by the districts and the statewide writing assessment; rather than statewide norm-referenced tests only, which is the single test approach. [See Senator Bolke's testimony page 2 of the Committee Hearing; and on pages 11418 to 11420, page 11446, pages 11463 to 11464, and pages 12426 to 12427 of the Floor debate.]

For the above reasons, we think it fair that **Finding #2** be re-worded as follows:

Proposed Finding #2

The Department and the Audit Team differ as to the requirements of Section 79-760(1). The Audit Team maintains that the Department's implementation of Section 79-760(1) is inconsistent with its interpretation of the legislative history of the statutory requirement that the Department have its consultants select four model assessments in each subject area. The Department maintains that its implementation of Section 79-760(1) is consistent with its interpretation of this requirement.

II.
Finding #5

"The Department's failure to identify model tests as required by the Act has reduced the potential comparability of test results among school districts."

The Department strongly disagrees with **Finding #5**. The Act does not require "tests" or comparable "test results." The Act required that assessment experts identify **model assessments**. This was done. The Department's assessment and reporting system reports on the performance of public schools based upon the results of the assessments, as required by Section 79-760(2)(b). As discussed below, the Department's system provides many meaningful bases for comparing public schools as required by Section 79-760(2)(d).

For the above reasons, we think it fair that **Finding #5** be reworded as follows:

Proposed Finding #5

The Department and the Audit Team differ as to the requirements of Section 79-760(1). The Audit Team maintains that the Department's implementation of Section 79-760(1) reduces the potential comparability of test results among the school districts. The Department maintains that it reports on the performance of public schools as required by Section 79-760(2)(b) and provides many meaningful bases for comparing public schools as required by Section 79-760(2)(d).

III.
Finding #6

"The Department does not make available a description of methodologies for making legitimate comparisons of student performance from data reported."

The Department strongly disagrees with **Finding #6**. The Quality Education Act does not require that the Department provide any such description of methodologies. However, we have provided guidance for making comparisons, including the enclosed brochure titled, "Know Your Schools 30 Easy Steps."

I also note that the Quality Education Act does not require comparisons of student performance. Rather, the Act requires that a statewide system be implemented "for the assessment of student learning and for the reporting of the performance of school districts . . ." (79-760(1)). The assessment and reporting system is to "[D]etermine how well public schools are performing in terms of achievement of public school students related to the model state academic content standards." The system is not required to compare student achievement among schools.

Comparison issues were also outlined in the letter to Ms. McClelland on November 6, 2006, and in my letter to you and Sen. Beutler dated November 21, 2006, and in our meeting on November 28, 2006. These are repeated as follows:

Districts can be compared on any number of measures. They can be compared on single measures or groups of measures. What cannot be done, with validity, is comparison by ranking.

Districts can be compared on single or group of measures including ratings on standards, quality retains on assessments, proficiency ratings, standardized test scores, ACT scores, writing scores, etc. Districts can also be compared on factors such as demographics including such critical factors as numbers of students living in poverty, experiencing mobility, learning the English language, and learning with disabilities. In addition, districts can be compared on the changes or improvements that take place from year to year or on changes/improvements that take place over multiple years, i.e. trend data. And, districts can be compared to statewide averages.

In your letter to Pat (Roschewski), you inquired about using statewide averages. Comparing districts against statewide averages is appropriate because the "n" size, or number of individuals in the reporting pool, is sufficiently large to take into account individual school differences and the "n" size supports the use of a statistical methodology referred to as "normal curve equivalency" or "bell curve." The bell curve of statewide averages represents a natural occurring distribution of factors considered with differences spread across the population. Therefore, districts can determine what how they are doing in relationship to their peers.

Comparisons of one district to another are appropriate unless they compromise integrity and validity. The comparisons that are valid and that do not compromise the integrity of evidence-based best practices would include the following:

- *comparisons of like districts (deomographically)*
- *comparisons based on multiple indicators*
- *comparisons using indicators (not outcomes)*
- *comparing a district to itself to determine improvement from year to year or over time*
- *comparing buildings within the same district*

There is neither evidence nor any body of credible knowledge/theory that supports comparisons by rankings. In fact, there is considerable evidence and knowledge/theory to indicate the negative consequences of rankings.

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Until the "playing field" is level across districts, the comparison of one district to another is not a policy of equity. This is especially true of comparisons using rankings. As long as key demographics point to major differences across districts in terms of the challenges with which each district does their work and as long as resource equity does not match the challenges, rankings represent at best a meaningless comparison and at worst a false comparison. Neither equity of demographic challenge nor equity of resources exists in our state at this time. And, until such time that they do, policy leaders should stand firmly in opposition to any kind of ranking of school districts.

