



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF INSPECTOR GENERAL

Investigation Services

FINAL MANAGEMENT INFORMATION REPORT

DATE: October 31, 2013

TO: Deborah Delisle
Assistant Secretary
Office of Elementary and Secondary Education

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Office of Inspector General

SUBJECT: Final Management Information Report
Fraud in Title I-Funded Tutoring Programs
Control No. ED-OIG/ X42N0001

The Office of Inspector General (OIG) has conducted numerous investigations of fraud and corruption involving Title I-funded Supplemental Educational Services tutoring programs over the past five years. The OIG's inventory of these investigations has risen significantly.

On September 26, 2013, OIG issued a Draft Management Information Report (MIR) to alert the Office of Elementary and Secondary Education about our findings from these investigations, and to make recommendations which, if implemented, would mitigate future additional risks of fraud and corruption in these and other similar programs involving the provision of services by third parties who bill on a per-child basis.

On October 30, 2013, the U.S. Department of Education's (Department) Office of Elementary and Secondary Education responded to the Draft MIR and concurred with our concern about fraud in this program and will convene a working group to consider potential regulations and other measures to strengthen protections against the types of fraud described in this report. Given the the findings we reported, the Department also plans to take immediate steps to mitigate the fraud as described in their response, which is attached.

Below is the Final MIR which includes the findings from these investigations and the recommendations. We are including the Department's response as an attachment to this report.

We conducted our work in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Investigations* and the *Quality Standards for Inspection and Evaluation*.

This Management Information Report issued by the Office of Inspector General will be made available to members of the press and general public to the extent information contained in the memorandum is not subject to exemptions in the Freedom of Information Act (5 U.S.C. § 552) or protection under the Privacy Act (5 U.S.C. § 522a).

Final Management Information Report Fraud in Title I-Funded Tutoring Programs Control Number: X42N0001

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I. LIST OF ABBREVIATIONS

Department	U.S. Department of Education
EDGAR	Education Department General Administrative Regulations
ESEA	Elementary and Secondary Education Act of 1965, as Amended
FAR	Federal Acquisition Regulations
GAO	U.S. Government Accountability Office
HEA	Higher Education Act
LEA	Local Educational Agency
OIG	Office of Inspector General
Recovery Act	American Recovery and Reinvestment Act of 2009
SEA	State Educational Agency
SES	Supplemental Educational Services

Management Information Report Fraud in Title I-Funded Tutoring Programs

II. EXECUTIVE SUMMARY

The purpose of this report is to alert the U.S. Department of Education's (Department) Office of Elementary and Secondary Education to serious fraud and corruption in Title I-funded Supplemental Educational Services (SES) tutoring programs and to make recommendations that, if implemented, would mitigate the risk of fraud and corruption in SES or similar programs involving services provided by third parties who bill on a per-child basis.

Over the past 5 years, the Office of Inspector General (OIG) has responded to a significant increase in cases of fraud and corruption among SES providers. In 2009, we had only one SES investigation; since then, we have received complaints for another 31 matters for investigation, and this trend is continuing. These investigations are complex and resource-intensive, and they often involve large dollar losses. Additionally, they involve a significant public trust issue: our investigations have found many instances of public school teachers who have engaged in fraudulent conduct while working for SES providers.

This report focuses on our investigation work, which has found falsification of billing and attendance records, corruption by public officials, conflicts of interest related to recruiting students, conflicts of interest related to public school officials who are employed by an SES provider in noninstructional positions, and the use of improper financial incentives to enroll students.

Our SES cases have illustrated a number of weaknesses in the following areas:

- program monitoring,
- reporting of fraud,
- fraud and compliance certification,
- conflict of interest policies and certification,
- verification of parental consent,
- financial incentives, and
- data retention.

Our recommendations, if implemented, will help reduce the incidence of fraud and corruption and improve the ability of the OIG and others to identify and prosecute violators. We recommend seeking regulatory changes to State Educational Agency (SEA) monitoring, establishing a reporting requirement for Title I fraud, establishing certifications to deter fraud and conflicts, implementing student verification procedures, prohibiting improper financial incentives, and extending record retention requirements to match applicable statutes of limitations for prosecutions. Some of these recommendations repeat past OIG recommendations and suggestions for consideration that the Department has not implemented.

We prepared this report in accordance with the Council of the Inspectors General on Integrity and Efficiency's "Quality Standards for Investigations,"¹ "Quality Standards for Federal Offices of Inspectors General,"² and "Quality Standards for Inspection and Evaluation."³

III. SUPPLEMENTAL EDUCATIONAL SERVICES

a. Background

Under Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended, (ESEA), local educational agencies (LEA) must offer SES, such as afterschool tutoring, to low-income students who attend Title I schools that have been designated by the State to be in need of improvement for more than one year. LEAs fund SES with a portion of their Title I, Part A allocation, from a minimum of 5 percent for the tutoring services alone to a maximum of 15 percent with transportation to the SES provider included.

