



Wyoming Department of Education
PRESS RELEASE

For Immediate Release:

May 20, 2011

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**Settlement Agreement Between the State of Wyoming
Department of Education and NCS Pearson, Inc.**

A settlement agreement between the State of Wyoming Department of Education and NCS Pearson, Inc. was completed May 16, 2011. The agreement is the culmination of discussions and negotiations occurring between the two parties during the past several months. A copy of the actual agreement is attached. The financial aspects of the settlement are:

Financial Settlement Component	Value
Conversion of 2010-2011 assessment from electronic platform to paper-pencil platform at no cost to state	\$1,151,119
Liquidated damages for late delivery	\$1,290,000
Settlement of other damages	\$2,684,378
Total Value of Settlement	\$5,125,497

As a direct result of this matter, the Wyoming Department of Administration and Information will require all future contracts of this nature to include a 100% liquidated damage clause.

The Wyoming Department of Education will use a portion of the settlement dollars to produce and deliver a statewide training initiative called Teacher-to-Teacher (T2T). The goal of T2T is to dramatically improve the reading skills of Wyoming's students. The T2T training will take place between August 2011 and November 2011 (see attached document).

Please contact Jerry Zellars at 307-777-6386 or via email at jzella@educ.state.wy.us if you have any questions.

-END-

JZ

Cindy Hill
State Superintendent of Public Instruction
(307) 777-7673 (307) 777-6234 FAX

**SETTLEMENT AGREEMENT BETWEEN THE STATE OF WYOMING, DEPARTMENT OF
EDUCATION AND NCS PEARSON, INC.**

This Settlement Agreement, herein referred to as the Agreement, sets forth the terms of the settlement reached on this 9th day of May, between the State of Wyoming, Department of Education, whose address is Hathaway Building, 2nd Floor 2300 Capitol Avenue, Cheyenne, Wyoming 82002-0050, ("Agency") and NCS Pearson, Inc., whose address is 2510 N. Dodge Street, Iowa City, Iowa 52245 ("Contractor").

WHEREAS, this Agreement is intended by the parties to settle, fully and finally, all claims of each as against the other, arising out of or in any way concerning the 2009-2010 Proficiency Assessments for Wyoming Students ("PAWS") administration.

WHEREAS, the parties have determined it is in their mutual best interests to resolve the dispute related to the 2010 PAWS administration.

WHEREAS, in the interest of resolving the dispute associated with the 2009-2010 PAWS administration and re-establishing goodwill between the parties, the parties enter into this Settlement Agreement.

NOW, THEREFORE, in full and complete settlement of all disputed issues related to the 2009-2010 PAWS administration and in consideration of the mutual covenants contained in this Agreement and the benefits to be derived hereunder, the parties agree as follows:

Relevant Facts.

1. The Contractor was required by the Professional Services Contract between the State of Wyoming, Department of Education and NCS Pearson, Inc., executed January 12, 2009,

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Department of Education and NCS Pearson, Inc.*

- (“original contract”) to provide an on-line testing platform for the administration of the 2009-2010 PAWS administration. The term of the original contract was from December 2, 2008 through December 2, 2012, and the total original contract price was thirty-nine million, nine hundred forty-one thousand, two hundred forty-eight dollars (\$39,941,248).
2. On October 14, 2009, the parties executed an amendment (“Amendment 1”) to the original contract which eliminated the WELLA portion of the statewide student assessment system as of June 5, 2009, and changed the scope of work on the PAWS Writing Assessment by reducing the number of skills assessed from six (6) skills to four (4) skills. Amendment 1 decreased the original contract price from thirty-nine million, nine hundred forty-one thousand, two hundred forty-eight dollars (\$39,941,248) to thirty-five million, one thousand, seventy-five dollars (\$35,001,075).
 3. The delivery of the on-line testing platform by the Contractor during the 2009-2010 PAWS administration was unacceptable and unsatisfactory to the Agency. The Agency asserts the failures of the on-line platform led to additional deliverables being performed in an unsatisfactory or unacceptable manner by the Contractor that were required by the original contract.
 4. The Agency monitored the performance of the Contractor and the deliverables to determine which deliverables were not met in a satisfactory and/or acceptable manner.
 5. In response to the failures associated with the 2009-2010 PAWS assessment, the parties executed a second amendment to the original contract on October 28, 2010 (“Amendment 2”), in which the Contractor agreed to administer the 2010-2011 and 2011-2012 PAWS assessments in a paper-and-pencil mode only for grades 3-8, 10 and 11, and as an option in grade 12 for science. Amendment 2 further defined additional services which were to

