

THE MISSPENT YOUTH OF SOUTH DAKOTA  
NATIVE AMERICAN STUDENTS:  
AN ANALYSIS OF THE GEAR UP GRANT PROGRAM  
IN SOUTH DAKOTA

By

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## ABSTRACT

### The Misspent Youth of South Dakota Native American Students: An Analysis of the Gear Up Grant Program in South Dakota

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The State of South Dakota has a significant educational achievement gap between Native American students and non-Native students. In 2005 and 2011, the State of South Dakota submitted successful applications to receive the federal education grant GEAR UP. The specific goal of the GEAR UP grant was to increase the number of Native American students who entered and succeeded in postsecondary education. After Scott Westerhuis tragically murdered his family and committed suicide in 2015, the conflicts of interest and mismanagement of the GEAR UP grant by the Mid-Central Educational Cooperative became apparent. The aim of this thesis is to define the chronological timeline of the GEAR UP grant in South Dakota and factually examine the relationships between and among individuals who administered and provided services for the grant. Questions about proper evaluation, lack of oversight and accountability, and conflicts of interest arise. The conclusion of this thesis argues that while millions of dollars were spent on the GEAR UP program since 2005, the number of Native American students enrolled in South Dakota Board of Regents institutions has barely fluctuated.

**KEYWORDS:** GEAR UP, education, Native American students, conflict of interest

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## **I. INTRODUCTION**

The state of South Dakota has a significant education achievement gap between Native American students and non-Native students. While Native Americans constitute about 9.00% of the total population of South Dakota, they represent only 3.16% of the student population in Board of Regents (BoR) institutions.<sup>1</sup> Many economic, social, geographical, and educational challenges facing Native American students contribute to the gap.

One solution to help close the gap is federal and state education grants that provide funds to establish initiatives, programs, and scholarships for targeted populations. This constituted the beginning of the South Dakota Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP), which later came to hold infamous connotations among many South Dakotans. The South Dakota GEAR UP program had, and still has, a noble cause: to help more Native American students enter and succeed in postsecondary education and to close the achievement gap in South Dakota.<sup>2</sup> Even after the expenditure of millions of federal and state tax dollars within South Dakota, the number of Native American students attending BoR institutions has not greatly increased. As policymakers applied increasing scrutiny over the GEAR UP program in 2015, tragedy struck. Law enforcement officials, auditors, legislators, and investigative journalists began shining light on the inner-workings of the program and the organization

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<sup>1</sup> United States Census Bureau, “Quickfacts: South Dakota,” (1 July 2016), par. 3, <https://www.census.gov/quickfacts/fact/table/SD/RHI325216#viewtop>; South Dakota Board of Regents, “Fact Book FY2018,” (2018), 14, <https://www.sdbor.edu/mediapubs/factbook/Documents/FY18Factbook.pdf>

<sup>2</sup> South Dakota Department of Education, “South Dakota 2005 GEAR UP Grant Application,” e39, <https://assets.documentcloud.org/documents/3474776/2005-GEAR-UP-Grant-Application.pdf>

known as the Mid-Central Educational Cooperative in Platte, South Dakota. The purpose of this essay is to outline the many complexities, relationships, conflicts of interest, and significant events that characterized the administration of the GEAR UP program within South Dakota.

## **II. The Beginning of GEAR UP in South Dakota**

GEAR UP (Gaining Early Awareness and Readiness for Undergraduate Programs) is a federally funded grant program the U.S. Department of Education established in 1998. The purpose of the GEAR UP program is to award grants to states or partnerships of local community, education, or government institutions to fund services for low-income or at-risk students to help prepare them for postsecondary education. GEAR UP awards six- and seven-year renewable grants intended to emphasize “early intervention, mentoring and advising, financial assistance, and family involvement.”<sup>3</sup> GEAR UP programs target cohorts of students no later than the 7th grade and use 50% of awarded grant money for scholarships and financial assistance to program participants.<sup>4</sup>

South Dakota first received the GEAR UP grant in 2005, one of 27 states to receive such funding. After the South Dakota Department of Education (SDDOE) submitted a second grant proposal in July 2011, the U.S. Department of Education renewed South Dakota’s GEAR UP grant from 2012 through 2017.

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<sup>3</sup> David Hulac, Kelly Duncan, Shane Nordyke, and Kathryn Birkeland, “South Dakota GEAR UP Program Evaluation” (University of South Dakota Government Research Bureau, Vermillion, August 2015), 3.

<sup>4</sup> IBID.

### III. GEAR UP Grant Application #1

In 2005, Dr. Rick Melmer, South Dakota's Secretary of Education and the authorizing state official, submitted the original GEAR UP grant application. Although Melmer submitted the application on behalf of the state of South Dakota, he did not have a large role in composing the application, as is standard operating procedure for many federal grant applications. According to an editor for the state's original application, South Dakota decided to apply for the GEAR UP grant only two weeks before the application deadline, which was April 11, 2005. That editor was working for the Academy for Educational Development (AED) in Washington, D.C.<sup>5</sup> The SDDOE contracted AED to help compile the 2005 application. According to the "brief abstract" of the application:

"The mission of the South Dakota Department of Education, along with its partner Oceti Sakowin Education Consortium (OSEC), is to increase the number of first generation, low income Native American students that successfully transition and complete higher education through the participation in the Gear Up program. The Gear Up Program will augment the school year by having a 6-week on-campus intensive curriculum that that (**sic**) emphasizes mentorship, personal achievement and rigorous coursework. The South Dakota Gear Up program will be an opportunity for over 800 first generation, low income Native American students that will be prepared to successfully transition and complete higher education."<sup>6</sup>

The South Dakota application requested \$1,153,930 per year of federal funds, totaling \$6,923,580 to be matched by state dollars over a period of six years. The proposed project dates were October 1, 2005 through September 30, 2011.<sup>7</sup> The

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<sup>5</sup> Angela Kennecke, "South Dakota's Original GEAR UP Grant Application Revealed," (KELOLAND News, 11 January 2016), par. 5, <http://www.keloland.com/news/article/investigates/south-dakota's-original-gear-up-grant-application-revealed>

<sup>6</sup> SDDOE, "South Dakota 2005 GEAR UP Grant Application," e1.

<sup>7</sup> IBID., e1.

application stated that each year the grant would serve 1,380 students.<sup>8</sup> In the comprehensive project abstract, the GEAR UP program seeks to accomplish four master goals:

“Goal 1: Increase opportunity for low-income Native American students to participate in college preparatory course work via distance learning.

Goal 2: To assist and prepare parents or guardians to support college bound students in schools with high concentrations of low-income Native American students.

Goal 3: Increase the number of low-income Native American students who are prepared to enter and succeed in higher education.

Goal 4: Increase the development and availability of school-based infrastructures that will encourage and support underserved and low-income students who participate in the GEAR UP program.”<sup>9</sup>

#### **IV. Discrepancies within the 2005 Application**

The composers of the application based a portion of the South Dakota GEAR UP program on the model of the Native American Honors Program, which South Dakota School of Mines and Technology alumnus and longtime Native American educator Stacy Phelps founded in 1992.<sup>10</sup> This model had achieved apparent success, so state education officials believed they could replicate the structure of the promising honors program. In reviewing the original grant application, though, several discrepancies are evident.

In the original grant application, a conflicting budgetary concern is clear. On page e3, the federal funds amount requested for “Consultants & Contracts” is \$959,188 per year, totaling \$5,755,128 or 83.12% of the total amount requested.<sup>11</sup> The “Scholarships/Tuition Assistance” category requested \$50,000 per year, totaling \$300,000 or 4.3% of the total amount requested.<sup>12</sup> In the following budget for matching

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<sup>8</sup> SDDOE, “South Dakota 2005 GEAR UP Grant Application,” e17.

<sup>9</sup> IBID., e19.

<sup>10</sup> IBID., e39.

<sup>11</sup>  $\$5,755,128/\$6,923,580 = 83.12\%$  of total federal funds.

<sup>12</sup>  $\$300,000/\$6,923,580 = 4.33\%$  of total federal funds.



funds to be provided by non-federal sources, the pattern is similar. Consultants and contracts amount to \$180,000, whereas scholarships and tuition assistance account for \$90,000 (the total matching funds are \$723,000).<sup>13</sup> As noted previously, of the awarded grant money, at least 50% was required to be used for scholarships, unless a waiver were requested. South Dakota's 2005 application did not request a waiver for the scholarship requirement.<sup>14</sup>

Additionally, the grantee must match the federal funds with non-federal cash or in-kind contributions, such as equipment or facilities. South Dakota's application had a major discrepancy between the federal funds requested (\$6,923,580) and the budgeted non-federal contributions (\$723,000).

These budgetary conflicts are problematic because they show the original application was proposing a program greatly out of compliance with the grant requirements. The award of the grant to the SDDOE, despite these issues, suggests that state and federal officials made substantial negotiated changes soon after the state submitted the grant proposal.<sup>15</sup> The inconsistency within the application may not have been intentional, but the apparent mistakes would one day draw attention to the sloppiness with which the state and AED completed the grant application.

### AED

A further issue with the 2005-2011 grant application relates to the nonprofit company AED (Academy for Educational Development) in Washington, D.C., that

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<sup>13</sup> SDDOE, "South Dakota 2005 GEAR UP Grant Application," e4.

<sup>14</sup> Michael Wyland, "Federal Grant Investigating Aided by Recovery of Missing Application," (Nonprofit Quarterly, 13 January 2016), par. 4, <https://nonprofitquarterly.org/2016/01/13/federal-grant-investigation-aided-by-recovery-of-missing-application/>

<sup>15</sup> IBID.

helped compose the 2005 South Dakota GEAR UP application. The results of the final grant report for 2005-2011 showed that South Dakota GEAR UP program failed to meet many of the objectives outlined in the original application – partly because the subsequent evaluators apparently did not know the source of some original numbers. AED had solicited all state education departments, offering technical assistance in applying for GEAR UP funds. Only Maine and South Dakota agreed to work with AED.<sup>16</sup> Evaluators and investigative reporters subsequently discovered that AED heavily adapted Maine’s GEAR UP application and inserted many of Maine’s numbers and objective goals into South Dakota’s 2005 application.<sup>17</sup>

The state of South Dakota also hired AED to conduct the annual external evaluation for South Dakota’s program, but AED completed only the first year’s evaluation. The evaluation of the grant was to be overseen by Paul Bucci, the Vice President of AED and the Director of AED’s Higher Education Management Services Center.<sup>18</sup> Brinda Kuhn, who was a Senior Program Officer for AED in Washington, D.C., served as the lead evaluator for the SD GEAR UP program from February 20, 2006, through January 19, 2007, as a consultant and employee of AED.<sup>19</sup> In 2010, the United States Agency for International Development (USAID) suspended AED from being awarded new federal service contracts from USAID for 12-18 months because of

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<sup>16</sup> Michael Wyland, interviewed by Anna Madsen, 18 April 2018.

<sup>17</sup> Kennecke, “South Dakota’s Original GEAR UP Grant Application Revealed,” par. 8.

<sup>18</sup> SDDOE, “South Dakota 2005 GEAR UP Grant Application,” e58.

<sup>19</sup> Brinda Kuhn, “Proposal 2007-2008 GEAR UP South Dakota: Evaluation, Data Collection, Performance Reporting, and Technical Assistance,” (6 August 2007), 1, <http://sdlegislature.gov/docs/interim/2017/documents/goa10-5-17replyfrommsdoc23a.pdf>

evidence of serious corporate misconduct (activities non-related to GEAR UP).<sup>20</sup>

Following the first evaluation completed through AED, Brinda Kuhn relocated to South Dakota and became the lead evaluator of the SD GEAR UP program through BC Kuhn LLC, also known as BC Kuhn Evaluation, LLC.<sup>21</sup>

## **V. Implementation of the GEAR UP Program**

Despite these discrepancies in the original application, the U.S. Department of Education approved the South Dakota GEAR UP program. The SDDOE received approximately \$7 million dollars in federal funds to be matched by state funds, totaling about \$14 million for the GEAR UP grant from 2005-2011.

In order to implement the GEAR UP program, the SDDOE partnered with the Platte, South Dakota, based non-profit corporation Oceti Sakowin Education Consortium (OSEC). Based on the 2005 grant application, OSEC contracted with the SDDOE to carry out the direct work of the grant.<sup>22</sup> As the application stated, “The primary contract for service for the project will be between the State Department of Education as a grantee and the Oceti Sakowin Education Consortium. OSEC will provide direct grant management for all aspects of deliverables for the grant.”<sup>23</sup> Noted on page e64, because OSEC employees were not SDDOE employees, they would be compensated through the

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<sup>20</sup> United States Attorney’s Office. “Washington, D.C.-Based Academy for Educational Development Pays More Than \$5 Million to Settle False Claims Act Allegations,” (Federal Bureau of Investigation, 30 June 2011), par. 6, <https://archives.fbi.gov/archives/washingtondc/press-releases/2011/washington-d.c.-based-academy-for-educational-development-pays-more-than-5-million-to-settle-false-claims-act-allegations>

<sup>21</sup> Kuhn, “Proposal 2007-2008 GEAR UP South Dakota: Evaluation, Data Collection, Performance Reporting, and Technical Assistance,” 12.

<sup>22</sup> According to KELOLAND’s Angela Kennecke, it is common practice for the SDDOE to contract out grant work with educational cooperatives. Other states do not typically do this. Interview with Kennecke, April 2018.

<sup>23</sup> SDDOE, “South Dakota 2005 GEAR UP Grant Application,” e80.

contractual services segment of the budget rather than the personnel services portion of the budget.<sup>24</sup>

Something to note of the partnership between the SDDOE and OSEC is that the partnership was actually with an entity titled the Oceti Sakowin **Distance** Education Consortium. OSEC, the Oceti Sakowin Education Consortium, was not incorporated in South Dakota until April 5, 2011, with its first registered agent being Scott Westerhuis.<sup>25</sup> Ted Hamilton incorporated the Oceti Sakowin Distance Education Consortium on January 17, 2003.<sup>26</sup> Hamilton was the executive director of OSEC (meaning OSDEC) and the point of contact for OSEC in the original GEAR UP application.<sup>27</sup> Whether or not the naming were intentional, it is puzzling that the entity for which all direct services of the GEAR UP program were to be carried out was not technically incorporated until 2011. It is likewise confusing that the entity was wrongly identified as OSEC when it should have been referred to as OSDEC. More confusion – intentional or unintentional – soon followed, setting up conditions ripe for fraud.

Beginning in 2005 and into 2011, the SDDOE signed annual GEAR UP grant partnership contracts with OSEC. While the 2005 and 2006 contracts could not be located, paragraph nine of the 2007 agreement designates the Mid-Central Educational Cooperative as the grantee’s (or OSEC’s) fiscal agent.<sup>28</sup>

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<sup>24</sup> SDDOE, “South Dakota 2005 GEAR UP Grant Application,” e64.

<sup>25</sup> SD SoS, <https://sosenterprise.sd.gov/BusinessServices/Business/FilingSearch.aspx>, accessed 11 April 2018.

<sup>26</sup> IBID.

<sup>27</sup> SDDOE, “South Dakota 2005 GEAR UP Grant Application,” e57.

<sup>28</sup> South Dakota Department of Education, “Grant Agreement Number 2008A-340,” (2007), par. 9.

## MCEC

The Mid-Central Educational Cooperative (MCEC), founded in 1976 in Platte, South Dakota, was an educational service unit comprised of 14 South Dakota school districts “organized to assist its member schools in providing services of a special nature for the member schools.”<sup>29</sup> The MCEC Board included a school board member from each of the member districts.<sup>30</sup> While providing services to its districts, MCEC also facilitated federal and state grants for the SDDOE, including GEAR UP, Teacher Quality, College Access Challenge, and Wakan Gli. MCEC held contracts with the SDDOE and contracts with other entities and individuals throughout its existence.

## **VI. Professional Relationships or Conflicts of Interest?**

Following the arrival of the first GEAR UP grant in South Dakota, many colorful personalities soon populated the GEAR UP world. The personal and professional relationships between and among these people rapidly grew into a tight web. Some observers see these relationships as entirely professional and beneficial – especially in a lightly populated state where educational experts may be difficult to find. Others see them as blatant conflicts of interest and reject the argument that South Dakota has to tolerate close relationships due to sparse population and a lack of professionals in technical education areas. The following individuals were employees of MCEC along with being associated with other entities that received federal education grant dollars.

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<sup>29</sup> South Dakota Department of Legislative Audit, “Special Review of Mid Central Educational Cooperative,” (19 May 2017), 48, <https://legislativeaudit.sd.gov/reports/School/MidCentralCoopSpecialReview.pdf>

<sup>30</sup> The 14 member school districts of MCEC were the Armour School District; Burke School District; Colome School District; Corsica School District; Ethan School District; Gregory School District; Kimball School District; Mount Vernon School District; Plankinton School District; Platte-Geddes School District; Stickney School District; Wessington Springs School District; White Lake School District; and Wolsey-Wessington School District.

A. Scott Westerhuis

When the federal government awarded the GEAR UP grant to South Dakota in 2005, Scott Westerhuis of Platte, South Dakota, was the business manager for MCEC.<sup>31</sup> Beginning in 2003 with the formation of OSDEC, where he also served as the registered agent, business manager, and chief financial officer, Scott Westerhuis incorporated six other businesses through the South Dakota Secretary of State's Office. He was the:

- Incorporator, registered agent, and chief financial officer for the American Indian Institute for Innovation (AIII) (incorporated in 2008)
- Incorporator, registered agent, vice-president, and chief financial officer of Blackrock Consulting (2010)
- Organizer, registered agent, and manager of Rock Ranch Consulting (2010)
- Registered agent of OSEC (2011)
- Incorporator, registered agent, director, and president of Chita Corporation (2012)
- Incorporator and registered agent for American Indian Institute for Innovation and Excellence (sic) (AIIIE) (2015)<sup>32</sup>

B. Nicole Westerhuis

Scott Westerhuis's wife, Nicole Westerhuis, was the grant manager for MCEC from 2009 through 2014 and assistant business manager from 2014 until her death in 2015.<sup>33</sup> She also served as the:

- Incorporator and secretary of Blackrock Consulting
- Organizer of Rock Ranch Consulting
- Business manager of OSEC
- Incorporator and director for the Chita Corporation
- Incorporator of the American Indian Institute for Innovation and Excellence (sic) (AIIIE)<sup>34</sup>

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<sup>31</sup> SD DLA, "Special Review of Mid Central Educational Cooperative," 52.

<sup>32</sup> SD SoS, <https://sosenterprise.sd.gov/BusinessServices/Business/FilingSearch.aspx>, accessed 11 April 2018.

<sup>33</sup> SD DLA, "Special Review of Mid Central Educational Cooperative," 52.

