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Report by the *Free Market Protection and Privatization Board* Concerning the Utah State Office of Education and a Complaint of Unfair Competition in Student Information Systems

The Free Market Protection and Privatization Board, pursuant to UCA 63I-4a-203, reviewed issues concerning agency competition with private enterprise, namely whether the Utah State Office of Education (USOE) unfairly competes with private vendors of student information systems. The board approved the attached report, including recommendations, at its January 8, 2015 meeting.

The board finds that in its development, marketing, and operation of its student information system now known as Aspire, USOE does appear to compete unfairly in the student information system market. The board further finds that privatization of Aspire is feasible.

The board recommends five actions to eliminate unfair competition and two steps toward the privatization of Aspire. See pages 3 and 4 for recommendations; see pages 10 and 15 for findings.

Sincerely,

Kimberley Jones
Chair, Free Market Protection and Privatization Board

Contents

Executive Summary	3
Recommendations	3
Background	4
Petition	5
Main Issues	6
Issue #1: Is USOE Engaging in Unfair Competition with Private Enterprise?	6
A Definition of Unfair Competition	6
Authority for and History of Utah’s SIS	6
Utah State Office of Education	6
Local Education Agencies	7
Appropriations	7
History and Use of Student Information Systems	7
SIS Comparative Features/Functions	8
<i>Typical Functions and Features by Student Information System</i>	8
Aspire	9
Other support services	9
Ownership rights	9
LEA Student Information System Survey	9
Findings Regarding Allegations of Unfair Competition	10
Issue #2: Whether Privatization is to be Recommended for this Activity?	11
Commercial Activities Inventory Surveys	11
Comparative costs: Private SIS Costs	12
Comparative Costs: USOE SIS Costs	13
<i>Information Technology Organization Chart</i>	13
Aspire	13
Servers	14
Administration	14
Summary of Costs	15
Findings Regarding Privatization	15
Appendix	17
Terminology	17
Board Authority	18
Commercial Activities Inventory Survey (Elements of Review)	19
Relational Data Corporation response to draft report	27
Utah State Office of Education response to draft report	29

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Concerning the Utah State Office of Education and a Complaint of Unfair Competition
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Executive Summary

In accordance with UCA 63I-4a-203, the Free Market Protection and Privatization Board (the board) reviewed issues concerning agency competition with private enterprise, namely whether the Utah State Office of Education (USOE) unfairly competes with private vendors of student information systems.

The board finds that in its development, marketing, and operation of its student information system now known as Aspire, USOE does appear to compete unfairly in the student information system market. The board further finds that privatization of Aspire is feasible.

The board recommends five actions to eliminate unfair competition and two steps toward the privatization of Aspire.

Recommendations

1. Recommendations to eliminate unfair competition:
 - a. That the legislature review the agency's vendor selection and approval process with a view to eliminating conflict of interest;
 - b. That the agency fairly promote all SIS options approved in the state, not just Aspire;
 - c. Whereas the agency established an appropriate SIF agent in collaboration with other SIS vendors at state expense, the SIF agent should be made available to all potential SIS vendors seeking to compete in the market.
 - d. In the promotion of transparency and interest of local control by LEAs, that funding for USOE IT be reduced by most of Aspire's non-allocated costs and those funds be shifted to all LEAs on a per student basis and that Aspire be funded by charge to its users, including a fair and reasonable assessment for licenses.
 - e. That consideration should be given to LEAs who have subscribed to an uncharged service and should be given funding consideration on a short term basis as needed.

2. Recommendations to privatize:

- a. That careful consideration be given to reviewing the pros, cons, and costs of privatizing Aspire by sale, licensing, or some form of managed competition and that the legislature independently assess via audit, evaluation, or market study the viability and marketability of Aspire.
- b. That the legislature independently assess and determine the minimum data and security needs to be maintained by the agency should all SIS systems be available only in the private sector.

Background

The *Free Market Protection and Privatization Board Act* (UCA 63I-4a) directs the board, at Section 203 to “consider whether to recommend privatization of an activity provided by an agency...in response to a complaint that an agency...is engaging in unfair competition with a private enterprise.” It also provides that the board may recommend “ways to eliminate any unfair competition with a private enterprise.”

In November 2013, Nathan Andelin, President of Relational Data Corporation (hereinafter RDC), petitioned the board to investigate its complaint that the Utah State Office of Education (USOE) is engaged in unfair competition with the private sector where it provides student information systems.

Prior to its petition, Relational Data Corporation was contracted by two charter schools (Legacy Preparatory Academy and Renaissance Academy) to build or install a student information system (SIS) capable of transmitting state-required data to USOE. RDC was having difficulties meeting requirements set by USOE which claims to have helped RDC over a long period to get its SIS (known as OnePoint) installed and operating. RDC claims that USOE made the process difficult by its requirements and rules. Nonetheless, at this time, RDC’s OnePoint application is installed and is operating at Legacy Preparatory Academy. Renaissance Academy switched to the state’s SIS now known as Aspire.

RDC has submitted multiple petitions, commentaries, and considerable analysis of technical and other issues to the Free Market Protection and Privatization Board, the State Board of Education and the legislature’s Administrative Rules Committee. USOE has provided information as requested. RDC and USOE staff has met numerous times with the board and its staff.

Petition

A summary¹ of Mr. Andelin's complaint that USOE is engaging in unfair competition with private enterprise is as follows:

The Utah State Office of Education:

- “[provides] data centers, computer hardware, networks, operating environments, hosted software, documentation, training, and related services to [local education agencies or LEAs] for free”;
- promotes its student information system above other options;
- “asserts exclusive intellectual property rights to [Aspire] as opposed to open-source licensing”;
- “requires that LEA's restrict their choices to USOE ‘approved student information systems’, calling that authority “a conflict of interest”; and
- implemented an approval process that is onerous, even unlawful, to a small business striving to enter the market.

Additionally, Mr. Andelin opposes USOE's adoption of the Schools Interoperability Framework (SIF), calling it “an additional undue cost and programming burden for providers.” He has separately petitioned the State Board of Education and the legislature's Administrative Rules Committee on those issues.

Mr. Andelin specifically petitioned² the Free Market Protection and Privatization Board to:

- Investigate and assess USOE's sources and uses of funds which enable them to engage in these commercial activities, including the full cost of USOE's products and services in comparison to those offered by private enterprise.
- Recommend to USOE, the Governor's Office, and the Utah Legislature that funding for these commercial activities be dropped, or allocated to other USOE endeavors which are more congruent with the proper role of government.
- Provide special funding to LEA's which would like to contract with private enterprise for their student information systems, instead of using [Aspire].

¹ Andelin, Nathan. 2014. *Privatization Proposal Summary*. This is an expansion from the original petition and was presented at the February 19, 2014 meeting of the Competition Review Advisory Committee (an advisory committee of the Free Market Protection and Privatization Board).

