



**AGENDA**  
**Durham Public Schools Board of Education**  
**Instructional Services Committee**  
**August 5, 2013**  
**Fuller Administration Building, 511 Cleveland Street, Durham, NC**

1. Call to Order
2. Moment of Silence
3. Agenda Review and Approval
4. Public Comment
5. Instructional Services Committee Meeting Minutes
  - I. June 10, 2013
6. Reports
  - I. North Carolina Museum of Life and Science Contract
  - II. North Carolina Accountability Model Update
  - III. Discovery Education Agreement
  - IV. North Carolina Write Contract
7. Summary of Follow Up Items
8. Adjournment

***Mission Statement***

*In collaboration with our community and parents, the mission of Durham Public Schools is to provide all students with an outstanding education that motivates them to reach their full potential and enables them to discover their interests and talents, pursue their goals and dreams, and succeed in college, in the workforce and as engaged citizens.*



*One Vision. One Durham.*

Date: August 5, 2013

## Durham Public Schools Instructional Services Committee PRECIS

**Agenda Item:** Instructional Services Committee Meeting Minutes

**Staff Liaison Present:** Lewis D. Ferebee, Ed.D.

**Phone #:** 560-3874

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### Main Points:

Administration is presenting meeting minutes for consideration and approval:

- June 10, 2013 – Instructional Services Committee

### Fiscal Implications:

- None

### Strategic Plan Alignment:

- None

### Purpose

Information

Discussion

Action

Consent

*Reviewed by:*

Finance \_\_\_\_\_

Attorney \_\_\_\_\_

**DRAFT**  
Minutes of the  
Instructional Services Committee of the Board of Education  
Durham Public Schools

The Instructional Services Committee of the Durham Public Schools Board of Education held a meeting on Monday, June 10, 2013 at 4:30 p.m. in the Board Room, Fuller Administration Building - 511 Cleveland Street, Durham, NC.

**Committee members present**

Leigh Bordley, Chairperson; Minnie Forte-Brown, Heidi Carter, Omega Parker, Natalie Beyer, Nancy Cox and Pastor Fredrick Davis.

**Administrators present**

Dr. Lewis Ferebee, Chief of Staff; Dr. Julie Spencer, Area Superintendent for Middle Schools; Teresa Daye, Executive Director of Curriculum, Instruction and Assessment; Beth Cross, Director of Advanced Academics; Mary Gray Leonard, Director of Media Services.

**Attorney present**

Ken Soo

**Call to Order/Moment of Silence**

Chair Bordley called the meeting to order and presided over a moment of silence.

**Agenda Review and Approval**

Chair Bordley moved to adopt the agenda as presented. The agenda was approved as presented.

**General Public Comment**

Public Comments – Alan Lang offered comments regarding the committee meeting minutes, Invision Services, and Citizens School.

**Approval of Minutes**

Presented for approval were the May 6, 2013 minutes.

Minutes were approved with the following edits:

- Add the names of the members of the public who provided comments
- Language edited for the Wellness Program Update and the Moving in the Middle Update

**Reports**

**Academically or Intellectually Gifted (AIG) Plan**

Dr. Teresa Daye and Beth Cross presented the plan for serving Academically and/or Intellectually Gifted (AIG) Students. The plan was presented for discussion and subsequent approval.

Administration answered all questions. The plan was placed on the agenda for the June Board meeting for action.

**Standards-Based Progress Reporting Update**

Dr. Ferebee and Dr. Daye provided an update on Standards-Based Progress reporting including an overview of the purpose, themes from the literature and the Duke University Research Collaborative.

Administration answered all questions. The report was for information only.

**Citizens School Contract**

Dr. Ferebee and Dr. Spencer presented the Citizen Schools Extended Learning Model Contract, recommending that DPS continue the partnership agreement for the extended learning programs at Neal and Lowe’s Grove Middle Schools.

Administration answered all questions. The Citizens School Contract was placed on the agenda for the June Board meeting for action

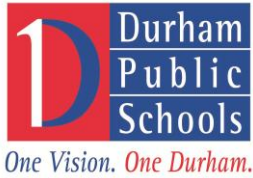
**Revised Policy 3045 – Use of Videos**

Dr. Daye and Mary Gray Leonard recommended revisions to policy 3045 – Use of Videos. This agenda item was presented for discussion and subsequent approval.

Administration answered all questions. Revised Policy 3045-Use of Videos was placed on the agenda for action pending recommended changes for the June Board meeting.

Meeting was adjourned.

DRAFT



Date: August 5, 2013

**Durham Public Schools  
Instructional Services Committee  
PRECIS**

**Agenda Item:** Museum of Life and Science and Durham Public Schools Partnership

**Staff Liaison Present:** Lewis Ferebee, Ed.D.  
Teresa Daye, Ed.D.

**Phone #:** 919.560.3874  
**Phone #:** 919.560.9181

**Main Points:**

- Durham Public Schools continues to partner with the Museum of Life and Science to provide instructional services in science to elementary and middle schools. These services include: staff development, consultation, on-site or school-site educational programs, teachers use of the Museum’s Science Education Resource Center.
- In addition, the Museum has provided kit storage and refurbishment for the K-6 science kits. The Durham Public Schools science kits are the primary instructional resource for elementary science.
- The attached contract represents the established agreement negotiated between the Museum of Life and Science and Durham Public Schools.
- Administration submits this plan for discussion and subsequent approval.

**Fiscal Implications:**

- The total cost of the contract is \$284,507 and will be supported through local funds.

**Strategic Plan Alignment:**

- **Goal II.3** – DPS will strategically collaborate with local, regional and global organizations to increase the number of partnerships that support student learning.
- **Goal I.7**– DPS will target Science, Technology, Engineering, Arts and Math (STEAM) integration to improve student achievement outcomes as measured by school, district and state assessments.

**Purpose**

**Information**

**Discussion**

**Reviewed by:**

**Finance** PL

**Attorney** BNJ

**Museum of Life and Science/Durham Public Schools Partnership  
Elementary School Science Program Enrichment  
2013-14 Partnership Agreement**

This Contract is made this 22<sup>nd</sup> day of August, 2013 by and between the Durham Public Schools Board of Education (“DPS” or “District”) and the NC Museum of Life and Science (“Museum” or “Provider”) for the time period of August 22, 2013 to June 30, 2014.

For and in consideration of the mutual promises set forth in the Contract, the parties do mutually agree as follows:

**I. Obligations of Museum. The Museum agrees to provide the following services to Durham Public Schools Board of Education (DPS):**

1. *School Programs* The Museum will deliver Starlab programs for up to 116 third grade classes in the fall of 2013.
2. *Science Resources* The Museum will build science kits for K-5 based on the new 2013-14 curriculums, as outlined below. Any additional kits will require an additional contract.

The Museum will provide one kit per elementary classroom, per rotation K-5, in the following amounts:

- K – four rotations, up to 140 kits per rotation
- 1 – four rotations, up to 140 kits per rotation
- 2 – four rotations, up to 140 kits per rotation
- 3 – four rotations, up to 130 kits per rotation
- 4 – four rotations, up to 120 kits per rotation
- 5 – four rotations, up to 120 kits per rotation

This number of kits provides for both year-round and traditional calendar schools. Select materials will be sent to the schools’ science contacts and shared among multiple teachers. Materials lists will be created and agreed upon by the Museum and DPS.

3. *Staffing Resources*

Museum staff will be involved with the K-5 Science program in the following ways:

- Deliver Starlab program and assembly programs using museum resources.
- Assist the DPS Science K-12 specialist in selecting materials designed to match the 2013-14 curriculum.
- Build and refurbish kits for the second, third and fourth units of the 2013-14 school year and the first unit of the 2014-15 school year.
- Assist the DPS Science K-12 specialist in collecting and analyzing teacher feedback data.

- Provide quarterly kit trainings at the museum for elementary school science contacts.
- Provide two admit-four memberships to the DPS Science K-12 specialist, which can be checked-out by the science contacts.

#### 4. *Program Coordination*

The Museum's manager for Program Development and Partnerships is responsible for resources communications between the Museum and Durham Public Schools. The DPS staff and Museum SERC staff will hold regular meetings to review refurbishment scheduling and material needs.

Museum staff will provide the science K-12 specialist an updated missing kit list in writing no later than 7 days after the quarterly deadline by which kits are required to be returned to the Museum or the Bacon Street facility. Museum staff will provide the science K-12 specialist a missing item list at the end of each rotation.

Museum staff will communicate to the K-12 science specialist all substitutions to original materials prior to refurbishing the kits.

## **II. Obligations of DPS. DPS agrees to:**

1. Compensate Museum quarterly for services rendered over a 12-month period with total payment not to exceed \$284,507. Provider shall submit to DPS an itemized invoice, and DPS will remit four payments of \$71,126.75 due as follows: September 1, 2013, December 1, 2013, March 1, 2014 and a final payment on June 1, 2014.
2. Provide a Museum science contact from each participating elementary school to facilitate scheduling and communications for kits and educational programs. The name and contact information of the science contact will be provided in writing to the Museum SERC staff on or before September 1, 2013. The science contacts will participate in quarterly kit trainings where they review the educational content of each kit, as well as kit rotation logistics, with Museum staff. They will also coordinate the schedule for educational programs at their school, and will provide notice of change within three business days of the scheduled program date.
3. Provide a list of the number of teachers per grade for each school. Changes to this list must be made at least two weeks prior to kit pick-up.
4. Provide support through the science K-12 specialist to:
  - a. Approve materials lists for new kits.
  - b. Arrange meetings with the DPS science contacts and Museum staff.
  - c. Set up the rotation cycle for the DPS kits and provide the schedule to Museum staff no less than two weeks before the first rotation begins. Any requests for a change to the rotation schedule must be submitted in writing to the Museum no later than September 1, 2013. Verbal requests and/or requests received

after September 1, 2013, will be evaluated on a case-by-case basis due to structured distribution schedules.

