



Committee Report, Vol. 15 , No. 2

**The State Foster Care Review Board:
Authority, Conflicts of Interest, and
Management Practices**

Performance Audit Section

Legislative Audit and Research Office

December 2008

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Prepared by
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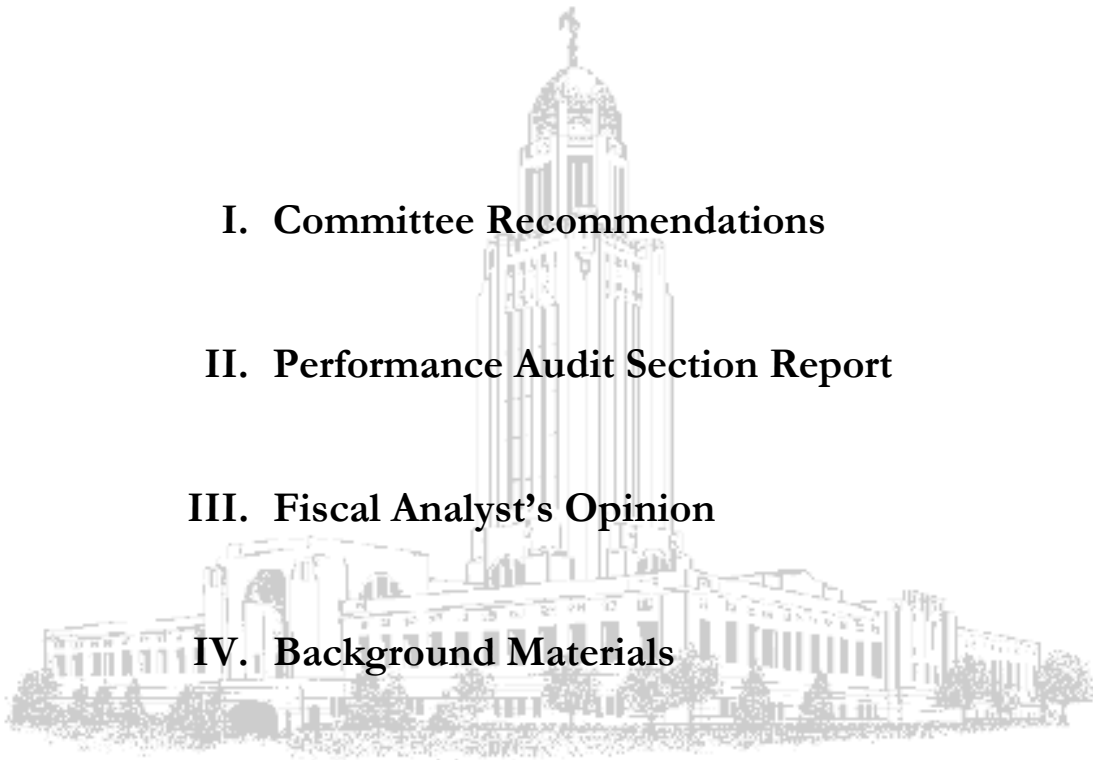


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I. Committee Recommendations

Committee Recommendations

The Committee encourages the state board to work with the Executive Director to resolve the issues identified in this report so that the agency can accomplish its statutory mission of protecting children. The Committee believes that the audit process was fair and makes the following recommendations based on the audit findings.

Section II: FCRB's Authority and Responsibilities

Finding #1: The board's authority to delegate to non-state-board members its statutory ability to conduct facility visits is unclear (pg. 6).

Recommendation: The state board should consider requesting clarification from the Attorney General's office or seek to have the Act clarified regarding who is allowed to visit facilities.

Finding #2: The manual given to new board members may not be the most effective means of education as most members did not recall receiving instruction regarding their responsibilities as FCRB board members (pg. 7).

Finding #3: No board members reported receiving training when appointed by either FCRB staff or the Governor's office on broader laws and policies that apply to most state agencies, including the FCRB, such as the state's open meetings and accountability and disclosure laws (pg. 7).

Discussion: All newly appointed non-code board members, not just FCRB state board members, should receive instruction on basic state government procedures and duties of public officials such as those contained in the open meetings and accountability and disclosure laws.

Recommendation: The state board should consider increasing its educational activities for new board members on agency operations, basic state government procedures, and duties of public officials—such as those contained in the open meetings and accountability and disclosure laws. Some of this instruction should come from neutral parties—such as the Attorney General's Office and the Accountability and Disclosure Commission and not entirely from FCRB staff as this places both staff and board members in a difficult position. The state board could also consider creating a New Member Orientation

Committee to determine a list of topics that new members need to know before participating in state board meetings.

Recommendation: The Performance Audit Committee (Committee) will consult with the Governor's office and an independent agency director's group that meets periodically regarding the need for all newly appointed members of boards and commissions to receive instruction on basic state government procedures and duties of public officials.

Finding #4: There is little agreement among state board members regarding how they are to oversee and evaluate agency operations; however, the board has recently set guidelines for the Executive Director (pg. 8).

Recommendation: The state board should develop means to oversee and evaluate agency operations.

Section III: Possible Conflicts of Interest

Finding #5: No one currently serving on the state board would have been barred from membership had statutory restrictions removed in 2005 remained in effect (pg. 10).

Recommendation: None.

Finding #6: Because the conflict of interest disclosure requirements apply to specific actions or decisions, they do not affect whether an individual can be a member in the organization. Therefore, even if a potential conflict exists for an FCRB state board member, he or she may still serve on the board (pg. 11).

Recommendation: None.

Finding #7: In the period reviewed, no votes were taken by the state board that presented a conflict of interest for any members under the Accountability and Disclosure Act (pg. 12).

Recommendation: The state board should consider implementing a formal, internal process in which each new board member discloses to the state board potential conflicts of interest including, but not

limited to, those in the Accountability and Disclosure Act. This would ensure that all members are aware of any potential conflicts that may arise.

Finding #8: State board members received inadequate training on the Accountability and Disclosure Act (pg. 14).

Recommendation: See the discussion and recommendations regarding finding #3.

Finding #9: There are no statutory requirements for public officials, including state board members, regarding the need to disclose or take other action regarding potential *appearances* of conflicts of interest (pg. 15).

Finding #10: A reasonable person might question whether an individual whose employer receives substantial funding from DHHS would be able to be critical of DHHS if necessary (pg. 16).

Finding #11: It may not be possible to eliminate all appearances of conflicts for board members who work in the child welfare field, but the board could take steps to offset those appearances (pg. 16).

Discussion: We reiterate that the current board members have not violated applicable conflict of interest law and this discussion does not imply any criticism of them. We raise this issue as one that the Committee may wish to consider as a refinement of the policy changes made in 2005.

Recommendation: The state board should consider including potential appearance issues in the internal disclosure process recommended in Finding #7. This would ensure that all members are also aware of any potential appearance issues that may arise.

Recommendation: The Committee will consult with staff from the Accountability and Disclosure Commission about whether it would be appropriate to add state board members to the list of public officials required to file financial interest statements.

Recommendation: The Committee believes that there should be some limit on the extent of board members' affiliation with DHHS. The Committee appointed during the 2009 legislative session should consider introducing legislation to require members' income from DHHS to be less than a certain percentage.

Finding #12: The Executive Director suggests that reinstating the employment restrictions removed by LB 761 (2005) would resolve her concerns about conflicts she believes exist with current board members; however, such a change would not disqualify any current members of the board from serving (pg. 16).

Recommendation: None.

Sections IV and V: Agency Management

Finding #13: The FCRB meets the recommended practice of having job descriptions for its staff members (pg. 20).

Finding #14: The majority FCRB staff reported that they were satisfied with the job training they received (pg. 21).

Finding #15: All FCRB staff said they understood there are disciplinary procedures in place that would apply if they violated agency policy (pg. 24).

Finding #16: The FCRB has a code of conduct for employees and staff understand what management expects of them (pg. 27).

Recommendation: None.

Finding #17: Almost half of the FCRB staff members interviewed expressed concerns that they do not have enough time to do everything required of them. Additionally, workload concerns were raised with the state board during the course of this audit and the board established a committee to study those concerns (pg. 21).

Recommendation: If it has not already done so, the FCRB workload committee should consider reviewing staff job descriptions and whether the existing level of staff can reasonably be expected to meet everything expected of them.

Finding #18: The majority of FCRB staff reported that they do not receive regular performance evaluations. In addition, the agency does not maintain a summary of previous evaluations as its internal policies require (pg. 22).

Recommendation: The state board should ensure that staff receive regular evaluations and that its policy that evaluation summaries be retained is followed or changed to reflect actual practice.

Finding #19: All staff understand the established chain of command and communication channels; however some staff believe that communication problems exist because they are given inadequate notice to attend previously scheduled meetings and they believe that the Executive Director would be angry with them if they spoke to a state board member (pg. 23).

Finding #20: Five FCRB staff members reported that the Executive Director has made disparaging remarks about current state board members to them (pg. 23).

Discussion: It is reasonable for staff to want consistent communication about management's expectations, conveyed in a timely manner. If staff are not given enough preparation time or expectations change without notice, they cannot be expected to work as efficiently as possible or produce satisfactory work products.

Regarding disparaging remarks made about state board members, we find these statements extremely concerning as the board has authority over both the Executive Director and the rest of the staff. Disparaging board members to staff could undermine the board's authority. Further, management literature supports the theory that managers need to model the behavior they expect from their employees.

Recommendation: The state board should encourage the Executive Director and supervisors to ensure that, whenever possible, proper notice is given to staff regarding meetings and changes in expectations. Additionally, the board should instruct the Executive Director not to make disparaging remarks about the board to the staff.

Finding #21: The majority of state board members said that they understood the communication protocol and felt that it had addressed concerns they had regarding agency communication (pg. 24).

Recommendation: None.

Finding #22: The majority of FCRB staff stated that employee turnover has affected their jobs (pg. 25).

Finding #23: The FCRB has a high staff turnover rate compared to other state agencies (pg. 25).

Discussion: Management standards state that excessive personnel turnover and staff fulfilling the responsibilities of more than one employee can be an indication of problems within the organization. Supervisors performing the work of those they supervise is especially problematic as supervisors carry out a quality control function in the agency. If they are performing the work of staff they would typically oversee, there is no one to check the quality of their work.

Recommendation: The state board, in consultation with the Executive Director, should evaluate the reasons for staff turnover, especially in key positions, and consider making changes in order to reverse this trend.

Finding #24: Almost half of the staff members interviewed believe that staff are treated unfairly by the Executive Director and are afraid of retaliation if they disagree with her (pg. 29).

Finding #25: Dissatisfaction with the Executive Director played a role in the recent resignations of two of the agency's five supervisors. Additionally, two other supervisors have taken their concerns regarding the Executive Director to the Executive Committee of the state board (pg. 29).

Discussion: The Gallup Organization has published the results of extensive research suggesting that positive reinforcement of employees' good behaviors yields greater rewards for the employer than does negative reinforcement. Organizations that do not use positive reinforcement have 10 to 20 percent lower productivity and employees are more likely to quit their jobs. In order to determine if positive reinforcement was being used at the FCRB, we asked staff if they felt they were treated fairly and if they were afraid of retaliation in the workplace.

We acknowledge that concepts like "perceptions of fairness" are subjective and that it is possible for an organization to have a few employees who perceive unfairness where it does not actually exist. Nevertheless, we believe that having 11 people (almost half of the agency's employees) report that they believe staff have been treated unfairly is cause for serious concern.

Recommendation: The state board should work with the Executive Director to resolve these issues. If the state board thinks it would be useful, it could hire a neutral third party to help in these efforts.

Finding #26: No staff reported law violations by the Executive Director or any other staff (pg. 30).

Finding #27: No staff have been asked by the Executive Director or any other current staff to release confidential information inappropriately (pg. 30).

Recommendation: None.

Finding #28: Executive branch employees are given little guidance on activities that could constitute violations of the federal Hatch Act.

Finding #29: Based upon the audit staff's interpretation of applicable laws, some actions of the Executive Director relating to a 2006 campaign fundraiser—including using agency staff to mail invitations to the fundraiser, posting an invitation in two of the agency's offices, and encouraging staff to invite foster families to attend the event—may be violations of law (pg. 33).

Finding #30: In addition to potentially violating the law, the actions of the Executive Director relating to a 2006 campaign fundraiser were inappropriate because employees could have felt pressure to participate and some, in fact, did feel that pressure (pg. 34).

Discussion: The Executive Director stated in her response to the draft report that she did not intend to campaign for a candidate nor use her position to influence an election.

Recommendation: The state board should instruct the Executive Director that no state personnel, time, or resources should be used for political activities. Additionally, the board should consider organizing a training session for all staff about appropriate use of state resources.

Recommendation: The Committee will consult with DAS regarding the need for executive branch management to receive instruction on the Hatch Act.

Finding #31: Reimbursing the owner of the car that is used for state purposes is appropriate even when another person drives (pg. 34).

Recommendation: None.

Finding #32: It is unclear whether the board intended for agency staff to transport the Executive Director to and from work (pg. 35).

Finding #33: It is inappropriate for the Executive Director to regularly request transportation from a staff member because the staff member may find it difficult to deny that request (pg. 35).

Discussion: While an occasional ride to work might be less problematic, the more regular carpool situation that is occurring is inappropriate because the employee who drives her to work may fear professional ramifications if she were to stop driving the Executive Director to work.

Recommendation: The state board should instruct the Executive Director to find alternate means of transportation to and from work.

Recommendation: As several of the audit findings pertain to legal questions, the Committee will consult with the Attorney General's Office to encourage participation by that office in the state board meetings until issues identified in this report are resolved.



II. Performance Audit Section Report

Performance Audit Section Report

The Foster Care Review Board: Authority, Conflicts of Interest, and Management Practices

December 2008

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INTRODUCTION

The State Foster Care Review Board (FCRB) was created in 1982 as an independent, non-code state agency. The FCRB state board consists of eleven members who are appointed by the Governor and approved by the Legislature. The state board hires the agency's Executive Director.

In September 2007, the Legislature's Office of the Public Counsel (Ombudsman) issued a report in response to allegations of illegal acts by the FCRB's Executive Director. The Ombudsman determined that no violations of law had occurred, but suggested that the FCRB follow-up with an independent investigation of the Executive Director's actions and management practices to determine if she had acted appropriately in accordance with regulations that govern the FCRB. This perceived need to "clear the air" was, in part, the reason a performance audit was requested.

The Legislative Performance Audit Committee directed the Legislative Performance Audit Section to conduct a performance audit of the FCRB and answer the following questions:

- 1) What are the FCRB's authority and responsibilities?
- 2) Do any board members have employment or other interests that create a conflict with their responsibilities as members of the FCRB?
- 3) Do current FCRB management practices reasonably follow generally accepted management standards and best practices?

Section I of this report provides an overview of the FCRB. Sections II through V answer the specific questions posed for this audit.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. The methodologies used are described briefly at the beginning of each section, with further detail included in the appendices.

We appreciate the cooperation and assistance of state board members and staff during the audit.

SECTION I: The State Foster Care Review Board

In this section, we give a brief background of the State Foster Care Review Board (FCRB), including the creation of the agency as well as its statutory responsibilities. We obtained this information through review of the Foster Care Review Act, legislative histories, rules and regulations, internal FCRB policies, and other documents.

Creation of the FCRB

The FCRB was created by LB 714 (1982), the Foster Care Review Act (Act),¹ to provide for external oversight of the foster care system. The Legislature adopted the Act in response to concerns that children in foster care were being “lost” in the system by the then-Department of Welfare.² Currently, the FCRB serves an oversight function of the Department of Health and Human Services (DHHS) by tracking children in foster care and ensuring that each child’s case is evaluated on a regular basis.

Organization

The FCRB consists of a state board, local boards, and agency staff.

State Board

The FCRB’s state board is the agency’s governing body. The state board consists of eleven members who are appointed by the Governor and approved by the Legislature.

The Act requires certain professionals to be represented on the state board, which we discuss in greater detail in Section III of this report. Although some types of professionals may not be appointed to *local* review boards (as discussed below), there are no such prohibitions on appointments to the state board. State board members may serve up to two, three-year terms and are reimbursed for expenses.³

The Act also requires the state board to meet at least twice a year and to select a chairperson and vice-chairperson. The state board may select other officers as needed.

Local Boards

The state board is required to establish local review boards, consisting of four to ten members, to review the cases of children in foster care. Local board members are appointed for three year terms, with no limit on the number of terms they may serve. There are currently

44 local boards active in Nebraska, with more than 350 volunteers serving on those boards.⁴

The Act does not require any specific representation on local boards, although it requires members to “reasonably represent the various social, economic, racial, and ethnic groups of the county or counties from which its members may be appointed.”⁵ In addition, employees of the following entities cannot serve on a local board: the state board; DHHS; a child-caring agency; a child-placing agency; or a court.⁶

Agency Staff

The Act authorizes the state board to employ staff or contract for services to help carry out its duties.⁷ At the time this report was drafted, the FCRB employs 25.99 full-time equivalent staff.⁸ The FCRB has offices in Lincoln and Omaha, where the majority of staff work, as well as staff in the western region of the state, who work from home offices. In FY2007-08, the FCRB had a budget of \$1.6 million, \$1.3 million of which was used for personal services expenses such as staff salaries.⁹

Statutory Requirements

The Act requires the FCRB to conduct two activities: case review and compiling and reporting child placement information.

Case Review

The Act requires that the case of each child in out-of-home care be reviewed every six months. The state board has given the local boards the responsibility for these reviews, the purpose of which is to assess permanent placement efforts and to maintain continuity in the child’s living situation.¹⁰ The reviews are also meant to fulfill review requirements in the federal Adoption Assistance and Child Welfare Act.¹¹ After a local board has reviewed a child’s case, it submits its findings and recommendations to the court with jurisdiction over the child.¹²

Compiling and Reporting Child Placement Information

The Act also requires the FCRB to establish a statewide registry of all foster care placements, based, in-part, on information provided each month by DHHS, child-placing agencies, and the courts.¹³ Using this information and the review recommendations from the local boards, the state board is required to report information to DHHS, regional health and human services offices, and courts that have the authority to make foster care placements.¹⁴

Actions Permitted by Statute

The Act also provides for several activities the FCRB is permitted to do. The state board may request a judicial review hearing if the state board determines that further review of a child's situation is in the best interest of the child.¹⁵ The state board may also visit and observe foster care facilities "in order to ascertain whether the individual physical, psychological, and sociological needs of each foster child are being met."¹⁶

Notes

¹ Neb. Rev. Stat. §§ 43-1301 to 43-1318.

² Legislative History, LB 714 (1982), remarks by Sen. John DeCamp, March 15, 1982, pg. 8821.

³ Neb. Rev. Stat. § 43-1302(1)(b) and (2).

⁴ Phone conversation with FCRB staff, October 10, 2008.

⁵ Neb. Rev. Stat. § 43-1304.

⁶ Neb. Rev. Stat. § 43-1304.

⁷ Neb. Rev. Stat. § 43-1302(2).

⁸ E-mail from FCRB staff October 16, 2008.

⁹ Nebraska Information System budget status report from the period ending June 30, 2008.

¹⁰ Neb. Rev. Stat. § 43-1308(1)(a) and (d). The statute is silent regarding the nature of the review, which can be done by the state board or a designated local board.

¹¹ Neb. Rev. Stat. § 43-1314.01(1). The state board is responsible for the conduct of reviews and is financially responsible for any non-compliance sanctions imposed by the federal government related to the requirements for review. However, under § 43-1314.01(2), the Legislature made clear its intent that any six-month *court* review of a juvenile, done pursuant to sections 43-278 and 43-1313, is also identified as a review that meets the federal requirements for six-month case reviews.

¹² Neb. Rev. Stat. § 43-1308(1)(b).

¹³ Neb. Rev. Stat. § 43-1303(1).

¹⁴ Neb. Rev. Stat. § 43-1303(2) and (3).

¹⁵ Neb. Rev. Stat. § 43-1308(2).

¹⁶ Neb. Rev. Stat. § 43-1303(3).

SECTION II: FCRB’s Authority and Responsibilities

In this section, we describe the State Foster Care Review Board’s (FCRB’s) authority and responsibilities. This information was specifically requested by several state board members in preliminary audit interviews. In conducting this analysis, we reviewed the Foster Care Review Act (Act), legislative histories, rules and regulations, internal FCRB policies, and other documents. We also interviewed FCRB state board members and staff. We did not audit agency compliance with the Act as this was outside the scope of this audit.

Non-Code Agency Authority

The FCRB is a non-code agency. This means that the agency has an Executive Director hired by the state board, rather than by the Governor. Although the agency is independent from direct executive control, its members are appointed by the Governor and approved by the Legislature, and its budget is determined by the Legislature.

Non-code agency boards, including the FCRB, are not advisory in nature. Instead, non-code agency boards are ultimately responsible for all agency activities. Legislative history reflects the Legislature’s intention that the FCRB be a “working” board and not just an advisory board.¹ In our interviews with state board members, we asked if they acknowledged this responsibility and most did.²

Delegation Powers

Although most state board members understood that the state board is responsible for the agency, some members raised questions about what actions and decisions they are—and are not—permitted to delegate to non-state-board members—primarily FCRB staff and members of local review boards. Following is a discussion of what can be delegated under principles of administrative law.

Two general principles apply to the authority of governing bodies, such as the FCRB state board, to delegate duties to their subordinates. First, administrative functions, defined as actions that do not require independent judgment, may be delegated.³ Second, functions which require independent judgment may not generally be delegated.⁴ An exception to the second rule occurs when a required action is impossible for the governmental body, be it one person or an entity, to accomplish alone. In such a case, even if the power to delegate is not explicitly set out in statute, the governing body may delegate the function requiring independent judgment.⁵

Applying these principles of administrative law to the FCRB, the state board may delegate actions that are clearly administrative in nature. For example, the state board may have agency staff establish training programs for local board members and assign cases for review to local boards because this task only requires staff to follow established protocols and not make independent judgments. The state board may not delegate the statutory requirements placed on state board members that require independent judgment—for example, votes for positions of authority on the state board or the approval of local board members. Additionally, the state board may not delegate its responsibility to review local board activities and report on those activities.

Permitted Actions in Statute Where Authority to Delegate is Not Clear

As discussed in Section I, there are several actions that the FCRB is permitted, but not required, to do. State board members expressed some concerns to us regarding whether the state board can lawfully delegate to non-state-board members its ability to visit and observe foster care facilities, a permissive activity granted to the state board.⁶

We believe that the state board’s authority to delegate this action is unclear. The task itself—visiting the facilities—is not *required* and the relevant principles of law do not directly address whether a *permissible* action may be delegated to someone other than the person or organization directly responsible for the action.

FINDING: The board’s authority to delegate to non-state-board members its statutory ability to conduct facility visits is unclear.

The Board’s Understanding of its Authority and Responsibilities

Management standards recommend that those in positions of authority be fully aware of their duties and responsibilities.⁷ To determine whether the FCRB state board members understand their authority and responsibilities, we asked about the training they received as board members and their understanding of various aspects of the Act and agency governance.

Training

All but one of the state board members said that they had a training session with the Executive Director and received an extensive manual about the FCRB.⁸ However, the majority of board members said that they were not specifically briefed on their responsibilities as FCRB state board members (six of 11, or 55%). The majority of board

members (nine or 81%) also said that they were at least somewhat familiar with the requirements of the Foster Care Review Act, but two said that they were not. Also, while the majority of board members (nine or 81%) noted at least a limited understanding of what a non-code agency is, three said that they had only recently learned the term as it was a point of discussion at a 2008 state board meeting.

FINDING: The manual given to new board members may not be the most effective means of education as most members did not recall receiving instruction regarding their responsibilities as FCRB board members.

No board members reported receiving training when appointed by either FCRB staff or the Governor's office on broader laws and policies that apply to most state agencies, including the FCRB, such as the state's open meetings and accountability and disclosure laws. The agency did have a representative from the Attorney General's Office give the state board an overview of the state's open meetings laws in March 2008; however, this information should be a regular part of the initial training provided when board members are appointed. This lack of regular training is troubling as it may impact both citizen involvement in board activities and board member compliance with the laws intended to identify and remedy potential financial conflicts of interest. (See Section III for further discussing regarding training on the state's accountability and disclosure laws).

FINDING: No board members reported receiving training when appointed by either FCRB staff or the Governor's office on broader laws and policies that apply to most state agencies, including the FCRB, such as the state's open meetings and accountability and disclosure laws.

Understanding of Agency Governance

In order to be effective stewards of the agency, state board members must have both clearly defined expectations for the agency and its staff and a standard for comparison to evaluate accomplishments. Management standards recommend that a board of directors: issue directives to management detailing specific actions to be taken; oversee those actions; and follow up as needed.⁹ (See Section IV of this report for a discussion of management standards used).

The state board votes on agency goals and other agency business items, but we found little agreement among state board members regarding how they are to oversee the agency and whether they have a method of evaluating agency operations, including staff activities.¹⁰ We asked state board members whether a system of accountability

exists within the agency for them to evaluate the performance of agency management such as the Executive Director, and the majority (seven or 64%) said that they did not believe so.

Recently, however, the state board's Executive Committee has been working more closely with the Executive Director as part of an "intensive executive plan." During the course of this audit, FCRB staff followed the established agency communication protocol and reported concerns about the conduct of the FCRB's Executive Director to the Executive Committee. The state board discussed the matter in closed session at their July 25, 2008 meeting.¹¹ At that meeting, the state board voted to implement an intensive executive plan to monitor the Executive Director's actions for the next six months in order to "share information with regards to personnel issues and to help her in some of the unique challenges of her position."¹² The guidelines set for the Executive Director in this could be considered an accountability plan for agency management.

FINDING: There is little agreement among state board members regarding how they are to oversee and evaluate agency operations; however, the board has recently set guidelines for the Executive Director.

Notes

¹ Legislative History, LB 239 (1987), remarks by Sen. Don Wesely, February 4, 1987, pg. 537.

² One recently appointed state board member was unsure of the board's responsibilities.

³ Ministerial acts or administrative acts are defined by the Corpus Juris Secundum (C.J.S.), a legal encyclopedia, as, "one which a person or board performs upon a given state of facts, in a prescribed manner, in observance of the mandate of legal authority and without regard to or the exercise of independent judgment upon the propriety of the act being done." 73 C.J.S. Public Administrative Law and Procedure §116 p. 333 (2004). See also Neb. Atty. Gen. No. 04020 (June 01, 2004).

⁴ Neb. Atty. Gen. No. 00016 (February 23, 2000).

⁵ *Fulmer v. Jensen*, 379 N.W.2d 736, 739 (Neb. 1986). See also 73 C.J.S. Public Administrative Law and Procedure §119 p. 335 (2004).

⁶ Neb. Rev. Stat. § 43-1303(3).

⁷ Comptroller General of the United States, General Accounting Office, *Internal Control Management and Evaluation Tool*, August 2001, "Organizational Structure" Section.

⁸ The remaining board member did not meet with the Executive Director, but did receive the manual.

⁹ Committee of Sponsoring Organizations of the Treadway Commission, *Internal Control—Integrated Framework Evaluation Tool*, pg. 10.

¹⁰ The state board voted on goals May 9, 2008. *Minutes*, FCRB Meeting (draft), May 9, 2008, pg. 17.

¹¹ *Minutes*, FCRB Meeting, July 25, 2008, pg. 7.

¹² *Minutes*, FCRB Meeting, July 25, 2008, pg. 7. Any other instruction given to the Executive Director beyond the state board's public vote is not public information.

SECTION III: Possible Conflicts of Interest

In this section, we discuss whether any members of the State Foster Care Review Board (FCRB) have employment or other interests that create a conflict with their responsibilities as members of the FCRB. In conducting this analysis, we reviewed the Foster Care Review Act, the Nebraska Political Accountability and Disclosure Act (Accountability and Disclosure Act), legislative histories, rules and regulations, internal FCRB policies, and other documents. We also interviewed FCRB members and staff, among others.

Alleged Conflicts

Since the Performance Audit Section (Section) began this performance audit, concerns have been raised about possible conflicts of interest for several current FCRB state board members. These concerns were shared with members of the Legislature, raised during an FCRB public meeting, and presented to Section staff during interviews, including our interviews with the FCRB's Executive Director.

The concerns relate to certain state board members' affiliations in two ways: (1) financial ties between some members' employers and the Department of Health and Human Services (DHHS), and (2) a member's professional ties to a judge who allegedly does not support the work of the FCRB. In addition, those who raised concerns noted that the perceived conflicts have only been an issue with board members who were appointed after the Foster Care Review Act was amended to change membership requirements in 2005.

Following is our discussion of that legislation, conflict of interest standards, any perceived conflicts of current state board members, state board member training regarding conflicts of interest, and policy questions for the Legislature regarding membership on the FCRB.

Statutory Change in Board Membership

In 2005, the Legislature adopted LB 761, which increased membership from nine to eleven. The bill also added requirements that the state board members include:

- A pediatrician;
- A child clinical psychologist;
- A social worker;
- An attorney who is a guardian ad litem;¹
- A representative of a state child advocacy group;
- A director of a child advocacy center;

- A director of a court-appointed special advocate (CASA) program; and
- An individual with background in business and finance.

The legislative history for LB 761 indicates that the change in membership requirements reflected introducer Senator Nancy Thompson’s intent to “professionalize” the board. Senator Thompson stated that she understood that it is difficult “to find people who can make the system better who aren’t a part of that system,” but it was not her intent to “taint,” “shade,” or “bias” the FCRB.² Instead, she said that she wanted to strengthen the governance of the agency by “giving them expertise from a variety of areas that will be helpful in the execution of their prescribed duties.”³

LB 761 also eliminated a restriction that “no person employed by a child-caring agency, child-placing agency, or a court shall be appointed to the state board,” although the legislative history does not explain why this language was deleted. This change left no restrictions for membership on the state board.

Some of the people who alleged conflicts of interest for current state board members suggested that those members would not have been allowed to serve on the board under the pre-LB 761 statute; however, no one currently serving on the state board would have been barred from membership had these restrictions remained in effect.

FINDING: No one currently serving on the state board would have been barred from membership had statutory restrictions removed in 2005 remained in effect.

Conflict of Interest Standards

In its broadest sense, a conflict of interest is: “a conflict between the private interests and the official responsibilities of a person in a position of trust (as a government official).”⁴ In Nebraska, the only legal requirements for state employees regarding conflicts of interest are contained in the Accountability and Disclosure Act. This Act addresses a relatively narrow set of possible conflicts involving the potential financial impact certain decisions made in the course of public service may have on a state employee.

The Nebraska Political Accountability and Disclosure Act

The Legislature’s intent for the Accountability and Disclosure Act was, in part, to ensure that public officials and employees are “independent and impartial” and that public officials do not use their posi-

tions for personal gain.⁵ Members of the FCRB meet the Act’s definition of “public officials.”⁶

The Accountability and Disclosure Act does not define the phrase “conflict of interest,” but it gives direction to public officials relating to certain types of financial conflicts they may encounter. The Act’s direction on how to handle conflicts is situational: its requirements only apply to *specific actions or decisions* that relate to the finances of individual public officials once they are in office.

The Accountability and Disclosure Act prescribes disclosure and possible recusal if a public official is presented with a conflict of interest. First, if, in the course of his or her duties, a public official is presented with a real or potential financial conflict, the Act requires him or her to prepare a written statement describing the situation and file the statement with the Accountability and Disclosure Commission (Commission) and his or her immediate superior, who will “assign the matter to another.”⁷ Second, the public official should either recuse himself or herself from votes relating to this potential conflict or take other action as recommended by the assigned party or the Commission, as appropriate.⁸

According to the Commission’s Executive Director, because the conflict of interest disclosure requirements apply to specific actions or decisions, they do not affect whether an individual can be a member of an organization.⁹ Therefore, even if a potential conflict exists for an FCRB state board member, he or she may still serve on the board.

<p>FINDING: Because the conflict of interest disclosure requirements apply to specific actions or decisions, they do not affect whether an individual can be a member in the organization. Therefore, even if a potential conflict exists for an FCRB state board member, he or she may still serve on the board.</p>
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In addition to requiring disclosure and possible recusal in certain situations, the Accountability and Disclosure Act also requires some public officials—those listed in the Act and corresponding rules and regulations—to file annual statements of financial interest, listing assets and business associations.¹⁰ However, FCRB state board members are not listed and are therefore not required to file statements of financial interest.

Current Board Members

Section staff interviewed the eleven FCRB state board members serving at the time of this audit. We asked each one about his or her employment and affiliations that could be affected by his or her deci-

sions as an FCRB member (See Appendix A for a list of our questions). We also asked their opinions about the possible appearance of conflicts in their individual situations and the training that they received regarding identifying and dealing with conflicts of interest. In addition, we independently researched FCRB members' business associations. (See Appendix B for the methodology of this research). Finally, because the Accountability and Disclosure Act's application to the FCRB members relates primarily to any official actions taken by the board, we analyzed the votes taken by the board from January 2006 to May 2008.¹¹

No Conflicts Under Accountability & Disclosure Act

For a conflict of interest to be present under the Accountability and Disclosure Act, an FCRB member would have to be in a situation in which they could benefit (or be harmed) financially from an official action they took as a board member. Board members told us, and our independent research confirmed, that the votes taken by the FCRB from January 2006 to May 2008 did not have a financial impact on any of the state board members' business associations.¹² (See Appendix C for our full vote analysis).