² Andelin, Nathan. 2013. *Privatization Proposal Summary*. Presented at the November 11, 2013 meeting of the Free Market Protection and Privatization Board.

- Establish a level playing field by requiring USOE to support choice, and to recover the costs of USOE's commercial activities by charging LEA's that benefit from them.
- Have USOE implement a privatization program that migrates their commercial activities to private companies which currently offer services in Utah and already have student information systems that are compatible with USOE's reporting interfaces, aggregate data warehouse, and other requirements.
- Improve language in Utah Code Title 53A to clarify legislative intent to protect LEA's rights against undue control by USOE concerning their choices of educational technology, and protect private enterprise from unfair competition by USOE.

Main Issues

Notwithstanding the many issues raised, this board's review and this report are limited to matters consistent with the duties assigned per UCA 63I-4a-203. Therefore, we are concerned with two main issues:

- 1) Whether USOE's Information Technology Division is engaging in unfair competition with private enterprise, and if so, how to remedy it; and
- 2) Whether privatization is to be recommended for this activity.

Issue #1: Is USOE Engaging in Unfair Competition with Private Enterprise?

A Definition of Unfair Competition

Unfair competition exists when either the governmental agency or a private business gains a financial advantage as a result of statutory authority.

Authority for and History of Utah's SIS

The next several paragraphs summarize the history and authority USOE has to develop and operate a student information system. USOE's SIS has been authorized and appropriated by the Utah Legislature and school districts and charter schools may acquire a SIS.

Utah State Office of Education

Article X of the Utah State Constitution and Title 53A of the Utah Code provide the constitutional and statutory authority for public education in Utah. Under the guidance of the State Board of Education (SBOE) the Utah State Office of Education (USOE) administers and implements public education. The Utah Legislature has the power of appropriation.

Local Education Agencies

School districts and charter schools are described as local education agencies (LEAs). Each has independent authority prescribed by statute. Each has its own governing board. LEAs are funded by a variety of methods, most commonly through the Basic School Program through a Weighted Pupil Unit. School districts also receive property tax revenue.

Specific to the issues herein, UCA 53A-1-706 authorizes and protects LEAs' rights to acquire educational technology through their purchasing programs.

Appropriations

Public education is a \$3.83 billion responsibility in Utah. The USOE budget is \$380 million, with nearly 95% of that figure passing through for various programs. USOE is responsible for state level administration and support services. USOE's Information Technology Division, which operates and improves the state's SIS, is funded on an ongoing basis.

History and Use of Student Information Systems

A student information system is a data collection system used to manage student data, such as student test and other assessment scores, and can be used to build student schedules, track student attendance, and manage many other student-related data needs in a school. The state requires certain data to be collected and reported. Among other uses, the data is used for allocating education funding and failure to report on time can result in financial consequences, such as withholding or delay of Minimum School Program funds for LEAs.

There are several SIS applications in use in Utah. The state's application is known as Aspire (formerly SIS2000 and SIS2000+). Currently, four different private sector vendors have applications in use (Skyward, PowerSchool, Compass, and One Point). Some LEAs like Davis School District have developed and operate their own custom SIS applications.

There are 42 school districts and 106 charter schools in Utah. 21 school districts and 88 charter schools use Aspire in 2014-15. While Aspire accounts for 20% of students in school districts it serves about 71% of students in charter schools (24% combined). Skyward, which serves approximately 26% of all Utah students has no presence in Utah's charter schools. PowerSchool serves about 16% of all students including 13% of charter school students. Compass accounts for 7% of charter school students. OnePoint serves approximately 2% of charter school students (or 0.2% of all students).

The legislature initially funded SIS development at USOE in 1967 and USOE has continued its development of SIS since that time through a variety of different technological formats. In the 1990s, USOE and LEAs began working together to develop or acquire a statewide student information system.

Historically, USOE has favored a single statewide approach. However, some school districts created their own SIS programs while others contracted with private sector developers. Task forces (in 1991 and again in 2008) recommended the continuation of local choice with the state setting reporting standards.

The 2008 task force also resulted in the requirement for Schools Interoperability Framework (SIF) compliance. USOE and two private sector SIS vendors (Pearson, which makes PowerSchool, and Skyward) participated together in the development of an SIF Agent to meet the standard.

Around 2007, USOE obtained federal funding to develop a system for transmitting data between school districts and USOE. That program is known as UTREx (Utah Transcript Record Exchange). Since then, USOE reporting requirements require LEAs to transmit data to UTREx.

A significant issue for USOE and LEAs is the protection and security of student data. USOE sets the standards and requires compliance with those standards.

SIS Comparative Features/Functions

The chart on the right shows the typical features and functions in student information systems offered by USOE and the four private sector applications mentioned previously.

Typical functions and features by student information system (self reported)

"•" if built in feature
 "+" if available as an add-on or third party option

Functions and Features	Aspire	Compass	OnePoint	PowerSchool	Skyward
Assessment					
Attendance	•	•	•	•	•
Standardized test scores	•	•	•	•	•
Grade book	•	•	•	•	•
Cafeteria Management					
Food service/cafeateria	•	•	•	•	•
Free/reduced lunch	•	•	•	•	•
Classroom Collaboration					
Teacher portals/blogs	•	•	•	•	•
Unit planning	•	•	•	•	•
Career & College Planning					
Student Educational Occupational Plan (SEOP)	•	•	•	•	•
Data (Analytics, Certification)					
UTREx SIF/State Reporting	•	•	•	•	•
Education – Finance interface	•	•	•	•	•
Report customization	•	•	•	•	•
Fees Management					
Fees	•	•	•	•	•
Library books and fines	•	•	•	•	•
Hardware & Network Solutions					
Hosting Services	•	•	•	•	•
API tools (plug ins)	under development	•	•	•	•
ISV (independent software vendors) accessible	•	•	•	•	•
User support (web/training)	•	•	•	•	•
Health & Immunizations					
Messaging & Notification	•	•	•	•	•
Mobile Solutions	•	•	•	•	•
Parent & Student Engagement					
Assignment	•	•	•	•	•
Calendar/Schedules	•	•	•	•	•
Class & course scheduling	•	•	•	•	•
Conference scheduling	See SEOP	•	•	•	•
Contacts	•	•	•	•	•
Family/student access	•	•	•	•	•
Family management	•	•	•	•	•
Multiple language options	Spanish re food service	•	•	•	•
Online Forms & Registration					
Enrollment/Registration	•	•	•	•	•
Online classroom files	•	•	•	•	•
Special Education & ELL					
English Language Learners	•	•	•	•	•
RTI & Special Education	•	•	•	•	•
Staffing Management					
Departmental support	•	•	•	•	•
Faculty attendance	•	•	•	•	HR Solution – True Time
Substitutes	•	•	•	•	•
Volunteer hours tracking	•	•	•	•	•
Student Behavior and Safety					
Student Administration					
Address/boundaries	•	•	•	•	•
Class seating charts/rostering	•	•	•	•	•
Demographics	•	•	•	•	•
Graduation progress	See SEOP	•	•	•	•
Dashboard (benchmarking/performance)	•	•	•	•	•
Lockers	•	•	•	•	•
Self-contained resource attendance management (SCRAM)	•	•	•	•	•
Textbook management	•	•	•	•	•
Uniform check	•	•	•	•	•
Online Waiting/Returning Lists	•	•	•	•	•
District to district transfer	•	•	•	•	•
Childcare/afterschool program attendance	•	•	•	•	•
Transcript & Document Management					
Transportation Management					
Bus routes	•	•	•	•	•
Car pool	•	•	•	•	•

Aspire

The Aspire application has two components: a FoxPro Client Interface accessed via remote desktop connection and Aspire software web portal accessed via web browser.