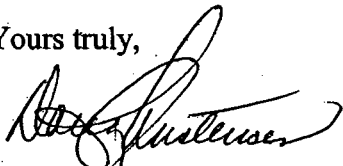
For the above reasons, we think it fair that **Finding #6** be reworded as follows:

Proposed Finding #6

While the Department has made available some descriptions of methodologies for making legitimate comparisons of student performance from the data reported, given the large amount of data, the Audit Team encourages the Department to provide as much assistance as possible to help the public understand the data available.

Please let me know if you have any questions regarding the Department's response.

Yours truly,



Douglas D. Christensen, Ph.D.
Commissioner of Education

Attachments

cc: Fred Meyer, President
Nebraska State Board of Education

LEGISLATIVE AUDITOR'S SUMMARY OF AGENCY RESPONSE

On 11 December 2006, the State Department of Education (Department) submitted a response to a draft of the Performance Audit Section's report prepared in conjunction with this audit. Neb. Rev. Stat. § 50-1210 requires the Legislative Auditor to "prepare a brief written summary of the response, including a description of any significant disagreements the agency has with the section's report or recommendations." The Legislative Auditor's summary of the response follows.

Of the seven findings included in the draft report, the Department posed strong disagreement with three, namely Findings 2, 5, and 6. These protestations mirrored those made during the 28 November 2006 exit conference.

Findings 2 & 5

These two findings reflect our conclusion that the Department has not met a statutory requirement to develop "four model assessments" for each of several academic subjects. The Commissioner of Education (Commissioner), who responded to the draft audit report, argues that (1) we have mischaracterized the statutory requirement by using the term "test" instead of "assessment" in the language of the finding; and (2) that the Department is complying with the requirement to develop the model assessments.

We agree to change the language in the draft report to address the Commissioner's first concern and have replaced the term "test" with "assessment" in the findings and elsewhere throughout the report. However, we continue to argue that the Legislature intended for "assessment" to mean "test" and to disagree that the Department's actions to develop "model practices" meet the statutory requirement for "model assessments." (This issue is discussed thoroughly in Section II of the draft report.) In response to the Commissioner's comments, we also added discussion to the report to explain more clearly the profound difference of opinion between the Section and the Department on this point.

Finding 6

Finding 6 notes that the Department has not made available a description of methodologies for making legitimate comparisons of student performance from the data reported. The Commissioner responds that: (1) statute does not require the Department to produce such a description; (2) the Department has published a brochure titled, "Know Your Schools in 30 Easy Steps"; and (3) comparing student achievement among schools is inappropriate.

In response to the Commissioner's first point, we agree that this is not a statutory requirement, and we did not characterize it as such in the report. Instead, we suggest that the Department can and should make it easier for policymakers and the public to understand what can and cannot legitimately be compared. Doing so would further the Department's existing efforts to provide "information for the public and policymakers on the performance of public schools" (Neb. Rev. Stat. sec. 79-760 (2) (c)) and to provide for "the comparison of Nebraska public schools to their peers and to school systems of other states and other countries" (Neb. Rev. Stat. sec. 79-760 (2) (d)).

In response to the Commissioner's second point, we acknowledge the Department's creation of the "Know Your Schools in 30 Easy Steps" brochure and the role it plays in helping citizens navigate the reported data. We believe, however, that a more thorough and involved publication, showing all comparisons that could be made from the reported data, is needed.

Finally, in response to the Commissioner's statement that some types of comparisons are inappropriate, we believe that this is exactly the kind of information that needs to be spelled out in an easily understandable guide. Doing so may not entirely prevent inappropriate comparisons, but it would assist those who are trying to make accurate and appropriate comparisons.

APPENDIX A: Audit Methodology

This audit was conducted in accordance with generally accepted government auditing standards for performance audits. The methodologies we used to answer each of the scope statement questions are described briefly at the beginning of each section. This appendix provides additional details.

Section II: The Board and Department's Compliance with the Quality Education Accountability Act

For our assessment of the State Board of Education (Board) and Department of Education's (Department) compliance with the Quality Education Accountability Act (Act), we reviewed the statutory provisions of the Act itself, relevant administrative regulations, and the complete legislative history of LB 812 (2000), the bill that created the basic provisions of the Act. We also interviewed the Commissioner of Education, the Department's Legal Counsel, and other Department staff.