Consequently, the Section found that none of the FCRB state board members have encountered a conflict of interest as defined by the Accountability and Disclosure Act. While several members have links to DHHS and foster children (in various capacities), the members have not been in a position to make decisions as board members that would trigger the provisions of the Accountability and Disclosure Act. Table 3.1, on page 13, shows our analysis of this issue.-

<p>FINDING: In the period reviewed, no votes were taken by the state board that presented a conflict of interest for any members under the Accountability and Disclosure Act.</p>
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In addition, state board members themselves do not perceive conflicts within the board membership. In September 2008, the state board's Executive Committee wrote to the Legislative Performance Audit Committee stating that the state board has "not experienced any actual problems with alleged 'conflict of interest' among the current board members. All board members are committed to improving the governance and functioning of the board and are dedicated to the board's mission of improving the lives of Nebraska children in out-of-home care."¹³

Table 3.1: Alleged Conflicts of Current FCRB State Board Members		
Name of Board Member	Alleged Conflict or Connection to DHHS	Do Allegations Pose a Violation of the Accountability and Disclosure Act or the Foster Care Review Act?
Georgina Scurfield, Chair	Alleged that she works for a court, which would have disqualified her for membership prior to 2005.	No. The allegation is incorrect; she is an employee of Sarpy County and she would have been eligible for FCRB membership prior to the 2005 statutory change.
Lisa Borchardt, Vice-Chair	Supervises social work practicum students who work at DHHS.	No. The state board has not voted on a topic that would directly affect her duties as a supervisor.
Rev. Larry Brown, M.D., Vice-Chair	Receives state Medicaid funds from treating foster children in his medical practice.	No. Receiving income from DHHS does not violate either statute. Additionally, the state board has not voted on a topic that would directly affect his practice.
Ron Albin, Attorney Representative on Executive Committee	Works as a guardian ad litem.	No. The state board has not voted on a topic that would directly affect his duties as a guardian ad litem.
Gene Klein	His employer, Project Harmony, receives funds through DHHS as well as from other organizations that receive money from DHHS.	No. Receiving income from DHHS does not violate either statute. Additionally, the state board has not voted on a topic that would directly affect his employer.
Sarah Ann Lewis	Employed by Voices for Children, a private non-profit organization.	No. The state board has not voted on a topic that would directly affect her duties as a policy coordinator.
Judy Meter	None.	No.
Mary Jo Pankoke	Her employer, the Nebraska Children and Families Foundation, receives funds through DHHS.	No. Receiving income from DHHS does not violate either statute. Additionally, the state board has not voted on a topic that would directly affect her employer.
Alfredo Ramirez	Receives state Medicaid funds for treating children in foster care in his counseling practice.	No. Receiving income from DHHS does not violate either statute. Additionally, the state board has not voted on a topic that would directly affect his practice.
Dr. Mario Scalora	Receives state funds through a University of Nebraska contract to practice in the Forensic Mental Health Services unit of the Lincoln Regional Center.	No. Receiving income from DHHS does not violate either statute. Additionally, the state board has not voted on a topic that would directly affect his contract.
Dave Schroeder	None.	No.

Instruction Regarding Conflicts of Interest

Just as it is important for board members to have sufficient training in their agency's operations, it is also important for board members to understand what is expected of them as public officials. If they do not know the law regarding conflicts of interest, they cannot be expected to consistently identify and address such situations if they arise. To determine whether state board members knew or had been told about identifying and addressing conflicts of interest, Section staff asked all state board members a series of questions about their disclosures and what they were told to do if faced with a conflict.

All potential members of state boards and commissions are required to fill out an application form with the Governor's office; however, until recently, applicants were not required to disclose potential financial conflicts of interest before they were appointed. Due to this, no state board members recalled disclosing any conflicts of interest in their appointment application to the Governor and none recalled disclosing any conflicts of interest directly to the state board.¹⁴

No state board members recalled training regarding identifying conflicts of interests or how to handle them and several told us they were unaware of the existence of the Accountability and Disclosure Commission before this performance audit. In 2006, the state board discussed the definition of conflict of interest and the importance of board members disclosing any potential conflicts. However, the minutes from that meeting do not indicate that there was any discussion of the process required if a board member believed he or she was confronted with a conflict under the Accountability and Disclosure Act. Also, that discussion took place prior to the appointment of five of the current 11 board members.¹⁵

FINDING: State board members received inadequate training on the Accountability and Disclosure Act.
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Potential Policy Issues

During the course of the performance audit, the FCRB's Executive Director discussed her concerns with us regarding state board members and potential conflicts of interest and appearance issues. Her concerns and suggested statutory changes center around who is allowed to serve on the state board. (See Appendix D for a document from the Executive Director outlining these concerns and suggested changes).

*Prohibiting People with Financial Connections to DHHS
from Serving on the State Board*

The Executive Director suggested that the Foster Care Review Act should be amended to exclude from board membership any individuals “who receive funds from DHHS, administering or distributing DHHS funding to others, or those persons who work under the supervision of the courts.” She believes that individuals with such ties have the appearance of a conflict of interest. Most board members acknowledged to us that some people could be concerned about that appearance as well.

The Accountability and Disclosure Act does not address such potential appearance issues. The intent language of that Act notes that the Legislature was aware of the importance of the appearance of conflicts as well as actual conflicts. However the Act contains no direction for a public official who is faced with a questionable circumstance that does not rise to the level of the financial conflicts described in the Act.

<p>FINDING: There are no statutory requirements for public officials, including state board members, regarding the need to disclose or take other action regarding potential <i>appearances</i> of conflicts of interest.</p>
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We disagree with the Executive Director’s specific suggestion but agree that the Legislature may wish to consider whether there should be a limit on the amount of funding from DHHS an individual, or his or her employer, may receive and maintain the appearance of independence while serving on the board.

Through the 2005 membership changes to the Foster Care Review Act, the Legislature clearly intended for board members to have an increased level of experience in the child welfare system, which was bound to result in some members having connections to DHHS. A prohibition of *any* financial connection to DHHS would eliminate many—if not most—of the professionals who are directly or indirectly associated with the child welfare system.

Nevertheless, we believe that a reasonable person might question whether an individual whose employer receives a substantial amount of funding from DHHS would be able to be critical of DHHS if necessary. In the 2005 bill, the Legislature did, in effect, set an outside limit on the level of DHHS involvement appropriate for a board member: the original bill included the Director of Health and Human Services as a board member, but the introducer ultimately asked to have that provision removed.¹⁶ It may now wish to consider whether it would also be appropriate to establish a limitation on the amount

of funding an individual or his or her employee can receive from DHHS and still maintain the needed appearance of independence.

FINDING: A reasonable person might question whether an individual whose employer receives substantial funding from DHHS would be able to be critical of DHHS if necessary.

The state board may also want to consider requiring disclosure among board members. Both the FCRB state board and the Legislative Performance Audit Section serve an independent oversight function. As such, both need to be concerned with potential conflicts of interest and the appearance of such conflicts. For example, in each audit we conduct, we must assess whether individual staff members have any “impairments” that could compromise their independence or objectivity on that project. If an impairment is identified, generally accepted government auditing standards provide a continuum of actions to either offset the impairment (such as disclosing the potential impairment to the Legislative Auditor, who can then watch for possible bias) or eliminate it entirely by removing the staff member from that audit.

While it may not be possible to eliminate all potential appearance concerns, the board may want to consider steps to offset them, such as asking new members to disclose to the full board any affiliations that might be perceived as posing a conflict.

FINDING: It may not be possible to eliminate all appearances of conflicts for board members who work in the child welfare field, but the board could take steps to offset those appearances.

*Prohibiting People with Certain Types of Employment
from Serving as Board Members*

The Executive Director also suggested reinstating the employment restrictions removed by LB 761 (2005), which said that “no person employed by a child-caring agency, child-placing agency, or a court shall be appointed to the state board.” To the extent that the Executive Director believes that reinstatement of this language would eliminate conflicts that she believes exist with current state board members, we disagree. As noted earlier, the addition of this language would have no effect on the current membership of the board as there are no employees of child-caring agencies, child-placing agencies, or courts currently serving on the state board.

FINDING: The Executive Director suggests that reinstating the employment restrictions removed by LB 761 (2005) would resolve her concerns about conflicts she believes exist with current board members; however, such a change would not disqualify any current members of the board from serving.

Notes

¹ The statutory membership requirement was previously “an attorney with expertise in child welfare.”

² Legislative History, LB 761 (2005), committee hearing remarks by Sen. Thompson, February 23, 2005, pg. 33.

³ Legislative History, LB 761 (2005), remarks by Sen. Thompson, May 24, 2005, pg. 6795.

⁴ “Conflict of interest,” *Webster’s New International Dictionary*, Third ed, 1986.

⁵ Neb. Rev. Stat. § 49-1402(3).

⁶ Neb. Rev. Stat. §§ 49-1436 and 49-1443.

⁷ Neb. Rev. Stat. § 49-1499.02(1).

⁸ Neb. Rev. Stat. § 49-1499.02(1).

⁹ Conversation with Frank Daley, Executive Director, Nebraska Accountability and Disclosure Commission, February 8, 2008.

¹⁰ Neb. Rev. Stat. § 49-1493 and NAC Title 4, Ch. 2, 002. These public officials include state and county elected officers as well as various agency staff and some specific members of boards and commissions.

¹¹ We chose this period of time as the first of the post-membership change appointments would have started serving on the FCRB in 2006.

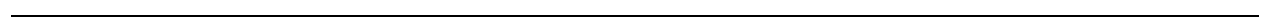
¹² Neb. Rev. Stat. § 49-1408 states that a business with which an individual is associated means a business “in which the individual is a partner, limited liability company member, director, or officer,” not just an employee. If the individual is an employee only, one must look further to see if there is a financial benefit to the individual that results from a vote or decision the individual made as a public official. Telephone conversation with Frank Daley, October 6, 2008.

¹³ E-mail sent September 22, 2008 from FCRB Chairperson Georgina Scurfield, signed by the members of the Executive Committee.

¹⁴ One member noted that he had talked about a potential conflict in a specific instance (unrelated to a vote) with the Executive Director.

¹⁵ *Agenda*, FCRB Meeting, April 24, 2006, pg. 2. According to the minutes for this meeting, the board also discussed the importance of disclosure of any conflicts and how conflicts of interest are handled on the local board level. *Minutes*, FCRB Meeting, April 24, 2006, pgs. 3-4.

¹⁶ Legislative History, LB 761 (2005), committee hearing remarks by Sen. Nancy Thompson, February 23, 2005, pg. 30.



SECTION IV: Agency Practices Compared to Management Standards, Part 1

In this section and the next, we address the third scope statement question: whether current State Foster Care Review Board (FCRB) management practices reasonably follow management standards and best practices.

In conducting this analysis, we reviewed the Foster Care Review Act, FCRB rules and regulations, FCRB internal policies, and management literature. We also interviewed all current FCRB state board members and all current staff except one who was on medical leave. We requested interviews with 17 former FCRB staff members who had left in the past two years; however as only four agreed to be interviewed, we have only included information from these interviews in two instances, which is clearly noted.

Management Standards

To assess the sufficiency of an organization's management practices, it is necessary to have standards for comparison. While the State of Nebraska has established rules and regulations for areas of agency operation such as personnel issues, it has not established standards for agency managers to guide them as they administer their agencies.¹

In the absence of statutory or policy standards for management, we developed a list of seven management best practices based on an extensive literature review of management standards relating to both the public and private sectors. Ultimately, we relied heavily on two sets of comprehensive management standards: public sector standards used by the federal Government Accountability Office^{2,3} and private sector standards published by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).⁴ The two sets of standards are virtually identical except that the COSO standards include a sub-section relating to governing boards that is directly relevant to this audit. We also relied heavily on management materials from The Gallup Organization, including the 2006 book *12: The Elements of Great Managing*. (See Appendix E for a list of all literature reviewed).

From these resources, we identified best practices relating to seven aspects of management:

- agency culture/code of conduct;
- job descriptions/expectations;
- training;

- performance evaluations;
- agency communication;
- disciplinary procedures; and
- human resources management.

While establishing this list, we communicated the process we were using to the FCRB, and state board members expressed general agreement with our approach.⁵ In addition, although there are no *requirements* for state government managers, the Department of Administrative Services (DAS) provides management training to state agencies on a voluntary basis. These management best practices closely follow management concepts taught by DAS.⁶ Consequently, we believe that holding the FCRB to these best practices is fair and reasonable.

The best practices we identified relating to six of these aspects of management are described in this section. Agency culture/code of conduct is addressed in Section V of this report

Job Descriptions/Expectations

Management standards recommend that organizations analyze the tasks required for each job and maintain up-to-date job descriptions.⁷ In addition, The Gallup Organization reports that efficiency is increased when employees know what is expected of them in relation to the bigger picture of organizational operations.⁸

We found that the FCRB has established job descriptions, which are included in staff manuals, and those manuals are readily available to all staff.

FINDING: The FCRB meets the recommended practice of having job descriptions for its staff members.

Job Expectations

Management standards recommend that an organization have a sufficient number of employees to carry out its mission and that those employees have enough time to carry out their responsibilities effectively.⁹ Inadequate staffing and a lack of other necessary tools can hinder agency operations and productivity and become a source of frustration among employees.¹⁰

To assess whether FCRB staff believe they have what they need to do their jobs, we asked if there were any obstacles which prevented them from doing their jobs as well as they could; 22 of 24 (91%) identified obstacles in their jobs. Most employee concerns related to the num-

ber of employees and time available versus the time required to meet management expectations. Specifically, the most common concerns were:

- there is not enough time to do the work expected of them (nine responses);
- there are not enough staff members to do the work expected of them (seven responses);
- excessive travel time is expected of some staff (four responses); and
- expectations from management change frequently (four responses).

We asked staff if they are generally able to get their work done in a regular work week; 13 (54%) said that they had enough time to do everything required of them and 11 (46%) said that they did not have enough time to do everything required of them. Ten of the 11 staff members who reported this concern were review specialists—the staff members who support the local review boards, which review individual cases of children in foster care. The remaining individual provides administrative support to the agency.

Workload concerns were brought to the state board’s Executive Committee in the summer of 2008 and the board has since established a committee to study the matter.

FINDING: Almost half of the FCRB staff members interviewed expressed concerns that they do not have enough time to do everything required of them. Additionally, workload concerns were raised with the state board during the course of this audit and the board established a committee to study those concerns.

Training

Management standards recommend that staff should receive sufficient training when they start a job and on an ongoing basis thereafter. Employee training should communicate roles and responsibilities, agency objectives, and management’s expectations of staff.¹¹ At the FCRB, new staff training is done by employees’ immediate supervisors. Other than providing staff with manuals, there does not appear to be a standardized training method; however, the majority of staff (19 of 24, or 79%) said that they were satisfied with the training they received.

FINDING: The majority of FCRB staff reported that they were satisfied with the job training they received.

Performance Evaluations

Management standards recommend that supervisory personnel meet with employees to review job performance and suggest improvements. Performance appraisals should be based on elements of the employee's job description and organizational goals.¹²

Both the DAS personnel manual and the FCRB's internal policies require annual performance evaluations, and the FCRB's internal policies also require that a summary of previous evaluations be kept on file in the FCRB main office.¹³ In addition to asking about performance evaluations in our interviews, we reviewed the personnel files of current FCRB employees to find the dates of their most recent evaluations.

We found that the vast majority of staff members who were eligible for evaluations in 2008 (18 of 23, or 78%) had received evaluations this year.¹⁴ However, 10 of these evaluations were completed between July 7 and July 9, 2008—a few days after we notified the agency that we would be reviewing the personnel files. We also found that the personnel files did not contain a summary of previous evaluations as required by agency policy. Consequently, we could not determine if the employees had evaluations on similar dates in previous years or whether any prior evaluations had actually occurred.

The majority of staff (12 of 22, or 55%) told us that they have not received regular performance evaluations.¹⁵ Further, three staff members that have been with the agency longer than three years told us that the July 2008 performance evaluation was the first they had received. Six other staff members, all of whom have been with the agency for more than six years, said they had only received a few performance evaluations in their time at the agency. We also reviewed the Executive Director's personnel file and found that she has received one performance evaluation from the state board since 2006.

<p>FINDING: The majority of FCRB staff reported that they do not receive regular performance evaluations. In addition, the agency does not maintain a summary of previous evaluations as its internal policies require.</p>
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Agency Communication

Management standards recommend that an organization's structure facilitate the flow of information across all agency activities, reporting relationships should be established, and employees should be aware of reporting relationships.¹⁶ Also, standards recommend that a board

of directors regularly receive sufficient information in a timely manner.¹⁷

In 2007, the previous state board chair instructed staff not to communicate directly with state board members. The state board subsequently rescinded that instruction in early 2008 and adopted a communication protocol, which outlines reporting relationships and appropriate steps to address problems with other staff members.

We asked staff whether they knew about the communication protocol and the agency chain of command. We also asked state board members to discuss the communication protocol.

Internal Agency Communication

All FCRB staff said that they understood the established chain of command and communication channels outlined in the protocol. However, staff raised two other areas of concern regarding agency communication. Four staff members stated that they are regularly given short notice that they need to attend previously scheduled meetings.

Five staff members said that while they understand that they are allowed to speak to state board members, they believed that the Executive Director would be angry if they spoke to a board member without her permission. These five staff members also told us that the Executive Director has made disparaging remarks about current state board members to them and has told staff that some state board members should not be trusted. These comments were made voluntarily and were not made in response to any questions posed to FCRB staff members by the Section.

FINDING: All staff understand the established chain of command and communication channels.

FINDING: Some FCRB staff believe that communication problems exist within the agency as they are given inadequate notice to attend previously scheduled meetings.

FINDING: Some FCRB staff believe that the Executive Director would be angry with them if they spoke to a state board member.

FINDING: Five FCRB staff members reported that the Executive Director has made disparaging remarks about current state board members to them.

Communication to the State Board

We asked state board members that if they had communication-related concerns, whether they felt the protocol addressed those concerns. The majority of state board members (seven of 11, or 64%) said that they understood the protocol and felt that it had addressed concerns they had regarding agency communication.

FINDING: The majority of state board members said that they understood the protocol and felt that it had addressed concerns they had regarding agency communication.

Disciplinary Procedures

Management standards recommend that management respond to violations of behavioral standards with appropriate corrective action. Doing so sends a message that violations of expected behavior are not acceptable.¹⁸ FCRB internal policies state that the agency follows the disciplinary procedures established by DAS for all disciplinary actions.

We asked staff whether they knew what would happen if they violated agency policy. Although some did not know the specific procedures, all staff said that they understood that there are disciplinary procedures in place.

FINDING: All FCRB staff said they understood there are disciplinary procedures in place that would apply if they violated agency policy.

Human Resources Management

Management standards state that management should monitor personnel turnover and be aware that if employees (especially supervisors) are fulfilling the responsibilities of more than one employee, it can compromise the oversight controls in an agency.¹⁹ Additionally, too many new employees at one time can impair agency operations because the new employees are unfamiliar with the requirements of their jobs.²⁰

Seven FCRB staff have been with the agency over ten years, which represents 27 percent of the FCRB's workforce. When asked, however, the majority of FCRB staff (15 or 63%) said that employee turnover had affected their jobs. Half of the FCRB staff members said that they or other staff members, including two supervisors, have had to shoulder additional responsibilities when there are vacancies.

FINDING: The majority of FCRB staff stated that employee turnover has affected their jobs.

We also reviewed the FCRB's staff turnover rates calculated by the Department of Administrative Services for the 1997 to 2007. According to DAS, in three of the last 10 years, the FCRB's turnover rate was lower than, or only slightly higher than, the state agency average turnover rate. In the other seven years, the FCRB's rate was much higher than the state agency average—more than double in 2000, 2003, 2004, and 2005.²¹ In the last two calendar years, the average agency turnover was 12.9% in 2006 and 15% in 2007.²² In comparison, the FCRB's turnover rate was 34.5% in 2006 and 23.1% in 2007.²³ (See Appendix F for the chart *Total Turnover by Agency* from the DAS 2008 Personnel Almanac).

As of October 14, 2008, six staff have left the agency this year, which represents about 25% of the agency's staff.

FINDING: The FCRB has a high staff turnover rate compared to other state agencies.

Notes

¹ Conversation with Mike McCrory, Personnel Director, Department of Administrative Services, January 18, 2008.

² Government Accountability Office (GAO) staff conduct audits for the Legislative branch of the federal government. The organization also sets the standards by which the Legislative Performance Audit Section conducts its work.

³ The GAO states that its internal control standards apply to "all aspects of an agency's operations programmatic, financial, and compliance." GAO, *Standards for Internal Control in the Federal Government*, November 1999, pg. 7.

⁴ Although the Committee of Sponsoring Organizations of the Treadway Commission (COSO) deals predominately with internal controls for financial management in the private sector, the overall goal of these standards and practices, especially those for management, are aimed at increasing management accountability and integrity. We believe these concepts are best practices for management in general in all functional capacities and not just in the financial management field.

⁵ E-mails from Gene Klein, July 17, 2008; Mario Scalora, July 8, 2008; Georgina Scurfield, July 3 and 7, 2008; and Alfredo Ramirez, July 8, 2008.

⁶ <http://www.das.state.ne.us/personnel/nkn/nkncourses/orgeffect.htm>

⁷ GAO, *Internal Control Management and Evaluation Tool*, August 2001, "Commitment to Competence" Section.

⁸ Wagner, Rodd, and James K. Harter, *12: The Elements of Great Managing*, 2006, pg. 4.

⁹ GAO, *Internal Control Management and Evaluation Tool*, August 2001, "Organizational Structure" Section.

¹⁰ Wagner, pg. 17.

¹¹ GAO, *Internal Control Management and Evaluation Tool*, "Commitment to Competence" and "Human Resource Policies and Practices" Sections.

¹² GAO, *Internal Control Management and Evaluation Tool*, "Commitment to Competence" and "Human Resource Policies and Practices" Sections.

¹³ NAC Title 273, Chapter 10, 002.02, pg. 40. FCRB Work Rule Manual #10-040, "Employees will be evaluated by their immediate supervisor at the end of their probationary period and annually thereafter." FCRB Work Rule Manual #10-044, Personnel records maintained in the main office are to include copies of the current performance evaluation "and the prior year's summaries of performance evaluations."

¹⁴ Five other staff members had received evaluations for 2007.

¹⁵ Of the remaining two staff members, one had received her six month probationary evaluation and the other had not yet been with the agency six months.

¹⁶ COSO, *Internal Control—Integrated Framework*, pg. 28; GAO, *Internal Control Management and Evaluation Tool*, "Organizational Structure" and "Assignment of Authority and Responsibility" Sections.

¹⁷ COSO, *Internal Control—Integrated Framework Evaluation Tool*, pgs. 9-10.

¹⁸ COSO, *Internal Control—Integrated Framework*, pg. 29; GAO, *Internal Control Management and Evaluation Tool*, “Human Resource Policies and Practices” Section.

¹⁹ GAO, *Internal Control Management and Evaluation Tool*, “Organizational Structure” Section.

²⁰ GAO, *Internal Control Management and Evaluation Tool*, “Management’s Philosophy and Operating Style” Section

²¹ *Ibid.* The Executive Director questioned whether the DAS figures took into account terminations from budget cuts. We confirmed that they did.

²² Nebraska Department of Administrative Services, *State of Nebraska Personnel Almanac*, July 2008, pg. 110. A copy of this chart can also be found in Appendix F of this report.

²³ *Ibid.*

SECTION V: Agency Practices Compared to Management Standards, Part 2

This section continues our discussion of the scope statement question relating to the State Foster Care Review Board’s (FCRB’s) management practices compared to management standards and best practices described in Section IV.

In conducting this analysis, we reviewed the Foster Care Review Act and other state and federal laws, FCRB rules and regulations, FCRB internal policies, management literature, and generally accepted government auditing standards. We also interviewed all current FCRB state board members, all current staff except one who was on medical leave, and four former staff members.

Agency Culture/Code of Conduct

Management standards emphasize that the “culture” of an organization and the tone established by upper management influences employee actions. (See Section IV for a discussion of the management standards used). The culture of an agency refers to the stated and unstated expectation of staff behavior. While official policies, such as codes of conduct, specify what management wants to occur, the culture influences what happens in practice.¹

Code of Conduct

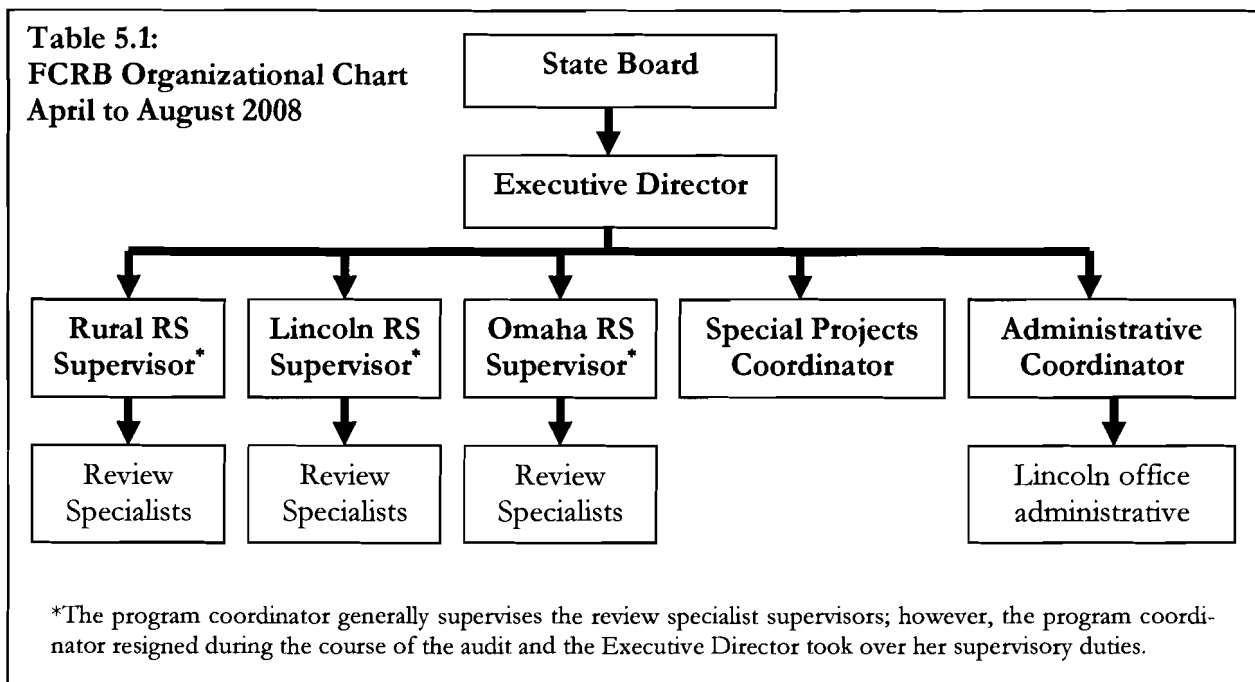
The management standards do not state that a written code of conduct—which describes desired employee behavior in different aspects of a job—is necessary, but emphasize that if a written code does not exist, management needs to communicate its expectations of staff in less formal ways.²

We found that the FCRB has a code of conduct in its internal policies.³ In addition, during our interviews, all staff showed an understanding of expected professional behavior. While none of the staff reported having received formal training regarding how to represent the agency, 20 of 24 (83%) said that they had been given informal guidance by supervisors.

FINDING: The FCRB has a code of conduct for employees and staff understand what management expects of them.
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The Gallup Organization has published the results of extensive research suggesting that positive reinforcement of employees' good behaviors yields greater rewards for the employer than does negative reinforcement. Organizations that do not use positive reinforcement have 10 to 20 percent lower productivity and employees are more likely to quit their jobs.⁴ In order to determine if positive reinforcement was being used at the FCRB, we asked staff if they felt they were treated fairly and if they were afraid of retaliation in the workplace.

Of the 24 staff members interviewed, five were directly supervised by the Executive Director at the time of our audit:⁵ the administrative coordinator, the special projects coordinator, and three review specialist supervisors. Four of these individuals—the administrative coordinator and three review specialist supervisors—serve supervisory roles at the agency and the remainder of the staff are supervised by one of these four individuals.⁶ These relationships are shown in Table 5.1.



Most of the people not supervised directly by the Executive Director (16 of 19, or 84%) believed staff were treated fairly by their immediate supervisors and were not afraid of retaliation. In contrast, most of the people who were supervised directly by the Executive Director (three of five, or 60%) felt staff were not treated fairly and were afraid of retaliation.

Staff perceptions of the Executive Director's fairness were similarly split among the staff who are not directly supervised by her. Nine of 19 (47%) said that the Executive Director treats staff fairly; eight (42%) said that the Executive Director does not treat staff fairly.⁷

The employees who believe that staff are treated unfairly said people who bring up problems are "pegged" and made into "scapegoats." Staff also said that employees who are out-of-favor with the Executive Director are targeted, badmouthed to other staff, or intimidated by her. Other staff said that they know that they should not "cause waves" and they believe or have been told that they should not get on the Executive Director's "bad side." Still other staff members said they were afraid that if the Executive Director were to find out what they told us she would make their lives "hell" and they "expect retaliation" in some form.

FINDING: Almost half of the staff members interviewed believe that staff are treated unfairly by the Executive Director and are afraid of retaliation if they disagree with her.

We acknowledge that concepts like "perceptions of fairness" are subjective and that it is possible for an organization to have a few employees who perceive unfairness where it does not actually exist. Nevertheless, we believe that having 11 people (almost half of the agency's employees) report that they believe staff have been treated unfairly is cause for concern. We note that none of the agency's current employees, including the 11 represented here, had disciplinary proceedings pending against them. Had such proceedings been pending against anyone, this might suggest a motivation for those employees to lash out at the Executive Director.

Two former supervisors that left the agency during the course of our audit told us that dissatisfaction with the Executive Director played a role in their resignations. Additionally, two of the remaining supervisors still with the FCRB have taken their concerns regarding the Executive Director to the Executive Committee of the state board.

FINDING: Dissatisfaction with the Executive Director played a role in the recent resignations of two of the agency's five supervisors. Additionally, two other supervisors have taken their concerns regarding the Executive Director to the Executive Committee of the state board.

Possible Law Violations

The management standards we reviewed do not explicitly state that managers should follow the law because compliance with the law is assumed.⁸

In this audit, we revisited two allegations of possible law violations by the Executive Director originally raised in a September 2007 report by the Legislature's Office of the Public Counsel (Ombudsman). The Ombudsman examined allegations that the Executive Director had (1) directed a staff member to release confidential case information and (2) used public resources to promote a political candidate. The Ombudsman concluded that no law violations had occurred.

We asked all staff members a general question about whether they had knowledge of any law violations by the Executive Director or any FCRB staff member as well as specific questions relating to the release of confidential information and invitations to the campaign event.

Knowledge of Law Violations

We found that no staff knew of actual law violations. Five of the 24 interviewed had questions about the legality of driving and carpool activities of the Executive Director. While we found nothing illegal relating to those activities, we have other concerns which are discussed later in this section.

FINDING: No staff reported law violations by the Executive Director or any other staff.

Release of Confidential Information

By law, information regarding children in foster care must be kept confidential. All but one staff member told us they had never been asked to inappropriately release confidential information and they had never given out such information. The remaining staff member said that she had not been asked to release confidential information by a current staff member; however, she had been asked to do so by a former supervisor but had not done so.

FINDING: No staff have been asked by the Executive Director or any other current staff to release confidential information inappropriately.

Fundraising Event

Public employees are barred by statute from using public resources to campaign for the election of a candidate.⁹ Additionally, state agencies that receive federal money, including the FCRB, are subject to the federal Hatch Act which prohibits government employees from using their authority to influence an election.¹⁰

The Ombudsman's report investigated concerns that the Executive Director had invited staff to attend an April 2006 campaign fundraising event for then-gubernatorial candidate Tom Osborne and had encouraged some staff to invite foster families to attend. During that investigation, the Executive Director told the Ombudsman's office that she herself attended the fundraiser but that it did not occur during work hours.¹¹ She also stated that her verbal invitations to staff took place while she was on vacation, so no public resources were used.¹²

However, during our interviews, additional concerns were raised, including that the Executive Director:

- had a staff member send invitations to the campaign event during work hours;
- posted invitations to the event on bulletin boards in the FCRB's Lincoln and Omaha offices; and
- asked staff to invite foster families to the campaign event (the Ombudsman looked into this concern as well).

We believe these actions may constitute violations of law.

Invitations Mailed During Work Hours

The Executive Director told us that she invited the director of the Nebraska Foster and Adoptive Parent Association (NFAPA) to the campaign event. A former staff member of the FCRB stated that she was asked to send out fundraiser invitations to members of NFAPA and other organizations while at work. Public resources are defined in statute as "personnel, property, resources, or funds under the official care and control of a public official or public employee."¹³ By asking an employee to mail invitations to a campaign fundraiser while that employee was being paid by the state, the Executive Director clearly used state resources—personnel—which may be a violation of the statutory provision in question.

Posted Invitations

The Executive Director said, and other FCRB staff confirmed, that she posted invitations to the Osborne fundraiser at the FCRB offices in Lincoln and Omaha. Although the common understanding of a “public resource” is generally state money, office supplies, or computers, the FCRB offices themselves are state property, which is a public resource. By posting these invitations, the Executive Director used public resources for the purpose of campaigning for the election of a candidate.

We acknowledge that the statute does not expressly prohibit posting such invitations in a state office and we found no opinions on this subject from the Accountability and Disclosure Commission or the Attorney General. Nevertheless, the Executive Director of the Accountability and Disclosure Commission concurred that posting such invitations could violate the law.¹⁴

In addition, the internal policies of the state’s Department of Administrative Services (DAS) and the University of Nebraska Medical Center prohibit posting political signs in their offices.¹⁵ Although neither of these policies directly apply to all state employees, they are practical applications of the law that support our interpretation that posting campaign materials in public offices may violate the law.

An additional legal issue regarding the posting of invitations in FCRB offices arises under the federal Hatch Act. The Hatch Act is applicable to state employees in the executive branch if the employee performs duties in connection with an activity financed in part by federal funds.¹⁶ As the FCRB receives funding from the federal government—which is used for personal services and general operating expenses—the agency’s employees are subject to the Hatch Act.¹⁷

The Hatch Act prohibits state employees from using their official authority or influence for the purpose of affecting the result of an election or directly or indirectly attempting to coerce an employee to contribute to a political cause.¹⁸ The Executive Director’s posting of an invitation to a *fundraiser* may violate both prohibitions as it could be seen as an attempt to influence employees to vote for a particular candidate and an indirect attempt to encourage her staff to contribute to his campaign.

We note, however, that executive branch employees are given little direction about the types of activities that are potential Hatch Act violations. The DAS personnel manual, which contains policies applicable to all executive branch agencies, informs employees that the Hatch Act prohibits them from running for a partisan office but re-

fers agencies to the federal office that enforces the Hatch Act for guidance on what other activities might violate the Act.¹⁹

FINDING: Executive branch employees are given little guidance on activities that could constitute violations of the federal Hatch Act.

Invitation of Foster Families

Four of the staff members invited to the campaign event told us they were also directly asked to invite foster families. In our interviews, the Executive Director confirmed that she told staff, “if you know of any foster families that would like to meet Tom Osborne,” they should invite those foster families if they so chose. Further, in the Executive Director’s written response to the Ombudsman’s report, she stated, “I encouraged some of my staff to consider inviting foster care parents and children to this event.”²⁰ Of the staff encouraged to invite foster families, only one did so.

We believe that the identities of foster families and the contact information for those families should also be considered public resources, as FCRB staff have knowledge of this information by virtue of their state employment. Using this interpretation, the use of this specialized knowledge for a campaign event may also violate state law. By encouraging her staff to do this, the Executive Director may have encouraged them to violate the law.

FINDING: Based upon the audit staff’s interpretation of applicable laws, some actions of the Executive Director relating to a 2006 campaign fundraiser—including using agency staff to mail invitations to the fundraiser, posting an invitation in two of the agency’s offices, and encouraging staff to invite foster families to attend the event—may be violations of state and federal laws.