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be provided by the Contractor, and eliminated services that would no longer be needed by the Contractor. Amendment 2 decreased Amendment 1 contract price from thirty-five million, one thousand, seventy-five dollars (\$35,001,075) to thirty-four million, nine hundred nineteen thousand, six hundred thirteen dollars (\$34,919,613).

6. The Agency also tracked items for which liquidated damages would be imposed pursuant to the original contract. The table entitled "Attachment A to the Settlement Agreement between the State of Wyoming, Department of Education and NCS Pearson, Inc." ("Attachment A"), is attached hereto and made a part of this Agreement by reference. Attachment A provides the details regarding the deliverables required by the original contract that the Agency deemed were either unacceptable or unsatisfactory, and the amount associated with the liquidated damage for the deliverables.
7. The contents of Attachment A provide the Agency's basis for imposition of liquidated damages in the amount of one million, two hundred ninety thousand dollars (\$1,290,000).
8. Contractor accepts the imposition of liquidated damages as outlined in Attachment A to facilitate settlement and not as an admission of failure or fault with regard to the specific deliverables and dates identified.
9. Contractor further accepts the imposition of other damages in the amount of two million, six hundred eighty-four thousand, three hundred seventy-eight dollars (\$2,684,378) to facilitate settlement and not as an admission of failure or fault with regard to the specific deliverables and dates identified.

Agreement.

1. The parties agree, as a result of the negotiation efforts, that the Agency will deduct the noted amount from any outstanding invoice due and payable to the Contractor for

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services provided to date in the amount of three million, nine hundred seventy-four thousand, three hundred seventy-eight dollars (\$3,974,378) to fully resolve all disputed matters with regard to the 2009-2010 PAWS administration. The outstanding amount due for the 2009-2010 PAWS Administration is nine million, four hundred eighty-one thousand, three hundred forty-one dollars (\$9,481,341). Thus, the Agency will pay the Contractor five million, five hundred six thousand, nine hundred sixty-three dollars (\$5,506,963) for the 2009-2010 PAWS Administration.

2. By executing this Agreement, and in exchange for the Agency's agreement not to take further action to collect additional liquidated damages or other damages associated with the 2009-2010 PAWS administration, the Contractor agrees all issues and disputed matters related to the 2009-2010 PAWS administration are fully resolved and the Contractor will not take any further action related to this matter, including but not limited to seeking any relief afforded to the Contractor via judicial action and any applicable statutes.
3. By executing this Agreement, and in exchange for Contractor's agreement not to take further action related to this matter and in receipt of three million, nine hundred seventy-four thousand, three hundred seventy-eight dollars (\$3,974,378), the Agency agrees all issues and disputed matters related to the 2009-2010 PAWS administration are fully resolved and the Agency will not take any further action related to this matter, including but not limited to seeking any relief afforded to the Agency via judicial action and any applicable statutes.
4. The parties recognize that there may be changes to applicable policies, rules and statutes in the future, and that regardless of such changes, neither party shall bring any action to

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change the terms and conditions of this Agreement based upon those changes in applicable policies, rules and statutes.