SEAs are responsible for ensuring that SES are available to all eligible students by qualified and approved SES providers. SEAs must approve SES providers, maintain and publish a list of approved providers for parents to select from, monitor LEAs' implementation of SES, and monitor the quality and effectiveness of SES providers. SEAs must remove SES providers from their approved list if they fail to:

- increase students' achievement for 2 consecutive years; or
- provide services consistent with applicable Federal, State, and local health, safety, and civil rights requirements.

LEAs arrange SES for eligible children from an SEA-approved provider that the student's parent selects. According to State-published data, in 2010 there were 3,462 State-approved SES providers nationwide; in 2011 there were 4,416; and in 2012 there were 4,629. SES providers range in size from large, nationally recognized firms operating in multiple States to small sole proprietorships operating only within a single school district. We have multiple investigations in States that have had a significant increase in SES providers. For example, in Ohio, the number of SES providers has increased 68 percent from 2010 to 2012 and in Florida, 56 percent. According to the Department's ED Data Express, in school years 2010–2011 and 2011–2012, 989,969 students and 1,408,687 students applied for SES services, respectively. As noted in the Department's 2009 "Supplemental Educational Services, Non-Regulatory Guidance," the average per-pupil allocation of Title I funds to LEAs for SES is about \$1,300, with amounts ranging from roughly \$900 to \$2,400.

The following table shows the amount of SES funds disbursed nationwide in the last 5 years.

¹ November 15, 2011; <http://www.ignet.gov/pande/standards/invstds2011.pdf>.

² August 2012; <http://www.ignet.gov/pande/standards/Silver%20Book%20Revision%20-%208-20-12r.pdf>.

³ January 2012; <http://www.ignet.gov/pande/standards/iestds12.pdf>.

Supplemental Educational Services by School Year

School Year	Annual Disbursements
2007–2008	\$806,187,260
2008–2009	\$771,853,655
2009–2010	\$908,556,774
2010–2011	\$965,916,621
2011–2012	\$1,040,000,000 ⁴

Source: ED Data Express

In September 2011, the Department allowed each SEA to request ESEA flexibility waivers regarding specific requirements of the ESEA in exchange for State-developed plans designed to improve educational outcomes for all students, close achievement gaps, increase equity, and improve the quality of instruction. SEAs that have received ESEA flexibility receive a waiver of the requirement to identify schools for improvement, corrective action, or restructuring. This flexibility also relieves an LEA and school that otherwise would have been identified for improvement from the requirement to carry out certain actions that accompany such identification, including implementing SES requirements. Thus, school districts covered by an ESEA waiver are no longer required to provide SES.

However, some SEAs and LEAs have chosen to continue offering SES or similar academic services to eligible students. For example, Florida received an ESEA waiver but State lawmakers passed a statute to preserve SES in 2012 and set aside \$50 million in Federal funds for SES providers. South Carolina received an ESEA waiver but continued to offer SES during the 2012–2013 school year to eligible students in Priority and Focus schools. North Carolina received an ESEA waiver, but North Carolina’s ESEA Flexibility Focus Schools Guide states, “An LEA may continue to offer services through its own state-approved SES provider organization or may offer tutoring through a school (non-SES) program or through some other partnership with an external provider (e.g., State-approved SES, other tutoring service providers, volunteer programs, etc.).” Colorado has also chosen to retain SES as part of its flexibility waiver by requiring its low-achieving Title I schools to offer SES to eligible children. States that have received waivers and choose not to provide SES can provide other Title I funded tutoring programs. For example, Georgia’s ESEA waiver application, which was approved by the Department, states that Georgia will be replacing SES with the “Flexible Learning Program,” which provides tutoring for eligible students from schools currently required to implement SES. New Jersey’s ESEA waiver application, which was also approved by the Department, stipulates that afterschool tutoring may be provided by schools identified as in need of improvement.

⁴ According to ED Data Express, Texas and Pennsylvania had errors in their final data submissions to the Department. Data will be updated once the Department receives accurate information. The 2011–2012 school year data is the Department’s estimate.

Thus, some SEAs and LEAs that have obtained ESEA waivers have chosen to continue offering SES or other tutoring services to eligible students.

The vulnerabilities identified in this report could occur in other large Department programs that allow grantees or subgrantees to contract with third parties to deliver services, particularly when services are billed on a per-child basis. For example, other potentially vulnerable programs include compensatory services provided by third party vendors under the Individuals with Disabilities Education Act and academic enrichment services provided by third party vendors under ESEA's 21st Century Community Learning Centers Program.

b. SES Oversight and Increased Risk

OIG audit work conducted over the last decade has identified a lack of oversight and monitoring of SES providers by SEAs that leaves programs vulnerable to waste, fraud, and abuse. The OIG audited SES in six States between 2003 and 2005,⁵ and audited SES implementation and providers in five California school districts in 2005.⁶ These audits identified weaknesses with SEA oversight of LEAs and their evaluations of provider effectiveness in each State we reviewed. In October 2007, the OIG also issued "An OIG Perspective on Improving Accountability and Integrity in ESEA Programs,"⁷ which outlined program monitoring deficiencies and made a number of suggestions for consideration to the Department to help ensure SEA and LEA compliance with the ESEA. Additionally, in 2006, the U.S. Government Accountability Office (GAO) issued a report with recommendations to improve Federal and State monitoring of SES.⁸ GAO followed up and issued another report in 2007⁹ that restated its 2006 report recommendations that the Department clarify guidance, clarify State authority, and provide evaluation assistance. Although the Department agreed to and accepted the OIG and GAO recommendations, the SES program and ESEA funds remain at risk as demonstrated by recent OIG investigations.