Influence Over Staff

Beyond possible law violations, the Executive Director’s actions relating to the campaign event raise questions of the appropriateness of a manager encouraging his or her staff to support a certain candidate. A manager has inherent power over his or her employees and employees have a vested interest in maintaining a positive relationship with their managers. An employee could assume that any request by his or her manager is a job requirement or, at a minimum, that the employee may fall out of favor with the manager if he or she does not comply with the request. Misuse of a manager’s power may be considered “abuse” which generally accepted government auditing standards define as: “behavior that is deficient or improper when compared with behavior that a prudent person would consider rea-

sonable and necessary business practice given the facts and circumstances.”²¹ Applying this standard, a prudent person may find her actions inappropriate.

We asked the 18 FCRB staff who were employed at the FCRB in April 2006 whether they had, in fact, been invited to the campaign fundraiser and, if so, if they had felt pressure to go. Of the 18, the majority (15, or 83%) said that they had been invited to the fundraiser. Twelve (80%) said that they understood attendance at the event to be voluntary but three (20%) believed participation was mandatory.

FINDING: In addition to potentially violating the law, the actions of the Executive Director relating to a 2006 campaign fundraiser were inappropriate because employees could have felt pressure to participate and some, in fact, did feel that pressure.

Transportation

The Executive Director has a disability that limits her ability to drive; the state board is aware of this and allows the Executive Director to be driven by FCRB staff on official FCRB business.²² The Executive Director told us that she rides to meetings with other FCRB staff members and to work with an FCRB employee. As stated previously, five staff members brought up concerns regarding the Executive Director’s driving practices when we asked about potential law violations at the FCRB; three more individuals stated at other times in our interviews that they felt the driving situation regarding the Executive Director was problematic.

A few staff members were concerned that the Executive Director is reimbursed for mileage when the Executive Director has staff drive her to meetings in the Executive Director’s vehicle. This is allowed, however, as when one is using a personal vehicle for state business, the vehicle owner receives mileage reimbursement to compensate for vehicle wear and tear and fuel costs.²³

FINDING: Reimbursing the owner of the car that is used for state purposes is appropriate even when another person drives.

While receiving mileage reimbursements is allowable, we have two concerns about the Executive Director routinely relying on a staff member for transportation to and from work. First, while the state board allows employees of the FCRB to drive the Executive Director to meetings and other work events, this issue has not been addressed by the state board. Second, this situation again raises the issue of unequal power in the manager-employee relationship and the effect it

may have on an employee's ability to decline a manager's request. The individual who drives the Executive Director to work told us that she does so willingly; however, we believe it could be difficult for an employee in this situation to say no if she were to change her mind.

FINDING: It is unclear whether the board intended for agency staff to transport the Executive Director to and from work.

FINDING: It is inappropriate for the Executive Director to regularly request transportation from a staff member because the staff member may find it difficult to deny that request.

Notes

¹ Committee of Sponsoring Organizations of the Treadway Commission (COSO), *Internal Control—Integrated Framework*, September 1992, pg. 24.

² Comptroller General of the United States, General Accounting Office (GAO), *Internal Control Management and Evaluation Tool*, August 2001, "Integrity and Ethical Values" Section; COSO, *Internal Control—Integrated Framework*, pgs. 24 and 26.

³ FCRB Work Rules Manual, 10-001.

⁴ Wagner, Rodd, and James K. Harter, *12: The Elements of Great Managing*, 2006, pg. 52.

⁵ The program coordinator normally supervises the review specialist supervisors; however, as the program coordinator resigned during the course of the audit, the Executive Director took over her supervisory duties.

⁶ The Special Projects Coordinator does not supervise any employees.

⁷ Two staff members gave answers that were unclear.

⁸ COSO, *Internal Control—Integrated Framework*, pg. 23.

⁹ Neb. Rev. Stat. § 49-14,101.02(2).

¹⁰ 5 U.S.C. §§ 1501-1508.

¹¹ Office of the Public Counsel, Nebraska Legislature, *Ombudsman's Report on the Wrongdoing Submitted by Ms. Tammy Peterson*, September 2007, Attachment 2.

¹² *Ibid.*

¹³ Neb. Rev. Stat. § 49-14,101.02(1).

¹⁴ E-mail from Frank Daley, Executive Director, Accountability and Disclosure Commission, October 7, 2008.

¹⁵ Nebraska Department of Administrative Services (DAS) addresses this topic in its internal Human Resource Policies and Procedures Manual. The Political Activities Policy states that "employees may not display a political poster in their office, nor wear clothing with political slogans/symbols or political buttons while on duty." DAS, *DAS Human Resource Policies and Procedures Manual*, January 2002, pg. 22. Additionally, the University of Nebraska Medical Center (UNMC), a state-funded institution, recently instructed its staff that posting political campaign signs would violate the statute in question. An October 2008 memo from the UNMC Human Relations division stated: Pursuant to Neb. Rev. Stat. § 49-14,101.02, public employees are not permitted to use public property under their control for the purposes of campaigning for or against the nomination or election of a candidate or the passage or defeat of a ballot question....*This would include, but is not limited to, posting political campaign signs on the walls of UNMC-owned cubicles, offices, labs, hallways and/or using the campus telephone, e-mail or mail delivery system for the purposes listed above, whether in an actual or virtual means.* [emphasis added]. UNMC, "A note from HR concerning campaign signs at UNMC" (Published October 7, 2008; Accessed October 8, 2008): http://app1.unmc.edu/PublicAffairs/TodaySite/sitefiles/today_full.cfm?match=4919

¹⁶ 5 U.S.C. §§ 1501-1508.

¹⁷ The Nebraska Information System Budget Status Report as of June 30, 2008 shows that the FCRB receives \$380,000 in federal funds.

¹⁸ 5 U.S.C. §§ 1502(a)(1) and (2).

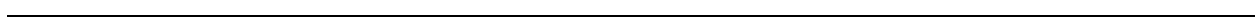
¹⁹ NAC Title 273, Chapter 17, 010.01D & 010.02, pg. 110.

²⁰ *Ombudsman's Report*, Attachment 2.

²¹ GAO, *Government Auditing Standards*, 2007 revision, 7.33.

²² *Minutes*, FCRB Meeting, February 1, 2008, pg. 10. No actual vote was taken: "All State Board members were in favor of continuing the accommodations in place currently for the Director."

²³ Conversation with DAS Transportation Services Bureau staff member, October 14, 2008.



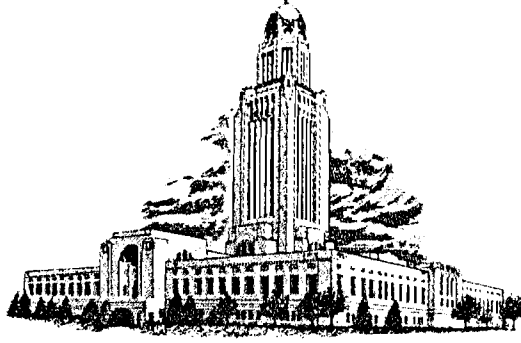


III. Fiscal Analyst's Opinion

State of Nebraska

LEGISLATIVE COUNCIL

2008
EXECUTIVE BOARD
LEO "PAT" ENGEL, Chairman
DON PREISTER
MIKE FLOOD
RAY JANSSEN
ARNIE STUTHMAN
ERNIE CHAMBERS
GAIL KOPPLIN
PHILIP ERDMAN
VICKIE D. McDONALD
LAVON HEIDEMANN (ex officio)



PATRICK J. O'DONNELL
Clerk of the Legislature

CYNTHIA G. JOHNSON
Director of Research

JOANNE PEPPERL
Revisor of Statutes

MICHAEL CALVERT
Legislative Fiscal Analyst

MARSHALL LUX
Ombudsman

Legislative Fiscal Office
PO Box 94604, State Capitol
Lincoln, NE 68509-4604

October 24, 2008

Martha Carter, Legislative Auditor
Nebraska Legislature
Room 1201, State Capitol
Lincoln, NE 68509

Dear Martha:

I have reviewed the draft report, "The State Foster Care Review Board: Authority, Conflicts of Interest, and Management Practices." As per the statute, the Legislative Fiscal Office is to provide an assessment of whether the recommendations can be implemented within the current agency appropriations. The assessment is provided in this letter.

The report examined management issues and other internal operating issues, such as conflicts of interest of state board members. Because of the nature of the recommendations, none of the individual recommendations require additional funding. The final recommendation which encompasses the findings in their totality, however, might require additional appropriations. It states that the board "might wish to consider hiring a legal counsel that reports directly to the board." As this is a new position, if the board would hire a legal counsel, additional funding would be needed. The cost for salary and benefits would range from \$60,407 to \$78,821. Using the agency's funding mix, the general fund amount would be \$45,306 to \$59,116 with the balance of \$15,101 to \$19,705 paid from federal funds.

If you need any additional information, please contact me at 471-0053.

Sincerely,

A handwritten signature in black ink, appearing to read "Liz Hruska".

Liz Hruska
Program Analyst



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 I of this report. They include:

- the Section’s draft findings and recommendations (provided for context);
- the State Foster Care Review Board’s response to a draft of the Section’s report;
- the State Foster Care Review Board Executive Director’s response to a draft of the Section’s report and a related appendix;
- the Legislative Auditor’s summary of the agencies’ response;
- Appendix A: Interview Methodology and Questions
- Appendix B: Research Methodology for Board Member Conflict of Interest Issues
- Appendix C: Board Members’ Votes
- Appendix D: Materials provided by the Executive Director
- Appendix E: Management Standards Literature Reviewed
- Appendix F: State of Nebraska 2008 Personnel Almanac Turnover Rates
- Additional materials provided by the Executive Director with her response to the draft report.

Draft Findings and Recommendations

The following are the Performance Audit Section's findings and recommendations for each section of this report.

Section II: FCRB's Authority and Responsibilities

Finding #1: The board's authority to delegate to non-state-board members its statutory ability to conduct facility visits is unclear (pg. 6).

Recommendation: The state board should consider requesting clarification from the Attorney General's office or seek to have the Act clarified regarding who is allowed to visit facilities.

Finding #2: The manual given to new board members may not be the most effective means of education as most members did not recall receiving instruction regarding their responsibilities as FCRB board members (pg. 7).

Finding #3: No board members reported receiving training by either FCRB staff or the Governor's office on broader laws and policies that apply to most state agencies, including the FCRB, such as the state's open meetings and accountability and disclosure laws (pg. 7).

Discussion: All newly-appointed non-code board members, not just FCRB state board members, should receive instruction on basic state government procedures and duties of public officials such as those contained in the open meetings and accountability and disclosure laws.

Recommendation: The state board should consider increasing its educational activities for new board members on agency operations, basic state government procedures, and duties of public officials—such as those contained in the open meetings and accountability and disclosure laws. Some of this instruction should come from neutral parties—such as the Attorney General's Office and the Accountability and Disclosure Commission and not entirely from FCRB staff as this places both staff and board members in a difficult position. The state board could also consider creating a New Member Orientation Committee to determine a list of topics that new members need to know before participating in state board meetings.

Recommendation: The Performance Audit Committee (Committee) may wish to consider consulting with the Governor's office and an independent agency director's group that meets periodically regarding the need for all newly appointed members of boards and commissions to receive instruction on basic state government procedures and duties of public officials.

Finding #4: There is little agreement among state board members regarding how they are to oversee and evaluate agency operations; however, the board has recently set guidelines for the Executive Director (pg. 8).

Recommendation: The state board should develop means to oversee and evaluate agency operations.

Section III: Possible Conflicts of Interest

Finding #5: No one currently serving on the state board would have been barred from membership had statutory restrictions removed in 2005 remained in effect (pg. 10).

Recommendation: None.

Finding #6: Because the conflict of interest disclosure requirements apply to specific actions or decisions, they do not affect whether an individual can be a member in the organization. Therefore, even if a potential conflict exists for an FCRB state board member, he or she may still serve on the board (pg. 11).

Recommendation: None.

Finding #7: None of the FCRB state board members have encountered a conflict of interest under the Accountability and Disclosure Act (pg. 12).

Recommendation: The state board should consider implementing a formal, internal process in which each new board member discloses to the state board potential conflicts of interest including, but not limited to, those in the Accountability and Disclosure Act. This would ensure that all members are aware of any potential conflicts that may arise.

Finding #8: State board members received inadequate training on the Accountability and Disclosure Act (pg. 14).

Recommendation: See the discussion and recommendations regarding finding #3.

Finding #9: There are no statutory requirements for public officials, including state board members, regarding the need to disclose or take other action regarding potential *appearances* of conflicts of interest (pg. 15).

Finding #10: A reasonable person might question whether an individual whose employer receives substantial funding from DHHS would be able to be critical of DHHS if necessary (pg. 16).

Finding #11: It may not be possible to eliminate all appearances of conflicts for board members who work in the child welfare field, but the board could take steps to offset those appearances (pg. 16).

Discussion: We reiterate that the current board members have not violated applicable conflict of interest law and this discussion does not imply any criticism of them. We raise this issue as one that the Committee may wish to consider as a refinement of the policy changes made in 2005.

Recommendation: The state board should consider including potential appearance issues in the internal disclosure process recommended in Finding #7. This would ensure that all members are also aware of any potential appearance issues that may arise.

Recommendation: The Committee may wish to consider consulting with staff from the Accountability and Disclosure Commission about whether it would be appropriate to add state board members to the list of public officials required to file financial interest statements.

Recommendation: If the Committee is satisfied with effect of the current statute, no further action is necessary. However, if the Committee believes that there should be some limit on the extent of board members' affiliation with DHHS, it may wish to introduce legislation to require members' income from DHHS to be less than a certain percentage.

Finding #12: The Executive Director suggests that reinstating the employment restrictions removed by LB 761 (2005) would resolve her concerns about conflicts she believes exist with current board members; however, such a change would not disqualify any current members of the board from serving (pg. 16).

Recommendation: None.

Sections IV and V: Agency Management

Finding #13: The FCRB meets the recommended practice of having job descriptions for its staff members (pg. 20).

Finding #14: The majority FCRB staff reported that they were satisfied with the job training they received (pg. 21).

Finding #15: All FCRB staff said they understood there are disciplinary procedures in place that would apply if they violated agency policy (pg. 24).

Finding #16: The FCRB has a code of conduct for employees and staff understand what management expects of them (pg. 27).

Recommendation: None.

Finding #17: Almost half of the FCRB staff members interviewed expressed concerns that they do not have enough time to do everything required of them. Additionally, workload concerns were raised with the state board during the course of this audit and the board established a committee to study those concerns (pg. 21).

Recommendation: If it has not already done so, the FCRB workload committee should consider reviewing staff job descriptions and whether the existing level of staff can reasonably be expected to meet everything expected of them.

Finding #18: The majority of FCRB staff reported that they do not receive regular performance evaluations. In addition, the agency does not maintain a summary of previous evaluations as its internal policies require (pg. 22).

Recommendation: The state board should ensure that staff receive regular evaluations and that its policy that evaluation summaries be retained is followed or changed to reflect actual practice.

Finding #19: All staff understand the established chain of command and communication channels; however some staff believe that communication problem exists because they are given inadequate notice to attend previously scheduled meetings and they believe that the Executive Director would be angry with them if they spoke to a state board member (pg. 23).

Finding #20: Five FCRB staff members reported that the Executive Director has made disparaging remarks about current state board members to them (pg. 23).

Discussion: It is reasonable for staff to want consistent communication about management's expectations, conveyed in a timely manner. If staff are not given enough preparation time or expectations change without notice, they cannot be expected to work as efficiently as possible or produce satisfactory work products.

Regarding disparaging remarks made about state board members, we find these statements extremely concerning as the board has authority over both the Executive Director and the rest of the staff. Disparaging board members to staff could undermine the board's authority. Further, management literature supports the theory that managers need to model the behavior they expect from their employees.

Recommendation: The state board should encourage the Executive Director and supervisors to ensure that, whenever possible, proper notice is given to staff regarding meetings and changes in expectations. Additionally, the board should instruct the Executive Director not to make disparaging remarks about the board to the staff.

Finding #21: The majority of state board members said that they understood the protocol and felt that it had addressed concerns they had regarding agency communication (pg. 24).

Recommendation: None.

Finding #22: The majority of FCRB staff stated that employee turnover has affected their jobs (pg. 25).

Finding #23: The FCRB has a high staff turnover rate compared to other state agencies (pg. 25).

Discussion: Management standards state that excessive personnel turnover and staff fulfilling the responsibilities of more than one employee can be an indication of problems within the organization. Supervisors performing the work of those they supervise is especially problematic as supervisors carry out a quality control function in the agency. If they are performing the work of staff they would typically oversee, there is no one to check the quality of their work.

Recommendation: The state board, in consultation with the Executive Director, should evaluate the reasons for staff turnover, especially in key positions, and consider making changes in order to reverse this trend.

Finding #24: Almost half of the staff members interviewed believe that staff are treated unfairly by the Executive Director and are afraid of retaliation if they disagree with her (pg. 29).

Finding #25: Dissatisfaction with the Executive Director played a role in the recent resignations of two of the agency's five supervisors. Additionally, two other supervisors have taken their concerns regarding the Executive Director to the Executive Committee of the state board (pg. 29).

Discussion: The Gallup Organization has published the results of extensive research suggesting that positive reinforcement of employees' good behaviors yields greater rewards for the employer than does negative reinforcement. Organizations that do not use positive reinforcement have 10 to 20 percent lower productivity and employees are more likely to quit their jobs. In order to determine if positive reinforcement was being used at the FCRB, we asked staff if they felt they were treated fairly and if they were afraid of retaliation in the workplace.

We acknowledge that concepts like "perceptions of fairness" are subjective and that it is possible for an organization to have a few employees who perceive unfairness where it does not actually exist. Nevertheless, we believe that having 11 people (almost half of the agency's employees) report that they believe staff have been treated unfairly is cause for serious concern.

Recommendation: The state board should work with the Executive Director to resolve these issues, including taking disciplinary action if necessary. If the state board thinks it would be useful, it could hire a neutral third party to help in these efforts.

Finding #26: No staff reported law violations by the Executive Director or any other staff (pg. 30).

Finding #27: No staff have been asked by the Executive Director or any other current staff to release confidential information inappropriately (pg. 30).

Recommendation: None.

Finding #28: Some actions of the Executive Director relating to a 2006 campaign fundraiser—including using agency staff to mail invitations to the fundraiser, posting an invitation in two of the agency’s offices, and encouraging staff to invite foster families to attend the event—are arguably violations of state and federal laws (pg. 33).

Finding #29: In addition to potentially violating the law, the actions of the Executive Director relating to a 2006 campaign fundraiser were inappropriate because employees could have felt pressure to participate and some, in fact, did feel that pressure (pg. 34).

Recommendation: The state board should instruct the Executive Director that no state personnel, time, or resources should be used for political activities. Additionally, the board should consider organizing a training session for all staff about appropriate use of state resources.

Finding #30: Reimbursing the owner of the car that is used for state purposes is appropriate even when another person drives (pg. 34).

Recommendation: None.

Finding #31: It is unclear whether the board intended for agency staff to transport the Executive Director to and from work (pg. 35).

Finding #32: It is inappropriate for the Executive Director to regularly request transportation from a staff member because the staff member may find it difficult to deny that request (pg. 35).

Discussion: While an occasional ride to work might be less problematic, the more regular carpool situation that is occurring is inappropriate because the employee who drives her to work may fear professional ramifications if she were to stop driving the Executive Director to work.

Recommendation: The state board should instruct the Executive Director to find alternate means of transportation to and from work.

Recommendation: As several of our findings pertain to legal questions, the state board should consider increasing its consultation with the Attorney General's Office on legal issues. Alternatively, the state board might wish to consider hiring a legal counsel that reports directly to the board.

Senator DiAnna Schimek
Chairperson,
Legislative Performance Audit Committee,
1201 State Capital Building
P.O. Box 98945
Lincoln NE 68509-4945

Dear Senator Schimek,

This letter is the response of the Foster Care Review Board to the Legislative Performance Audit's Draft Report entitled "The State Foster Care Review Board: Authority, Conflicts of Interest, and Management Practices." Board members are impressed by the respectful, thorough and professional way in which the Legislative Performance Audit Staff carried out their work, grateful for the time and effort that was spent on this study and are substantially in agreement with the findings.

In our response to the report we will address the findings and recommendations as numbered and listed in Section IV: Findings and Recommendations.

Finding 1 addresses the issue of whether the State board can lawfully delegate to non-state-board members its ability to visit and observe foster care facilities, which action is permitted, but not required by the LB 714 (1982). The Board has been delegating this authority to paid staff and local volunteer Review Board members throughout its 25 year history and believes that a recent court ruling in Omni Behavioral Health vs Nebraska Foster Care Review Board confirmed the legitimacy of this activity. However the Board is prepared to request a ruling from the Attorney general in order to put the matter to rest. The Board therefore agrees and will implement this recommendation.

Findings 2, 3 and 8 address the issue of training that should be offered to better prepare State Board members for their responsibilities. The board embraces this idea and is willing to create a committee to plan both a thorough orientation for new members and on-going training opportunities for all Board members. Dale Comer from the Attorney General's Office addressed the Board about the Open Meetings Law at its March 7th 2008 meeting, and the Board is open to learning directly from the expertise of the staff of the Accountability and Disclosure Commission, in a similar manner.

Finding 4 addresses the means by which the Board oversees and evaluates agency operations. The Board is in agreement that this should be done and agrees to make efforts to address this as an urgent priority. Former Boards have addressed this issue differently, and the Board recognizes that there is a need to be more strategic in our efforts to make oversight and evaluation effective.

The Board is pleased to find that the work that was done to clarify the issues of conflict of interest in findings 5 and 6 was thorough and individualized, and found no conflicts of interest. The untruthful attacks on the integrity of individual Board members have been divisive, acrimonious and difficult to manage, and the issue impacted the reputations and work of Board members, both in Board matters and outside. The subject was raised on the floor of the legislature during confirmation hearings and is not an issue that the Board takes lightly. The Board agrees that the organization needs Board members who have independent knowledge of the child welfare system, and is concerned that any continuation of these suggestions of conflict would have made respected, well-qualified and effective future Board members reluctant to volunteer their time on the Board. The Board reiterates that it has not seen any conflict of interest situations impact our deliberations.

Findings 7, 9, 10 and 11 also address issues of potential conflicts of interest or appearances of conflict, and the Board agrees to consider implementing a formal, internal process, after consultation with the Accountability and Disclosure Commission. The Board sees the need for disclosure about sources of income for Board members, but does not feel that Board members need to go so far as to disclose their personal assets. The Board also believes that in the interest of trust and transparency it will be helpful to the work of the Board if all Board members know about the interest, expertise and connections of all other Board members, particularly close relationships with organizations where conflicts or the appearance of conflict might be an issue.

In August 2008 the Board began to address the concerns raised in Finding 17 about the workload of the staff, by creating a committee to study the issue and make recommendations. The Board agrees that the task should include a review of staff job descriptions as well as a study of the Board's statutory responsibilities and priorities.

The Board will implement Finding 18 and agrees that staff should all receive regular evaluations, and that summaries of those evaluations should be retained, as its policy states. The Board also recognizes that this issue is related to the concern raised in Finding 4 about oversight.

This is also true of Findings 19 and 20 which raise the issue of short notice for meetings, changes in expectations, and the Executive Director making disparaging remarks about Board members. Again the Board made some attempts to address these concerns at the August 2008 meeting, and the Board agrees to consider these issues further and take action to implement the recommendations.

Findings 22 and 23 are equally concerning to the Board, and staff turnover and its impact on morale and workload is another issue that the Board began to address in July 2008, when the Executive committee met individually with all but three of the staff, and began to conduct exit interviews on staff who left the organization. The Board agrees with the recommendation and will certainly continue to evaluate the reasons for the turnover and make changes to address the problem.

The Board is particularly concerned about the issues raised in Findings 24 and 25, addressing staff concerns about lack of fairness and dissatisfaction with the Executive Director, and accepts the validity of the Findings. The Board sees the need for careful and respectful deliberation about what steps should be taken and when, and may choose to implement differently after further consideration.

The Board agrees with and will implement the recommendations in response to Finding 28 about some actions of the Executive Director relating to the 2006 campaign fundraiser, and agrees to refer the issue to the Attorney General's office for consideration.

It was not the intention of the Board to agree to agency staff transporting the Executive Director to and from work, and the Board agrees with and will implement the recommendation in findings 31 and 32, while recognizing that there may be occasional reasons why staff should help the Executive Director by providing transportation or car-pooling.

The Board is open to consulting with the Attorney General's Office or hiring legal counsel if issues arise where the Board feels it needs further legal advice.

The Report and an Agency Response Worksheet is attached.

Sincerely,

Georgie Scurfield
Chair,
Nebraska Foster Care Review Board.

November 24, 2008

Senator _____
State Capitol Room _____
Lincoln NE 68509

Dear Senator _____:

Thank you for this opportunity to respond to the Draft Report of the Legislative Performance Audit Committee regarding the Nebraska Foster Care Review Board.

I would like to bring some serious problems with this Draft Report to your attention:

1. **The Draft Report did not follow the scope of the audit.** The Scope Statement of April 8, 2008, stated that the audit would answer the following questions:
 - What are the FCRB's authority and responsibilities?
 - Do any board members have employment or other interests that create a conflict with their responsibilities as members of the FCRB?
 - Do current FCRB management practices reasonably follow generally accepted management standards and best practices?
- A. In the Draft Report, little was discussed about the FCRB's responsibilities and how those are being carried out, yet the FCRB's authority and responsibilities form the only context by which the other two scope questions can be accurately and fairly answered.
- B. The Draft Report ignored FCRB accomplishments and FCRB productivity, which are a reflection of agency management. For example, the Report omitted that:
 - In spite of serious staff shortages caused by budget issues, the FCRB conducted 5,458 comprehensive reviews of children's cases in 2007. See the enclosed example that shows the positive impact that review has on the lives of children in foster care. This example shows that a guardian ad litem acted on the FCRB's recommendations and the children were adopted by their foster parents within three months of the review.¹
 - In 2008, I worked with Todd Landry to develop a joint study of children who had been in care for 24 months or more and whose plan is reunification. The Governor later named this to be a part of his reform efforts. FCRB staff had originally determined there were over

¹ Sample recommendation attached.

500 children who met the criteria. Through the course of discussions with DHHS, over 120 of those children's plans changed to adoption.

- The FCRB provided extensive information to the Performance Audit Staff for the Transportation Audit on transportation issues affecting children in foster care that the FCRB had identified through recent reviews.
- The Chief Justice of the Nebraska Supreme Court attended a spring 2008 staff meeting (which the auditors also attended) in order to commend the staff for their work and to get input from staff regarding major court issues. A few days later he directed judges to track continuances, which staff had identified as an issue. Staff continue to be active on the Through the Eyes of a Child teams.
- The FCRB also partnered with the Chief Justice to address issues with the performance of some children's guardians ad litem (GAL). This partnership resulted in both the development of GAL guidelines, and a request that the FCRB let judges know when a GAL in one of their cases that we review appears to not be meeting minimum standards.
- The FCRB worked with DHHS to hold joint legal training across the state to help both groups better understand how an Aggravated Circumstance Hearing could help severely abused children find expedited permanency. These were held in Lincoln, Lexington, and Scottsbluff.
- The FCRB also assisted with the education program for county judges on Aggravated Circumstance hearings.
- DHHS Safety Administrators were directed to attend FCRB local board meetings. Subsequently, DHHS supervisors and workers were directed to attend meetings in several parts of the state and participate in the citizen review process.

- C. Conflict of interest was given a very narrow definition and was not put in the context of how conflicts could impede the FCRB from meeting its responsibilities, such as not responding to a legislative request to provide information on Safe Haven cases. No question was asked as to whether or how state board members affirmed the FCRB's authority and responsibilities and how they have demonstrated that commitment.
- D. Management issues were not put in terms of the statutory framework of the agency, or what should be occurring, such as timely issuance of reports or managing the budget.
- E. Management issues were confined to comments regarding myself as opposed to reflecting the whole FCRB management team or the fact that from April to October in addition to my normal duties I also covered the vacancy of the Program Coordinator and of the Lincoln Supervisor.
 - i. As a result of issues that came to light in covering these positions, I had put in place a more comprehensive quality assurance process

to address concerns with timeframes and incorrect information on reports.

- ii. For example, critical deadlines were missed, essential information about children's cases often did not go out in time for court hearings. This meant that the time, effort, and money used to secure the information was not achieving results. Therefore, this was an issue that needed to be addressed for the sake of the children and the agency.
- F. A directive was given that each review specialist be allowed to cancel one board meeting in either August or September in order to facilitate the work on a special study. At a staff meeting it was apparent there were variances, with some cancelling a meeting and others not being allowed to do so. I immediately communicated my directives to the entire staff and have continued to do so since.
 - G. The Legislative Performance Audit did not authorize reopening of the 2007 Ombudsman investigation, yet that is the focus of much of the Report. The Report uses the same underlying facts as the Ombudsman, who found that "there were no law violations...that would involve criminal liability."
 - H. The scope was to be toward current management practices, yet the auditors spoke with former employees who had not been with the agency for some time and re-examined events that occurred in 2006.
2. **Confidential information was shared.** Neb. Rev. Stat. 50-1213(2) states that, "any confidential information...shared with the section shall remain confidential and shall not be shared by an employee of the section with any person who is not an employee of the section."

In spite of statute and verbal assurances from the auditors, it appears that the names of staff members who spoke about their perceptions of conflicts of interest were shared with the State Board Chair. These person's jobs were threatened.

This occurred after a letter from a constituent to a member of the Performance Audit Committee regarding their views of conflicts of interest was shared with members of the State Board. As the State Board minutes reflect:

"Georgina Scurfield stated that Martha Carter had provided her with the list of the people [staff] who were interviewed during that time period as outlined in Ms. Carter's e-mail. Ms. Scurfield stated that she had not gone any further with the information and that she did not think the Board could specifically point fingers. Ms. Scurfield stated that there were ways that State Board Member behavior could be dealt with but that staff

members needed to know that their job was in jeopardy if the State Board found out that they did this.”²

3. **In spite of repeated requests throughout the process, standards for measuring management were never provided.** With no clarification of the standards well into the evaluation, in July 2008, I again wrote Martha Carter to ask for the criteria for the evaluation of the management practices.³ She sent me the plan which listed as the fourth bullet under methodology “*Identify and review external management standards and best practices, which include but are not limited to, the Internal Control Integrated Framework from the Committee of Sponsoring Organizations of the Treadway Commission.*” This has over 300 evaluation points, and is geared toward publicly held corporations, such as Lehman Brothers, rather than a small state agency. The bullet point did not address what other standards would be used.

I asked for clarification as to which of COSO and other standards the Legislative Auditors felt were important. In the subsequent response she wrote, “*we are not taking the COSO standards and applying them in their entirety to the FCRB. Instead, we identified basic COSO management standards and combined them with other management standards and best practices – including those DAS recommends to state agencies – to come up with a set of basic management practices that are reasonable to expect state agencies to follow.*” No further clarification was given.

The Legislature created the FCRB to track, review, and report on system issues, and incorporated this in the Nebraska Foster Care Review Act and other pertinent statutes. In addition, as a State agency, the FCRB acts in response to DAS fiscal and personnel standards, and NAPE requirements, relevant Attorney General Opinions, FCRB Rules and Regulations, FCRB policies and procedures, and State Board directives. I again asked for clarification as to the measurement standards, and was never given a definitive answer. Even at the end of August, I received an email stating that they were still considering which standards to use, with only a short time left before their report was due.

4. **The Report has a negative bias, the majority of the questions asked about the Executive Director and management were negatively structured, and the Report placed emphasis on negative comments.**
- A. The Report cites the need for positive reinforcement of staff, but then proceeds to ask questions designed to illicit a negative response, such as:
- Do you think FCRB staff are treated fairly by management (both your immediate supervisor and upper management)?
 - What happens if you do something wrong?
 - Are you afraid of retaliation from management? If so, why?

² September 5, 2008, State Board meeting minutes, page 12, attached.

³ Emails to Martha Carter attached.

- B. Negative questions generate negative answers.
 - C. Staff could have been asked questions framed in the positive, such as:
 - Does management ever use positive reinforcement with you?
 - What happens when you do something right?
 - What are some examples of other positive reinforcements?
 - D. Report narratives were framed in terms of 'nearly half had negative comments', rather than 'over half had these positive comments.'
 - E. While negative comments are expanded on, few positive comments are presented.
 - F. The Draft Report omitted that seven of the FCRB's staff have over 10 years of service with the agency.
5. **Weight was not given to certain person's employee performance issues and the context of their comments, even though information was provided to the Auditors.**
- A. The performance issues included failure to perform basic duties, failure to meet statutory timeframes, not following clear directives, and not adhering to agency policies. I was addressing these issues, and provided documentation.
 - B. Without the framework of the FCRB's responsibilities, the negative effect on children's cases when recommendation reports are late or inaccurate, cannot be put in context.
 - C. Some of these persons were working together to influence the audit findings.
 - D. None of this is reflected in the Report narratives, even though I provided documentation regarding these issues.
6. **The context of some issues was not presented.**
- A. For example, the Draft Report finding in regard to there not being enough staff to do the work (p.21) is valid.
 - B. What is not described in the narrative is the fact that due to budget cuts in 2002-2004, the FCRB lost 5 review positions, and due to a reduction in federal funds the FCRB subsequently lost another 2 review positions, (the FCRB went from 21 review specialist positions to 14 positions) and the FCRB lost 3 support staff. The State Board put in place a priority list of cases to be scheduled for review, and adjusted workloads, consultation points, and back-up for when staff attend court hearings.

- C. Also not described in the narrative, is the fact that the turnover rate was affected by the staff reductions and by staff fearing further reductions.
- D. This information was provided, but not addressed in the report.
7. **The Auditors did not seek information from key management staff until the end of the interview process**, and then in the most cursory fashion. One of these persons was the last of the staff to be interviewed, even though she works very closely with me and could have provided valuable information for the Auditor's consideration throughout the process.
8. **Response time was short.** While the Auditors had over six months to craft their report, I was originally given 20 working days, and then given a 5-day extension. The report was shrouded in confidentiality, which made responding difficult. As I was attempting to respond to some very negative comments about myself based on vague allegations, many of which I was seeing for the first time and for which I did not have any specifics, the regular work of the agency went on.

Thus, while I was drafting my response, I was also:

- assuring our agency continued tracking and reviewing children,
- implementing a special study for the Governor,
- acting upon a request for information regarding Safe Haven,
- working with the Chief Justice guardian ad litem performance,
- training the newly hired Program Coordinator, and
- drafting our next annual report.