<sup>34</sup> SD SoS <https://sosenterprise.sd.gov/BusinessServices/Business/FilingSearch.aspx>, accessed 11 April 2018.

### C. Dan Guericke

Dan Guericke of White Lake, South Dakota, was the executive director of MCEC throughout the time the GEAR UP grant was awarded to South Dakota. He was also the registered agent for Guericke Enterprises, G&N LLC, and GNS Bus Sales.<sup>35</sup> Additionally, he was both a founder and director for the DIAL Corporation and the South Dakota Innovation Lab (SDIL).<sup>36</sup>

### D. Stacy Phelps

Stacy Phelps of Rapid City, South Dakota, is an enrolled member of the Sisseton Wahpeton Sioux Tribe. He served as the GEAR UP program director for OSEC for the first South Dakota GEAR UP grant and the program coordinator for the second GEAR UP grant.<sup>37</sup> Between 2008 and 2015, Phelps also served as MCEC's outreach coordinator and Native American technical advisor.<sup>38</sup> He was a member of the South Dakota Board of Education Standards from 2008-2015.<sup>39</sup> Additionally, he was the:

- Chief executive officer of the American Indian Institute for Innovation (AIII)
- Incorporator and president for Blackrock Consulting
- Incorporator of the American Indian Institute for Innovation and Excellence [sic] (AIIIE)<sup>40</sup>
- Director of the South Dakota GEAR UP summer camp in Rapid City<sup>41</sup>

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<sup>35</sup> SD SoS, <https://sosenterprise.sd.gov/BusinessServices/Business/FilingSearch.aspx>, accessed 11 April 2018.

<sup>36</sup> IBID.; Sheli O. Smith, Mary Schneider, Monica Hunter, and Annlies Corbin, "South Dakota's Innovation Lab Pilot Report: The Transformation of Rural Education," (2014), 6, <http://midcentral-coop.org/uploads/SDIL%20Report%20final.Mar%202014%20copy.pdf>

<sup>37</sup> SDDOE, "South Dakota 2005 GEAR UP Grant Application," e57; South Dakota Department of Education, "South Dakota 2011 GEAR UP Grant Application," e44, <https://assets.documentcloud.org/documents/3474778/2011-GEAR-UP-Grant-Application.pdf>

<sup>38</sup> SD DLA, "Special Review of Mid Central Educational Cooperative," 22.

<sup>39</sup> South Dakota Department of Education, "Board of Education members reappointed," (February 2013), par. 3, [http://doe.sd.gov/pressroom/educationonline/2013/Mar/art\\_5.asp](http://doe.sd.gov/pressroom/educationonline/2013/Mar/art_5.asp)

<sup>40</sup> SD SoS, <https://sosenterprise.sd.gov/BusinessServices/Business/FilingSearch.aspx>, accessed 11 April 2018.

- Member of the South Dakota Indian Education Advisory Council (SDIAC)<sup>42</sup>
- Member of the National Advisory Council on Indian Education (NACIE)<sup>43</sup>

### E. Stephanie Hubers

Stephanie Hubers of Geddes, South Dakota, was an assistant business manager for MCEC. She began working for MCEC in September 2005.<sup>44</sup> She served as the interim business manager for MCEC in 2015 and part of 2016.<sup>45</sup> Hubers was also the treasurer, president-elect, and president of the South Dakota Association of School Business Officials between 2013 and 2015.<sup>46</sup>

## **VII. Transition from GEAR UP #1 to GEAR UP #2**

As stated previously, the first GEAR UP grant ran from 2005 through 2011. The SDDOE applied for renewal of the grant for 2012 through 2017. In the second GEAR UP grant, the state requested approximately \$48 million: \$24,386,152 in federal funds and \$24,392,904 in matching, non-federal sources over a span of six years.<sup>47</sup> The application also requested a waiver of the 50% allocation requirement for student scholarships, noting that “GUSD [GEAR UP South Dakota] is applying for a waiver of the GEAR UP

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<sup>41</sup> South Dakota School of Mines and Technology, “The School of Mines welcomes GEAR UP to campus,” par. 4, <https://www.sdsmt.edu/Campus-Life/Multicultural-Affairs/News/>

<sup>42</sup> South Dakota Department of Education, “Campbell Selected As State’s Newest Indian Education Director,” (3 March 2011), par. 2, <http://doe.sd.gov/pressroom/news.aspx?id=249>

<sup>43</sup> Rapid City Journal, “Phelps to be appointed by Obama administration,” (5 July 2010), par. 1, [http://rapidcityjournal.com/news/local/top-stories/phelps-to-be-appointed-by-obama-administration/article\\_ea28a036-8866-11df-9918-001cc4c03286.html](http://rapidcityjournal.com/news/local/top-stories/phelps-to-be-appointed-by-obama-administration/article_ea28a036-8866-11df-9918-001cc4c03286.html)

<sup>44</sup> *State of South Dakota vs. Stephanie Hubers*, Probable Cause Affidavit, (10 March 2016). par. 30, <https://drive.google.com/file/d/0B3agsA-vm8SMU3o0cTlpcGszVmc/view>.

<sup>45</sup> *State of South Dakota vs. Stephanie Hubers*, Probable Cause Affidavit, par. 30,

<sup>46</sup> South Dakota Association of School Business Officials, “Minutes of the Board of Directors’ Executive Meeting,” (23 April 2013), 2, <http://www.sasd.org/wp-content/uploads/2017/08/Minutes-of-the-Board-of-Directors-April-23-2013.pdf>; SDASBO, “Minutes of the Board of Directors’ Executive Meeting,” (22 June 2015), par. 2, <http://www.sasd.org/wp-content/uploads/2017/08/Minutes6-22-15ExecutiveCommittee.pdf>

<sup>47</sup> SDDOE, “South Dakota 2011 GEAR UP Grant Application,” e164, e180.



scholarship requirements, as significant scholarship opportunities currently exist for Native American students in South Dakota.”<sup>48</sup> The program application proposed to serve 6,600 students in South Dakota public, Tribal/Bureau of Indian Education operated, and non-public schools.<sup>49</sup>

The partnerships listed in the GEAR UP #2 grant application were notably different than in the GEAR UP #1 application. The SDDOE Office of Indian Education was listed as the lead partner and administrative and fiscal agent for the GEAR UP program.<sup>50</sup> Additionally, OSDEC (referred to as OSEC in the 2005 application) was no longer the primary partner for the SDDOE. Instead, the application lists MCEC, the American Indian Institute for Innovation (AIII), OSEC (the OSEC Scott Westerhuis incorporated in 2011), the South Dakota Board of Regents (SDBoR), Lakota Funds, Wells Fargo, Microsoft, and the DIAL Virtual School as partners for the GEAR UP program.<sup>51</sup> This scope of partners was far more expansive than the entities listed in the GEAR UP #1 application.

Roger Campbell, the director of the SDDOE Office of Indian Education, would serve as the GEAR UP project director. Campbell’s part-time (25%) position would provide overall leadership and oversight for the project. Phelps would serve as the project coordinator, a full-time (100%) position that would hire and manage all of the GEAR UP staff and ensure the quality of all GEAR UP services.<sup>52</sup> The GEAR UP #2 grant was also under a different gubernatorial administration, with Governor Dennis Daugaard replacing M. Michael Rounds in January of 2011. Governor Daugaard appointed Melody Schopp

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<sup>48</sup> SDDOE, “South Dakota 2011 GEAR UP Grant Application,” e43.

<sup>49</sup> IBID., e29.

<sup>50</sup> IBID., e57.

<sup>51</sup> IBID., e14.

<sup>52</sup> IBID., e46.

as the South Dakota Secretary of Education to replace Tom Oster, who served from 2008 through 2011.<sup>53</sup> Tom Oster had replaced Rick Melmer, who served from 2003 through 2008, both under the Rounds administration.<sup>54</sup>

### **VIII. Final Performance Report of GEAR UP #1 (2005-2011): Application versus Implementation**

At the completion of the first GEAR UP grant, the SDDOE submitted a final performance report to the U.S. Department of Education covering the grant program from September 1, 2005 through August 31, 2011. The submitting director of the grant was listed as Roger Campbell (who had only been serving in that position for several months), and the certifying official was Secretary of Education Melody Schopp. The report stated the grant program served 17,333 students throughout the six years.<sup>55</sup> The performance report noted several implementation problems, as well as significant differences between the original 2005 application and the execution of it.

One of the overarching problems stated in the report is that some of the original objectives and baseline numbers outlined in the 2005 application were simply wrong or could not be found. As noted in the 2010-2011 annual report used to generate the final report, “GUSD [GEAR UP South Dakota] has determined that the target goals of some of the performance indicators were unrealistic, as a consequence of baseline data that could

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<sup>53</sup> Bob Mercer, “Kirkegaard gets Senate panel’s support for education secretary,” (Mitchell Daily Republic, 18 January 2018), par. 28, <http://www.mitchellrepublic.com/news/education/4390280-kirkegaard-gets-senate-panels-support-education-secretary>

<sup>54</sup> IBID., par. 23.

<sup>55</sup> South Dakota Department of Education, “GEAR UP Final Performance Report for Partnership and State Projects: 2005-2011,” Section IV.

not be reproduced.”<sup>56</sup> Apparently, the performance indicators in the original application did not make sense for the actual context of South Dakota, especially when gathering data for public schools compared to BIE schools. For example, performance indicator 1.2.1 states: “The percentage of 8th grade students who perform at or above grade level on the DakotaSTEP Math will increase from 71% to 85%.” The final report revised the metric to be: “(a) The percentage of 8th grade **public** school students who perform at or above grade level on the DakotaSTEP Math will increase from 26% to 40%. (b) The percentage of **BIE** school students who perform at or above grade level on the DakotaSTEP Math will increase from 50% to 64%.”<sup>57</sup>

Additionally, the 2011 report showed the GEAR UP program lacked in special education services. According to Michael Wyland of *Nonprofit Quarterly*,

“Disturbingly, while the GEAR UP program reported serving several thousand low-income, predominantly Native American students prepare for success in postsecondary education, not a single student receiving special education services was served during the 2005-2011 period. We now know the original grant application stressed equitable participation in program services and even documented the percentage of special education students in each of the two dozen schools to be served.”<sup>58</sup>

## **IX. The Implementation of GEAR UP #2**

As noted previously, the administering of the second GEAR UP grant differed significantly in several ways. The U.S. Department of Education awarded the GEAR UP #2 grant in September 2011. The SDDOE Office of Indian Education received the award

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<sup>56</sup> South Dakota Department of Education, “GEAR UP Annual Performance Report for Partnership and State Projects: 2010-2011,” 12.

<sup>57</sup> SDDOE, “GEAR UP Final Performance Report for Partnership and State Projects: 2005-2011,” 5.

<sup>58</sup> Wyland, “Federal Grant Investigating Aided by Recovery of Missing Application,” par. 4.

and sub-awarded the GEAR UP grant to MCEC in March 2012.<sup>59</sup> To implement the GEAR UP program, MCEC set up programs and engaged in activities with other individuals, businesses, and schools to carry out the daily activities for the program. The grant operated on a reimbursement system. Therefore, MCEC would collect the expenditures that the individuals or entities made on behalf of the grant each month, review them, and then submit the expenditures to the SDDOE to reimburse with GEAR UP grant funds. After reimbursement, the GEAR UP funds would go directly into MCEC's general fund, as MCEC fronted the expenses submitted to it by the other organizations and people.

#### **X. GEAR UP Beyond MCEC**

As noted above, the first GEAR UP grant ended in 2011 but was renewed through 2017. By the time the U.S. Department of Education approved the second grant application, many people outside the MCEC sphere but associated with the GEAR UP program were beginning to move jobs and locations. These individuals include evaluators, consultants, and members of educational agencies that were related to or provided services for the GEAR UP program.

##### **A. Brinda Kuhn**

The first individual with longstanding ties throughout both the first and second GEAR UP grants is Brinda Kuhn. One of the original grant writers of the 2005 application through AED in Washington, D.C., Kuhn relocated to Martin, South Dakota, in 2007 after completing the first year evaluation of the GEAR UP program for AED. She

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<sup>59</sup> Roger Campbell, Email to Melody Schopp entitled "Additional information," (1 August 2012), par. 3, <https://assets.documentcloud.org/documents/3982883/goa8-29-17SDDOEexhibit2doc28.pdf>

eventually moved to Rapid City, South Dakota. Once in South Dakota, Kuhn founded seven corporations: BC Kuhn LLC (2009), Prairie Stone Foundation (2010), Hardrocker Aeronautics (2012), BC Kuhn Evaluation (2013), Kuhn Properties (2013), Fly Fast LLC (2014, DBA Booty and Loot: 2017; DBA Amazing Grace: 2016), and Pixie Air (2014).<sup>60</sup>

While not all of the corporations provided services for the GEAR UP program, MCEC compensated several of Kuhn's corporations for helping write the 2011 GEAR UP application and administering parts of both grants. As noted in the *Special Review of Mid Central Educational Cooperative* by the Department of Legislative Audit (DLA) in May 2017, "BC Kuhn Evaluation, LLC was a consulting firm that wrote the original grant applications for the GEAR UP, College Access, and Teacher Quality grants. In the applications, the firm included itself in each of these grants as a partner that would be providing advisory services. In the case of the GEAR UP grant, the firm also provided evaluation services, which is a conflict of interest."<sup>61</sup>

#### B. Rick Melmer

Prior to becoming the Secretary of the SDDOE in 2003, Rick Melmer was the superintendent of the Watertown School District from 1995 until 2003, where he also administered Lake Area Technical Institute. Appointed by Governor Mike Rounds, Melmer served as the Secretary of the Department of Education from 2003 through 2008, where during his final year he served as the president of the Council of Chief State

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<sup>60</sup> SD SoS, <https://sosenterprise.sd.gov/BusinessServices/Business/FilingSearch.aspx>, accessed 12 April 2018.

<sup>61</sup> SD DLA, "Special Review of Mid Central Educational Cooperative," 12.

School Officers (CCSSO).<sup>62</sup> Melmer authorized the initial GEAR UP grant in 2005. He left the SDDOE in November 2008 to become the Dean of the School of Education at the University of South Dakota (USD) in Vermillion, South Dakota.<sup>63</sup>

While at USD, Melmer was a consultant for the federal Bureau of Indian Education (BIE), CCSSO in Washington, D.C., and MCEC.<sup>64</sup> He incorporated Dakota Education Consulting (DEC) with Tom Oster in March 2013, while simultaneously being the Dean of Education at USD.<sup>65</sup> Melmer left the School of Education later that year on June 21 to “become an advisor for several educational agencies at the state and national levels.”<sup>66</sup>

In 2017, Melmer wrote a letter in response to questions posed by the South Dakota Legislature’s Government Operations and Audit Committee (GOAC). Melmer explained that during his tenure at USD in 2012 MCEC’s Guericke asked him to provide technical assistance on issues related to GEAR UP and other programs administered by MCEC. Under contract, MCEC paid Melmer \$1,000 per month beginning in August

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<sup>62</sup> University of South Dakota, “School of Education Dean Rick Melmer is leaving USD to serve as advisor for state, national education agencies,” (21 May 2013), par. 4, <http://www.usd.edu/news/2013/school-of-education-dean-rick-melmer-is-leaving-usd-to-serve-as-advisor-for-state-national>

<sup>63</sup> KELOLAND News, “Melmer Joins USD As Education Dean,” (KELOLAND News, 16 June 2008), par. 2, <http://www.keloland.com/news/article/other/melmer-joins-usd-as-education-dean>

<sup>64</sup> Office of the Inspector General, U.S. Department of the Interior, “Investigative Report of Brian Drapeaux,” (2 December 2014), 1, <https://www.doioig.gov/sites/doioig.gov/files/BrianDrapeauxPublicRevised.pdf>; Rick Melmer, <https://www.linkedin.com/in/rick-melmer-93bb1321/>, accessed 12 April 2018; Rick Melmer, Letter to Tim Flannery, Department of Legislative Audit, (24 September 2017), par. b, <http://sdlegislature.gov/docs/interim/2017/documents/goa10-5-17replyfromrmdoc17a.pdf>

<sup>65</sup> The website for Dakota Education Consulting listed Melmer’s office in Delzell Hall on USD’s campus as his business address.

<sup>66</sup> USD, “School of Education Dean Rick Melmer is leaving USD to serve as advisor for state, national education agencies,” par. 1.

2012.<sup>67</sup> Under this contract, Melmer served on the GEAR UP Advisory Board that met monthly with the goal of coordinating programs that assist Native American students, such as GEAR UP, the College Access Challenge Grant, Jump Start, TRIO and the Bridge programs.<sup>68</sup>

Also in the letter to GOAC, Melmer stated that he began his two-year employment with MCEC in 2013 (after he left USD) where he worked on three contracts with CCSSO, the SDBoR, and the GEAR UP program respectively. In June 2013, the MCEC board approved a one-year contract for \$185,000 with Melmer to serve as a senior advisor, and approved a similar contract the following year for \$233,000.<sup>69</sup> Between 2012 and the termination of MCEC in June 2017, MCEC paid Melmer at least \$350,000 through contracts directly among MCEC, CCSSO, and the SDBoR that were not included in Melmer's two employee contracts for 2013-2014 and 2014-2015.<sup>70</sup>

Melmer established Leadership South Dakota as a DBA (Doing Business As) under his consulting firm DEC in January 2014. In 2017, Melmer, along with Tom Oster, incorporated Leadership South Dakota as a non-profit. On June 24, 2015, Melmer incorporated RVM Consulting Services, LLC with the South Dakota Secretary of State's

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<sup>67</sup> Melmer, Letter to Tim Flannery, DLA, par. b.; Mid Central Governing Board Meeting, "Minutes of the Mid Central Educational Cooperative," (13 September 2012), 4, [http://midcentral-coop.org/uploads/September%202012%20Minutes-A\\_.pdf](http://midcentral-coop.org/uploads/September%202012%20Minutes-A_.pdf)

<sup>68</sup> Rick Melmer, Letter to Tim Flannery, DLA, par. b.