5. The parties agree to execute and deliver all other such documents as are reasonably necessary to achieve the purposes of this Agreement.
6. Any changes, modifications, revisions or amendments to this Agreement which are mutually agreed upon by the parties to this Agreement shall be incorporated by written instrument, executed and signed by all parties.
7. The construction, interpretation and enforcement of this Agreement shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Agreement and the parties, and the venue shall be the First Judicial District, Laramie County, Wyoming.
8. This Agreement, consisting of seven (7) pages, and Attachment A, consisting of five (5) pages, represents the entire and integrated Agreement between the parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.
9. The State of Wyoming and the Agency do not waive sovereign immunity by entering into this Agreement and specifically retain immunity and all defenses available to them as sovereigns pursuant to Wyo. Stat. § 1-39-104(a) and all other State law.
10. In accordance with Rule 408 of the Wyoming Rules of Evidence, evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either the validity or amount, is not admissible to prove the liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. This Agreement and any

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documents or negotiations related to this matter constitute the compromise of a disputed claim between the parties and such documents and negotiations are afforded the protections provided in Rule 408 of the Rules of Evidence and shall not be construed as an admission of liability or of non-liability on the part of either party.

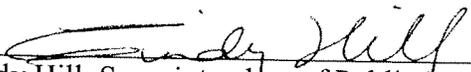
11. This Agreement shall become binding upon the parties once signed by both parties.

INTENTIONALLY LEFT BLANK

IN WITNESS THEREOF, the parties to this Agreement, either personally or through their duly authorized representatives, have executed this Agreement on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Agreement.

The effective date of this Agreement is the date of the signature last affixed to this signature section.

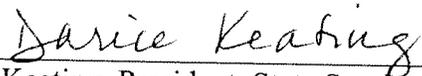
STATE OF WYOMING, DEPARTMENT OF EDUCATION



Cindy Hill, Superintendent of Public Instruction

5-9-11
Date

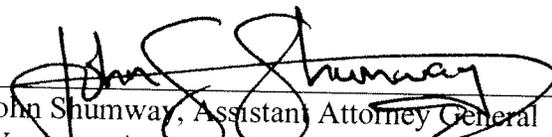
CONTRACTOR



Darice Keating, President, State Services, Assessment
NCS Pearson, Inc.
Federal Tax ID: 41-0850527

5-16-11
Date

ATTORNEY GENERAL'S OFFICE - APPROVAL AS TO FORM



John Shumway, Assistant Attorney General
Wyoming Attorney General's Office

5-9-11
Date

*Settlement Agreement between the State of Wyoming,
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Attachment A to the Settlement Agreement between the State of Wyoming, Department of Education and NCS Pearson, Inc.

Requirement Section	Deliverable	Measureable Indicator	Description of Events	Date due	Date Delivered	Liquid. Damage
1) Test Materials	Production of Test Administrator Training Materials (p. 4 ¹)	Test Administrator Training Materials are delivered on time to training sites without errors.	The <i>PAWS 2010 Directions for Administration</i> manual had to be split into two volumes, Paper/Pencil and Online due to the incompleteness of the online platform functionality. The <i>PAWS 2010 Online Directions for Administration</i> manual was posted as a PDF on Feb. 23, 2010. Printed copies were not delivered to schools until February 26, 2010. In addition, the Header Sheets, which provide pre-printed school information and used when shipping test materials back to Pearson, had to be re-printed due to school code errors. These too were shipped out the week of Feb. 23, 2010.	January 11, 2010 (See 2009-2010 Prg. Plan – p. 15).	Paper/ Pencil: Feb. 9, 2010; On-line: Feb 26, 2010	\$ 70,000 (35 days)
2) Test Administration	Shipping (p. 5)	Ancillary Materials delivered on time to schools.	See explanation for Liquidated Damages #1) above.	On or before Feb. 20, 2010	February 26, 2010	\$ 10,000 (5 days)
3) Technology	TestNav Student Tutorial and ePat (p. 8)	Student test tutorial accessible to schools prior to test administration for full demonstration	Online platform failed to perform throughout the window when the tutorial was available; technical issues remained during the duration; problems were never completely rectified. For purposes of calculating liquidated damages the Department utilized the	On or before Feb. 15, 2010 (See 2009-2010 Prg. Plan – p. 10).	To date satisfactory product has not been delivered; contract amendment required as a result of failure.	\$ 86,000 (43 days: Feb 15 – April 14, 2010)

¹ Unless otherwise denoted, page numbers referenced refer to Attachment A (PAWS Action Plan) to the Original Professional Services Contract between the State of Wyoming, Department of Education and NCS Pearson, Inc., executed January 12, 2009.

