



OFFICE OF AUDITOR OF STATE
STATE OF IOWA

David A. Vaudt, CPA
Auditor of State

State Capitol Building
Des Moines, Iowa 50319-0004

Telephone (515) 281-5834 Facsimile (515) 242-6134

Contact: David A. Vaudt
515/281-5835
or Andy Nielsen
515/281-5834

FOR RELEASE July 25, 2007 8:00 A.M.

Auditor of State David A. Vaudt today released a reaudit report on the Des Moines Independent Community School District for the period July 1, 2004 through June 30, 2005. The reaudit also covered certain items to determine practices applicable to the years ended June 30, 2004, 2006 and 2007. The reaudit was performed at the request of citizens of the District.

Vaudt recommended the District review and revise its policies and procedures pertaining to the District's contracting, bidding, change order and certain other procedures, and implement procedures to ensure compliance with policies. Recommendations were also made to the District regarding compliance with the Code of Iowa when bidding projects and signing contracts. The District's responses to the recommendations are included in the reaudit report.

A copy of the reaudit report is available for review in the District's Business Office, in the Office of Auditor of State and on the Auditor of State's web site at <http://auditor.iowa.gov/specials/specials.htm>.

###

DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT

AUDITOR OF STATE'S REPORT ON REAUDIT

**FOR THE PERIOD
JULY 1, 2004 THROUGH JUNE 30, 2005**

Table of Contents

	<u>Page</u>
Officials	3
Auditor of State's Report on Reaudit	5-7
Detailed Findings:	<u>Finding</u>
Schools First – Central Kitchen Project	A 9-13
Public Hearing and Competitive Bidding	B 13-15
Parking Lot Project	C 15-17
Program Manager Contract	D 17-18
Disposal of Rice Property/Potential Conflict of Interest	E 18-19
Policy on Disposal of Property	F 20
Board Minutes	G 20-22
Transfers	H 22
Certified Annual Report (CAR)	I 23-24
Staff	25

Des Moines Independent Community School District

Officials

<u>Name</u>	<u>Title</u>	<u>Term Expires</u>
Board of Education (Before September 2005 Election)		
Connie Boesen	President	2006
Sam Baccam	Vice President	2005
Margaret Borgen	Board Member	2005
Ako Abdul-Samad	Board Member	2006
Phil Roeder	Board Member	2007
Marc Ward	Board Member	2007
Jim Patch	Board Member	2007

**Board of Education
(After September 2005 Election)**

Phil Roeder	President	2007
Ako Abdul-Samad	Vice President	2006
Marc Ward	Board Member	2007
Dick Murphy	Board Member	2008
Ginny Strong	Board Member	2008
Jeanette Woods	Board Member	2008
Connie Boesen	Board Member	2009

District Officials

Eric Witherspoon	Superintendent	Resigned June 30, 2006
Nancy Sebring	Superintendent	Effective July 1, 2006
Linda Lane	Deputy Superintendent/ District Secretary	Resigned January 15, 2007
Patricia Schroeder	Chief Financial Officer/ Interim District Secretary	Effective January 16, 2007
Ahlers & Cooney, P.C.	Attorney	Indefinite

Des Moines Independent Community School District



OFFICE OF AUDITOR OF STATE
STATE OF IOWA

David A. Vaudt, CPA
Auditor of State

State Capitol Building
Des Moines, Iowa 50319-0004

Telephone (515) 281-5834 Facsimile (515) 242-6134

Auditor of State's Report on Reaudit

To the Board of Education of the
Des Moines Independent Community School District:

We received a request to perform a reaudit of the Des Moines Independent Community School District (District) under Chapter 11.6(4) of the Code of Iowa. As a result, we performed a limited review of the fiscal 2005 audit report and workpapers prepared by the District's certified public accounting firm to determine whether the CPA firm may have addressed any or all of the specific issues identified in the request for reaudit during their annual audit of the District. Based on this review and our review of the preliminary information available, we determined a partial reaudit was necessary to further investigate specific issues identified in the request for reaudit. Accordingly, we have applied certain tests and procedures to selected accounting records and related information of the Des Moines Independent Community School District for the period July 1, 2004 through June 30, 2005. We also inquired and performed procedures regarding certain items to determine practices applicable to the years ended June 30, 2004, 2006 and 2007.

Background

On July 13, 1999, the Board approved an election for a one cent local option sales and services tax (LOSST) for school infrastructure projects. According to the referendum, LOSST revenue "shall be spent for school infrastructure as defined by Iowa Code Section 422E.1 (now Section 423E pursuant to 2005 Code editor directive) and as specified in a school infrastructure project plan on file with the Secretary of each school district located in Polk County on September 1, 1999." The measure passed on November 23, 1999 and the tax began on July 1, 2000 and will be in effect for a ten year period until June 30, 2010.

Chapter 422E of the Code of Iowa (2003) defines school infrastructure as "those activities for which a school district is authorized to contract indebtedness and issue general obligation bonds under section 296.1, except those activities related to a teacher's or superintendent's home or homes. These activities include the construction, reconstruction, repair, purchasing, or remodeling of schoolhouses, stadiums, gyms, fieldhouses, and bus garages and the procurement of schoolhouse construction sites and the making of site improvements. Additionally, 'school infrastructure' includes the payment or retirement of outstanding bonds previously issued for school infrastructure purposes as defined in this subsection, and the payment or retirement of bonds issued under section 422E.4."

The District's "school infrastructure project plan" dated August 27, 1999 consisted of a 10 year Community School Facilities Action Plan. Subsequently, the District approved the "Schools First" management plan on January 9, 2001, which was revised February 5, 2002. The District also performed and prepared a "Schools First" mid-program review dated February 15, 2005, with program recommendations dated May 31, 2005 and proposed revisions dated July 12, 2005.

As a result of the citizens' request for reaudit, we selected the Central Kitchen Project, also referred to as "Central Kitchen Center", "Central Nutrition Center" and "Central Production Kitchen", to test compliance with the District's "Schools First" management plan, including various applicable statutory compliance requirements of the Code of Iowa and District policies. We also selected other contracts for review and testing.

Financing, construction and school closures are local decisions to be made by the Board of Education of the Des Moines Independent Community School District. This reaudit was not designed to or intended to address local decisions on matters already addressed or in the process of being addressed through the judicial system. Instead, the reaudit focused on the District's policies, procedures and systems to ensure statutory compliance and consisted of selected testing and procedures to determine whether the District's policies, procedures and systems were working as prescribed and in compliance with State and local provisions.