School District Analysis

Map 2.1 was created from a 1 November 2006 listing of the districts that report local standards.

Department's Refusal to Provide Requested Documents

During our research on the Board and Department's compliance with the Act, the Department declined to provide us with legal opinions that we believe were relevant to the audit and should have been made available to us pursuant to § 50-1213(1) of the Legislative Performance Audit Act. In a subsequent request for the withheld materials, the Legislative Performance Audit Committee (Committee) also asked the Department to provide us with "copies of any formal or informal legal opinions and related documents, whether generated internally or obtained through outside counsel, pertaining to the audit topic." The Department acknowledged additional relevant internal legal documents but declined to provide them to the auditors. The Department's continued refusal to surrender the requested materials resulted in the Committee requesting, on October 31, 2006, that the Attorney General issue a formal opinion as to whether a state agency can legitimately assert attorney-client privilege to deny auditors access to information relating to an audited program.

At the time the draft report was written, the Attorney General had yet to rule on the Committee's request, and access to the requested materials remained blocked. However, the auditors believed that,

even in the absence of those documents, the evidence obtained relating to the Department's compliance with the Act was sufficient to prepare the report within generally accepted government auditing standards. Given the unpredictability in determining the length of time that the Committee's request could remain pending, we chose to proceed with the report.

Section III: Nebraska and the No Child Left Behind Act

To assess Nebraska's compliance with the No Child Left Behind Act (NCLB), we reviewed correspondence between the Department and the United States Department of Education (USDE), the federal agency responsible for overseeing state compliance with the NCLB, regarding various stages of the approval process. In addition, we examined USDE materials on NCLB, and interviewed Department staff regarding various compliance issues. For information on the current status of Nebraska's compliance with the NCLB, we spoke with a USDE representative.

APPENDIX B: Criteria and Model Practices

As noted in Section II of the report, this appendix provides additional details regarding the state Department of Education's (Department's) Six Quality Criteria and chosen model practices.

Six Quality Criteria

As required by the Quality Education Accountability Act,¹ the Department established criteria for rating assessments. The Department established Six Quality Criteria that assessments must demonstrate:

- 1) "The assessments reflect state or local standards.
- 2) Students have an opportunity to learn the content.
- 3) The assessments are free from bias or offensive language or situations.
- 4) The level is appropriate for students.
- 5) There is consistency in scoring.
- 6) Mastery levels are appropriate."²

Choosing Model Assessments

As noted in Section II, the Department (with the use of a consultant) considered public school districts' assessments for reading in 2000-2001, mathematics in 2001-2002, and revised reading to include speaking and listening in 2002-2003.³ Instead of developing model tests, the Department and the consultant "collaboratively decided" to develop four "model practices" for each of the six criteria.⁴ The term "model practice" is not mentioned in the Act. However, we reviewed the model practices for reading and would characterize them as guidelines for developing tests rather than tests.⁵ This appears consistent with the Department's view of the model practices, which it encourages districts to incorporate into their local tests.

The following pages are photocopies from the consultant's September 2001 report on reading assessments.⁶ We provide a list of school districts that were designated to be illustrative of one of the Six Quality Criteria. Additionally, we include the four model assessment practices for criterion #1.

Notes

¹ Neb. Rev. Stat. § 79-760(1).

² *STARS Update #17*, March 2005, pg. 45.

³ Impara, Buckendahl, and Plake, *Final Report - Evaluating Nebraska's District Assessment Portfolios and Recommending Model Assessments for Reading: 2000 - 2001*, Buros Institute for Assessment Consultation and Outreach - A Division of the Buros Center for Testing, University of Nebraska - Lincoln, November 2001. Buckendahl, Impara, and Plake, *Final Report - Evaluating Nebraska's District Assessment*

Portfolios and Recommending Model Assessments for Mathematics: 2001 – 2002, Buros Institute for Assessment Consultation and Outreach - A Division of the Oscar and Luella Buros Center for Testing, University of Nebraska – Lincoln, October 2002. Buckendahl, Impara, Plake, Ferdous, and Haack, *Final Report - Evaluating Nebraska's District Assessment Portfolios and Recommending Model Assessments for Reading, Speaking, & Listening: 2002 – 2003*, Buros Institute for Assessment Consultation and Outreach - A Division of the Oscar and Luella Buros Center for Testing University of Nebraska – Lincoln, November 2003.

⁴ Buckendahl, Impara, Plake, Ferdous, & Haack, *Final Report Evaluating Nebraska's District Assessment Portfolios and Recommending Assessments for Reading, Speaking, & Listening: 2002-2003*, November 2003, pg. 3.