<sup>69</sup> Angela Kennecke, "Melmer Answers Questions About GEAR UP Work," (KELOLAND News, 28 September 2015), par. 13, <http://www.keloland.com/news/article/business/melmer-answers-questions-about-gear-up-work>

<sup>70</sup> MCEC Board Meeting, "Minutes of the Mid Central Educational Cooperative": CCSSO, \$110,000 for "Dr. Melmer's Work" July 11, 2013  
SDBOR, \$49,500 for "Dr. Melmer Services" Sept. 12, 2013  
CCSSO, \$150,000 for "Dr. Melmer Work" Feb. 13, 2014  
SDBOR, \$49,500 for "Dr. Melmer Services" July 10, 2014

office.<sup>71</sup> On July 9, 2015, MCEC accepted Melmer's resignation.<sup>72</sup> After he resigned from MCEC, he continued to offer services through DEC as the co-director, through RVM Consulting as the director, through Leadership South Dakota as the co-director, and through the Growth Coach of South Dakota as a leadership coach.<sup>73</sup>

### C. Tom Oster

Tom Oster replaced Melmer as the South Dakota Secretary of Education in 2008. Prior to joining the SDDOE, Oster was the superintendent of the Avon school district. Oster was the Secretary of Education until early January 2011. When voters elected Daugaard governor in November 2010, Governor-elect Daugaard informed Oster he would not be retained when Daugaard took office.<sup>74</sup> Oster then became the superintendent of the Sioux Valley school district in Volga, South Dakota, beginning July 1, 2011.<sup>75</sup> He soon founded Oster Consulting in August 2011 (continuing to serve as the director to this day) and DEC with Melmer in March 2013 (where he continues to serve as co-director).<sup>76</sup> When Oster left the Sioux Valley school district in 2016, the school board hired Oster's own consulting firm (Dakota Education Consulting) to find his

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<sup>71</sup> SD SoS, <https://sosenterprise.sd.gov/BusinessServices/Business/FilingSearch.aspx>, accessed 12 April 2018.

<sup>72</sup> Mid Central Governing Board Meeting, "Minutes of the Mid Central Educational Cooperative," (9 July 2015), 2, <http://midcentral-coop.org/uploads/July%202015%20MCEC%20Minutes.pdf>

<sup>73</sup> "Why Leadership South Dakota?" (2018), par. 3, <http://www.leadershipsouthdakota.com/about/>

<sup>74</sup> Bob Mercer, "Schopp named interim education secretary," (10 December 2010), par. 2, [http://www.capjournal.com/news/schopp-named-interim-education-secretary/article\\_1257e2a7-33bf-54f8-9407-25511eb4b355.html](http://www.capjournal.com/news/schopp-named-interim-education-secretary/article_1257e2a7-33bf-54f8-9407-25511eb4b355.html)

<sup>75</sup> Rapid City Journal, "Oster returns to school administration," (23 March 2011), par. 2, [http://rapidcityjournal.com/news/oster-returns-to-school-administration/article\\_efeb6c9e-5555-11e0-a9fb-001cc4c002e0.html](http://rapidcityjournal.com/news/oster-returns-to-school-administration/article_efeb6c9e-5555-11e0-a9fb-001cc4c002e0.html)

<sup>76</sup> SD SoS, <https://sosenterprise.sd.gov/BusinessServices/Business/FilingSearch.aspx>, accessed 12 April 2018.



replacement.<sup>77</sup> In January 2014, Oster co-founded (with Melmer) Leadership South Dakota, where he also serves as co-director.<sup>78</sup> Oster has also been a senior advisor to CCSSO, serving as the “senior rural education consultant.”<sup>79</sup>

#### D. Keith Moore

Keith Moore, an enrolled member of the Rosebud Sioux Tribe, served as director of the SDDOE Office of Indian Education from 2005 through 2009 under then Secretary of Education Melmer.<sup>80</sup> While at the SDDOE, he served as the project director for the GEAR UP program. In August 2009, Moore left the SDDOE to become the chief diversity officer at USD (while Melmer was the Dean of the School of Education).<sup>81</sup> After a short tenure at USD, he left to become the director of the BIE for the BIA in Washington, D.C., beginning on June 7, 2010.<sup>82</sup> According to the U.S. Department of the Interior Bureau of Indian Affairs,

“The BIE Director is responsible for overseeing a federal school system that provides elementary and secondary education for 42,000 American Indian and Alaska Native children from federally recognized tribes, as well as overseeing the administration of two post secondary institutions, providing funding for 26 tribal

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<sup>77</sup> Angela Kennecke, “Superintendent’s Own Consulting Firm Will Find His Replacement,” (KELOLAND News, 17 December 2015) par. 3, <http://www.keloland.com/news/article/business/superintendent-s-own-consulting-firm-will-find-his-replacement>

<sup>78</sup> “Why Leadership South Dakota?” (2018), par. 8, <http://www.leadershipsouthdakota.com/about/>

<sup>79</sup> Council of Chief State School Officers, “Rural Chiefs Conference,” (June 2015), 5, [http://online.ccsso.org/iweb/upload/RuralChiefsAgenda\\_Omaha2015.pdf](http://online.ccsso.org/iweb/upload/RuralChiefsAgenda_Omaha2015.pdf)

<sup>80</sup> South Dakota Office of Indian Education, “History,” (2016), par. 3, <https://indianeducation.sd.gov/history.aspx>.

<sup>81</sup> University of South Dakota, “Keith Moore named Chief Diversity Officer at The U,” (24 June 2009), par. 1, 3, <http://www.usd.edu/news/2009/keith-moore-named-chief-diversity-officer-at-the-u>

<sup>82</sup> United States Department of the Interior, Indian Affairs, “Biographical Statement of Keith O. Moore: Director, Bureau of Indian Education, U.S. Department of the Interior,” (2010), par. 1, [https://appropriations.house.gov/uploadedfiles/02.28.12\\_budget\\_hearing\\_-\\_interior\\_-\\_kieth\\_moore\\_-\\_biography.pdf](https://appropriations.house.gov/uploadedfiles/02.28.12_budget_hearing_-_interior_-_kieth_moore_-_biography.pdf)

colleges and universities and two technical colleges, and operating higher education scholarship programs.”<sup>83</sup>

While Moore was leading the BIE, he selected as his chief of staff Brian Drapeaux. Directly prior to working for the BIE, Drapeaux was the vice-president of Pergroup (also known as Personal Group) in Pierre from 2004 through 2007 and 2009 through 2010.<sup>84</sup> Both Moore and Drapeaux left the BIE in 2012 amid an investigation by the Office of the Inspector General for the U.S. Department of the Interior for attempting to steer a contract to Pergroup. As the report stated,

“We found that Drapeaux, as well as former BIE Director Keith Moore, had a longstanding friendship with the president of PerGroup, one of several contractors applying for the organizational assessment contract. PerGroup initially was awarded the contract. A public complaint led to recognition of the award as a conflict of interest and, as a result, the contract was terminated. PerGroup then became a subcontractor for the company that eventually received the new contract, in spite of stipulations established by the contract specialist... These senior BIE officials appear to have acted in violation of Federal ethics regulations governing impartiality and the use of public office for private gain.”<sup>85</sup>

As reported by the Office of the Inspector General, after the BIA terminated the contract due to a violation of conflict of interest laws, Moore and Drapeaux awarded the contract to Ho-Chunk, Inc., an economic development company owned by the Winnebago Tribe in Nebraska. Ho-Chunk, Inc. made All-Native, Inc. (a subsidiary of

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<sup>83</sup> United States Department of the Interior, Indian Affairs, “Biographical Statement of Keith O. Moore: Director, Bureau of Indian Education, U.S. Department of the Interior,” (2010), par. 1, [https://appropriations.house.gov/uploadedfiles/02.28.12\\_budget\\_hearing\\_-\\_interior\\_-\\_kieth\\_moore\\_-\\_biography.pdf](https://appropriations.house.gov/uploadedfiles/02.28.12_budget_hearing_-_interior_-_kieth_moore_-_biography.pdf).

<sup>84</sup> Office of the Inspector General, U.S. Department of the Interior, “Investigative Report of Brian Drapeaux,” (2 December 2014), 1, <https://www.doi.gov/sites/doi.gov/files/BrianDrapeauxPublicRevised.pdf>

<sup>85</sup> Office of the Inspector General, U.S. Department of the Interior, “Investigative Report of Brian Drapeaux,” (2 December 2014), par. 2, <https://www.doi.gov/reports/investigative-report-brian-drapeaux>; Office of the Inspector General, U.S. Department of the Interior, “Investigative Report of Brian Drapeaux,” (2 December 2014), 1, <https://www.doi.gov/sites/doi.gov/files/BrianDrapeauxPublicRevised.pdf>

Ho-Chunk) a sub-recipient of the contract. All-Native then sub-contracted with Pergroup and USD Dean of Education Melmer.<sup>86</sup> While the government took no legal action against Moore or Drapeaux, Moore soon left the BIE and returned to South Dakota to become the state director of the Fellowship of Christian Athletes (FCA) in July 2012. Drapeaux served as the acting director of the BIE until the agency found a replacement.<sup>87</sup>

After returning to South Dakota, Moore also served as a consultant for the SDDOE and MCEC. According to Moore's September 2017 letter in response to questions GOAC posed to him, he served as a consultant for the GEAR UP grant from August 2012 through September 2015.<sup>88</sup> MCEC paid Moore \$4,000 per month to be the chairman of the MCEC GEAR UP Advisory Board. Moore received at least \$99,000 in compensation from MCEC while he was the director of the FCA.<sup>89</sup> In June 2013, Moore became the interim director of the SDDOE Office of Indian Education after the departure of Roger Campbell. Moore also became the interim GEAR UP project director.<sup>90</sup> Moore began serving on the South Dakota Community Foundation Board (SDCF) in 2015, an

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<sup>86</sup> Office of the Inspector General, U.S. Department of the Interior, "Investigative Report of Brian Drapeaux," 7.

<sup>87</sup> U.S. Department of the Interior, "Bureau of Indian Education Director Keith Moore to Wrap up Successful Tenure at Department of the Interior," (20 June 2012), par 3, <https://www.doi.gov/news/pressreleases/Bureau-of-Indian-Education-Director-Keith-Moore-to-Wrap-up-Successful-Tenure-at-Department-of-the-Interior>

<sup>88</sup> Keith Moore, Letter to Tim Flannery, Department of Legislative Audit, (25 September 2017), par 3, <http://www.sdlegislature.gov/docs/interim/2017/documents/goa10-5-17replyfromkmdoc18a.pdf>

<sup>89</sup> Eide Bailly, "Forensic Accounting Report of Mid-Central Educational Cooperative," (1 December 2015), 5, [http://mediad.publicbroadcasting.net/p/sdpb/files/201512/mcec\\_forensic\\_report\\_-\\_12-1-2015.pdf?\\_ga=1.42743654.255997400.1426187076](http://mediad.publicbroadcasting.net/p/sdpb/files/201512/mcec_forensic_report_-_12-1-2015.pdf?_ga=1.42743654.255997400.1426187076)

<sup>90</sup> Indian Country Today, "Moore Named Interim Director of Indian Education for South Dakota," (June 10, 2013), par. 1, <https://indiancountrymedianetwork.com/education/native-education/moore-named-interim-director-of-indian-education-for-south-dakota/>.

original sponsor of Leadership South Dakota (founded by Melmer and Oster).<sup>91</sup> SDCF also contributes funds to the PAST Foundation, an Ohio-based corporation specializing in STEM education.<sup>92</sup>

E. Kelly Duncan

Dr. Kelly Duncan served on the South Dakota Board of Education Standards from 1996 through 2016, acting as president from 2007 through 2011.<sup>93</sup> Duncan was an assistant professor at Northern State University (NSU) in Aberdeen from 2003 to 2006 until joining the Division of Counseling and Psychology in Education at the University of South Dakota. She began as an assistant professor before becoming the director of the Counseling and Psychological Services Clinic at USD in 2011.<sup>94</sup> Duncan also worked as a consultant for MCEC. From June 2011 through December 2012, MCEC paid Duncan at least \$50,000 for her work on the College Access grant in South Dakota.<sup>95</sup>

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<sup>91</sup> Kayla Prasek, “Watertown businessman on S.D. Community Foundation Board,” (Watertown Public Opinion, 27 December 2014), par. 9, [https://www.thepublicopinion.com/news/local\\_news/watertown-businessman-on-s-d-community-foundation-board/article\\_9e341884-8d31-11e4-a7d9-277d6183456e.html](https://www.thepublicopinion.com/news/local_news/watertown-businessman-on-s-d-community-foundation-board/article_9e341884-8d31-11e4-a7d9-277d6183456e.html); Leadership South Dakota, “Leadership South Dakota Announces Its First Class,” (20 August 2014), par. 1, <http://leadershipsouthdakota.com/news/leadership-south-dakota-announces-its-first-class/>

<sup>92</sup> South Dakota Community Foundation, “Community Innovation Grants Round 2 of 2016,” (6 September 2016), par. 7, <https://sdcommunityfoundation.org/news/community-innovation-grants-round-2-of-2016/>

<sup>93</sup> SDDOE, “Board of Education members reappointed,” (February 2013), par. 2.

<sup>94</sup> KDLT Newsroom, “Northern State Appoints Dr. Kelly Duncan As Dean For School Of Education,” (17 April 2015), par. 2, <http://www.kdlt.com/2015/04/17/northern-state-appoints-dr-kelly-duncan-as-dean-for-school-of-education/>

<sup>95</sup> Angela Kennecke, “Board of Education Member On Mid Central Payroll,” (KELOLAND News, 16 November 2015), par. 8, <http://www.keloland.com/news/article/business/board-of-education-member-on-mid-central-payroll>

In June 2012, Duncan incorporated Dakota Plains Consulting with the South Dakota Secretary of State's office.<sup>96</sup> In 2013, MCEC paid that same consulting company \$25,000 for work done on the College Access grant. In July 2014, Duncan's consulting firm received a \$40,000 contract from the South Dakota Department of Education to help implement the SD-STARS program.<sup>97</sup> While Duncan was at USD, the USD Government Research Bureau (GRB) hired her to be an independent evaluator and one of the principal investigators of the GEAR UP program (evaluation published in August 2015).<sup>98</sup> Duncan left USD to become the Dean of the School of Education at NSU in June 2015.<sup>99</sup> She moved her consulting firm from Vermillion to Aberdeen. Overall, as reported by KELOLAND News, Duncan received over \$124,000 in contracts from the SDDOE between 2012 and 2015 in addition to her salaries from USD and NSU.<sup>100</sup>

#### *F. Annalies Corbin*

Annelies Corbin graduated from USD with a degree in Anthropology in 1993. She founded the PAST (Partnering Anthropology with Science and Technology) Foundation in 2000. She currently serves as the PAST Foundation's president, CEO, and "Chief Goddess." The PAST Foundation, located in Columbus, Ohio, is a federal

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<sup>96</sup> SD SoS, <https://sosenterprise.sd.gov/BusinessServices/Business/FilingSearch.aspx>, accessed 12 April 2018.

<sup>97</sup> Angela Kennecke, "Board of Education Member Also Has Contract With Dept. of Ed," (KELOLAND News, 18 November 2015), par. 7, <http://www.keloland.com/news/article/business/board-of-education-member-also-has-contract-with-dept.-of-ed>

<sup>98</sup> Hulac, Duncan, Nordyke, and Birkeland, "South Dakota GEAR UP Program Evaluation," 5.

<sup>99</sup> KDLT Newsroom, "Northern State Appoints Dr. Kelly Duncan As Dean For School Of Education," par. 7.

<sup>100</sup> Angela Kennecke, "Board of Education Member Had Multiple Contract With State," (KELOLAND News, 23 November 2015), par. 8, <http://www.keloland.com/news/article/business/board-of-education-member-had-multiple-contracts-with-state>

501(c)(3) public charity that designs STEM education (especially in rural America) and builds partnerships for educational projects, field schools, media, and websites.<sup>101</sup>

The PAST Foundation partnered with several entities. Those partners included MCEC, the South Dakota Innovation Lab (SDIL), Sanford Research, and the PAST Innovation Lab. Corbin was the president and CEO of the PAST Innovation Lab and a board member of the South Dakota Innovation Lab (SDIL). SDIL is “a statewide STEM professional development program that has so far has provided 8300 students with access to quality education that meets them where they are and prepares them for the modern economy.”<sup>102</sup> Dan Guericke was the executive director of the SDIL. In February 2016, KELOLAND News featured an article about the PAST Foundation and the SDIL partnership, stating:

“According to the Innovation Lab's own report, in 2010, South Dakota Secretary of Education Melody Schopp asked Guericke to create a new model of education for rural South Dakota. And GEAR UP Funds were directed through the PAST Foundation in Ohio to Guericke's pet project, the South Dakota Innovation Lab, headed up by various employees of Mid Central, who were the same people administering the grant money.”<sup>103</sup>

The PAST Foundation received at least \$480,000 in GEAR UP funds between October 2013 and August 2015.<sup>104</sup>

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<sup>101</sup> Annalies Corbin, “Curriculum Vita,” (2014), 1-2, <https://pastfoundation.org/wp-content/uploads/2014/03/AC-2014-full-v02.pdf>

<sup>102</sup> Department of Anthropology, Ohio State University, “PAST Foundation recognized by President Bill Clinton,” (4 July 2014), par. 2, <https://anthropology.osu.edu/news/clinton-recognizes-past>

<sup>103</sup> Angela Kennecke, “What Is PAST? Following GEAR UP Money To Ohio,” (KELOLAND News, 9 February 2016), par. 15, <http://www.keloland.com/news/article/featured-stories/what-is-past-following-gear-up-money-to-ohio>

<sup>104</sup> Eide Bailly, “Forensic Accounting Report of Mid-Central Educational Cooperative,” 5.

### G. Don Kirkegaard

Don Kirkegaard served on the South Dakota Board of Education Standards from 2006 through 2017. He was the superintendent of the Britton-Hecla school district for over 17 years. He also served as the superintendent of the Meade County school district from 2011 through 2017.<sup>105</sup> Although Kirkegaard denied the association, DEC listed him on its website as a partner with Melmer, Oster, and John Pederson. He was listed on the DEC website from at least 2013 through January 23, 2016.<sup>106</sup> During those years, the DEC website listed among its clients Britton Hecla, Meade County, and SDDOE – under which the South Dakota Board of Education Standards serves.<sup>107</sup> On November 6, 2017, Governor Dugaard nominated Kirkegaard to become the South Dakota Secretary of Education, replacing Melody Schopp.<sup>108</sup> The South Dakota State Senate subsequently confirmed the nomination.<sup>109</sup>

### **XI. Trouble during Secretary Schopp’s Tenure**

Melody Schopp served as the deputy secretary under Secretary of Education Tom Oster until Governor Dugaard appointed her secretary of education in January 2011.<sup>110</sup> At the very start of her tenure as secretary, Schopp faced several complaints from state employees about the handling of the GEAR UP program.

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<sup>105</sup> Office of Gov. Dennis Dugaard, “Governor Names Don Kirkegaard As Secretary of Education,” (6 November 2017), par. 4, 6, <https://news.sd.gov/newsitem.aspx?id=22637>

<sup>106</sup> Dakota Education Consulting, “About Us,” (7 April 2013), par. 4, <https://web.archive.org/web/20130407200404/http://www.dakotaedconsulting.org/about.html>

<sup>107</sup> Dakota Education Consulting, “Clients,” (6 February 2015), <https://web.archive.org/web/20150206074020/http://deconsulting.wpengine.com/clients/>

<sup>108</sup> Office of Gov. Dennis Dugaard, “Governor Names Don Kirkegaard As Secretary of Education,” par. 4.