The procedures we performed are summarized as follows:

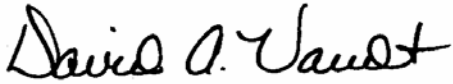
1. We obtained and reviewed copies of the District's "Schools First" program and related documents, including its 10 year management plan dated August 27, 1999, revised plan dated February 5, 2002 and the mid-program review dated February 15, 2005 and related documents.
2. We obtained and reviewed copies of legal actions and decisions pertaining to the District's local option sales tax revenue and related expenditures issued by the Iowa Department of Revenue, Iowa Department of Education and the Iowa District Court of Polk County.
3. We obtained and reviewed the District's policies and procedures pertaining to procurement of services, authorization of services, authorization of payment for services and consent agenda.
4. We obtained and reviewed the District's policies and procedures regarding competitive bidding of projects and compliance with Chapter 73A of the Code of Iowa.
5. We obtained and reviewed the District's policies and procedures regarding contracts, including when contracts are required.
6. We reviewed selected vendor contracts for compliance with selected criteria related to procurement of services, authorization of services, authorization of payment for services and appropriateness of approval through the consent agenda.
7. We inquired about and reviewed certain related party transactions and potential conflicts of interest for compliance with District policy.
8. We reviewed selected expenditures from the Special Revenue, Physical Plant and Equipment Levy (PPEL) Fund for compliance with Chapter 298.3 of the Code of Iowa and the Capital Projects, Local Option Sales Tax Fund for compliance with the referendum and Chapter 423E of the Code of Iowa.
9. We obtained and reviewed the District's policies and procedures regarding disposition of property for compliance with Chapters 278.1 and 297.22 of the Code of Iowa.

10. We reviewed the District's minutes for compliance with Chapter 21 of the Code of Iowa and the publication requirements of Chapters 279.35 and 279.36 of the Code of Iowa.
11. We reviewed and tested the propriety of transfers to and from the Capital Projects, Local Option Sales Tax Fund, including proper authorization.
12. We reviewed copies of the District's Certified Annual Financial Reports (CAR) for the years ended June 30, 2005 and 2006.

Based on the performance of the procedures described above, we identified instances of non-compliance and have developed various recommendations for the District. Our recommendations and the instances of non-compliance are described in the Detailed Findings of this report. Unless reported in the Detailed Findings, items of non-compliance were not noted during the performance of the specific procedures listed above.

The procedures described above are substantially less in scope than an audit of financial statements made in accordance with U.S. generally accepted auditing standards, the objective of which is the expression of an opinion on financial statements. Accordingly, we do not express an opinion. Had we performed additional procedures, selected additional vendor contracts or had we performed an audit of the Des Moines Independent Community School District, additional matters might have come to our attention that would have been reported to you. Pursuant to Chapter 11.15 of the Code of Iowa, a copy of this report has been filed with the Polk County Attorney for his review and determination of further action, if any. A copy of this reaudit report has also been filed with the Iowa Department of Education.

We would like to acknowledge the assistance extended to us by personnel of the Des Moines Independent Community School District. Should you have any questions concerning any of the above matters, we shall be pleased to discuss them with you at your convenience.



DAVID A. VAUDT, CPA
Auditor of State



WARREN G. JENKINS, CPA
Chief Deputy Auditor of State

March 1, 2007

Detailed Findings

Des Moines Independent Community School District

Detailed Findings

July 1, 2004 through June 30, 2005

(A) Schools First - Central Kitchen Project –

Budget

In August 1999, the Board of Education (Board) adopted a 10 year Community School Facilities Action Plan. The Facilities Action Plan included a school facility assessment report prepared by the DLR Group (DLR), a national architectural and engineering firm. The DLR report included cost estimates of facility needs by individual facility. The total DLR cost estimate exceeded projected local option sales and services tax (LOSST) revenue by approximately 19%. According to the District, LOSST was never intended to cover the DLR total cost estimate.

In January 2001, the Board adopted the “Schools First” management plan (Management Plan). The Management Plan included specific program parameters and actions necessary for orderly implementation of the plan.

The overall budget for “Schools First” was established based on the projected income for the Des Moines Independent Community School District (District) from the 10 year 1% local option sales tax. The total program budget was distributed across all of the projects in the District using the DLR report as the starting point and applying the 19% funding shortfall to the cost estimates presented in the DLR report for each facility.

The Central Kitchen project was not included in the original 10 year Community Schools Facilities Action Plan. In July 2001, the Board approved the design and implementation of a Central Production Kitchen.

In February 2002, the Board approved a revised Management Plan. Within the revised plan, the Central Kitchen Project was included in the individual project budget listing with a LOSST budget of \$9,226,792. The Central Kitchen Project budget dated August 2002 provided by the District’s Program Manager totaled \$11,984,231. Further breakdown of the project budget indicated the portion funded from LOSST was \$10,076,578, a nine percent increase, or \$849,786 more than the budget listed in the revised Management Plan. The remaining budget consisted of funding of \$1,907,653 from the Physical Plant and Equipment Levy Fund (PPEL).

The Management Plan, page 05.03, states “Budget modifications for any reason other than adjustments in anticipated sales tax revenue, investment income, sales tax rebates, or grants will be recommended by the Board Liaison Committee. This will allow projects to proceed with minimal interruption if unforeseen cost increases occur in the middle of a project.”

We were unable to determine whether the \$849,786 increase to the Central Kitchen Project budget was recommended by the “Schools First” Board Liaison Committee (Committee) as required by the Management Plan since the District did not keep or retain minutes of Committee meetings or written documentation of decisions and/or recommendations made by the Committee. Although not specifically required by the Management Plan, the Board did not approve the nine percent LOSST budget increase for the Central Kitchen Project.

Program Reserve

The Management Plan, page 05.03, states “At the time of completion of a specific project, any remaining savings or contingency shall be transferred to the Program Reserve line item in the Schools First Modernization Master Program Budget. This Program Reserve line item can only be used to fund unforeseen cost overruns for projects that are under construction and exceed their budgets (including contingencies). The Committee recommends transfers from the Program Reserve. The Board of Education approves transfers by a Consent Item on the Board meeting agenda.”