The FoxPro Client interface is used for school and calendar setup, scheduling, and student fees.

The Aspire Software Web Portal is used for assessment, attendance, behavior, contact/student access, control master, data quality, enrollment, food service, grade book, lockers, SEOP (Student Educational Occupational Plan), student summary, and UTREx data submission.

The Aspire team installs and configures database software, creates, develops, and produces student information software, manages security and integrity of student data, assists in state and federal reporting for all LEA funding, assists in state and federal reporting of all assessments, manages changes and requirements of state and federal reporting, assists LEAs in communicating student data information and academic progress to guardians/parents, assists in management of the success of educating Utah students, and continually improves and enhances student information system software.

At the request of its users, USOE continues to make improvements to the application. An Aspire (SIS) Future Project and Implementation Plan indicates that improvements and additional features are continually being rolled out. Items scheduled for 2014 included the addition of Faculty and Track Editors to Enrollment, Gradebook integration via SIF, a Student Locator Framework to replace Statewide Student Identifier (SSID), an Attendance Data Dashboard, and others. Other improvements and features to be implemented in 2015 or 2016 include Attendance integration, College and Career Readiness, a new Online Registration process, a Student Achievement Backpack, increased usability and access for Scheduling, and a Behavior Data Dashboard.

Other support services

USOE's Information Technology (IT) teams provide a variety of support services, including hosting and maintenance services.

Ownership rights

USOE's Official IT Policies and Procedures include a Software Use and Service Agreement which makes clear that USOE owns or licenses all application software it provides to LEAs.

LEA Student Information System Survey

RDC asserts that USOE unfairly competes against the private sector. Given that USOE is clearly competing in terms of features and functions and that there are currently four private sector vendors (including RDC) with applications in use in Utah, we wanted to understand what factors affect LEA choice in the SIS market.

In March 2014, we sent a questionnaire to 42 school districts and 90 charter schools in Utah based on a list supplied by the Utah State Office of Education. 32 school districts and 36 charter schools responded. We asked which SIS is used, why that SIS is used, what it costs, whether and why (not) the LEA has considered a different SIS, and if the LEA is paying a private vendor rather than getting Aspire at no cost from USOE, why?

The results were mixed. 16 school districts and 32 charter schools using the Aspire application responded, the remainder represented other products with the largest group (10 school districts and 2 charter schools) using PowerSchool.

Less than one-half of Aspire users have considered using other programs, with most of those obtaining quotes or bids. For many of the Aspire users, cost is clearly a factor in the decision to use USOE's SIS. A second factor is the support they receive from the Aspire team at USOE.

When asked if Aspire were not free, 24 of 46 who answered that question indicated they would continue to use Aspire. Only nine indicated they would not. While reluctance to change to a new system is commonly mentioned, cost is again routinely named as a factor in the choice. And it is clear that for those LEAs using Aspire, how to fund the cost if not provided at no charge is a concern.

When asked if the state were to provide funding in the form of grants would the LEA consider acquiring a different system, 22 LEAs said yes, 26 LEAs said no, with 3 maybes and 1 not sure. When asked why, respondents clearly pointed to satisfaction with Aspire for those who would not change, and for those who would consider a change, again cost is a factor.

Non-Aspire users were asked for information on costs to the LEA. While there were many comments, the information was diverse. It is apparent that the monetary costs of installation are significant, a factor that is hard to quantify on the Aspire side as development costs are enmeshed in the USOE IT budget and no information as to installation costs is available without further study. In any event, USOE does not charge LEAs for installation of the Aspire application.

Finally, when asked why the LEA pays for an SIS when Aspire is available at no cost, respondents pointed the state's system being inadequate for their needs (either now or during earlier stages). One school district, which participated in a PowerSchool pilot many years ago, would not consider changing because it receives that program free.

Findings Regarding Allegations of Unfair Competition

USOE provides data centers, computer hardware, networks, operating environments, hosted software, documentation, training, and related services to LEAs for free or what USOE prefers to call "at no charge to the LEA". USOE stands on its authority given in statute and by

appropriation for these services. However, information provided by LEAs indicates that “free” is a significant factor in the decision to use Aspire.

USOE promotes its student information system exclusively. It openly promotes Aspire on its webpage, offers it to new LEAs, and circulates a newsletter touting improvements and market share. It holds data conferences for LEAs twice a year to provide information about USOE’s product and service offerings. These are not open to vendors and USOE benefits from the discussions with LEA personnel.

The task forces in 1991 and 2008 both explored the potential for a statewide SIS but found that LEAs preferred to keep local control. These did find it appropriate to have statewide data standards.

USOE has invested decades of resources into the development of its SIS. That investment has value, though undetermined, and it does assert its intellectual property rights. It does not recover these costs through licenses or sale of the application. While specifics vary, the private sector vendors generally charge a license fee and/or installation charge.

RDC asserts that there is no need for USOE to approve an SIS so long as it can successfully communicate with UTREx. That may be but the SBOE is allowed to set the data standards, especially since it owns UTREx, and because it believes that if a vendor fails that it will be USOE that is accountable to the taxpayer. However, given that USOE is also in the “business” of providing an SIS, there is an apparent conflict of professional interest for the IT personnel approving outside SISs for use.

RDC asserts that USOE implemented an onerous approval process, “even unlawful” under the Utah Rule Making Act (UCA 63G-3-301) in that the USOE did not ascribe any measurable fiscal impact to small business. USOE instead declared that the rule and amendments apply to LEAs. Nevertheless, RDC claims it went to extraordinary efforts and costs to meet the requirements. The proprietor of Compass said meeting the SIF requirements was “a pain. . . .and it did take many hours to actually implement and test it, which was an out of pocket expense.” Indeed, there is some evidence that the meeting the rule for SIF was costly. USOE contracted NCS Pearson Inc. to assist with the development of custom SIF agents for [Aspire] and engaged a pilot project that included USOE, Skyward and PowerSchool.

