



Minnesota Department of Education
400 NE Stinson Boulevard
Minneapolis, MN 55413

February 25, 2025

Dear Representative Anderson and House Education Finance Committee Members,

I write to share the Minnesota Department of Education's views regarding HF 1 as amended (DE2). The Minnesota Department of Education (MDE) is committed to ensuring the highest program integrity and robust oversight to prevent and root out fraud, waste, and abuse. MDE appreciates the opportunity to share our views on House File 1, particularly given our perspective having recently established a statutorily created Office of Inspector General.

We believe we have a valuable perspective about the needs and considerations in establishing clear and appropriate authority for an OIG to do the important work of investigating and combatting fraud, waste, and abuse. A cornerstone for our work has been aligning with the Association of Inspectors General Principals and Standards, which emphasize the need for clear reporting, independence, confidentiality, and data protection.

MDE OIG is set up to conduct investigations, including into criminal activity, that can ultimately lead to prosecution based on evidence uncovered during an MDE OIG investigation. This requires the utmost level of care with regard to protocol and procedure, confidentiality, and cooperation with law enforcement entities. It also requires adequate due-process protections to ensure sanctions withstand legal challenge. MDE has proposed statutory updates in both 2024 and 2025 to ensure that MDE's OIG has the tools it needs to effectuate the MDE OIG's purpose, in terms of preserving confidentiality, protecting complainants, imposing effective sanctions, and accessing needed information. We bring these experiences to our review of this proposed language in HF 1.

As I reaffirm our shared priority on preventing and rooting out fraud, waste, and abuse in programs that MDE oversees, I would like to take this opportunity to present some considerations and concerns for the committee.

Impact to MDE Program Integrity

The proposals in House File 1, could have a negative impact on the current structures and practices around data classification, confidentiality, immunity, sanctions, and reporting.

The bill is missing critical components that uphold data protections, confidentiality, and immunity that MDE's OIG already has in place or are proposed by MDE this legislative session. Requiring agencies to provide all data to the statewide OIG, regardless of classification, but not including a provision affording

OIG protected data classification statuses, nor law enforcement protections under Minnesota law, misses a layer of confidentiality protection for OIG data and risks exposing agency data. These protections are currently in place for DHS OIG data and MDE is proposing for its OIG data. Additionally, House File 1 does not include clear enough protections against retaliation against state employees or civil immunity for good faith reporters, which are essential protections for a robust fraud, waste, and abuse prevention system.

Sanctions are a fundamental aspect of fraud, waste, and abuse prevention processes and must be established clearly for effective enforcement. This proposal addresses imposing sanctions in two different places: first it permits the Commissioners of Administration or MMB to impose temporary sanctions under some circumstances, and then with regard to more permanent sanctions, it says only that an agency must “stop payment, increase oversight, or take other action” if approved or directed by law enforcement.

This is a confusing set of sanctions authority. First, it does not provide either the OIG or agencies themselves with the authority to impose sanctions. The responsibility and authority to enforce sanctions should continue to reside with an OIG within MDE, particularly given that what temporary sanctions may be imposed may involve detailed questions of the regulations or laws governing the specific state program involved. Second, it is an unorthodox arrangement for state law to direct state agencies to follow directives of unnamed law enforcement entities. It is not clear how law enforcement entities would participate, and this could create complications if the sanctions a law enforcement entity directs an agency to take are not permitted under the applicable state program rules or applicable laws, or without an analysis of risk to public health or safety.

The sanctions provisions do not include notice requirements or appeal rights. Without those, sanctions imposed under this language may not withstand due-process scrutiny when imposed. Collaborating with law enforcement and other entities is of utter importance, but it must be exercised in an effective and efficient manner. The proposal requires reporting fraud and “other misuse” to law enforcement, but reporting other misuse may not be appropriate when the activity involves no suspicion of fraud or other criminal activity. This could result in overreporting and adversely impacting law enforcement relationships. House File 1 amends statute to remove language that does not necessitate reporting when it “would knowingly impede or otherwise interfere with an ongoing criminal investigation.” It is not clear why this proposal seeks to remove this protection against interfering with criminal investigations.