⁵ Impara, Buckendahl, and Plake, *Report on Model Assessments for Reading 2000-2001*, September 2001, pp. 4-29.

⁶ Impara, Buckendahl, and Plake, *Report on Model Assessments for Reading 2000-2001*, September 2001.

Districts that were identified as illustrative of the model described in the next section.

Criterion	District(s) that are illustrative of the model	Label
1	Bellevue	1A
1	Beatrice & Omaha	1B
1	Hampton	1C
1	Waterloo	1D
2	Elkhorn	2A
2	Crawford	2B
2	Ralston	2C
2	Hanover & Nemaha Valley	2D
3	Valley, Blair, Bennington, Conestoga, Johnson-Brock	3A
3	Lincoln	3B
3	Winnebago	3C
3	David City	3D
4	Bancroft-Rosalie, Mead, Scribner-Snyder	4A
4	Crete, Ashland-Greenwood	4B
4	Hastings	4C
4	McCool Junction	4D
5	Niobrara	5A
5	Millard	5B
5	Cheney	5C
5	Raymond Central, Yutan	5D
6	Ralston	6A
6	Panhandle consortium (ESU 13)	6B
6	Platteville, North Bend Central	6C
6	Medicine Valley	6D

Description of the models

On the following pages are concise descriptions of the model procedures. For more information about the details and results of the model process, the district named may be contacted or the ESU in which that district is located may be able to provide information about that model procedure.

Synopsis of Model Assessment Procedure for

Criterion 1

Model 1A

Criterion 1: Alignment with standards. Requires both alignment and sufficiency (that the assessment provides enough information to infer that the standard is met).

Synopsis of process for alignment:

This district used two methods to establish alignment of assessments with state standards. The two methods included a panel of district teachers and a panel of outside consultants that reviewed the assessments for alignment and confirmed the district's determination.

Synopsis of process for determining sufficiency:

Coverage was reviewed and determined to be sufficient by teaching staff trained for this purpose, and by outside experts.

Details of alignment process and sufficiency determination:

Alignment

This school district used panels of educators to a) write the standards and assessments, b) ensure that appropriate types of assessments were used, and c) that the content of the assessments matched state standards. Detailed information on the qualifications of the panel members and the results of the process was provided.

Subsequently, all teachers in grades 4, 8, and 11 reviewed the assessments during development for a match to the standards.

Two outside experts/consultants were engaged to review the content match, standards coverage, and the level of difficulty of the assessments. Reports from each consultant confirmed the alignment that was done by the district's teachers.

The district used special forms that were designed to guide test development and document the alignment of assessments and standards.

Sufficiency

The district documented the number and types of test items used in the district assessment. The outside experts also examined the assessment materials for alignment and confirmed that the assessments were sufficient to assess the standards.

Criterion 1

Model 1B

Criterion 1: Alignment with standards. Requires both alignment and sufficiency (that the assessment provides enough information to infer that the standard is met).

Synopsis of process for alignment:

Local standards were developed and were approved by the state as meeting or exceeding state standards. Local criterion-referenced assessments were developed for the local standards. Across several cycles of review and evaluation by teachers, the assessments were revised to assure alignment with the standards.

Synopsis of process for determining sufficiency:

Each assessment item and/or task was matched to the local standard it assessed, resulting in a table of the number of items/tasks for each standard. The number of score points for each standard (either single items for multiple choice, or rubric for constructed response) was determined to be adequate.

Details of alignment process and sufficiency determination:

Alignment

When a district has designed its own standards (approved as meeting or exceeding state standards), concerns about the alignment of the assessments with the standards remains a concern. Developing local standards almost certainly assures that the district's *curriculum* is aligned to its standards. This district used the same committee that developed the local standards to develop the assessments, helping to assure that the *assessments* would also be aligned to the standards. The committee was trained in assessment development with attention to alignment issues. At various times during assessment development, the committee sought assistance from outside assessment experts.

Once completed, the assessments were presented to all staff in the district for feedback and suggested revisions. Particular attention was paid to comments from teachers of grade levels one year below and one year above the assessed grades. Based on the teacher reviews and feedback, the committee revised the test items/tasks and the scoring guides/rubrics.

After the assessments were piloted and scored, teachers were again asked to comment on the alignment of the assessments to the local standards. The assessment committee reconvened to review and revise the items/tasks and the scoring rubrics in light of the pilot data and the teacher feedback.