- d. Send the rotation schedule and any updates in writing to science contacts, as well as reminders before the scheduled delivery and pick-up for each unit.
  - e. Assist with program content design and alignment with DPS curriculum.
  - f. Assist in the design and implementation of quarterly kit trainings and coordinate training schedules with science contacts. DPS will also provide refreshments for kit training sessions.
5. Provide transportation of K-5 Infrastructure kits between the Museum, the Bacon Street facility and Durham Public Schools through the district courier system.
  6. Provide all replacement items above and beyond the agreed materials budget within thirty days following receipt in writing of the quarterly inventory prepared by the Museum staff. If the item is not provided in time for the kit delivery, a DPS representative will be responsible for delivering the item to the individual school. In the event that the Museum must purchase any of these items to maintain the refurbishment schedule, the cost will be reimbursed by Durham Public Schools within thirty days of receiving purchasing paperwork (receipts, invoices, etc.) with the approval of the Science K-12 Specialist.
  7. Provide support in retrieval and transporting of non-consumable supplies and kits not returned by the quarterly deadline.
  8. Provide support in assuring that kits are returned in good condition and in a timely way.

**III. Ownership.** The K-5 Infrastructure kits shall remain the property of DPS at all times.

**IV. Advertising.** It is the policy of the Museum that its name shall not appear in any advertising or endorsement without express written permission, which may be sought from the President of the Museum.

**V. Termination.** Either party, with 30 days written notice, may cancel this agreement. In the event that the Contract is cancelled before the end of the 2013-14 school year, DPS shall be required to pay for actual services rendered on the following proportionate basis:

- a. For each K-5 rotation that the Museum has built, DPS shall pay \$71,126.75.
- b. If the Museum has delivered the StarLab programs, DPS shall pay \$20,880.

If DPS has paid more than the required amount as set forth above, the Museum shall reimburse DPS for the excess payment amount within 10 business days of written notice of cancellation.

**VI. Termination for Default.** At any time, DPS may terminate this Contract



immediately and without prior notice if provider is unable to meet goals and timetables or if DPS is dissatisfied with the quality of services provided.

- VII. Contract Funding.** It is understood and agreed between the Provider and DPS that DPS's payment obligation under this Contract is contingent upon the availability of appropriated funds from which payment for Contract purposes can be made.
- VIII. Lunsford Act.** Provider acknowledges that N.C. General Statute 14-208.18 prohibits anyone required to register as a sex offender under Article 27A of Chapter 14 of the General Statutes from knowingly being on the premises of any school. This prohibition applies to persons required to register under Article 27A who have committed any offense in Article 7A of Chapter 14 or any offense where the victim of the offense was under the age of 16 years at the time of the offense.
- IX. Criminal Background Checks.** The Museum shall conduct criminal background checks on each of its employees who, pursuant to this Agreement, engage in any services on DPS property or at DPS events. The Provider shall provide documentation that criminal background checks were conducted on each of its employees prior to hiring, and shall refuse employment to any person convicted of a felony or any other crime, whether misdemeanor or felony, that indicates the person poses a threat to the physical safety of students, school personnel or others. Such check shall include an annual check of the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry. Provider shall not assign any employee or agent to provide services pursuant to this Contract if (1) said worker appears on any of the listed registries; (2) said worker has been convicted of a felony; (3) said worker has been convicted of any crime, whether misdemeanor or felony, involving sex, violence, or drugs; or (4) said worker has engaged in any crime or conduct indicating that the worker may pose a threat to the safety or well-being of student or school personnel. DPS reserves the right to prohibit any individual employee of Provider from providing services on DPS property or at DPS events if DPS determines, in its sole discretion, that such employee poses a threat to the safety or well-being of students, school personnel or others.
- X. Relationship of Parties.** The Provider shall be an Independent Contractor of DPS and nothing herein shall be construed as creating a partnership or joint venture; nor shall any employee of the Provider be construed as an employee, agent or principal of DPS.
- XI. Compliance with Applicable Laws, Policies, and Directives of DPS Staff.** Provider shall comply with all applicable laws and regulations in providing services under this Contract. Provider represents that it is aware of and in compliance with the Immigration Reform and Control Act, and that it will collect properly verified I-9 forms from each employee providing services under this Contract. Provider shall not employ any individuals to provide services to DPS who are not authorized by federal law to work in the United States. Provider acknowledges that the Durham Public

Schools Board of Education has adopted policies governing conduct on District property and agrees to abide by any and all relevant DPS policies and the directives of the Superintendent, the Superintendent's designee, the school principal or the school principal's designee while on District property.

**XII. Insurance.** Provider agrees to maintain \$1,000,000 in general liability and other appropriate insurance, as well as Workers Compensation in the required statutory amount, for all employees of Provider participating in the provision of services under this Contract. Certificates of such insurance shall be furnished by Provider to DPS and shall contain the provision that the DPS be given 20 days' written notice of any intent to cancel or terminate by either Provider or the insuring company.

**XIII. Indemnification.** Provider shall indemnify, defend and hold harmless the DPS, its school board members, officers, agents, and employees from and against all claims, actions, demands, costs, damages, losses and/or expenses of any kind whatsoever, in whole or in part, proximately caused by the negligent or willful acts or omissions of the Provider, its agents and/or employees, including but not limited to court costs and attorney's fees incurred by Provider in connection with the defense of said matters.

In addition, DPS shall indemnify, defend and hold harmless the Museum, its officers, agents, and employees from and against all claims, actions, demands, costs, damages, losses and/or expenses of any kind whatsoever, in whole or in part, proximately caused by the negligent or willful acts or omissions performed by DPS, by its employees or students, including but not limited to court costs and attorney's fees incurred by the Museum in connection with the defense of said matters.

**XIV. Assignment.** The Provider shall not assign, subcontract, or otherwise transfer any interest in this Contract without the prior written approval of DPS.

**XV. Contract Modifications.** This Contract may be amended only by written amendments duly executed by and between DPS and the Provider.

**XVI. North Carolina Law.** North Carolina law will govern the interpretation and construction of the Contract.

**XVII. Entire Agreement.** This Contract constitutes and expresses the entire agreement and understanding between the parties concerning the subject matter of this Contract. This document, the purchase order, if any, used in connection herewith and any other document incorporated in this Contract by reference, supersede all prior and contemporaneous discussions, promises, representations, agreements and understandings relative to the subject matter of this Contract.

**XVIII. Severability.** If any provision of this Contract shall be declared invalid or unenforceable, the remainder of the Contract shall continue in full force and effect.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year indicated below.

**DURHAM PUBLIC SCHOOLS BOARD OF EDUCATION**

By: Heidi Carter, Board Chair

\_\_\_\_\_  
(Signature)

Attest: Dr. Eric J. Becoats, Superintendent

\_\_\_\_\_  
(Signature)

Durham Public Schools Board of Education  
511 Cleveland Street  
PO Box 30002  
Durham, NC 27702

This instrument has been pre-audited in the manner required by the School Budget and Fiscal Control Act.

By: \_\_\_\_\_, Durham Public Schools Finance Officer

\_\_\_\_\_  
Signature Date

**NC MUSEUM OF LIFE AND SCIENCE**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

NC Museum of Life and Science  
433 Murray Avenue  
Durham, NC 27704



*One Vision. One Durham.*

Date: August 5, 2013

## Durham Public Schools Instructional Services Committee PRECIS

**Agenda Item:** North Carolina Accountability Model Update

**Staff Liaison Present:** Lewis Ferebee, Ed.D.      Phone #: (919) 560-3874

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### **Main Points:**

- Administration will present an overview of the North Carolina Accountability Model.
- Administration presents this agenda item for information.

### **Fiscal Implications:**

- These efforts are supported through federal, state, and local funds.

### **Strategic Plan Alignment:**

- **Goal I.2** – DPS will expand opportunities for academic acceleration to eliminate achievement gaps and ensure annual student growth as measured by district, state, and local assessments.