<sup>109</sup> Bob Mercer, “Senate confirms education appointees Kirkegaard and Sly,” (Rapid City Journal, 22 January 2018), par. 2, [http://rapidcityjournal.com/news/local/senate-confirms-education-appointees-kirkegaard-and-sly/article\\_4f75138c-d64a-5df3-9c77-93a9fd6eb983.html](http://rapidcityjournal.com/news/local/senate-confirms-education-appointees-kirkegaard-and-sly/article_4f75138c-d64a-5df3-9c77-93a9fd6eb983.html)

<sup>110</sup> Bob Mercer, “Schopp named interim education secretary,” par. 2.

LuAnn Werdel, the director for the SDDOE Office of Indian Education at the time, sent Schopp an email on January 10, 2011, regarding Schopp's decision to end Werdel's employment with the SDDOE Office of Indian Education. In the email, Werdel references several issues with the management of the GEAR UP and College Access grants by MCEC. In her email, she states:

“By ending my appointment as an exempt employee of the Department of Education you have effectively sided with people who have no integrity or morals when it comes to managing grants and federal funds. I have told you over and over what Stacy Phelps and Mid Central is doing with the GEAR UP grant and College Access grant... To conclude, you know only too well that I have been frustrated with the daily operations of the SD GEAR UP Grant and the SD College Access Grant. In front of everyone last Friday at the last College Access meeting, Stacy Phelps directed all College Access staff to send College Access data to his GEAR UP data lady, Misty Mousseau. This co-mingling of data is illegal. Stacy Phelps remains Project Coordinator in charge of daily operations. This arrangement did not work previously and I'm not sure why we would expect a different result. He is also designated 100% GEAR UP and once I showed you and Mr. Oster the budgets a couple of months ago you were appalled. What has changed? ... You told me last week not to worry so much about the grants and to focus on large policy issues-how can one focus on other issues when the foundation of the Office of Indian Education is based on unethical foundations.”<sup>111</sup>

The next day – on January 11 – Werdel sent another email to Schopp and her colleagues apologizing for the previous day's message, stating that she acted out of line and lashed out.<sup>112</sup> Six years later (in 2017), Werdel's emails became public. When GOAC, in August 2017, questioned Schopp about this email exchange, Schopp replied in writing that, “I made the decision not to retain LuAnn Werdel in her role, due to the erratic nature of her behavior and ongoing personnel issues. I informed her of my decision on my first day as interim Secretary and she provided a resignation email the

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<sup>111</sup> Melody Schopp, “Answers to GOAC questions to Melody Schopp,” (8 August 2017), Appendix B, <http://sdlegislature.gov/docs/interim/2017/documents/goa8-29-17replyfromSDDOEdoc19.pdf>

<sup>112</sup> Schopp, “Answers to GOAC questions to Melody Schopp,” Appendix C, Appendix D, Appendix E.



following day.”<sup>113</sup> In an August 2017 interview with KELOLAND, LuAnn Werdel recanted the apology email she sent in the exchange. According to the story, “Werdel says she only apologized on the advice of a mentor because she was worried about the repercussions and her own future in education.”<sup>114</sup> LuAnn Werdel argued that she never recanted the information or allegations in the email, only the unprofessional and emotional tone she used, along with sending it to several recipients in addition to Secretary Schopp.

Following Werdel’s termination, Roger Campbell became the new director of the SDDOE Office of Indian Education. According to documentation, Campbell also raised concerns about the perceived improprieties he witnessed in the GEAR UP and College Access programs. On April 10, 2012, a little over a year into his office, Campbell had a meeting with Secretary Schopp and representatives from MCEC, including Scott Westerhuis and Stacy Phelps. According to Schopp’s recollection there was “obvious personal animosity on both sides” and “This was a contentious meeting with unfair allegations being leveled at Mr. Campbell by Mr. Phelps and Mr. Westerhuis.”<sup>115</sup> After the meeting, Campbell sent an email to Secretary Schopp on April 23, 2012 addressing specific issues raised during the heated April 12 meeting along with allegations made by Westerhuis and Phelps. According to later testimony by Secretary Schopp in 2017, the

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<sup>113</sup> Schopp, “Answers to GOAC questions to Melody Schopp,” 5.

<sup>114</sup> Angela Kennecke, “Exclusive: Former Education Official Explains Her GEAR UP Warnings,” (KELOLAND News, 28 August 2017), par. 9, <http://www.keloland.com/news/article/investigates/exclusive-former-education-official-explains-her-gear-up-warnings>

<sup>115</sup> Paul Bachand, Letter to Tim Flannery for further information about Roger Campbell for GOAC, (28 August 2017), 2-3, <http://sdlegislature.gov/docs/interim/2017/documents/goa8-29-17SDDOEemailsdoc26.pdf>

SDDOE increased its monitoring and oversight of the GEAR UP program in response to this meeting.

On August 1, 2012, approximately three months after the first meeting and emails from Roger Campbell, Campbell sent another email to Secretary Schopp that would later be widely publicized. Within the nearly three-page email, Campbell outlined the background of the SDDOE Office of Indian Education and the GEAR UP program in South Dakota. He also summarized the problems of accountability, transparency, and clarity he had observed during his time in the SDDOE Office of Indian Education.

Several of his claims are as follows:

“When I initially took the position of Indian Ed. Director in 2011 there were a number of challenges that had been communicated to me from the DOE about Gear Up and a more recent grant, College Access Challenge. The Gear Up grant had more history in terms of questions about accountability specifically but both grants and the management of each has been a point of contention in the department as well as certain agencies outside the department.”

“There were also instances of certain employees being paid from both grants at amounts inconsistent with SD DOE standards. There were dollars attempted to be expended that were without grant agreement or contract and based on our agreement with the contractor were not reasonable or necessary...Prior to the new Gear Up grant none of the accountability measures that I am instituting had been followed. We have also communicated to the feds through the annual performance that there were certain activities that had taken place but in fact they had not.”

“There has also been a lack of checks and balances with the fiscal responsibilities. The Business Manager for Mid Central Education Cooperative (MCEC) is also the CFO American Indian Institute for Innovation (AIII) who is another grant partner. He also serves in the capacity of Business Manager for the Oceti Sakowin Education Consortium (OSEC) who is another grant partner. The Assistance [sic] Business Manager for MEC is paid at 80% FTE directly off of the Gear Up grant but is titled Data Specialist. The Business Manager for AIII is a MCEC employee who in the past was the highest paid employee paid out of the College Access Challenge grant.”

“We are almost to the seventh year of Gear Up in SD and to date there has never been an audit of this federal program.”

“It has been determined that agreements between MCEC and other partners have been incorrect or have not been in place which is not following proper grant administration. There has not been an [sic] collective effort to effectively communicate with the SD DOE in terms of grant initiatives nor has there been attempts at building relationships to improve the data collection efforts so that we can more effectively assess and measure the program.”

“Historically the Gear Up program has suffered from objectivity in its assessment due to the relationship between the contractor and evaluator.”<sup>116</sup>

As noted previously, Secretary Schopp stated that the SDDOE increased its oversight and monitoring of MCEC with the GEAR UP grant after the April 10 meeting. Some of those measures included use of an online system for claims submission, random sampling of invoices, and onsite technical assistance.<sup>117</sup> In response to Campbell’s August email, Schopp apparently took into account the increased measures and Campbell’s reiteration of the problems discussed in the April meeting:

“Roger – we need to stop doing this back and forth thing. I don’t know where any of this is going and it seems all this is going to do is further the issues. This was April – it is useless at this point to address the issues again. Can we simply move forward?”<sup>118</sup>

This email seems to be the last of the exchange according to available documentation. Less than one year later, Campbell submitted his resignation to Secretary Schopp on February 28, 2013.<sup>119</sup> After Campbell’s departure, the directorship of SDDOE Office of Indian Education remained vacant for three months until Keith Moore stepped

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<sup>116</sup> Roger Campbell, Email to Melody Schopp entitled “draft,” (1 August 2012), 1-3, <https://assets.documentcloud.org/documents/3982883/goa8-29-17SDDOEexhibit2doc28.pdf>

<sup>117</sup> Bachand, Letter to Tim Flannery for further information about Roger Campbell for GOAC, 6.

<sup>118</sup> IBID., 9.

<sup>119</sup> Schopp, “Answers to GOAC questions to Melody Schopp,” Appendix H.

in to serve as interim director.<sup>120</sup> Eventually, Mato Standing High would become the permanent director in June 2015; he serves currently.<sup>121</sup>

## **XII. Beginning of the End**

On May 19, 2015, investigative reporter Bob Mercer published a newspaper article in the *Pierre Capital Journal* titled “SD audit finds unusual activities in GEAR UP.” The audit referenced in the article was a 2014 South Dakota Department of Legislative Audit (DLA) audit of MCEC for the fiscal year ending on June 30, 2014. Mercer noted several findings from the audit, including that \$214,000 needed to be repaid to the SDDOE and that effort logs had not been completed for two senior advisors, Rick Melmer and Keith Moore.<sup>122</sup> The audit noted that they did not complete these logs for the first quarter of fiscal year 2014 (the months of July, August, and September of 2013), but MCEC compensated them \$32,570.83 during that time.<sup>123</sup> Another issue regarded matching state dollars for the GEAR UP contract between 2012 and 2013, particularly with the valuation of Microsoft licenses for software used in the GEAR UP schools.

Two factors precipitated the 2014 DLA audit. First, an anonymous individual came to the DLA with concerns about the GEAR UP program. Second, while beginning an investigation of the GEAR UP program, DLA determined the GEAR UP program to be high risk and worthy of a formal audit. After the completed audit, DLA published four

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<sup>120</sup> Indian Country Today, “Moore Named Interim Director of Indian Education for South Dakota,” par. 1.

<sup>121</sup> Mato Standing High, <https://www.linkedin.com/in/mato-standing-high-7a23a167/>, accessed 12 April 2018.

<sup>122</sup> Bob Mercer, “SD audit finds unusual activities in GEAR UP,” (*Pierre Capital Journal*, 19 May 2015), par. 7, 10, [http://www.capjournal.com/news/sd-audit-finds-unusual-activities-in-gear-up/article\\_be27292e-fea6-11e4-a52d-13bf0a7950d6.html](http://www.capjournal.com/news/sd-audit-finds-unusual-activities-in-gear-up/article_be27292e-fea6-11e4-a52d-13bf0a7950d6.html)

<sup>123</sup> *IBID.*, par 14, 17.

written findings about GEAR UP, about which Mercer wrote in his May 19, 2015 news story.<sup>124</sup>

Mercer's article caught the attention of the South Dakota legislature's Government Operations and Audit Committee (GOAC). The August 25, 2015 GOAC meeting was the first chance the committee members were able to discuss the findings of the 2014 Single Audit with representatives from the SDDOE and MCEC. Tamara Darnall, director of the Division of Finance and Management for the SDDOE, and Dan Guericke, the director of MCEC, were present at the GOAC meeting to answer questions about the audit.<sup>125</sup> According to Darnall, the findings from the audit were mostly resolved. Toward the end of the discussion, Senator Phyllis Heineman (Sioux Falls) inquired if the GEAR UP program results were measured and if the program were effective in its goals. According to the GOAC minutes,

“Director Darnall stated that an annual performance report is prepared and submitted to the USDOE. Mr. Guericke stated that about three hundred students participate in the summer program each year. He added that the summer program has been in place for many years, even before the GEAR Up funding became available. For those students in the summer program, ninety-eight percent of them graduate from high school and ninety-five percent go on to attend post-secondary education.”<sup>126</sup>

### **XIII. Tragedy**

Following the August 25, 2015, GOAC meeting, the next event to occur would cause the GEAR UP story in South Dakota to become one of the most widely publicized

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<sup>124</sup> South Dakota Department of Legislative Audit, “Update to the Government Operations and Audit Committee on the Status of the Mid Central Educational Cooperative Special Review and Fiscal Year 2015 Single Audit,” (25 April 2017), par. 1-3, <http://sdlegislature.gov/docs/interim/2017/documents/goa4-25-17dlaprocessactionsdoc14.pdf>

<sup>125</sup> Government and Operations Audit Committee, “Minutes,” (South Dakota Legislative Research Council, 25 August 2015), 1, <http://www.sdlegislature.gov/docs/Interim/2015/minutes/MGOA08252015.pdf>

<sup>126</sup> IBID., 2.

scandals in South Dakota history. On September 16, 2015, Secretary of Education Melody Schopp emailed the executive director of MCEC, Dan Guericke, requesting a meeting for the following week. At about 6:00 p.m. that day, Schopp and Guericke connected over a phone call, in which Secretary Schopp informed Guericke that she was terminating the SDDOE's management partnership contract with MCEC for the GEAR UP program.<sup>127</sup> That same night, just hours after the phone call between Secretary Schopp and Guericke, local Platte residents reported a fire at the property of Scott and Nicole Westerhuis. Scott and Nicole Westerhuis and their four young children perished. Based upon Division of Criminal Investigation (DCI) findings, South Dakota Attorney General Marty Jackley revealed that Scott Westerhuis murdered his wife and their four children with a shotgun before setting the house on fire and shooting himself.<sup>128</sup> The news of the murder-suicide shocked the community of Platte and the entire state of South Dakota.

The morning before the fire, Scott Westerhuis had travelled to Takini School in west-central South Dakota, a more than three-hour drive from Platte. After speaking with Secretary Schopp, Guericke called Westerhuis, to inform him that Secretary Schopp had terminated the GEAR UP contract. That evening, Westerhuis drove back to Platte from Takini, and according to the police investigations, spoke on the phone with Guericke for

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<sup>127</sup> Jonathan Ellis, "Between two phone calls, Platte family murdered," (Argus Leader, 14 November 2015), par. 5, <https://www.argusleader.com/story/news/2015/11/14/between-two-phone-calls-platte-family-murdered/75535332/>

<sup>128</sup> KSFY News, "Murder-suicide suspected in Platte house fire," (21 September 2015), par. 6, <http://www.ksfy.com/home/headlines/Attorney-General-Platte-family-killed-in-328597201.html>

an extended period of time on his drive back.<sup>129</sup> Allegedly, the news of the cancelled grant contract spurred Westerhuis to take dramatic and horrific actions.

#### **XIV. Cancellation of the Grant?**

Investigative reporters gradually unearthed the factors that led to the SDDOE cancelling its partnership contract with MCEC. At the August 25, 2015, GOAC meeting, Tamara Darnell stated that the issues raised in the 2014 audit were being resolved. During this time period, DLA had started a GEAR UP program audit for the following year, FY2015. Apparently, DLA's subsequent investigation started raising the same issues found in the 2014 audit. According to an *Argus Leader* article with an interview with Secretary Schopp:

“The takeaway from that Aug. 25 meeting was that Schopp and the Department of Education were sticking by Mid Central. But that changed within a matter of days. A second state audit was under way – an audit that has yet to be made public. Schopp and department officials heard bad news. Many of the problems that were found in the previous audit – problems in the department had just assured lawmakers were fixed – were being found again.”<sup>130</sup>

The continuation of these problems prompted Secretary Schopp's cancellation of the grant contract with MCEC. A few days later, on September 21, 2015, Secretary Schopp sent a formal letter to Dan Guericke outlining the eight specific reasons for termination. They are as follows:

- “(1) Lack of supporting documentation and improper documentation for match, resulting in a significant shortfall in match;
- (2) Lack of fiscal capacity including lack of fiscal control and improper governmental accounting procedures;

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<sup>129</sup> Bob Mercer, “Mid Central board responds to state's Legislative Audit, puts blame on Westerhuises,” (Black Hills Pioneer, 22 May 2017), par. 26, [http://www.bhpioneer.com/news/mid-central-board-responds-to-state-s-legislative-audit-puts/article\\_d6778ff2-3f07-11e7-8467-9bc492ac598b.html](http://www.bhpioneer.com/news/mid-central-board-responds-to-state-s-legislative-audit-puts/article_d6778ff2-3f07-11e7-8467-9bc492ac598b.html)

<sup>130</sup> Ellis, “Between two phone calls, Platte family murdered,” par. 25.

- (3) Lack of knowledge of Generally Accepted Accounting Principles (GAAP) or failure to implement GAAP procedures;
- (4) Lack of internal controls
- (5) Conflict of interest and failure to disclose related parties;
- (6) Lack of project oversight;
- (7) Lack of oversight on school subgrants; and
- (8) Lack of documentation for grant activities under OMB A-87.”<sup>131</sup>

Although SDDOE held other contracts with MCEC, Schopp cancelled only the contract for the GEAR UP program in her September letter. The SDDOE did not announce until February 2016 that it would not renew the other 15 contracts for services and five grants with MCEC.<sup>132</sup> The SDDOE allowed the contracts and services to run through the end of the fiscal year, but SDDOE would not have a relationship with MCEC thereafter. After SDDOE’s cancellation of the GEAR UP contract, the U.S. Department of Education, in October 2015, approved the South Dakota Board of Regents to administer the GEAR UP going forward.<sup>133</sup>

#### **XV. Eide Bailly Report “Finds No Malfeasance”**

To address the financial issues DLA raised in its 2014 audit at MCEC, the MCEC board commissioned a forensic accounting examination of the GEAR UP program by the accounting firm Eide Bailly on September 24, 2015, soon after the fire occurred.<sup>134</sup> Eide

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<sup>131</sup> Melody Schopp, “Grant award PS334S110022 – project titled GEAR UP SD Notice of Termination,” (South Dakota Department of Education, 21 September 2015), 1-2, <https://kelolandassets.azureedge.net/images/docs/default-source/Investigates/south-dakota-department-of-education-letter-of-termination.pdf?sfvrsn=0>

<sup>132</sup> Angela Kennecke, “State Will Not Renew Contracts and Grants With Mid Central,” (KELOLAND News, 19 February 2016), par. 2, <http://www.keloland.com/news/article/investigates/state-will-not-renew-contracts-grants-with-mid-central>

<sup>133</sup> Dana Ferguson, “The story so far: S.D. Gear Up investigation,” (Argus Leader, 2 November 2015), par. 21, <https://www.argusleader.com/story/news/crime/2015/11/03/story-so-far-mid-central-scandal/75034810/>

<sup>134</sup> Eide Bailly, “Forensic Accounting Report: Mid-Central Educational Cooperative,” 3.