Sufficiency

Each test item/task was mapped to the standard it assessed. A table was developed to show the total number of points for each standard. (The table also shows the number of points the district has decided are necessary for a student to have mastered the standard.) The number of points for each standard – one point for each multiple choice item and the number of rubric points for each short answer, extended response, or essay task – was then compared the “five point minimum” criterion.

Synopsis of Model Assessment Procedure for

Criterion 1

Model 1C

Criterion 1: Alignment with standards. Requires both alignment and sufficiency (that the assessment provides enough information to infer that the standard is met).

Synopsis of process for alignment:

A representative panel of qualified teachers from within the district judged the assessments to be matched to the standards and adequate to cover the standards. Meetings with teachers from other districts, organized through their ESU, gave district teachers a chance to share suggestions for assessments or parts of assessments and develop consensus on their understanding of the standards themselves.

Synopsis of process for determining sufficiency:

Items and tasks from the set of assessments were coded according to the appropriate standard, and a count was made. The criterion of at least 5 items per standard was used for objectively scored items. The criterion of at least two tasks per standard was used for subjectively scored assessments.

Details of alignment process and sufficiency determination:

Alignment

After developing the assessments, a representative panel of qualified teachers from within the district judged the assessments to be matched to the standards and adequate to cover the standards. The panel members all received assessment training prior to beginning the development process. A two-step process was used. First, grade level teachers wrote or selected assessments, using match to standards and coverage as one of the criteria. Next, teachers from other grade levels (who were also on the panel) reviewed these assessments for match to standards and adequacy of coverage, thus assuring that the reviews were conducted by teachers other than those who wrote or selected the assessments. A checklist was used for the review and was included in the portfolio.

Meetings with teachers from other districts, organized through their ESU, gave district teachers a chance to share suggestions for assessments or parts of assessments and develop consensus on their understanding of the standards themselves. While informal networking is not sufficient in itself to satisfy the criterion of alignment, the district found it helpful as an addition to their own formal development and review process.

Sufficiency

Items and tasks from the set of assessments were coded according to the appropriate standard and a count was made. The criterion of at least 5 items per standard was used for objectively scored items. The criterion of at least two tasks per standard was used for subjectively scored assessments. For subjectively scored assessments, scoring guidelines or rubrics were checked to insure that descriptions were clear.

Synopsis of Model Assessment Procedure for

Criterion 1

Model 1D

Criterion 1: Alignment with standards. Requires both alignment and sufficiency (that the assessment provides enough information to infer that the standard is met).

Synopsis of process for alignment:

This school district's alignment for grade 4 used a diverse teacher panel with an average of 10 years experience. The panel was involved in the development of the curriculum, the alignment of curriculum to standards, and the alignment of the assessments to standards. The principal and superintendent reviewed all alignment work.

Synopsis of process for determining sufficiency:

A diverse teacher panel determined: (a) which items measured which standards and (b) how many items per standard were needed to show adequacy of content/standards coverage.

Details of alignment process and sufficiency determination:

Alignment

For the Grade 4 standards a panel of local teachers took several steps to determine alignment of their Teacher Developed Tasks (e.g., Unit tests from SRA, ESU Reading Assessment System). These tasks included a) reviewing of 'best practices' research literature, existing curriculum, and current resources to identify four of the most important concepts taught in each subarea of Reading/Language Arts, (b) charting the concepts within subareas to determine the content progression over grades K-12, and (c) deciding which assessments measured which standards and filling in gaps with additional locally developed assessments. The panel worked in small and large group settings to reach consensus in each of the above 3 steps. All of the alignment work of the teacher panel was reviewed by the principal and superintendent.

Alignment of the District's CRT (Fluency Assessment) was provided in a report based upon a study conducted by the district. In the study, a panel of teachers from grades 4, 8, and high school provided ratings of the items in terms of high, moderate, and low levels of alignment of content to the standards. The teachers providing the ratings received training from outside consultants.

Sufficiency

To illustrate sufficiency of content coverage a chart was constructed that contained three column headings (Standards, Assessment Type, and Number of Items). The rows of the chart were the separate standards. The panel worked with each of the assessment types (e.g., NRT, CRT, unit tests, and teacher-created assessments) and listed the number of items from each assessment that measured a given standard.

APPENDIX C: Non-Approved Status Letter

As noted in Section III of the report, this appendix provides additional details regarding the United States Department of Education's (USDE's) notification of non-approval to the State Department of Education (Department).