Attached please find additional documentation regarding the above points. Should the Committee choose to issue a Report, I ask that this information be considered and reflected in the final report.

However, due to the inherit problems with this process, such as: 1) not following the scope, 2) breaching confidentiality, 3) using standards of management based on COSO, which are geared toward publicly held corporations and not state government, 4) reopening an investigation without authorization, and 5) utilizing a negative bias throughout Report narrative, I respectfully request that a final report not be issued.

Sincerely,

Carolyn K. Stitt
Executive Director

CKS/lmc

I would like to begin by saying that I am pleased to be able to cooperate with this performance audit and join with the Legislative Performance Audit Committee in an effort to “clear the air” regarding any concerns regarding the Nebraska Foster Care Review Board since the Ombudsman’s report was issued in September 2007.

The Scope Statement adopted by the Legislative Performance Audit Committee on April 8, 2008, stated that the audit would answer the following questions:

- What are the FCRB’s authority and responsibilities?
- Do any board members have employment or other interests that create a conflict with their responsibilities as members of the FCRB?
- Do current FCRB management practices reasonably follow generally accepted management standards and best practices?

Because the Auditors did not answer the first scope question, the remaining questions were answered without consideration of the FCRB’s mandates or consideration of the agency’s accomplishments on behalf of children in foster care.

The Draft Report acknowledges that the performance Audit Section did not audit the FCRB’s compliance with the Nebraska Foster Care Review Act, stating that an evaluation of actual compliance with the Act was not included in the three questions that were used to form the scope of this audit (performance Audit Section Draft Report, p. 5).

However, the FCRB’s authority and responsibilities frame the management of the agency, thus I find it is essential to respond to the Draft Report in the context of the FCRB’s work and the manner and degree to which its role and statutory responsibilities have actually been met as management must occur within this context.

Other issues with how the FCRB’s management was discussed include:

- Standards for measuring management issues were unclear.
- Management issues were confined to comments regarding myself as opposed to reflecting the whole FCRB management team. The scope was to be toward current management practices, yet the auditors spoke with former employees who had not been with the agency for some time.
- The impact of working under statute and relevant Attorney General Opinions, FCRB Rules and Regulations, FCRB policies and procedures, State Board directives, DAS fiscal and personnel standards, and NAPE requirements on specific management decisions was omitted. The FCRB does not work under *the Internal Control Integrated Framework from the Committee of Sponsoring Organizations of the Treadway Commission*, which are geared toward publicly held corporations rather than a small state agency, but apparently formed some of the standards used to evaluate the FCRB.
- The FCRB’s accomplishments were not discussed as part of the discussion of management practices and decisions.

In addition, the Draft Report goes beyond the scope of the Audit. The Legislature did not authorize a reopening of the 2007 Ombudsman investigation, yet that is the focus of much of the Report.

I believe that the scope issues and omissions were critical flaws throughout the report. If this report is released, I would ask that this report include a brief description of the success of the FCRB's program, such as having a model independent tracking system, and the positive impact of reviews, and advocacy measures such as attending court hearings, staffing cases, etc.

Context of the Performance Audit: Roles and Responsibilities of the FCRB

As our long-established mission statement and statute makes clear, the State Foster Care Review Board's mission is to ensure the best interests of children in foster care are being met through independent external citizen review, monitoring facilities that house children and youth, maintaining up-to-date data on a statewide tracking system, and disseminating data and recommendations through an Annual Report. The Board accomplishes this by:

- Utilizing trained citizen volunteers to review the plans, services, and placements of children in foster care whether in foster care through the Department of Health and Human Services, or through private placement;
 - 5,458 reviews were completed in 2007.¹
 - Reviews occur in a well-defined system, and are a multi-disciplinary comprehensive analysis of the child's plan, placement, and services based on information from DHHS, foster parents, guardians ad litem and others significant in the life of a child in foster care.
 - Local citizen volunteers donated over 38,200 hours of service reviewing children's cases in 2007.
- Making findings based on the statutory requirements for review and setting forth the specific rationale for these findings;
- Sharing the findings with all the legal parties to the case within 30 days of the meeting;
 - 38,206 case specific reports with recommendations were issued to the courts and legal parties of the cases reviewed in 2007.
- Collecting data on children in foster care, updating data on these children, and evaluating judicial and administrative data collected on foster care;
 - Data forms are completed in each review, which is how we are able to report information about the child welfare system. Lesser quantities of information are also collected on children who were not reviewed, and is used to determine when to schedule children's reviews.
 - 9,623 children who were in foster during 2007 were tracked.
- Disseminating data and findings through an Annual Report, community meetings, and legislative hearings;

¹ A sample review recommendation document is attached, and labeled attachment A.

- Discussed in the annual report the need for oversight of all services for children, particularly those provided via contract.
- Reported on the need to stabilize case management.
- Reported on the need to stabilize children's placements.
- Visiting and observing facilities for children in foster care;
 - 122 facilities were visited during 2007.
- Requesting appearance in further court proceedings through limited legal standing by petitioning the Court at disposition to present evidence on behalf of specific children in foster care and their families, when deemed appropriate by the State Board;
 - Staff appeared in court 947 during 2007, with the concerns being addressed in over 70% of those cases.
- Advocating for children and their families through individual case review, legislation, and by pressing for policy reform;
- Organizing, sponsoring, and participating in educational programs.
 - Participated in the judicial education program on aggravated circumstances.

By statute, the FCRB is required to establish a statewide registry of all foster care placements occurring within Nebraska. The local boards are required to review the case of each child in foster care at least once every six months, and the agency is to submit written reports to the court having jurisdiction over the child. The State Board is required to review the activities of the local boards, and to report and make recommendations to the Nebraska Department of Health and Human Services. The State Board also approves the yearly goals for the agency.²

These responsibilities are demanding, and the systems with which we interface are ever changing.

Unique Aspects of the FCRB's Role

On paper, the statutory responsibilities described above might not seem to be much different from the legislative mandates of many other State agencies. But unlike other State Agencies, the Foster Care Review Board's legislative purposes and mandate require its employees and volunteers to immerse themselves into the complex and emotionally intense issues resulting when children have been subjected to abuse, which can include horrible mistreatment, neglect and abandonment by families who are often unwilling or unable to meet the children's basic needs, in order to effectively advocate for the children.

For example, during the Safe Haven hearing, some heart-breaking stories of the need to access services were presented. These and equally heartbreaking cases form the day-to-day work of the FCRB of the over 4,800 children in foster care.

In this ever-changing child-welfare system, the FCRB meets four essential functions:

1. Tracking children in foster care,

² 2008 Goals are included as attachment E.

2. Reviewing children's cases,
3. Advocating for individual children's needs, and
4. Reporting system breakdowns and deficiencies.

The FCRB is responsible for documenting critical problems with the DHHS system, the prosecutorial system, the judicial system, and the guardian ad litem system, and advocating for children's best interests. The FCRB works within legal framework of these children's cases and staff must be knowledgeable about each of these systems.

In fulfilling its function of review and report on these cases, the Board is required to assess whether the care, services and planning provided for such children by the Nebraska Department of Health and Human Services, or its subcontractors, adequately meet and protect each child's need for health, safety and well being. As with many large organizations, NDHSS has areas of strengths and deficits. The same is true of the prosecutorial system, the judicial system, and the guardian ad litem system. It is the FCRB's statutory mandate to report on these findings.

When it is an agency's mission to reveal the unbiased facts about a strained child welfare system, the agency, its staff, and its Executive Director makes enemies. In its role, the FCRB brings system deficits such as the significant needs of children that go unmet, the lack of resources, and children at risk, to the attention of the Governor, the Legislature, DHHS, and/or the press, which has created political enemies. As a result, there are entities which have challenged the FCRB's authority to advocate and continue its essential work to track, review and advocate for the best interests of Nebraska's foster children.

This challenge has been exhibited by a DHHS contractor (OMNI Behavior Health) who has sued the FCRB to diminish its authority and in order to:

- Prevent the FCRB from meeting its statutory obligation to review children's cases,
- Stop the FCRB from reporting to the contractor's funding source (DHHS), the Governor, the Legislature, or law enforcement any serious safety concerns uncovered as a result of review of children placed at that contractor's facilities, and
- Stop the FCRB from visiting and observe foster care facilities to determine whether the physical and psychological and social needs of each foster child is being met as allowed by statute.

OMNI is using taxpayer dollars to pursue this action against the FCRB, a state agency.

- It is trying to stop the FCRB from reporting serious concerns, even though it has had more than one group home closed due to substantial and ongoing issues with failure to provide basic supervision.
- Although the District Court issued a summary judgment against OMNI finding its allegations baseless, it appealed the decision, and the action remains on going.

In fulfilling its statutory responsibilities, the State Board members are authorized to visit and observe foster care facilities to determine if children's needs are being met. The

Nebraska Attorney General has issued a written opinion determining that members of local boards are also entitled to conduct such visits.³

Some of the contract foster care providers have a financial stake in the provision of their services, and a financial incentive to provide substandard care, thus you can understand that the FCRB's exercise of its right to visit and observe foster care facilities is sometimes not welcomed by some of the providers, who have tried to raise barriers to the FCRB's authority to determine whether the physical and psychological and social needs for each foster child is being met in these placements.

Likewise, some contractors were unhappy when the FCRB worked with the Performance Audit Committee and provided detailed information to the transportation auditors on serious issues with contracted transportation, such as children endangered by drivers under the influence, children allegedly sexually assaulted by drivers, children left by drivers without checking to make sure a responsible adult was present, children under five being transported without appropriate car seats, etc. There are patterns of issues with some providers that have not be corrected.

Others within the system were unhappy when the FCRB brought policy makers information about the child deaths from abuse where the system had been aware of serious safety issues within the children's home of origin in 2003, and brought to light the serious issues with often the inadequate response to child abuse and neglect.⁴

All this being said, **the FCRB has substantially fulfilled its legislative purposes and mandates,** and continues to track children, review their cases, visit child care facilities, and report on the collected tracking and review findings and analysis of the data.

In addition to tracking children and reviewing their cases, staff have been involved in a number of project which have greatly benefited children and youth in foster care. Some of the major projects recently undertaken include:

- Providing the Legislature with information for the Transportation Audit.
- Designing the study process, designing the data tool, and conducting a special study for the Governor on children who have been in care for 24 months or more. As a result, over 120 plans changed to adoption.
- Identifying issues with Guardian ad litem representation for the Chief Justice.
- Conducting joint educational programs on aggravated circumstances with DHHS.

The following are my responses to some of the major findings in the Draft Report:

³ Attorney General opinion is enclosed as attachment F.

⁴ Nebraska's Lost Children is included as attachment G.

FINDING 1: The board's authority to delegate to non-state-board members its statutory ability to conduct facility visits is unclear.

Auditor Recommendation: The state board consider requesting clarification from the Attorney General's office or seek to have the Act clarified regarding who is allowed to visit facilities.

Facts Not Considered:

The Attorney General's office has already found that the State Board can authorize local board members and staff to conduct facility visits.⁵

Also, in the summary judgment rendered February 28, 2008, in the lawsuit by OMNI Behavioral Health against the Board, Judge Chevront found,

"The visits [by the Board to facilities caring for foster children] here are in furtherance of the responsibility of the state to assure appropriate care and services for children who are in the state's care. **In fact, the state, including the Board, would be remiss if no visits were conducted and would be subject to criticism** and possible legal liability if the Board failed to carry out the visits and inspections provided by statute."⁶

The ruling goes on to cite the courts orders allowing such visits and then states,

"...by filing this action, the plaintiff's are attempting to collaterally challenge the authority and jurisdiction of these judges...These judges would be derelict in their duties if they failed to require that the placement of such be reviewed and inspected to insure that the welfare of the children is maintained."

It would be logistically impossible for an 11-member State Board, by itself, to visit even a small percentage of the 1,500+ foster homes plus all the group facilities across the state. Clearly, trained staff and volunteers can fulfill this function.

Recommendation: If this report is released, please reflect that has an Attorney General opinion has already been rendered that allows the State Board to authorize local board members and staff to conduct visits, and the report needs to reflect the statutory authority to conduct facility visits as recently reaffirmed by the District Court. FCRB Regulations are in process of being changed to reflect the ability of local board members and staff to conduct these visits.

⁵ The Attorney General's Opinion is provided as attachment F.

⁶ The District Court Ruling is provided as attachment H.

FINDING 3: No board members reported receiving training by either FCRB or the Governor's office on broader laws and policies that apply to most state agencies...

Auditor Recommendation: The state board increase educational activities for new board members on agency operations, basic state government procedures, and duties of public officials...

Clarification:

I arranged for Dale Comer from the Attorney General's office provided a comprehensive training on the open meetings law to State Board members and senior staff at the March 2008 State Board meeting, to which the auditors were invited. He also provided written documents for the existing State Board members that will be put into the training manual for new state board members. The training manual is supplemental to the face-to-face training program.

Recommendation: If this report is released, please reflect that this training has occurred. I agree that it was helpful to have a representative of the Attorney General's office provide this training.

FINDING 4: There is little agreement among state board members regarding how they are to oversee and evaluate agency operations; however, the board has recently set guidelines for the Executive Director.

Auditor Recommendations: The state board should develop means to oversee and evaluate agency operations.

Facts Not Considered:

The Institute on Governance lists the basic job description of a governing board, including:

- Affirming the mission of the agency.
- Providing strategic direction.
- Providing accountability and transparency.
- Financial stewardship.

The Institute goes on to describe the role of the Executive Director as the official link between the governance board and the staff. The Institute distinguishes between governance, the source of strategic decisions and ultimate accountability for the work, and management, the organization of tasks, people, relationships, and technology to get the job done. Directors are to exercise their power with competence and diligence in the best interests of the organization.⁷

⁷ Adapted from principals found on the Institute's website, <http://www.iog.ca/boardgovernance/html>.

The State Board has already developed multiple means to oversee and evaluate agency operations.

- Affirming the mission of the agency.
 - The FCRB mission is spelled out in statute, and further described in the long-standing FCRB mission statement.
- Providing strategic direction.
 - The State Board approves the agency goals each year.
 - The State Board set criteria for reviewing children's cases in response to budget shortfalls.
 - The State Board approves agency policies.
 - The State Board reviews the Rules and Regulations and has a Committee that is currently working on revising the Regulations.
 - The State Board has appointed an Annual Report Committee to oversee the format of the statutorily required Annual Report.
 - The State Board has appointed a technology committee that is reviewing the agency's technological needs.
 - The State Board has also appointed committees for special functions, such as the 25th anniversary committee and the nominating committee.
- Providing accountability and transparency.
 - I provide the State Board regular updates on all aspects of the FCRB's operations, including tracking, review, data analysis, meetings held, etc., which gives them the opportunity to review the activities of the local boards, agency staff, and myself. (Over 150 such updates were sent January-November 2008). I serve at the pleasure of the State Board.
 - The State Board approves new local board members per statute.
- Financial stewardship.
 - There is a Fiscal Audit Committee that oversees expenditures, and the budget status is discussed at each State Board meeting.
 - The State Board set a protocol for the approval of items or activities where the cost may be beyond the ordinary course of business.
 - The State Board at the beginning of each calendar year makes a number of formal motions as suggested by the State Auditor, including a cost analysis of space for review specialists, supervisor, and program coordinator who home office, allowing me to occasionally work from home, and affirming that the federal fund agreement with DHHS remains intact.
 - Twice each year the State Board reviews all contracts with the FCRB.
 - The State Board determines the biennium budget request.

The State Board has had numerous discussions on its role in oversight. This included an orientation on March 3, 2006, in which the roles are distributed and discussed. The roles were again discussed on April 26, 2006; April 23, 2007; February 1, 2008; March 7, 2008' and May 9, 2008.

During the discussion on February 1, 2008, Dr. Brown asked that all State Board members agree to the roles prior to the election of the State Board Chair. He further

noted “that it is not the role of the State to run the day-to-day operations of the agency and decisions must not bypass the Director.” Mr. Ramirez noted at that meeting that “it was not the role of the State Board to micro-managed the agency or staff.”

At the March 7, 2008, State Board meeting, Ms. Scurfield asked if their should be more leadership roles established for the State Board, even though these roles had been discussed at the prior meeting. Dr. Brown stated at the March meeting that “*the State Board is not the Director of the agency and that he would have significant concerns if the State Board wanted to take on front-line direction of this agency.*”

Past State Board chairs have focused on how they could help address serious issues for children in foster care. For example, joining staff in staffing cases of serious concern, attending meetings regarding children being restrained, testifying before the Legislature, participating in press conferences, welcoming staff, volunteers and guests at educational programs, and affirming the agency’s role and mission at staff meetings.

As the Institute on Governance states, “*One goal of good governance is to enable an organization to do its work and fulfill its mission. Good governance results in organizational effectiveness.*”⁸ As the agency’s 25 year history of accomplishments shows,

There are State Board members who are clear that the State Board is to provide oversight and support through the above means so that its paid staff and volunteers can accomplish the FCRB’s mission to track children, review their cases, advocate for their best interests, and provide an analysis of the foster care system to policy-makers and the public.

That said, due to some claims by some staff with performance issues (see my response to findings 24-25), the State Board has attempted to assist with personnel issues. This has inadvertently created some additional challenges, such as triangulation by staff who are insubordinate. The State Board needs to allow the newly hired Program Coordinator to address these issues according to state personnel policy so that we can act in a timely and appropriate manner.

Recommendation: If this report is released, please reflect extensive oversight exists.

FINDING 7: None of the FCRB state board members have encountered a conflict of interest under the Accountability and Disclosure Act.

Auditor Recommendation: The state board should consider implementing a formal, internal process in which each new board member discloses to the state board potential conflicts of interest including, but not limited to, those in the Accountability and Disclosure Act. This would ensure that all members are aware of any potential conflicts that may arise.

⁸ As found on the website http://www.iog.ca/boardgovernance/html/gov_whagoo.html in November 2008.

Comments and Facts to Consider:

The Draft Report states on page 16, “A reasonable person might question whether an individual whose employer receives substantial funding from DHHS would be able to be critical of DHHS if necessary. In the 2005 bill, the Legislature did, in effect, set an outside limit on the level of DHHS involvement appropriate for a board member: the original bill included the Director of Health and Human Services as a board member, but the introducer ultimately asked to have that provision removed. It may now wish to consider whether it would be appropriate to establish a limitation on the amount of funding an individual or his or her employer can receive from DHHS...”

I agree that it is unrealistic to expect persons whose employment could be at risk to self-disclose conflicts. I also agree with the implication that even if employment were not directly threatened, **it would be difficult for anyone to simultaneously represent two agencies with different missions and goals that may have very different positions on essential issues.** This is not a personality issue, as even with the best of intentions anyone in this situation would find it difficult.

The Draft Report also states on page 16, “It may not be possible to eliminate all appearances of conflicts for board members who work in the child welfare field, but the board could take steps to offset those appearances.” I find these steps should include, at minimum, provisions for board members to be recused from voting on matters related to potential conflicts of interest.

Since one of the basic purposes of a governing board is to affirm the agency’s mission,⁹ the question should be posed as to:

1. Does each board member, with or without an appearance of a conflict of interest, support the mission and work of the FCRB?
2. How do State Board members show their commitment to citizen review, tracking, and advocacy for children in foster care?

The following are a few illustrations of why the commitment to the goals and mission of the agency is a concern:

- After nearly two years on the State Board some State Board members have yet to attend a local board meeting and witness the review process in action. These members are from urban areas where we have boards that meet at various times of the day or evening and on different days of the week, so scheduling conflicts should not be a major issue. The need to attend a local board meeting is emphasized in the initial training, and these persons have been provided with the dates/times of the meetings on more than one occasion.
- Some State Board members who are on the Workload Committee have never shadowed staff, nor do they have a basic understanding of the state and federal requirements that have led us to implement certain steps in the duties of the various positions.

⁹ Institute on Governance.

- Some staff have misrepresented issues and directives to members of the State Board.

Please keep in mind as you read the report that since the beginning of 2006, which coincides with the change of the State Board makeup, I have been investigated by the Ombudsman, Al Curtis on behalf of the State Board, two more State Board investigations, and as part of the OMNI lawsuit (a lawsuit by a DHHS contractor against the State Board and myself personally). In most of these investigations, I was not given any information other than “someone” made an allegation about a broad topic, often without dates, times, or facts to back up the allegations.

I had not been the subject of any formal investigations in the 20 years prior to the change in the State Board makeup. Notably, none of these multiple investigations found any wrongdoing, and the Court dismissed the OMNI lawsuit for being without merit.

Recommendation: If this report is released, please reflect the above facts in the final report.

FINDING 17: Almost half of the FCRB Staff members interviewed express concerns that they do not have enough time to do everything required of them...

Auditor Recommendation: If it has not already done so, the FCRB workload committee should consider reviewing staff job descriptions and whether the existing level of staff can reasonably be expected to meet everything expected of them.

Facts Not Considered:

The FCRB interacts with a dynamic system on the cases of children who have suffered abuse and neglect in their home of origin and who may be further harmed by the system, such as when children are moved too frequently between different foster homes.

Workloads involve not only the number of actions needed to impact cases, but dealing with the emotional nature of cases of children who are emotionally hurting and suffering loss on a number of levels, and who may have physical effects from the abuse and neglect, and parents who are in grief from having lost their children, lost control of their lives, and lost their dignity. As Dr. Ann Coyne, a professor of Social Work from the University of Nebraska School of Social Work has said, *“The decisions in child welfare are not between good and bad, they are between worse and least worse.”*

Review specialists:

1. Review the DHHS files of children assigned,
2. Summarize and/or copy the materials for the local board members who conduct the reviews,
3. Obtain the addresses of the multiple parties to be notified of each review and assure that support staff receive these in time to mail the notification letter,
4. Make federally required collateral contacts with the foster parents or caregivers,

5. Make other collateral contacts with the caseworker, the guardian ad litem, therapists or others,
6. Collects data related to the case reviewed,
7. Facilitate the meeting of the local citizen review volunteers who make the findings on the case and records those findings,
8. Writes the final recommendation report to be distributed to the legal parties and submits it to their supervisor for proofreading,
9. Consults with their supervisor regarding the cases and any follow up needed.
10. Assures that needed advocacy and follow up occurs, such as attending court hearings, attending staffings, or attending other meetings related to the cases.

Successful outcomes for children often require a lot of work on the part of the FCRB's review specialists and staff. For example, the FCRB had a case in which the plan was to return two girls who had been sexually abused to the home of their mother, who was living with a sex addict. To successfully intercede required research, numerous case staffings, hiring an attorney, and cross-examining witnesses on the stand. It was not enough to document this in a report. Advocacy steps were necessary to make a difference for these children.

Children in foster care need the FCRB's staff to assure their cases receive the protections of citizen review and the advocacy that review can provide. Therefore, management needs to make sure that the workloads are as manageable, fair and equitable as possible.

There are some significant challenges to achieving this goal. The Draft Report finding in regard to there not being enough staff to do the work (p.21) is valid. In recent years we went from 21 review specialist positions to 14 positions. Due to budget cuts in 2002-2004, the FCRB lost 5 review positions, and due to a reduction in federal funds the FCRB subsequently lost another 2 review positions, and the FCRB lost 3 support staff.

Having never had a large number of staff to begin with, it is a challenge to try to manage a workload that did not appreciably decrease with significantly fewer (10 less) staff. The State Board has requested additional staff in the budget request submitted in September 2008.

In response to the ongoing staff cuts, the State Board prioritized which cases will be reviewed, and we are reviewing fewer children.

The draft report found that almost half of the staff interviewed express concerns that they do not have enough time to do everything required of them (p.21). Again, this is expressed in the negative, rather than as **over half find they can fulfill their responsibilities in the time allotted.**

While workload is a serious issue, the Draft Report omits that **in order to assure that review specialist workloads were manageable, a study was completed with all review specialists participating.** Each was given a time study tool to complete on which they recorded how long it took them to complete each different component or task of the position for one complete month. Using that, and taking into account normal use of

vacation and sick leave, we reduced the normal number of children's cases required of each review specialist, and made provisions for special projects or extraordinary circumstances.

This year we have reduced review specialist's workloads as follows:

1. We reduced by 14% the number of cases required to be reviewed in order to facilitate advocacy. Full time staff went from being required to review 21 cases per month to being required to review 18 cases, while part time went from 14 cases per month to 12 cases.
2. We reduced the number of cases reviewed to facilitate review specialist training in May.
3. We reduced by 33% the number of cases each staff persons reviewed in either late August or early September (depending on the staff person's geographic region) so that review specialists could gather data for the Governor's special study on children in out-of-home care for 24 months or longer.
4. We allowed reviewers to review one less case during September in order to conduct Governor staffings, a 5-8% reduction.
5. We continue to allow reviewers to drop one case for a state holiday in a month. (For example, in November we have three state holidays – two at Thanksgiving and one Veteran's Day, so three cases may be dropped in November).

Prior to 2008, a number of other timesaving measures were implemented for review specialists that continue to be in effect, including:

- Shortening the recommendation format to save writing time,
 - We took out a major section of history, so that we could write fact-based recommendations that focus on current information and clearly defined top concerns.
 - This change has helped move cases forward, as the focus is on the current situation.
 - After speaking with recipients of our reviews, we left the first page information intact.
- No longer requiring a special letter to be written and sent to the children's guardian ad litem outlining specific case concerns.
- Utilizing support staff to create the mandatory notification letters and to send out the final recommendation reports to the legal parties as required by statute.
- Utilizing support staff to create the preliminary case assignment lists, in order to free up supervisors so they could better assist their reviewers.
- Providing review specialists access to DHHS computerized N-FOCUS records via their office computers so they did not need to go to the DHHS offices for those documents,
- Use of regionally based video-conferencing for some staff meetings to save drive time,
- Use of computer server technology to provide automatic backup of documents (formerly this had to be done manually) and to provide easier access for supervisors and for staff to pull cases, and
- More fully utilizing email capabilities.

Workloads need to be reasonable, however, we can never lose sight of the fact that each time a case is not reviewed, means that the children involved do not receive the benefits of citizen review – including the oversight and advocacy we provide.

While it is a demanding professional position, full-time review specialists have a manageable workload, which can be accomplished within a 40-hour workweek if they utilize basic organizational skills. In fact, the report notes that **over half of the staff indicated they are able to complete their work in the time allotted**. Considering that there is a potential reward for reporting that workloads are too high (the potential for being given less work), the fact that over half indicated they are able to accomplish their work in the time allotted is significant.

That said, there are some inequities between the workloads of rural versus urban review staff, since in the urban areas the coverage of court hearings, 1184 team meetings, and the like can be shared among several staff, while in the rural areas one person must cover all such meetings if the FCRB is to have a presence. The impact of appearing in court, attending staffings, and attending meetings varies depending on the geographic location, the judges involved, and the case specifics, but all of these measures have proven effective at assuring children's best interests are met. We continue to work on ways to allow for such differences while still making a difference for children.

The reduced requirements I described above allow for response to the cases requiring more labor-intensive efforts. To illustrate the difference in advocacy needed, one review specialist currently has two cases involving the identification of immediate risk to the children involved. In order to ensure these children's safety, the reviewer has been in contact with the legal parties on multiple occasions, and continues to work towards resolving the issues. In contrast, there are cases where minimal work is needed, such as children whose adoption hearing will occur soon with no expected complications. Most cases are somewhere between these two extremes.

Some have put forth doing no advocacy for individual children and/or not addressing systemic issues as a means for addressing workloads. However, in order to meet our mandate of promoting children's best interests, reviews need to be more than a meaningless checklist. Some review specialists have reduced their level of advocacy citing workloads, which is not acceptable.

For example, the FCRB has reviewed cases where the transportation provider or the visitation provider has documented some frighteningly negative interactions of the parents during visitation, yet the Department's plan remained reunification. Without intervention these plans would not have changed.

Reviewing cases and advocacy involve:

- Staff reviews DHHS case files, gathers additional pertinent information regarding the child's welfare, provides information to local board members prior to local board meetings, and provides the means for pertinent parties to participate in the local board meetings.

- Local board members make recommendations and findings on the placement, services and plan, and identify barriers to achieving the permanency objective. A comprehensive recommendation report is issued to all legal parties to the child's cases.
- Staff conduct follow-up, such as:
 - Contacting DHHS case managers, supervisors, legal staff, adoption workers, or administration as well as guardians ad litem, investigators, or prosecutors on behalf of an individual child's case,
 - Arranging case status meetings between the legal parties to the case on behalf of a child or children to address the case concerns,
 - Arranging and participate in the Governor Case Reviews,
 - Notifying County Attorneys, requesting termination of parental rights,
 - Working with guardians ad litem on case concerns,
 - Bringing cases to LB 1184 meetings to facilitate meeting the child's needs through discussion of the case with the legal parties,
 - Working to monitor, assure safety and appropriateness, and address concerns regarding children's placements through citizen review, tours of child caring facilities, and/or child specific facility visits.

As previously described, there have been instances where directives were not followed. Due to these types of situations, directives are now being communicated directly with the all staff.

Recommendation: If this report is released, please reflect the above basis for workload issues.

FINDING 18: The majority of FCRB staff reported that they do not receive regular performance evaluations. In addition the agency does not maintain a summary of previous evaluations as its internal policies require.

Auditor Recommendation: The state board should ensure that staff receive regular evaluations and that is policy that evaluations summaries be retained is followed or changed to reflect actual practice.

Clarification:

It is a supervisory function to conduct regular performance evaluations. Supervisors' work is to be monitored and supervised by the Program Coordinator (see response to findings 24/25). With the hiring of the new Program Coordinator in September, this situation is being addressed and monitored.

Recommendation: If this report is released, please reflect the above clarification.

FINDING 22: The majority of FCRB staff stated that employee turnover has affected their jobs.

Auditor Recommendations: The state board, in consultation with the Executive Director, should evaluate the reasons for staff turnover...

Clarification:

It may not have been clear to the performance auditors that when staff spoke of changes many were referring to the staff losses we have incurred due to budget cuts (see finding 23 below) rather than to changes in the persons holding individual positions. As to supervisors shouldering additional responsibilities, responding to vacancies with their staff is a normal supervisory function.

Recommendation: If this report is released, please reflect the above clarification.

FINDING 23: The FCRB has a high staff turnover rate compared to other agencies.

Auditor Recommendations: The state board, in consultation with the Executive Director, should evaluate the reasons for staff turnover...

Facts Not Considered:

The Auditors cited 2003, 2004, and 2005, as having a higher than average rate of turnover. First, it is unclear if the lost positions were part of that calculation, and second, when staff see significant budget cuts it is only natural that some leave voluntarily in fear of being laid off.

The years in question were all years during which we lost staff positions (a 4% budget cut in 2002, followed by a 5%, 3% and 2.62% budget cut in FY 2003, and a 6.3% budget cut in FY 2004). In spite of these challenges, there are seven employees, in addition to myself, who each have over 10 years of service with the Foster Care Review Board.

Supervisors play a vital role in staff retention, as staff interface with heart-breaking incidents of children suffering abuse and neglect on a daily basis as they work to mitigate damage done by the families of origin and sometimes the foster care system itself. This is difficult work so effective training is critical.

Also, the report does not reflect that unlike larger agencies, staff who find their job is not the right fit cannot simply transfer to another division. Further, most of the positions are at entry-level, there are few financial benefits to longevity in such a position, and there is little chance for advancement within the agency. Therefore, some staff have taken positions with other state agencies when they were ready for career advancement. All of this affects the turnover rate.

Recommendation: If this report is released, please reflect the above basis for turnover issues.

FINDINGS 24/25: Almost half of the staff members interviewed believe that staff are treated unfairly by the Executive Director and are afraid of retaliation if they disagree with her. Dissatisfaction with the Executive Director played a role in the recent resignations of two of the agency's supervisors.

Auditor Recommendations: The state board should work with the Executive Director to resolve those issues.

Facts Not Considered:

The Draft Report refers to research published by the Gallup Organization that suggests:

“Positive reinforcement of employees’ good behavior yields greater rewards for the employer than does negative reinforcement. Organizations that do not use positive reinforcement have 10 to 20 percent lower productivity and employees are more likely to quit their jobs. In order to determine if positive reinforcement was being used at the FCRB, we asks staff if they field they were treated fairly and if they were afraid of retaliation in the workplace” (Draft Report at p. 28)

This is an interesting quote, since the majority of the questions asked about the Executive Director and management were negatively structured. For example, the following three questions asked of FCRB non-supervisory staff relating to this specific concern are listed on p. 3 of Appendix A at the end of the Draft Report:

Supervision

- Do you think FCRB staff are treated fairly by management (both your immediate supervisor and upper management)?
- What happens if you do something wrong?
- Are you afraid of retaliation from management? If so, why?

Even though the goal of these questions asked of FCRB staff was “to determine if positive reinforcement was being used at the FCRB,” not one question was asked about whether staff ever do receive positive reinforcement. For example, staff could have been asked:

- Does management ever use positive reinforcement with you?
- What happens when you do something right?

The fact that questions like these were omitted from the interviews, suggests a biased approach within the questions themselves, and a predisposition toward a finding of negative reinforcement in the workplace.

As top researchers have found, if most questions to a survey are negatively worded then the results will likely show more negative answers. Many persons, particularly in a stressful interview setting, find negative questions to be confusing, so the questions need to be reliability tested by an expert. In short, a balanced approach is needed to ensure accuracy.

Further, the performance auditors attended a staff meeting on May 29-30, 2008, where there were numerous examples of positive reinforcement. For example, the auditors saw that each staff member received a certificate of appreciation for their unique talents and accomplishments with those briefly described.

The auditors saw that the Chief Justice of the Supreme Court attended this staff meeting and told our staff that he would be passing on the issues they identified with court and guardian ad litem performance at the meeting he was having with the judges the following week. He also thanked staff. For example, he thanked Linda Cox and the tracking system staff for the data and lists that had been provided to the courts. He thanked Dawn Paulsen and other reviewers for giving vital input regarding court functioning, and for sitting on the Through the Eyes of the Child teams.

The auditors were also advised that Governor Heineman had thanked staff for their work at an earlier meeting at which the auditors were not present.

Inexplicably, these types of positive reinforcements were not mentioned in the Draft Report.

The Draft Report found that “almost half of the FCRB staff members interviewed believe that staff are treated unfairly by the Executive Director and are afraid of retaliation if they disagree with her.” But **this finding omits the fact that more than half of the employees interviewed said they are treated fairly by the Executive Director** (Draft Report at p.29) This also does not taken into account that the auditors questioned former employees without determining the context under which those persons left FCRB employment.