The Central Kitchen Project expenditures exceeded the budget by \$352,495. The District transferred \$400,000 of budgeted pooled contingencies to the Central Kitchen project from the remaining project budget of closed projects. The transfer is reflected in the May 2006 “Schools First” Financial Report to the Board. However, we were unable to determine whether the Committee recommended the transfer from the Program Reserve. Also, the Board did not approve the \$400,000 transfer of Program Reserve to the Central Kitchen Project as required by the Management Plan. The excess of \$47,505 was transferred back to the pooled contingencies.

Field Order Requests

The Management Plan, page 10.04, states “Field Orders are defined as changes within the identified budget and scope, a mechanism for changing the contract between the District and the construction contractors, and must be executed by the Executive Director of Facilities to be valid.”

Section 17.02 of the General Conditions of the District’s construction contracts states “The owner (“District”) may, at any time, by a written field order directed through the Architect, without notice to the sureties and without invalidating the Contract, make changes in the drawings and/or specifications of this Contract within the general scope thereof; order extra work; or make changes by altering, adding to, or deducting from the work. If such changes cause an increase or decrease of 15% or less in the amount due under this Contract, or in the time required for its performance, an equitable adjustment shall be made on the field order, and the Contract shall be modified in writing accordingly.”

The general construction contract for the Central Kitchen Project included 193 field order requests totaling a net increase of \$1,003,660, or 20.7% of the original contract. Approval by the Executive Director of Facilities was appropriately included on the field order requests we selected for testing.

The District paid the general contractor an additional \$68,618 on the Central Kitchen Project for two field order requests (numbers 144 and 161). Per discussions with District personnel, the additional costs were incurred due to a delay in the procurement of equipment, which involved the fabrication, delivery and installation of specialized equipment. The reason or cause for the delay was not documented and was not readily apparent. Since the general contractor was responsible under its contract to provide final connections to this equipment, set by others, the work could not be completed until all equipment pieces were in place. The additional costs were calculated at daily rates ranging from \$822 to \$1,027 for a 74 day period.

We were unable to determine the propriety of the \$68,618 in payments by the District for this purpose under the terms and conditions of the contracts and whether the District should have pursued recovery from the contractor(s) causing the delay. It is also unclear whether the Executive Director of Facilities was authorized to execute field order requests resulting in additional payments of \$68,618 to the general contractor for this purpose under the terms and conditions of the contract.

Change Orders

The Management Plan, page 10.05, states “The Board has delegated authority to the Management Team to approve Field Orders within the project defined limits. A change that exceeds the identified project budget and/or scope is designated a change order. A change order requires Board approval and will be submitted as an agenda item.”

As noted above, the actual expenditures for the Central Kitchen Project exceeded the established budget. In accordance with the Management Plan, a change order was required since actual expenditures exceeded the identified project budget. A change order for the Central Kitchen Project was not completed or approved by the Board as required.

Budget Adjustments

The individual project budget worksheet maintained by the District indicated the Central Kitchen Project budget included \$1,311,037 of budget adjustments from other revenue sources. Detail of the budget adjustments provided by the District’s Program Manager from Taylor Ohde Kitchell totaled \$1,411,037. We were unable to determine the reason for the \$100,000 variance.

The District included a revenue budget adjustment of \$350,000 for selling property at 1800 East Euclid. However, according to the District, the revenue was not received by the District since the property was not sold and the Central Kitchen Project used more LOSST revenue than reflected on the budget worksheets maintained by the District. The District later indicated the revenue from the proposed sale of property was replaced by interest income. However, the District’s worksheets do not specifically reflect whether LOSST revenue and/or interest income was used in lieu of the budgeted revenue not received by the District for the property at 1800 East Euclid. By not adjusting the amount of LOSST revenue and/or interest income used for the Central Kitchen Project, the District has not properly reduced the amount of LOSST revenue and/or interest income available for other projects.

A budget adjustment of \$500,000 for selling the Mid-Iowa Computing Center was received and credited to the PPEL Fund as required by statutes. We were unable to determine if the \$500,000 was included twice in the Central Kitchen Project budget, both as a budget adjustment and in the \$1,907,653 PPEL contribution.

Recommendation – The District should establish procedures to ensure adjustments to individual project budgets, including transfers of program reserve, are properly approved and documented in Board and/or Committee minutes. Procedures should also be established to ensure required change orders are completed and approved by the Board and signed by the Board President.

The District should consult legal counsel regarding the payments totaling \$68,618 made under field order requests number 144 and 161 to determine the propriety of these payments, whether recovery should be pursued, if appropriate, and whether the Executive Director of Facilities was authorized to execute these field order requests under the terms and conditions of the contract. Policies and procedures pertaining to field order requests should be reviewed, evaluated and revised to ensure the District requires appropriate approval and procedures should be implemented to require Board approval for exceptions and/or variances in contractual agreements.

The District's project budget worksheets should be revised to reflect actual LOSST revenue and/or interest income used to ensure the available LOSST revenues and/or interest income are allocated only once and the remaining projected LOSST revenues and/or interest income are appropriately allocated to ongoing and future projects.

As noted, we performed an extensive review of only one of eighteen completed projects as of January 2005. Several projects are in process and/or remain proposed. Based upon the scope and magnitude of findings resulting from the review of the Central Kitchen Project, the District should review and evaluate its fiduciary controls, including policies and procedures pertaining to the Management Plan and related funding and proposed projects remaining in the "Schools First" budget to ensure successful completion of its program. Due to unpredictable fluctuations in projected LOSST revenue and unknown, but likely, fluctuations in project costs, the District should continue to perform periodic projections to proceed conservatively within the constraints of the projected project revenue.

Response – Several points of clarification are needed:

- The DLR Group report prepared at the District's request was always intended to assess the total building renovation needs of the District. As is often the case, the cost of addressing all needs identified by the DLR report was far more than the resources projected to be available. Accordingly, original budgets were prudently and conservatively set to stay within the anticipated resources available. In fact, because actual revenues generated by the LOSST have been less than projected, budgets have been changed several times over the past several years to ensure that the District continues to work within resources available.
- As is also so often the case, thoughts on improvements and modifications to original plans are continually brought forward for discussion and plans can and are changed. Such was the case in creating a Central Nutrition Center. The source of funding for the CNC budget was the budgets for each for the kitchen renovations at each of the schools that would no longer be necessary as a result of the creation of the CNC.
- Field orders are a normal part of any construction project. Again, as the auditors have stated, all CNC field orders tested were appropriately approved.
- The Board was not informed of the actions described regarding CNC until this report was prepared. To the extent policies and procedures were not followed, it was done without Board knowledge or approval.