The following is a photocopy of a letter dated 30 June 2006 from USDE Assistant Secretary Henry Johnson. In his letter, Mr. Johnson notifies the Department of USDE's decision to designate Nebraska's standards and assessment system *Non-Approved*. Mr. Johnson also attached a list of additional evidence needed to change Nebraska's status to *Approved*.



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

THE ASSISTANT SECRETARY

JUN 30 2006

The Honorable Douglas D. Christensen
Commissioner of Education
Nebraska Department of Education
301 Centennial Mall, South, 6th Floor
P.O. Box 94987
Lincoln, Nebraska 68509-4987

Dear Commissioner Christensen:

Thank you for your participation in the U.S. Department of Education's (Department) standards and assessment peer review process under Title I of the *Elementary and Secondary Education Act of 1965* (ESEA), as amended by the *No Child Left Behind Act of 2001* (NCLB). I appreciate the efforts required to prepare for the peer review. As you know, with the implementation of NCLB's accountability provisions, each school, district, and State is held accountable for making adequate yearly progress (AYP) towards having all students proficient by 2013-14. An assessment system that produces valid and reliable results is fundamental to a State's accountability system.

Also, thank you for the opportunity to come to Nebraska on April 20-21, 2006 to witness first hand the work of teachers and districts to develop local assessments and continuously use assessment results to improve student learning. Further, our follow-up meeting on April 25, 2006 in Washington DC allowed the Department to understand the steps Nebraska has taken, and plans to take, to improve the technical quality of the Nebraska assessment system. I am writing to follow up on these meetings and on the peer reviews of Nebraska's standards and assessment system, which occurred on September 23-25, 2005 and June 9, 2006. The results of this peer review process indicate that additional evidence is necessary for Nebraska to meet the statutory and regulatory requirements of Section 1111(b)(1) and (3) of the ESEA.

At the outset, it is important to emphasize that the Department fully supports local assessment models as allowed in both the statute and regulations. However, the statute and regulations also require that we hold these local assessment systems to the same rigorous standards as statewide assessments.

On April 24, 2006, the Department laid out new approval categories in a letter to the Chief State School Officers. These categories better reflect where States collectively are in the process of meeting the statutory standards and assessment requirements and where each State individually stands. Based on these new categories, the two peer reviews, and our understanding of Nebraska's system, the current status of the Nebraska standards and assessment system is *Non-Approved*. This indicates that Nebraska's standards and

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assessment system administered in the 2005–06 school year has several fundamental components that are missing or that do not meet the statutory and regulatory requirements, and that the evidence provided indicates that the State will not be able to administer a fully approved standards and assessment system in the 2006–07 school year.

Nebraska's system has a number of fundamental components that warrant the designation of *Non-Approved*. Specifically, the Department cannot approve Nebraska's standards and assessment system due to outstanding concerns regarding whether all local assessment systems meet the requirements of academic content standards in reading and mathematics in grades 3-8 and high school, academic achievement standards including at least three performance levels, technical quality including validity and reliability, alignment of the assessments to academic content standards, inclusion of all students in the assessment system, and reports of student achievement. Please refer to the enclosure for a detailed list of the evidence Nebraska must submit to meet the requirements for an approved standards and assessment system.

Because of the scope and significance of the areas in which Nebraska has not met Title I statutory and regulatory requirements and because the State will not be able to administer an approved locally developed assessment system in the 2006–07 school year, Nebraska must enter into a *Compliance Agreement* with the Department, as authorized by Section 457 of the General Education Provisions Act. The purpose of a compliance agreement is to enable a grantee to remain eligible to receive funding while coming into full compliance with applicable requirements as soon as feasible but within three years. The Department and the State will need to agree on the terms and conditions of the compliance agreement including a detailed plan and specific timeline for how Nebraska will accomplish the steps necessary to bring the State into compliance. In addition, before entering into a compliance agreement, the Department must hold a hearing to explore why full compliance with the Title I standards and assessment requirements is not feasible until a future date. The State, affected students and their parents, and other interested parties may participate. The Department must publish findings of noncompliance and the substance of the compliance agreement in the *Federal Register*. In addition, there will be specific conditions placed on Nebraska's fiscal year 2006 Title I, Part A grant award.


Because Nebraska has not met the requirements of NCLB for the 2005–06 school year and will not be able to come into compliance during the 2006–07 school year, the Department intends to withhold 25 percent of the State's fiscal year 2006 Title I, Part A administrative funds, totaling \$126,741, pursuant to Section 1111(g)(2) of the ESEA. Nebraska has the opportunity, within 20 business days of receipt of this letter, to show cause in writing why we should not withhold these funds. If Nebraska cannot show cause, the Department will withhold 25 percent of Nebraska's fiscal year 2006 Title I, Part A administrative funds, which will then revert to the local educational agencies in Nebraska.