As in any employment situation, there are going to be employees who perceive management as unfair, regardless of whether there is any unfairness really occurring, and the FCRB is no exception. It is likely a common belief among employees in many employment contexts that it is a good idea to avoid getting on the boss’s “bad side” or not to “cause waves” in the workplace. In this, some of the FCRB staff are no different from many employees, and these kinds of beliefs do little to establish that the staff have actually been treated unfairly.

It is also nearly impossible to respond to the reports that people who bring up problems are pegged, or are scapegoated, targeted or intimidated, or fear retaliation if they were to disagree with the Executive Director, without knowing the exact context of these statements and the history underlying these concerns expressed by each of these individuals. It is also not clear if these negative comments came from current or former staff.

While the scope statement says that the auditors were to examine current management practices, four ex-employees were contacted and included in the statistics (Draft Report Appendix A, page 1). Since there had not been four recent resignations, it is unclear how

long ago these staff had worked for the FCRB, and under what circumstances these persons had left and how this fits into the scope.

The comments of the more than half of the interviewees who thought there was fair treatment were omitted the draft report while comments of a negative nature are included in the draft report. This gives a distorted picture of the comments of those being interviewed.

The report also states that none of the current employees reporting concerns had disciplinary proceedings pending against them (p. 29). This is not correct. There were performance issues being addressed regarding some employees.

The report also states that two former supervisors that left the agency during the course of the audit stated that dissatisfaction played a role, but does not put that into context. Had the auditors spoken to me about these person's concerns, I could have provided them with the context of their comments.

Notably, one former employee expressed an interest in returning to agency employee multiple times.

Responding to Staff Performance Issues

After the resignation of the Review Board's long time Program Coordinator in April 2008, I assumed supervision of the Review Specialist Supervisors. After addressing each of the examples below, certain staff or supervisors have complained to certain State Board members of either of retaliation or that they were overwhelmed by workload issues. As a result, I was placed on an intensive management plan that expressly identified that performance issues would continue to be addressed after consultation with the State Board's Executive Committee. The State Board did this in acknowledgement of the additional responsibilities that I needed to take on during the vacancy.

1. Addressing time management by requiring all staff to meet reasonable timeframes that are necessary in order for the FCRB to meet statutory mandates. These timeframes are clearly delineated in both training and in their position manuals.
 - a. The following example shows the importance of meeting deadlines regarding the processing of recommendation reports that are sent to all legal parties following a case review.
 - i. Per state, the FCRB must have recommendations to the courts and legal parties within 30 days of the review meeting.
 - ii. Review staff persons write these documents and submit them to their supervisors within 5 working days of the local board meeting, supervisors proofread them, and then supervisors give them to office support staff for photocopying/mailing to the legal parties to the children's case.
 - iii. The office support staff closely work with reviewers and supervisors to draft assignment letters to be sent to DHHS offices

statewide that contain notices for review for 7,700 children's cases, to send 40,000 recommendation documents to legal parties and 45,000 individual letters notifying parties to the case of local board meetings each year.

- iv. The agency's work flow depends on all staff's accurate and timely review and submission of documents for processing. When work is late or incomplete it disrupts the workflow and creates backlogs and/or situations where all other work is set aside to meet deadlines.
 - v. A quality assurance process to track staff's timeliness of document review and submission has been in place for many years. It is apparent to these support staff persons and their supervisor when timeframes are not met or when work is incomplete, incorrect or missing because of the disruption to work that this causes.
 - vi. Certain persons were chronically late in turning in their work, which affected:
 - meeting the statutory mandate,
 - getting information to the courts prior to the children's hearings, and
 - the workflow of other staff, leading to a perpetual crisis.
 - b. Staff who assign children's cases were not being provided the necessary information about children's cases. These staff assign over 7,700 cases, including alternates, each year. The information not being provided is necessary to assure that children are assigned according to the State Board's policy for review scheduling, and to avoid duplicate assignments.
 - c. When staff would directly communicate to determine when the expected work might be received, some staff were rude or non-responsive.
 - d. When discussing the importance of meeting the deadlines some staff involved minimized the impact on the cases, other staff, and the reputation of the FCRB.
 - e. Addressing these issues has been labeled as retaliation.
2. Assuring accurate and professional work, by requiring all staff to meet the minimal performance standards clearly described in their manuals and training.
- a. The reports written after reviews are legal documents and thus need to be well written, clearly state case concerns, and have no major errors before they are submitted to the courts and legal parties for the reviewed children's cases.
 - b. Errors put into question all of the board's findings within the report and reflect negatively on the staff producing the report and the agency as a whole.

- c. Assuring accurate and professional work has been labeled as retaliation.
3. Addressing consistency throughout the agency by addressing communication issues. It is important that directives are communicated consistently so all staff are aware of the issue and so these directives are followed statewide.
 - a. Directives are followed up on to assure that they have been issued and met by all staff. Misinformation and/or miscommunication has been identified and corrected.
 - b. Addressing this issue and assuring consistency has been labeled as retaliation.
4. Addressing workload distribution by redistributing work as necessary.
 - a. State Agency Management authority includes making and implementing decisions concerning employee job assignments and schedules.
 - b. Addressing this issue has been labeled as retaliation.
5. Addressing budgetary issues, such as excessive claims for mileage reimbursements.
 - a. Per State policy all mileage claims are to be examined by the agency prior to reimbursement being authorized, and additional information can be requested for excessive or unusual claims. In reviewing our budget, I discovered some travel expenses that 1) had not been approved, and 2) were excessive considering caseload.
 - b. Addressing this issue has been labeled as retaliation.
6. Addressing the importance of following directives, such as by asking supervisors to follow directives regarding the best utilization of staff time, such as when staff appear in court on cases of serious concern or participate in joint staffings with DHHS staff.
 - a. Addressing this issue has been labeled as retaliation.
7. Addressing productivity by requiring staff to complete duties in a reasonable timeframe.
 - a. It is the authority of the agency to determine the overall methods, processes, mean or personnel by which operations are conducted. These methods are outlined in agency manuals. If it is found that staff are not following the methods and/or processes as outlined, redirection would occur.
 - b. Addressing productivity has been labeled as retaliation.
8. Addressing adherence to personnel requirements. Directives were not followed regarding performance evaluations.

9. Professional Coaching of Staff by re-directing staff in situations where their unprofessional behavior was a detriment to the agency and marginalized the gravity of the issues faced by abused and neglected children. For example, talking about an personal matter, not turning personal cell phones off during business meetings, etc.
 - a. Addressing this issue has been labeled as retaliation.

A claim of fear of retaliation was once used by a supervisor who was in the final stages of discipline as a means to slow the progression toward her termination. Since then, when I begin to address issues such as those previously described, the subject of "retaliation" comes up with nearly every attempt to address performance, including actions that violate established protocols and procedures.

On August 22nd, I prepared the attached memo about some of the protocols.¹⁰

Complaints made to the Executive Committee & Performance Auditors

As you know, the performance audit process is a confidential process, thus a few staff can easily work to affect the outcome. This is especially true with a small staff, where a few can make such a big difference in the percentages reported, particularly when they exert pressure on others, or are attempting to deflect attention away from their own performance issues.

Through the normal monitoring of telephone bills, I became aware of a number of non-work related calls being made with state equipment during working hours. This involved employees with other personnel issues who had contacted the Executive Committee.

Also, table 5.1 on the organizational chart makes it appear that I always directly supervise the review special supervisors, when in fact this is the prime responsibility of the Program Coordinator. I only assumed direct supervision of these persons during the vacancy in the program coordinator position and while the newly hired program coordinator was being trained.

Staff Expectations

I do have high expectations for the FCRB's staff because foster children's lives depend on our work. Foster children, who have suffered abuse and neglect, profoundly benefit from the protections of citizen review and the work the staff completes. These expectations are clearly outlined in the FCRB's manuals and job descriptions.

Supervisors are in integral part of the work of our agency and how our agency can accomplish positive outcomes for foster children. As a statewide agency, the FCRB interacts with professional, dynamic, and varied systems. For example, the legal system is a formal, fact-based system, where multiple steps must be understood and rules must be followed. FCRB Supervisors play a vital role in assuring the Review Staff are translating the case issues into clear language and documentation that this system can act upon.

¹⁰ Memo to staff, August 22, 2008, included as attachment J.

I use the progressive discipline techniques recommended by DAS to address the above issues, which begins with verbal discipline. Whenever there is a need to move beyond verbal discipline, I have consulted with Bill Woods in Employee Relations regarding the best means of approaching the individual situation and documenting the progress or lack of progress to correct the issues, and I would continue to consult with him through the disciplinary process.

Recommendations: If this report is released, please revise to not include the comments of staff who are undergoing verbal counseling, or at least modify it to reflect the context of the employment of many of the persons making negative assertions was not considered. Please do the same regarding the staff that were colluding their responses. Comments from former employees, particularly those who have not worked for the agency in some time, need to be removed from the final report. They are irrelevant to current management practices, and it is impossible to know the employment history of these persons.

FINDING 28: Some actions of the Executive Director relating to a 2006 campaign fundraiser...are arguably violations of state and federal laws.

Auditor Recommendations: The state board should instruct the Executive Director that no state personnel, time, or resources should be used for political activities.

Facts Not Considered

It is puzzling why there appears to be a continuing pursuit of this issue, given that the Ombudsman, who is charged with the duty to investigate allegations of wrongdoing on the part of State agencies and their officials, fully cleared me of any law violation in this regard more than one year ago. This action is not related to current management practices and appears to not follow the scope of the audit; however, authors of the Draft Report choose to revisit this matter once again.

Therefore, for what I hope is the final time, I will again clarify this matter.

The issue of my suggestion to staff to invite foster parents to attend the fundraiser event for Tom Osborne was fully investigated by the Ombudsman's office.

Both of these investigations concluded that no laws had been violated in connection with this incident. The Ombudsman concluded that no FCRB staff members received a direct order to attend the campaign function. He also found that no staff member who did not attend the event was punished in any overt way. Here is the Ombudsman's finding that there was no violation of law regarding this issue:

“As has been noted, Neb. Rev. State. 49-14,101.02(2) provides that public officials and employees may not ‘use or authorize the use of public resources’ for

campaign purposes. In this case, while it is clear that many Foster Care Review board staff did attend the campaign event, it is also clear that the campaign event in question was held on April 28, 2006, which was the Arbor Day holiday for state employees. There is no evidence to indicate that the Foster Care Review Board employees who were in attendance at the event were compensated for their time, or that any of those employees were reimbursed for mileage traveled to the event. Even [the complainant] concedes that there was no compensation or reimbursement paid to the Foster Care Review Board staff who attended the campaign function. In light of these facts, the Ombudsman's office concludes that there is no evidence of a violation of 49-14,101.02(2) in this case" (Ombudsman's investigation report, p. 13)

The Ombudsman also stated:

"The Ombudsman's office assumes that the members of the Foster Care Review Board are aware of [the complainant's] employment history with the agency, and can consider [the complainant's] statements in the context of that history."

The former staff person who brought the complaint to the Ombudsman, was in the final stages of disciplinary action for actions unrelated to the complaint. This information was provided to the Ombudsman, who wrongfully gave the former staff person Whistle Blower status. The Ombudsman went on to state that the former staff person's testimony in the matter of the Ombudsman's investigation was critical. The Auditors did not include this information in the Draft Report.

The two main concerns of the Draft Report are that public employees are barred by state law from using public resources to campaign of the election of a candidate and that state agencies that receive federal money, such as the FCRB, are also subject to the federal Hatch Act, which "prohibits government employees from using their authority to influence an election." (Draft Report at p. 31)

In addition, the report inaccurately states:

1. that I posted invitations in the FCRB offices (p.33). I did not post invitations in the FCRB offices.
2. that I had a staff member send invitations to the event during work hours. I did not have staff send invitations.

Persons not affiliated with the agency sent the invitations. The report states that a former staff member that the auditors interviewed made this accusation. Since this was a former staff person, and one who did not make the assertion during either the investigation by the Ombudsman or by Mr. Curtis, it is impossible to know this person's motivation. I was not given the reporter's identity or any facts about this allegation, so I cannot put this in context of that person's work history, nor effectively defend myself. Let me be clear, *no* staff were asked to send invitations at all, much less during work hours.

Even if I had posted the invitations, which I did not, the Draft Report points out that state statute does not expressly prohibit the posting of such invitations in a state office. (Draft

Report at p. 32) The Committee also was unable to find any official opinions available to clarify the issue, from either the Accountability and Disclosure Commission or the Nebraska Attorney General (Draft Report at p. 32) It was only in October, 2008, when contacted by the Legislative performance Audit Committee in connection with this performance audit, that the current Executive Director of the Accountability and Disclosure Commission agreed that posting such invitations *might* violate the state law. Although this clarification took place only recently, it is welcome guidance regarding an issue that has never really been clear.

Regarding asking staff to invite foster families, at the time of this incident, Tom Osborne was not only a candidate for State political office, but he was a U.S. Congressman. He had done considerable work in the area of advocating for foster children, was concerned about fixing the foster care system, and had made foster care reform a key element of his election platform.

The sole intent and purpose of my suggesting to staff that they consider inviting foster parents to meet Tom Osborne was to benefit foster parents by providing them with an opportunity at a public event to meet him, and ask questions, if they chose to. Because Tom Osborne is also the former coach of the University of Nebraska and a “football legend” in this state, I also saw it as a wonderful opportunity for foster children to meet this great role model for children.

My intention and purpose on encouraging staff to invite foster parents to the event was not to “campaign for the election of a candidate” or to use my authority as the Executive Director of the Foster Care Review Board to “influence an election.” Since the purpose of the suggestion was to benefit foster parents and children, and not to advance the candidate’s campaign or election, it is difficult to see how there is any violation of the state or federal law.

Recommendation: I ask that this section of the final report be excluded, or at very least the report needs to include the above information.

LEGISLATIVE AUDITOR'S SUMMARY OF AGENCY RESPONSE

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.” In this audit, the Legislative Performance Audit Committee chose to allow the State Foster Care Review Board and the agency’s Executive Director to submit separate responses. The board and the Executive Director discussed the findings with the auditors during the board’s November 7, 2008, meeting. The Legislative Auditor’s summary of these responses follows.

The State Foster Care Review Board agreed with all of the Section’s findings and draft recommendations that were within its purview.

The Executive Director disagreed with many of the Section’s findings and criticized the process used to conduct the audit. The Executive Director believes that five of her concerns are so serious that the Committee should not issue a final report on this audit. We found those five allegations false and, consequently, found no reason for the Committee not to release the final audit report. A detailed explanation of our significant disagreements with the Executive Director is contained in the attached memorandum.

Note: While we have always interpreted our guiding statute to require publication of the agency response in its entirety, we believe that we have a responsibility to remove any information in an agency response that is confidential or refers to personnel performance matters, when that information is specific enough to identify individual employees. Consequently, to protect the employees’ reputations, the Performance Audit Committee asked the Executive Director to remove portions of her original response that dealt with confidential information or personnel performance matters specific enough to identify any former or current Foster Care Review Board staff members. This includes information from a document detailing an exit interview that the Executive Director included as an attachment to her response but cited as “confidential and not for public release.”

The Executive Director agreed to remove identifying information and her revised response is the one included in this report. Additionally, our original memorandum to the Committee included references to the confidential information in the Executive Director’s original response. In the published version, which follows, we have removed those references.

Legislative Performance Audit

Committee

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Senator Pat Engel
Speaker Mike Flood
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Memorandum

To: DiAnna Schimek, Chair
Performance Audit Committee

From: Martha Carter, Legislative Auditor

Date: December 3, 2008

Re: Audit Section Response to the FCRB Executive Director's Comments on the FCRB Draft Audit Report

The FCRB Executive Director's response (Director's Response) contains many criticisms of the performance audit process and the contents of the draft audit report. The Executive Director believes that five of her concerns are so serious that the Committee should not issue a final report on this audit. We found those five allegations false and, consequently, found no reason for the Committee not to release the final audit report.

The remainder of this memo: (1) summarizes our responses to the most serious allegations made by the Executive Director; (2) explains in detail the reasoning behind our summary responses; and (3) lists all allegations contained in the Director's Response and our responses to them.

Summary of Responses to Major Allegations

The Director's Response highlights five allegations she believes are serious enough that the Committee should not release the final audit report. They are that the performance audit staff: 1) re-opened the Ombudsman's investigation without the Committee's authorization; 2) did not follow the audit scope statement; 3) used inappropriate management standards; 4) released confidential information; and 5) presented the report with a negative bias. These are extremely serious allegations—any one, if true, would constitute a violation of the government auditing standards we are statutorily required to follow.

We carefully reviewed each of these allegations and found them to be false. Consequently, there is no reason for the Committee not to release the final report.

We also note that some of the Executive Director's allegations indicate that either she was not acting in good faith during the audit or is not doing so now. For example, she now objects to the inclusion of questions relating to potential law violations, having **not once** raised a concern about those questions during the audit. In fact, she made a point of letting audit staff know that several of her employees appreciated the opportunity to give their opinions on these questions since many were not interviewed during the Ombudsman's investigation.

Our brief response to each of the five major allegations is:

- 1) The audit staff did not “re-open” the Ombudsman's investigation without the Committee's authorization. The Committee intended for the audit to include questions about some topics covered in the Ombudsman's report and both the state board and the Executive Director were told about those questions at the beginning of the audit. The Executive Director offers no evidence that audit staff went beyond what the Committee authorized.
- 2) The audit staff followed the scope statement. The Executive Director provides no evidence to support her belief that the Committee directed audit staff to *assess* the state board's authority and responsibilities. In fact, the Committee directed us only to *describe* the board's authority and responsibilities.
- 3) The audit staff relied on appropriate management standards, the Executive Director was fully informed of those standards, and she presents no evidence that the standards we used produced inaccurate or unfair results.
- 4) The audit staff did not release confidential information and the Executive Director presents no evidence to the contrary, stating only that “it appears” that the names of staff who spoke to us on a specific topic were shared inappropriately.
- 5) The audit staff did ask some questions in a negative form, and did so intentionally, as explained in the next section of this memo. However, we reported positive as well as negative findings—including that no staff knew of any law violations or of any instances in which confidential information was

released. The extent to which we put more emphasis on the negative findings was necessary because they require more explanation than the positive findings.

In addition to the five allegations that the Executive Director believes should prevent the Committee from releasing a final audit report, she raises several arguments against our analysis of potential law violations and the related findings. We respond to those arguments beginning on page 13 of this memo.

Detailed Responses to the Executive Director's Five Major Allegations

(1) Reopening the Ombudsman's Investigation

Allegation: "The Legislative Performance Audit did not authorize reopening of the 2007 Ombudsman investigation, yet that is the focus of much of the Report. The Report uses the same underlying facts as the Ombudsman, who found that 'there were no law violations...that would involve criminal liability.'" (Letter from Carol Stitt to Martha Carter, November 24, 2008, pg. 3.)

Section Response: The allegation that audit staff addressed questions from the Ombudsman's investigation without the Committee's authorization to do so is not true, and the Executive Director provides no evidence to support it.

Committee members intended for the audit to revisit some of the issues raised in the Ombudsman's report. In a closed session on the day the Committee approved the scope statement questions, the Committee considered a memo from the audit staff reporting on research conducted on the audit to date as well as potential scope questions. The memo also contained topics that staff suggested *not* be part of the audit including; "The methodology used by the State Ombudsman in his September 2007 report regarding allegations against FCRB Executive Director." The explanation of this item stated:

Under the Section's proposal, we would address similar issues, such as confidentiality laws and policies, but would not revisit how the Ombudsman's investigation was conducted or the reasoning behind conclusions drawn in the report. (Memo to the Committee, April 3, 2008, pg. 2.)

Part of the reason for reconsidering some of the questions addressed in the Ombudsman's investigation was to "clear the air" regarding allegations that were not completely resolved by that investigation. Although the Ombudsman ultimately concluded that no law violations had occurred, he reported some serious concerns about the Executive Director's behavior. For example, regarding the allegation that the Executive Director had released confidential information, he stated that: "It is the opinion of the Ombudsman's Office that there is significant credible evidence that the substance of Ms. Peterson's allegations in regard to this issue are true." (Ombudsman's Report on the Allegations of Wrongdoing Submitted by Ms. Tammy Peterson, September 5, 2007, pg. 16.)

We came to a different conclusion on this allegation. The Ombudsman had not interviewed all agency staff, but we did. We asked them whether they knew of any current agency employee (which would include the Executive Director) having released confidential information and all said "no."

The Ombudsman also believed additional investigation into some of the issues raised in his report was warranted, recommending that: "the Foster Care Review Board immediately undertake a full examination of these issues [specifically possible violations of regulations and errors of judgment by the Executive Director] to include further fact finding by the Board, if it is deemed to be necessary to resolve fact questions that may not have been settled to the Board's satisfaction." He also suggested that as part of its oversight, the board conduct "in-depth interviews of all the agency's line staff, so that the Board can gain a clearer picture of what the staff believes needs to be done to make the agency operate at optimal levels." (Both quotes from Ombudsman's Report, pg. 19.)

While the Ombudsman’s investigation was taking place, the state board also contracted with Allen Curtis to examine some of the same questions. Following release of the Ombudsman and Curtis reports, then-FCRB Chair Jim Gordon publicly stated that the state board would:

find an outside expert to interview all current and former line employees; review the agency structure, operations and communications; and make recommendations that could improve the organization, structure, communication and oversight. (“Foster care board retains Stitt,” *Lincoln Journal Star*, September 11, 2007.)

Ultimately, the state board requested a performance audit to accomplish that purpose.

At the Entrance Conference with the state board and staff on February 1, 2008, audit staff explained that we would not be recreating the Ombudsman’s investigation but that we expected some of the same issues to be considered. Audit staff had three interviews with the Executive Director and she gave no indication she felt these questions were inappropriate until she raised them in her response to the draft audit report. In fact, at our August 19, 2008 interview, referring to audit staff having asked agency staff the law violation-related questions, the Executive Director said: “I can tell you a couple of people have said to me how helpful it was—I mean, they really felt great that they could actually give their, you know, some of their experiences and their side of the story. . . .I want you to know that too.”

In addition, there is no basis for the implication that the Ombudsman’s examination of these questions precluded any other investigation into them. The Ombudsman is not the final authority on questions of law.

The statement that the Section came to conclusions different from those of the Ombudsman based on the same underlying facts is true in two instances. As explained above, we concluded that there was no evidence that the Executive Director had released confidential information. In addition, we believe that the Accountability and Disclosure Act’s definition of “public resources” should be interpreted as including information agency staff have access to through their employment—such as the names of foster families—but the Ombudsman did not. While the Ombudsman did not believe that a law violation had occurred, he was concerned about the Executive Director’s activities, stating:

“[t]he citizens of this state do not pay the employees of the Foster Care Review Board to use their special knowledge of and contacts with foster families to help secure crowds for campaign functions. In the opinion of the Ombudsman’s Office, the idea of using Foster Care Review Board staff as resources for the purpose of ‘inviting’ foster parents and children to the campaign event came perilously close to being a use of ‘public resources’ for campaign purposes in violation of § 49-14,101.02(2).” (Ombudsman’s Report, pg. 14.)

Although the Executive Director criticizes the audit staff for coming to a different conclusion based on the same facts considered by the Ombudsman regarding the alleged use of public resources for a campaign event, she does not object to our having disagreed with the Ombudsman’s conclusion regarding the evidence relating to whether or not she released confidential information.

We recognize that we too are not the final authority on legal matters, which is why we do not make definitive statements about whether law violations occurred. Instead, we state that they may have and provide the evidence we believe supports our position. Ultimately, a court could consider both interpretations and decide which is correct.

The remainder of our findings relating to potential law violations are different from the Ombudsman's findings because they **are not** based on the same underlying facts. During our interviews, we received evidence that apparently had not been provided to the Ombudsman, because it was not mentioned in his final report. For example, he did not report allegations relating to the use of staff time to mail invitations to a campaign fundraiser or to the Executive Director's posting of campaign fundraiser invitations. He also did not consider whether the Executive Director inviting employees to a political fundraiser was potentially a violation of the federal Hatch Act.

(2) Audit Scope

Allegation: The Draft Report did not follow the scope of the audit. (Letter, pg. 1.)

Section Response: This allegation is not true—audit staff followed the scope statement.

The allegation that the audit staff did not follow the audit scope contains eight different points, which we have summarized as follows.

Allegation (A, B, & D): “The audit staff did not include an assessment of the FCRB's accomplishments, which it should have done under scope question #1 and the remaining scope statement questions cannot be fairly answered without this information.” (Letter, pgs. 1 & 2; Appendix A, pg. 1.)

Section Response: The audit contained no assessment of the FCRB's accomplishments because the Committee specifically chose not to include such an assessment in this audit and the Executive Director provides no evidence to the contrary. We disagree that the other scope statement questions cannot be addressed without such an assessment and the Executive Director provides no evidence that the audit section's analysis of those questions was harmed by the absence of that information.

The process for developing the scope statement for this audit was somewhat different from the usual process. Because the state board itself requested the performance audit, the Committee wanted to ensure that the audit addressed the agency's needs as well as its own. Consequently, prior to consideration of potential scope statement questions, audit staff interviewed the 10 state board members serving at that time and the Executive Director to learn their concerns. Audit staff compiled information from those interviews in a confidential memo provided to the Committee for its discussion of the audit scope.

One major concern of state board members was that they did not understand their statutory authority and responsibilities. Consequently, the memo to the Committee noted:

FCRB members specifically requested that the performance audit provide clarification on [the board's authority and responsibilities] as they are unclear about the scope of their responsibilities. Addressing this question would mainly consist of a

detailed description of FCRB authority and responsibilities. (Memo to the Committee, April 3, 2008, pg. 1.)

At the same meeting, the Committee specifically chose not to investigate the FCRB's *compliance* with the Foster Care Review Act, concurring with the staff's suggestion that the three questions ultimately adopted "should be addressed prior to undertaking a more general compliance and efficiency audit."

As early as the state board's February 1, 2008 meeting (attended by the Executive Director), audit staff explained that the audit was unlikely to include an assessment of the FCRB's accomplishments and compliance with its statute. While stating that the final decision was up to the Committee, we explained that including those questions would probably be impractical given the other questions the Committee was likely to adopt. However, as late as August 6, 2008, audit staff had to reiterate to the Executive Director that the audit would not contain a compliance component.

We disagree that the second and third scope statement questions, relating to potential board member conflicts of interest and management practices respectively, can only be answered in the context of the agency's *accomplishments*. For conflict of interest questions, it is true that the questions have to be considered within the context of the types of decisions that state board members must make, and we did so. For management questions, while the agency's structure is relevant to the assessment, its accomplishments cannot be used to somehow "offset" identified problems.

Allegation (C): "Conflict of interest was given a very narrow definition and was not put in the context of how conflicts could impede the FCRB from meeting its responsibilities, such as not responding to a legislative request to provide information on Safe Haven cases." (Letter, pg. 2.)

Section Response: Audit staff fully and fairly considered available definitions of "conflict of interest" and offered to consider any other definitions that the Director or the board might recommend. In the draft report, we went beyond the "very narrow definition"—that contained in the Accountability and Disclosure Act. We also suggested to the Committee that it may want to consider a policy issue relating to the very issue the Executive Director is concerned about—whether there should be some statutory prohibition on board members being too closely affiliated financially with the Department of Health and Human Services.

During the audit, the Executive Director suggested that we also consider the ethical components contained in the COSO standards; however, the COSO statement that management "demonstrate...a commitment to high ethical standards" was not specific enough to be useful in our discussion of potential conflicts of interest regarding state board members.

In addition, the connection between the board's decision not to pursue additional research for a senator's request for information related to the safe haven issue and any potential board member conflicts of interest is unclear. Audit staff were present at the meeting when that decision was made and, while we take no position on the decision itself, we believe that the context in which it was made was reasonable and within the board's authority.

Throughout the year as we have attended board meetings as part of this audit, board members have expressed concerns about the agency's inability to meet its statutory requirement for reviewing all

cases of children in foster care. At an earlier board meeting, the board decided that any external requests for information that would take staff time away from their regularly scheduled reviews needed to be approved by the board—including requests from senators, such as the request for additional information on the safe haven cases.

Allegation (E): “Management issues were confined to comments regarding myself as opposed to reflecting the whole FCRB management team or the fact that from April to October in addition to my normal duties I also covered the vacancy of the Program Coordinator and of the Lincoln Supervisor.” (Letter, pg. 2.)

Section Response: Audit staff did consider the role of the management team; however the vast majority of concerns expressed related to the Executive Director. In addition, the memo considered by the Committee in adopting the scope statement focused the management component of the audit on the Executive Director stating that the audit would:

Examine general management of the FCRB. The Ombudsman suggested increased FCRB oversight of the Executive Director’s activities. We propose to compare current agency management practices to generally accepted management standards and best practices. As part of our comparison, we would interview all agency staff. (Memo to the Committee, April 3, 2008, pg. 2.)

Audit staff were aware that the Executive Director filled in for the two positions mentioned for part of the year but it is unclear from her response how consideration of this fact would change any of the reported findings.

Allegation (F): *The Executive Director’s original response contained personnel-related information that she later removed for the published response. Consequently, we have removed our related comments from this memo.*

Allegations (G) and (H) are addressed in the section (1) relating to the Ombudsman’s report.

(3) Management Standards

Allegation: “In spite of repeated requests throughout the process, standards for measuring management were never provided.” (Letter, pg. 4.)

Section Response: This allegation is not true. The Executive Director requested an outline of the management standards and we provided it.

In the course of an e-mail exchange regarding the standards we were using, the Executive Director asked:

I would just like to know the general outline of what the set of basic management practices you and your staff have developed during the course of your audit process and that you feel are reasonable to expect state agencies including the Foster Care Review Board to follow. (E-mail from Carol Stitt to Martha Carter, July 17, 2008.)

That same day, the Legislative Auditor responded that:

I think that Carol's request to know the general standards that we're using is a reasonable one and providing them is consistent with our standard practice. To that end, attached is a list of the general categories of management standards that we're using, which represent common elements we identified after reviewing a number of management resources. The list of those resources is also attached. (Note that I have deleted all previous e-mails in this thread except the two I received today in order to reduce the size of the e-mail.)

I would add that we are sensitive to a concern raised at one point about our holding the agency to standards that it was not required ahead of time to meet. However, our job is to answer the Performance Audit Committee's question about how well the agency is being managed and, to do so, we must have standards. We believe that the general categories we have identified from the literature are basic, common sense areas that any manager would need to address. We will determine whether or not the agency addresses these categories and we will be respectful of the fact that there is not necessarily one "right" way of meeting them. (E-mail from Martha Carter to the Executive Director and state board members, July 17, 2008.)

This is the list of categories attached to that e-mail:

- Ethics/Code of Conduct/Professionalism
- Job Descriptions/Expectations
- Training
- Performance Evaluations
- Agency Communication
- Disciplinary Procedures
- Human Resources Management

We received no further communication regarding management standards from either the state board or Executive Director for the duration of the audit.

Allegation: Throughout the audit and in her response, the Executive Director criticized our use of the standards issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO standards). In her letter, she states that "This [COSO standard] has over 300 evaluation points, and is geared toward publicly held corporations, such as Lehman Brothers, rather than a small state agency." (Letter, pg. 4.)

Section Response: We believe our review of the COSO standards was appropriate, we explained to the Executive Director how we were using them, and she provides no evidence that review of these standards produced inaccurate or unfair results.

As we explained in the draft report, in establishing our list of basic management standards, we relied heavily on two sets of comprehensive management standards: public sector standards from the Government Accountability Office (GAO) and private sector standards from COSO. We started

with these standards because they are recommended in the generally accepted government auditing standards published by GAO that we are statutorily required to follow. However, we also reviewed management standards used by DAS in management training, and an extensive list of other standards. We did not rely solely on any one set of standards; instead, we compiled a list of basic management categories, as listed above. We asked questions in the interviews relating to each of these categories.

(4) Confidential Information

Allegation: “In spite of statute and verbal assurances from the auditors, it appears that the names of staff members who spoke about their perceptions of conflicts of interest were shared with the State Board Chair. These person’s jobs were threatened.” (Letter, pg. 3.)

Section Response: No confidential information was released and the Executive Director offered no evidence that any confidential information was released.

On August 19, 2008, Committee members received an e-mail from an individual who was not a state board member or an agency employee, which contained factually incorrect statements about discussions that had taken place in our interviews with FCRB state board members and staff. Specifically, the e-mail stated that:

I am writing now because I understand that the Performance Audit is looking at the “conflict of interest” question strictly in accordance with the Nebraska Statute that is part of the rules of the Nebraska Political Accountability and Disclosure Act. Unfortunately, this act does not address the moral and ethical issues of having persons on the State Foster Care Review Board that have the conflict of interest affected the bias of their oversight of the Foster Care Review Board. (sic)

This was the third e-mail from this person to the Committee discussing audit details. It was clear to the Committee and audit staff that the author was getting information from someone who had been interviewed during the audit. The information being shared was not confidential, and therefore no potential law violation had occurred. Nevertheless, the Committee and audit staff were concerned that, instead of raising concerns directly, someone in the agency was sidestepping the normal audit process by sharing their concerns with an individual outside the agency who then reported them back to the Committee.

In response, the Legislative Auditor e-mailed the state board and Executive Director suggesting that the information in the e-mail had to come from someone we had interviewed. Specifically, she stated that:

Given the timing of the e-mail received by the Committee, I believe that the note’s author may have spoken to someone we interviewed recently who then misinformed the author on this point. I know that our auditors have told board members and FCRB staff in their interviews that we are using the Accountability and Disclosure standards because those are the only statutory requirements that deal with potential conflicts of interest issues. I also know that people have suggested something similar to what the recent e-mail suggests—that there could be conflict of interest-type

concerns, or at least the appearance of those types of concerns, that the A&D Act does not reach. And we do understand that point.. (E-mail from Martha Carter to Carol Stitt and state board members, August 25, 2008.)

The e-mail went on to explain that we were considering other standards relating to the conflict of interest question, to ask if anyone had concerns about our interviews or the standards used, and to encourage people to bring their concerns directly to the audit staff.

After receiving this e-mail the state board chair contacted the audit staff and asked for a list of the interview dates for the agency staff. Audit staff discussed the request, determined that neither the staff names nor the interview dates were confidential, and provided the information to the chair. We did not give any indication whether staff (as opposed to board members) had discussed conflicts of interest concerns with us much less did we identify any individuals as having done so.

No one was threatened due to the information they provided to us. Like the Committee, the state board—not just the chair—was frustrated because the e-mails from someone not affiliated with the agency showed that either a board member or agency employee was going around the audit process. The Director’s Response takes the quote from the state board chair about employees’ jobs being in jeopardy out of context. When the board chair stated that “staff members needed to know that their job was in jeopardy if the State Board found out that they did this,” she was referring to going around the audit process, not to raising the conflict of interest questions with the audit staff.

