



## Wyoming Department of Education

Dr. Jim McBride, Superintendent of Public Instruction

Hathaway Building, 2nd Floor, 2300 Capitol Avenue

Cheyenne, WY 82002-0050

Phone 307-777-7673 Fax 307-777-6234 Website [www.k12.wy.us](http://www.k12.wy.us)

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### MEMORANDUM NO. 2010-093

**TO:** School District Superintendents

**FROM:** Jim McBride, Ed.D.

**DATE:** April 23, 2010

**SUBJECT:** PAWS Settlement Letter

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### FOR YOUR INFORMATION

I recently sent the attached settlement letter to Pearson in response to their initial damages estimate for the 2010 PAWS Administration.

Please share this with your staff and we will continue to communicate any updates in the negotiations as we move forward.

No response has been received as of yet.

JM:tcl

Attachment



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April 21, 2010

Mrs. Darice Keating, SVP/ General Manager  
State Services, Educational Measurement  
NCS Pearson, Inc.  
2510 N. Dodge Street  
Iowa City, IA 52245

RE: April 13, 2010 Letter: Proposed Settlement Offer for 2010 Spring PAWS  
Administration

Dear Mrs. Keating:

I am writing in reference to your letter dated April 13, 2010, which includes an offer of settlement for the issues associated with the 2010 Spring Proficiency Assessments for Wyoming Students ("PAWS") Administration in the state of Wyoming. Your proposal includes a payment of approximately Two Hundred Sixty-Six Thousand, Five Hundred Twenty-Three Dollars (\$266,523), plus the actual amount associated with any overtime paid to district and/or individual school staff members that worked to resolve the issues relating to proctor caching and/ or on-line testing. This offer is simply unacceptable and is not in accordance with the terms of the Professional Services Contract ("Contract") executed on January 12, 2009, between NCS Pearson, Inc. ("Pearson") and the Wyoming Department of Education ("Department").

The Department contracted with Pearson to deliver a statewide student assessment system that would *"satisfy all federal and state requirements for educational accountability"* and *"also serve as a potent stimulus to improve educational quality within Wyoming's public schools."* See *State of Wyoming, Request for Proposal #0056, Department of Education, Statewide Student Assessment System ("RFP #0056"), Section 5.2, Scope of Work for the PAWS, pg 41.* This underlying assumption and the corresponding contractual obligations are a direct result of the language contained in Wyoming Statute § 21-2-304(a)(v). This statute, in part, requires that the State Board, *"through the State Superintendent and in consultation and coordination with local school districts, implement a statewide assessment system comprised of a coherent system of measures that when combined, provide a reliable and valid measure of individual student achievement for each public school and school district within the state and the performance of the state as a whole. Improvement of teaching and learning in schools and fostering school*

Mrs. Darice Keating, SVP/General Manager

NCS Pearson, Inc.

RE: April 13, 2010 Letter : Proposed Settlement Offer for 2010 Spring PAWS Administration

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*program improvement shall be the primary purposes of statewide assessment of student performance in Wyoming.*" Meeting the required primary purpose as required by W.S. § 21-2-304(a)(v) and the Contract will not be realized in Wyoming for the 2009-2010 School Year because the results from this assessment are suspect and cannot be used for the intended primary purpose, the improvement of teaching and learning in schools and fostering school program improvement.

The entire 2010 Spring Administration of the PAWS test is essentially unusable by the Department and the State of Wyoming as a whole due, in large part, to Pearson's failure to deliver an operational TestNav 7.0 Assessment Platform. Pearson's failure to deliver an assessment product that was useable by the students, the teachers and the Department has created a whole host of problems that will likely not be fully realized for another year. Everything required by statute and in the Contract - from the actual test results, to Adequate Yearly Progress, to useable information for the classroom teacher - is at risk due to Pearson's failure to produce and deliver a reliable, accurate and user-friendly test platform.

The Department views Pearson's failures with regard to the 2010 Spring PAWS Administration as a complete default of the Contract, and one that reverberates through each and every deliverable of the PAWS Program Plan and the 2009-2010 contract period as a whole. As such, the Department proposes an initial imposition of Liquidated and Default Damages in the amount of Nine Million, Five Hundred Sixty-Two Thousand, Eight Hundred Three Dollars (\$9,562,803). In addition to the amount associated with the 2009-2010 Administration of the PAWS, the Department intends to seek the actual costs associated with the overtime paid to district and school teachers and staff members who worked to assist Pearson in resolving the issues with the 2010 Spring PAWS Administration. This information has not yet been collected and an amount associated with this item, along with supporting documentation, will be forthcoming. Furthermore, the Department's imposition of the above noted Liquidated and Default Damages does not foreclose the possibility of additional damage assessments in the future. The failure of Pearson in the 2010 Spring PAWS administration will likely continue to have an impact on the performance of the remainder of the Contract and deliverables contained therein.

In accordance with Rule 408, Wyoming Rules of Evidence, this letter and any 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 by this Rule and shall not be construed as an admission of liability or of non-liability on the part of either party.

Mrs. Darice Keating, SVP/General Manager

NCS Pearson, Inc.

RE: April 13, 2010 Letter : Proposed Settlement Offer for 2010 Spring PAWS Administration

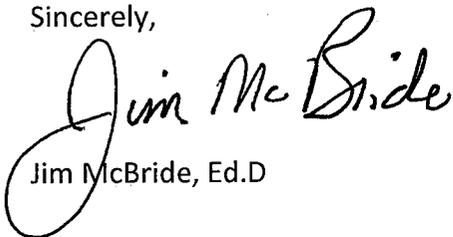
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Further, due to the nature of this letter, demand is hereby made that you and your staff preserve and protect all electronically stored information that is, in any way, relevant to this Contract, the RFP, your response to the RFP, and to any and all actions you have undertaken as a result of the above issues. This request constitutes an ongoing demand upon you and your staff. Electronically stored information includes e-mails; instant messages; word processing documents; electronic versions of reports, spreadsheets, and databases; digital recordings, including, but not limited to, voice mail messages; Internet usage files, and; any other electronic information that your office may maintain on its information systems from any source whatsoever. "Sources" may include, but are not limited to, PC's laptop computers, servers, PDAs, cellular/digital phones, back-up systems (such as magnetic tape drives), removable media (flash drives, CDs), and any other device on which you may store electronic information. You and your staff must preserve any existing relevant documents and any future relevant data, including any e-mails, created in the normal course of business. Since many electronic systems automatically purge some documents, please consult with relevant IT staff to ensure that electronic files related to this matter are not accidentally lost. Failure to preserve this information could result in negative rulings by the courts if litigation occurs.

The Department requests careful consideration of this offer and looks forward to discussing this matter with you further. If you have any questions or concerns regarding this matter, or if the Department can be of further assistance, please do not hesitate to contact me by phone at (307)777-7675 or via email at [supt@educ.state.wy.us](mailto:supt@educ.state.wy.us). Thank you.

Sincerely,

A handwritten signature in black ink that reads "Jim McBride". The signature is written in a cursive style with a large, looping initial "J".

Jim McBride, Ed.D

cc: Senator Hank Coe  
Representative Del McOmie  
Dave Nelson, LSO, School Finance Manager