Requirement Section	Deliverable	Measureable Indicator	Description of Events	Date due	Date Delivered	Liquid. Damage
		of online assessment tools; and online platform is accessible throughout the test administration window.	tutorial and testing windows; arguably liquidated damages could continue to be imposed to date.			
4) Technology	Online administration platform (p. 8)	Online platform is accessible throughout the test administration window.	<p>The Pearson TestNav 7.0 online assessment platform continued to malfunction throughout the test administration window. This is supported by Pearson’s PAWS Communication #37 (April 5, 2010), “Please continue to report any technical challenges you may experience to Pearson’s CSC, even though you have resolved the situation. Pearson is aware that some schools are still challenged by random incidents with the online testing platform. Pearson will notify WDE to introduce new software coding in the event we identify any specific root cause for these issues.”</p> <p>Testing window had to be extended an additional three (3) days due to the technical difficulties of the on-line platform.</p>	March 8, 2010 (See 2009-2010 Prg. Plan – p. 12).	To date satisfactory product has not been delivered; contract amendment required as a result of failure.	\$ 56,000 (28 days: March 8 – April 14, 2010)

Requirement Section	Deliverable	Measureable Indicator	Description of Events	Date due	Date Delivered	Liquid. Damage
			For purposes of calculating liquidated damages the Department utilized the testing window; arguably liquidated damages could continue to be imposed to date.			
5) Reporting Services	Real-Time, online multiple-choice individual student results (p. 12)	PAWS results and reports delivered on-time, accurate and without error	On April 9, 2010, the WDE declined to accept the Real-Time (On-Demand), online multiple-choice individual student results due to multiple significant errors in appearance and accuracy. Satisfactory reports were delivered on April 23, 2010.	March 31, 2010 (Note: 2009-2010 Pgm. Plan p. 21 indicates reports due March/April TBD, 2010 – but because a date was never identified the date in the Action Plan was utilized).	April 23, 2010	\$ 36,000 (18 days: March 31 - April 23, 2010).
6) Reporting Services	Final On-line Report (p. 12)	PAWS results and reports delivered on-time, accurate and without errors.	Due to the deficiencies of the TestNav 7.0 Platform, analysis by an independent 3 rd party was necessary prior to processing of data and information and compilation of any reports; all reporting was delayed significantly as a result of the failure of the TestNav 7.0.	May 31, 2010 (See 2009-2010 Prg. Plan - p. 21)	Sept. 27, 2010.	\$ 172,000 (86 days: May 31, 2010 – Sept. 27 2010).
7) Reporting Services	Student, School, District, Demographic,	PAWS results and reports delivered on-time, accurate	See explanation for Liquidated Damages #6) above.	May 31, 2010 (See 2009-2010 Prg. Plan - p. 21 -22)	To-date satisfactory reports have not been	\$ 190,000 (95 days: May 31, 2010 – October 8,