Budget and Program Reserve

As the auditors pointed out, the management plan did not require that the Board approve the 9% increase in the CNC budget. This information should have been brought to the Liaison Committee's attention and was not. The District will strengthen its internal procedures to ensure that approvals and documentation needs for adjustments to project budgets, transfer of program reserves, field orders and change orders, and the roles of the Schools First Liaison Committee and/or School Board are clarified in a manner that provides the District with the strongest internal controls and accountability.

Field Order Requests and Change Orders

The District recognizes that a field order is a change within the identified budget and scope, and is a mechanism for changing the contract between the District and the construction contractor. The field order must be executed by the Executive Director of Facilities. A change order is necessary when a change exceeds the identified budget and scope and requires Board approval.

The work specified in the two field order requests totaling \$68,618 was indeed performed and therefore the District should have and did pay the contractors for the work performed. The Board approved budget for the Central Kitchen Project was \$11,984,231. Therefore, had a change order been submitted, it would have reflected only a 0.6% increase to the budget. The District will consult with legal counsel to determine what additional action, if any, is needed relative to the delays that necessitated this work and the authority of the Executive Director of Facilities and program manager to contract for services in this manner.

Budget Adjustment

The auditors stated they could not determine the reason for a \$100,000 variance. The variance is simply due to \$100,000 being reported on different lines in each document. That said, the District will continue to review its procedures relative to allocation of LOSST revenue, interest income, and other relevant revenue sources.

The District will continue, as it has done in the past, to perform periodic reviews of the management plan and related funding and proposed projects. Cashflow statements are updated with the most current information on a monthly basis. In consultation with the Department of Revenue and using modeling software developed by an accounting firm specifically for the District, revenue projections are reviewed and modified annually and the related necessary expenditure changes are incorporated into cashflow statements and construction schedules. Revenue projections have been and will continue to be conservative and the cashflow statement and construction schedule continue to be based on these conservative estimates.

The District will ask its auditors as part of their FY08 workplan to perform a thorough review and evaluation of the District's fiduciary controls to ensure that the Schools First Program continues to be successful.

Conclusion – Response acknowledged.

In accordance with Chapter 21 of the Code of Iowa, the District should implement procedures to ensure minutes are consistently maintained for meetings of all committees established by the Board.

The Board's lack of knowledge of the issue does not relieve it of its fiduciary responsibilities. The results of the District's independent auditor's review of the District's fiduciary controls and findings and recommendations, if any, pertaining to the Schools First Program should be made available to the public.

- (B) Public Hearing and Competitive Bidding – Chapters 73A.2 and 73A.3 of the Code of Iowa require the District to hold a public hearing on the proposed plans and specifications of public improvement projects costing \$25,000 or more. Chapter 73A.18 of the Code of Iowa requires the District to advertise for bids for such improvement projects. Effective January 1, 2007, the competitive bidding process and bid thresholds changed significantly for local governments, including school districts, as provided in Chapter 26 of the Code of Iowa (2007).

The District's Policy Code 722 "Contracts" requires sealed bids for all public improvement contracts which range from \$10,000 to \$24,999. Also, the District's Purchasing Manual regarding "Contracts for Construction, Demolition and Installation when Estimated Cost is Expected to Exceed \$25,000" states in part:

"Construction, demolition, alteration, or repair to any building or improvement, where estimated cost is to exceed twenty-five thousand (\$25,000) dollars, requires that projects be advertised and sealed bids be issued in accordance with Section 73A.18, State Code of Iowa. Bids issued under this provision require a Public Hearing by the Board of

Directors. Minimum time before contracts can be let is from forty-five (45) to sixty (60) calendar days.”

During the period reviewed, we identified temporary classroom projects at the East High Annex and East High Small Gym for which public hearing and bidding requirements were not followed. Specifically:

- The East High Annex general contractor and electrical contractor expenditures totaled \$74,283 and \$41,079, respectively. The District divided the general contractor work on three separate purchase orders (each less than \$25,000) plus one additional disbursement. The electrical work was split between two purchase orders (each less than \$25,000). Cost proposals or quotes were received from two general contractors and two electrical contractors.
- The East High Small Gym general contractor and electrical contractor expenditures totaled \$31,310 and \$36,077, respectively. The District divided the electrical work on two separate purchase orders (each less than \$25,000) while the general contractor work was paid using a check request. No proposals or quotes were obtained by the District. The District used the same contractors performing work on the East High Renovation project.

The District did not comply with Iowa Code or District policies requiring advertisement for sealed bids, public hearing and Board approval.

The District’s Program Manager represented this work had to be completed over the holiday break and referred to statutory process for emergency work since there wasn’t time to perform formal bidding. Chapter 297.8 of the Code of Iowa requires AEA approval for emergency repairs. The District’s Purchasing Manual addresses “Emergency Purchasing” but does not appear to address the emergency repairs provisions of Chapter 297.8 of the Code of Iowa. However, there was no evidence or documentation this was emergency work or within the scope of emergency repairs. Per inquiry of the AEA, the District did not request and/or receive a certificate from the area education agency administrator that emergency repairs were necessary to prevent closing of the school for these projects as required by Chapter 297.8 of the Code of Iowa.

Recommendation – According to an Attorney General’s Opinion dated December 14, 1988 referencing a 1984 court case, (it is) “unlawful to evade competitive bidding by dividing contract into several contracts below the threshold amount for competitive bidding.” Also, as of January 1, 2007, Chapter 26.5 of the Code of Iowa states in part “If the estimated total cost of a public improvement exceeds the competitive bid threshold of one hundred thousand dollars, or as established in section 314.1B, a governmental entity shall not divide the public improvement project into separate parts, regardless of intent, if a resulting part of the public improvement project is not let in accordance with section 26.3.”

The District should revise its policies, pursuant to Chapter 26 of the Code of Iowa (2007), and establish procedures to ensure compliance with the Code of Iowa and District policies pertaining to public hearings, bidding and form of payment on future public improvement contracts. The District should consult legal counsel to determine the propriety of payments made to the contractors pertaining to the temporary classroom projects at East High Annex and East High Small Gym since the contracts were not competitively bid as required.