⁵ OIG completed the audits related to SES in the following six States: Delaware (ED-OIG/A03F0002, November 22, 2005, <http://www2.ed.gov/about/offices/list/oig/auditreports/a03f0002.pdf>); Illinois (ED-OIG/A07F0003, August 23, 2005, <http://www2.ed.gov/about/offices/list/oig/auditreports/a07f0003.pdf>); Indiana (ED-OIG/A05E0014, February 18, 2005, <http://www2.ed.gov/about/offices/list/oig/auditreports/a05e0014.pdf>); Michigan (ED-OIG/A05F0007, August 2, 2005, <http://www2.ed.gov/about/offices/list/oig/auditreports/a05f0007.pdf>); Nevada (ED-OIG/A09F0002, July 14, 2005, <http://www2.ed.gov/about/offices/list/oig/auditreports/a09f0002.pdf>); and New Jersey (ED-OIG/A02F0006, September 14, 2005, <http://www2.ed.gov/about/offices/list/oig/auditreports/a02f0006.pdf>).

⁶ OIG Management Information Report, "Implementation of Supplemental Education Services in California," ED-OIG/X09G0007, September 21, 2006; <http://www2.ed.gov/about/offices/list/oig/auditreports/x09g0007.pdf>.

⁷ ED-OIG/S09H0007, October 2007; <http://www2.ed.gov/about/offices/list/oig/auditreports/fy2008/s09h0007.pdf>.

⁸ "Education Actions Needed to Improve Local Implementation and State Evaluation of Supplemental Educational Services," GAO-06-758, August 2006; <http://www.gao.gov/new.items/d06758.pdf>.

⁹ "Education Actions May Help Improve Implementation and Evaluation of Supplemental Educational Services," GAO-07-738T, April 18, 2007; <http://www.gao.gov/new.items/d07738t.pdf>.

The Department has conducted monitoring in this area through disseminating guidance on SES and conducting compliance reviews of States and school districts. The Department's 2009 "Supplemental Educational Services, Non-Regulatory Guidance" states, "The Department, as part of its auditing and on-site and desk monitoring of Title I, requests evidence documenting that SEAs are effectively monitoring the implementation of SES by their LEAs." However, the Department has not conducted focused SES monitoring since 2007. Office of Elementary and Secondary Education officials stated that SES monitoring efforts are included in broader monitoring efforts of ESEA, Title I, Part A, but that the reviews do not focus on SES providers and the Department does not review SES expenditure records.

IV. FINDINGS FROM INVESTIGATIONS OF SES PROVIDERS

Recent OIG investigations have uncovered substantial fraud and corruption perpetrated by SES providers and school district officials. Because these schemes undermine the public's trust in public officials and service providers, they are a high investigative priority. As of August 2013, we had opened for investigation 32 matters involving more than 50 SES providers, with 19 investigations currently open and 6 additional complaints being evaluated for investigative merit. Of our open SES cases, 68 percent involve the falsification of attendance and billing records.

As of August 2013, OIG SES investigations have resulted in the criminal prosecution of 13 people and one corporation and 8 civil fraud actions. We have secured more than \$19 million in criminal restitution, civil judgments, civil settlements, and fines, and we have a number of additional criminal and civil prosecutions pending. Our investigations have uncovered a multitude of fraud schemes involving issues raised by our prior audit work, including billing and attendance fraud and conflicts of interest. Our investigations have also identified other issues not identified previously, such as bribery and the use of financial incentives to recruit and enroll students. OIG's growing caseload of SES investigations makes it imperative that the Department implement the corrective actions we recommend in this report.

The following are examples of our SES investigations that we reported in our most recent Semiannual Report to Congress.

- In New York, a national SES provider agreed to a \$10 million civil fraud settlement and two former directors pled guilty and agreed to pay more than \$1 million for their role in the fraud. A third company official agreed to a civil judgment of \$3.2 million. The SES provider admitted to instructing employees, including public school teachers, to falsify student attendance records and submit claims for reimbursement for SES services that it did not provide. From 2006 through 2010, this provider received more than \$38 million in Title I funds.
- Another SES provider agreed to a \$1.725 million civil fraud settlement and one of its former managers pled guilty and agreed to a \$2.3 million civil judgment in response to civil and criminal fraud complaints that the SES provider and former manager defrauded the SES program at New York City schools. The former manager was also a public school teacher. He submitted bills for services never rendered; instructed other employees, including public school teachers, to forge student signatures on attendance forms; and had students sign attendance forms for tutoring classes that they had not

attended. A civil fraud complaint is pending against three New York City school teachers for their participation in the scheme, and one of them has also been criminally charged. The SES provider received tens of millions of dollars in SES funding.