Requirement Section	Deliverable	Measureable Indicator	Description of Events	Date due	Date Delivered	Liquid. Damage
	and State PDF score reports (p. 12)	and without errors.			delivered; anticipated delivery Oct. 8, 2010.	2010).
8) Reporting Services	Student Paper Reports (p. 12)	PAWS results and reports delivered on-time, accurate and without errors.	See explanation for Liquidated Damages #6) above.	May 31, 2010 (See 2009-2010 Prg. Plan - p. 21-22)	To-date satisfactory reports have not been delivered; anticipated delivery Oct. 15, 2010.	\$200,000 (100 days: May 31, 2010 – October 15, 2010).
9) Reporting Services	Interpretive Guide (p. 12)	PAWS results and reports delivered on-time, accurate and without errors.	See explanation for Liquidated Damages #6) above.	August 5, 2010 (See 2009-2010 Prg. Plan - p. 22)	To-date satisfactory reports have not been delivered; anticipated delivery Oct. 15, 2010.	\$ 104,000 (52 days: August 5, 2010 – Oct. 15, 2010).
10) Program Management	Quarterly Progress Reports (p. 15)	Reports shall include: information on the progress and status of the program; and, issues encountered and solutions for issues.	The Agency was not accurately informed of status of the program and the issues with TestNav which affected many of the deliverables. Quarterly reports lacked detail and did not include call center information. Agency repeatedly asked for call center reports and the Contractor failed to provide it in a timely manner. Quarterly invoices as required to be included in the Quarterly Progress Reports were not provided in a timely manner and were not an	Dec. 1, 2009 Mar. 1, 2010 June 1, 2010	Dec. 1, 2009 Report was delivered on time but failed to identify the TestNav Platform issue and technical difficulties regarding implementation of the Spring	\$ 128,000 (64 days: Dec. 1 – Feb. 28). \$ 132,000 (66 days: Mar. 1 – June 1, 2010) \$ 14,000 (7 days: June 1 – June 9, 2010)

Requirement Section	Deliverable	Measurable Indicator	Description of Events	Date due	Date Delivered	Liquid. Damage
			accurate reflection of the services provided to date.	Sept. 1, 2010	2010 PAWS Administration; March and June Reports delivered June 9, 2010; September 1, 2010 Report: to-date Report, including an acceptable invoice has not been submitted to date.	\$ 92,000 (46 days: Sept. 1 – November 3, 2010)
TOTAL LIQUIDATED DAMAGES FOR 2010 PAWS ADMINISTRATION (Nov. 3, 2010)						\$1,290,000.00

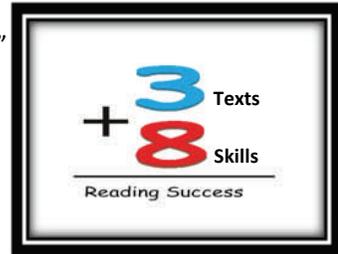


WYOMING
DEPARTMENT OF EDUCATION

Urgent

WDE Reading Success Institutes

- Deliver improved reading scores
- Apply what Popham and Farr call “instructionally supportive assessment”
- See and practice PAWS **3+8 Reading Success** models
- Take away prompts that grow comprehension and lessons (face-to-face and virtual) to use in your classroom and with teacher teams
- Practice Constructed Response calibration
- Earn University of Wyoming or PTSB credit, optional
- Work with WY grade-specific teacher/facilitators in WY-wide PLC



T2T Teacher-to-Teacher
 Join the learning journey with other successful Wyoming teachers—
 grades 3-8 and 11—
 to improve reading achievement on all assessments.

MARK YOUR CALENDARS!!!
 Sheryl Lain encourages
 teachers to attend.

2011 Institute Dates and Locations	
August	
5-6	Casper
8-9	Cody
9-10	Riverton
10-11	Lander
11-12	Pinedale
12-13	Evanston
15-16	Afton
19-20	Newcastle
26-27	Torrington
September	
9-10	Rock Springs
16-17	Saratoga
23-24 (TBA)	Jackson
30	Sheridan
October	
1	Sheridan
7-8	Gillette
14-15	Cheyenne
21-22	Buffalo
28-29	Laramie
November	
4-5	Douglas
11-12	Wheatland

Contact Amy Enzi
 for
 Information and register
 by e-mail at:
enziwyt2t@yahoo.com

Include the following items:

- Your Name
- School
- Grade level that you teach
- Contact information for the summer
 - Your e-mail address
 - Telephone number