<p><b><u>Purpose</u></b></p> <p>Information <input checked="" type="checkbox"/>                      Discussion <input type="checkbox"/></p> <p>Reviewed by:                      <input type="checkbox"/> Finance _____      <input type="checkbox"/> Attorney _____</p>
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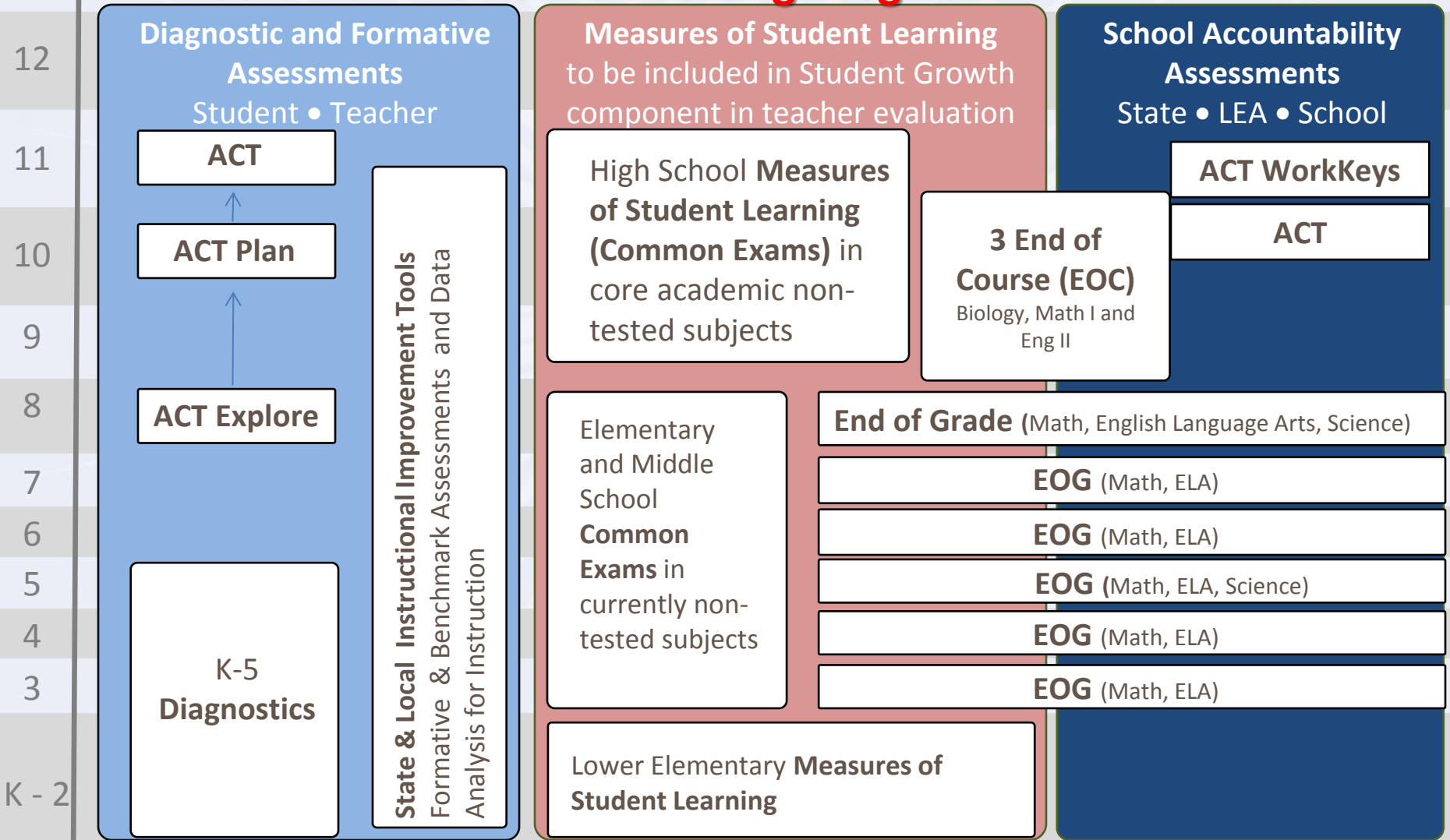
# **NC Accountability Model Update**

**Instructional Services Committee  
August 5, 2013**

## **Presentation Outline**

- Overview of the NC State Testing Program
- Describe the assessment administration
- Explain the new accountability indicators
- Review previous student proficiency
- Discuss next steps

## What is North Carolina's Testing Program?



**Diagnostic and Formative Assessments**  
Student • Teacher

**ACT**

**ACT Plan**

**ACT Explore**

**K-5 Diagnostics**

**State & Local Instructional Improvement Tools**  
Formative & Benchmark Assessments and Data Analysis for Instruction

**Measures of Student Learning**  
to be included in Student Growth component in teacher evaluation

**High School Measures of Student Learning (Common Exams)** in core academic non-tested subjects

**Elementary and Middle School Common Exams** in currently non-tested subjects

**Lower Elementary Measures of Student Learning**

**School Accountability Assessments**  
State • LEA • School

**ACT WorkKeys**

**ACT**

**3 End of Course (EOC)**  
Biology, Math I and Eng II

**End of Grade (Math, English Language Arts, Science)**

**EOG (Math, ELA)**

**EOG (Math, ELA)**

**EOG (Math, ELA, Science)**

**EOG (Math, ELA)**

**EOG (Math, ELA)**

# How do we administer the assessments?

## Online

All End of Course Assessments  
(Math I, English II, & Biology)

End of Grade 5 & 8 Science

- NCEXTEND2 Alternate Assessments
- NCEXTEND2 Reading and Math 3-8
- NCEXTEND2 Science 5 & 8
- NCEXTEND2 Math I, English II & Biology

## Paper/Pencil

End of Grade  
Reading and Math 3-8

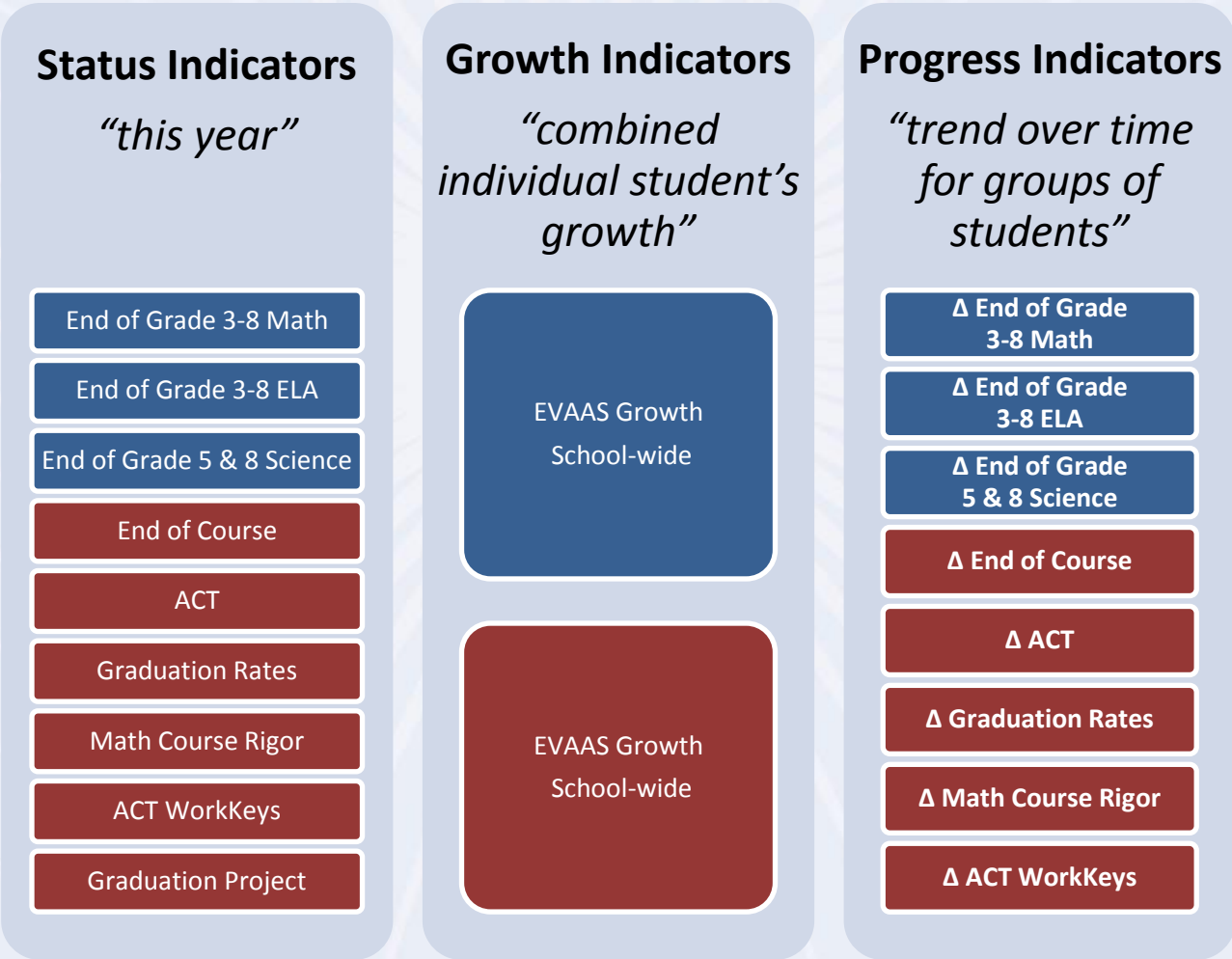
- NCDPI recommends online administration, but paper/pencil will be available for all assessments