- The former director of State and Federal programs for a Michigan school district was convicted on bribery charges and sentenced to 5 years of incarceration followed by 3 years of supervised release. She received money and other items of value from an SES provider, her brother-in-law, in exchange for her support in awarding a contract to him. The SES provider is currently under indictment for his role in this scheme.
- The owner of an SES provider in Ohio was indicted on charges related to fraud. The owner allegedly billed a school district for tutoring sessions that were not provided and submitted more than \$50,000 in fraudulent claims.
- The owner of an SES provider was sentenced to 5 years of probation and was ordered to pay more than \$158,000 in restitution plus \$160,000 for investigative costs for defrauding the SES program. The owner, whose programs operated at three public schools in Miami, submitted bills to the schools for tutoring students who did not exist, overbilled for tutoring services for actual students, and submitted false documentation as proof of services rendered.
- The owner of a company seeking to become a State-approved SES provider in Arkansas pled guilty to submitting fraudulent documents, including a forged letter of credit from a deceased bank employee, to the Arkansas Department of Education in order to be considered a “financially responsible entity” eligible to be an SES provider.

These cases reported by OIG represent the types of investigations currently being prosecuted nationwide. Of our open SES investigations, 36 percent involve allegations that public school teachers, often students’ own teachers working as SES tutors after hours, directly participated in SES fraud schemes, including the following examples.

- An ongoing investigation in Arkansas involves an SES provider who allegedly paid a public school teacher to falsify SES billing and student attendance records. The teacher was also allegedly paid to travel the State to recruit students, parents, and other public school districts for the SES provider.
- An ongoing investigation in New York alleges that a public school substitute teacher and a computer technician, who also coached the high school’s baseball team, submitted bills for students who never received any tutoring. The teacher also allegedly instructed other teachers and SES tutors to forge student signatures on attendance forms and to have students sign attendance forms for tutoring classes they had not attended. The teachers allegedly obtained students’ signatures in the school cafeteria or at sports practices. One of the teachers allegedly instructed her own students to obtain signatures during class and rewarded them with pizza.

- An ongoing investigation in New Jersey alleges that an SES official allegedly paid public school teachers to recruit students. The SES official allegedly wanted each teacher to recruit 12–15 students, calling it “job security.” The teachers allegedly billed for absent students and for books and materials that were not provided to students, and paid for students to eat snacks rather than be tutored. One LEA allegedly paid SES providers \$15,000 per day for students who ate snacks instead of being tutored.
- An ongoing investigation in Oklahoma revealed that up to 20 public school teachers who were also SES tutors allegedly submitted false invoices for tutoring services for students who never received any tutoring. Students and parents of students reported as having been tutored disclosed that they never signed up for tutoring or attended any tutoring sessions. In August 2013, two owners of SES providers and a public high school counselor were indicted.

V. AREAS NEEDING IMPROVEMENT

Our SES investigations and prior OIG audits have uncovered significant gaps in the control environment left by existing laws, regulations, and guidance applicable to SES, which could be relevant to other large Department programs. In particular, we identified the following as areas needing improvement:

- program monitoring,
- reporting of fraud,
- fraud and compliance certification,
- conflict of interest policies and certification,
- verification of parental consent,
- restrictions on financial incentives, and
- data retention periods.

a. Improving Monitoring of SES and Other ESEA programs

The ESEA does not address minimum requirements for SEA monitoring of LEA administration of ESEA programs, including SES programs. The Education Department General Administrative Regulations (EDGAR/Department regulations) applicable to ESEA programs require grantees to monitor grant- and subgrant-supported activities to ensure compliance with Federal requirements and that performance goals are being achieved, but do not address minimum requirements for monitoring (34 C.F.R. § 80.40). The Department’s SES-specific regulations establish standards for monitoring SES providers. However, these requirements focus on a provider’s instructional program—for example, how it contributes to students’ academic achievement—and do not address monitoring of billing and contracting practices, or other financial oversight issues (34 C.F.R. § 200.37(c)).¹⁰

¹⁰ Although SEAs have no SES-specific monitoring requirements the Department’s regulations do require that SEAs have procedures in place for reviewing complaints related to financial practices, regarding LEA implementation of Title I programs and activities generally, and that SEAs should follow those procedures in determining the credibility of complaints related to an LEA’s compliance with the SES requirements (34 C.F.R. § 299.10).

A 1999 OIG report, “An OIG Perspective on the Reauthorization of the ESEA,”¹¹ and the 2007 report, “An OIG Perspective on Improving Accountability and Integrity in ESEA Programs,” noted that minimum requirements for monitoring are not addressed in the ESEA or EDGAR. Also, as previously discussed, the OIG issued a series of reports in 2005 and 2006 on six States’ and several California LEAs’ compliance with SES provisions, which all found inadequate monitoring. Additionally, OIG issued an audit report in 2011 to the New Jersey Department of Education that found the SEA’s monitoring of Camden’s SES program was ineffective to ensure payments to SES providers were allowable.¹² It also found that the SEA did not have adequate procedures for informing school districts that SES providers were removed from its approved provider list. Additionally, the 2006 and 2007 GAO SES reports recommended that the Department provide SEAs and LEAs with assistance in evaluating SES’ effects on student achievement.