Issue #2: Whether Privatization is to be Recommended for this Activity?

Commercial Activities Inventory Surveys

The board has developed a detailed approach to evaluate services for privatization potential. Using various elements of review (divided into general elements, cost elements, performance elements, staffing element, and summary elements), the board asked USOE to complete a

Commercial Activities Inventory survey (see Appendix for a list of the questions, responses, and scoring) for its Aspire application and related services. Both the agency and the board's program specialist provided comment with the latter scoring the responses.

Two surveys are used. The first, called Tier 1, reviews most of the general elements, two performance elements, and a cost element. If a score above 65% is evident, a second or Tier 2 survey is used. The Tier 2 survey covers the remaining general element, four performance elements, 12 costs elements, a staffing element and four summary elements.

Scoring of these surveys resulted in an aggregate score of 73% suggesting that the activity has privatization potential.

The responses provided have been used to inform the research and findings in this report.

Comparative costs: Private SIS Costs

In addition to the comments about costs supplied in the original survey, cost data was obtained from nine LEAs including six school districts and three charter schools.

Annual support and maintenance costs per student for five school districts (Park City, Washington County, Duchesne County, Juab, and Iron County) using PowerSchool ranged from \$4.05 to \$4.75.

Jordan School District benefits from economies of scale (it has 53,000 students) and the fact that Skyward is providing both its SIS and FIS (financial information systems). Splitting out the costs for modules similar to other student information systems suggests an annual support and maintenance cost per student of \$2.14.

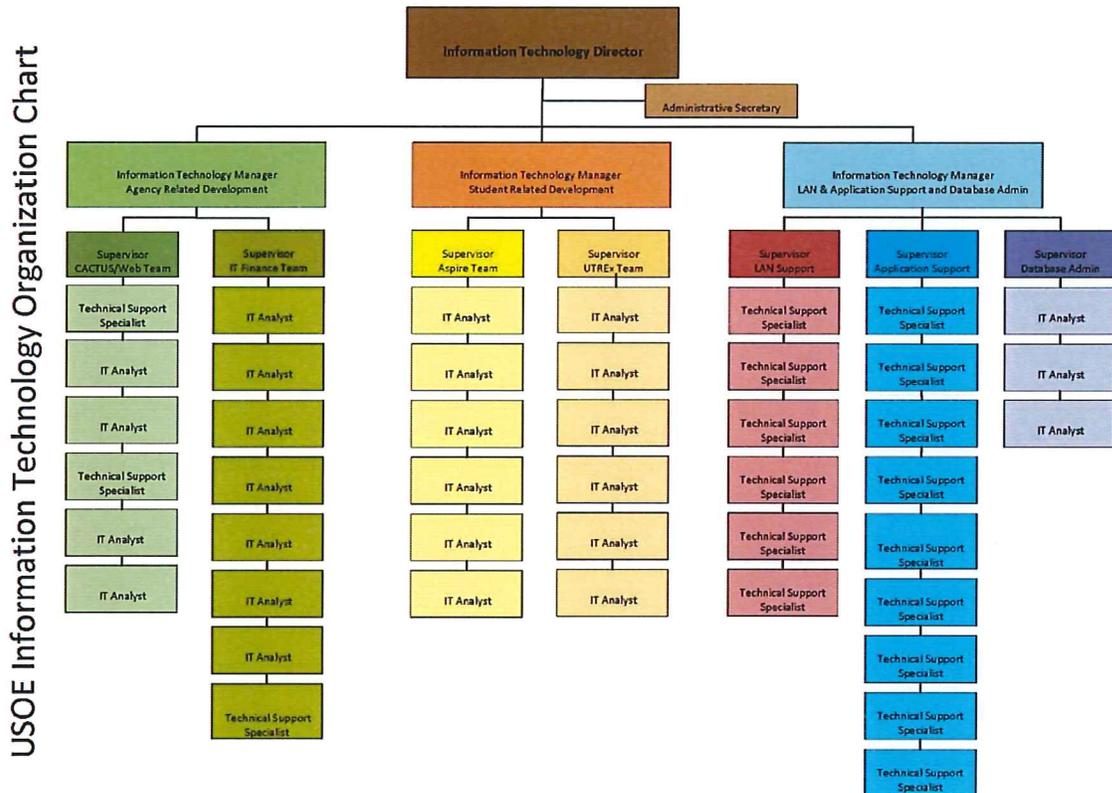
Monticello Academy and several other charter schools use Compass. Compass was developed by a parent who then became a contract employee of the school. He received the rights to sell the SIS to other schools. Compass charges \$20 per student for the initial license. Thereafter support and maintenance is 20% of that cost or \$4.00 per student. Compass offers hosting services for an additional fee. Compass is growing its market share at the expense of Aspire, it now has 13 charter schools under contract.

[To accurately determine implementation costs for new systems, there is a need for more work to be done. With Aspire, those in-house costs are beyond the resources available to the board and may impossible to determine after decades of development and improvements. In any case, LEAs do face considerable implementation costs (installation and licenses) for most private systems.]

[A recent conversation board staff had with the State Superintendent of Public Instruction (formerly Superintendent of the Ogden School District) is worth comment here as the State Superintendent believes "it is analogous." Several years ago, USOE also offered its own

financial information system (FIS) to the LEAs. It discontinued the service and some LEAs had to go find a new FIS. Ogden School District (OSD) was one of those. Noting that OSD paid approximately \$250,000 he wondered if the savings at the state level were less than the total cost to individual LEAs that had to acquire a FIS.]

Comparative Costs: USOE SIS Costs



Aspire Team

USOE’s Information Technology Division is divided into three sections, Agency Related Development, Student Related Development, and LAN and Application Support and Data Base Administration. Student Related Development is divided organizationally into two teams: Aspire and UTREx. However, USOE advises there is much collaboration:

Developers that work on the Aspire/SIS2000+ application also work with our UTREx development team to collect data from the LEA’s. They work with the [database administrators] to maintain the database and data exchange between the USOE and LEA’s. There are also food service pieces that are maintained by this group as well as financial and teacher data that is sent to other applications in the USOE application pool (Cactus). Support personnel support a multitude of applications such as BASE

(accounting), Cactus (teacher licensing), UTREx (Utah Transcript and Record Exchange).³

Of the 56 FTE (full-time equivalents = employees) in the IT shop, USOE's information suggests 7.68 FTE or 14% of the personnel resources are used on the Aspire product.

Using USOE's own figures, personnel costs on Aspire are \$672,600. These and other non-allocated costs are directly attributable to SIS functions. The other non-allocated costs are server costs (see below), charges to state internal service funds for liability and equipment, and various current expenses.

These non-allocated costs total \$678,600 which when divided by the number of students on Aspire (159,025) costs \$4.39 per student.