# How are schools held accountable?

**Elementary  
and Middle  
Schools**

**High  
Schools**



# Standard Setting

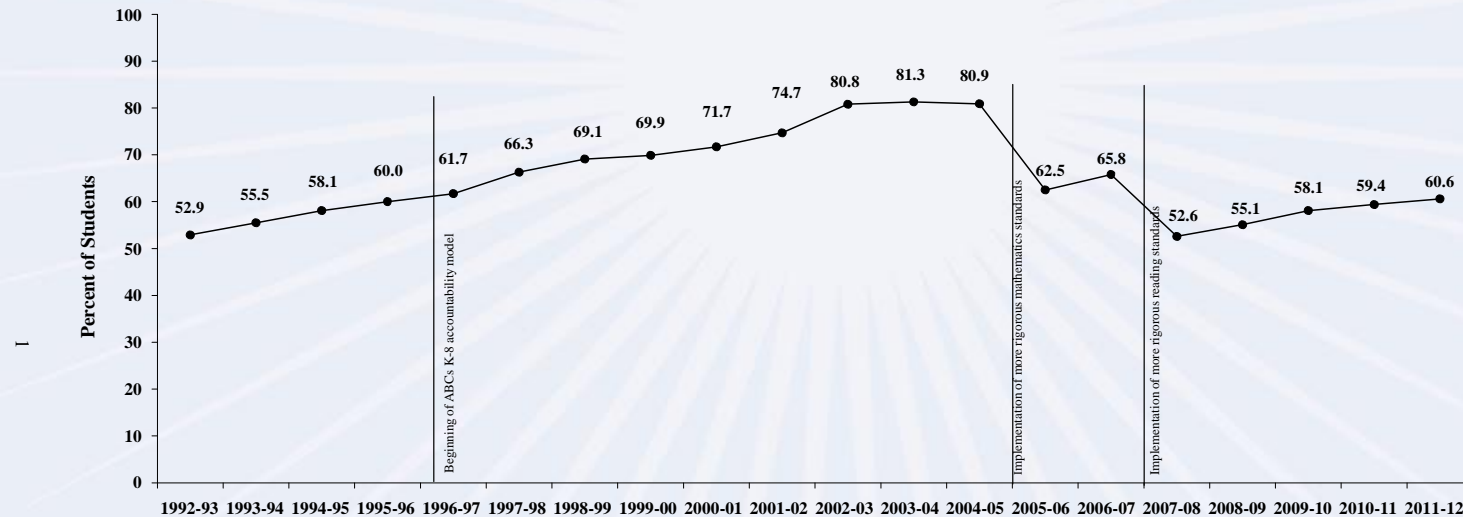
Schedule	Deliverable
June 28, 2013	<ul style="list-style-type: none"> <li>○ <b>All test data</b> from 2012-13 <b>due</b> to NCDPI Accountability</li> </ul>
July 2013	<ul style="list-style-type: none"> <li>○ <b>Development of scale</b> for all assessments</li> </ul>
Late June and July 2013	<ul style="list-style-type: none"> <li>○ <b>Standard Setting</b> for all assessments</li> </ul>
August 2013	<ul style="list-style-type: none"> <li>○ Data Analysis</li> </ul>
Mid-September 2013	<ul style="list-style-type: none"> <li>○ Recommendations prepared from Standard Setting for SBE approval</li> </ul>
October 3, 2013	<p><b>Presented to SBE for Approval</b></p> <ul style="list-style-type: none"> <li>• <b>Cut scores</b></li> <li>• <b>Achievement Levels and Descriptors</b></li> <li>• <b>2012-13 READY Accountability results</b></li> </ul>

# How many students will be proficient?

## Reading and Math Performance: 1992-93 to 2011-12

The North Carolina State Testing Results, 2011-12

Figure 1. 1992-93 to 2011-12 End-of-Grade General Test Multiple-Choice Test Results  
Statewide Percent of Students At or Above Level III in Both Reading and Mathematics  
Grades 3-8



Notes:\*N counts equal the number of students tested in both reading and mathematics; previous years are comparable.

Prior to 2002-03, the end-of-grade reading scale score range was 114-187. From 2002-03 to 2006-07, the end-of-grade reading scale score range was 216-290. From 2007-08 and beyond, the end-of-grade reading scale score range is  $\leq 330$  to  $\geq 370$ .

Prior to 2000-01, the end-of-grade mathematics scale score range was 98-208. From 2000-01 to 2004-05, the end-of-grade mathematics scale score range was 218-310. From 2005-06 and beyond, the end-of-grade mathematics scale score range is  $\leq 328$  to  $\geq 386$ .

The "Percent At or Above Level III in Both Reading and Mathematics" is calculated by dividing the number of students passing both reading and mathematics tests at or above Achievement Level III by the number of students with valid scores in both reading and mathematics, therefore, the data do not include students tested only in reading or mathematics or taking alternate assessments.

End-of-grade retest data are not included in this figure. See Appendix A for student proficiency with retest scores included starting in 2008-09.

Data received from LEAs and charter schools after September 6, 2012 are not included in this figure.

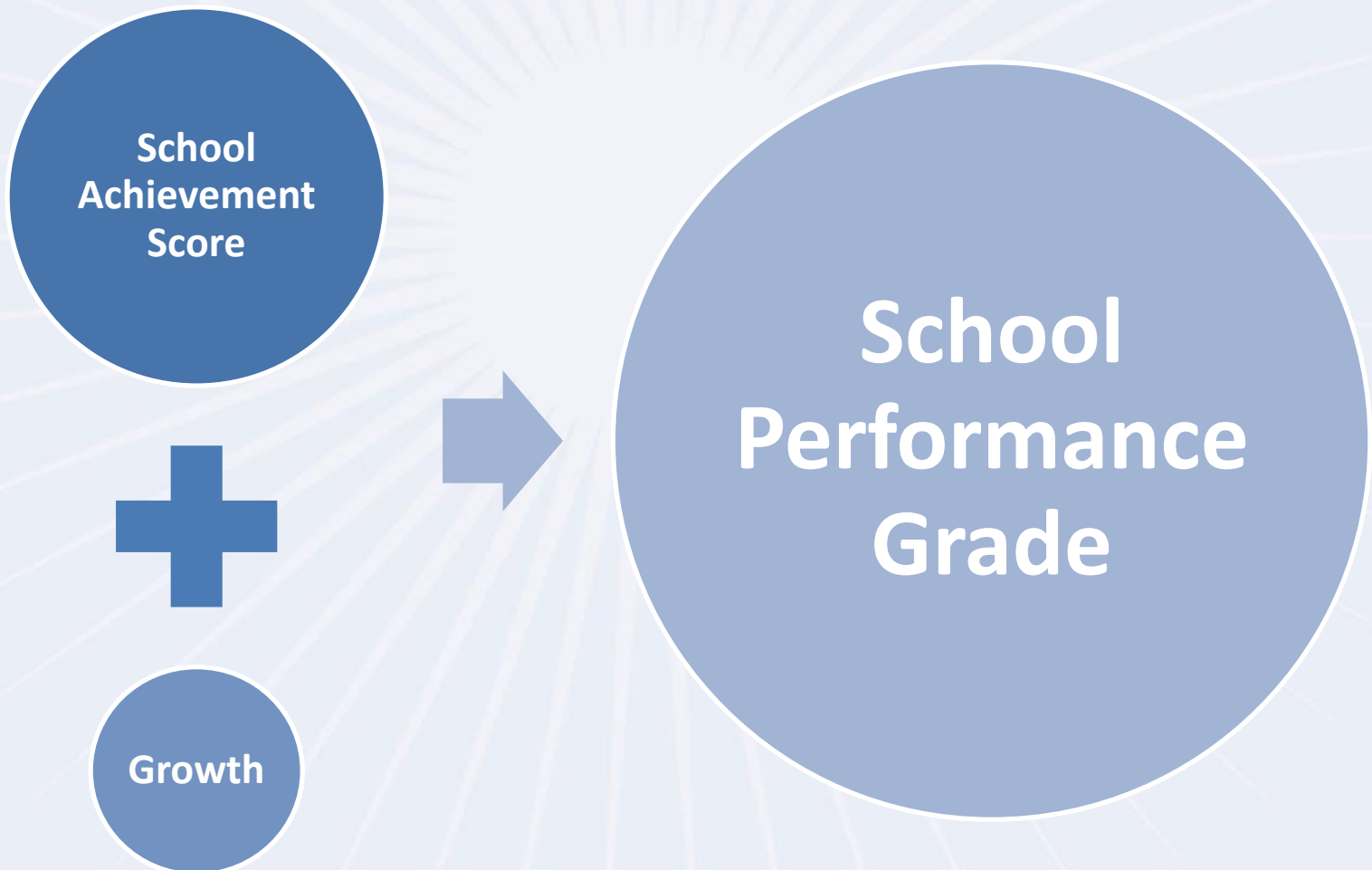
Prepared by the NCDPI Division of Accountability Services/Test Development Section.

# How are the School Performance Grades calculated?

## Current Law Passed in Budget (Senate Bill 402, July 26, 2013)

- Delay reporting until August 1, 2014
- Will be based on 2013-14 school year
- Equal weighting of indicators: each indicator has the same weight in the calculation of the School Achievement Score
- Growth included (except for schools who meet growth and have a School Achievement Score at or above 80%)

# School Performance Grades



# READY Accountability and School Performance Grades Indicators

<p><b>EOGs and EOCs</b> (Elementary and High)</p>	<ul style="list-style-type: none"> <li>• Percent of proficient tests in a school           <ul style="list-style-type: none"> <li>– All EOG/EOC tests, subjects, and grade levels (Including alternate assessments)</li> </ul> </li> </ul>
<p><b>Math Course Rigor</b></p>	<ul style="list-style-type: none"> <li>• Percent of FRC graduates who earn credit in Alg. II, Int. Math III, or Common Core Math III           <ul style="list-style-type: none"> <li>– Excludes the 1% and FRC9 populations</li> </ul> </li> </ul>
<p><b>Graduation Rate</b></p>	<ul style="list-style-type: none"> <li>• Percent of students that graduate within 4 years (4-year cohort graduation rate)</li> </ul>
<p><b>ACT WorkKeys</b></p>	<ul style="list-style-type: none"> <li>• Percent of graduates who are CTE concentrators and who achieve a Silver certificate, or better, on the WorkKeys assessment</li> </ul>
<p><b>ACT</b></p>	<ul style="list-style-type: none"> <li>• School Performance Grades will use an ACT Composite of 17 or better</li> <li>• READY Model will also report the percent of college-ready benchmarks met</li> </ul>

# Testing

- ***Read to Achieve***
  - End-of-grade test form administered at beginning of 3<sup>rd</sup> grade
  - End-of-grade retesting for end of 3<sup>rd</sup> grade administrations
- ***ACT***
  - HB 587: requires an alternative for ACT in Spring 2014 and for ACT Plan in Fall 2014

A large sunburst graphic with many thin rays emanating from a central point, filling the background of the slide.