Our investigations have revealed that some SEAs and LEAs are only providing limited SES oversight. For example, Florida had the greatest number of State-approved SES providers (456) in the nation in the 2012–2013 year but conducted on-site inspections of only 7 providers, or about 1 percent. We currently have two SES investigations in Florida and one investigative lead pending.

b. Fraud Reporting

The Department’s 2009 “Supplemental Educational Services, Non-Regulatory Guidance” advises SEAs to ensure that SES providers do not engage in unfair or illegal business practices. The guidance provides the following example: “An SEA should clearly take action if it learns that a provider is offering ‘kickbacks’ to LEA officials, principals, or teachers who encourage parents to select that provider, or if it learns that a provider is engaging in false advertising about its SES program or other providers’ programs.” However, the guidance does not include a requirement to report allegations to the OIG.

The OIG’s 2007 “An OIG Perspective on Improving Accountability and Integrity in ESEA Programs” recommended that the Department establish a reporting requirement for suspected fraud and other criminal misconduct, waste, and abuse in ESEA programs. The Department agreed to this recommendation, but to date, it has not made any regulatory changes.¹³

In contrast, fraud reporting is required for postsecondary institutions that receive Higher Education Act (HEA) Title IV funds,¹⁴ and for all programs funded under the American

¹¹ ED-OIG/S1480010, February 1999; <http://www2.ed.gov/about/offices/list/oig/auditreports/s1480010.pdf>.

¹² “Camden City Public School District’s Administration of its Supplemental Educational Services Program,” ED-OIG/A02K001, May 4, 2011; <http://www2.ed.gov/about/offices/list/oig/auditreports/fy2011/a02k0011.pdf>.

¹³ Some of the matters under OIG investigation were initially referred to other law enforcement officials, such as local authorities, who later brought them to the OIG’s attention. However, to sufficiently protect the Department’s interest, it is essential that the OIG receive timely notification of allegations.

¹⁴ 34 C.F.R. § 668.16(g)(2) requires postsecondary schools to report allegations of HEA-related fraud to the OIG.

Recovery and Reinvestment Act of 2009 (Recovery Act),¹⁵ which have resulted in many fraud referrals to the OIG. Additionally certain contracts under the Federal Acquisition Regulation (FAR)¹⁶ also require reporting of fraud allegations to OIGs. The Department should establish a regulatory reporting requirement for suspected fraud and other criminal misconduct, waste, and abuse in its Title I programs similar to the current requirement for Federal contractors and subcontractors pursuant to the FAR. The Department should also work with Congress to include a reporting requirement in the next ESEA reauthorization. Examples of information that should be required to be reported by statute or regulation include the following:

- falsification of applications for funding,
- falsification of billings and counts of eligible children,
- theft or embezzlement of Federal education program funds,
- improper use of Federal education funds,
- bribery and kickbacks, and
- test or grade tampering to improve student or school performance results.

c. Fraud Certification

The ESEA and the Department's regulations do not specifically require recipients of ESEA funds to certify that they are not committing fraud when submitting applications to participate in programs or making requests for payment. Such certification language can deter fraud and help facilitate prosecutions on any enrollment, billing, or performance-related forms submitted to grantees, subgrantees, or the Department.

Through our investigations, we have found that although some SEAs and LEAs have certifications on SES student applications and billing forms, the certifications are not mandatory and do not include sufficient details, such as relevant Federal statutes or potential penalties for false reporting. For example, in one of our SES cases, the LEA required the SES provider to sign a "Claim for Payment to Consultant Services," which contained a somewhat narrower certification that does not address submitting false information:

I certify that I will be receiving no compensation for services rendered from any other public funding source during the period of time covered by this invoice.

¹⁵ Office of Management and Budget, "Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009," M-09-10, February 18, 2009, Section 5.9 requires each Recovery Act grantee or subgrantee to "promptly refer to an appropriate inspector general any credible evidence that a principal, employee, agent, contractor, sub-grantee, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds."

¹⁶ 73 Fed. Reg. 67064, "Contractor Business Ethics Compliance Program and Disclosure Requirements," November 12, 2008.

The following example from another case of an insufficient certification does not address the consequences for submitting false information and includes “to the best of my knowledge” language, which is difficult to prove:

I, the undersigned, certify that the information on this invoice and attached to this invoice is correct to the best of my knowledge.

The following insufficient certification fails to identify which perjury law, State or Federal, the certifying official is subject to:

I certify, under penalty of perjury, that the above information is true and correct.

In one of our successful investigations, the LEA mandated that SES providers sign a certification that held the provider and its representatives subject to criminal prosecution if they knowingly submitted false information to the LEA (“DoE” in the certification shown below). Although this certification did not identify which “legal action” the certifying official is subject to, the certification did provide specific language in terms of the scope of the certification and was important part of our successful prosecution of the provider and two of its employees.