USOE says that if Aspire were to be privatized, it would still require support personnel for the other applications the department operates, plus some help to ensure integration with the applications.

Servers

While the majority of Aspire costs are incurred by the Student Related Development team, Aspire is supported by systems operated by the LAN & Application Support and Database Administration team.

The total capacity of information systems at USOE is estimated at 145 TB (terabytes) of which 55 TB are in use. Aspire reportedly uses 1.5 TB for databases, web, development, and testing. This figure approximates 2.72% of used space or 1.03% of capacity. USOE management thinks these percentages similarly apply to CPU, RAM, network bandwidth, and other resources within the information technology infrastructure at USOE.

Based on FY 2014 costs of \$1.929 million an allocation to Aspire of costs per used space (2.72%) would total \$52,474. Measured in terms of capacity, costs are \$19,871.

Administration

To obtain an estimate of overhead costs for Aspire, it is necessary to consider administration costs for the division and the agency. These are expenses that are necessary to the continued functioning of the organization but cannot be immediately associated with the products or services being offered.

For our purposes, we included an appropriate allocation of costs of the State Board of Education (including the State Superintendent) and the costs of the Associate Superintendent overseeing Information Technology. This includes the cost of their support staff.

³ Utah State Office of Education. 2014. Notes included on spreadsheet of costs provided to the Board.

Other indirect costs relate to support services, internal accounting, internal data processing, public relations, and other agency supports.

Allocation of these costs is based on total FTE (employee count) for board costs except costs related to the Associate Superintendent, whose costs are allocated by the FTE count for the divisions responsible to her office.

Summary of Costs

Based on information provided by USOE, the following table summarizes costs. While we have tried to determine total costs, we believe these may be understated as USOE admits to considerable collaboration between teams and these personnel costs are based on an estimate of time spent on Aspire by the Aspire team and direct supervisors.

<u>Cost center</u>	<u>Total Cost of Operations</u>	<u>Non-Allocated Costs</u>
Personnel	\$672,600	\$672,600
Indirect Costs – IT	\$ 90,900	
Indirect Costs – Servers	\$ 19,900	
Office space – R&M	\$ 4,400	
Liability and Equipment	\$ 7,600	\$ 5,100
Indirect Costs – Board/Supt.	\$ 3,400	
Indirect Costs – Assoc. Supt.	\$ 19,900	
Other: Current Expense	\$ 900	\$ 900
Totals	\$819,600	\$678,600
Cost per student (159,025)	\$ 5.15	\$ 4.39

USOE advises that the student figure for 2015 is 171,294 which if the budget remains the same drops the cost per student to \$4.78.

Findings Regarding Privatization

Aspire is a significant competitor in Utah’s SIS market. Aspire is the most widely used SIS in Utah when measured in terms of school districts and charter schools using the product. It is nearly equal with Skyward in numbers of students served. Any privatization initiative should ensure that existing users can keep the product but pay a fair and competitive rate. Users report satisfaction with the software and support.

LEAs pay no fees to USOE for it. Instead, taxpayer funds support Aspire at the state agency level. Taxpayers in LEAs with private or custom systems, are paying for two SIS systems – the one used in their LEA and Aspire.

On a per student basis, Aspire’s support and maintenance costs are competitive with similar charges by private SIS providers. The budget for the Aspire team includes development and support functions.

USOE does need to have some capacity for support of any SIS in the system. It also has valid concerns for safety and security of student data. However, that there are several systems (whether private, public, or custom) already in operation which suggests that data safety and security has been and should continue to be addressed.

Aspire could be privatized. Plausible options include sale of the code and intellectual rights outright, licensing of the code to other software companies while retaining intellectual rights, or even some form of managed competition with the personnel behind Aspire forming a company or even a separate internal service fund that could operate on a competitive and transparent basis.

There may be significant opposition from the 109 LEAs currently using it. Since Aspire is funded by appropriation and offered “at no cost” to LEAs, and for reasons of improving transparency and supplementing local control, funding should be shifted to LEAs to pay for the product directly. Since the other 39 LEAs are paying for their own or a private SIS, there may be some opposition over the shift in funding. One suggestion is to shift the funding but determine which LEAs have long term need and phase it out for the rest.

While the state’s prior termination of financial information systems for LEAs is analogous in concept, there would be a significant difference in the implementation in the present matter. Any privatization of Aspire should ensure that current users of Aspire may keep the application and have it supported under whatever privatization option is implemented.

Free Market Protection and Privatization Board

Kimberley Jones, Chair	Brian Gough, Vice-Chair
Sen. Howard Stephenson	Sen. Karen Mayne
Rep. Johnny Anderson	Thomas Bielen
Randy Park	Manuel Torres
Al Manbeian	Robert Myrick
Russell Anderson	Rick Jones
Jacquie Nielsen	Steve Fairbanks
Louenda Downs	LeGrand Bitter

Cliff Strachan, Governor’s Office of Management and Budget, Staff

Appendix

Terminology

Student Information System (SIS) –A software application used by schools and school districts to manage student data, such as student test and other assessment scores, and can be used to build student schedules, track student attendance, and manage many other student-related data needs in a school.

Schools Interoperability Framework (SIF) –An information technology specification to translate and integrate data between schools. This integration via SIF benefits schools to exchange student information securely and efficiently in sharing data no matter what student information system is used.

Utah Transcript Record Exchange (UTREx) – A multi-component system that facilitates the electronic transfer of individual, detailed student records between LEAs and USOE. It was funded by a federal grant in 2007.

Simply stated, a SIS integrates with UTREx via SIF.

Board Authority

UCA 63I-4a-203 (1) The board shall:

- (a) determine whether an activity provided by an agency could be privatized to provide the same types and quality of a good or service that would result in cost savings;
 - (b) review privatization of an activity at the request of
 - (ii) a private enterprise
 - (c) review issues concerning agency competition with one or more private enterprises to determine:
 - (i) whether privatization:
 - (A) would be feasible;
 - (B) would result in cost savings; and
 - (C) would result in equal or better quality of a good or service; and
 - (ii) ways to eliminate any unfair competition with a private enterprise.
- (2) The board may, using the criteria described in Subsection (1), consider whether to recommend privatization of an activity provided by an agency...
- (c) in response to a complaint that an agency...is engaging in unfair competition with a private enterprise...
- (3) In addition to filing a copy of recommendations for privatization with an agency head, the board shall file a copy of its recommendations for privatization with:
- (a) the governor's office; and
 - (b) the Office of Legislative Fiscal Analyst for submission to the relevant legislative appropriation subcommittee.

Commercial Activities Inventory Survey (Elements of Review)

Utah State Office of Education Information Technology Division re Aspire

Topic (T)

T 1: Describe the service/function so there is a clear understanding of the service and how it operates.