# Discussion





Date: August 5, 2013

## Durham Public Schools SUPPORT SERVICES COMMITTEE PRECIS

**Agenda Item:** Contract for Professional Services between Durham Public Schools and Discovery Education.

**Staff Liaison Present:** Teresa Daye, Ed.D.  
Benjy Downing

**Phone #:** 919.560.9181  
**Phone #:** 919.560.3751

### Main Points:

- The 2013-2014 contract with Discovery Education will serve all DPS teachers and students. Every teacher and every student will have access to the digital content which includes the wealth of video instructional resources and other digital STEAM resources.
- Discovery Education has been an educational partner with DPS in the past and the students and staff benefitted from the engaging resource. This request is to continue this resource for another year.
- Administration presents this contract for discussion and subsequent approval.

### Fiscal Implications:

- The contract is for an amount not to exceed \$130,000 and will be supported through local funds.

### Strategic Plan Alignment:

- **Goal 1.2** - DPS will expand opportunities for academic acceleration to eliminate achievement gaps and ensure annual student growth as measured by district, state and local assessments.
- **Goal 1.7** - DPS will target STEAM integration to improve student achievement outcomes as measured by school, district and state assessments.

### Purpose

Information

Discussion

Reviewed by:

Finance PL

Attorney BNJ



**Subscriber Agreement ("Agreement")  
made 06/12/2013 between Discovery Education, Inc. ("Discovery") and  
DURHAM PUBLIC SCHOOL DISTRICT, NC ("Subscriber")**

- Subject to the terms and conditions of this agreement, Discovery grants to Subscriber, and the educators, administrators, and students (collectively, "Users") enrolled in the school(s) listed in Exhibit A hereto (the "Community") a limited, non-exclusive, terminable, non-transferable license to access Discovery Education *streaming* via the website currently at <http://streaming.discoveryeducation.com>, or by any other means on which the parties may agree, and to use Discovery Education *streaming* as set forth in the Terms of Use located at <http://www.discoveryeducation.com/aboutus/terms-of-use/streaming.cfm>, as Discovery may revise such Terms of Use from time to time (the Discovery Education *streaming* "Terms of Use").

In addition, if Subscriber chooses below to add Discovery Education Science, Discovery grants to Subscriber and Users in the Community a limited, non-exclusive, terminable, non-transferable license to access Discovery Education Science via the website currently at <http://science.discoveryeducation.com>, or by any other means on which the parties may agree, and to use Discovery Education Science as set forth in the Terms of Use located at <http://www.discoveryeducation.com/aboutus/terms-of-use/science.cfm>, as Discovery may revise such Terms of Use from time to time (the Discovery Education Science "Terms of Use").

- The "Term" shall be 07/01/2013 through and including 06/30/2014.
- The pricing for this license (the "Fees") shall be as follows:

**Discovery Education *streaming* PLUS**

Quantity	Description	Price/Year	Discounted Price/Year	Total
9	Discovery Education <i>streaming</i> Plus HS License	\$3,095.00	\$2,940.25	\$26,462.25
6	Discovery Education <i>streaming</i> Plus HS License – LE*	\$1,525.00	n/a	\$9,150.00
37	Discovery Education <i>streaming</i> Plus K-8 License	\$2,570.00	\$2,445.00	\$90,465.00
2	Discovery Education <i>streaming</i> Plus K-8 License – LE*	\$1,275.00	n/a	\$2,550.00
	<b>Total</b>			<b>\$128,627.25</b>

**Discovery Education Science**

Quantity	Description	Price/Year	Discounted Price/Year	Total
	Discovery Education Science K-8 License	\$1,995.00	n/a	
	<b>Total</b>			

\*LE means enrollment of less than 200 students

- The Fees are non-cancellable and are due and payable to Discovery within 30 days of receipt of invoice.
- All other terms and conditions governing this license shall be as set forth in the Terms of Use, and this Agreement, together with the Terms of Use constitute the complete and exclusive terms of the agreement between the parties regarding the subject matter and supersedes all other prior and contemporaneous agreements, negotiations, communications or understandings, oral or written, with respect to the subject matter hereof. There shall be no modifications to this Agreement unless they are in writing, and duly signed by both parties. In no event shall the terms and conditions of a purchase order or any other purchase agreement amend or modify the terms and conditions of this Agreement or the Terms of Use. In the event of a direct conflict between the terms of this Agreement and the terms of the applicable then-current Terms of Use, the terms of this Agreement shall control.



- 6. While Subscriber acknowledges that no student personal information is required for the use of any of the basic Discovery Education services, in the event Subscriber or its Users elect to use any of the functionality within the Discovery Education services which provide personalized pages, individual accounts, other user-specific customization, or otherwise submit or upload information, Subscriber represents and warrants that Subscriber has all necessary authorization to provide to Discovery any information it provides through Discovery services in order to use such functions. Consent is required for the collection, use and disclosure of personal information obtained from children through certain online services, and to the extent required, Subscriber consents to Discovery's use of such information in the course of providing the Discovery Education services. Discovery agrees to use any student personal information and data provided to it by Subscriber in compliance with (i) the Children's Online Privacy Protection Act of 1988 ("COPPA"), the Federal Educational Rights and Privacy Act of 1974 ("FERPA"), Children's Internet Protection Act ("CIPA") and any other laws, regulations and statutes, all solely to the extent applicable, and (ii) Discovery's standard terms of use and privacy policy.
- 7. Discovery understands that government entities, such as Subscriber, may be required to disclose information pursuant to applicable open records acts. Prior to any such disclosure, Subscriber shall make any claim of privilege that may be applicable to prevent such disclosure and will make reasonable efforts to give Discovery reasonable prior notice and a reasonable opportunity to resist such disclosure. In all other respects, all provisions of this Agreement ("Confidential Information") shall be kept strictly confidential by Subscriber and may not be disclosed without prior written consent, except for any disclosure required by any order of a court or governmental authority with jurisdiction over Subscriber.
- 8. This Agreement contains the entire understanding and supersedes all prior understandings between the parties relating to the subject matter herein. The terms and conditions set forth herein shall not be binding on Discovery, or any of its affiliates, until fully executed by an authorized signatory for both Subscriber and Discovery (or its applicable affiliate). Signatures may be exchanged in counterparts. Signatures transmitted electronically by fax or PDF shall be binding and effective as original ink signatures.

DURHAM PUBLIC SCHOOL DISTRICT

DISCOVERY EDUCATION, INC.

By: \_\_\_\_\_  
(Signature Required)

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**RETURN THE ATTACHED EXHIBIT A WITH THIS SIGNED AGREEMENT TO FAX NO. 240-662-8741**

Billing Entity: \_\_\_\_\_

Billing Entity Address: \_\_\_\_\_  
\_\_\_\_\_

Billing Entity Phone Number: \_\_\_\_\_

**Ref. No. O6UJ9C001GHC**

This instrument has been preaudited in the manner required by the School Budget and Fiscal Control Act.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Signature of finance officer)



EXHIBIT A  
LICENSED SCHOOLS

DISCOVERY EDUCATION SCHOOL INFORMATION REQUIRED				PLEASE SELECT THE UPGRADE OPTION(S) BY CHECKING THE PRODUCTS THAT APPLY FOR EACH LICENSED SCHOOL		
SCHOOL NAME	ADDRESS	GRADE LEVELS	NO. OF STUDENTS	PLUS	SCIENCE	
BROGDEN MIDDLE SCHOOL	1001 LEON ST, DURHAM, NC 27704	06 - 08	800	X		
BURTON ELEMENTARY SCHOOL	1500 MATHISON ST, DURHAM, NC 27701	K - 05	331	X		
CARRINGTON MIDDLE SCHOOL	227 MILTON RD, DURHAM, NC 27712	06 - 08	1,158	X		
C C SPAULDING ELEM SCHOOL	1531 S ROXBORO ST, DURHAM, NC 27707	PK - 05	300	X		
CHEWNING MIDDLE SCHOOL	5001 RED MILL RD, DURHAM, NC 27704	06 - 08	576	X		
CITY OF MEDICINE ACADEMY	4100 N ROXBORO ST, DURHAM, NC 27704	09 - 12	233	X		
CLUB BLVD HUMANITIES MAG SCH	400 W CLUB BLVD, DURHAM, NC 27704	K - 05	520	X		
CREEKSIDE ELEMENTARY SCHOOL	5321 EPHEBUS CHURCH RD, DURHAM, NC 27707	K - 05	850	X		
DURHAM PERFORMANCE LEARNING CENTER	401 N DRIVER ST, DURHAM, NC 27703	09 - 12	48	X		
DURHAM PUBLIC SCHOOLS - HOSPITAL SCHOOL	3000 ERWIN RD, DURHAM, NC 27705	PK - 12	27	X		
DURHAM SCHOOL OF THE ARTS	400 N DUKE ST, DURHAM, NC 27701	06 - 12	1,352	X		
EASLEY ELEMENTARY SCHOOL	302 LEBANON CIR, DURHAM, NC 27712	K - 05	623	X		
EASTWAY ELEMENTARY SCHOOL	610 N ALSTON AVE, DURHAM, NC 27701	PK - 05	576	X		
E K POWE ELEMENTARY SCHOOL	913 9TH ST, DURHAM, NC 27705	PK - 05	396	X		
ENO VALLEY ELEMENTARY SCHOOL	117 MILTON RD, DURHAM, NC 27712	PK - 05	734	X		
FAYETTEVILLE ST ELEM SCHOOL	2905 FAYETTEVILLE ST, DURHAM, NC 27707	K - 05	295	X		
FOREST VIEW ELEMENTARY SCHOOL	3007 MOUNT SINAI RD, DURHAM, NC 27705	K - 05	640	X		
GEORGE WATTS MONT MAGNET SCH	700 WATTS ST, DURHAM, NC 27701	PK - 05	281	X		
GLENN ELEMENTARY SCHOOL	2415 E GEER ST, DURHAM, NC 27704	PK - 05	766	X		
HILLDALE ELEMENTARY SCHOOL	2730 HILLDALE RD, DURHAM, NC 27705	K - 05	646	X		
HILLSIDE HIGH SCHOOL	3727 FAYETTEVILLE ST, DURHAM, NC 27707	09 - 12	1,308	X		