Billing Certification: Example

CLB Upload

BATCH ID: 23975 STATUS: SUBMITTED

Service Details

Provider ID: 19 Family Vendor ID: PR0040000 Provider Name: THE PRINCETON REVIEW, INC.
Invoice Number: NCLB100A0190000 Total Students: 1 Total Hours: 3.00

NOTE: Only accepted maximum service hours will be paid for.

(ii) the Representative is aware that this invoice, when submitted to the DoE, becomes a business record of the Department of Education (DoE) and that the DoE relies upon the information contained therein to compute payments to the Agency;

(iii) the Agency and Representative individually are subject to legal action, including criminal prosecution, if false information is submitted knowingly to the DoE;

(iv) based upon the books and records of the Agency, the information in this invoice submitted to the DoE is true and accurate and may be relied upon by the DoE

The DoE will not approve any invoice for hours that exceed the maximum allowable as per the Agency's contract.

Title: DO
Last Name: NER

Confidential 22

The following is a model certification that OIG developed that would meet the necessary criteria:

I understand that providing a false certification to any of the statements above makes me liable for repayment to U.S. Department of Education for funds received on the basis of this certification, for civil penalties under 31 U.S.C. § 3729, and for criminal prosecution under 18 U.S.C. §§ 1001, 641, 666, and other relevant Federal statutes, and/or State criminal statutes if applicable, and punishable by fines and prison. I certify that the information contained above is true and accurate and may be relied upon by the U.S. Department of Education.

This model certification addresses several key elements, especially related to programs involving subgrantees, such as knowledge that certification involves Federal funds and the range of penalties available to the government for falsification.

d. Conflict of Interest

Although the Department's regulations prohibit LEA officials from participating in the award or administration of a contract supported by Federal funds if a conflict of interest arises (34 C.F.R. § 80.36), neither the regulations nor the ESEA require a conflict of interest certification or prohibit misuse of position and abuses of authority. Additionally, the regulations do not address employees who are not directly involved in the award or administration of a contract but who are in a position to influence the award or administration of a contract to their personal benefit.

Our investigations have found that in many instances public school employees are the people who are falsely reporting services. For example, public school employees engaged in falsifying SES billing and attendance records, coaching afterschool activities such as baseball or basketball practice during tutoring hours, and having students walk through the school during normal classroom hours to obtain the signatures of students on falsified attendance sheets. Public school employees employed by an SES provider, or who have a private interest in entities offering SES, have increased vulnerabilities for actual or perceived conflicts of interest. This is especially true when public school employees are employed by an SES provider in a noninstructional position, such as managing tutoring programs, completing administrative functions, and recruiting students or other schools districts for the provider.

The OIG investigation in Michigan previously discussed in this report involved a former LEA official accepting thousands of dollars in cash for giving preferential treatment to an SES provider owned by her brother-in-law. She also promoted the company's tutoring by telling parents of students that the program was mandatory. In May 2013, this official was sentenced to 5 years in prison. Her brother-in-law is currently under indictment awaiting trial.

An ongoing OIG investigation in New Jersey involves allegations that a multi-State SES provider offered incentives such as expensive handbags to public school administrators in exchange for lists of students eligible for SES. Additionally, in New Jersey, we are investigating allegations that public school teachers steered students to certain providers they planned to work for to supplement their teacher salaries.

A 2008 Miami-Dade County Public School District internal audit report¹⁷ identified serious conflicts of interest with the LEA's SES program. LEA officials, such as an Assistant Principal, a Security Monitor, and a teacher were employed by the SES provider, which sponsored activities where school personnel attended. The SES provider employed school district employees in noninstructional positions that included the LEA employees recruiting students for the provider.

The Department should seek statutory language subjecting SEA employees, LEA employees, and contractor personnel who have the authority to obligate Federal education funds to certain provisions of the Federal bribery and conflict of interest statutes.¹⁸ The criminal conflict of interest statute, 18 U.S.C. § 208, requires a Federal employee's disqualification ("recusal") from a "particular matter" if it would have a direct and predictable effect on the employee's own financial interests or on certain financial interests that are treated as the employee's own, such as those of the employee's spouse, dependent child, or an employer. The Department should also implement regulations requiring SEAs to have appropriate protocols in place to mitigate the potential for conflicts of interest by public school employees. To deter misuse of position and abuse of authority by public school employees, including public school teachers who are in a position to influence the award and administration of Federal education funds, the Department should expand regulatory conflict of interest provisions to include prohibitions on use of public office for private gain similar to the Federal Standards of Ethical Conduct at 5 C.F.R. § 2635.702.

e. Parental Verification

The ESEA and the Department's regulations do not specifically require parental verification of student enrollment and attendance in the SES program. The Department's regulations currently have two principal intersections between providers and parents. First, they require SEAs to consider parental surveys when approving and monitoring an SES provider to determine the success of the provider's instructional program (34 C.F.R. § 200.47(b)(3)(i)(c)). However, the regulations do not require such surveys be done. Second, the Department regulations require LEAs to develop progress goals for a student, which an SES provider must agree to, in consultation with the student's parents, and to establish procedures for regularly informing the student's parents and teachers of the student's progress (34 C.F.R. § 200.36(b)(2)).