Response – According to the Executive Director of Facilities, the work done to East High Annex and East High Small Gym had to be done over winter break and had to be

completed promptly to prevent school delays in resuming classes in January. Although not approved or certified by the AEA, the additional work in question was determined by the Executive Director of Facilities to be, at the time, emergency repairs. However, it is significant to note that had this same situation occurred today, competitive bidding would not have been required pursuant to Iowa Code Chapters 26 and 76A. In addition, it has not been suggested, nor has any evidence been presented that any action taken by District personnel was done with intent to defraud or for personal gain. The Board was not aware of these decisions and was not notified of them until this report was prepared.

The District will strengthen its policies and procedures relative to emergency repairs to ensure compliance with Iowa Code Chapters 26 and 297.

The work was indeed performed and therefore the District should have and did pay the contractors for the work performed. The District will consult with legal counsel to determine what additional action, if any, is needed relative to the propriety of these contractual arrangements and the authority of the Executive Director of Facilities and program manager to contract for services in this manner.

Conclusion – Response acknowledged.

The Board’s lack of knowledge of this issue does not relieve it of its fiduciary responsibilities. As previously noted, “The District did not comply with Iowa Code or District policies requiring advertisement for sealed bids, public hearing and Board approval.”

Both Chapter 73A of the Code of Iowa and the District’s Policy Code 722 required sealed bids for these public improvements at the time the work was performed. Under current law, pursuant to Chapter 26 of the Code of Iowa, since the combined general and electrical contractor cost for the East High Annex totaled \$115,362, competitive bidding would still be required. Since the combined general and electrical contractor cost for the East High Small Gym totaled \$67,387, competitive quotations would be required.

- (C) Parking Lot Project – In April 2001, the District entered into a lease agreement for the use of a church parking lot located near a school building. The agreement did not require rent payments. In April 2004, the District approved an addendum to the agreement extending the term of the lease to February 2006 and requiring the District to repair and resurface the parking lot. During the year ended June 30, 2005, the District expended \$69,700 from the PPEL Fund to resurface the parking lot. In addition, the April 2004 addendum included a provision requiring the District to “name the Church as an additional insured on its policy.” We did not determine the additional cost, if any, to the District as a result of including the Church on its insurance policy or the nature and extent of coverage provided by the District pursuant to this agreement.

Chapter 298.3(8) of the Code of Iowa states the PPEL levy may be used for “the rental of facilities under Chapter 28E.” Since the agreement was not entered into under Chapter 28E of the Code of Iowa, the public purpose of the expenditures should have been documented.

Article III, Section 31 of the Constitution of the State of Iowa provides public funds may only be spent for the public benefit. This public purpose criterion is also addressed in various court cases and opinions of the Attorney General, including an Attorney General’s opinion dated April 25, 1979. According to the opinion, it is possible for such disbursements to meet the test of serving a public purpose under certain circumstances, although such items will certainly be subject to a deserved close scrutiny. The line to be drawn between a proper and an improper purpose is very thin.

As previously noted, Chapter 73A.18 of the Code of Iowa requires public improvement projects with costs exceeding \$25,000 to be advertised for bids. This section specifically requires two publications in a newspaper with the first advertisement for bids required to be published not less than 15 days prior to the date set for receiving bids. The District advertised for bids for the resurfacing of the parking lot but the first advertisement for bids was published 14 days prior to the date set for receiving bids rather than 15 days, as required by Chapter 73A.18 of the Code of Iowa.

The resurfacing expenditure does not appear to be an allowable expenditure from the PPEL levy since the lease agreement was not entered into under Chapter 28E of the Code of Iowa and the resurfacing was paid to a contractor not as a lease payment. We are unable to determine the propriety of the expenditure of public funds to provide insurance coverage on behalf of the Church.

Recommendation – The District should consult legal counsel to determine the disposition of the lease, the cost to resurface, the propriety of providing insurance coverage and reimbursement to the PPEL fund, if appropriate. The District should establish procedures to ensure compliance with Chapter 73A.18 of the Code of Iowa and, as of January 1, 2007, Chapter 26 of the Code of Iowa (2007) pertaining to advertising for bids on future public improvement contracts.

Response – The District when advertising for bids believed it was in compliance based on the 15 day count including the day of publication as well as the day bids are received. However, the District now understands that the count must be calculated differently to ensure that the count is not short by one day.

The District's expenditure of funds to resurface the parking lot was proper. The public purpose was documented in the Board Agenda of April 6, 2004. The agenda item specifically stated:

Greenwood School property does not provide adequate parking. The District has leased the parking from the First Church of Christ Scientist since the school was renovated in 2001. The church does not charge rent, but we are responsible to clean the snow, remove debris and repair the lot. The church is now requesting that we mow the lawn when we mow the Greenwood property and repair the lot this summer. It is in need, **it is heavily used by our staff and Greenwood parents.** The estimated repair cost is \$60,000 and will be a FY05 PPEL project. (emphasis added)

It is readily apparent from examining the public documents and the video tape recording of the April 6, 2004 meeting that the money spent to resurface the parking lot provided a public benefit. It is important to note that although the written minutes, standing alone, from the April 6, 2004 Board meeting do not provide verbatim discussions, the minutes without question meet the legal requirements of Iowa Code Section 21.3:

Each governmental body shall keep minutes of all its meetings showing the date, time and place, the members present, and the action taken at each meeting. The minutes shall show the results of each vote taken and information sufficient to indicate the vote of each member present.

The agenda items and tape recordings are public documents and are easily accessible. When the totality of information is reviewed, the public benefit is readily apparent.

Although the lease agreement between Greenwood Elementary and the First Church of Christ Scientist did not have "28E" in its title, the contents of the agreement satisfy the

requirements of Iowa Code Section 28E.5. Through its legal counsel, the District will ensure that 28E agreements are filed with the appropriate governmental agencies.

In a discussion with the District's property and casualty insurance agent, the District confirmed in writing that the parking lot next to Greenwood is indeed covered by the contractual liability coverage in the District's General Liability Policy and that there is no additional premium for this coverage, nor has there been in the past.

We believe the auditor's objections to the parking lot agreement are without merit.