USOE developed (and improves) and operates Aspire, a student information system (SIS) used by LEAs (local education authorities including several school districts and many charter schools) for tracking student progress. Aspire is provide at no additional cost to LEAs.

T 2: What is the budget for this service/function?

The budget for this specific program is included within the individual budget for the units providing the service directly or supporting the service. Based on a review of costs attributable to the service, Aspire costs approximately \$819,600 per fiscal year. Of that \$678,600 is non-allocable costs.

General Elements (GE)

GE 1: Is the service being reviewed considered a mission critical service of Utah State Government?

Agency response: The USOE is committed to provide the best possible service to all LEAs in Utah. To assist with this mission, we develop the software for the benefit of all Utah LEAs.

GOMB analyst response: Public education is a mission critical service of government and arguably so is collection of student data.

Maximum		Score
Yes	No	
0	5	0

GE 2: Do other alternatives exist for providing the service?

Agency response: Yes. Some districts have chosen to use private vendors (PowerSchool, Skyward, etc). Some like it, others hate it.

GOMB analyst response: Yes. Private vendors (PowerSchool, Skyward, Compass, etc) offer similar products. Some LEAs have developed and operate their own systems.

Maximum		Score
Yes	No	
25	0	25

GE 3: Could the State replace a provider if costs or performance proved unsatisfactory?

Agency response: Not at the cost they are providing now. Even if the state purchased a vendor's software, the support for the software would need to still come from within USOE. Having a vendor in another state to support the software does not work well if at all. Also, costs and time to learn a new system are high. Replacing a vendor means new software which incurs great costs.

GOMB analyst response: There would be issues of timing and cost but an unsatisfactory vendor could be replaced by the LEA, not the state, as the state would not be the owner.

Maximum		Score
Yes	No	
15	0	15

GE 4: Is there a significant level of political opposition to privatization of this service?

Agency response: There would be by the districts and charter schools that use Aspire. Currently there are 21 districts and 80 charter schools that use Aspire. Almost all our customers love our software and the service they receive. Parents and students would hate to lose many of the features we provide that other software doesn't.

GOMB analyst response: While many LEAS already use a private or self-provided alternative, it is likely that opposition would come from USOE, individual school districts and charter school boards depending on the manner and funding of any privatization effort.

Maximum		Score
Yes	No	
0	20	0

GE 5: Has this service been successfully privatized by other state, local or federal governments?

Agency response: As far as we know, no other state agency provides this type of service.

GOMB analyst response: Many LEAs in the USA and in Utah use privately developed and operated student information systems.

Maximum		Score
Yes	No	
15	0	15

GE 6: Are there any known barriers to privatization?

GOMB analyst response: No, but there may be political opposition to doing so.

Maximum		Score
Yes	No	
0	25	25

GE 7: Are there any obvious risks to be considered with the privatization of this service?

Agency response: Sharp increases in costs to LEA's who use this service. Each LEA would have to hire additional technical people to install, maintain, and assist with the new software. Support would be significantly reduced and the intimate knowledge our support staff could never be achieved by a private company due to not being in direct contact/meetings with the decisions being made.

GOMB analyst response: Notwithstanding the various costs attributable to changing software, if needed, USOE does not have a monopoly on good service or support. Many LEAs are satisfied with the quality of their private sector support services. In any case, additional costs that can be determined in advance are not risks for this service. Risks would include acquiring products that do not meet security protocols or which have no track record of success.

Maximum		Score
Yes	No	
0	25	25

GE 8: Does a vendor need access to confidential information?

Agency response: Yes, most likely. In order for a vendor to accurately test their product, they would have to have access to confidential information at some point.

GOMB analyst response:

Maximum		Score
Yes	No	
0	5	0

Performance Elements (PE)

PE 1: Does this service currently utilize quantifiable and measureable performance measures?

Agency response: Yes. We work with our user group to set milestones and deadlines.

GOMB analyst response:

Maximum		Score
Yes	No	
15	0	15

PE 2: Would it be difficult to assess the performance of the privatized service?

Agency response: We can somewhat assess it by the data that is received from the LEAs. However, that only shows they can submit data. It does not show that it is accurate data. The verification of the data, the quality of the application, and the service provided would be up to each LEA to assess. This would not be the responsibility of the State.

GOMB analyst response: No, the objective measure is whether data is successfully transmitted to the state via accepted protocols.

Maximum		Score
Yes	No	
0	15	15

PE 3: Would there be a high level of risk if a privatized service did not meet required performance requirements?

Agency response: Districts and charters would suffer greatly having to move from one system to another to another.

GOMB analyst response: Maybe, if a product fails data security protocols or installation of a product is not completed. However, many vendors already successfully meet USOE's requirements.

Maximum		Score
Yes	No	
0	25	25

PE 4: Would the State be able to transfer liability to a service vendor in the case of poor performance?

Agency response: Liability never transfers to the vendor. It always lands on USOE.

GOMB analyst response: Liability belongs to the LEA (and its SIS provider) to successfully transmit the data.

Maximum		Score
Yes	No	
15	0	15

PE 5: Would the State be able to reward or penalize any vendor or performance?

Agency response: No, we do not have any contracts with vendors that work for the LEAs.

GOMB analyst response: In effect, yes. USOE can withhold funding to LEAs for failing to submit data.

Maximum		Score
Yes	No	
15	0	15

PE 6: Would it be difficult to construct a performance contract for this service?

Agency response: Yes, but it would cost time, which would cost money out of the workflow and production of the service. There is no One Size Fits All SIS. Each has to be customized to the needs of the districts and what is performing for one district wouldn't be for another.

GOMB analyst response: No. Individual LEAs would be responsible for their own contracts.

Maximum		Score
Yes	No	
0	15	15

Cost Elements (CE)

CE 1: Do the current costs for providing this service appear high?

Agency response: Not when you consider the amount of users that are provided a student information system service and the data that is submitted for funding is accurate with the data requirements for federal and state submissions. Costs are actually much lower than a private company would be to develop/support the same caliber of software.

GOMB analyst response: The true costs are difficult to measure without a full audit but data provided by USOE suggest the cost is comparable to costs charged by private vendors.

Maximum		Score
Yes	No	
25	0	0

CE 2: Does the percentage of fixed current costs appear to exceed 50%?

Agency response:

GOMB analyst response: No.

Maximum		Score
Yes	No	
0	20	20

CE 3: Does the percentage of variable current costs appear to exceed 50%?

Agency response:

GOMB analyst response: Yes.

Maximum		Score
Yes	No	
20	0	20

CE 4: Does State service cost appear to be higher than privatized costs?

Agency response: No, they are lower. The initial cost of the vendor software may not seem higher but, any changes needed to the vendor software that are custom to a state reporting service is an added expense. There are data changes required constantly by the Federal and state governments.