Our investigations have determined that parents are not always consulted or informed about their child's after school tutoring. We have found falsified attendance records in 68 percent of our SES investigations, including open investigations in New York, Florida, and Ohio, in which SES providers billed millions of dollars for services they did not provide. We have found that parents are not always consulted about their child's participation in SES, and this lack of parental contact has contributed to attendance falsification. We have also identified instances where services were not provided as indicated in supporting documentation. For example, an LEA with

¹⁷ "Miami-Dade County Public Schools, Internal Audit Report, Supplemental Education Services Audit," December 2008.

¹⁸ This recommendation was included in OIG's 2007 report, "An OIG Perspective on Improving Accountability and Integrity in ESEA Programs."

about 33,000 students issued an internal audit report on a group of its SES providers in August of 2010.¹⁹ The internal auditors conducted site visits at locations indicated on student learning plans and determined that at 6 of the 25 sites, tutoring sessions were not taking place at the locations and times indicated by the SES providers—an exception rate of 24 percent.

The Department should require SEAs to implement parental verification procedures as a means of ensuring that SES providers are actually providing services for students and at the locations and times specified. Such verification could include mandating parental surveys and enforcing existing requirements that LEAs develop progress goals agreed to by the SES provider and consult with parents on student progress. Requiring verification, can help confirm that students were enrolled in or attended SES tutoring and assist LEAs in determining whether an SES provider is falsifying attendance records.²⁰

f. Prohibiting Financial Related Incentives

The Department does not prohibit SES providers from providing financial incentives or other gifts to students, their families, or school and LEA personnel to encourage student enrollment in SES. The Department's nonregulatory guidance provides the following example: "An SEA might want to allow providers to offer nominal incentives to parents or students to attend information sessions and provider fairs, for regular student attendance, or for student academic achievement." However, the Department does not define "nominal" or establish limits on this potentially problematic activity. SES providers' use of incentives to attract students to their programs and encourage student attendance can lead to fraud or serious abuses by providers. Our investigations in Florida and New Jersey have found that incentives to sign up with a SES provider have included computers, MP3 players, iPods, \$50 gift cards, and pizza on a daily basis. Our ongoing investigation in Arkansas revealed that the chief executive officer of an SES provider allegedly offered iPads and iPods to students for signing up for tutoring, but never provided them.

OIG investigations have found that some students attend tutoring sessions only long enough to "earn" the incentive. A national SES provider based in New York provided pizza and sandwiches on a daily basis as an incentive for students to attend tutoring sessions. Some students would eat their food and leave without receiving any tutoring.

States have addressed financial and financially related incentives in different ways. Indiana mandates that incentive information cannot be shared in recruitment or marketing materials or

¹⁹ "Cincinnati Public Schools, Internal Audit Report, Supplemental Education Services Audit," August 12, 2010.

²⁰ Currently, the Department provides guidance to independent public accountants who audit the HEA programs at postsecondary schools to consider sending a request for positive confirmations to verify student existence and attendance at school. This practice has uncovered significant fraud schemes involving "ghost" students and resulted in the recovery of millions of Federal student aid dollars and criminal convictions. U.S. Department of Education, "Audit Guide, Audits of Federal Student Financial Assistance Programs at Participating Institutions and Institution Servicers," January 2000.

with parents in conversations during fairs, in the community, or at recruitment events.²¹ Texas permits SES providers to offer nominal incentives to parents or students to attend information sessions and provider fairs, for regular student attendance, or for student academic achievement.²² Florida limits incentives to a value of no more than \$50 per student per year.²³ New York allows SES providers to provide pizza and sandwiches for attendance,²⁴ while Illinois²⁵ and Wisconsin²⁶ both prohibit such incentives and awards.

Additionally, the Department's regulations and guidance do not prohibit the use of financial incentives to recruiters of prospective students. Our investigations found that two New Jersey SES providers allegedly offered incentive payments of \$25 and \$50 to school employees who also were recruiters for each student they signed up. Some of the recruiters went door-to-door in public housing developments. One SES provider allegedly paid people in a drug rehabilitation program to recruit students in their neighborhood.

Congress has prohibited postsecondary schools from providing any commission, bonus, or other incentive payment based directly or indirectly on success in securing enrollments to any individual or entity engaged in recruiting or admission activities.²⁷ Prior to the ban, OIG audits and investigations revealed that the use of financial incentives led recruiters to use tactics that were misleading and deceptive in order to secure enrollments. In 2008, based on the results of OIG audits and other oversight work that identified abuses, Congress tightened the prohibition on inducements made by lending institutions to schools and school officials designed to steer students to particular lenders.²⁸

The Department should seek a regulatory change to prohibit the offering or providing of financial or financially related incentives to SES employees, LEA employees, students, and parents, or at least define or establish limits on financial incentives.

g. Data Retention Periods

Although data retention and access to record requirements are covered under the Department's regulations, 34 C.F.R. § 80.42, the regulations require only a 3-year data retention period.