Conclusion – Response acknowledged.

The minutes record is the permanent record of the Board's actions. In support of the Board's action, the minutes record should include the District's conclusions regarding public purpose when the public purpose is not readily apparent.

Chapter 28E.8 of the Code of Iowa states in part "Before entry into force, an agreement made pursuant to this chapter shall be filed with the secretary of state and recorded with the county recorder." While the District has represented "the contents of the agreement satisfy the requirements of Iowa Code Section 28E.5", it does not appear to be valid absent the mandatory filing and recording.

- (D) Program Manager Contract – In May 2000, the District entered into a contract with the Taylor Ohde Kitchell Joint Venture (formerly known as Taylor Ball Kitchell) to provide construction management services. The District amended the agreement in July 2003 and July 2006. The July 2006 amendment extended the agreement through June 30, 2011.

In 2001, the District provided office space to the Program Manager at District facilities. As a result, the Program Manager eliminated the rent charges on the monthly billings to the District. This arrangement is not included in the Program Manager contract or under a separate written agreement. The Board did not approve this arrangement in the Board minutes.

Recommendation – All amendments to contractual obligations should be formalized in a written document, approved by the Board and documented in the Board minutes. The District should consult legal counsel regarding the facilities arrangement with the Program Manager.

Response – The District's decision to provide on-site office space to the program manager that was not otherwise being used by the District, has improved the efficiency and effectiveness of the management of construction for the District. Not only was the program manager more readily available, the District was able to save money by reducing the amount charged under the contract with the program manager in an amount equal to the rent the program manager had been paying.

A memo dated June 3, 2003, from the Executive Director of Facility Management to Board members and superintendent, states that the reduction in the program management expenses is due to "cost avoidance related to providing an onsite office" for the program management staff.

A reduction in the amount charged for something that is less than the guaranteed maximum price is not a change in the contract, since it is after all a maximum price. The District does not believe further action is necessary.

Conclusion – Response acknowledged.

At a minimum, as a matter of internal control and compliance, the District should ensure all amendments to contractual obligations are formalized in a written document.

- (E) Disposal of Rice Property/Potential Conflict of Interest – On July 12, 2005, the District identified “Rice” property for disposal at a later date. On May 15, 2006, the District approved a “Conceptual Plan” which created a seven member review committee (Review Committee) to review the request for proposals and recommend an RFP/developer to the Board for approval and public hearing.

According to the October 3, 2006 Board minutes, the Review Committee made a public presentation of three selected proposals on September 18, 2006. Also, according to the October 3, 2006 Board minutes, the “review committee has recommended the Superintendent accept and further recommend to the Board the proposal submitted by the Rice Development Partners for \$650,000.” These Board minutes included a summary of six proposals for \$432,000; \$480,000; \$595,000; \$650,000; \$680,000 and \$750,000. The three proposals selected by the Review Committee did not include the two highest proposals. The Rice Development Partners proposal was the highest of the three presented. It is unclear how or when the Review Committee communicated its recommendation to the Superintendent.

On October 17, 2006, the Board accepted the Rice Development Partners proposal to purchase the Rice Property and approved a resolution to hold a public hearing on October 31, 2006 for the sale of this property. The public hearing and Board approval to sell the property took place on October 31, 2006. The rationale for the Review Committee’s selection and the Board accepting less than the highest proposed amount for the sale of the Rice property was not documented in the Board minutes. We are unable to determine the propriety of the Board’s decision and action to accept less than the highest proposal for this property.

The husband of Board Member Connie Boesen is a brother to partners of the Rice Development Partners. District Policy Code 233 “Conflicts of Interest” requires Board Members to “publicly disclose the existence of the conflict and refrain from taking any official duty that would detrimentally affect or create a benefit for the outside employment or activity” when the “outside employment or activity is subject to the official control, inspection, review, audit, or enforcement authority of the Board Member during the performance of the Board Member’s duties of office or employment.”

Board Member Boesen voted to approve the future sale of the Rice Property on July 12, 2005 and the Conceptual Plan on May 15, 2006. Board Member Boesen does not appear to have a potential conflict of interest on July 12, 2005 and May 15, 2006 since the actions on these dates preceded the Rice Development Partners’ proposal. Board Member Boesen was absent on October 17, 2006 when the Board accepted the Rice Development Partners’ proposal and abstained from voting on the sale of the property on October 31, 2006. However, the Board minutes do not document compliance with District Policy Code 233 “Conflicts of Interest” requiring public disclosure of the conflict.

Recommendation – The rationale for the Review Committee’s selection and the Board’s acceptance of a lower amount for the sale of the Rice property should be documented in the Board/Committee minutes. Pursuant to Dillon’s Rule and public purpose criteria, the District should consult legal counsel regarding the propriety of its actions to accept less than the highest proposal for this property. Procedures should be established to ensure compliance with District Policy Code 233, including documentation in the Board minutes.

The propriety of the District's public hearing, including statutory compliance, is currently under judicial review and, accordingly, it is not addressed in this reaudit.

Response – The District acted lawfully in its disposal of the Rice property. The manner in which a school district is allowed to dispose of property is governed by Iowa Code Section 297.22. Section 297.22 does not mandate the District use the public bidding process to dispose of property. This is significant because it demonstrates the criticism against the District on this issue lacks merit. The District lawfully chose to utilize the legal process of soliciting Requests for Proposals. In that regard, the District is not bound to accept the highest offer; rather the District accepts the offer that most closely follows the criteria outlined in the RFP. Accordingly, any criticism that the District failed to accept the highest bid is irrelevant and lacks merit. The District followed the applicable law.

The District followed its Policy Code 233 because Ms. Boesen publicly disclosed that her husband is a brother to one of the partners of the Rice Development Partners at *every meeting* wherein the Rice Development Partners' offer was discussed. This information is easily accessible to the public as each tape from these meetings is retained. Furthermore, a thorough reading of Policy Code 233 shows that Ms. Boesen was not obligated to publicly disclose this relationship. Policy Code 233 requires public disclosure only when a board member is going to engage in any outside employment or activity. Here, Ms. Boesen was not seeking any employment or activity that presented a conflict of interest. The portion Policy Code 233 that pertains to Ms. Boesen's circumstance is as follows: "Should a conflict of interest arise, a board member should not participate in any action relating to the issue from which the conflict arose." Ms. Boesen, undisputedly, followed the policy and her abstention from taking action was duly noted in the minutes. As previously stated, Iowa Code Chapter 21 governs what information must be included in the minutes of a public entity. The District complied with Iowa law. It is the District's position that the entire comment concerning the disposal of Rice property and Ms. Boesen's conflict of interest is without merit.