Bailly published its report on December 1, 2015, and focused on the “expenditures and reimbursements related to the GEAR UP program.” The examination was limited to the time period of July 2013 through September 2015.<sup>135</sup> Although the firm found general accounting errors and discrepancies such as missing signatures and disallowed expenditures, the report concluded that the GEAR UP grant money was accounted for and no deliberate wrongdoing took place. During the examination, Eide Bailly interviewed only two individuals, Dan Guericke and Stephanie Hubers.<sup>136</sup> Across the front page of its December 3, 2015 edition, the Sioux Falls *Argus Leader* headlined “Gear Up audit finds no malfeasance.” According to the article, “Pamela Haukaas, Mid-Central Board of Directors chairperson, in a statement said she was pleased with the firm’s ‘positive findings.’”<sup>137</sup>

## **XVI. Resignations, Criminal Charges, and More Audits**

On October 1, 2015, Governor Dennis Daugaard sent a letter to the GOAC, outlining the events that led to the cancellation of the GEAR UP contract and his administration’s actions moving forward. At the end of the letter, Governor Daugaard announced Stacy Phelps’ resignation from the State Board of Education Standards. As stated, “Although the State Board of Education [Standards] has no role in the awarding or oversight of SD DOE contracts or grants, Mr. Phelps’ continued position on that board would be a distraction from the important work the board performs, given his

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<sup>135</sup> Eide Bailly, “Forensic Accounting Report: Mid-Central Educational Cooperative,” 1, 3.

<sup>136</sup> *IBID.*, 2.

<sup>137</sup> Dana Ferguson, “Gear Up audit finds no malfeasance,” (*Argus Leader*, 3 December 2015), par. 6, <https://www.argusleader.com/story/news/2015/12/03/gear-up-audit-finds-no-malfeasance/76714974/>

involvement with GEAR UP.”<sup>138</sup> On October 14, Phelps submitted a letter to the board of MCEC requesting his resignation as the GEAR UP coordinator for the cooperative.<sup>139</sup>

The board approved his resignation on November 12.

On November 3, 2015, Attorney General (AG) Marty Jackley stated in an official press conference in Platte that Scott Westerhuis killed his family members before setting his house on fire and killing himself. AG Jackley said the ongoing investigation by the Division of Criminal Investigation (DCI) could result in criminal charges for others at MCEC involved with the GEAR UP program. At the AG’s press conference, questions arose about a missing safe that witnesses claim should have been in the Westerhuis’s house. The safe may hold important financial documents regarding MCEC, other organizations, and people involved with GEAR UP. According to a KELOLAND News report in November 2015, “Jackley believes it was most likely destroyed in the fire, but could have been stolen or moved somewhere else by Scott Westerhuis.”<sup>140</sup>

Nine days after the press conference on November 12, Dan Guericke announced he was resigning as executive director of MCEC. Several months later, at the end of January 2016, Stephanie Hubers, the interim business manager who replaced Scott Westerhuis, announced her resignation from MCEC.

On March 16, 2016, AG Jackley announced criminal charges against Phelps, Guericke, and Hubers for their involvement in the financial scheme that Scott and Nicole

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<sup>138</sup> Dennis Daugaard, Letter to GOAC concerning GEAR UP, (1 October 2015), 3, <http://politics.my605.com/wp-content/uploads/2015/10/2015-10-01-GOAC-letter.pdf>

<sup>139</sup> Dana Ferguson, “Board accepts Gear Up program coordinator’s resignation,” (Argus Leader, 12 November 2015), par. 3, <https://www.argusleader.com/story/news/2015/11/12/mid-central-accepts-phelps-resignation/75649790/>

<sup>140</sup> Angela Kennecke, “Westerhuis Family Friend Says Safe Was ‘Gone’,” (KELOLAND News, 4 November 2015), par. 9, <http://www.keloland.com/news/article/news/westerhuis-family-friend-says-safe-was-gone>

Westerhuis allegedly developed to funnel grant funds through non-profit organizations. The state indicted Phelps and Guericke with Class 5 and Class 6 felonies, which include falsification of evidence and conspiracy to offer forged or fraudulent evidence, totaling six charges against Guericke and four charges against Phelps. The state indicted Hubers with Class 4 felonies, including grand theft, grand theft by deception, and receiving stolen property, totaling in six charges.<sup>141</sup> All three pleaded not guilty.

## **XVII. Wrongdoing Emerges**

After the announcement of criminal charges against those three individuals, the webs of conspiracy and conflicts of interest began to emerge into the public light, with the Westerhuises at the forefront. One of the most obvious criminal schemes existed between MCEC and AIII. Scott Westerhuis was the business manager for MCEC, and Phelps was the GEAR UP project coordinator. Westerhuis was the CFO for the American Indian Institute for Innovation (AIII), and Phelps was the CEO. Despite the close connection, MCEC awarded substantial contracts to AIII to help administer the GEAR UP program. Essentially, Westerhuis and Phelps submitted contracts to themselves to be approved. But how did no state officials act on the blatant and long-standing conflict of interest?

To avoid AIII being audited by the state as required by federal law, Phelps and Westerhuis treated AIII as a contractor or “vendor” of the second GEAR UP grant instead of a sub-recipient. Generally, contractors do not have to be audited, but sub-recipients do. As more issues began to arise with the administration of the GEAR UP grant, the DLA

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<sup>141</sup> South Dakota Office of the Attorney General, “Attorney General Files Charges in Connection to GEAR UP Financial Investigation,” (16 March 2016), par. 4-6, <https://atg.sd.gov/OurOffice/Media/pressreleasesdetail.aspx?id=1540>

became involved in 2015. Phelps and Westerhuis needed to prove that AIII was a contractor and not a sub-recipient. Subsequently, they allegedly backdated contracts to make AIII a contractor for the GEAR UP grant instead of a sub-recipient, and Nicole Westerhuis uploaded the contracts to MCEC's database for the DLA to find. Therefore, although MCEC seemed to appear clean from the Eide Bailly examination because all expenses were accounted for, the audit did not show how the third parties spent the money. MCEC could account for documentation of expenses, such as when AIII submitted a receipt to MCEC, but did not track how AIII spent the money. For example, AG Jackley alleges that AIII submitted receipts for "supplies" for the GEAR UP grant program, but the expenses were actually from expensive restaurants and casinos.<sup>142</sup>

The relationship between MCEC and AIII also showed how Westerhuises allegedly embezzled money through MCEC. Stephanie Hubers, in an affidavit submitted by the DCI, explained how the scheme operated:

"During her time at MCEC, Hubers was aware that AIII was directly taking money from the MCEC bank account to pay the AIII payroll. This had been going on since she began employment with MCEC in 2005 [but with OSEC instead of AIII]. This use of MCEC funds by AIII was not authorized. Hubers knew that AIII and OSEC were not bank rolling each month, meaning they did not have enough cash reserves to pay their payroll. Scott and Nicole were stealing money from AIII, including writing checks to themselves from the AIII bank account for personal use."<sup>143</sup>

Investigators state the Westerhuises began embezzling money as early as November 2009. According to Attorney General Jackley, they would spend money on "trips, expenditures into the home, and other spending that would have gone to people

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<sup>142</sup> Dana Ferguson, "AIII Chairman: 22 cars, lavish meals purchased without approval in Gear Up scandal," (Argus Leader, 16 March 2017), par. 7, <https://www.argusleader.com/story/news/politics/2017/03/16/aiii-chairman-22-cars-lavish-meals-purchased-without-approval-gear-up-scandal/99247954/>

<sup>143</sup> *State of South Dakota vs. Stephanie Hubers*, Probable Cause Affidavit, (10 March 2016), par. 80, <https://drive.google.com/file/d/0B3agsA-vm8SMU3o0cTlpcGszVmc/view>.

outside of Scott and Nicole Westerhuis, which is in part payrolls for positions that didn't exist.”<sup>144</sup>

The state accuses Hubers, as part of the scheme, of accepting over \$55,000 from Scott Westerhuis to “keep quiet” about the questionable bookkeeping. The payments came from AIII in installments of approximately \$833 per month (extra compensation totaling \$10,000 per year), and Hubers created fake invoices for herself in order to account for the payments. According to a KELOLAND News report in March 2016, MCEC's monthly end balances had discrepancies that sometimes exceeded \$300,000.<sup>145</sup> As Hubers did the books for MCEC, she knew from the start that money was disappearing at the end of the month from the balance sheets. According to the DCI,

“Hubers said that when the DLA started looking at their books, she sat down with Scott and Nicole and they revamped the balance sheets and put in a line that said AIII payroll and then everything balanced. Your affiant asked if anybody on the MCEC Board of Directors ever said anything and Hubers said that every now and then one of the schools would ask why the ending balance was not the same as the beginning balance and Scott's standard response was to tell them it was due to Void Checks and Journal Entries.”<sup>146</sup>

While this scheme accounts for the charges against Stephanie Hubers and partly against Phelps and Guericke, the other criminal offenses relate to backdated contracts for Rick Melmer and Keith Moore, senior advisors for MCEC. The two individuals did not submit effort logs for a three-month span, but received payment of over \$30,000 during that time period. Because of the discrepancies in the 2014 audit and the subsequent

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<sup>144</sup> Angela Kennecke, “Investigation Reveals Westerhuses Took Up To \$2M As Part of Conspiracy,” (KELOLAND News, 16 March 2016), par. 20, <http://www.keloland.com/news/article/investigates/platte-investigation-reveals-westerhuses-embezzled-charges-filed>

<sup>145</sup> Angela Kennecke, “Missing Financial Balances from Mid Central's Older Minutes,” (KELOLAND News, 17 March 2016), par. 18, <http://www.keloland.com/news/article/investigates/missing-financial-balances-from-mid-centrals-older-minutes>

<sup>146</sup> *State of South Dakota vs. Stephanie Hubers*, Probable Cause Affidavit, par. 67.

August GOAC meeting, Phelps and Westerhuis allegedly created backdated documents for the time period. They then sent Guericke to meet Lloyd Persson, who was the chair of the MCEC from 2010 through June 2015, to sign the contracts even though he was no longer on the MCEC board.<sup>147</sup>

While the DLA 2014 audit was the State of South Dakota's first inclination of serious problems at MCEC, the auditing firm Schoenfish and Company had been conducting audits on MCEC for more than 20 years. Auditor Randy Schoenfish later stated that inconsistencies had existed within MCEC's books for quite some time. The 2014 Schoenfish audit report stated that it was the eighth year in a row that auditors had found serious discrepancies.<sup>148</sup> Although Schoenfish communicated the audit findings to Guericke, the Westerhuises, and Hubers, the MCEC board reportedly never knew about the educational cooperative's accounting and financial issues. According to court testimony, Hubers kept a set of secret books to hide the real balances from those outside the financial scheme, and when the board brought up any questions over financial discrepancies, Scott Westerhuis explained them away.<sup>149</sup>

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<sup>147</sup> *State of South Dakota vs. Daniel Guericke*, Probable Cause Affidavit, (10 March 2016), 14, <https://kelolandassets.azureedge.net/images/docs/default-source/Investigates/GEAR-UP/state-v-daniel-mark-guericke-complaint-and-affidavit.pdf?sfvrsn=0>

<sup>148</sup> Angela Kennecke, "SD Legislator's Accounting Firm Named In GEAR UP Lawsuit," (KELOLAND News, 28 February 2017), par. 22, <http://www.keloland.com/news/article/investigates/sd-legislators-accounting-firm-named-in-gear-up-lawsuit>

<sup>149</sup> Angela Kennecke, "Attorney General: Mid Central Assistant Hid 'Secret Books' From Board, Auditors," (KELOLAND News, 15 March 2017), <http://www.keloland.com/news/article/investigates/auditor-testifies-in-gear-up-case-says-money-transferred-between-nonprofits>

### **XVIII. More Audits, More Details**

On May 19, 2017, less than two years after the fire at the Westerhuis property, the SD DLA released two reports about MCEC. The first report was the MCEC FY2015 audit, and the second was a special review of MCEC. These two reports, long in the making, provided many details into the financial schemes at MCEC. The DLA released them concurrently due to the overlapping nature of the issues they addressed.

In the FY2015 audit, the DLA stated that MCEC failed to identify related parties and conflicts of interest, failed to disclose related party transactions, had inadequate oversight of partner organizations, and lacked competition in contracting services. In one analysis, the DLA noted that \$7.84 million of unauthorized withdrawals were made from MCEC's checking account from January 2007 through September 2015. As of this writing, \$1.38 million of that amount was still unaccounted for.<sup>150</sup> The \$1.38 million could be GEAR UP money, or any combination of other funds that were transferred to MCEC's general account, such as money from individual school districts or other grant programs.

The FY2015 audit also noted other findings, such as issues with Stacy Phelps' contracts with MCEC and his scope of authority with GEAR UP. The report also found that contracts issued to BC Kuhn Evaluation lacked going through a competitive bidding process, GEAR UP employees were being overpaid, and matching in-kind contributions of non-federal sources were inadequate. The DLA Special Review echoed many of the same problems outlined in the FY2015 audit. Even though both reports detailed the many conflicts MCEC harbored over the years with GEAR UP and other federal grants, the

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<sup>150</sup> South Dakota Department of Legislative Audit, "Mid Central Educational Cooperative Audit Report for the Fiscal Year Ended June 30, 2015," (19 May 2017), 22, <https://legislativeaudit.sd.gov/reports/School/MidCentralCoop2015.pdf>

MCEC board claimed it had no way of knowing the extent of fraudulent activities.

According to the MCEC board's response to the 2014 audit and 2015 special review,

“The DLA’s Special Report seems to imply that if certain monitoring activities would have been implemented by the Board, it would have discovered these fraudulent and illegal activities. However, the Board did everything that could reasonably be expected to ensure adequate oversight of its financial activities, including receiving a yearly audit from Schoenfish & Co. in Parkston, South Dakota. There is no basis to conclude that the Board could have detected the complex scheme of these fraudulent and illegal activities based upon the deceitful conduct of Scott and Nicole Westerhuis and the Board’s reliance on professionals who were retained to annually review MCEC’s financial records.<sup>151</sup>”

### **XIX. GEAR UP Tentacles Reach Far**

As investigators and reporters continued to unravel GEAR UP’s many nuances, close relationships – and possible conflicts of interest – found their way into the headlines. These conflicts involved educators, consultants, and even family members of GEAR UP leaders. Some are directly related to GEAR UP; others are not.

Brinda Kuhn emerges as a major figure in both GEAR UP grants. The DLA Special Review of MCEC revealed the following:

“BC Kuhn Evaluation, LLC was a consulting firm that wrote the original grant applications for the [2012] GEAR UP, College Access, and Teacher Quality grants, in the applications, the firm included itself in each of these grants as a partner that would be providing evaluation services, which is a conflict of interest.”<sup>152</sup>

Brinda Kuhn also received contracts not approved by the MCEC board. The state of South Dakota alleges that MCEC executive director Dan Guericke handed out 17 contracts totaling \$3.8 million without any approval from the MCEC board of directors, as required by law. Of the 17 contracts, Guericke sent three contracts to Brinda Kuhn, three to the PAST Foundation, three to USD, one to the (now defunct) Rural Learning

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<sup>151</sup> SD DLA, “Special Review of Mid Central Educational Cooperative,” 56.

<sup>152</sup> IBID., 12.



Center in Howard, South Dakota, and the rest to AIII employees, Stacy Phelps and Jay Roman.<sup>153</sup>

The PAST Foundation received a substantial amount of GEAR UP funds. According to the Eide Bailly forensic examination, MCEC paid the PAST Foundation in Columbus, Ohio, over \$480,000 between October 2013 and August 2015.<sup>154</sup> In turn, the PAST Foundation founded the South Dakota Innovation Lab, based at MCEC by Dan Guericke. Including the unapproved contracts, the PAST Foundation received over two million dollars from MCEC.

Auditors and investigators discovered that GEAR UP money travelled not only to Ohio, but also to Alabama, home of the Cambrian Group. Lance Witte, superintendent at Wessington Springs, Lower Brule (which AIII operated for two years), and Takini, was an associate for the Cambrian Group. As the Eide Bailly forensic examination of MCEC revealed, MCEC paid the Cambrian Group \$102,000 in GEAR UP funds. Witte is also the founder of Lance L. Witte Consulting, which received funds from MCEC.<sup>155</sup> Witte is the director of both the DIAL Corporation and the DIAL Virtual School, which operated from MCEC.

Joe Graves is the superintendent of the Mitchell School District. MCEC paid Graves approximately \$160,000 for administering the million dollar “Teaching American History” grant. On October 5, 2015, KELOLAND News aired a news report by Angela

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<sup>153</sup> Angela Kennecke, “State Submits Evidence Against Former Mid Central Director Dan Guericke In GEAR UP Case,” (KELOLAND News, 3 October 2016), par. 14-18, <http://www.keloland.com/news/article/investigates/state-submits-evidence-against-former-mid-central-director-dan-guericke-in-gear-up-case>

<sup>154</sup> Eide Bailly, “Forensic Accounting Report of Mid-Central Educational Cooperative,” 5.

<sup>155</sup> Angela Kennecke, “Wessington Springs Superintendent Resigns,” (KELOLAND News, 19 October 2017), par. 7, <http://www.keloland.com/news/article/investigates/wessington-springs-superintendent-resigns>

Kennecke in which she interviewed Graves. Graves stated, “It was pretty widely known, so I didn’t see—I don’t see now a conflict of interest.”<sup>156</sup> Graves also served as the board president for DIAL Virtual School at MCEC and the director and president of the DIAL Corporation.

Jay Roman, an incorporator of AIII, was an instructor for Film and Rocketry at the AIII-funded GEAR UP summer camps in Rapid City. He also worked as the dissemination and community coordinator for the second GEAR UP grant. On the same day AG Jackley announced felony charges against Guericke, Phelps, and Hubers, Roman and Alice Phelps (Stacy Phelps’ aunt) incorporated the Partnership for Excellence and Innovation with the Office of the South Dakota Secretary of State. Roman received one secret contract from Dan Guericke amounting to \$80,000 for working 200 days.<sup>157</sup>

Alice Phelps is the principal of Wounded Knee School on the Pine Ridge Reservation and also served as the administrative coordinator for AIII. She was not the only family member of Stacy Phelps to receive GEAR UP money. Phelps’ compensated ten other members of his family, totaling over \$380,000, for GEAR UP services.<sup>158</sup>

Glenn Drapeau served as the director for the Institute of Excellence and Innovation that Alice Phelps and Jay Roman incorporated. He also was the program coordinator and member of the board of directors for the Dakota Indian Foundation in Chamberlain, South Dakota. The Dakota Indian Foundation received one of the lowest

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<sup>156</sup> Angela Kennecke, “Mitchell Superintendent Defends ‘Second Job’,” (KELOLAND News, 5 October 2015), par. 13, <http://www.keloland.com/news/article/business/mitchell-superintendent-defends-second-job>

<sup>157</sup> Kennecke, “State Submits Evidence Against Former Mid Central Director Dan Guericke In GEAR UP Case,” par. 18.