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**DISCOVERY EDUCATION SCHOOL INFORMATION REQUIRED**

SCHOOL NAME	ADDRESS	GRADE LEVELS	NO. OF STUDENTS	PLEASE SELECT THE UPGRADE OPTION(S) BY CHECKING THE PRODUCTS THAT APPLY FOR EACH LICENSED SCHOOL	
				PLUS	SCIENCE
HILLSIDE NEW TECH HIGH SCHOOL	3727 FAYETTEVILLE ST, DURHAM, NC 27707	09 - 09	97	X	
HOLT ELEMENTARY SCHOOL	4019 HOLT SCHOOL RD, DURHAM, NC 27704	K - 05	645	X	
HOLTON CAREER & RESOURCE CENTER	401 N DRIVER ST, DURHAM, NC 27703	09 - 12	100	X	
HOPE VALLEY ELEMENTARY SCHOOL	3005 DIXON RD, DURHAM, NC 27707	K - 05	741	X	
J D CLEMENT EARLY CLG HIGH SCH	1801 FAYETTEVILLE ST, DURHAM, NC 27707	09 - 12	322	X	
JORDAN HIGH SCHOOL	6806 GARRETT RD, DURHAM, NC 27707	09 - 12	1,799	X	
LAKEVIEW SCHOOL	3507 DEARBORN DR, DURHAM, NC 27704	06 - 12	257	X	
LAKEWOOD ELEMENTARY SCHOOL	2520 VESSON AVE, DURHAM, NC 27707	PK - 05	455	X	
LAKEWOOD MONTESSORI MIDDLE SCHOOL	700 WATTS ST, DURHAM, NC 27701	06 - 06	65	X	
LITTLE RIVER ELEMENTARY SCHOOL	2315 SNOW HILL RD, DURHAM, NC 27712	K - 05	564	X	
LOWES GROVE MIDDLE SCHOOL	4418 S ALSTON AVE, DURHAM, NC 27713	06 - 08	641	X	
MANGUM ELEMENTARY SCHOOL	9008 QUAIL ROOST RD, BAHAMA, NC 27503	K - 05	483	X	
MERRICK-MOORE ELEM SCHOOL	2325 CHEEK RD, DURHAM, NC 27704	PK - 05	705	X	
MIDDLE COLLEGE HIGH SCHOOL	1637 E LAWSON ST, DURHAM, NC 27703	11 - 12	101	X	
MOREHEAD MONTESSORI ELEM SCH	909 COBB ST, DURHAM, NC 27707	PK - 05	177	X	
NEAL MIDDLE SCHOOL	201 BAPTIST RD, DURHAM, NC 27704	06 - 08	692	X	
NORTHERN HIGH SCHOOL	117 TOM WILKINSON RD, DURHAM, NC 27712	09 - 12	1,559	X	
OAK GROVE ELEMENTARY SCHOOL	3810 WAKE FOREST RD, DURHAM, NC 27703	K - 05	947	X	
PARKWOOD ELEMENTARY SCHOOL	5207 REVERE RD, DURHAM, NC 27713	K - 05	687	X	
PEARSONTOWN ELEMENTARY SCHOOL	4915 BARBEE RD, DURHAM, NC 27713	PK - 05	915	X	
RIVERSIDE HIGH SCHOOL	3218 ROSE OF SHARON RD, DURHAM, NC 27712	09 - 12	1,850	X	
R N HARRIS ELEMENTARY SCHOOL	1520 COOPER ST, DURHAM, NC 27703	PK - 05	400	X	
ROGERS-HERR MIDDLE SCHOOL	911 W CORNWALLIS RD, DURHAM, NC 27707	06 - 08	620	X	

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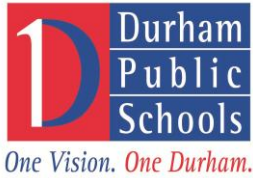


DISCOVERY EDUCATION SCHOOL INFORMATION REQUIRED			PLEASE SELECT THE UPGRADE OPTION(S) BY CHECKING THE PRODUCTS THAT APPLY FOR EACH LICENSED SCHOOL		
SCHOOL NAME	ADDRESS	GRADE LEVELS	NO. OF STUDENTS	PLUS	SCIENCE
SANDY RIDGE ELEMENTARY SCHOOL	1417 OLD OXFORD RD, DURHAM, NC 27704	K - 05	450	<input checked="" type="checkbox"/>	
SHEPARD MAGNET SCHOOL	2401 DAKOTA ST, DURHAM, NC 27707	06 - 08	420	<input checked="" type="checkbox"/>	
SHERWOOD GITHENS MIDDLE SCH	4800 OLD CHAPEL HILL RD, DURHAM, NC 27707	06 - 08	952	<input checked="" type="checkbox"/>	
SOUTHERN HIGH SCH-ENGINEERING	800 CLAYTON RD, DURHAM, NC 27703	09 - 12	135	<input checked="" type="checkbox"/>	
SOUTHERN HIGH SCHOOL	800 CLAYTON RD, DURHAM, NC 27703	09 - 12	1,100	<input checked="" type="checkbox"/>	
SOUTHWEST ELEMENTARY SCHOOL	2320 COOK RD, DURHAM, NC 27713	K - 05	665	<input checked="" type="checkbox"/>	
SPRING VALLEY ELEMENTARY SCH	2051 NORTHERN DURHAM PKWY, DURHAM, NC 27703	K - 05	600	<input checked="" type="checkbox"/>	
W G PEARSON ELEMENTARY SCHOOL	3501 FAYETTEVILLE ST, DURHAM, NC 27707	PK - 05	672	<input checked="" type="checkbox"/>	
W G PEARSON MIDDLE SCHOOL	600 E UMSTEAD ST, DURHAM, NC 27701	06 - 08	250	<input checked="" type="checkbox"/>	
Y E SMITH ELEMENTARY SCHOOL	2410 E MAIN ST, DURHAM, NC 27703	K - 05	357	<input checked="" type="checkbox"/>	

Please add additional pages as necessary

**RETURN THE ATTACHED EXHIBIT A WITH THIS SIGNED AGREEMENT TO FAX NO. 240-662-8741**

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Date: August 5, 2013

**Durham Public Schools  
INSTRUCTIONAL SERVICES COMMITTEE  
PRECIS**

**Agenda Item:** Contract for Professional Services between Durham Public Schools and Measurement Incorporated for NC Write

**Staff Liaison Present:** Heidi Elmoustakim

**Phone #** 919.560.2605

**Main Points:**

- The 2013-2016 contract with Measurement Inc. will serve approximately 27,456 Durham Public Schools students in grades 2-12.
- To improve student writing, NC Write, an online formative writing resource, provides the following supports:
  - Students - writing process support, immediate specific feedback on their writing using the 6 Traits® of writing, and targeted interactive instructional support modules based on that feedback.
  - Instructional staff - professional learning (face-to-face, documents, videos) and live support.
- Administration submits this plan for discussion and subsequent approval.

**Fiscal Implications:**

- The contract is for an amount not to exceed \$525,393 and includes student enrollment in NC Write, professional learning, and technical support for the life of the contract, and will be supported through local funds.

**Strategic Plan Alignment:**

- **Goal 1.6** - DPS will implement an assessment for learning model to improve student achievement outcomes as measured by school, district and state assessments
- **Goal 1.6.3** - Implement Small Goal Assessments (SGAs), Cumulative Assessments (CAs) and district assessments to effectively measure student mastery

**Purpose**

**Information**

**Discussion**

**Reviewed by:**

**Finance** PL

**Attorney** BNJ

STATE OF NORTH CAROLINA

SERVICE AGREEMENT

COUNTY OF DURHAM

THIS AGREEMENT is hereby entered into this 22<sup>nd</sup> of August, 2013, by and between the Durham Public Schools Board of Education ("Board") and Measurement Incorporated ("Provider").

RECITALS

WHEREAS, the Provider is a corporation in good standing in the business of providing educational assessment systems, professional development trainings, and other related services, with a principal place of business at 423 Morris Street, Durham, North Carolina 27701; and

WHEREAS, the Provider desires to provide its services to the Board and the Board desires to obtain such services.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties hereby agree as follows:

AGREEMENT

1. Scope of Agreement. The Provider agrees to provide the Durham Public Schools ("DPS") with the following services for a term beginning August 22, 2013 ("Effective Date") and concluding August 23, 2016 ("Term"):
  - a. *Online Formative Writing System*.
    - i. Provider shall grant DPS with unlimited student and teacher access to the 2.0 version of the NC Write online system ("Assessment System") based on the student counts and costs in accordance with the attached **Appendix A**.
    - ii. Access includes the use of: pre-packaged prompts for Common Core Writing categories: narrative, argumentative, and informational/explanatory; custom prompts created by teachers with the option of adding stimulus material; graphic organizers (both printer-friendly and electronic); automated essay scoring for submitted essays and subsequent drafts; teacher/student messaging and within-essay feedback tools; score reports by student, class, writing prompt, and trait; interactive student learning tutorials; video and printable student and teacher user guides; and phone and email customer support during business hours Monday through Friday.
    - iii. DPS agrees to provide teacher names and email addresses to allow Provider to create usernames and passwords for teacher access to the Assessment System. DPS may also provide Provider with certain student



information, in accordance with DPS policies and procedures and applicable state and federal law, to allow the Provider to create usernames and passwords for student access to the Assessment System. Provider will provide DPS with student and teacher Assessment System account information within two weeks of receiving such information.