Conclusion – Response acknowledged.

The minutes record is the permanent record of the Board's actions. In support of the Board's action, the minutes record should include the District's conclusions regarding public purpose when the public purpose is not readily apparent.

"Public purpose/public benefit" criteria appears to apply to the Board's decision pertaining to the sale of the Rice property and rather than focusing on the Board's right to accept the offer, we recommend the Board document its reasons for accepting other than the highest offer resulting in the most revenue to the District. In a period of budgetary constraints, the public purpose of accepting \$100,000 less than the highest offer should be adequately documented.

In accordance with Chapter 21 of the Code of Iowa, the District should implement procedures to ensure minutes are consistently maintained for meetings of all committees established by the Board.

Board Member Boesen apparently abstained from voting as a result of a potential conflict of interest. Accordingly, disclosure of the potential conflict of interest in the Board's minutes would be appropriate.

- (F) Policy on Disposal of Property – The District’s Policy Codes 735 “Sale, Lease or Disposal of School District Property” and 745 “Site Disposition” address disposal of property. Code 735 states in part “property with an appraisal value in excess of \$25,000 may be sold, leased or disposed of only after a public hearing and approval by the Board or as directed by the electors at a regular election.” Code 735 also provides “all property declared obsolete and intended for sale or lease shall be advertised for bid as required by law. Bids shall only be accepted as permitted by law. Property other than real property may be disposed of by auction following the provisions of this policy.” and “property of negligible relative value not intended for sale or lease may be disposed of at the discretion of the Superintendent.”

Chapter 297.22 of the Code of Iowa states in part “before the board of directors may sell, lease for a period in excess of one year, or dispose of any property belonging to the school, the Board shall hold a public hearing on the proposal” and “property having a value of not more than five thousand dollars, other than real property, may be disposed of by any procedure which is adopted by the Board and each sale shall be published by at least one insertion each week for two weeks in a newspaper having general circulation in the district.”

The District’s policies appear to conflict with the statutory requirements of Chapter 297.22 of the Code of Iowa.

Recommendation – The District should review and revise Board Policy Codes 735 and 745 to be compliant with Chapter 279.22 of the Code of Iowa including clarification of real property and property other than real property. The District’s policies should also be revised to address the thresholds for disposition of real property and other than real property.

Response – The District will review and revise Board Policies 735 and 745 to ensure that dollar thresholds for the disposal of property, both real and other than real, are consistent with the thresholds set forth by Iowa Code 297.22. In addition, the District will ensure that there is clear distinction in the policies between real property and property other than real property.

Conclusion – Response accepted.

- (G) Board Minutes – The Board went into closed session numerous times during the year ended June 30, 2005. However, the roll call vote to go into closed session was not documented in accordance with Chapter 21.5 of the Code of Iowa, which states in part “the vote of each member on the question of holding the closed session and the reason for holding the closed session by reference to a specific exemption under this section shall be announced publicly at the open session and entered into the minutes.”

For the years ended June 30, 2005 and 2006, Board minutes were not always published as required by Chapters 279.35 and 279.36 of the Code of Iowa. Chapter 279.35 states in part “the proceedings of each regular, adjourned, or special meeting of the board, including the schedule of bills allowed, shall be published after the adjournment of the meeting in the manner provided in this section and section 279.36” and “the secretary shall furnish a copy of the proceedings to be published within two weeks following the adjournment of the meeting.”

Chapter 279.35 of the Code of Iowa also states in part “the schedule of bills allowed may be published on a once monthly basis in lieu of publication with the proceedings of each meeting of the board” and “the list of claims allowed shall include the name of the person or firm making the claim, the purpose of the claim and the amount of the claim.”

The District publishes bills once monthly as permitted by Chapter 279.35 of the Code of Iowa.

Although the schedules of bills allowed were published, the publications were not always timely and the list of claims allowed did not include the purpose of the claim as required by Chapter 279.35 of the Code of Iowa. Of months tested, the schedules of bills were not published timely for three of four publications, as noted below:

<u>Month/ Year</u>	<u>Date Bills Published</u>	<u>Days from Month End</u>
July 2004	August 13, 2004	13 days
April 2005	August 25, 2005	117 days
June 2005	August 31, 2006	1 year, 62 days
July 2005	September 1, 2006	1 year, 32 days

In addition, as noted in the District's fiscal 2006 audit report finding 06-IV-F "Board Minutes" the Board minutes were not signed. Also, as noted in the fiscal 2006 audit report, the District indicated it would "have the board secretary sign off meeting minutes after every meeting" which was implemented subsequent to the fiscal 2006 audit.

Recommendation – The District should ensure the Board minutes document the vote of each Board Member when entering into closed sessions as required by Chapter 21.5 of the Code of Iowa. The District should properly publish all minutes and schedules of bills, including the purpose of claims allowed pursuant to Chapters 279.35 and 279.36 of the Code of Iowa. Although not required by statute, the Board President should also sign the Board minutes to authenticate the record.

Response – Due to staff turnover and training issues, the Board minutes for the period identified did not consistently reflect the roll call vote to go into closed session. The District examined the board minutes since that time and found that during its regularly scheduled Board meetings, the Board went into two closed sessions from July 2005 to June 2006, and went into eleven (11) closed sessions from July 1, 2006 to the present. The minutes for those closed sessions have consistently reflected the identity of the Board member making the motion, the identity of the Board member seconding the motion, and the roll call vote to go into closed session each and every time. This information shows that the Board has complied with Iowa law in the past and will continue to do so.

Except for the time period highlighted by the auditors, the District believes it has published minutes and schedules of billings in a timely manner. The District has always believed that inclusion of the vendor's name provided sufficient description to satisfy statutory requirements. We understand that some school districts provide additional description other than vendor name and some do not. However, we will determine what changes need to be made and will amend what is published accordingly.

As has been repeatedly stated throughout this response, the Board's minutes comply with applicable law as found in Iowa Code Chapter 21. The Board President is not required by law to sign the minutes. The suggestion that the President sign the minutes to authenticate the record is unnecessary because the same effect is reached when the Board takes action to approve the minutes. The District has followed the law with respect to recording minutes and will continue to do so.