²¹ Indiana Department of Education, "Policies and Procedures for Supplemental Educational Services," October 2010.

²² Texas Education Agency, "SES 2011-2012 Implementation Guide."

²³ The 2012 Florida Statutes, Title XLVIII, Chapter 1008, Section 1008.331(1).

²⁴ New York State Education Department, "2009 Supplemental Educational Services, Non-Regulatory Guidance Book."

²⁵ Ill. Admin. Code tit. 23, § 675.10.

²⁶ Wisconsin Department of Public Instruction memorandum, "Enrollment Incentives of Any Kind Are Not Permitted."

²⁷ HEA § 487(a)(20), 20 U.S.C. 1094(a)(20).

²⁸ The Higher Education Opportunity Act § 436(c), 20 U.S.C. 1085(d)(5).

Additionally, the regulations and the Department's nonregulatory program guidance do not establish any standardized data retention requirements for SES providers. Standardized data retention requirements would improve risk management, create more efficient and auditable operating environments, and provide the OIG and other government oversight agencies with adequate documentation needed to perform audits and investigate and prosecute cases of fraud and corruption. The data retention period should be consistent with Federal criminal and civil/administrative statute of limitations periods, which are generally 5 years and 6 years, respectively.

VI. RECOMMENDATIONS

If implemented, the following recommendations will mitigate fraud and abuse in Title I and SES programs. We recommend that the Department—

1. Seek a regulatory change to mandate minimum requirements for SEA monitoring of LEA administration of ESEA authorized programs.
2. Seek a regulatory change to require reporting to the OIG suspected ESEA-related fraud and other criminal misconduct, waste, and abuse.
3. Mandate that SEAs include certification language on ESEA-related billing and program forms designed to deter fraud and help facilitate prosecutions for fraud.
4. Seek a statutory change subjecting SEA employees, LEA employees, and contractor personnel who have the authority to obligate Federal education funds to certain provisions of the Federal bribery and conflict of interest provisions.
5. Seek a regulatory change to prohibit SEA and LEA employees who are in a position to influence the award and administration of Federal education funds from using their public office for private gain.
6. Seek a regulatory change requiring that SEAs implement parental verification procedures, including the use of parental surveys and the enforcement of existing requirements for LEAs to develop progress goals agreed to by the SES provider and consult with parents on the students' progress, to ensure that services for students are being provided and to assist in detecting fraud and abuse.
7. Seek a regulatory change to prohibit the offering or providing of financial and financially related incentives to SES employees and LEA employees for the enrollment or recruitment of students.
8. Seek a regulatory change to prohibit or limit the offering or providing of financial and financially related incentives to students and parents for SES enrollment or attendance.
9. Change the data retention period in EDGAR from 3 years to 6 years to coincide with Federal criminal, civil, and administrative statute of limitations periods.

Management information reports issued by the Office of Inspector General will be made available to members of the press and general public to the extent information contained in the report is not subject to exemptions in the Freedom of Information Act (5 U.S.C. § 552).



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

MEMORANDUM

OCT 30 2013

TO: William D. Hamel
Assistant Inspector General for Investigations
Office of Inspector General

FROM: Deborah S. Delisle *DD*
Assistant Secretary
Office of Elementary and Secondary Education

SUBJECT: Fraud in Title I-Funded Tutoring Programs
Control No. ED-OIG/X42N0001

Thank you for providing us with an opportunity to review the Office of Inspector General's (OIG) draft Management Information Report (MIR) titled "Fraud in Title I-Funded Tutoring Programs" (ED-OIG/X42N0001). In the report, OIG discusses the results of its investigations into numerous troubling instances of fraud involving third-party provision of Supplemental Educational Services (SES) using funds provided under Title I, Part A of the Elementary and Secondary Education Act of 1965 (ESEA), as amended.

The Office of Elementary and Secondary Education (OESE) appreciates OIG's important work in these investigations and shares OIG's concerns as to the nature and extent of these problems. In response to the auditors' recommendations, OESE will organize a working group to consider potential regulations and other measures to strengthen protections against the types of fraud and abuse discussed in the report. However, as the gravity of these issues demands a more urgent response than could be achieved through the regulatory process, OESE also plans to take the following steps:

- OESE will develop and provide State Educational Agencies (SEAs) with a "Dear Colleague" letter related to preventing fraud by third-party academic service providers within 45 days.
- The Office of Student Achievement and School Accountability (SASA) will consider ways to incorporate these issues into monitoring protocols for the next Title I, Part A monitoring cycle to begin in June 2014 and will provide technical assistance around these issues for SEAs that are either providing SES as required under ESEA or similar academic services to eligible students using third-party providers under approved ESEA flexibility requests within the next 60 days.

Given the nature of the problems presented, we strongly agree that it is important to make an effort to develop and implement effective strategies designed to minimize the potential for fraud

in the provision of these types of academic services. We greatly appreciate the information OIG provided and for the opportunity to provide comments on the draft MIR.