- iv. Student and teacher accounts and student writing portfolios will remain in the NC Write system for the duration of the Term. If this Agreement is extended within 30 days of expiration, student and teacher accounts will be saved and access to student and class portfolios and teacher-created prompts will continue for the duration of the extended contract.

b. *Professional Development.*

- i. Provider shall provide one hundred eighty-four (184) professional development sessions totaling 325.5 hours in accordance with the attached **Appendix B**. Professional development topics includes NC Write 101; NC Write Advanced Tools; Leadership Workshop: NC Write Data Analysis; NC Write Performance Task/Writing Prompt Development.
- ii. In addition, DPS may access live webinars offered by Provider at no additional cost to the Board.
- iii. Alternative training and professional development may be provided as replacements to the workshops listed in Appendix B as agreed upon by DPS and Provider.
- iv. Any additional training and professional development requested by DPS beyond the scope and hours included in this Agreement will be provided by Provider at an additional cost to DPS of \$100 per hour.

2. Term. The services described in this Agreement will be provided from August 22, 2013 through August 23, 2016. The Agreement may be renewed at a negotiated rate by mutual agreement of the parties.
3. Location. The services(s) will be provided at the location(s) designated by the Board.
4. Payment. For and in consideration of the satisfactory completion of the services described herein, the Board agrees to pay the Provider the fees set forth in **Appendix C**. For payment purposes, Board agrees to the following: Provider will invoice the Board within ten (10) business days after the Effective Date for fees as set forth in Appendix C as due in "Year One". Such fees shall be due and payable in advance on a yearly basis, with the "Year One" payment due upon receipt of invoice. Provider will invoice the Board within ten (10) business days after July 1 of 2014 and 2015 for fees as set forth in Appendix C as due in "Year Two" and "Year Three" respectively, with payment due upon receipt of each invoice.
5. Total Cost. The total cost to the Board under this Agreement shall not exceed \$525,393.00 for the Term. Board is entitled to a refund for the costs of any unused Professional Development services at the end of the Term.

6. Non-appropriation. It is understood and agreed between Provider and the Board that the Board's payment obligation under this Agreement is contingent upon the availability of appropriated funds from which payment for Agreement purposes can be made. The parties agree that all obligations under this Agreement shall terminate if funds for continuation are not appropriated.
7. License and Use. Subject to the terms and conditions of this Agreement, Provider grants to the Board a limited, personal, non-exclusive, non-transferable license to use and access the Assessment System for educational, instructional and related administrative purposes. The Board shall limit access to the Assessment System to authorized users (including DPS teachers, administrators, and enrolled students) ("Users") for such purposes in accordance with the terms of this Agreement. The Board may not modify, duplicate, copy, distribute, transmit, display, perform, reproduce, publish, license, create derivative works from, transfer, sell, sublicense, trade, permit the use by third parties (e.g., as a service bureau or data processing service), or exploit for any commercial purposes, inconsistent with the terms of this Agreement, any portion of the Assessment System, or any information, software, products or services obtained through the use of or access to the Assessment System. The Board may not allow access to, or share or create User identification codes ("ID") or passwords for the Assessment System with third parties for purposes inconsistent with the terms of this Agreement. The Board may grant its consultants access to the Assessment System to perform services on Board's behalf, provided that such consultants comply with the terms of this Agreement. At the conclusion of any consulting contract, the Board shall terminate the consultant's access to the Assessment System.
8. No Unlawful or Prohibited Use. As a condition of the Board's use of the Assessment System, the Board warrants to Provider that it will not use the Assessment System for any purpose that is unlawful or prohibited by this Agreement. The Board may not obtain or attempt to obtain any Assessment System materials or information through any means not intentionally made available or provided to the Board by Provider. The Board agrees not to access the Assessment System by any means other than the interface that is provided by Provider for end user access. The Board is not authorized to use proprietary Provider application programming interfaces without first receiving written permission from Provider.
9. Assessment System Content. The Assessment System includes all content, features, functionality and services whether made available by Provider to Users by way of the websites, the Internet or local deployment, and specifically includes: software applications; administrative and management programs; instructional and curriculum materials; and other content software applications, administrative and management system programs, modules; documentation; features; functionality; data; updates; derivative works; and associated work product. The Assessment System is protected by copyright and trade secret laws and other proprietary rights of Provider and its suppliers, and is licensed, not sold, to the Board. Provider reserves all rights in the Assessment System not expressly granted to the Board.

10. Board Responsibilities. Without limitation of anything else set forth herein, the Board shall be solely responsible for: (a) the quality and accuracy of all data and other information provided to Provider for the efficient operation of the Assessment System; (b) ensuring that at all times during which the Assessment System is being provided that the Board resources meet the network and hardware requirements necessary to operate the assessment system; and (c) providing internet connectivity necessary to use the Assessment System.
11. Standard of Care. Provider shall devote, and shall cause its staff and subcontractors, if any, to devote, such of their time, attention, best skill and judgment, knowledge and professional ability as is necessary to supply the Professional Development services related to the Assessment System effectively, efficiently and consistent with the obligations provided in this Agreement.
12. Warranties. Provider warrants that all goods and services delivered hereunder will be free from defects in materials and workmanship and will conform strictly to the specifications, drawings, or samples specified or furnished in this Agreement. This warranty shall survive any inspection, delivery, acceptance or payment by the Board of the goods and services and shall run to the Board. This express warranty is in addition to the Provider's implied warranties of merchantability and fitness for a particular purpose which shall not be disclaimed. Except as otherwise provided in this Agreement, the Board shall be entitled to all rights and remedies provided by the Uniform Commercial Code, Chapter 25 of the North Carolina General Statutes, for breach of express warranties and implied warranties of merchantability or fitness for a particular purpose. Provider or its suppliers shall not be responsible for the decisions made by the Board or its users based upon the assessment data produced by the Assessment System. Provider is not responsible for network slowness, Board resources or other items not within Provider's control which may impact the system performance of the Assessment System. Provider warrants that it has all necessary corporate power and authority to enter into and perform this Agreement, and this Agreement is duly executed by a representative of Provider with authority to bind the corporation, attested to by the corporate secretary, and affixed with the corporate seal, or duly executed by a representative of Provider with authority to bind the corporation and notarized. Provider further warrants that it has the right to grant to DPS the license set forth in Paragraph 7 above.
13. Independent Contractor. The Provider shall be an independent contractor and will employ appropriate personnel to deliver the service(s) to be performed under this Agreement. In no event shall any employee of the Provider be considered an employee or agent of the Board. The Provider is responsible for meeting all state, federal, and FICA tax obligations, and for maintaining all required insurance coverage, including workers' compensation insurance as required by North Carolina law.
14. Unforeseen Circumstances. In the event inclement weather, fire, power failure, or other similar unforeseen occurrence necessitates the cancellation of the delivery of the

service(s) and an alternate date cannot be agreed upon by the parties, the Board will be under no obligation to compensate the Provider.

15. Access to School Premises. DPS shall maintain full, final, and plenary authority to grant, deny, or restrict Provider, its agents or employees' access to school premises and school-sponsored events, including the authority to determine what services, if any, will be delivered, and by whom, to students on school premises or at school-sponsored events. Nothing in this Agreement shall be construed to create any right of access to school facilities or school-sponsored events on the part of Provider, its agents, or employees, and the DPS expressly reserves the right to deny or restrict Provider, its agents, or employees access, on a temporary or permanent basis, to any school facility or school-sponsored event, or to any individual student on school property or at a school-sponsored event, with or without cause, at any time, and without prior notice to Provider. The decision to deny access to Provider to any student, school facility, or school-sponsored event shall be final and not subject to appeal. DPS shall not incur any liability to Provider for denying or restricting access to school premises or school-sponsored events, with or without cause, and Provider expressly waives the right to challenge any such a denial or restriction of access in any judicial or administrative action.
  
16. Lunsford Act/Criminal Background Checks. Provider shall conduct criminal background checks on each of its employees or agents who, pursuant to this Agreement, interacts with DPS students or provides services on DPS property or at DPS events. Such checks shall include an annual check of the State Sex Offender and Public Protection Registration Program, the State Sexually Violent Predator Registration Program, and the National Sex Offender Registry. Provider shall provide documentation to DPS of criminal background checks before assigning its employees or agents to provide services under this Agreement. Provider shall likewise provide documentation to DPS of its annual checks of the aforesaid sex-offender registries. The mandatory sex-offender registry checks may be completed by accessing the North Carolina Sex Offender Registry website at <http://sexoffender.ncdoj.gov/>. Under no circumstances shall any employee or agent be assigned to work with any student or on DPS property or at DPS events if (1) said worker appears on any of the aforesaid sex-offender registries; (2) said worker has been convicted of a felony; (3) said worker has been convicted of any crime, whether misdemeanor or felony, involving sex, violence, or drugs; or (4) said worker has engaged in any crime or conduct indicating that the worker may pose a threat to the safety or well-being of students or school personnel.

Upon request, Provider will furnish the DPS with sufficient information to allow the District to perform its own criminal background checks on the Provider's employees and agents.

Failure to comply with this provision shall be grounds for immediate termination of the Agreement.