As you know, we have also been in conversations with you about a possible withholding of funds because of late identification of schools for improvement. It is clear from the

information Nebraska has provided that the local nature of your assessment and accountability system is a factor in how and when these decisions are made. As a gesture of good faith in moving forward to help you implement a local model for assessment, I want to let you know that the Department will not withhold money from Nebraska for the timing of last year's AYP decisions. As part of these discussions, the Department received your request to revise the timeline for AYP determinations starting with the 2006-07 school year. Nebraska proposed to make available preliminary AYP decisions, including whether a school or district has been identified for improvement, to districts on August 1. During the 10 days after August 1, districts review all data submitted and their AYP determination. Immediately following that review, districts will notify parent of students in Title I schools identified for improvement, corrective action, and restructuring of their options for public school choice and supplemental educational services. Otherwise, there's nothing that says when Nebraska expects districts to notify parents. We believe this timeline will help ensure parents are notified about these in a timely fashion given the local nature of your educational system.

I know you are anxious to receive full approval of your standards and assessment system and we are committed to helping you get there. Toward that end, let me reiterate my earlier offer of technical assistance and my offer of meeting with you in person. We remain available to assist you however necessary to ensure you administer a fully approved system. We will contact you in the near future to begin discussing the terms of the compliance agreement. If you have any questions or would like to discuss this further, please do not hesitate to call me at 202-260-2777.

Sincerely,



Henry L. Johnson

Enclosure

cc: Governor Dave Heineman
Marilyn Peterson
Pat Roschewski

SUMMARY OF ADDITIONAL EVIDENCE THAT NEBRASKA MUST SUBMIT TO MEET ESEA REQUIREMENTS FOR THE NEBRASKA ASSESSMENT SYSTEM

1.0 ACADEMIC CONTENT STANDARDS

1. Evidence indicating which LEAs have adopted academic content standards and whether an LEA adopted local standards, state standards or no standards in reading/language arts and mathematics for grades 3-8 and high school and science at least one grade in each of three grade spans (3-5, 6-8, and high school).
2. A description of the process used to determine whether LEAs have met the academic content standards requirements. Please clarify whether the review of LEA self reports on the web-based tool will be the primary method for evaluating compliance with the academic content standards requirements and how that fits within the Procedures for Local Standards Review.
3. A status report on the number of LEAs that meet the academic content standards requirement based on the Local Standards Review.

2.0 ACADEMIC ACHIEVEMENT STANDARDS

1. Evidence that Nebraska has peer reviewed each LEA's academic achievement standards, including the performance levels and performance descriptors, and approved or not approved them based on the implementation of the components contained in the "Assessing the Assessments – Companion Guide for District and School Personnel" developed by Nebraska and peer reviewed by ED on June 9, 2006.
2. A plan for responding to LEAs that have low ratings in order to increase the ability to accurately report performance levels.
3. The actual date that the memorandum regarding alternate achievement standards and alternate assessments was issued to confirm that both have been approved.

3.0 FULL ASSESSMENT SYSTEM

1. Evidence indicating which LEAs have implemented assessments, including alternate assessments, in reading/language arts and mathematics at grades 3-8 and high school that have been approved by Nebraska.
2. Evidence that each LEA's assessment system has been evaluated and approved or not approved based on the implementation of all of the components contained in the "Assessing the Assessments – Companion Guide for District and School Personnel."

4.0 TECHNICAL QUALITY

1. Evidence indicating which LEAs have assessments, including alternate assessments, that meet NCLB technical quality requirements for grades 3-8 and high school that have been approved by Nebraska based on the implementation of all of the components contained in the "Assessing the Assessments – Companion Guide for District and School Personnel" developed by Nebraska and peer reviewed by ED on June 9, 2006.
2. Evidence that Nebraska has peer reviewed the technical quality of each LEA's assessment system and approved or not approved the technical quality based on the implementation of the components contained in the "Assessing the Assessments – Companion Guide for District and School Personnel."

5.0 ALIGNMENT

1. Evidence indicating which LEAs have assessments, including alternate assessments, that meet NCLB alignment requirements for grades 3-8 and high school that have been approved by Nebraska.
2. Evidence that Nebraska has peer reviewed the alignment of each LEA's assessment system and approved or not approved the alignment based on the implementation of the components contained in the "Assessing the Assessments – Companion Guide for District and School Personnel."