(5) Negative Report Tone

Allegation: “The Report has a negative bias, the majority of the questions asked about the Executive Director and management were negatively structured, and the Report placed emphasis on negative comments.” (Letter, pg. 4.)

Section Response: We disagree that the report has a negative bias or that it placed an emphasis on negative comments. It is true that *some* questions were negatively structured, which was done intentionally to address specific concerns that we had received. It was not our intent to elicit any types of responses other than those that were truthful and applicable to the scope of the audit, and we believe we succeeded in meeting that intention.

In our interviews with state board members prior to the Committee’s consideration of scope statement questions, several members told us they were concerned about the potential for retaliation by the Executive Director against staff members. To address this issue, we included the questions ‘What happens if you do something wrong?’ and ‘Are you afraid of retaliation from management? If so, why?’

We did include positive findings in the report, but the Executive Director is correct in stating that those findings generally got less discussion than did the negative findings. This is not evidence of bias. For a finding that a person or an agency is doing something correctly, there is little to say beyond stating that fact. For a negative or critical finding, we must explain the basis for the finding and the potential impact, if possible.

The Executive Director also criticizes the audit staff for stating conclusions in the negative instead of the positive. We stated conclusions negatively in two of the 14 staff-related questions we reported

on and did so because in both cases the high proportion of negative responses was a cause for concern. We will add the positive statements to the report; however, doing so will not change any findings. For example, we reported that “almost half of the FCRB staff members interviewed believe staff are treated unfairly by the Executive Director and are afraid of retaliation if they disagree with her.” (Draft Report, pg. 29.) While it is true that more than half believed that staff are treated fairly, the important point is that a large portion of the staff do not believe that and are afraid of retaliation.

We also disagree that the negative phrasing of those questions caused people to respond more negatively than they would have otherwise. Our observation was that people were able to discern for themselves precisely what they wanted to say.

Potential Law Violations

The Director's Response contains a number of arguments regarding the findings relating to potential law violations, including that:

- audit staff were not authorized to ask these questions;
- the Executive Director has been cleared of any wrongdoing related to campaign-related activities;
- the Executive Director did not post campaign fundraiser invitations and argues that, even if she had done so, her intentions would preclude any law violation; and
- the Executive Director did not ask an employee to send campaign fundraiser invitations on work time.

Authorization

As we explained beginning on page three of this memo, the Committee intended for us to reconsider some of the questions—including those relating to potential law violations—that had been raised in the Ombudsman's report.

Results of Prior Investigations

The Director's Response states:

It is puzzling why there appears to be a continuing pursuit of this issue, given that the Ombudsman, who is charged with the duty to investigate allegations of wrongdoing on the part of State agencies and their officials, fully cleared me of any law violation in this regard more than one year ago. (Appendix A, pg. 25.)

As discussed on pages three and four of this memo, the Ombudsman is not the final authority on questions of law, and the Committee's decision to pursue an additional investigation of these questions was entirely appropriate.

The Executive Director also states that the Curtis investigation found no wrongdoing. We were unable to confirm this because the agency did not retain a copy of that investigation report. However, even if true, Mr. Curtis is not the final authority on questions of law either.

Denial of Posting Invitations

The Executive Director's denial that she posted campaign fundraiser invitations in the Lincoln and Omaha offices directly conflicts with what she stated during the audit. We raised questions relating to the campaign fundraiser in our August 19, 2008 interview with the Executive Director; we had informed her the week before that we would be asking these questions at this interview. During the interview, which both she and we taped, the Executive Director volunteered that she believed she had brought something relating to the fundraiser to the Lincoln and Omaha offices. We asked if she had posted an invitation, and she replied "yeah."

We had not raised the issue of posting an invitation, the Executive Director volunteered it. Similarly, in general discussion about whether the Executive Director had invited employees to the campaign event, two current staff members offered that they remembered seeing a posted invitation. Since we did not ask this question directly of all staff, we do not know whether others saw it as well.

Although the Executive Director now denies having posted the fundraiser invitations, she goes on to argue that there would have been nothing wrong with doing so. Initially, she reiterates what we explained in the draft report: that the Accountability and Disclosure Act does not explicitly prohibit the posting of campaign fundraiser invitations, nor are there any opinions of the Accountability and Disclosure Commission or the Attorney General on this point. (Appendix A, pg. 26.) Her implication seems to be that this is proof either that posting such invitations is not a violation of the act or that she could not have known that doing so might be illegal.

The implication that because there is no explicit prohibition on posting campaign invitation means that doing so is could not be illegal is without merit. We provided evidence in the draft report that such an action is *arguably* a violation of the law, including the opinion of the Executive Director of the Accountability and Disclosure Commission as well as two applications of the Act that included such a prohibition.

The implication that the Executive Director could not have known that posting campaign invitations, or more generally that inviting employees to a campaign event, might violate state and federal law strains believability. The Executive Director has been highly active in state government for more than two decades; it is hard to believe that it never occurred to her to even ask the Accountability and Disclosure Commission if inviting employees to a campaign event might be a cause for concern.

The Executive Director argues that she had good intentions in inviting staff and foster families to the campaign event, which she believes protects her from having violated the law. Specifically she states that:

My intention and purpose on encouraging staff to invite foster parents to the event was not to ‘campaign for the election of a candidate’ or to use my authority as the Executive Director of the Foster Care Review Board to ‘influence an election.’ Since the purpose of the suggestion was to benefit foster parents and children, and not to advance the candidate’s campaign or election, it is difficult to see how there is any violation of state or federal law. (Appendix A, pg. 27.)

We find it concerning that the Executive Director fails to see that, regardless of her intentions, it is problematic to have a high level government manager encouraging employees to attend a political campaign fundraising event. Indeed, this is precisely the type of activity the Hatch Act was adopted to prevent—the Supreme Court stated that “the end sought by Congress through the Hatch Act is better public service by requiring those who administer funds for national needs to abstain from active political partisanship.” *Oklahoma v. United States Civil Service Commission*, 330 U.S. 127, 143 (1947).

The Executive Director also states that:

Both of these investigations concluded that no laws had been violated in connection with this incident [the Executive Director inviting staff to a campaign fundraiser]. The Ombudsman concluded that no FCRB members received a direct order to attend the campaign function. He also found that no staff member who did not attend the event was punished in any way. (Appendix A, pg. 25.)

In terms of the Ombudsman's investigation, the Executive Director's statement that he concluded that "no laws" had been violated is incorrect. This quote referred only to a potential violation of the Accountability and Disclosure Act prohibition on the use of state resources for campaign purposes. (Ombudsman report, pg. 13.) He does not appear to have considered whether the Executive Director's actions could have violated the Hatch Act and we believe that the whether the Executive Director "ordered" employees to attend and whether any were punished for not doing so, while serious questions, are not critical to determining whether the Hatch Act was violated. (We cannot comment on the conclusions in the Curtis report as we were unable to obtain a copy of it.)

The Hatch Act prohibits executive branch managers from bringing political fundraising into the workplace. The Merit Systems Protection Board, the quasi-judicial agency that handles Hatch Act violations, found that "whenever a key management official solicits a junior employee for a political contribution, the solicitation is inherently coercive, absent exculpating circumstances. . . ." *Special Counsel v. Purnell*, 37 M.S.P.R. 184, 218 (1988), *In re Martin*, 2 P.A.R. 726, 733 (1965). In other words, if an executive branch manager asks an employee to contribute to a political campaign, the manager will have violated the Hatch Act *regardless of his or her intention* in making the request.

In this case, the Executive Director invited her employees to a campaign fundraising event. Implicit in such an invitation is the suggestion or expectation that acceptance of the invitation will result in a campaign contribution. Even if the Executive Director did not intend for her employees to contribute to the campaign, the invitation to the fundraiser itself (in whatever form it was made) is arguably a Hatch Act violation.

Additionally, Hatch Act case law supports our belief that posting a campaign fundraiser invitation arguably violates the Act. In *Bauers v. Cornett*, the Merit Systems Protection Board found a state employee guilty of a Hatch Act violation when the employee posted flyers soliciting funds to reimburse a lobbyist for nonpartisan legislation efforts. 865 F.2d 1517 (8th Cir. 1989).

Further, even if the Executive Director were unaware of the Hatch Act restrictions, the Merit Systems Protection Board has found that high level public officials have an obligation to be informed about such matters, stating that "as individuals serving in such responsible public positions and with substantial experience in the political arena, the respondents should have been sufficiently aware of the Hatch Act to have inquired as to whether their activities were within the Act's prohibitions." *Special Counsel v. Gallagher*, 44 M.S.P.R. 57, 71 (1990).

Denial of Asking An Employee to Mail Fundraiser Invitations

The Executive Director denies having instructed an employee to mail campaign fundraiser invitations during work hours. However, we find the information provided by that employee fully credible. Like the employees who simply volunteered that they had seen a posted campaign

fundraiser invitation, this employee simply mentioned without our asking that she had mailed the invitations from work.

The Executive Director argues that:

The report states that a former staff member that the auditors interviewed made this assertion. Since this was a former staff person, and one who did not make the assertion during either the investigation by the Ombudsman or Mr. Curtis, it is impossible to know this person's motivation. I was not given the reporter's identity or any facts about this allegation, so I cannot put this in context of that person's work history, nor effectively defend myself. (Appendix A, pg. 26.)

First, we do not believe that the Ombudsman interviewed this employee (we do not have access to information on the employees interviewed by Mr. Curtis), so the fact that this employee did not report this issue to him cannot be used to malign the employee's motivation. Second, we chose to rely on this employee's comments because she *was not* generally critical of the Executive Director and, in fact, was extremely cautious about what she told us. She went out of her way to clarify that she had not mailed invitations directly to foster families; instead she had mailed them to a foster parent association.

Conclusion

The Executive Director now denies that she posted a campaign fundraiser invitation in the Lincoln and Omaha offices in conflict with what she told us during the audit. She also denies having asked an employee to mail invitations on work time. We do not believe that the Executive Director's claims undermine the evidence we gathered during the audit and reported in the draft report.

Ultimately, the issue of how the invitations were made is not as important as *whether* they occurred at all—and the Executive Director has never denied inviting staff to attend the campaign fundraiser and encouraging them to also invite foster families. She argues only that she had good intentions in doing so. Regardless of how the invitations were made, the fact that the invitations occurred at all may be a violation of the Hatch Act and asking her staff to use state resources, in the form of names and contact information, to invite foster families to the fundraiser may be a violation of the Accountability and Disclosure Act.

Audit Section Response to Executive Director's Response Letter

Finding/ Issue (location)	Concern Raised by the Executive Director	Our Response
Scope (pg. 1 of response letter)	1A. "...little was discussed about the FCRB's responsibilities and how those are being carried out, yet the FCRB's authority and responsibilities form the only context by which the other two scope statement questions can be accurately and fairly answered."	<p>The Committee did not authorize a compliance audit. <i>See pages 6 and 7 of the Legislative Auditor's memo.</i></p> <p>We disagree that the second and third scope statement questions, relating to potential board member conflicts of interest and management practices respectively, can only be answered in the context of the agency's <i>accomplishments</i>. <i>See page 7 of the Legislative Auditor's memo.</i></p>
Scope (pg. 1 of response letter)	1B. "The Draft Report ignored FCRB accomplishments and productivity, which are a reflection of agency management."	It is true that the audit contained no assessment of the FCRB's accomplishments but it is not true that such an assessment should have been done under scope question #1—the Committee specifically chose not to include such an assessment in this audit. <i>See pages 6 and 7 of the Legislative Auditor's memo.</i>
Scope (pg. 2 of response letter)	1C. "Conflict of interest was given a very narrow definition and was not put in the context of how conflicts could impede the FCRB from meeting its responsibilities such as not responding to a legislative request to provide information on Safe Haven cases."	<p>Audit staff fully and fairly considered available definitions of "conflict of interest" and offered to consider any other definitions that the Director or the board might recommend. <i>See pages 7 and 8 of the Legislative Auditor's memo.</i></p> <p>In addition, audit staff are unclear about the connection between the board's decision not to pursue additional research for a senator's request for information related to the safe haven issue and any potential board member conflicts of interest. Audit staff were present at the meeting when the board decided not to pursue additional research on a senator's request. We take no position on the decision itself but the context in which it was made was reasonable and within the board's authority.</p>
Scope (pg. 2 of response letter)	1D. "Management issues were not put in terms of the statutory framework of the agency, or what should be occurring, such as timely issuance of reports or managing the	As early as the state board's February 1, 2008 meeting (attended by the Executive Director), audit staff explained that the audit was unlikely to include an assessment of the FCRB's accomplishments and compliance with its statutory requirements. However, as late as August 6, 2008, Sec-

Finding/ Issue (location)	Concern Raised by the Executive Director	Our Response
	budget.”	tion staff had to reiterate to the Executive Director that the audit would not contain a compliance component.
Scope (pg. 2 of response letter)	1E. Management issues were only about the Executive Director.	Audit staff did consider the role of the management team; however the vast majority of concerns expressed related to the Executive Director. <i>See page 8 of the Legislative Auditor’s memo.</i>
Scope (pg. 3 of response letter)	1F. <i>Confidential or sensitive information removed from published response.</i>	
Scope (pg. 3 of response letter)	1G. The Committee did not “authorize re-opening of the 2007 Ombudsman investigation, yet that is the focus of much of the report.”	The Committee intended for the audit to re-visit some of the issues raised in the Ombudsman’s report. <i>See page 4 of the Legislative Auditor’s memo.</i>
Scope (pg. 3 of response letter)	1G. “The Report uses the same underlying facts as the Ombudsman, who found that “there were no law violations...that would involve criminal liability.”	We did not come to the same conclusion as the Ombudsman. <i>See pages 4-6 of the Legislative Auditor’s memo.</i>
Scope (pg. 3 of response letter)	1H. “The scope was to be toward <u>current</u> management practices, yet the auditors spoke with former employees who had not been with the agency for some time and <u>re-examined</u> events that occurred in 2006.”	The Committee intended for the audit to re-visit some of the issues raised in the Ombudsman’s report. However, we ultimately relied very little on information from former staff. <i>See pages 4 and 5 of the Legislative Auditor’s memo.</i>
Confidential information shared (pg. 3 of response letter)	2. “...it appears that the names of staff members who spoke about their perceptions of conflicts of interest were shared with the State Board Chair. These persons jobs were threatened.”	No confidential information was released and the Executive Director offered no evidence that it was. <i>See pages 10 and 11 of the Legislative Auditor’s memo.</i>
Management standards never provided (pg. 4 of response letter)	3. “In spite of repeated requests throughout the process, standards for measuring management were never provided.”	This is untrue. The Executive Director requested an outline of the management standards and we responded. The Executive Director asked for an outline of our standards and the Legislative Auditor sent a list of general management categories as well as a list of the literature reviewed that

Finding/ Issue (location)	Concern Raised by the Executive Director	Our Response
		shaped those management categories. We received no further communication regarding standards from either the state board or the Executive Director for the duration of the audit.
Management standards never provided (pg. 4 of response letter)	3. COSO standards not applicable.	Our professional standards suggest using COSO. Our review of the COSO standards was appropriate, we explained to the Executive Director how we were using them, and she provides no evidence that our use of these standards produced inaccurate or unfair results. <i>See page 10 of the Legislative Auditor's memo.</i>
Report and questions have a negative bias. (pg. 4 of response letter)	4A. Questions were designed to “illicit [sic] a negative response.”	Compiling interview questions was a painstaking process whereby we read management literature, categorized elements, and crafted questions based on those materials. Some questions, such as concerns about retaliation, were also directly related to issues raised by state board members. It was not our intent to elicit any types of responses other than those that were truthful and applicable to the scope of the audit.
Report and questions have a negative bias. (pg. 4 of response letter)	4B. “Negative questions generate negative answers.”	We disagree that the negative phrasing of those questions caused people to respond more negatively than they would have otherwise. <i>See pages 11 and 12 of the Legislative Auditor's memo.</i>
Report and questions have a negative bias. (pg. 5 of response letter)	4C. Suggest positively framed questions.	We acknowledge that we could have asked these questions in addition to those listed in 4A; however, the two sets of questions are not interchangeable. For example, to address whether staff had specific concerns about retaliation (a concern that has been raised since the beginning of the audit), asking staff for instances of positive reinforcement would not elicit the necessary information.
Report and questions have a negative bias. (pg. 5 of response letter)	4D. Report narratives were framed negatively.	We will add the positive statements to the report; however, doing so will not change any findings. <i>See page 12 of the Legislative Auditor's memo.</i>
Report and ques-	4E. Few positive comments presented in the	We gave credit where credit was due in findings 13, 14, 15, 16, 26, and 27.

Finding/ Issue (location)	Concern Raised by the Executive Director	Our Response
tions have a negative bias. (pg. 5 of response letter)	report.	Positive findings do not generally warrant as much explanation as negative ones.
Report and questions have a negative bias. (pg. 5 of response letter)	4F. The draft report did not mention that seven staff have over 10 years experience with the agency.	It is unclear how this information relates to the issue of perceived negative bias. We will add this information, but it will not change any of our findings.
Personnel issues not considered (pg. 5 of response letter)	5A. <i>Confidential or sensitive information removed from published response.</i>	
Personnel issues not considered (pg. 5 of response letter)	5B. The importance of timely staff reports requires context.	Issues such as timeliness of reports are compliance related. As we have noted previously, the Committee specifically chose not to investigate the FCRB's compliance with the Foster Care Review Act. <i>See pages 6 and 7 of the Legislative Auditor's memo.</i>
Personnel issues not considered (pg. 5 of response letter)	5C and D. Some staff were working together to influence the findings but this is not in the report even though documentation was provided.	We received no evidence to prove collusion among staff members to influence the audit.
Context not provided (pg. 5 of response letter)	6A. "...the Draft Report finding in regard to there not being enough staff to do the work (p.21) is valid."	There is no such finding in the draft report. The finding related to staff workload reads as follows: "Almost half of the FCRB staff members interviewed expressed concerns that they do not have enough time to do everything required of them. Additionally, workload concerns were raised with the state board during the course of this audit and the board established a committee to study those concerns." (pg. 21)
Context not provided (pg. 5 of response letter)	6B. Budget cuts were not mentioned in the draft report.	We acknowledge that the agency lost staff due to budget cuts as late as FY2003-2004. We will add language that mentions this to the report.
Context not	6C. Turnover rate is affected "by the staff	The Executive Director's response states this reason for the turnover rate

Finding/ Issue (location)	Concern Raised by the Executive Director	Our Response
provided (pg. 5 of response letter)	reductions and by staff fearing further reductions.”	as fact; however, we found no evidence to support this statement. The Executive Director states that the last budget-related reductions in force were in FY2003-2004, therefore, it is reasonable to assume that the 34.5% turnover rate in 2007 and 23.1% turnover rate in 2006 were not the direct result of these budget cuts.
Key management personnel interviewed late. (pg. 6 of response letter)	7. Interviewed late “and then in the most cursory fashion.”	The Administrative Coordinator and the Special Projects Coordinator were asked the same set of questions that were posed to the other supervisory staff. The length of the interviews depended on how much each person chose to talk.
Response time (pg. 6 of response letter)	Response time was short.	Not only was the Executive Director given the statutorily required 20 business days, the Committee gave her an extra five business days to complete her response as requested. This is the only response extension that the Committee has ever granted.

Audit Section Response to Statements in Appendix A

Finding/ Issue (location)	Concern Raised by the Executive Director	Our Response
Scope (pg. 1 of Appendix A)	“Because the Auditors did not answer the first scope question, the remaining questions were answered without consideration of the FCRB’s mandates or consideration of the agency’s accomplishments on the behalf of children in foster care.”	<p>This is not true. We answered the first scope question in Section II of the report, in which we described the mandate of the agency by way of its authority and responsibilities. As stated previously, we disagree that the second and third scope statement questions can only be answered in the context of the responsibilities laid out in the Foster Care Review Act. Neither conflicts of interest nor management practices are discussed in the Act.</p> <p>We agree that we did not discuss the accomplishments of the agency, as this was not a compliance audit.</p>
Other issues with how management was discussed in the report (pg. 1 of Appendix A)	“Standards for measuring management issues were unclear”	<i>See “Management standards never provided (pg. 4 of response letter), 3” on page 5 of this chart.</i>
Other issues with how management was discussed in the report (pg. 1 of Appendix A)	“Management issues were confined to comments regarding myself as opposed to reflecting the whole FCRB management team. The scope was to be toward <u>current</u> management practices, yet the auditors spoke with former employees who had not been with the agency for some time.”	<i>See “Scope (pg. 2 of response letter), 1E” and “Scope (pg. 3 of response letter), 1H” on pages 2 and 4 of this chart.</i>
Other issues with how management was discussed in the report (pg. 1 of Appendix A)	“The FCRB does not work under <i>the Internal Control Integrated Framework from the Committee of Sponsoring Organizations of the Treadway Commission</i> , which are geared toward publicly held corporations rather than a small state agency, but apparently formed some of the standards used to evaluate the FCRB.”	<i>See “Management standards never provided (pg. 4 of response letter), 3” on page 5 of this chart.</i>

Finding/ Issue (location)	Concern Raised by the Executive Director	Our Response
Other issues with how management was discussed in the report (pg. 1 of Appendix A)	“The FCRB’s accomplishments were not discussed as part of the discussion of management practices and decisions.”	<i>See “Scope (pg. 1 of response letter), 1B” on page 1 of this chart.</i>
Scope (pg. 2 of Appendix A)	“...the Draft Report goes beyond the scope of the Audit. The Legislature did not authorize a reopening of the 2007 Ombudsman investigation, yet that is the focus of much of the Report.”	<i>See “Scope (pg. 3 of response letter), 1G” on page 3 of this chart.</i>
Finding 1 (pg. 6 of Appendix A)	“...Please reflect that has [sic] an Attorney General opinion has already been rendered that allows the State Board to authorize local board members and staff to conduct visits, and the report needs to reflect the statutory authority to conduct facility visits as recently reaffirmed by the District Court.”	<p>This is not true. The Attorney General, in opinion 98029, does not address the issue of delegation in any way, but instead addresses the issue of whether the FCRB has the authority to conduct visits and inspections of foster care group homes. Again, the opinion does <i>not</i> state that the state board can delegate their authority for visitations to state and local board members.</p> <p>The Executive Director also cites Judge Chevront’s summary judgment opinion in <i>Omni Behavioral Health v. Nebraska Foster Care Review Board</i> as further evidence that the state board can delegate this authority. This opinion does not address the state board’s ability to delegate facility visits to non-state-board members.</p> <p>The draft report, in Section II, also states that the state board is permitted to conduct facility visits.</p>
Finding 1 (pg. 6 of Appendix A)	“It would be logistically impossible for an 11-member State Board, by itself, to visit even a small percentage of the 1,500+ foster homes plus all the group facilities across the state. Clearly, trained staff and volunteers can fulfill this function.”	We agree that it would be difficult for the 11 state board members to conduct facility visits in addition to their regular board duties. However, as we stated in the draft report, because the ability to conduct visitations is a permitted function rather than a required function, we suggest that the agency request clarification on this issue from the Attorney General’s office or seek to have the Foster Care Review Act clarified regarding who is

Finding/ Issue (location)	Concern Raised by the Executive Director	Our Response
		<p>allowed to conduct facility visitations.</p> <p>We disagree with the Executive Director’s statement that “Clearly, trained staff and volunteers can fulfill this function” as we do not believe the statutory language is at all clear.</p> <p>The Executive Director also notes that the FCRB regulations are in the process of being modified to “reflect the ability of local board members and staff to conduct these visits.” However, if the Act itself is determined to be unclear, a change in statute is required, not a change in regulation.</p>
Finding 3 (pg. 7 of Appendix A)	“I arranged for Dale Comer from the Attorney General’s office provided [sic] a comprehensive training on the open meetings law to State Board members...please reflect that this training occurred.”	We will include this information in the report, although we note that it was not part of the formal training program provided for new members. It would be more useful for board members to receive this information at the beginning of their board membership.
Finding 4 (pg. 7-9 of Appendix A)	State board is already doing many things to manage the agency, as proscribed by the Institute on Governance	This finding is directed at the state board and not the Executive Director. The standards cited by the Executive Director from the Institute on Governance (which were not provided to us prior to the Executive Director’s written response)—a “Canadian non-profit think tank,” according to their website—appear reasonable; however, we based our finding on interviews with state board members in which the majority stated that they did not believe that a system of accountability exists within the agency for them to evaluate the performance of the Executive Director. Further, the state board agreed in their response with our finding and stated that they would “make efforts to address this as an urgent priority.”
Finding 7 (pg. 10 of Appendix A)	“I agree that it is unrealistic to expect persons whose employment could be at risk to self-disclose conflicts.”	We did not state that we feel it is unrealistic to expect that persons whose employment could be at risk to self-disclose conflicts. In fact, we encouraged the state board to ask “new members to disclose to the full board any affiliations that might be perceived as posing a conflict.” (pg. 16)
Finding 7 (pg. 10 of Appendix A)	“I find these steps should include, at minimum, provisions for board members to be	We agree that recusal from votes involving potential conflicts of interest is reasonable, and state in Section III of our draft report that the Ac-

Finding/ Issue (location)	Concern Raised by the Executive Director	Our Response
	recused from voting on matters related to potential conflicts of interest.”	countability and Disclosure Act requires that, in an instance of a potential conflict, “the public official should either recuse himself or herself from votes relating to this potential conflict or take other action as recommended by the assigned party or the Commission, as appropriate.” (pg. 11)
Finding 7 (pg. 10-11 of Appendix A)	Concern regarding some state board members’ commitment to the goals and mission of the agency	As we stated in the draft report, we believe that the question of who should serve on the state board is a policy question for the Legislature. We can attest, however, that after attending state board meetings for the past 11 months and interviewing each board member individually, we do not share the Executive Director’s belief that state board members are not supportive of the agency and its mission.
Finding 7 (pg. 11 of Appendix A)	<i>Confidential or sensitive information removed from published response.</i>	
Finding 17 (pg. 12-13 of Appendix A)	Draft report omitted a study on staff workload.	On 10-16-08, the Executive Director provided us with a 9-4-08 memo she sent to the state board regarding her answers to their questions about workload (included in Appendix D of the draft report); however, at the time the draft report was completed, we were not aware of the status of the Workload Committee’s actions and therefore did not comment on them in the draft report. We have requested a copy of this study from the Executive Director and will determine whether to include information from this document after reviewing it.
Finding 17 (pg. 15 of Appendix A)	<i>Confidential or sensitive information removed from published response.</i>	
Finding 18 (pg. 15 of Appendix A)	<i>Confidential or sensitive information removed from published response.</i>	
Finding 22 (pg. 16 of Appendix A)	Turnover is due to budget cuts.	<i>See “Context not provided (pg. 5 of response letter), 6C” on page 8 of this chart.</i>
Finding 22 (pg. 16 of Appendix A)	Supervisors are required to cover the responsibilities of vacant reviewer positions.	As we noted in the draft findings and recommendations: “Management standards state that excessive personnel turnover and staff fulfilling the responsibilities of more than one employee can be an indication of prob-

Finding/ Issue (location)	Concern Raised by the Executive Director	Our Response
		lems within the organization. Supervisors performing the work of those they supervise is especially problematic as supervisors carry out a quality control function in the agency. If they are performing the work of staff they would typically oversee, there is no one to check the quality of their work.” (pg. 42.)
Finding 23 (pg. 16 of Appendix A)	“...It is unclear if the lost positions were part of that calculation ...”	Any lost positions were taken into account by DAS when they calculated turnover numbers.
Finding 23 (pg. 16 of Appendix A)	Budget cuts in FY2003-2004 impacted staff turnover.	<i>See “Context not provided (pg. 5 of response letter), 6C” on page 8 of this chart.</i>
Finding 23 (pg. 16 of Appendix A)	<i>Confidential or sensitive information removed from published response.</i>	
Findings 24-25 (pgs. 17-18 of Appendix A)	Questions were negatively phrased. Suggest positively framed questions.	<i>See “Report and questions have a negative bias. (pgs. 4 and 5 of response letter) 4A and 4C” on page 6 of this chart.</i>
Findings 24-25 (pg. 18 of Appendix A)	“The fact that questions like these were omitted from the interviews, suggests a biased approach within the questions themselves, and a predisposition toward a finding of negative reinforcement in the workplace.”	<i>See “Report and questions have a negative bias. (pgs. 4 and 5 of response letter) 4A and 4C” on page 6 of this chart.</i>
Findings 24-25 (pg. 18 of Appendix A)	“Many persons, particularly in a stressful interview setting, find negative questions to be confusing...”	We saw no indication during our interviews that staff found our questions to be confusing.
Findings 24-25 (pg. 18 of Appendix A)	Instances of positive reinforcement from the Executive Director, the Chief Justice, and Governor Heineman were not included in the report.	We did not say at any point in the report that management <i>does not</i> use some methods of positive reinforcement; however, the fact remains that a significant proportion of staff do not feel that they are treated fairly. Additionally, as the Chief Justice and Governor Heineman are not agency management, their appreciative remarks are in no way positive reinforcement from agency management and are therefore not relevant to the scope of the audit.
Findings 24-25 (pgs. 18-19 of	Auditors questioned former employees “without determining the context under	This statement is made by the Executive Director in a paragraph discussing management fairness. We did not include former employee answers in

Finding/ Issue (location)	Concern Raised by the Executive Director	Our Response
Appendix A)	which those persons left FCRB employ- ment.”	the statements about perceptions of management fairness; we only in- cluded former employee statements in two places in the report, both of which are clearly marked (pg. 29 & 31). Regarding the context of their departures, we asked all four former employees interviewed why they left their jobs at the FCRB.
Findings 24-25 (pgs. 18-19 of Appendix A)	Perceptions of staff may not be true in reality.	As we stated in our draft report: “We acknowledge that concepts like “perceptions of fairness” are subjective and that it is possible for an or- ganization to have a few employees who perceive unfairness where it does not actually exist. Nevertheless, we believe that having 11 people (almost half of the agency’s employees) report that they believe staff have been treated unfairly is cause for concern.” (pg. 29) Additionally, the quotes used in the draft report are meant to give an indication of the trend we found among interview responses. Individual staff members gave other, more specific, examples but we chose not to publish those examples in case the employees could be identified by their individual concerns.
Findings 24-25 (pg. 19 of Appen- dix A)	<i>Confidential or sensitive information removed from published response.</i>	
Findings 24-25 (pg. 19 of Appen- dix A)	Regarding the four former employees inter- viewed, “...it is unclear how long ago these staff had worked for the FCRB, and under what circumstances these persons had left and how this fits into the scope.”	<i>See “Scope (pg. 3 of response letter), 1H” on page 4 of this chart.</i>
Findings 24-25 (pg. 19 of Appen- dix A)	<i>Confidential or sensitive information removed from published response.</i>	
Findings 24-25 (pg. 19 of Appen- dix A)	<i>Confidential or sensitive information removed from published response.</i>	
Findings 24-25 (pg. 23 of Appen-	A former employee once used the fear of re- taliation during a disciplinary process and the	This is one of the reasons why the Committee wanted to “clear the air” about management practices in the agency. This is also why audit staff

Finding/ Issue (location)	Concern Raised by the Executive Director	Our Response
dix A)	subject has been brought up repeatedly since then.	asked FCRB employees <i>directly</i> whether they had concerns about retaliation.
Findings 24-25 (pg. 23 of Appendix A)	<i>Confidential or sensitive information removed from published response.</i>	
Findings 24-25 (pg. 24 of Appendix A)	Some staff were working together to influence the findings.	<i>See "Personnel issues not considered (pg. 5 of response letter), 5C and 5D" on pages 7 and 8 of this chart.</i>
Findings 24-25 (pg. 24 of Appendix A)	Table 5.1 organizational chart "makes it appear that I always directly supervise the review specialist supervisors, when in fact this is a program coordinator duty."	The title of Table 5.1 is "FCRB Organizational Chart April to August 2008" with a notation included that states: "The program coordinator generally supervises the review specialist supervisors; however, the program coordinator resigned during the course of the audit and the Executive Director took over her supervisory duties." (pg. 28) We do not know how we could have been more clear.
Findings 24-25 (pg. 25 of Appendix A)	"If this report is released, please revise to not include the comment of staff who are undergoing verbal counseling, or at least modify it to reflect the context of the employment of many of the persons making negative assertions was not considered."	<i>We will not modify the report.</i>
Findings 24-25 (pg. 25 of Appendix A)	Request to also delete or revise the report to not include the comments of the staff who "were colluding their responses."	<i>We will not modify the report for reasons cited in "Personnel issues not considered (pg. 5 of response letter), 5C and 5D" on pages 7 and 8 of this chart.</i>
Findings 24-25 (pg. 25 of Appendix A)	"Comments from former employees, particularly those who have not worked for the agency in some time, need to be removed from the final report. They are irrelevant to current management practices and it is impossible to know the employment history of these persons."	<i>We will not modify the report for reasons cited in "Scope (pg. 3 of response letter), 1H" on page 4 of this chart.</i>
Finding 28 (pg. 25)	"It is puzzling why there appears to be a con-	<i>See "Scope (pg. 3 of response letter), 1G" on page 3 of this chart. The Ombudsman</i>

Finding/ Issue (location)	Concern Raised by the Executive Director	Our Response
of Appendix A)	tinuing pursuit of this issue, given that the Ombudsman ... fully cleared me of any law violation in this regard more than one year ago.”	is not the final authority on questions of law, and the Committee’s decision to pursue an additional investigation of these questions was entirely appropriate. Additionally, at our 8-19-08 interview with the Executive Director, she thanked us for asking all FCRB staff about the law violations at issue in the Ombudsman’s investigation, stating that “I can tell you a couple of people have said to me how helpful it was—I mean, they really felt great that they could actually give their, you know, some of their experiences and their side of the story.”
Finding 28 (pg. 25 of Appendix A)	“The Ombudsman concluded that <u>no</u> FCRB staff members received a direct order to attend the campaign function. He also found that no staff member who did not attend the event in any overt way.”	While we agree with the Ombudsman’s conclusions on these two issues based upon our audit, this does not change our finding that the Executive Director arguably violated federal and state law.
Finding 28 (pg. 25 of Appendix A)	“The Ombudsman went on to state that Ms. Peterson’s testimony in the matter of the Ombudsman’s investigation was critical. The Auditors did not include this information in the Draft Report.”	As we conducted our own audit, what the Ombudsman’s office relied on in coming to their conclusions is irrelevant to our findings.
Finding 28 (pg. 25 of Appendix A)	“...the report inaccurately states ...that I posted invitations in the FCRB offices (p.33). I did not post invitations in the FCBR offices.”	The Executive Director’s denial that she posted campaign fundraiser invitations in the Lincoln and Omaha offices directly conflicts with what she stated during the audit. <i>See pages 13 and 14 of the Legislative Auditor’s memo.</i>
Finding 28 (pg. 25 of Appendix A)	“...the report inaccurately states ... that I had a staff member send invitations to the event during work hours. I did not have staff send invitations. ... Let me be clear, <i>no</i> staff were asked to send invitations at all, much less during work hours.”	We do not believe this to be true. We find the information provided by that employee fully credible. <i>See pages 15 and 16 of the Legislative Auditor’s memo.</i>
Finding 28 (pg. 25 of Appendix A)	“Even if I had posted the invitations, which I did not, the Draft Report points out that state statute does not expressly prohibit the post-	Although the Executive Director now denies having posted the fundraiser invitations, she goes on to argue that there would have been nothing wrong with doing so. The implication that because there is no explicit

Finding/ Issue (location)	Concern Raised by the Executive Director	Our Response
	ing of such invitations in a state office.”	prohibition on posting campaign invitation means that doing so is could not be illegal is without merit. We provided evidence in the draft report that such an action is <i>arguably</i> a violation of the law, including the opinion of the Executive Director of the Accountability and Disclosure Commission as well as two applications of the Act that included such a prohibition. <i>See page 14 of the Legislative Auditor’s memo.</i>
Finding 28 (pg. 25 of Appendix A)	“Since the purpose of the suggestion was to benefit foster parents and children, and not to advance the candidate’s campaign or election, it is difficult to see how there is any violation of the state or federal law.”	We find it concerning that the Executive Director fails to see that, regardless of her intentions, it is problematic to have a high level government manager encouraging employees to attend a political campaign fundraising event. Indeed, this is precisely the type of activity the Hatch Act was adopted to prevent. <i>See pages 14 and 15 of the Legislative Auditor’s memo.</i>

Appendix A: Interview Methodology and Questions

As noted in Section III, this appendix provides a discussion of the methodology used to conduct interviews with FCRB state board members and staff. We have also included the questions that Performance Audit Section staff asked of state board members and FCRB staff.