Conclusion – Response acknowledged.

Chapter 279.35 of the Code of Iowa states in part “The list of claims allowed shall include the name of the person or firm making the claim, the purpose of the claim and the amount of the claim.” Publication of the vendor’s name does not, in and of itself, satisfy the statutory mandate to publish the “purpose of the claim”.

The recommendation to have the Board minutes signed is consistent with the recommendation of the District’s independent auditors and guidance provided in documents, including “Board Secretary Basics on Board Meeting and Business and Minutes” based on Robert’s Rules of Order Newly Revised (10th Edition), prepared by the Ahlers & Cooney, P.C. law firm and published in the Iowa Association of School Business Officials newsletter.

The District responded to the fiscal 2006 audit recommendation “Beginning October 2006, the District will have the board secretary sign off meeting minutes after every meeting.”

The recommendation to have the Board President sign the Board minutes, although not required by statute, was intended to authenticate the minutes record with the signatures of both the recording officer (District Secretary) and presiding officer (Board President).

- (H) Transfers – For the year ended June 30, 2005, the Board did not approve transfers of \$222,368 and \$400,438 to record payments for food service equipment made from the Capital Projects, Sales Tax and Special Revenue, PPEL Funds to the School Nutrition Fund, respectively.

Recommendation – These expenditures should have been recorded in the appropriate fund at the time payment was made. All transfers between funds should be reviewed and approved by the Board through the budgetary process and/or by resolution or other action of the Board and documented in the Board minutes, if applicable.

Response – We note that the auditor does not question the propriety of these expenditures, but only questions the transfer from one budget category to another. As part of the Schools First Plan, the remodeling and updating of kitchens within a school includes both movable equipment and equipment and machinery that is affixed to the building. When the Board approved the construction of the Central Nutrition Center it was with the proviso that movable equipment costs would be paid for with Food and Nutrition Funds, and fixed equipment would be paid for with Capital Projects funding. Moveable and fixed equipment were ordered at the same time in accordance with construction schedules and to maximize cost savings. As a result, it was determined to be more accurate to allocate these expenditures between the two accounts after installation and remodeling rather than before.

Since FY 2005, these expenditures have been recorded in the appropriate fund at the time payment is made, as recommended by the auditors.

Conclusion – Response acknowledged.

In addition to recording in the proper fund, Board approval should be obtained and documented as previously recommended.

- (I) Certified Annual Report (CAR) – Chapter 291.10 of the Code of Iowa requires “the school district shall file an annual report with the Director of the Department of Education on forms prepared for that purpose.” The District prepared a financial report for the year ended June 30, 2006 and submitted it to the Iowa Department of Education. The District’s fiscal 2006 audit report stated in part “The Certified Annual Report (CAR) was filed with the Iowa Department of Education timely.” However, for the year ended June 30, 2006, the Iowa Department of Education required the CAR to be submitted by electronic upload no later than October 13, 2006. The District has not completed the upload as of the date of this reaudit report.

Recommendation – The District should complete the fiscal 2006 CAR upload and implement procedures to ensure timely completion and filing in the future.

Response – For the fiscal year ended June 30, 2006, the Department of Education changed its Certified Annual Report (CAR) filing requirement, due in October 12, 2006, from a written report to an electronic upload of accounts and balances. In conjunction with the new requirements of submitting the CAR, DE also mandated significant changes to account code structures used in previous years.

When the District learned of this new requirement, it sent a letter, dated January 27, 2005, requesting a waiver to this uploading reporting requirement for the first year, FY 2006, as the District would be heavily involved in implementing a new computerized financial accounting system at that time – a new system with a “go-live” date of December 4, 2006. It did not seem feasible or cost effective to make the account code structure changes requested by DE twice in such a short period of time, once to the old computer system, and then immediately again to the new system.

The District had numerous discussions with the Deputy Director of DE and agreement was reached that the District would not need to submit an upload of accounts and balances in October given the status of the new system implementation. The District agreed to submit an upload of accounts and balances after the implementation was complete. In lieu of the upload, and as agreed to by DE, the District submitted a paper copy of the CAR on October 11, 2006, as attested by the DE “Received” stamp on a cover letter prepared by the District and signed by a DE administrative assistant.

The District has now since successfully uploaded its accounts and balances to DE.

The District is surprised that the auditor would recommend using taxpayer’s money to do the same thing twice in order to meet a deadline for which we had been granted a waiver.

The District believes it has complied with DE filing requirements, as modified and agreed upon, and therefore, the District believes this comment to be without merit and no further action is required.

Conclusion – Response acknowledged.

The Iowa Department of Education does not have a “Deputy Director” position. We believe the District is referring to the former Division Administrator of the Iowa Department of Education. The District represented but was unable to produce written evidence documenting approval from the former Division Administrator of an extension, waiver or other agreement granting the Des Moines Independent Community School District permission to upload its fiscal 2006 CAR at a date later than the extended date of October 13, 2006. According to the Iowa Department of Education, School Budget Review Committee (SBRC) liaison, the fact the District was included in its monthly

delinquent filing (non-filer) list provided to the SBRC is conclusive evidence an extension had not been approved by the SBRC or the Iowa Department of Education.

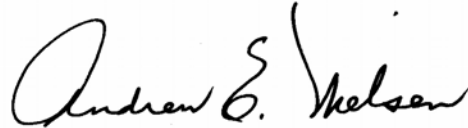
The reaudit recommendation did not state or imply the District should “do the same thing twice in order to meet a deadline”. As noted in the reaudit recommendation “The District should complete the fiscal 2006 CAR upload and implement procedures to ensure timely completion and filing in the future.” Since the District’s upload was not completed by October 13, 2006 as required, the recommendation is valid and appropriate. According to the Iowa Department of Education, the District’s upload was completed on May 2, 2007.

Des Moines Independent Community School District

Staff

This reaudit was performed by:

Susan D. Battani, CPA, Director
Donna F. Kruger, CPA, Manager
Ryan J. Sisson, Staff Auditor

A handwritten signature in black ink that reads "Andrew E. Nielsen". The signature is written in a cursive style with a large initial 'A' and 'N'.

Andrew E. Nielsen, CPA
Deputy Auditor of State