<sup>158</sup> Angela Kennecke, “10 Phelps Family Members Got GEAR UP Funds,” (KELOLAND News, 10 February 2016), par. 4, <http://www.keloland.com/news/article/investigates/10-phelps-family-members-got-gear-up-funds>

overall ratings from charity watchdog organizations for fundraising efficiency and audited financials.<sup>159</sup> According to the Eide Bailly report, Drapeau received over \$170,000 in GEAR UP funds between October 2013 and August 2015. In a related matter, Drapeau had a hand in the evaluation process for GEAR UP. According to the evaluation report started by Pergroup for the 2013-2014 GEAR UP program,

“Originally, a plan was developed to conduct on-site observations and interviews at all of the 28 participating schools. However, per a meeting with Mr. Glenn Drapeau on March 18, 2013, the evaluators were notified that the SDGU Advisory Committee had made the decision on-site evaluations needed only to be conducted at two schools and the Summer Honors Program held on the SDSM&T campus.”<sup>160</sup>

The report later stated,

“On-site reviews of schools under this evaluation were limited to only 2 sites. There are a total of 38 school sites that have entered an official agreement to participate in this program. Therefore, our assessment does not fully capture the entire condition of the program under this activity... Significant financial resources have also been directed in this area. It would deem appropriate that further analysis and larger sample size of this area is needed to fully understand the strengths and weaknesses of this activity.”<sup>161</sup>

Clearly, this “independent evaluation” of the GEAR UP program was not entirely independent.

## **XX. GEAR UP #2 Evaluation Reports and the Dismal Truth**

During the tenure of the second GEAR UP grant, Brinda Kuhn completed the first year evaluation. Pergroup in Pierre began the second year evaluation, but withdrew

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<sup>159</sup> Charity Navigator, “Dakota Indian Foundation,” (1 April 2018), <https://www.charitynavigator.org/index.cfm?bay=search.summary&orgid=8767>

<sup>160</sup> Pergroup, Brinda Kuhn, “South Dakota Gaining Early Awareness and Readiness for Undergraduate Program – GEAR UP Formative Evaluation,” (2013), 26.

<sup>161</sup> IBID., 41.

before the evaluation was complete.<sup>162</sup> Brinda Kuhn finished the second year evaluation, and the Government Research Bureau (GRB) at the University of South Dakota completed the third year evaluation. Continuing in the pattern of the final performance report for the first GEAR UP grant from 2005 through 2011, objectives were skewed, goals were not met, and data was simply not collected.

The GRB evaluation provides the most analytical and quantitative evaluation of any of the GEAR UP years when comparing the formative reports. The GRB evaluation was the first that Brinda Kuhn did not complete or help complete. Yet, the GRB report states that drawing a conclusion about the 2014-2015 GEAR UP program is difficult due to the absence of collected data by GEAR UP officials. It states: “Due to a lack of access to data, the evaluation team was unable to determine SD GEAR UP’s effect on college placement for schools in the South Dakota Board of Regents system. We encourage future evaluation teams to create surveys that follow students after high school to find their college placements and track their retention rates.”<sup>163</sup>

Ten years after its inception in 2005, the GEAR UP grant did not have an effective system of collecting data or consistently tracking performance metrics. South Dakota simply does not know, through explicit data, whether the millions of dollars of grant funds helped Native American students prepare for or succeed in college.

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<sup>162</sup> Paul Bachand, Letter to GOAC on behalf of Melody Schopp and Tamara Darnall, (22 August 2017), Appendix A, <http://sdlegislature.gov/docs/interim/2017/documents/goa8-29-17replyfromSDDOEdoc19.pdf>

<sup>163</sup> Hulac, Duncan, Nordyke, and Birkeland. “South Dakota GEAR UP Program Evaluation,” 1.

## **XXI. Oversight, Accountability, and Questions for the Future**

Stephanie Hubers was the statewide president of her professional association. Dan Guericke was the long-time leader of a widely admired education cooperative. Stacy Phelps thrice visited the White House, once to receive a prestigious national award. Soon, all three will be sitting in courtrooms, charged with multiple felonies. The trial date for Hubers is in late June; the trial for Guericke and Phelps in July. LuAnn Werdel and Roger Campbell have long since left the South Dakota Department of Education. Secretary Schopp retired just before the end of 2017. Kelly Duncan, Julie Mathiesen, and Stacy Phelps are no longer on the South Dakota Board of Education Standards. The Mid-Central Educational Cooperative has ceased to exist. Legislators of both major parties have introduced new transparency and ethics legislation in the South Dakota Legislature. It is too early to assay the effects of the passed legislation. Scott and Nicole Westerhuis, universally respected and loved members of a small community, are gone. If Michael, Connor, Jacci, and Kailey Westerhuis were still alive, they would be 20, 17, 13, and 12, finishing another year of school and eagerly looking forward to an endless summer vacation in Platte, SD. The New Hope Christian Camp and Retreat Center purchased the property of the Westerhuises, where religious events, retreats, and youth camps are now held.

So many changes, and yet, what has not appreciably changed is the appalling academic achievement and college attendance gap between Native American students and non-Native students in South Dakota. Because of the lack of consistent and accurate evaluations, the results of the GEAR UP program are unclear. Would the GEAR UP program have made a difference if it were managed competently? Could there have been

measures in place that prevented the conflict of interests from happening? Perhaps, but a more important question is how to prevent a similar situation in the future. The Mid-Central Educational Cooperative also managed the College Access, Teacher Quality, and Wakan Gli grants. If GEAR UP were administered poorly, one could logically assume that the other grants were not being managed effectively, either. Are the results of these grant programs being tracked? What kind of result-tracking system can the South Dakota Department of Education use to hold administrators of these grants more accountable, or at least know whether progress is being made toward outlined objectives? Many of these questions are beyond the scope of this thesis, but if one of the priorities of the State of South Dakota and the SDDOE is to help Native American students achieve academically, they would be more interested in the outcomes of these grant programs, and not simply that the money of the programs was spent.

## **XXII. The Consequences of GEAR UP**

In addition to the State of South Dakota's ongoing criminal proceedings against Stephanie Hubers, Dan Guericke, and Stacy Phelps, various attorneys have commenced several civil proceedings related to GEAR UP.

On March 23, 2016, attorney Paul Bachand of Moreno, Lee & Bachand of Pierre, SD, and a Special Assistant Attorney General for the State of South Dakota, filed, on behalf of the State of South Dakota Department of Education, a Statement of Claim against the Estate of Scott Westerhuis.

On April 4, 2016, attorneys Scott Swier and Michael Henderson of Swier Law Firm of Avon, SD, on behalf of Mid-Central, filed a Complaint against AIII. The action

is captioned as *Mid-Central Educational Cooperative v. American Indian Institute for Innovation (AIII)*.

On May 11, 2016, attorneys Jana Smoot White and Katelyn Cook of Gunderson, Palmer, Nelson & Ashmore of Rapid City, SD, on behalf of AIII, filed, under *Mid-Central Educational Cooperative v. American Indian Institute for Innovation (AIII)*, Third-Party Complaints against the Estate of Scott Westerhuis and the Estate of Nicole Westerhuis.

On May 17, 2016, attorneys John Hinrichs, Scott Heidepriem, Kasey Olivier, and Ashley Miles of Heidepriem, Purtell, Siegel & Olivier of Sioux Falls, SD, and Steven Emery of the Emery Law Firm of Rapid City, SD, filed *Alyssa Back Bear v. Mid-Central Educational Cooperative*.

On October 31, 2016, attorney Hinrichs filed an Amended Complaint. He added Kelsey Walking Eagle-Espinosa to the Plaintiffs of the intended class action. The Defendants are now Mid-Central and the individual members of its Board of Directors and AIII and its individual Directors, Stacy Phelps, Dan Guericke, and the estates Scott Westerhuis and Nicole Westerhuis.

On November 14, 2016, attorneys Rene Charles LaPierre, Timothy Clausen, and Ryland Deinert of the Klass Law Firm in Sioux City, IA, representing Mid-Central, filed, under *Black Bear and Walking Eagle-Espinosa v. Mid-Central and AIII*, Third Party Complaints against Schoenfish & Co.

### **XXIII. Conclusion**

The South Dakota GEAR UP mission statement is to “increase the number of low-income Native American students that are prepared to graduate from higher education.”<sup>164</sup> For both GEAR UP grants, South Dakota received federal and state-matched dollars totaling over tens of millions of dollars from 2005 through 2017. While the intrinsic benefits of the GEAR UP program for some students may exist, the hardline statistics of Native American students in Board of Regents universities barely fluctuated. The achievement gap between Native and non-Native students in South Dakota is very real. The GEAR UP grant program is a clear example of how “throwing money” at a problem without adequate oversight and checks and balances fails to accomplish its noble goal. In the end, good intent was lost between the dollar signs.

The GEAR UP scandal in South Dakota is an example of the importance of conflict of interest laws, federal and state oversight, and accountability. While assigning blame for the scandal is easy, the state of South Dakota is left wondering how the entire saga could have been prevented. Yet, the GEAR UP program is one of many grants in South Dakota with the same goal of preparing Native American students to succeed: College Access Challenge, Teacher Quality, Wakan Gli, Jumpstart, Upward Bound, TRIO. These grant programs have been implemented in varying time periods overlapping with the GEAR UP program. Nevertheless, the number of Native American students in BOR universities still has not greatly changed.

When comparing the ratio of BoR students representative to the South Dakota population, the achievement gap seems even more egregious. Hispanics/Latinos represent

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<sup>164</sup> SDDOE, “South Dakota 2005 GEAR UP Grant Application,” e39.



3.23% of BoR students, and 3.70% of the total South Dakota population.<sup>165</sup> Black or African students represent 2.31% of BoR enrollment, and 2.00% of the total South Dakota population.<sup>166</sup> White students comprise 82.73% of BoR enrollment, and 82.50% of the total population.<sup>167</sup> Native Americans represent 3.16% of BoR students and 9.00% of the total South Dakota population.<sup>168</sup>

Are grant programs like GEAR UP, College Access, and Wakan Gli effective? Does South Dakota need to approach the achievement gap in a fundamentally different way? While many factors are at play, the above statistics suggest that the achievement gap is not closing. The state of South Dakota needs to reflect deeply on how it serves this at-risk and long neglected segment of the population.

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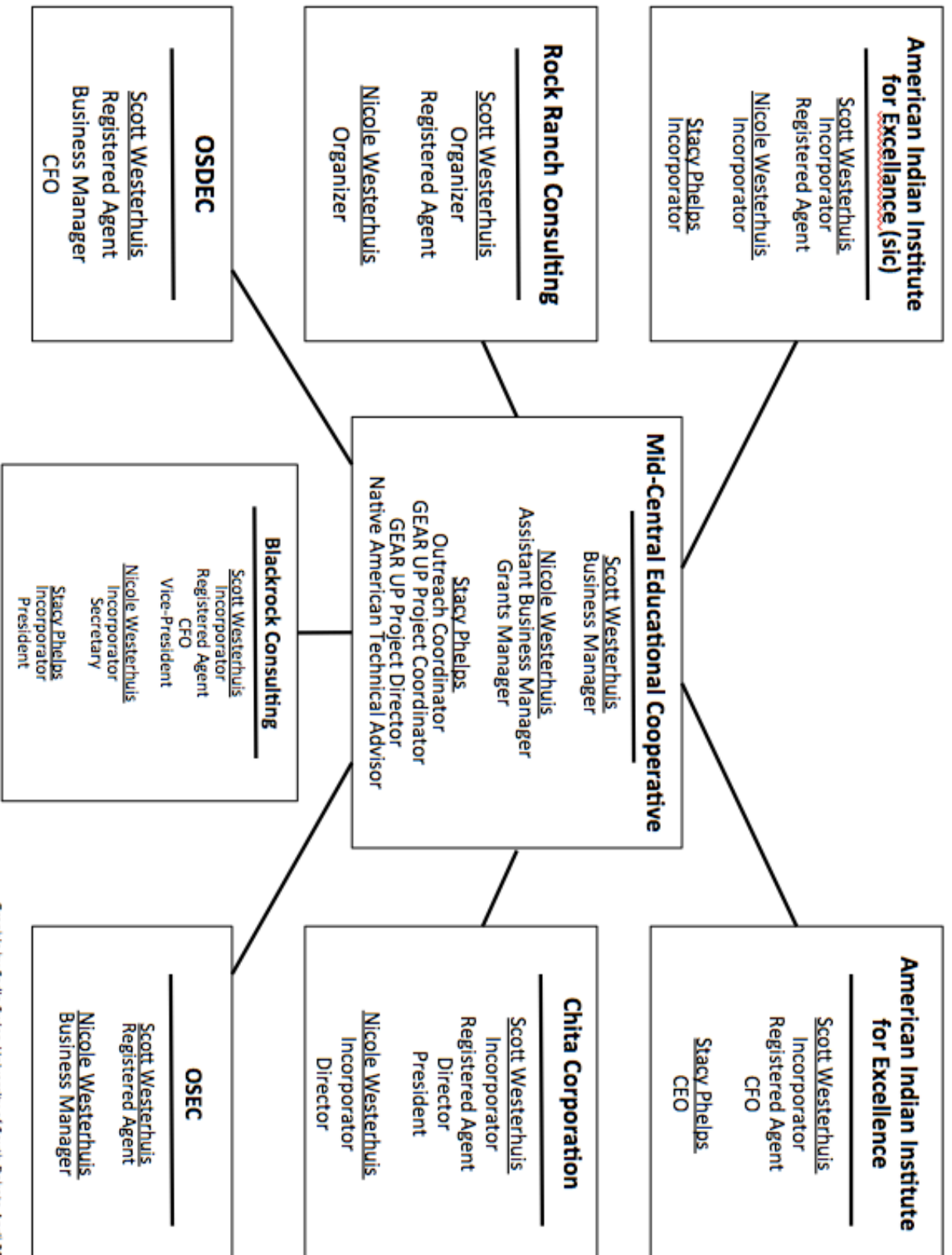
<sup>165</sup> U.S. Census Bureau, “Quickfacts: South Dakota,” par. 3; SDBoR, “Fact Book FY2018,” 14.

<sup>166</sup> IBID.

<sup>167</sup> IBID.

<sup>168</sup> IBID.

**Appendix A: Close Relationships or Conflicts of Interest?**



Graphic by Sadie Swier, University of South Dakota April 2018

## Appendix B: GEAR UP Cast of Characters

**Bruce Anderson:** First Circuit Court Judge in Charles Mix County presiding over criminal trials of Stephanie Hubers, Dan Guericke, and Stacy Phelps.

**Paul Bachand:** Attorney at Moreno, Lee, and Bachand of Pierre, SD, and South Dakota Assistant Attorney General. Attorney representing SD Education Secretary Melody Schopp and SD Department of Education Director of the Division of Finance and Management Tamara Darnell.

**Alyssa Black Bear:** Along with Kelsey Walking Eagle-Espinosa, has filed a civil lawsuit on behalf of all students who were supposed to be served by GEAR UP. The lawsuit is filed against the Mid-Central Educational Cooperative (MCEC) Board of Directors and the AIII Board of Directors.

**Catrina Brown:** Employee of MCEC.

**Paul Bucci:** Listed in original 2005 SD GEAR UP grant application as an evaluator. Vice-president of the Academy for Educational Development (AED) in Washington, DC.

**Mike Butler:** Sioux Falls, SD, criminal defense attorney representing MCEC Director Dan Guericke.

**Corrie Ann Campbell:** Oceti Sakowin project facilitator. MCEC facilitator. Executive director of Hunkpati Investments in Fort Thompson, SD. Wife of SD Director of Indian Education Director Roger Campbell.

**Roger Campbell:** Director of the SD Office of Tribal Government Relations 2003 through 2010. Director of Indian Education and GEAR UP project director in the SD Department of Education March 9, 2011, to March 10, 2013. Warned SD Department of Education about serious problems with GEAR UP. Husband of MCEC employee Corrie Ann Campbell.

**Annalies Corbin:** Graduated with B. S. degree from USD in 1993. Founder, administrator, president, CEO, and “chief goddess” of the PAST Foundation in Ohio. President and CEO of the PAST Innovation Lab. Board member of the South Dakota Innovation Lab (SDIL). An Eide Bailly forensic accounting examination revealed that MCEC gave \$487,466.55 to the PAST Foundation between October of 2013 and August of 2015. SD Attorney General Marty Jackley alleges that over a six-year period, MCEC Executive Director Dan Guericke signed 17 contracts (totaling about \$3.8 million) on behalf of MCEC without getting approval from MCEC’s Governing Board, as required by law. Three of those contracts, totaling about \$1.6 million, went to the PAST Foundation.

**Tamara Darnell:** Director of the SD Department of Education Division of Finance and Management in Pierre, SD.

**Courtney DeNeui:** Employee of MCEC, received (legal) compensation from AIII.

**Dennis Daugaard:** Elected Governor of SD in 2010. Serving 2011-current.

**Kelly Duncan:** Member of SD Board of Education Standards 1996-2016. While on the Board, received several contracts from the SD Department of Education. Not reappointed by Governor Daugaard in December 2016. Director of Counseling and Psychological Services Clinic at University of SD 2011-2015. Founder of Dakota Plains Consulting (2012). Dean of the School of Education for Northern State University 2015-present. Project director of College Access grant for MCEC. Hired by USD Government Research Bureau (GRB) to be independent evaluator and “Principal Investigator” of GEAR UP grant at MCEC.

**Glenn Drapeau:** Program coordinator and board of directors member for Dakota Indian Foundation in Chamberlain, SD. According to an Eide Bailly forensic examination of Mid-Central, he received \$170,013.79 in GEAR UP funds between October of 2013 and August of 2015. Director for the Institute for Excellence and Innovation, incorporated by Alice Phelps and Jay Roman in 2016.

**Brian Drapeaux:** Vice-president of Pergroup in Pierre, SD, 2004-2007 and 2009-2010. Served as chief of staff for federal Bureau of Indian Education (BIE) Director Keith Moore in D.C., 2010-2012. In December 2014, the Office of Inspector General (OIG) of the U.S. Department of the Interior released “Investigative Report of Brian Drapeaux.” The report covers the investigation into efforts by Moore and Drapeaux, with assistance from BIE Consultant Rick Melmer, to award a BIE contract to Pergroup.

**Terry Eckstaine:** Superintendent of Ethan School District (salary paid by AIII). Former superintendent of Tri Valley School District.

**Chris Eyre:** Native American film producer and director. One of three initial board members of AIII.

**Tim Flannery:** State Government Audit Manager for the SD Department of Legislative Audit (DLA).

**Dan Guericke:** Director of Mid-Central Educational Cooperative in Platte, SD. CEO of MCEC Governing Board. Registered agent for Guericke Enterprises and GNS Bus Sales of White Lake, SD. Director for DIAL Corporation. Director for South Dakota Innovation Lab (SDIL). Accused of giving 17 contracts totaling about \$3.8 million with no approval from Mid-Central Governing Board. On April 13, 2016, the State of South Dakota indicted him on two felony counts of falsification of evidence and two felony counts of conspiracy to offer forged or fraudulent evidence. The charges relate to allegations that he altered and backdated AIII documents, including contracts for former SD Education Secretary Rick Melmer and former SD Director of Indian Education Keith Moore.