6.0 INCLUSION

1. Evidence on the enrollment and separate reading and mathematics assessment participation data by subgroup for the most recent year available for each grade 3-8 and high school. This must include the number of students who took the regular assessment, the regular assessment with accommodations and the alternate assessment.
2. Evidence documenting that the English Language Development Assessment for ELL students meets the NCLB standards and assessment requirements as an on-grade level assessment aligned to challenging standards.
3. Evidence regarding Nebraska's policy that all ELL students in each LEA must take the mathematics tests in grades 3-8 and high school and information regarding how Nebraska documents that ELL students are taking the mathematics tests.
4. Evidence that Nebraska has adopted and is implementing a policy to discontinue the practice of counting students assessed on assessments administered out-of-level as participating in assessments for NCLB accountability purposes. This information must be communicated to the LEAs so that they are aware of this policy. Nebraska must amend its accountability workbook to reflect this policy. Any students who take an out-of-level assessment despite this policy must be counted as non-participants on tests administered for NCLB accountability.

7.0 REPORTING

1. Samples of individual student reports for the regular and alternate assessments for review to show student performance levels that are content competency specific and reported using at least three achievement levels, one of which must be at the basic level, one at the proficient level and one at the advanced level.
2. Evidence that all major subgroups are being assessed, that the assessment data provided by LEAs is accurate and that the data are being disaggregated as required by NCLB.

Performance Audit Committee Reports: 1994 to 2006

Performance Audit Reports

The Lincoln Regional Center's Sex Offender Services Program (August 2006)
The Public Employees Retirement Board and the Nebraska Public Employees Retirement Systems: An Examination of Compliance, PIONEER, and Management (August 2006)
The Nebraska Medicaid Program's Collection of Improper Payments (May 2005)
The Lincoln Regional Center's Billing Process (December 2004)
Nebraska Board of Parole (September 2003)
Nebraska Department of Environmental Quality: Administering the Livestock Waste Management Act (May 2003)
HHSS Personal-Services Contracts (January 2003)
Nebraska Habitat Fund (January 2002)
State Board of Agriculture (State Fair Board) (December 2001)
Nebraska Environmental Trust Board (October 2001)
Nebraska Department of Roads: Use of Consultants for Preconstruction Engineering (June 2001)
Department of Correctional Services, Inmate Welfare Fund (November 2000)
Bureau of Animal Industry: An Evaluation of the State Veterinarian's Office (March 2000)
Nebraska Ethanol Board (December 1999)
State Foster Care Review Board: Compliance with Federal Case-Review Requirements (January 1999)
Programs Designed to Increase The Number of Providers In Medically Underserved Areas of Nebraska (July 1998)
Nebraska Department of Agriculture (June 1997)
Board of Educational Lands and Funds (February 1997)
Public Service Commission: History of Structure, Workload and Budget (April 1996)
Public Employees Retirement Board and Nebraska Public Employees Retirement Systems: Review of Compliance-Control Procedures (March 1996)
Leaking Underground Storage Tank Program (December 1995)
School Weatherization Fund (September 1995)
The Training Academy of the Nebraska State Patrol and the Nebraska Law Enforcement Training Center (September 1995)
Nebraska Equal Opportunity Commission (January 1995)
The Interstate Agricultural Grain Marketing Commission (February 1994)

Preaudit Inquiries

Implementation of the Nebraska Information System (NIS) (November 2005)
The Lincoln Regional Center Psychiatrists' Work Commitments (September 2005)
The Nebraska State Patrol's Record of its Investigation of State Treasurer Lorelee Byrd (November 2004)
HHSS Public Assistance Subprograms' Collection of Overpayments (August 2004)
NDEQ Recycling Grant Programs (October 2003)
HHSS Reimbursement and Overpayment Collection (August 2003)
Grain Warehouse Licensing in Nebraska (May 2003)
HHSS Personal-Services Contracts (July 2002)
Livestock Waste Management Act (May 2002)
Nebraska Telecommunications Universal Service Fund (April 2001)
State Board of Health (November 2001)
State Board of Agriculture (State Fair Board) (August 2001)
Game and Parks Commission Cash Funds (August 1999)
Education Technology (January 1998)
Nebraska Research and Development Authority (April 1997)
Nebraska's Department of Agriculture (June 1996)
Nebraska's Department of Correctional Services Cornhusker State Industries Program (April 1996)
DAS Duplication of NU Financial Record-Keeping (February 1995)