17. Compliance with Board Policies. The Provider and its employees acknowledge that the Board has adopted policies governing conduct on DPS property and agree to abide by any and all relevant Board policies while on DPS property.
18. Compliance with Applicable Laws. During the term of this Agreement, Provider shall comply with all applicable federal, state, and local statutes, laws, ordinances, rules and regulations, including securing and maintaining in force such permits and licenses as are required by law in connection with the furnishing of services pursuant to this Agreement. Provider represents that it is aware of and in compliance with the Immigration Reform and Control Act, and that it will collect properly verified I-9 forms from each employee providing services under this Agreement. Provider shall not employ any individuals to provide services to the DPS who are not authorized by federal law to work in the United States.
19. Indemnity. Provider shall indemnify, defend and hold harmless the DPS, its school board members, officers, agents, and employees from and against all claims, actions, demands, costs, damages, losses and/or expenses of any kind whatsoever, in whole or in part, resulting from or connected with any acts under this Agreement or from the omission or commission of any act, lawful or unlawful, by Provider, its agents and/or employees or arising, directly or indirectly, out of the Provider's performance or lack of performance of the terms and conditions of this Agreement, including but not limited to court costs and attorney's fees incurred by Provider in connection with the defense of said matters.

In addition, Provider will defend the Board from any claim, demand, cause of action, debt or liability based on a claim that the Assessment System infringes, misappropriates, or otherwise violates any intellectual property rights of a third party, provided that, Board promptly notifies Provider of such proceeding; Board provides reasonably requested assistance in the defense and settlement of the proceeding; and Board complies with any settlement or court order made in connection with such proceeding. Provider will indemnify Board against any and all damages and costs awarded against Board in any such proceeding; reimburse Board's reasonable expenses incurred in providing assistance requested by Provider; pay any amounts agreed by Provider in settlement of any claims of infringement. Provider's obligations under this paragraph will not apply to any infringement arising out of: use or combination of the Assessment System with any other products, goods, services or other items; any modification or change made by the Board and not authorized by Provider; or the use of an infringing version of the Assessment System after Provider has provided both written notification to the Board to cease use of the infringing version and Provider has made a comparable noninfringing version available to the Board. In the event Provider reasonably believes it will be required to discontinue use of the Assessment System, Provider will do one of the following, selected by Provider at its option: (a) Provider will obtain for the Board the right to continue use of the Assessment System; (b) Provider will modify the Assessment System to make it noninfringing; or (c) If Provider is not reasonably able to accomplish the foregoing, Provider may terminate the Board's right to use the infringing portions of the Assessment System and refund to the Board any fees the Board prepaid to Provider for such terminated portions.

20. Insurance. Provider agrees to maintain \$1,000,000 in general liability and other appropriate insurance, as well as Workers Compensation in the required statutory amount, for all employees of Provider participating in the provision of services under this Agreement. Certificates of such insurance shall be furnished by Provider to the DPS and shall contain the provision that the DPS be given 10 days' written notice of any intent to cancel or terminate by either Provider or the insuring company. Failure to furnish insurance certificates or maintain such insurance shall be a default and grounds for immediate termination of this Agreement.
21. Living Wage. The Provider shall comply with the Board's living wage policy, Policy 5265 (Living Wage Policy). Failure to comply with the Board's living wage policy shall be a material breach of this Agreement and may jeopardize the Provider's ability to obtain future contracts with the Board.
22. Termination.
- a. This Agreement and the licenses granted to the Board may be terminated by Board at any time, by giving thirty (30) days written notice to Provider at the address indicated in this Agreement. The Board's right of access to and use of the Assessment System shall terminate upon the expiration of the Term or upon any termination of this Agreement.
  - b. The occurrence of any one of the following events shall constitute an event of default allowing either party to terminate this Agreement if the event of default is not cured within thirty (30) days after written notice thereof to the other party: (a) a party's failure to provide services required under this Agreement; or (b) a party's material breach of its obligations under this Agreement.
  - c. Notwithstanding the foregoing, in the event the North Carolina Department of Public Instruction incorporates NC Write into its state-wide Homebase Instructional Information System (IIS), the Board may terminate this Agreement at anytime by giving thirty (30) days written notice to Provider.
23. Reimbursement. In the event that this Agreement is terminated early by the Board pursuant to Sections 22(b) or 22(c) above, the Board shall be entitled to a pro-rata reimbursement for any funds pre-paid to Provider.
24. Access to Persons and Records. The Board, the Board auditor, appropriate federal officials, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of the Provider insofar as they relate to transactions with the Board pursuant to the performance of this Agreement or to costs charged to this Agreement. The Provider shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of this Agreement. Additional audit or reporting requirements may be required by the Board, if in the Board's opinion, such requirement is imposed by federal or state law or regulation.

25. Confidentiality. Provider hereby certifies that collection of certain confidential information from the Board is necessary for the performance of Provider's duties and responsibilities on behalf of Board. With respect to any access by Provider to any student education records (as such term is defined in the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232 et seq. ("FERPA"), its implementing regulations at 34 CFR part 99, and N.C. Gen. Stat. §§ 115C-401.1 and 115C-402) held by Provider under or in connection with this Agreement, Provider shall be acting as a legal agent ("school official") of DPS. As between the parties, any information protected by FERPA submitted to Provider by DPS in connection with this Agreement shall be deemed the Confidential Information of DPS subject to this Paragraph 25. Provider agrees that any and all student records obtained in the course of providing services to the DPS under this Agreement shall be subject to the confidentiality and disclosure provisions of applicable federal and state statutes and regulations, and DPS policies. The Provider agrees to hold any and all student records in Provider's possession in confidence and not to use such information for any purpose other than providing the service(s) outlined in this Agreement. Provider agrees to keep any such information confidential and to not disclose or permit it to be disclosed, directly or indirectly, to any person or entity. All student records shall be kept in a secure location preventing access by unauthorized individuals. Provider will maintain an access log delineating date, time, agency, and identity of any individual accessing student records who is not in the direct employ of Provider. Provider shall not forward to any person other than parent or DPS any student record, including, but not limited to, the student's identity, without the written consent of the parent and DPS. Upon termination of this Agreement, Provider shall turn over to District all student records of DPS students in Provider's possession.
26. Assignment. Provider may not assign this Agreement or its obligations hereunder. Provider shall provide reasonable notice of not less than thirty (30) days prior to any consolidation, acquisition, or merger. Any assignee shall affirm this Agreement attorning to the terms and conditions agreed, and that Provider shall affirm that the assignee is fully capable of performing all obligations of Provider under this Agreement. An assignment may be made, if at all, in writing by the Provider, assignee and the Board setting forth the foregoing obligation of Provider and assignee.
27. Notices. Any notices required under this Agreement should be delivered to the addresses listed below for each party. Unless otherwise specified in the solicitation documents, any notices shall be delivered in writing by U.S. Mail, Commercial Courier, facsimile or by hand.

To DPS:           Durham Public Schools  
                          511 Cleveland Street  
                          Durham, NC 27702  
                          Phone: 919-560-2000  
                          Attn: Curriculum, Instruction & Assessment

To Provider: Measurement Incorporated  
Software Products Division  
423 Morris Street  
Durham, NC 27701  
Phone: 919-683-2413  
Fax: 919-425-7726  
Attn: Dr. Trish Martin  
[tmartin@measinc.com](mailto:tmartin@measinc.com)

28. Titles and Headings. Titles and headings in this Agreement are used for convenience only and do not define, limit or proscribe the language of terms identified by such titles and headings.
29. Amendment. This Agreement may not be amended orally or by performance. Any amendment must be made in written form and signed by duly authorized representatives of the Board and Provider.
30. Taxes. Applicable taxes, if any, shall be invoiced as a separate item.
31. Governing Laws, Jurisdiction, and Venue. This Agreement is made under and shall be governed and construed in accordance with the laws of the State of North Carolina.
32. Force Majeure. If the Board is unable to perform its obligations or to accept the services or goods because of Force Majeure (as hereinafter defined), the time for such performance by the Board or acceptance of services will be equitably adjusted by allowing additional time for performance or acceptance of services equal to any periods of Force Majeure. "Force Majeure" shall mean any delays caused by acts of God, riot, war, terrorism, inclement weather, labor strikes, material shortages and other causes beyond the reasonable control of the Board.
33. Severability. In the event that a court of competent jurisdiction holds that a provision or requirement of this Agreement violates any applicable law, each such provision or requirement shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Agreement shall remain in full force and effect. All promises, requirements, terms, conditions, provisions, representations, guarantees and warranties contained herein shall survive the expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or State statute, including statutes of repose or limitation.
34. Entire Agreement. This Agreement constitutes and expresses the entire agreement and understanding between the parties concerning the subject matter of this Agreement. This document, along with its attached exhibits, supersedes all prior and contemporaneous discussions, promises, representations, agreements and understandings relative to the subject matter of this Agreement. The following exhibits are attached to and made a part of this Agreement:



Appendix A: Student Enrollment Number and Cost by School

Appendix B: Professional Development Workshops Descriptions and Costs

Appendix C: Enrollment and Training Fees by Contract Year and Payment Schedule

<Remainder of page left intentionally blank>

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above mentioned.

**DURHAM PUBLIC SCHOOLS BOARD OF EDUCATION**

by: Heidi Carter, Board Chair

\_\_\_\_\_  
(Signature)

Attest: Dr. Eric Becoats, Superintendent

\_\_\_\_\_  
(Signature)

This instrument has been preaudited in the manner required by the School Budget and Fiscal Control Act

By: \_\_\_\_\_, Chief Financial Officer

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(date)

**MEASUREMENT INCORPORATED**

by: \_\_\_\_\_, \_\_\_\_\_  
(Print Name) (Title)

\_\_\_\_\_  
(Signature)

Attest: \_\_\_\_\_, Corporate Secretary  
(Print Name)

\_\_\_\_\_  
(Signature)

(Official Seal)