**Joe Graves:** Superintendent of Mitchell, SD, School District. While full-time superintendent and as consultant, administered the million dollar “Teaching American History” grant for MCEC for \$160,000. Board President of DIAL Virtual School at MCEC. Director and president of DIAL Corporation at MCEC.

**Martin L. Guindon:** Auditor General of the State of South Dakota. The SD Department of Legislative Audit’s audit of the State Fiscal Year 2014 administration of the GEAR UP grant became an agenda item at the August 25, 2015, meeting of the State Legislature’s Government Operations and Audit Committee (GOAC). DLA subsequently conducted an audit of MCEC for FY2015 and also prepared a Special Review of Mid-Central dated May 19, 2017.

**Theodore “Ted” Hamilton:** Incorporator and executive director of Oceti Sakowin Education Consortium (OSEC). Registered agent, director, and president of Oceti Sakowin Distance Education Consortium (OSDEC).

**Dana Hanna:** Former Chief Public Defender for the Rosebud Sioux Tribe. Rapid City criminal defense attorney representing Stacy Phelps.

**Pamela Haukaas:** MCEC Board of Directors Chairperson after Lloyd Persson.

**Scott Heidepriem:** Sioux Falls attorney and former candidate for governor of South Dakota. His law firm (Heidepriem, Purtell, Siegel & Olivier) represents Alyssa Black Bear and Kelsey Walking Eagle-Espinosa against MCEC Board of Directors and AIII Board of Directors.

**Margo Heinert:** Registered agent for Dakota Plains Educational Consulting in Mission, SD. Director of Jobs for America’s Graduates (JAG) under SD Department of Education. Mother of SD State Senator Troy Heinert, Chairman of State-Tribal Relations Committee.

**John Herrington:** Born in Oklahoma; member of Chickasaw Tribe. Pilot and NASA astronaut. In 2002, became the first enrolled member of a Native American tribe to fly in space. Incorporator, board member, and president of AIII. Director of AIIIE.

**Stephanie Hubers:** Assistant business manager for MCEC. Interim business manager for MCEC. Filed annual reports for DIAL Corporation. Treasurer, president-elect, and president of the SD Association of School Business Officials 2015. Accused of taking \$55,339.43 from AIII between 2009 and 2014 to “keep quiet” about GEAR UP and AIII finances. On April 13, 2016, the State of SD indicted her on felony counts of grand theft, grant theft by deception and receiving stolen property. Her trial is currently scheduled for late June in Sioux Falls, SD.

**Marty Jackley:** Governor M. Michael Rounds appointed him SD Attorney General in 2006. Elected attorney General in 2010. Re-elected in 2014. Current candidate for the Republican nomination for Governor of SD in June 2018 primary.

**Michael Jandreau:** Chairman of the Lower Brule Sioux Tribe for at least 30 years. Member of Board of Trustees for American Indian Institute for Innovation (AIII). Died in 2015. In 2015, Human Rights Watch reported that at least \$25 million of tribal expenditures from 2007 to 2014 remain unexplained.

**Angela Kennecke:** Investigative reporter for Sioux Falls-based KELOLAND News, the leading media company in the region. Has won Murrow Awards, Associated Press Awards, Emmy Awards, and Eric Sevareid Awards. In 2016 the South Dakota Broadcasters Association and the Contemporary Media and Journalism Department at the University of South Dakota presented her with the prestigious Tom Brokaw Award for excellence in broadcasting. She researched and wrote many stories about GEAR UP.

**Don Kirkegaard:** SD Board of Education Standards 2006-2017. Superintendent of Britton-Hecla School District. Superintendent of Meade County School District 2011-2017. Despite public denial, worked as a partner with Rick Melmer, Tom Oster, and John Pederson in Dakota Education Consulting (DEC) for four years. On November 6, 2017, SD Governor Dennis Daugaard nominated him to be SD Secretary of Education. In 2018, the SD State Senate confirmed the nomination, over opposition by the Legislature's State-Tribal Relations Committee, which voted 9-1 against the nomination, and the Oglala Sioux Tribal Council, which voted 14-0-1 to approve a resolution opposing the nomination.

**Brinda Kuhn:** As senior program officer of Agency for Educational Development (AED) in Washington, D.C., wrote initial 2005 GEAR UP grant for SD. Subsequently moved to Martin, SD, and Rapid City, SD. Received funding from MCEC for managing GEAR UP, College Access, and Teacher Quality grants and (simultaneously) for being an independent evaluator of the GEAR UP grant at MCEC. Incorporated seven SD corporations: Prairie Stone Foundation, BC Kuhn Evaluation, Fly Fast LLC, Pixie Air, Hardrocker Aeronautics, BC Kuhn LLC, and Kuhn Properties. Attorney General Jackley alleges that over a six-year period, Mid-Central Director Dan Guericke signed 17 contracts (totaling about \$3.8 million) on behalf of Mid-Central without getting approval from MCEC's Board of Directors, as required by law. Three of those contracts went to Brinda Kuhn.

**Darla Drew Lerdal:** Media and community relations coordinator for GEAR UP. Lives in Rapid City.

**Julie Mathiesen:** Member of SD Board of Education Standards 2011-2016. Resigned in 2016. Works for Black Hills Special Services Cooperative (BHSSC) as director of Technology & Innovation in Education (TIE). Superintendent, director, consultant, and food service director for Three Rivers Special Services Cooperative in Philip, SD. According to KELOLAND News, in those roles, she signed nearly \$2 million worth of contracts with the SD Department of Education.

**Rick Melmer:** SD Education Secretary 2003-2008. Dean of the University of South Dakota College of Education 2008-2013. Consultant for the federal Bureau of Indian Education (BIE) in Washington, D.C. Consultant for the Council of Chief State School Officers (CCSSO). Senior advisor to MCEC. Member of MCEC GEAR UP Advisory Board. Member of Board of Directors for South Dakota Innovation Lab. Incorporated Dakota Education Consulting in 2013. Incorporated RVM Consulting in 2015. Founded Leadership South Dakota in 2014. Beginning August 2012, as employee and consultant, has received at least \$467,500 in payments from Mid-Central. Contracts covered not only GEAR UP but also other programs.

**Bob Mercer:** Former press secretary for SD Governor William Janklow. State Capitol Bureau investigative reporter. Wrote story in May 19, 2015, *Pierre Capital Journal*: “SD audit finds unusual activities in GEAR UP.”

**Keith Moore:** Enrolled Member of the Rosebud Sioux Tribe. Director of the SD Office of Indian Education under Education Secretary Rick Melmer 2005-2009. Chief Diversity Officer at the University of South Dakota 2009-2010. Director of the Bureau of Indian Education (BIE) for the U.S. Bureau of Indian Affairs (BIA) in Washington, D.C., 2010-2012. State Director of Fellowship of Christian Athletes starting 2012. Interim director of Indian Education and interim GEAR UP director for the SD Department of Education 2013. Chairman of MCEC GEAR UP Advisory Board. Member of Board of Directors for SD Community Foundation (SDCF), which has given money to the PAST Foundation and Leadership South Dakota.

**Misty Mousseau:** “GEAR UP data lady” referenced by LuAnn Werdel in January 10, 2011, email to SD Education Secretary Melody Schopp.

**Tom Oster:** Principal and superintendent at Avon School District. SD Secretary of Education 2008-2011. Superintendent of Sioux Valley School District 2011-2016. Co-director of Dakota Education Consulting with Rick Melmer. Co-director of Leadership South Dakota with Rick Melmer. Founder of Tom Oster Consulting in 2011. Senior Advisor to Council of Chief State School Officers (CCSSO) in Washington, D.C.

**John Pederson:** Partner with Rick Melmer, Tom Oster, and Don Kirkegaard in Dakota Education Consulting (DEC).

**Lloyd Persson:** MCEC Board of Directors Chairperson. Signed backdated AIII documents at request of Dan Guericke and Stacy Phelps. Succeeded by Pamela Haukaas.

**Alice Phelps:** Principal of Wounded Knee School in Manderson, SD. Administrative coordinator for American Indian Institute for Innovation (AIII). With Jay Roman, incorporated the Partnership for Excellence and Innovation on March 16, 2016. Aunt of Stacy Phelps.

**Stacy Phelps:** Graduated from the SD School of Mines & Technology in 1996 with a degree in Mechanical Engineering. SD Board of Education Standards 2008-2015. In October 1, 2015, letter to Government Operations and Audit Committee (GOAC), SD Governor Dennis Daugaard wrote that "...because of the many questions surrounding the administration of this program [GEAR UP], Stacy Phelps has resigned from the State Board of Education." Outreach coordinator, project coordinator, Native American technical advisor, and GEAR UP program director for MCEC. CEO of AIII. Incorporator of AIIIE. Incorporator and president of Blackrock Consulting. Director of the GEAR UP summer camp in Rapid City, where he put 10 of his relatives on the GEAR UP payroll. Member of SD Indian Education Advisory Council (established 2007). Member of National Advisory Council on Indian Education. At the White House on January 6, 2010, received the Presidential Award for Excellence in Science, Mathematics and Engineering Mentoring. Has been indicted on two felony counts of falsification of evidence and two felony counts of conspiracy to offer forged or fraudulent evidence.

**Wade Pogany:** Director of curriculum and instruction at SD Department of Education. Listed in the initial 2005 SD GEAR UP grant application as GEAR UP point of contact and grant director. Currently director of the Associated School Boards of South Dakota.

**Carlos Rodriquez:** Principal investigator of STEM awards for the National Science Foundation. Resident of Washington, D.C. Initial Board member of AIII.

**Jay Roman:** Dissemination and community coordinator for second GEAR UP grant beginning 2011. Instructor of Film and Rocketry at GEAR UP Summer Camps in Rapid City. Incorporator and registered agent for AIII. Incorporated the Institute for Excellence and Innovation with the South Dakota Secretary of State's office on February 16, 2016. Served as the corporation's registered agent. Dissolved that corporation on May 9, 2016. With Alice Phelps, incorporated the Partnership for Excellence and Innovation on March 16, 2016. Serves as registered agent for that corporation. SD Attorney General Jackley alleges that over a six-year period, MCEC Director Dan Guericke signed 17 contracts (totaling about \$3.8 million) on behalf of MCEC without getting approval from MCEC's Board of Directors, as required by law, and that one of those contracts gave Jay Roman \$80,000 for working 200 days. Also was the registered agent for Artbeat, Inc. (cancelled), and Red Sky Studios LLC (dissolved), both initially registered with the SD Secretary of State.

**M. Michael Mike Rounds:** Elected governor of South Dakota in 2002; re-elected in 2006. Served as governor from 2003 to 2011. Was serving as governor in 2005 when initial GEAR UP grant was awarded to SD. Elected U.S. Senator in 2014.

**Clint Sargent:** Criminal defense attorney in Sioux Falls firm of Meierhenry Sargent LLC. (Mark Meierhenry is former Attorney General of South Dakota.) Sargent represents Stephanie Hubers.



**Randy Schoenfish:** Auditor from Scotland, SD. His accounting firm, Schoenfish and Company, performed audits of MCEC for over a decade. Father of State Representative Kyle Schoenfish.

**Melody Schopp:** Secretary of SD Department of Education 2011-2017. Retired December 15, 2017. President of Council of Chief State School Officers (CCSSO) in Washington, D.C. Treasurer of Education Commission of the States (ECS) in Washington, D.C. Called MCEC Director Dan Guericke on September 16, 2015, and informed him that SD Department of Education was terminating its GEAR UP management partnership agreement with MCEC. Mailed termination letter on September 21, 2015.

**Scott Swier:** Founder of Swier Law firm in Avon, SD. Attorney for MCEC.

**Kelsey Walking Eagle-Espinosa:** Along with Alyssa Black Bear, has filed a civil lawsuit on behalf of all students who were supposed to be served by GEAR UP. The lawsuit is filed against the MCEC Board of Directors and the AIII Board of Directors.

**Luann Werdel:** Director of the SD Office of Indian Education from January 2010 into January 2011. Warned Education Secretary Melody Schopp and others about serious problems with GEAR UP and College Access at MCEC. SDDOE Secretary Melody Schopp terminated Werdel's employment in January 2011.

**Connor Westerhuis:** Fourteen-year-old son of Nicole and Scott Westerhuis. Died in apparent murder-suicide on the night of September 16-17, 2015, at the family's home in Platte, SD.

**Jaeci Westerhuis:** Ten-year-old daughter of Nicole and Scott Westerhuis. Died in apparent murder-suicide on the night of September 16-17, 2015, at the family's home in Platte, SD.

**Kailey Westerhuis:** Nine-year-old daughter of Nicole and Scott Westerhuis. Died in apparent murder-suicide on the night of September 16-17, 2015, at the family's home in Platte, SD.

**Michael Westerhuis:** Seventeen-year-old son of Nicole and Scott Westerhuis. Died in apparent murder-suicide on the night of September 16-17, 2015, at the family's home in Platte, SD.

**Nicole Westerhuis:** Grants manager (2009-2014) and assistant business manager (2014-2015) of MCEC. Business manager of Oceti Sakowin Education Consortium (OSEC). Incorporator and director of Blackrock Consulting. Incorporator and director for Chita Corporation. Organizer of Rock Ranch Consulting. Incorporator of AIIIE. Died on the night of September 16-17, 2015, along with her husband Scott and their four children in the family home in Platte, SD, in what authorities call a murder-suicide.

**Scott Westerhuis:** Business manager (1997-2015) of MCEC. Registered seven corporations with the SD Secretary of State's office. Registered agent, business manager, and CFO of Oceti Sakowin Distance Education Consortium (OSDEC). Incorporator, registered agent, and CFO of AIII. Incorporator, registered agent, vice-president, and CFO of Blackrock Consulting. Incorporator, registered agent, director, and president of Chita Corporation. Organizer, registered agent, and manager of Rock Ranch Consulting. Incorporator and registered agent for AIIIE. Died on the night of September 16-17, 2015, along with his wife Nicole and their four children in the family home in Platte, SD, in what authorities call a murder-suicide.

**Jana Smoot White:** Rapid City attorney. Registered agent of AIII, replacing Jay Roman in 2016.

**Heather Wilson:** President of the SD School of Mines and Technology 2013-2017, site of GEAR UP summer camps at that time.

**Lance Witte:** Superintendent of Wessington Springs School District; will resign effective 2018. Superintendent of Lower Brule Schools. Superintendent of Takini School. Director of DIAL Corporation. Director of DIAL Virtual School. Registered agent for Lance L. Witte Consulting, which received GEAR UP money from MCEC. An associate with the Cambrian Group of Montgomery, Alabama, which, according to KELOLAND News, received \$102,000 in GEAR UP funds from MCEC between 2012 and 2014.

**Michael Wyland:** Owner and partner of Sumption & Wyland in Sioux Falls, SD, offering strategic planning, board governance, executive coaching, and training and facilitation. As a writer since 2012 and consulting editor for *Nonprofit Quarterly* 2016-present, has written several articles about SD GEAR UP. Wyland also acquired the 2005 GEAR UP application materials and furnished them to KELOLAND's Angela Kennecke. He was interviewed on-camera for at least five KELOLAND stories on GEAR UP.

## Appendix C: GEAR UP Acronyms

**ACT:** American College Testing

**AED:** Academy for Education Development in Washington, D.C.

**AG:** Attorney General

**AII:** American Indian Institute for Innovation

**AIIIE:** American Indian Institute for Innovation and Excellence [sic]

**AP:** Advanced Placement

**BIA:** Bureau of Indian Affairs

**BIE:** Bureau of Indian Education

**BHSSC:** Black Hills Special Services Cooperative

**BHSU:** Black Hills State University in Spearfish, SD

**CACGP:** College Access Challenge Grant Program

**CAIRNS:** Center for American Indian Research and Native Studies

**CCSSO:** Council of Chief State School Officers

**CEO:** Chief Executive Officer

**CFO:** Chief Financial Officer

**CGI:** Clinton Global Initiative

**CFR:** Code of Federal Regulations

**CLEP:** College-Level Examination Project

**CPA:** Certified Public Accountant

**DBA:** Doing business as

**DC:** District of Columbia

**DCI:** Department of Criminal Investigation of the State of SD

**DEC:** Dakota Education Consulting in Sioux Falls, SD

**DIAL:** Dakota Interactive Academic Link

**DLA:** Department of Legislative Audit of the State of SD

**DSU:** Dakota State University in Madison, SD

**DWU:** Dakota Wesleyan University in Mitchell, SD

**ECS:** Education Commission of the States

**ESA:** Education Service Agency

**ESEA:** Elementary of Secondary Education Act of 1965

**ESSA:** Every Student Succeeds Act

**FAFSA:** Free Application for Student Aid

**FCA:** Fellowship of Christian Athletes

**GEAR UP:** Gaining Early Awareness and Readiness for Undergraduate Programs

**GOAC:** Government Operations and Audit Committee of the SD Legislature

**GPA:** Grade Point Average

**GRB:** Government Research Bureau at the University of SD

**GUSD:** GEAR UP South Dakota

**HEC:** Higher Education Act

**IHE:** Institution of Higher Education

**JAG:** Jobs for America's Graduates

**KELO:** Call letters for radio and TV stations in Sioux Falls, SD

**LBST:** Lower Brule Sioux Tribe

**LEA:** Local Education Agency

**LLC:** Limited Liability Corporation

**MCEC:** Mid-Central Educational Cooperative in Platte, SD

**NACIE:** National Advisory Council on Indian Education

**NCLB:** No Child Left Behind

**NGA:** National Governors Association

**NSU:** Northern State University in Aberdeen, SD

**OIG:** United States Office of Inspector General

**OMB:** United States Office of Management and Budget

**OSDEC:** Oceti Sakowin Distance Education Consortium

**OSEC:** Oceti Sakowin Education Consortium

**OST:** Oglala Sioux Tribe

**PAST:** Partnering Anthropology with Science and Technology

**PSAT:** Preliminary SAT

**RCI:** Rectal-Cranial Inversion

**SAT:** originally, Scholastic Aptitude Test

**SD:** South Dakota

**SDDOE:** South Dakota Department of Education

**SD BoR:** South Dakota Board of Regents

**SDIEAC:** South Dakota Indian Education Advisory Council

**SDIL:** South Dakota Innovation Lab

**SDSM&T:** South Dakota School of Mines & Technology in Rapid City, SD

**SD SoS:** South Dakota Secretary of State

**SDSU:** South Dakota State University in Brookings, SD

**STEM:** Science, Technology, Engineering, and Mathematics

**TIE:** Technology and Innovation in Education

**TPBL:** Transdisciplinary Problem Based Learning

**TQP:** Teacher Quality Partnership

**TRIO:** Not an acronym; refers to original three original programs: Upward Bound, Talent Search, and Student Support Service authorized by Higher Education Act of 1968.