Interview Methodology

We conducted extensive one-on-one interviews with all 11 current board members, 24 of the 25 current staff members¹, and four former staff members.² Board members were asked the same list of questions. We used different sets of questions for managers and general staff members, but within each group, all were asked the same questions.

Several staff members raised concerns about how their statements would be used in the report. Some of these individuals voiced frustrations that their names had been publicized without their knowledge in previous reports; others said that they were afraid of retaliation if they were identified as saying unflattering things about either the agency or the Executive Director. Due to these concerns, we asked staff whether they felt that they could be candid with us. All staff said yes. We also asked staff whether they had been told what we would be talking about in our interviews. Most staff (20 of 24, or 83%) said that they had been told what we might ask in our interviews; however, no one said that they had been instructed how to answer specific questions.³

Board Member Questions

We asked all FCRB state board members the same questions.

Training

- What training were you given when you were appointed to the state board?
- What materials were provided to you?
- Were you briefed on the FCRB's authority and responsibilities? If so, what were you told?
- Were you briefed about conflicts of interest and how to handle them?

Conflicts of Interest

- Are there conflicts (as defined by the Accountability and Disclosure Act) present? Could you make decisions on the FCRB that would have a financial impact on you, a family member, or a business associated with you?
- Is the appearance of conflict present?
- Did you disclose conflicts in your application to the Governor?
- Did you disclose conflicts directly to the FCRB?
- What do you do (or what were you told to do) when presented with a conflict?
- Have you had to recuse yourself from a vote?

General Board Authority

- Do you understand what a non-code agency is? Can you explain your understanding to us?
- Are you familiar with the FCR Act and its requirements?
- Do you understand the difference between statutory requirements (“shall” language) and elective activities (“may” language)?
- Do you acknowledge that you and the other FCRB members are ultimately responsible for agency activities (including staff activities)?

Staff Authority

- Do you know what the statute says about the state board’s authority over agency staff?
- Do you acknowledge that the state board is responsible for hiring and evaluating the activities of the Executive Director?
- Does the FCRB approve staff job descriptions? Has it done so in the past?
- Does the FCRB approve the executive director’s job description?
- Have you been directly involved in evaluating the Executive Director? When? How?
- Does the Board have a system of accountability in place if the staff does not follow the Board’s directives?

Communication

- Did the recently-approved communication policies change standard practice as you understood it?
- Did the recently-approved communication policies resolve any concerns that you may have had about agency communication?
- Have you been able to speak to staff recently?
- Are you made aware of staff/personnel issues?

Facility Visits

- Have you ever been on a facility visit? What kind of training did you receive before going on facility visits?
- What is your understanding of who can go on facility visits?

Non-Supervisory Staff Questions

Performance Audit

- Have you seen the audit scope statement and audit plan?
- Has anyone told you what we would be talking about in your interview?
- Do you feel that you can be candid with us? If not, why not?

Job Description

- When did you begin working at the Foster Care Review Board?
- Briefly describe your job duties.
- Are you generally able to get your work done in a regular work week?

Training/Expectations

- Describe the training you received when you started working for the FCRB.
- Do you feel that was enough?
- Were you given guidance on how to act?
- Is there anything that keeps you from doing your job as well as you could?

Supervision

- Who is your direct supervisor?
- Do you get enough supervision from your immediate supervisor? From upper management, including the Executive Director?
- Is management (both your immediate supervisor and upper management) open to suggestions for improvement? Can you ask management for help?
- Do you think FCRB staff are treated fairly by management (both your immediate supervisor and upper management)?
- What happens if you do something wrong?
- Are you afraid of retaliation from management? If so, why?

Communication

- Do you know who to report to in general? Who are you supposed to go to if there is a problem?
- Are you allowed to speak to Board members?

Evaluations

- Do you have regular performance evaluations? Are they useful? When was the last time you were evaluated? When was your last evaluation prior to this?

Human Resources

- Has employee turnover affected your job? Why have people left? Is there a particular position that is difficult to fill?

Statutory

- In your opinion, does management try to follow the laws and regulations that affect the FCRB? To your knowledge, has anyone broken the law?
- To your knowledge, has anyone in the FCRB ever provided confidential information to anyone, including members of the press?
- Has anyone in the FCRB ever asked you to provide confidential information to anyone, including members of the press?
- Did Ms. Stitt invite you to the Osborne campaign event on April 28, 2006? If yes, did you attend the event? If yes, were you compensated in any way for attending the event?
- Did Ms. Stitt ask you at any time to invite foster children to the Osborne campaign event? If yes, did you invite any foster children? If yes, how did you access the contact information for these children?

Supervisory Staff Questions

We asked supervisory staff the questions listed for the non-supervisory staff as well as the following:

Job Description

- Do you feel that you have the authority to get your job done?

Training/Expectations

- Describe your role in training new employees. Describe your role in ongoing employee training.

- What do you do to make sure that staff understand the importance of professionalism and ethical behavior?

Communication

- How often do you hold staff meetings?

Evaluations/Disciplinary

- How often do you meet with staff to review their performance? What do you cover?
- How do you deal with staff disciplinary issues?
- How do you inform staff of the agency's disciplinary procedures?

Human Resources

- How much turnover is there in the review supervisor positions? (Asked only review specialist supervisors)
- Do you have to cover duties of others because of vacancies?
- Are you, as a manager, expected to follow the same rules as all staff?

Questions for the Executive Director

In addition to the questions for the supervisory staff, we asked the Executive Director the following:

Performance Audit

- How have you informed staff about the audit and our interviews? What instructions have you given to staff?

Job Description/Expectations

- When was the last time your job description was updated? Does the board approve your job description in any way?
- When was the last time other staff job descriptions were updated?

Training

- Describe your role in training new state board members. What do you think they need to know before they are ready to serve on the state board?

Communication

- How do you determine what is important enough to inform board members about?

Supervision

- Are you satisfied with the supervision you receive from the state board?
- Is the board open to suggestions for improvement? Can you ask them for help?

Evaluations/Disciplinary

- How do you ensure that FCRB staff are treated fairly?

Human Resources

- Is there an agency succession plan?
- How often do you conduct exit interviews? Do you find them useful?

Conflicts of Interest

- What do you tell board members to do when presented with a conflict?
- Do you think that any of the current board members have conflicts of interest? If yes, what?
- Are you familiar with the Accountability and Disclosure Commission and Commissioner Frank Daley?
- Has you ever had him come and talk to the board about conflicts?
- Have you ever taken agency questions to him?
- Have you ever taken your concerns about board member conflicts to him?
- Are there conflicts (as defined by the Accountability and Disclosure Act) present? Could you make decisions on behalf the FCRB that would have a financial impact on you, a family member, or a business associated with you?

ADA

- How does the board handle your ADA accommodations?
- What accommodations has it made?
- Do you report to the board about how you deal with your driving situation or anything else (working from home)?

Statutory

- Have you ever provided confidential information to anyone, including members of the press?
- Have you ever asked an employee to provide confidential information to anyone, including members of the press?
- Did you invite staff to the Osborne campaign event on April 28, 2006?
- Did you ask staff to attend any other Osborne campaign activities?
- Did you ever think it might look bad?
- Did you ask staff to invite foster children to the Osborne campaign event?
- Did you invite any foster children? If yes, how did you access the contact information for these children?

Notes

¹ One individual had taken medical leave and did not wish to meet with us regarding the audit.

² We sent letters to 17 former staff who had worked for the FCRB within the last two years requesting interviews. Only four individuals agreed to interviews.

³ An e-mail sent June 23, 2008 listed questions that had been asked in a previous performance audit and included in the methodology of that report.

Appendix B: Research Methodology for Board Member Conflict of Interest Issues

As noted in Section III of the report, this appendix provides the methodology for the research Performance Audit Section (Section) staff did into FCRB members' business associations. Section staff used the following methods and resources to look for possible conflicts:

- Requested the Nebraska Accountability and Disclosure Commission check its files for any financial disclosures made by these individuals
- Searched for payments in NIS by name
- Searched for payments in NIS by company name
- Googled their names and company names
- In one case, contacted an employer
- In another case, contacted DHHS to ask about a referral procedure
- In yet another case, examined a divorce decree
- Reviewed any organizational annual reports for financial reporting information
- Contacted the Governor's Office to determine the procedures used to examine those seeking board appointments

Appendix C: Board Members' Votes

As noted in Section III of the report, this appendix provides an analysis of the votes taken by state board members from January 2006 until May 2008. We reviewed votes taken by the board to determine what the state board had recently voted on would have had any financial impact on a state board member.

Votes Not Tied to Financial Conflicts

We found that none of the votes taken by the FCRB from January 2006 until May 2008 would have a financial impact on any of the board members, their employers, or other business associations. In fact, the vast majority of the votes taken by the board had no discernible financial impacts at all. For example:

- Of the 105 votes taken by the state board between January 2006 and May 2008, 57 votes (54%) related to procedural duties such as approving the prior meeting's minutes, local board members, and yearly motions.
- There were no votes taken on individual foster children's cases.
- Votes regarding the approval of the annual report, which could be argued as an avenue for a board member to steer the FCRB's statements about DHHS, consisted of two votes taken to amend issues to be presented in the annual report in 2006; no state board members voted against these amendments.
- There were three instances where state board members abstained from voting: twice regarding the FCRB's support of specific legislative bills and once new members abstained from voting on meeting minutes because they had not been present at the original meeting.

Table D.1 on page 2 shows the distribution of state board members' votes by category. Table D.2 shows the specific votes that make up the 18 "miscellaneous" votes listed in Table D.1.

Table D.1: Categories of Votes Taken by the FCRB State Board January 2006 to May 2008

Vote Category	Number of Votes Taken
Procedural (Move to go into executive session, move to adjourn, close nominations, move agenda items)	24
Miscellaneous Board Business (See Table D.2 for specific votes in this category)	18
Legislation	13
Minutes	12
Budget Status Updates	11
Yearly Motions	9
Voting for Officers/Nominations	8
Appointment of New Local Board Members	4
Annual Report	2
Goals	2
Budget Requests	2
Total	105

Note: Table prepared by Legislative Performance Audit Section Staff.

Table D.2: Miscellaneous Board Business Votes Taken by the FCRB State Board January 2006 to May 2008

Issue (Date)	Vote Taken
Motion to create a Data Outcomes Working Group. (4-24-06)	All in favor
Motion to stand down certain local boards due to so few children in out-of-home care in these areas. (4-24-06)	All in favor
Concerns regarding the transition to N-FOCUS. “Jim Gordon stated that he was concerned for the quality of the Review Boards’ data and that the Board should continue to pursue a remedy to this issue, including pursuing alternate ways to meet the federal mandate, through any means reasonable with the congressional delegation.” (4-24-06)	All in favor
Carol Stitt asked for approval for raises for staff members Kathleen Stolz, Heidi Ore, and Linda Cox “due to their taking on extensive assignments outside their job descriptions including Kathleen’s legal expertise and representation of the Board in the EEOC complaint, and Linda Cox’s and Heidi Ore’s work on developing and maintaining the Review Board’s new tracking system. Carol stated that the process would include sending a letter of request through State Personnel.” (4-24-06)	All in favor
Carol Stitt asked for approval to send four staff members to a conference in Las Vegas. (4-24-06)	All in favor
Review of all contracts as suggested by Ombudsman’s report. Motion to approve contracts. (10-11-07)	All in favor
Gene Klein stated that he had received a letter from the Governor and Senator Johnson. “Mr. Klein thought that the Governor meant that the legislative per-	Nine in favor, one against, mo-

formance audit would take the place of an outside expert's review of the Board. Mr. Klein felt that the letter Mr. Gordon sent to the Governor implied that the Board did not want a Performance Audit." Motion to request a performance audit and have the Board further define the scope of the request. (10-11-07)	tion passed.
Motion to authorize Carol Stitt to continue discussions with Ms. Miller "to develop a structural and financial proposal to complete the State Board's review in accordance to the Ombudsman's recommendation that an outside expert to complete a review of the agency." (10-11-07)	All in favor
Kathleen Stolz reviewed the changed suggested by the Rules and Regulations Committee. Motion to approve the rules and regulations, as amended, subject to approval by the Governor and Attorney General. (10-11-07)	All in favor
Jim Gordon stated that the Board should discuss ADA accommodations since Carol Stitt could not drive. Motion to consider what accommodations to provide Ms. Stitt in accordance with the ADA. "Jim Gordon asked that Kathleen Stolz discuss with Bill Woods from Employee Relations what the current policy is for the State in accommodating disabilities and that this be reported at the next State Board Meeting." (11-12-07)	All in favor
Motion to leave the duties and function of the Executive Committee as they stood. (3-7-08)	All in favor
Motion to have documents attached to e-mail to save postage costs. (3-7-08)	All in favor
Motion to tape record future state board meetings. (3-7-08)	All in favor
Motion to approve the communication policy as amended by Larry Brown and Carol Stitt. (3-7-08)	All in favor
Motion that "for this year the State Board should be a facilitative and directive Board that is more involved in promoting the Board, asking questions, sharing ideas, and whose duties would include the existing and amended duties agreed upon by the State Board. (5-9-08)	All in favor
Motion noting that the State Board had reviewed the FCRB's service contracts. (5-9-08)	All in favor
Motion to accept the proposed budget request. (5-9-08)	All in favor
Motion to approve the special study. (5-9-08)	All in favor

Note: Table prepared by Legislative Performance Audit Section Staff.

Appendix D: Materials from the Executive Director

As noted in Section III of the report, this appendix provides the Executive Director's suggested statutory changes to the Foster Care Review Act. The following is a copy of a document given to Performance Audit Section staff by the Executive Director on August 6, 2008. She asked us to include the document as an attachment to our report.

Additionally, on October 16, 2008, the Executive Director asked us to attach the following materials to the report:

- A letter from the Governor;
- A list of the state board's 2008 accomplishments;
- Workload analysis materials; and
- The Executive Director's written response to Section questions regarding the Ombudsman's investigation.

TO: Performance Auditors
FROM: Carolyn K. Stitt, Executive Director
DATE: August 5, 2008
RE: Legislative History of State Board Membership

Statutory History:

When the Review Board was first created, membership was not defined for the State Board.

In 1987, Governor Kerry appointed DHHS administrators to positions on the State Board. When issues concerning foster children were brought to the State Board, when the Board sought to address issues or note concerns, these administrators would table the issue.

The Legislature created a statutory mandate (LB 239 -1987) which added the following language, **“No person employed by a child-caring agency, a child-placing agency, or a court shall be appointed to the state board.”** This was done so that the Board would be free to discuss all issues affecting children in foster care and make recommendations, as it found appropriate. The bill also mandated that at least three members of local review boards, who see the children’s cases, were appointed to the State Board, and that the Board be representative of each of the three congressional districts. This statute remained in effect until 2006.

In 1990, the Legislature added that, “At least one member shall be an attorney with legal expertise in child welfare” should serve on the State Board.

In January 2006, a State Board new membership prescription was put in place. Several different entities were now required to serve on the State Board including local board members. The language prohibiting persons employed by a child-placing agency or court from serving on the State Board was omitted from the expanded language.

Although the State Board members have been appointed per statute, some of the State Board members who receive funding from DHHS and/or are supervised by the Courts have an appearance of impropriety.

Current State Board Member's Appearance of Impropriety

The following State Board Member's conflict of interest and appearance of impropriety has not been disclosed at any time during the discussions by the State Board concerning issues that pertain to the care of foster children such as, child abuse investigations, contract oversight, and the mandate of the Board to review, track and report on the conditions of children in foster care.

One person currently sitting on the State Board has a conflict of interest on three different levels. Those are:

- Receiving funds from DHHS,
- Allocating and distributing DHHS pass-through funds, and
- Partially funding different entities in the child welfare system the Review Board oversees and reports on, such as;
 - Cedars, a child placement agency (\$44,000),
 - 1184 Teams which are formed through through the County Attorney Offices to assist in child abuse investigations (\$12,950 to support 26 counties 1184 teams),
 - Nebraska CASA and Seward CASA (\$37,729), and
 - Child Advocacy Centers (\$65,181) including partially funding the agency whose director sits on the State Board, Project Harmony (\$16,750). *As reported in the Nebraska Children and Families Foundation 2006 Tax Return

CASA Directors

43-1302 (b) states that after January 1, 2006 one of the State Board members will be. "one director of a court appointed special advocate program." CASA programs are funded by individual counties but are created, administered, and supervised by the court with juvenile court jurisdiction. This person would not have been allowed to serve on the State Board prior to January 1, 2006.

Child Advocacy Center Director

43-1302 (b) states that after January 1, 2006 one of the State Board members will be, "one director of a child advocacy center". Child Advocacy Centers are funded by several different entities including DHHS.

Strengthening Oversight

It has been the longstanding policy of the Legislature to protect the Board's ability to identify and report issues concerning foster children. In light of the numerous issues that the State has faced and worked to address, it is critical for Nebraska's foster children that oversight to the child welfare system be central with no other conflicts.

Recommended Remedy

I would recommend that the statute be returned to the original language that states, "No person employed by a child-caring agency, a child-placing agency, or a court shall be appointed to the state board." Also in light of current funding practices by DHHS and the courts, I would also recommend that language be drafted to include persons who receive funds from DHHS, administering or distributing DHHS funding to others, or those persons who work under the supervision of the courts.

This policy would protect the Review Board's core mission of:

- Reviewing the plan, services, and placements of children in out of home care by multi-disciplinary, community based, trained citizen volunteers. (Neb. Rev. Stat. 43-1308, 43-1312)
- Promoting safety, security and permanency for children. (Neb. Rev. Stat. 43-1303, 43-1308)
- Sharing the findings with all legal parties to the case. (Neb. Rev. Stat. 43-1308,(1)(b))
- Maintaining a computerized tracking system on all children and youth in out-of-home care. (Neb. Rev. Stat. 43-1303)
- Collecting and verifying information on children and youth in out of home care. (Neb. Rev. Stat. 43-1303)
- Disseminating information on children in out-of-home care. (Neb. Rev. Stat. 43-1303)
- Releasing an annual report containing the data collected, an evaluation of such data and recommendations. (Neb. Rev. Stat. 43-1303)
- Improving the foster care experience for children, (Neb. Rev. Stat. 43-1308), which includes working to obtain appropriate, safe, and permanent placements for children, reduce the number of placements children experience, reduce the number of times children enter care, and reduce the time children spend in out-of-home care.
- Taking legal standing to communicate the best interests of foster children to the legal parties in the case. (Neb. Rev. Stat. 43-1313)
- Visiting facilities for children in out of home care. (Neb. Rev. Stat. 43-1303(6))
- Organizing, sponsoring and participating in educational programs. (Neb. Rev. Stat. 43-1317)

Caliber of State Board Members

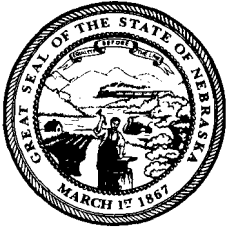
I commend the Governor for appointing persons to the State Board according to Statute and over the past 25 years I have had the pleasure of serving under persons with great integrity and skill. The State Board is an honored institution and one that stands for the best interests of children.

Current Statute regarding the State Board

(1) Until January 1, 2006, the State Foster Care Review Board shall be comprised of nine members to be appointed by the Governor, subject to confirmation by a majority of the members elected to the Legislature. At least one member shall be an attorney with legal expertise in child welfare. Two members shall be from each of the three congressional districts as they existed on January 1, 1982. In addition to the six members representative of the congressional districts, three members shall be appointed by the Governor from a group consisting of all the chairpersons of the local boards, and one such chairperson shall be appointed from each such congressional district. The appointment of a member of a local board to the state board shall not create a vacancy on the local board. Members other than those appointed from the group consisting of all the chairpersons of the local boards shall be appointed to three-year terms, and those members appointed from the group consisting of all the chairpersons of local boards shall be appointed to two-year terms. No person shall serve on the state board for more than six consecutive years. **No person employed by a child-caring agency, a child-placing agency, or a court shall be appointed to the state board.**

(b) On and after January 1, 2006, the State Foster Care Review Board shall be comprised of eleven members appointed by the Governor with the approval of a majority of the members elected to the Legislature, consisting of: Three members of local foster care review boards, one from each congressional district; one practitioner of pediatric medicine, licensed under the Uniform Licensing Law; one practitioner of child clinical psychology, licensed under the Uniform Licensing Law; one social worker certified under the Uniform Licensing Law, with expertise in the area of child welfare; one attorney who is or has been a guardian ad litem; one representative of a statewide child advocacy group; one director of a child advocacy center; one director of a court appointed special advocate program; and one member of the public who has a background in business or finance.

The terms of members appointed pursuant to this subdivision shall be three years, except that of the initial members of the state board, one-third shall be appointed for terms of one year, one-third for terms of two years, and one-third for terms of three years, as determined by the Governor. No person appointed by the Governor to the state board shall serve more than two consecutive three-year terms. An appointee to a vacancy occurring from an unexpired term shall serve out the term of his or her predecessor. Members whose terms have expired shall continue to serve until their successors have been appointed and qualified. Members serving on the state board on December 31, 2005, shall continue in office until the members appointed under this subdivision take office. The members of the state board shall, to the extent possible, represent the three congressional districts equally.



Dave Heineman
Governor

STATE OF NEBRASKA

STATE FOSTER CARE REVIEW BOARD

Carolyn K. Stitt, Executive Director

521 S. 14th Street, Suite 401
Lincoln, NE 68508-2707
Phone (402) 471-4420
1-800-577-3272
FAX (402) 471-4437

October 16, 2008

Omaha Office

1313 Farnam-on-the-Mall
Omaha, Nebraska 68102-1846
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Angie McClelland, Performance Auditor
State Capitol, Room 1201
Lincoln NE 68509

Dear Angie:

I would like to respectfully request that this letter and the enclosed attachments be included in the appendix of your report.

Enclosed please find the following:

- A letter from the Governor dated July 10, 2008, in which he thanks the Review Board for its work on behalf of foster children.
- The Board's Accomplishments during 2008.
- A workload analysis document showing a number of steps to address staff workloads. Among these actions was the streamlining of the recommendation format, dropping the extensive case history section, and dropping individualized letters to guardians ad litem. This was provided to the State Board.
- A memo containing answers to your questions regarding the Ombudsman's Report dated September 5, 2007.

Sincerely,

Carolyn K. Stitt
Executive Director



Dave Heineman
Governor

STATE OF NEBRASKA

OFFICE OF THE GOVERNOR
P.O. Box 94848 • Lincoln, Nebraska 68509-4848
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JUL 11 2008

July 10, 2008

Carolyn K. Stitt
Executive Director
State Foster Care Review Board
State of Nebraska
521 S. 14th Street, Suite 401
Lincoln, NE 68508-2707

Dear Carol:

Thank you for your June 30th letter, with the enclosed Foster Care Review Board Spring 2008 newsletter. I very much appreciate receiving the newsletter and find it very informative.

I would like to take this opportunity to thank you for your dedication and commitment to the Foster Care Review Board. I look forward to continuing to work together as we focus on the needs of foster care children across Nebraska.

Sincerely,

A handwritten signature in cursive script that reads "Dave".

Dave Heineman
Governor

2008 Activities

Program Goal: To improve the lives of foster children

Means to achieve the goal:

State Board:

- Increasing communication with members of the State Board,
- Strengthening the working relationship,
- Providing updates on program issues, legislation, budget issues,
- Inviting to trainings,
- Working with the Committees of the State Board.

Internally:

- Continuing to conduct comprehensive reviews and collect data,
- Improving our recommendations,
- Working for internal consistency in timeliness, accuracy, and effectiveness.
 - Examples, ensuring Governor Reviews were taking place across the state, work is received within expected time intervals, etc.
- Introducing more effective language for recommendations in trainings and in the newsletter for local board members,
- Interfacing more effectively with the Courts and legal parties.

With the Courts:

- Working in collaboration with the Chief Justice,
- Addressing the identification of aggravated circumstances,
- Addressing the GAL issue,
- Providing data to the Judges,
- Providing education programs.

With DHHS:

- Working in collaboration with Todd Landry, who requested that I work with Barry DeJong for Omaha issues and Jeff Schmidt for Lincoln issues.
- Designing and conducting the special study,
- Working in collaboration on education programs,
- Working to address systemic and regional issues.

With Other Partners:

- Providing information for the Governor, Senators, and other partners.

The following are highlights of 2008 activities to date:

January 2008

- Continued discussions with the State Board on the special study
- Informed the State Board of a serious shortfall in the Board's federal funding due to DHHS identifying fewer children as being IV-E eligible, and due to more children being placed with relatives who have not met the licensing requirements to be a IV-E eligible placement.

- Jan. 9th, met with DHHS Omaha area Administrator Barry DeJong about identifying IV-E eligibility.
- Worked with our attorney on a legal standing case that had court on Jan. 15th.
- Provided advance copies of the annual report to Governor Heineman, Todd Landry, and Chief Justice Heavican.
- Arranged to release the Board's annual report with some key senators. Provided a press release on annual report findings to the print and broadcast press, and answered a number of press questions regarding foster care.
- Reviewed newly proposed legislation and informed the State Board of bills that may impact children in foster care or the agency.
- New State Board members were confirmed by the Legislature.
- The Chief Justice mentioned the Board in the State of the Court address, citing work to improve the court's response to children in foster care.
- 210 joint reviews (Governor reviews) were held with DHHS in the central part of the state during January.
- Facilitated the conducting of 432 reviews in January.

February 2008

- State Board met on Feb. 1st, and held an election of officers and appointment of committees.
- Martha Carter spoke to the State Board regarding the performance audit.
- Began talks with Todd Landry on holding joint legal training for DHHS caseworkers, supervisors, and administrators, as well as FCRB staff and management.
- Distributed the communication protocol to staff.
- Distributed about 25 annual reports and data about the number of foster children from their district to the senators through in-person meetings with the senator or his/her staff.
- Distributed the annual report to each of the juvenile court judges, the county judges who serve as juvenile court judges, and the county attorneys from each county. Also distributed reports to guardians ad litem, caseworker supervisors, and members of the public who requested the information.
- Arranged for local board members to provide feedback on their top system concerns from 2007.
- Created and distributed a press release about our new State Board members appointment.
- Travelled to Scottsbluff to meet with local board members, the County Attorney, and Judge Camerer. Was interviewed by statewide radio station KRVN.
- Made arrangements for orientation for new State Board members.
- Responded to a judicial request for statistics for use at legislative hearing on the bill regarding pre-hearing conferences.
- Invited Dale Comer of the Attorney General's office to speak at the March 7th State Board meeting on the open meetings law.
- Enabled the Special Projects Coordinator to represent the board at discussions for a joint workshop with the Department of Education and other partners on

education for children in out-of-home care. These discussions continued through May, with the program in June.

- Facilitated the conducting of 464 reviews in February.

March 2008

- State Board met on March 7th. The open meetings law, the OMNI lawsuit, and the 2008 goals were discussed.
- Met with Chief Justice Heavican to discuss courts' response to foster care issues. He requested that all judges be sent a list of their foster children who have been in care for two years or longer, and requested we continue to advise him of judges doing exemplary work on benefit of children, as well as areas needing improvement.
- Testified on the need for oversight of contracted placements and services for foster children.
- Serious issues were found with the Beatrice State Developmental Center. We arranged to review the two youth placed at that facility, and arranged for a facility visit.
- OMNI appealed the decision of the District Court in their lawsuit against the Board.
- Attended a program at Creighton University on findings related to familial violence and its effect on children.
- Met with the State Board's Annual Report Committee to discuss the next report.
- Facilitated the conducting of 460 reviews in March.

April 2008

- Responded to Senator Pedersen's request for additional information about foster children with disabilities.
- Continued discussions regarding the special study of children in foster care for 24 hours or longer. Received approval from the Executive Committee on the special study parameters.
- Updated the Governor on progress in child welfare. Received a letter from the Governor thanking us for our update, directing me to continue working with Todd Landry and the Chief Justice.
- The Program Coordinator resigned. I assumed supervision duties, and began addressing agency consistency issues with the supervisors. Examples included weekly staffings, addressing errors on the recommendation cover sheet issues, poorly written recommendations, and timeliness of the Lincoln office receiving recommendations.
- Reviews of all children in a problematic facilities provided by a particular contractor were coordinated in order to better determine the safety and appropriateness of such placements.
- Provided to the State Board, upon their request, job descriptions for Lincoln office staff and management.
- Reviewed for the State Board, upon their request, the agency's statutory authority to conduct facility visits and the procedures in place for such visits.

- Conducted a study of transportation contract concerns and began developing the report for the Legislature's Transportation Contract Performance Audit.
- Facilitated the conducting of 445 reviews in April.

May 2008

- Provided the State Board some trend data.
- The State Board met on May 9th. Major topics included the role of the State Board, the role of the Executive Director, facility visits, the appropriations process, an update on IV-E funding, the transportation performance audit, and other updates. Discussed the parameters of who does what actions.
- Met with the State Board's Rules and Regulations Committee to revise the draft proposal.
- Responded to the State Board's questions regarding independent vs. code agencies.
- Informed the State Board of media reports that State Patrol and the FBI are in the process of investigating a DHHS service contract provider on allegations of embezzlement.
- Worked to reclassify the Program Coordinator's position. The reclassification takes effect July 1, 2008.
- Brought all reviewers into Lincoln for a staff meeting on May 15th where staff received training on developmental disabilities issues and time management. The next day review staff attended a daylong training on issues in Juvenile Court at Creighton University.
- Staff returned for a two-day meeting on May 29-30. Chief topics included GAL guidelines, aggravated circumstances, and internal constancy in writing recommendations that are fact-based and contain current information. The Chief Justice joined staff to hear court improvement needs from their areas and perspectives.
- Drafted the Spring 2008 newsletter for volunteers and partners with Bruce Baker.
- Facilitated the conducting of 345 reviews in May (lower than previous months due to staff meetings and trainings).

June 2008

- Attended a meeting with the DHHS Protection and Safety Administrators and Service Area Administrators. Discussed the Board's commendations, and work to be done, including the special study.
- DHHS Director Todd Landry requested that the special study be a joint venture of DHHS and the FCRB.
- Developed training programs on aggravated circumstances, permanency hearings, substance abuse, and other child welfare topics for multiple locations across the state. Dialogued with DHHS so they would co-sponsor many of these trainings, and send their caseworkers, supervisors, and administrators. Began conducting the trainings. Obtained speakers at low or no cost.
- The Special Projects Coordinator, Supervisors, and Executive Director participated in the Partnering for the Education of Children in Out-of-Home Care Conference.

- Provided data for Kids Count.
- Clarified facility visits again for the State Board.
- Responded to a press request for statistics related to caseworker changes.
- Media reports of problems with the Autism Center, a placement that the Board had also found problematic.
- Was contacted by reporters regarding the new DHHS contracts for in-home services.
- Sent each juvenile court judge a list of his/her cases where children have been in care for two years or longer, along with a cover letter approved by the Chief Justice.
- The Performance Auditors indicated that they would start speaking to staff in late June or early July.
- Met with Chief Justice Heavican to discuss the lists sent to the judges and reasons for children remaining in foster care.
- Worked with the Court's judicial education group to design a program on aggravated circumstances for the annual judicial conference.
- Conducted educational programs for local board members, DHHS case managers and supervisors, and other members of the child welfare system. Two programs were held in Omaha, two in Lincoln, one in Lexington, and one in Scottsbluff.
- Met with the Douglas County Attorney's staff to discuss prosecution issues.
- Governor Reviews began in Lincoln.
- One supervisor was named to a CFSR team, another was named as an alternate. The Executive Director was asked to participate in stakeholder meetings regarding the CFSR.
- Facilitated the conducting of 303 reviews in June.

July 2008

- Met with Todd Landry to discuss areas where improvement has been seen.
- Met with Chief Justice Heavican re data he requested be distributed to juvenile court judges and county judges who serve as juvenile court judges.
- Conducted new local board member training in Lincoln and Scottsbluff.
- Continued to provide educational programs for local board members, DHHS case managers and supervisors, and other members of the child welfare system.
- Joint press briefing with the Governor, Todd Landry, and Chief Justice on the special study.
- Worked with DHHS administration to design the memorandum of agreement on the special study.
- Continued to address consistency of recommendations, cover sheets, professional language, and timeliness of work.
- Informed senators of areas of progress in the child welfare system.
- Participated in the CFSR.
- Met with federal HHS representative Mary McKee as part of the federal audit process and provided data.
- The State Board met on July 25th. Major topics included the budget request, staffing, technology, and personnel issues.

- Responded to the Boards and Commissions survey.
- Revised the data collection form after final State Board input, and implemented the special study.
- Facilitated the conducting of 369 reviews in July.