GOMB analyst response: Based on information provided by USOE and data provided by various LEAs and vendors, it appears that USOE's support costs approximate \$5.15 per student served versus a costs as high as \$4.75 for private vendors at school districts or \$4.00 for some charter schools.

Maximum		Score
Yes	No	
25	0	25

CE 5: Would it be difficult to monitor service costs for a privatized service?

Agency response: It is likely that would be either the same or more difficult. Service costs of other vendors in this area aren't really monitored.

GOMB analyst response: No, the measure of service costs if privatized is the cost paid.

Maximum		Score
Yes	No	
0	20	20

CE 6: Do the estimated costs of contract development appear to exceed 15% of the estimated annual savings?

Agency response:

GOMB analyst response: Unknown.

Maximum		Score
Yes	No	
0	10	5

CE 7: Are the estimated annual costs of contract monitoring less than 15% of the estimated annual cost savings?

Agency response:

GOMB analyst response: That depends on how an LEA monitors its contracts.

Maximum		Score
Yes	No	
15	0	7.5

CE 8: Would privatization have a positive impact on tax revenue?

Agency response: No, taxes would not be lowered. If LEAs started purchasing their software, it still comes out of taxes, one way or another.

GOMB analyst response: Not likely.

Maximum		Score
Yes	No	
10	0	0

CE 9: Are other State departments paying a part of this service?

Agency response: No.

GOMB analyst response: No. Aspire is funded through public education appropriations directly to USOE not to individual LEAs. However, many LEAs have elected to spend their own funds on private or self-provided SIS systems.

Maximum		Score
Yes	No	
0	15	15

CE 10: Is the estimated costs of employee lay-offs greater than 25% of the total cost savings if the service were to be privatized?

Agency response:

GOMB analyst response: Probably, while USOE figures it could continue to use these employees, a privatization proposal may involve a shifting of funding.

Maximum		Score
Yes	No	
15	0	15

CE 11: Does the current State service have excess capacity that could be sold due to a privatization arrangement?

Agency response:

GOMB analyst response: It may be possible to license or sell Aspire to private vendors. Consideration might be given to working with USTAR or other service to investigate the possibility.

Maximum		Score
Yes	No	
5	0	5

CE 12: Does the current State service operate any facilities that could be shed due to privatization?

Agency response: No.

GOMB analyst response: No, other than office space, infrastructure needs for this service is minimal.

Maximum		Score
Yes	No	
10	0	0

CE 13: Would staffing costs to be eliminated due to privatization be equal to or greater than the ratio of staffing costs to overall service costs?

Agency response: Loss of this service to the LEAs would be a greater cost not only in funding but in accuracy of data. We also help other vendors understand the data and how to set it up for reporting. We find out users forget to let their vendors know to add data elements after they data should have been submitted. We help the vendors get the data submitted accurately. Aspire LEAs never worry about what data is needed to be submitted because we are always aware of what and when the data is submitted.

GOMB analyst response: Yes, 7.68 FTE are used on Aspire, but some may need to be retained.

Maximum		Score
Yes	No	
0	0	20

Staffing Elements (SE)

SE 1: Are the potential impacts on State employees considered to be significant or out of proportion to potential gain from privatization?

Agency response: Yes. We would spend millions more and quality and support would decrease greatly.

GOMB analyst response: Unknown. USOE believes they could use the employees elsewhere.

Maximum		Score
Yes	No	
0	15	0

Summary

Summary 1: Are you comfortable privatizing this service?

Agency response: No, our LEAs are not happy about losing an SIS system that does everything for them. We hold the LEAs hands in support. No vendor does that. Districts and especially charter schools will suffer.

GOMB analyst response: Yes, approximately 70% of students in the state are already using private or alternatives student information systems.

Maximum		Score
Yes	No	
15	0	15

Summary 2: Do you think service quality will improve? Or should improve?

Agency response: There is not another vendor that can answer questions about state and federal requirements for data submissions better than the USOE support team. There is not a vendor who answers the phone immediately or returns calls within a day; nor does trainings at anytime requested without an additional fee. Would anticipate that service quality would decrease.

GOMB analyst response: USOE will continue to be responsible for the state-level collection of data as it is now, even where private or alternative SIS is used. That service should not change. USOE cannot determine whether service will improve or diminish under private vendors.

Maximum		Score
Yes	No	
20	0	10

Summary 3: Do you think costs will decrease? Or should decrease?

Agency response: Costs will never decrease and shouldn't decrease. More data is being reported and required every year. You can't expect to produce more and increase work loads and not increase costs. Costs are below where they need to be for the amount and quality of software/support we provide.

GOMB analyst response: This privatization would shift costs and funding to LEAs.

Maximum		Score
Yes	No	
20	0	0

Summary 4: Are there other issues which cannot be scored but need to be considered?

Agency response: The service we give the LEAs outweighs the costs.

GOMB analyst response: Services and costs to small LEAs is a consideration as is USOE's concerns to protect student data and data security.

Maximum		Score
Yes	No	
0	10	0

Scoring of Elements

The elements of review (general, performance, cost, staffing, and summary) used by the board to evaluate privatization potential are designed to elicit a Yes or No response. Where neither is appropriate, the score is usually split in half but may be weighted. Maximum scores range from 0-25 depending on the relative weighting of the survey question.

An activity receiving an aggregate score of 65% or higher is considered to be potentially privatizable.

	Element of Review	Maximum		Score		Element of Review	Maximum		Score
		Yes	No				Yes	No	
Tier 1	GE 1	0	5	0	Tier 2	GE 3	15	0	15
	GE 2	25	0	25		PE 2	0	15	15
	GE 4	0	20	0		PE 4	15	0	15
	GE 5	15	0	15		PE 5	15	0	15
	GE 6	0	25	25		PE 6	0	15	15
	GE 7	0	25	25		CE 1	25	0	0
	GE 8	0	5	0		CE 2	0	20	20
	PE 1	15	0	15		CE 3	20	0	20
	PE 3	0	25	25		CE 4	25	0	25
	CE 11	5	0	5		CE 5	0	20	20
						CE 6	0	10	5
				CE 7	15	0	7.5		
				CE 8	10	0	0		
				CE 9	0	15	15		
				CE 10	15	0	15		
				CE 12	10	0	0		
				CE 13	20	0	20		
				SE 1	0	15	0		
				Sum 1	15	0	15		
				Sum 2	20	0	10		
				Sum 3	20	0	0		
				Sum 4	0	10	0		
	Total 1	165		135	Total 2	360		247.5	
	%	82			%	69			
Total 1 + 2		525		382.5	73%				

Monday December 29, 2014

Nathan M. Andelin
President, Relational Data Corporation
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West Jordan, Utah 84088
(801) 739-1872 (cell)

Dear Members of the Free Market Protection and Privatization Board,

Please accept my profound gratitude for the report forwarded by Cliff Strachan which is titled:

"DRAFT Report by the Free Market Protection and Privatization Board Concerning the Utah State Office of Education and a Complaint of Unfair Competition in Student Information Systems".