**US:** United States

**USD:** University of South Dakota in Vermillion, SD

## Appendix D: GEAR UP Entities

**Academy for Education Development (AED):** Washington, D.C. consulting firm that wrote South Dakota's 2005 GEAR UP grant application.

**All-Native, Inc.:** Subsidiary of Ho-Chunk, Inc., in Nebraska.

**American Indian Institute for Innovation (AIII):** Scott Westerhuis incorporated AIII with the South Dakota Secretary of State's office in 2008. Scott Westerhuis was the registered agent. Official incorporators include Stacy Phelps and Jay Roman. Directors include Chris Eyre, John Herrington, and Carlos Rodriguez. In October 2012, Mid-Central partnered with AIII and OSEC to administer portions of the second GEAR UP grant, beginning in 2012. SDDOE applied for the second grant in July 2011. US DoE awarded that second GEAR UP grant to SDDOE in September 2011.

**American Indian Institute for Innovation and Excellence [sic] (AIIIE):** Scott Westerhuis incorporated this entity with the South Dakota Secretary of State's office in 2015. Official incorporators were Scott Westerhuis, Nicole Westerhuis, and Stacy Phelps. Scott Westerhuis was also the registered agent. Directors included Stacy Phelps, astronaut John Herrington, and STEM educator Carols Rodriguez.

**BC Kuhn Evaluation LLC:** Brinda Kuhn incorporated this entity with the South Dakota Secretary of State's office in 2013. Registration is expired as of March 28, 2018.

**BC Kuhn LLC:** Brinda Kuhn incorporated this entity with the South Dakota Secretary of State's office in 2009. Brinda Kuhn is the registered agent.

**Black Hills Special Services Cooperative (BHSSC):** According to its website (accessed March 28, 2018), "BHSSC's governing board is composed of one elected school board member from each of 12 public school districts in western South Dakota. Public board meetings are conducted monthly with minutes published in the Rapid City Journal. The organization operates as an education cooperative under South Dakota Codified Law 13:5:31." One of the six divisions of BHSSC is Technology & Innovation in Education, whose director is Julie Mathiesen, former member of the SD Board of Education Standards.

**Blackrock Consulting:** Scott Westerhuis incorporated this entity with the South Dakota Secretary of State's office in 2010. Scott Westerhuis was the CEO. Stacy Phelps was the president and director. Nicole Westerhuis was the secretary and director. The corporation was dissolved in 2013.

**Board of Regents:** The South Dakota Board of Regents exercises control over the state's six universities, two special schools, and three public higher education centers. In October 2015, the United States Department of Education approved the South Dakota Department of Education's request for the South Dakota Board of Regents to administer GEAR UP funds.

**Bureau of Indian Affairs (BIA):** Established in 1824, the BIA is the oldest bureau of the United States Department of the Interior. The BIA provides services to almost two million American Indians and Alaska natives.

**Bureau of Indian Education (BIE):** According to the website of the Bureau of Indian Affairs (BIA) (accessed March 28, 2018), “Formerly known as the Office of Indian Education Programs, the Bureau of Indian Education (BIE) was renamed and established on August 29, 2006. . . .As stated in Title 25 CFR Part 32.3, BIE’s mission is to provide quality education opportunities from early childhood through life in accordance with a tribe’s needs for cultural and economic well-being. . . .”

**Cambrian Group:** Headquartered in Montgomery, Alabama, the Cambrian Group provides strategic planning for schools. Lance Witte, superintendent of the Wessington Springs, SD, school district, is an associate of the Cambrian Group.

**Center for American Indian Research and Native Studies (CAIRNS):** Founded in 2004 near Martin, SD. Allied with consultant Brinda Kuhn on grant applications and evaluations.

**Chita Corporation:** Scott Westerhuis incorporated this entity with the South Dakota Secretary of State’s office in 2012. Scott Westerhuis was the registered agent and officer. Nicole Westerhuis was an officer.

**College Access Challenge Grant Program (CACGP):** According to the website of United States Department of Education (accessed March 28, 2018), “The purpose of the College Access Challenge Grant Program (CACGP) is to foster partnerships among federal, state, and local governments and philanthropic organizations through matching challenge grants that are aimed at increasing the number of low-income students who are prepared to enter and succeed in postsecondary education.” In South Dakota, Board of Education Standards member Kelly Duncan managed the grant for Mid-Central.

**Council of Chief State School Officers (CCSSO):** According to its website, CCSSO is a “nonpartisan, nationwide nonprofit organization of public officials who head departments of elementary and secondary education in the states, the District of Columbia, the Department of Defense Education ‘activity, the Bureau of Indian Education, and give U. S. extra-state jurisdictions.” At one time, Melody Schopp was the President, Tom Oster the senior advisor for rural education, and Rick Melmer the director of the CCSSO Leadership Institute.

**Dakota Education Consulting:** Rick Melmer incorporated this Sioux Falls-based entity with the South Dakota Secretary of State’s office in 2013. At various times, the partners included former South Dakota Education Secretaries Rick Melmer and Tom Oster and future South Dakota Education Secretary Don Kirkegaard. Historical DEC websites cataloged on The Wayback Machine show DEC’s clients included Kirkegaard’s former school district (Britton-Hecla), Kirkegaard’s current school district (Meade County), and the SD Department of Education.



**Dakota Indian Foundation:** An independent 501 c(3) non-profit corporation based in Chamberlain, SD. At one time, Glenn Drapeau was program coordinator and board member of the foundation. The Dakota Indian Foundation has received low ratings from charity watchdogs for having questionable finances.

**Dakota Plains Consulting:** South Dakota Board of Education Standards member Kelly Duncan incorporated this entity with the South Dakota Secretary of State's office in 2012. She originally based the company in Vermillion and subsequently moved it to Aberdeen, SD.

**Dakota Plains Educational Consulting:** Margo Heinert incorporated this entity with the South Dakota Secretary of State's office in 2012. It is based in Mission, SD.

**Department of Legislative Audit (DLA):** According to DLA's website (accessed March 28, 201), "Our mission is to serve the legislators, government officials and citizens of the State of South Dakota by providing quality independent audits and assistance to the State of South Dakota and local governments. Our goal is for these services to continuously improve our governments' financial management and reporting, thereby enhancing the accountability of government to its citizens."

**DIAL Corporation:** Dan Guericke incorporated this entity with the South Dakota Secretary of State's office in 1998. The articles of incorporation state that the purpose for which the nonprofit corporation is formed is "To partner with technology-based enterprises for the development and implementation of advanced educationally-based products which result in telecollaborative curriculum units in member schools." Mitchell, SD, school district Superintendent Joe Graves is director and president. Dan Guericke and Lance Witte are directors. Stephanie Hubers filed the annual reports.

**DIAL Virtual School:** According to its website (accessed March 28, 2018), "The DIAL Virtual School is an initiative of the Dakota Interactive Academic Link or DIAL Consortium and began offering distance classes in 2002. The purpose of the DIAL Virtual School is to provide high-quality online and interactive class options to meet the many different needs of South Dakota students and schools for grades 6-12." Joe Graves is the board president; Lance Witte is a member of the board of directors.

**Education Commission of the States (ECS):** According to its website (accessed March 28, 2018), the ECS is "a national education policy organization that serves as a partner to state policymakers." Melody Schopp has been the treasurer.

**Fellowship of Christian Athletes (FCA):** Keith Moore became the statewide director of FAC in 2012.

**GEAR UP Advisory Board:** Mid-Central created this entity in 2012. Keith Moore was the chair. Rick Melmer was a member. Mid-Central compensated both for their service.

**Government Research Bureau (GRB):** According to the website of the University of South Dakota, “The Government Research Bureau (GRB), established in 1939, has a distinguished history of conducting applied research on public policy and administrative issues affecting the State of South Dakota, local governments and American Indian Reservations and nonprofits.” GRB conducted a program evaluation of GEAR UP released in August 2015.

**GNS Bus Sales LLC:** Dan Guericke incorporated this entity with the South Dakota Secretary of State’s office in 2014. Dan Guericke is the registered agent.

**Guericke Enterprises:** Dan Guericke incorporated this entity with the South Dakota Secretary of State’s office in 2013. Dan Guericke is the registered agent.

**Ho-Chunk, Inc.:** Economic development corporation owned by the Winnebago Tribe of Nebraska.

**Kuhn Properties, LLC:** Brinda Kuhn incorporated this entity with the South Dakota Secretary of State’s office in 2013. Brinda Kuhn is the registered agent.

**Leadership South Dakota:** According to its website (accessed March 28, 2018), “Leadership South Dakota’s mission is to attract engaged citizens from across the state, then provide them with the background, unique experiences and insights necessary to assume leadership positions at the community, state and national levels.” Rick Melmer is founder (2014) and co-director. Tom Oster is co-director.

**Mid-Central Educational Cooperative (MCEC):** Fourteen public school districts comprised MCEC, based in Platte, SD. The Department of Legislative Audit’s “Special Review of Mid-Central Educational Cooperative”, released May 19, 2017, states, “What we found: Inadequate oversight of related parties and conflicts of interest. MCEC began with a primary function of providing special education services to its member school districts. MCEC is governed by a decision making board made up of a school board member from each of its member schools that is supported by an advisory board made up of the superintendent for each of its member schools....Over the years, MCEC began administering additional federal grant programs both as a subrecipient of the State of South Dakota and as a direct recipient on its own behalf. MCEC also began providing services on a contractual basis for other organizations and individuals.” Mid-Central schools voted in April 2017 to dissolve the cooperative. It terminated its provision of services to member schools on June 30, 2017. Subsequently, the Core Educational Cooperative in Platte has been organized to provide special education services to students enrolled in the member school districts.

**National Advisory Council on Indian Education (NACIE):** The Council is authorized by the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA). The President of the United States appoints the 15 members from lists of nominees furnished by Indian tribes and organizations. Stacy Phelps was a member of the Council from 2010 to 2015.

**Native American Honors Program:** In 1992, on the campus of the SD School of Mines & Technology in Rapid City, Stacy Phelps started a summer camp for Native American students. Over the years, the camp was known as SKILL, NASA Honors, and the SD Honors GEAR UP Program.

**Oceti Sakowin Distance Education Consortium (OSDEC):** Scott Westerhuis incorporated this entity with the South Dakota Secretary of State's office in 2003. Scott Westerhuis was the registered agent, CFO, and business manager. Ted Hamilton was the registered agent, director, and president. The corporation was dissolved in 2007, reinstated in 2008, and dissolved in 2015. (*Oceti Sakowin* is Lakota for the "Seven Council Fires" of the Lakota Nation.)

**Oceti Sakowin Education Consortium (OSEC):** Scott Westerhuis incorporated this entity with the South Dakota Secretary of State's office in 2011. Scott Westerhuis was the registered agent. Nicole Westerhuis was the business manager. Ted Hamilton is incorporator and director. Mid-Central partnered with OSEC and AIII to administer portions of the second GEAR UP grant, beginning in 2011/2012.

**Oglala Lakota College:** During 2005-2008, Stacy Phelps was the Math/Science Chair of Oglala Lakota College in Kyle, SD.

**Oster Consulting:** Former SD Education Secretary Thomas J. "Tom" Oster incorporated this entity with the South Dakota Secretary of State's office in 2011. Tom Oster is the registered agent.

**Partnership for Excellence and Innovation:** Alice Phelps and Jay Roman incorporated this entity with the South Dakota Secretary of State's office on March 16, 2016, the same day Attorney General Marty Jackley announced multiple felony charges against Stacy Phelps, Stephanie Hubers, and Dan Guericke. Jay Roman is the registered agent. Glenn Drapeau is a director.

**PAST Foundation:** Dr. Annalies Corbin, a 1993 graduate of USD, founded the PAST (Partnering Anthropology with Science and Technology) Foundation in 2000. Today, she serves as the president, CEO, and, according to the corporation's website (accessed March 28, 2018), "Chief Goddess." Located in Columbus, OH, the PAST Foundation is a federal 501 c(3) nonprofit entity that designs STEM education (especially in rural America) and builds partnerships for educational projects, field schools, media, and websites. In 2013, the PAST Foundation partnered with Dakota Wesleyan University (DWU) in Mitchell, SD, to offer a program in STEM education. The program was eliminated in 2016 due to a lack of interest. An Eide Bailly forensic examination revealed that Mid-Central gave \$487,466.55 to PAST between October of 2013 and August of 2013. Attorney General Jackley alleges that over a six-year period, Mid-Central Director Dan Guericke signed 17 contracts (totaling about \$3.8 million) on behalf of Mid-Central without getting approval from Mid-Central's Board of Directors, as required by law. Three of those contracts, totaling about \$1.6 million, went to PAST.

**PAST Innovation Lab:** In describing the PAST Innovation Lab, the PAST Foundation, on its website (accessed March 28, 2018), states, “Our goal was to create a state of the art Education R&D prototyping facility.” Annalies Corbin is the president and CEO of the PAST Innovation Lab.

**Pergroup (Personal Group):** According to the company’s website (accessed March 28, 2018), Pergroup “is a native-owned and operated business headquartered in Pierre, South Dakota. Since 1989, we have built our reputation on delivering innovative, needs-driven, quality business solutions for companies like yours.” Brian Drapeaux of Pergroup became chief of staff to Keith Moore at the BIE in Washington, D.C.

**Pixie Air, LLC:** Brinda Kuhn incorporated this entity with the South Dakota Secretary of State’s office in 2014. Brinda Kuhn is the registered agent.

**Prairie Stone Foundation:** Brinda Kuhn incorporated this entity with the South Dakota Secretary of State’s office in 2010. Kuhn was the registered agent. She dissolved the corporation in 2015.

**Rock Ranch Consulting:** Scott Westerhuis incorporated this entity with the South Dakota Secretary of State’s office in 2010. He was the registered agent for the corporation, which was terminated in 2016.

**Rural Learning Center:** A 1996 grassroots economic and rural community revitalization movement in Howard, SD, led to the creation of the Rural Learning Center. An October 4, 2016, Angela Kennecke story on KELOLAND News reported, “The State of South Dakota alleges that over a six-year period, Mid-Central Executive Director Dan Guericke signed 17 contracts on behalf of Mid-Central without getting approval from the Mid-Central Board of Directors, as required by law.” One of those contracts, for \$160,000, went in 2009 to the Rural Learning Center, which is today defunct.

**RVM Consulting Services:** Rick Melmer incorporated this entity with the SD Secretary of State’s office in 2015. Rick Melmer is the registered agent.

**Sanford Research:** According to its website (accessed March 28, 2018), “Sanford Research is a non-profit research organization that is a part of Sanford Health, the largest rural, not-for-profit health care system in the nation.” At one time, Sioux Falls-based Sanford Research was a partner in the SD Innovation Lab (SDIL).

**Schoenfish and Company:** Parkston, SD, accounting firm that performed annual audits of Mid-Central. State Representative Kyle Schoenfish is a member of the firm.

**South Dakota Board of Education Standards:** The Governor appoints the seven members of the Board. According to the website of the SD Department of Education (accessed March 28, 2018), the Board’s leadership role includes enhancing “the professional development of educators through credentials, teacher training programs, and a code of ethics.” Stacy Phelps, Kelly Duncan, Julie Mathiesen, and Don Kirkegaard all served on the Board, but none remained on the Board by 2018.

**South Dakota Indian Education Advisory Council (SDIEAC):** According to the website of the SDDOE, “The Indian Education Advisory Council was formed to address the achievement gap between Native and non-Native students in South Dakota.” The Council was established in 2007.

**South Dakota Innovation Lab (SDIL):** Established in 2011, the South Dakota Innovation Lab was initially a formal partnership among Mid-Central, Sanford Research, and the PAST Foundation. According to *South Dakota’s Innovation Lab Pilot Report*, dated 2014, “Through SDIL, STEM experts provide professional development to rural and Native American educators, regardless of their geography or local resource limitations.” Dan Guericke was the executive director of SDIL.

**South Dakota Jobs for America’s Graduates (JAG):** According to its website (accessed March 18, 2018), “JAG is committed to helping resolve our country’s dropout and transition problems by expanding state organizations and local programs that help people overcome barriers to graduation from high school and become college and career ready!” SD State JAG director is Margo Heinert.

**South Dakota Native American Student Achievement Advisory Council:** According to the website for the SDDOE (accessed March 28, 2018), “On Feb. 2, 2015, Gov. Dennis Daugaard issued Executive Order 2015-02 calling for the establishment of the Native American Student Achievement Advisory Council. This order came as a result of a request by the Great Plains Tribal Chairman’s Association. Council members will be looking to identify successful strategies to change the current learning paradigm for Native American students in South Dakota.” The Council submitted its final report to Governor Daugaard on November 25, 2015. Members included Stacy Phelps.

**Teacher Quality Partnership (TQP) Grant Program:** In 2009, the U.S. Department of Education awarded the Teacher Quality Partnership Grant directly to Mid-Central. According to the U.S. Department of Education website (accessed March 28, 2018), “The goal of this project is to improve student achievement in rural areas of South Dakota. This will be accomplished by increasing the placement and retention of highly qualified teachers in these partnering high-need South Dakota school districts. Candidates will engage in community study and professional development focusing on rural schools. Over the five-year grant, this program will prepare 75 teachers to serve in 49 high-need public schools located within 19 South Dakota school districts. A feature of this project is its partnership with agencies that focus on the interests of American Indians.”

**Technology & Innovation in Education (TIE):** According to its website (accessed March 28, 2018), “The purpose of Technology & Innovation in Education (TIE) is to make a difference in the education environment by providing quality service, and staying on top of cutting-edge technology and training strategies. TIE curates lesson resources, provides instruction for the best uses of internet tools and provides customized support on the best pedagogical strategies to support learning.” TIE is one of six divisions within BHSSC. Former SD Board of Education Standards member Julie Mathiesen is the director of TIE, whose offices are in Rapid City, SD.

**Three Rivers Special Services Cooperative:** The educational cooperative was started in 2007 in Philip, SD. Former SD Board of Education Standards member Julie Mathiesen is superintendent, technology coordinator, curriculum director, and assessment coordinator.

**Wakan Gli:** U.S. Department of Education awarded Mid-Central the *Wakan Gli* (“Sacred Movement”) demonstration grant in 2009 and provided annual allocations through 2014. Mid-Central administered *Wakan Gli* to help Native American students who attended 11 high schools. It followed one cohort of students from ninth grade through high school graduation.

**Woonspe Tiospaye:** A Native American demonstration grant AIII administered. The grant focused upon STEM curriculum. It served Native American students in grades 9-12 at seven high schools.

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