Finally, the proposal expands what must be reported to the LAC under Chapter 16. Previously, reporting on agency OLA reports were to only disclose the number and type of allegations involved, which provides a level of protection from more detailed information potentially interfering with ongoing investigations. This proposal removes that limitation.

Separation of Powers

MDE remains committed to a close partnership with the legislature in our OIG work; however, legislative oversight of executive branch OIG operations presents challenges with regard to the independence of the office and coordination of the work.

The placement of the proposed new OIG in conjunction with the OLA and its relationship with the Legislative Audit Commission present challenges to OIG independence and management of criminal investigations. This also presents challenges with regard to coordination in sanctions and coordination with law enforcement. Requiring the OIG to report suspected fraud, waste, and abuse to the LAC and OLA mid-investigation could compromise criminal investigations and cooperative efforts with law enforcement. Additionally, the language leaves open the possibility that the OLA could initiate activities based on that information while an OIG investigation is ongoing. Requiring LAC approval of OIG policies - and under specified time periods - could limit OIG independence.

Requiring reporting to the LAC and other legislative chairs when the OIG has “document[ed] the existence of suspected fraud, misuse, or other unlawful use of funds” (lines 7.28-7.29) would involve mid-investigative reporting which opens investigations up to significant risk, including the reticence of law enforcement to work with the OIG. It is not clear what, if any, data protections such reported information would have in the possession of the LAC and other legislative chairs. This could also impact agency funds when any misuse is still only suspected.

Impact of Proposal and OIG Transition on MDE

MDE has made significant progress since the OIG was established in 2023, and our focus needs to remain on the work underway to prevent and investigate fraud, waste and abuse.

The MDE OIG has been established, funded, and enhanced over the past two legislative sessions, resulting in an oversight and enforcement entity that is well-positioned to support program integrity and combat fraud, waste, and abuse in MDE programs. As I noted above, MDE’s OIG is established and operating under AIG principals after careful consideration of its procedure, access, and sanction needs. MDE anticipates several impacts on the continuity of our work by eliminating MDE’s OIG and rescinding MDE OIG statutory authority.

MDE’s OIG has ongoing, open investigations and its Standard Operating Procedures, Mission, Vision and Manual established. If MDE’s OIG moved to a statewide OIG, it would take a significant amount of time for the statewide OIG to establish policies and procedures, particularly given differences between MDE’s statutory authority and that proposed here. Specifically, transition planning would be needed to determine how to transfer open cases, how to maintain working partnerships with law enforcement, considering what and how data classifications would apply and transfer, how to transfer and store information and data and case tracking.

Second, MDE’s OIG has developed strong working relationships with MDE program areas which are key to ensuring effective communication and information flow to OIG. MDE OIG is also building its understanding of MDE programs and governing requirements, which is necessary to thoughtfully and effectively impose sanctions that withstand legal challenge. This proposal could impact the efficacy of investigations into fraud, waste, and abuse in MDE programs by directing resources to transition planning rather than continuity of operations within MDE OIG. Additionally, the proposal requires that all OIG staff serve in the unclassified service. Given that MDE’s OIG employees (and other state employees) are currently in the classified service, this could make recruitment and retention of highly skilled staff challenging.

Thank you for the opportunity to comment on House File 1. MDE appreciates your partnership in the important work of detecting and preventing fraud, waste, and abuse and welcomes additional discussions. In the spirit of partnership, it is important to highlight the Governor’s comprehensive anti-

fraud package. This package strengthens investigation and enforcement authority, improves detection and oversight, and increases criminal penalties. It is critical that the administration be given the tools that are requested in the Governor's comprehensive package.

Sincerely,

A handwritten signature in black ink, appearing to read "Willie Jett". The signature is stylized and somewhat cursive, with a prominent initial "W" and "J".

Willie Jett
Commissioner of Education