The report is the result of significant effort, weighted consideration, and perseverance.

Please consider the following small but significant addition to wording on Page 1 and in the Executive Summary on Page 3:

"The board further finds that privatization of Aspire is feasible [,and recommended]".

The addition of two words "and recommended" appears to be congruent with UCA 63I-4a-203 Free Market Protection and Privatization Board -- Duties.

(1) The board shall:

(d) *recommend* privatization to an agency if a proposed privatization is demonstrated to provide a more cost efficient and effective manner of providing a good or service, taking into account:

(ix) the ability to develop sound policy and implement best practices;

Concerning the development of "sound policy" and the implementation of "best practices", please consider:

- Protecting the free market system in Utah, including fair competition, and the fruits thereof.
- Providing an environment where small businesses may grow and create jobs in the state.
- Providing appropriate separation between the State Office of Education and Local Educational Agencies (local school districts and charter schools).
- Protecting LEA rights to acquire their own educational information systems based on their own procurement programs - including their ability to choose alternatives.
- Deterring the building of "kingdoms" within agencies, which are based on monopolistic and unfair trade practices, and unfair competition against private enterprise.

I believe that a clearly stated "recommendation" in favor of privatization is needed to offset the political and economic power which exists in the Utah State Office of Education, and the expectation that senior officials within the agency will continue to maneuver to stall the process.

The remainder of my remarks are in response to allegations made by USOE in the report, and concerns which were raised in December 2014 committee & board meetings - that privatization would lead to higher costs, lower service levels, risky migrations off Aspire, unhappy LEAs about the loss of Aspire, a reduction of data quality provided to the state, and concerns about data privacy and security.

USOE appears to be characterizing student information systems as "front-ends" to state data warehouses. It is more appropriate to view them as separate, stand-alone, self-contained, and broadly-scoped systems. Depending on the scope of the system, less than 20% of the data maintained therein is passed to the state. The vast majority of the data pertains exclusively to LEAs and their patrons, and provides a basis for daily operations.

LEA's are primarily responsible for the privacy and security of their own & patron data. Vendors provide tools for LEAs to implement appropriate privacy and security. LEAs, working with private partners understand concerns about privacy and security and address them in a professional manner. Agreements, laws, and best practices between LEAs and partners ensure the protection of private data.

USOE has control over the "quality" of data passed to the state by communicating clear specifications to LEAs and vendors, and validating data submissions against specifications.

GOMB analyst, Cliff Strachan made good points while responding to USOE allegations about privatization leading to higher costs, lower service levels, and unhappy LEA's. The allegations are unfounded. Depending on how privatization may be implemented, the same people who support Aspire now could do so after.

Intellectual property rights & source code pertaining to Aspire could be provided via public open-source licensing if a qualified buyer cannot be found in a timely manner. Then any number of private companies, including small businesses in Utah could continue offering "support" for Aspire as needed.

USOE offers Aspire and related services "at no cost to LEAs"; officials at USOE grant to themselves authority to arbitrarily approve and disapprove alternatives; they establish an approval process which is designed to prevent new systems from entering the state; they exercise these self-granted authorities capriciously and aggressively in actions against LEAs - including threatening the withholding and loss of funding; they raise other significant barriers against LEAs and commercial alternatives based on contrived pretenses; these policies and practices are designed to limit LEA choice & restrain trade.

USOE would not have to resort to such devices to gain adoption of Aspire - if the product and service were as good as asserted. USOE tactics instill a twisted mixture of dependency and fear among LEAs.

Annual "operating costs" delineated by USOE for Aspire & reported appear to be grossly understated. Notwithstanding, the board's rationale for recommending privatization appears to be solid enough to let the report move forward without further investigation and disclosure of costs at this junction.

Please encourage the State Board of Education, the Legislature, and the Governor to support the "sound policies" and "best practices" delineated above, by recommending the privatization of "commercial activities" of the USOE IT section.

January 5, 2015

Cliff Strachan
Program Specialist
Governor's Office of Management and Budget
350 N State Street, #150
Salt Lake City, Utah 84114

USOE Response to DRAFT Report by the *Free Market Protection and Privatization Board* Concerning the Utah State Office of Education and a Complaint of Unfair Competition in Student Information Systems

USOE appreciates the opportunity to review this report and provide comments. USOE would request that attention be given to the sensitivity of personally identifiable student and parent data that is collected, maintained and reported using student information systems. It is imperative that USOE maintain high standards to ensure the security and accuracy of this data. USOE would also request that attention be given to the many small LEAs that do not have the resources to maintain IT departments.

Herein are contained the responses to the inaccuracies of the above report. The comment from the report is listed first and the USOE response is in italics.

Page 10

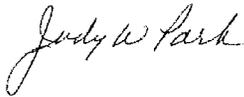
- USOE promotes its student information system exclusively.
 - *This is incorrect. The USOE responds to all questions from LEAs and vendors and informs LEAs on all SIS options that meet state specifications. This is regularly done on an as needed basis as LEAs and vendors contact USOE.*
- It openly promotes Aspire on its webpage, offers it to new LEAs, and circulates a newsletter touting improvements and market share.
 - *USOE circulates the Aspire newsletter to current Aspire users only for information purposes.*
 - *USOE does not initiate contact with new LEAs for purposes of marketing Aspire.*
- It holds data conferences for LEAs twice a year to provide information about USOE's product and service offerings.
 - *The Spring and Fall Data conferences provided by USOE are for the purpose of informing all LEAs in regards to data requirements. This meeting is vendor neutral and does not promote Aspire. The Aspire product is never an agenda*

item any time during the conference for promotion nor is any other vendor's products. The conferences are open to vendors and most, if not all, attend.

- These are not open to vendors and USOE benefits from the discussions with LEA personnel.
 - *The way USOE "benefits" from these data conferences is by improving the collection of timely and accurate data. The main purpose of the data conferences are to help LEAs understand the definitions for data needed at the state and federal levels.*

Page 11

- RDC asserts that there is no need for USOE to approve an SIS so long as it can successfully communicate with UTREx. That may be but the SBOE is allowed to set the data standards, especially since it owns UTREx, and because it believes that if a vendor fails that it will be USOE that is accountable to the taxpayer. However, given that USOE is also in the "business" of providing an SIS, there is an apparent conflict of professional interest for the IT personnel approving outside SISs for use.
 - *The USOE required specifications are to ensure the security of individual student data and the successful transfer of required data to USOE. USOE only approves the ability of any vendor to meet the specifications. If the vendor does not meet the specifications then the LEA may be unable to meet the required deadlines for data submission.*



Judy Park, Ed.D
Associate Superintendent
Utah State Office of Education