August 2008

- Provided an educational program for local board members, DHHS case managers and supervisors, and other members of the child welfare system in Scottsbluff. Topics included bonding and attachment, substance abuse, and court issues.
- Continued to address internal consistency issues.
- Met with Review Specialists in Omaha, Lincoln and the Rural Areas.
- Met with the Performance Auditors.
- Partnered with Todd Landry to establish a consistent and statewide format and process for the Governor Reviews.
- Attended Governor Reviews in Lincoln and Omaha to assure consistency.
- Interviewed candidates for the Program Coordinator position.
- Facilitated staff conducting a statewide Special Study identifying concerns and barriers to permanency for children in foster care 2 years and longer whose plan was reunification.
- Worked to assure that cases of concern found in the Review Board's Special Study were staffed so appropriate action could be taken on behalf of foster children.
- Facilitated the conducting of 369 reviews in August.

September 2008

- The State Board met on September 5th. Major topics included the budget request, staffing, technology, and issues regarding the Performance Audit.
- Submitted the Review Board's Biennium Budget Request to the Governor on September 15, 2008.
- Planned a 25th Anniversary celebration for local board members, FCRB founders, staff and supporters of Citizen Review.
- Planned, wrote and delivered testimony at the Performance Auditors public hearing their audit of contract providers who transport and provide visitation supervision for children in foster care.
- Began training the new Program Coordinator.
- Continued coverage for the Lincoln Area Review Specialist Supervisor.
- Attended Governor Reviews in Lincoln and Omaha to assure consistency.
- Continued work on the Annual Report.
- Facilitated the entry of 200+ records of children studied during the Review Board's Special Study.
- Related the Review Board's concerns regarding
- Facilitated the conducting of 330 reviews in September.

September 4, 2008

To: State Board

Gene asked several helpful questions regarding workloads. This is an important issue, and I wanted everyone to have this history and background.

What are the training requirements for staff? How many hours a year are they required to attend training? What is the scope of the training?

Review specialists go through an initial training program. There is a check-off sheet that is signed in which the review specialist and his/her supervisor sign that training has been completed. Additional training is offered throughout the year as budget and opportunity allow. Review specialists also are to attend training programs for local board members, because they need to understand what has been communicated to the local boards.

For example, this year we had training on developmental disabilities, aggravated circumstances, the new GAL guidelines, and how to write fact-based recommendations appropriate for submission to juvenile court. This was done with three days of staff meetings in which these and other issues were presented, and with another day where we took advantage of Creighton Law School's continuing education program, which was available to us at very cost-effective rate.

In past years we have had programs on topics such as assertiveness training, how to testify in court, and how to write recommendations and main concerns to better communicate with the legal system.

How do you prioritize training?

Training is prioritized based on when new materials need to be communicated (i.e., the new GAL guidelines), when areas are identified where further clarification is needed (such as when children can access certain developmental disability services), and to enhance writing skills so that our recommendations were fact-based, with current issues needing action and the recommended actions clearly defined.

How is staff training different from training for the local board?

Review specialists serve as consultants to the local boards. Thus, training is different for staff than local boards because 1) staff facilitate the local board meetings and 2) staff need to be equipped to answer their local board member's questions. Staff training includes how to utilize the information as a paid staff member.

Are we paying for staff to work overtime? I see this occasionally on the budget report but was not sure how often this takes place.

Under the NAPE/State of Nebraska contract review specialists and support staff must be paid overtime if they work over 40 hours per week. Supervisors, the accountant, the

Program Coordinator, the Administrative Coordinator and the Special Projects Coordinator are exempt from overtime payments.

Overtime for qualifying employees can occur if pre-approved by the supervisor. This is the procedure outlined in the work rules manual that was approved by the Union and DAS. Because of our budget constraints, all overtime must be preapproved and is granted on a limited basis. An example of when overtime might be approved is if a review specialist is covering for another review specialist on medical leave, or is doing a Saturday or evening speaking engagement.

Do supervisors report staff working overtime to you – or are they taking comp time?

Supervisors are to report overtime either to me or to the Program Coordinator. I will need clarification of Gene's question regarding comp time.

What is the formula for staff case loads?

The Program Coordinator provided this to the State Board in 2006. A study was completed with all Review Specialists participating. Each Review Specialist was given a time study tool to fill out. The tool asked that the Review Specialist record how long it took them to complete each different component or task of the Review Specialist position for one complete month.

In summary, these tasks include:

- Conducting file reviews,
- Determining addresses for notifications (which support staff send),
- Making collateral contacts with foster parents, caseworkers, GALs,
- Preparing board packets,
- Facilitating local board meetings,
- Writing final recommendation reports (which support staff send after reviewed by the supervisor), and,
- Advocating for the children's best interests through attending court or staffings, if necessary.

At the conclusion of the month, the Program Coordinator determined the average length of time required (as reported by the review specialists) to complete each task. From those timeframes, it was determined that it took a review specialist an average of approximately eight hours to complete each review with its advocacy steps. The variance took into account sibling groups.

The next part of the equation is determining the number of working hours per month. Each Review Specialist works 1,992 hours per year (an average of 166 per month), not taking into account vacation or sick leave. Each review specialist earns a minimum of 96 hours of vacation and 96 hours of sick leave each year. The NAPE/State of Nebraska contract states that vacation requests may not be unreasonable denied.

Since each case takes eight hours to complete, and since each reviewer has about 166 working hours per month, full-time review specialist can complete 21 cases per month if they do not take any leave time. However, to allow for staff to take time off as required by the contract, unless an allowance is made for different circumstances as described below, each full-time Review Specialist is required to review a minimum of 18 cases per month and a minimum of 30 children per month.

Allowing for normal vacation and sick leave, each full-time review specialist can review approximately 165 children per six-month period. (Six-month period of time was used as 75% of the cases are reviewed twice each year as required by statute)

Is there credit given for other work assignments?

Yes, there is credit given for other work assignments. For example, as I reported we allowed review specialists to lay down one board (one third of a month's work for a full-time reviewer) in order to complete the Governor's special study.

In addition, this year:

1. We reduced by three cases per month the minimum number of reviews for each full-time review specialist (two for part-time) in order to facilitate advocacy,
2. We reduced the number of cases reviewed to facilitate review specialist training in May,
3. We allowed reviewers to drop one case during September in order to conduct Governor staffings.
4. We continue to allow reviewers to drop one case for a state holiday in a month. (For example, in November we have three state holidays – two at Thanksgiving and one Veteran's Day, so three cases may be dropped in November).

Prior to 2008, a number of other timesaving measures were implemented for review specialists that continue to be in effect, including:

- Shortening the recommendation format to save writing time,
 - We took out a major section of history, so that we could write fact-based recommendations that focus on current information and clearly defined top concerns.
 - This change has helped move cases forward, as the focus is on the current situation.
 - After speaking with recipients of our reviews, we left the first page information intact.
- No longer requiring a special letter to be written and sent to the children's guardian ad litem outlining specific case concerns.
- Utilizing support staff to create the mandatory notification letters and to send out the final recommendation reports to the legal parties as required by statute.
- Utilizing support staff to create the preliminary case assignment lists, in order to free up supervisors so they could better assist their reviewers.

- Providing review specialists access to DHHS computerized N-FOCUS records via their office computers so they did not need to go to the DHHS offices for those documents,
- Use of regionally based video-conferencing for some staff meetings to save drive time,
- Use of computer server technology to provide automatic backup of documents (formerly this had to be done manually) and to provide easier access for supervisors and for staff to pull cases, and
- More fully utilizing email capabilities.

Can you describe the case assignment process?

Case assignment could not exist without the work of tracking system and support staff. Printouts are created from the Board's tracking system of children in out-of-home care. Children whose next court date is unknown are researched to determine if any have upcoming court dates. Queries are run based on the State Board's priority list (see item 5 below).

The case assignment coordinators (support staff) then create a preliminary draft list of children for each board to review, taking into account the State Board priority list, any rotation of towns that a board may review (for example, the Southeast Board rotates between reviewing children in Beatrice, Tecumseh, Falls City, Nebraska City, etc.), and the need to review siblings together whenever possible

These lists are given to the supervisors, who review the lists, go over the cases with their review specialists, and modify the lists accordingly. After any changes are noted, the case assignment coordinator emails the list of cases to be reviewed to the appropriate DHHS office as a courtesy so that files can be pulled for the review specialist prior to their arrival in the office.

Is there any priority for cases to be reviewed?

Yes, the State Board approved the following priority list:

1. Cases where the Foster Care Review Board receives a Special Request
2. Children in foster care who are IV-E eligible.
 - a. Children who are birth to age 5, IV-E eligible and there is an upcoming court hearing.
 - b. Children who are ages 6 to 18, IV-E eligible and there is an upcoming court hearing.
 - c. Children who are IV-E eligible and who entered care at least 6 months previously and who have not been reviewed by the board.
 - d. Children who are IV-E eligible and who were reviewed at least 6 months previously.
3. Children in foster care who are not IV-E eligible.
 - a. Children who are birth to age 5, are not IV-E eligible and there is an upcoming court hearing.

- b. Children who are ages 6 to 18, are not IV-E eligible and there is an upcoming court hearing.
 - c. Children who are not IV-E eligible and who entered care at least 6 months previously and who have not been reviewed by the board.
 - d. Children who are not IV-E eligible and who were reviewed at least 6 months previously.
4. Children who are in foster care and have been reviewed by the Foster Care Review Board previously. This includes those children who no longer have court involvement (i.e. delinquents who are in a “foster care” setting.)

This is the priority list used when assigning cases for review.

Can we see a report on the current staffing – by region with the number of staff in place, number of staff vacancies that will be filled, and those not being filled?

The following are the current staff vacancies and recent resignations:

- Program Coordinator (formerly Kathleen Stolz),
- Lincoln Area Supervisor (formerly Michele Blodgett),
- Scottsbluff review specialist (formerly Jolie Camden),
- Omaha review specialist (formerly Diana Haney) and
- Lincoln review specialist Lynda Todd.

Review specialists include the following.

Under Review Specialist Supervisor Tami Gangwish:

- Karen Olson (North Platte, Ogallala, Lexington, McCook)
- Dawn Paulsen (Kearney, Broken Bow, Hastings, Grand Island)
- Vacancy (Scottsbluff, Gering, Alliance) [was Jolie Camden]

Under the Vacant Lincoln Review Specialist Supervisor:

- Jodi Borer – who is 0.67 FTE (Columbus, David City, Pierce, Norfolk, O’Neill, Ainsworth, Valentine)
- Cheryl Johnson (Lincoln, Tecumseh, Falls City, Crete, Beatrice, Nebraska City, Plattsmouth)
- Tony Menard (Macy, Winnebago, York, Seward, Lincoln)
- Nikki Swope – who is 0.67 FTE (Lincoln)
- Jessie Zuniga (floater)
- Lynda Todd (Lincoln) [who is resigning]

Under Review Specialist Supervisor Stacey Sothman:

- Ben Gray (Papillion, Omaha)
- Jennifer Jolley (Omaha)
- Anna Nelson (Omaha)
- Tammy Oswald (Omaha)
- Pauline Williams (Omaha, Papillion)
- Vacancy at 0.67 FTE (Omaha) [was Diana Haney]

In regard to where Review Specialists are assigned to review cases– we periodically review the numbers of children in each DHHS office across the state and attempt to assign or re-assign our staff accordingly. When assigning review specialists, we do not leave any geographic area of the state without at least some coverage – this is important for the children as the legal parties know that there is the possibility of oversight of their cases, and it also provides better statistical data for our required annual analysis of the status of foster care in Nebraska.

Staff who support the work of all the review specialists and supervisors are:

- Abby Webben – case assignment, recommendation processing, opening mail, processing notifications
- Karie Dey (0.75 FTE) – case assignment, recommendation processing, opening mail, processing notifications
- Lydia Daniel – tracking system input of thousands of reports
- Pat Kuhns (0.75 FTE) – tracking system input of all data form information
- Dora May (0.75 FTE) – filing

Our accountant is Holly Powell.

The Administrative Coordinator is Heidi Ore.

The Special Projects/Data Coordinator is Linda Cox.

How many cases were reviewed in the last period?

- In 2005, we completed 4,984 reviews on 3,309 children.
- In 2006, we completed 5,473 reviews on 4,984 children.
- In 2007, we completed 5,458 reviews on 3,806 children.
- In the first half of 2008, we completed 2,449 reviews.

How many children are in foster care?

Total children in foster care, including those in care less than six months:

- There were 6,204 children in foster care on December 31, 2005.
- There were 5,186 children in foster care on December 31, 2006.
- There were 5,043 children in foster care on December 31, 2007.
- There were 4,800 children in foster care on August 22, 2008.

How many cases were not reviewed?

As of July 17, 2008, there were 3,388 children who should be mandatory for review (removed from the home six months ago or longer).

- 1,956 (57.7%) of the children had been reviewed in the last six months
- 704 (20.8%) of the children had been reviewed, but more than six months ago.
 - 77 of these children were late by less than one month.

- 728 (21.5%) children had not yet been reviewed.
 - 103 of these had reviews scheduled within the next few weeks.
 - 625 children had not been reviewed and did not have reviews scheduled within the next six weeks.

Is the trend going up or down?

In 2006, we completed 5,473 reviews. In 2007, we completed 5,458 reviews. Each time we drop cases decreases our ability to review all children in out-of-home care. However, the projects staff have undertaken are extremely beneficial, and assures the protection of citizen review.

Are there regional variances in children reviewed/not reviewed?

There can be some regional variances, however, we have worked to ensure that children from each region are being reviewed.

Where there are regional variances, they are based on the length of time children from a particular area typically spend in the system (which would effect the number of re-reviews needed), changes in general population (such as with the opening or closing of a major employer) and our staffing levels. For example, in Lincoln children tend to remain in care longer, thus will need more re-reviews.

As described earlier, we do periodically re-evaluate where staff are assigned based on fluctuations in the population of children in out-of-home care.

We will get updated numbers, including regional statistics to the State Board at a later date.

How many are projected for review in the near future?

We project to complete an average of about 400 reviews per month. This is based on the current productivity levels, and factoring in the increased participation in Governor reviews.

What else do State Board members need to know about review numbers?

- Reviews are subject to state or federal statute/regulation.
 - Thorough reviews meet state/federal requirements, and allow for successful processes such as the joint FCRB/DHHS staffings, progress on GAL representation, collaboration with county attorneys, and joint educational programs, to name but a few.
- Recommendations are legal documents.
- Recommendations may be quoted by the appellate or Supreme Court
- Courts use our recommendations as a starting point to knowing what questions to ask, and rely on their accuracy

- In spite of being down six staff and sustaining budget cuts, we have maintained high quality reviews statewide.

Review Requirements

Reviews are required under state or federal statute when children have been in care for six months or longer.

Notifying the parties of upcoming reviews is a federal requirement. Our support staff are a vital component in getting this accomplished for the review specialists. The review specialists provide the names and address of the legal parties, and the support staff do the mail merges and prepare the mailings.

Likewise, we are required to provide the courts and legal parties the findings and recommendation document. Support staff assure these are mailed or faxed to the parties in the appropriate timeframes, again freeing review specialist time.

Reviews conducted by the Foster Care Review Board must meet federal regulations, as the designated IV-E agency, and meet state statutes. We are designed to be citizen review, thus the findings on each child reviewed needs to be made by a community-based panel of trained citizen reviewers.

To meet both state and federal requirements, the findings and recommendations made on each case during review must be submitted to the courts. As then State Board Vice-Chair Dennis Carlson, an attorney with the Supreme Court, pointed out to us early in our history, under Nebraska statute information submitted to the judge must also be submitted to the other legal parties in order for due process to occur and for the judge to consider the information. Therefore, our recommendations are sent to the judges and to the other legal parties.

Use of Our Reviews

Courts have utilized our reviews in a number of ways. The following is a quote from the appellate court.

“Importantly, §43-285(6) provides that the only prerequisite for the admission in evidence of the Board’s written findings and recommendations is that they have been provided to all other parties of record. The Foster Care Review Act and the Board would be empty vessels indeed if the Board’s recommendations were not considered by the court. Thus, we do not take the Board’s emphatic stand against the DSS plan to be a meaningless gesture.” *In re Interests of John T., Court of Appeals, (1995)*.

The Legislature authorized the Board to pursue limited legal standing in order to present information to the courts regarding children’s best interests.

The federal auditors found the quality of our reviews and our work for Nebraska’s children as one of state’s strengths in the last CFSR document. Todd Landry and Chief Justice Heavican have commented favorably on the quality of our reviews, as have numerous other legal parties.

The Governor and Todd Landry have recently institutionalized our advocacy for children through the joint staffings done as part of the Governor's reviews, which we built into our memorandum of agreement. To summarize our statutory mandate, the Board is to track, to review, and to advocate for children's best interests.

Actions Taken in Response to Budget Cuts

Following the 9-11-2001 terrorist attacks the economy suffered and every state agency was subjected to serious budget cuts.

- One cut was made during a special Legislative session (affecting FY 2002),
- Three cuts were made in FY 2003, and
- Two cuts were made in FY 2004.

In total, these cuts were approximately 16% of the agency's budget. This necessitated cutting five review specialist positions and two support persons.

Since then, we have not been funded to meet our mandate. In addition, the way the state is determining whether children are IV-E eligible has cut our federal match, further impacting the budget.

We took the following actions in response to these budget cuts.

We informed the Governor, the Appropriations Committee, the Health and Human Services Committee, and the Auditor of the budget shortfalls and their impact.

Knowing we would be unable to review all children in light of the 16% budget cuts, the State Board created a priority list of the children to be reviewed. This was done so that we could continue to create complete and accurate review recommendation documents and so that we could continue to gather essential data. As a result, we are reviewing all children who are IVE eligible, and some children who are not IVE eligible.

We have used the Governor Reviews and the Governor's special studies to triage cases of serious concern and get them on for review.

We implemented measures to streamline our processes, and maximize our resources. We have allowed reviewers to create an appendix to address serious concerns between reviews as opposed to re-writing the entire recommendation document.

Earlier this year we reduced the minimum number of reviews required in order to allow review specialists more time to attend case staffings and court hearings, so that we could better address the issues identified in children's cases. We have also allowed review specialists to lay down a board in order to complete the special study.

Effect of Lower Number of Children Deemed IVE Eligible

When comparing numbers, it is important to consider that in 2005 the State Auditor recommended changes to the process we use to derive IVE funds, which altered the ability to claim reviews, while at the same time HHS responded to federal audit of IVE by removing many children's eligibility in error. These two factors resulted in the Board

receiving less federal funding; thus, since that time we have not been able to fill two review specialist vacancies. This was on top of the budget cuts following 9-11.

Making a Difference

Our current processes are creating quality reviews that are making a difference for children. The special studies we have conducted have also had a positive impact on children's cases. If we were to modify our processes, we would need to make sure that the resultant reviews were still of high quality, and that we would continue to be able to provide quality data by which to measure progress and areas needing improvement.

What is My Vision for the Future?

As I stated at the last State Board meeting, we are looking into obtaining the new data tool used by the federal auditors during our CFSSR review as the supervisors thought this could be helpful. This tool may help us be able to complete more reviews. Of course the review documents would still need to be taken to local boards for citizen review.

We are also looking at a number of ways ensure our support staff:

- Continue to provide supports to the review specialists,
 - (statute requires that notifications of reviews be provided the parents and legal parties, and statute required that the recommendation reports be issued in certain timeframes, and the support staff assist with this for the reviewers),
- Remain able to record the data needed to schedule reviews, and
- Remain able to report on children's outcomes
 - (statute requires us to track and review cases).

We continue:

- To facilitate our partnerships with the Governor (who heads DHHS), the Chief Justice, and other legal parties.
- To participate in Governor reviews, joint staffings with DHHS, and the Through the Eyes of a Child Teams with the courts.
- To appear in court on behalf of children.
- To utilize staffings and other advocacy measures.
- To continue to conduct reviews.
- To collect data and report on that data and its analysis.

I hope this information has been helpful. Please let me know if you have any other questions about our processes.

Carol Stitt

October 16, 2008
Memorandum

To: Angie McClelland, Performance Auditor

From: Carolyn K. Stitt, FCRB Executive Director

I wanted to respond in writing to the questions you asked me concerning the Ombudsman's Report dated September 5, 2007.

You had asked me if I had released confidential information or had asked anyone else to release confidential information about wards of the state in violation of Neb. Rev. Stat. 43-3001. I categorically and unequivocally deny that I have ever breached confidentiality or directed staff to breach confidentiality by disclosing confidential information about wards of the state.

This serious allegation was seemingly made without basis because there was no date, time, or case name was identified. In fact, one collaborator on this issue could not even identify the season this alleged incident occurred.

You had also asked me if I had invited foster children to attend a fundraiser for Congressman Tom Osborne during his campaign for Governor. I did extend invitations to my staff and my colleagues to let them know that foster families and children were invited to attend this informal gathering.

Additionally, I wanted to extend this invitation to foster families because meeting a Congressman or Governor or Senator is a privilege, especially of the stature of Tom Osborne who was prioritizing reforming the Foster Care System in his campaign. This contact could allow these families to share their concerns directly with a policy maker.

Per State Personnel Rules (Title 273 – Nebraska Administrative Code), staff was invited, not directed to attend. The fact that I had extended an invitation, not given a directive, is evidenced in at least three ways: 1) only a handful of staff chose to attend, 2) not even one staff member asked whether it was a directive or an invitation because it was clearly presented as an invitation, not a directive, and 3) I never contacted any staff member about why they chose to attend or not attend.

It is important to understand that over the years I have consistently and appropriately provided information, upon request, to candidates of both parties for the Governor's office and the State Legislature. The information I have provided relates to the mission of the Foster Care Review Board that is to improve the Foster Care System and outcomes for abused and neglected children. I am always pleased to provide such information to candidates for public office who express concern about the plight of Nebraska's foster children.

Appendix E: Management Standards Literature Reviewed

As noted in Section IV of the report, this appendix provides a list of the literature reviewed by Performance Audit Section (Section) staff in compiling the management standards used in the report.

Literature Reviewed

Comprehensive Standards

- *Internal Control—Integrated Framework*, Committee of Sponsoring Organizations of the Treadway Commission (COSO), September 1992.
- *Internal Control—Integrated Framework Evaluation Tool*, Committee of Sponsoring Organizations of the Treadway Commission (COSO), September 1992.
- *Standards for Internal Control in the Federal Government*, General Accounting Office (now Government Accountability Office), November 1999.
- *Internal Control Management and Evaluation Tool*, General Accounting Office (now Government Accountability Office), August 2001.
- *Management Accountability and Control, Circular A-123*, Office of Management and Budget.
- *12: The Elements of Great Managing*, Rodd Wagner and James K. Harter, Gallup Press, New York, 2006.

Supporting Literature

- *The Best of the Gallup Management Journal 2001-2007*, Edited by Geoffrey Brewer and Barb Sanford, Gallup Press, New York, 2007.
- *The Responsible Administrator*, Terry L. Cooper, Jossey-Bass Publishers, San Francisco, Oxford, 1990.
- *Human Sigma: Managing the Employee-Customer Encounter*, John H. Fleming and Jim Asplund, Gallup Press, New York, 2007.
- *In Praise of the Incomplete Leader*, Deborah Ancona, Thomas W. Malone, Wanda J. Orlikowski, Peter M. Senge, Harvard Business Review, February 2007.

- *What Your Leader Expects of You*, Larry Bossidy, Harvard Business Review, April 2007.
- *The Ethical Mind: A Conversation with Psychologist Howard Gardner*, Bronwyn Fryer, Harvard Business Review, March 2007.
- *What Every Leader Needs to Know About Followers*, Barbara Kellerman, Harvard Business Review, December 2007.
- *Avoiding Integrity Landmines*, Ben W. Heineman, Jr., Harvard Business Review, March 2007.
- *Managing Government Employees: How to Motivate Your People, Deal with Difficult Issues, and Achieve Tangible Results*, Stewart Liff, American Management Association, 2007.
- *Driving Fear Out of the Workplace: How to Overcome the Invisible Barriers to Quality, Productivity, and Innovation*, Kathleen D. Ryan, Daniel K. Oestreich, Jossey-Bass Publishers, San Francisco, Oxford, 1991.
- *30 Reasons Employees Hate Their Managers: What Your People May Be Thinking and What You Can Do About It*, Bruce L. Katcher with Adam Snyder, American Management Association, 2007.

Training Course Attended

At the recommendation of the Director of the Department of Administrative Services Personnel Division, Section staff attended a three-day supervisor training program—called SuperVision—that the department offers for supervisors in all state agencies. For more information on this training program, see:

<http://www.das.state.ne.us/personnel/nkn/nkncourses/orgeffect.htm>

Appendix F: State of Nebraska 2008 Personnel Almanac Turnover Rates

As noted in Section IV of the report, this appendix provides turnover information compiled by the Nebraska Department of Administrative Services. The following is a photocopy of the chart *Total Turnover by Agency* in the State of Nebraska 2008 Personnel Almanac.

Total Turnover by Agency

2007 Rank	Agency	2007 Total Turnover %	2006 Total Turnover %	2005 Total Turnover %	2004 Total Turnover %	2003 Total Turnover %	2002 Total Turnover %	2001 Total Turnover %	2000 Total Turnover %	1999 Total Turnover %	1998 Total Turnover %	1997 Total Turnover %
1	Real Property Appraiser Board	50.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	0.0%
2	Ethanol Board	25.0%	0.0%	33.3%	33.3%	0.0%	66.7%	33.3%	50.0%	66.7%	0.0%	0.0%
3	Foster Care Review Board	23.1%	34.5%	40.7%	40.7%	28.1%	21.2%	14.7%	41.9%	16.7%	19.4%	12.5%
4	Economic Development	20.3%	5.6%	7.6%	4.3%	6.1%	9.5%	3.0%	19.4%	17.9%	10.4%	11.7%
5	Arts Council	20.0%	10.0%	10.0%	14.3%	60.0%	42.9%	10.0%	10.0%	18.2%	8.3%	8.3%
6	Liquor Control	20.0%	0.0%	18.2%	0.0%	10.0%	10.0%	9.1%	10.0%	10.0%	0.0%	0.0%
7	Corrections	19.9%	19.2%	20.4%	20.4%	16.2%	21.9%	19.6%	18.5%	21.2%	17.0%	10.7%
8	Health & Human Services	19.7%	16.3%	18.6%	18.8%	15.4%	18.2%	21.6%	22.0%	18.7%	14.4%	--
9	Equal Opportunity Commission	19.4%	20.6%	9.1%	5.9%	16.1%	27.3%	19.4%	7.5%	12.5%	22.9%	12.5%
10	Crime Commission	19.0%	11.9%	13.2%	22.0%	5.9%	13.2%	16.2%	16.2%	7.5%	7.5%	12.5%
11	Racing Commission	16.7%	33.3%	80.0%	0.0%	0.0%	16.7%	0.0%	0.0%	0.0%	0.0%	0.0%
12	Engineers & Architects	16.7%	33.3%	25.0%	0.0%	0.0%	33.3%	0.0%	0.0%	0.0%	0.0%	0.0%
13	Veterans Affairs	16.7%	15.4%	16.7%	7.7%	27.3%	20.0%	9.1%	9.1%	8.3%	0.0%	9.1%
14	Deaf & Hard of Hearing Commission	15.4%	7.7%	27.3%	7.7%	16.7%	30.0%	33.3%	0.0%	20.0%	18.2%	30.0%
15	Accountability & Disclosure	14.3%	14.3%	33.3%	25.0%	0.0%	16.7%	28.6%	57.1%	33.3%	14.3%	28.6%
16	Blind & Visually Impaired Commission	14.3%	4.0%	17.8%	9.6%	8.2%	7.8%	9.6%	0.0%	--	--	--
17	Military	12.9%	12.2%	11.4%	14.8%	9.3%	12.3%	8.3%	19.1%	11.4%	6.4%	2.6%
18	Historical Society	12.8%	14.0%	9.3%	10.5%	5.9%	11.8%	13.2%	9.9%	11.8%	4.3%	9.0%
19	Administrative Services	12.3%	9.2%	7.6%	13.4%	35.2%	7.6%	9.9%	12.2%	9.6%	12.0%	13.6%
20	Aeronautics	12.0%	3.8%	0.0%	3.8%	12.0%	11.5%	17.9%	14.3%	6.9%	13.3%	10.0%
21	Environmental Quality	10.7%	9.3%	3.4%	6.4%	5.0%	4.5%	8.9%	10.2%	10.1%	9.2%	7.4%
22	Labor	10.1%	16.6%	15.5%	8.5%	8.4%	6.5%	13.5%	21.0%	10.3%	9.3%	4.1%
23	Agriculture	9.1%	8.6%	5.5%	5.4%	8.9%	10.7%	4.5%	9.5%	8.2%	5.7%	3.1%
24	Real Estate Commission	9.1%	0.0%	33.3%	0.0%	20.0%	30.0%	40.0%	0.0%	0.0%	0.0%	0.0%
25	Motor Vehicles	8.6%	10.6%	11.4%	13.0%	9.2%	11.4%	12.2%	14.5%	7.7%	4.9%	8.4%
26	Game and Parks	8.4%	7.9%	6.9%	8.5%	5.7%	6.3%	11.8%	12.7%	10.5%	7.6%	5.7%
27	Revenue	8.4%	5.4%	6.1%	8.4%	7.4%	7.6%	8.1%	12.7%	10.2%	10.7%	3.7%
28	Retirement Systems	8.3%	12.8%	8.9%	14.6%	11.6%	15.9%	30.2%	14.3%	15.8%	21.9%	10.3%
29	State Patrol	8.3%	7.1%	7.0%	7.9%	4.0%	6.3%	5.8%	7.8%	10.3%	8.8%	6.3%
30	Roads	8.1%	7.8%	7.3%	6.9%	7.6%	5.7%	7.4%	10.4%	9.7%	8.1%	5.7%
31	Banking	6.8%	5.1%	23.5%	5.1%	18.8%	7.1%	25.5%	11.9%	3.3%	20.0%	3.4%
32	Educational Telecommunications	5.8%	5.8%	11.4%	7.2%	14.1%	17.7%	10.2%	14.0%	11.3%	13.5%	4.1%
33	Insurance	5.1%	10.9%	5.6%	2.1%	11.8%	6.6%	9.1%	7.0%	12.1%	5.4%	10.1%
34	Library Commission	4.4%	2.2%	6.8%	4.8%	7.7%	2.3%	2.3%	18.6%	11.4%	6.8%	11.9%
35	Natural Resources Department****	4.0%	6.4%	10.9%	3.1%	3.4%	3.5%	10.6%	2.4%	--	--	--
36	Fire Marshal	3.2%	11.3%	10.0%	1.6%	3.4%	8.3%	6.6%	16.4%	5.2%	4.9%	9.8%
--	Electrical Board	0.0%	11.1%	5.9%	5.6%	5.9%	6.3%	0.0%	0.0%	6.7%	21.4%	0.0%
--	Mexican American Commission	0.0%	200.0%	100.0%	66.7%	33.3%	0.0%	50.0%	200.0%	300.0%	100.0%	0.0%
--	Wheat Board	0.0%	50.0%	100.0%	100.0%	50.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
--	Parole Board	0.0%	40.0%	33.3%	0.0%	0.0%	20.0%	0.0%	0.0%	0.0%	0.0%	0.0%
--	Indian Affairs Commission	0.0%	33.3%	0.0%	33.3%	100.0%	0.0%	100.0%	100.0%	100.0%	100.0%	0.0%
--	Power Review Board	0.0%	33.3%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
--	Oil and Gas Commission	0.0%	28.6%	14.3%	0.0%	0.0%	0.0%	28.6%	0.0%	0.0%	0.0%	0.0%
--	Investment Council	0.0%	14.3%	0.0%	0.0%	16.7%	0.0%	20.0%	20.0%	40.0%	0.0%	66.7%
--	MV Industry Licensing Board	0.0%	11.1%	0.0%	0.0%	14.3%	0.0%	14.3%	0.0%	0.0%	0.0%	28.6%
--	Grain Sorghum Board	0.0%	0.0%	0.0%	100.0%	0.0%	0.0%	100.0%	0.0%	0.0%	0.0%	100.0%
--	Corn Board	0.0%	0.0%	0.0%	20.0%	33.3%	0.0%	33.3%	0.0%	0.0%	0.0%	0.0%
--	Women's Commission	0.0%	0.0%	0.0%	0.0%	100.0%	50.0%	0.0%	0.0%	0.0%	33.3%	0.0%
--	Public Accountancy Board	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	33.3%	50.0%	66.7%	0.0%	50.0%
--	Barber Examiners Board	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	0.0%	0.0%	0.0%
--	HHSS-Regulation & Licensure**	--	13.1%	5.9%	5.3%	7.8%	10.6%	9.0%	8.8%	7.7%	5.7%	--
--	HHSS-Finance & Support**	--	6.7%	9.0%	6.5%	7.5%	10.3%	13.9%	15.9%	9.1%	9.6%	--
--	Property Assessment & Taxation****	--	5.3%	6.9%	10.4%	14.5%	6.2%	8.3%	14.3%	7.6%	--	--
--	Landscape Architects Board	--	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	0.0%	0.0%	0.0%
--	Rural Development Commission	--	--	--	--	--	100.0%	25.0%	20.0%	0.0%	0.0%	--
--	Water Resources (merged into Nat Res Dept)	--	--	--	--	--	--	--	--	11.4%	2.3%	9.3%
--	Natural Resources Comm (merged into Nat Res Dept)	--	--	--	--	--	--	--	--	7.9%	0.0%	5.4%
--	Aging (merged into HHSS)	--	--	--	--	--	--	--	--	--	--	20.0%
--	Institutions (merged into HHSS)	--	--	--	--	--	--	--	--	--	--	11.8%
--	Health (merged into HHSS)	--	--	--	--	--	--	--	--	--	--	11.0%
--	Social Services (merged into HHSS)	--	--	--	--	--	--	--	--	--	--	7.5%
	Total *	15.0%	12.9%	13.6%	13.5%	12.5%	13.3%	15.0%	16.3%	14.3%	11.4%	8.6%
	% Change from Previous Year	+14.0%	-5.4%	+1%	+8%	-6%	-13%	-8%	+14%	+25%	+33%	+34%

* Includes turnover from the Classified Agencies only.

** Part of HHSS.

*** Represents the merger of the Natural Resources Commission & Water Resources Department

**** Merged into Revenue

Performance Audit Committee Reports: 1994 to 2008

Performance Audit Reports

Personal Services Contracts: An Examination of Compliance and Oversight (October 2008)
The Nebraska Information Technology Commission: An Examination of Statutory Compliance and the Project Review Process (November 2007)
The Nebraska Lottery's Implementation of LB 1039 (February 2007)
The State Department of Education's Student-based Teacher-led Assessment and Reporting System (February 2007)
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)