The Story behind the Institutes
by Sheryl Lain

Wyoming reading scores on PAWS should be better. That was my belief long before I joined the Wyoming Department of Education (WDE) in January 2011. I didn't know why, but reading did not show the improvement that students and teachers work so hard to achieve. Then, about a month after arriving at the WDE, I met Jim Popham, a famous national assessment researcher and guide, who was in on the groundwork with Wyoming assessments. He took me aside and told me this story, "The PAWS reading portion was researched by Roger Farr who, with Popham, wanted to make large-scale assessments "instructionally supportive." So, Farr created "Purposeful Reading" wherein he detailed 3+8—the three kinds of texts people use and the eight most substantive reading strategies arrayed around these texts. This 3+8, coupled with the rubric to score constructed responses and the 8 basic prompts, should be shared widely with Wyoming teachers." That's what Popham said.

Dr. Popham continued, "Wyoming had not completed instruction of 3+8." That is what the 10 hour Institute coming to your area is all about—a heavy lift in a short time focusing on improving our student's reading skills. And what better way to get this word out than to get teachers to teach teachers? Therefore, I have enlisted a teacher corps led by Amy Enzi. The first group of teachers will pass the baton to other teachers as we move through the months of training from August to December. We are working hard to share the three kinds of texts, the eight strategies, prompts, student papers, calibration of these papers—all wrapped up by modeling reading strategy lessons in whole class and small group settings. We will learn and practice together in grade level groups, and, for breaks, we will listen to the wise, comforting, and inspiring words of Jim Popham, Richard Allington, and others—words and images we've captured on video from their recent Wyoming visit.

A side note: the 8 Farr strategies match Common Core reading as well as the older version of WY reading standard/benchmarks. These are the same strategies as explained by Pearson and modeled by the PEBC. It's lovely how all of this converges!

The following is a tentative agenda about how we will share and practice the 3+8.
Tentative Workshop Agenda *

FRIDAY	
4:45 p.m.-5:15 p.m.	Registration
5:15 p.m.-6:00 p.m.	Small groups in classrooms by grade level Getting to Know You: Building Community
6:00 p.m.-6:15 p.m.	Drink and Drain—Snacks
6:15 p.m.-6:30 p.m.	UW and PTSD issues, course syllabus, how to avail themselves of video club
6:30 p.m.-6:50 p.m.	What is 3+8? Overview. Why it grows readers? Popham video
6:50 p.m.-7:15 p.m.	Read Roger Farr: Why will 3+8 grow readers? Debrief
7:15 p.m.-8:00 p.m.	3+8 in action! Narrative text plus strategies of: plot, theme, literary elements T2T Teacher #1: Model with a workshop approach.

SATURDAY	
8:00 a.m.-8:20 a.m.	Warm up.
8:20 a.m.-9:30 a.m.	Narrative Revisit modeling whole class approach Organization of constructs Rubric See student samples Prompt writing on 3 narrative strategies
9:30 a.m.-9:45 a.m.	Break
9:45 a.m.-11:30 a.m.	Expository Model in small group (guided) approach See kid samples Prompt writing
11:30 a.m.-12:30 p.m.	LUNCH
12:30 p.m.-1:45 p.m.	Functional Model whole class again See Sam Bennett, PEBC, in action See student samples Prompt writing
1:45 p.m.-2:30 p.m.	Calibrate
2:30 p.m.-2:45 p.m.	Break
2:45 p.m.-3:45 p.m.	Meet Allington and Debrief
3:45 p.m.-4:00 p.m.	Closing Celebration
4:00 p.m.	Goodbye from Wyoming's largest PLC!

3+8

Functional Text
Read to determine relevance and importance of functional information.
Read to select and apply relevant information

Expository Text
Read to understand a text's major points and supporting details.
Read to understand the text's organizational exposition and how that organization serves the writer's purpose
Read to understand how the information in the text applies to broader topics and issues.

Narrative Text
Read to recognize and understand an author's development of character, setting, and mood as basic story elements
Read to understand how the plot of a story develops as a series of high points and/or how it can be depicted as a problem and its solution
Read to understand the theme of a story and how the author develops it.