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**Thomas P. DiNapoli  
COMPTROLLER**



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**OFFICE OF THE  
NEW YORK STATE COMPTROLLER**

**DIVISION OF STATE  
GOVERNMENT ACCOUNTABILITY**

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**NEW YORK CITY  
DEPARTMENT OF  
EDUCATION**

**MONITORING OF  
SUPPLEMENTAL  
EDUCATIONAL SERVICES  
PROVIDERS**

**Report 2007-N-22**

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## AUDIT OBJECTIVES

The objectives of our audit were to determine whether the New York City Department of Education's monitoring of certain contracted tutoring services provides adequate assurance (1) the amounts billed for the services are accurate, (2) the services are provided in accordance with contract requirements, and (3) the individuals providing the services have been checked for criminal histories and cleared to work with children.

## AUDIT RESULTS - SUMMARY

Supplemental Educational Services (SES) are federally funded tutoring services that are offered to low-income students at elementary schools, middle schools and high schools where a significant portion of the student population is not meeting certain academic performance goals. The services are to be offered by qualified contractors before or after school or on weekends. In the 2006-07 school year, the New York City Department of Education (DoE) contracted with 108 SES providers and paid them more than \$74 million for their tutoring sessions with more than 55,000 students.

The providers are to be paid on the basis of student attendance at the tutoring sessions (a certain amount for each hour of student attendance, up to a maximum number of hours for each student). The payments are based on attendance data submitted by the providers. However, we found this data is not always reliable, and as a result, DoE is at risk of overpaying the providers. We found that some providers could not provide student attendance sheets. In other instances, the provider entered onto the DoE system that a student attended a full tutoring session when the attendance sheet indicated that the student left early. Many other attendance sheets were incomplete, pre-printed with start and end

times and/or not signed by the students. To reduce this risk, we recommended DoE address certain questionable attendance recordkeeping practices and establish a process for testing some of the providers' attendance data on a routine basis.

The SES Program was created to help schools improve their students' skills in English Language Arts/Reading and Math. Special tutoring in these subjects is to be provided to the targeted students in groups small enough to ensure that the students receive adequate attention from the tutors. However, we found that, in some tutoring classes, the class size exceeds the limit specified in the contract. If these tutoring sessions are not provided in accordance with contract requirements, the SES Program is less likely to achieve its goal in New York City schools. DoE monitors observe selected tutoring sessions to evaluate the providers' performance, but no monitoring coverage is provided to sessions held off school grounds. It appears that DoE lacks a sufficient number of monitors to properly cover over 1,000 sites. We recommend DoE improve and expand its monitoring coverage to better ensure that critical contract requirements are being met.

All provider employees who work with SES students must be checked for criminal histories and be cleared to work with children. However, when we verified the clearance status of the tutors and other such employees of 26 sampled providers, we found that 37 employees, at 10 of the providers, were not cleared to work with children, and that 156 other employees, at 12 providers, may be working with students without the proper clearance status. We recommend DoE take immediate action to ensure these individuals do not participate in SES activities involving contact with students until they are cleared for such contact, take immediate action to confirm the clearance status of the individuals

employed by the providers not in our sample, and more closely monitor provider compliance with the clearance requirement.

Our report contains a total of 11 recommendations for improving DoE's oversight of SES providers.

This report, dated July 14, 2009, is available on our website at: <http://www.osc.state.ny.us>. Add or update your mailing list address by contacting us at: (518) 474-3271 or Office of the State Comptroller  
Division of State Government Accountability  
110 State Street, 11<sup>th</sup> Floor  
Albany, NY 12236

## BACKGROUND

The federal No Child Left Behind (NCLB) Act of 2001 requires schools to improve the academic performance of their students so that they are proficient in English Language Arts/Reading and Math by the year 2014. To facilitate this improvement, the NCLB Act created the Supplemental Educational Services (SES) Program, in which federally funded tutoring sessions in reading and math are to be offered to certain students before or after school or on weekends.

The tutoring sessions are to be offered to low-income students at elementary schools, middle schools and high schools where a significant portion of the student population is not meeting certain academic performance goals. Eligible students are not required to enroll in the SES Program, but schools are directed by the NCLB Act to encourage their enrollment. SES tutoring sessions are to be provided by qualified contractors known as providers. The providers may be for-profit or not-for-profit organizations, and in New York State, their qualifications are to be approved by the State Education Department. DoE has contracted with about 100 SES providers.

In New York State, these schools are identified by the State Education Department, and in the 2006-07 school year, there were 336 such schools in New York City. According to records maintained by the New York City Department of Education (DoE) 208,016 students at the 336 schools were eligible for SES services and 55,396 of these students actually received services. The SES tutoring services are provided in over 1,000 sites (exclusive of the services offered to students in the home). This significant number of sites presents some unique challenges to DoE for monitoring the program. The SES providers are generally paid by the hour and by the student. The provider contracts also specify the subjects that are to be tutored during the sessions, and a maximum student/tutor ratio for each session (such as 8 to 1). This presents an internal control challenge given that the DoE staff provided to oversee the program is limited.

The sessions are offered at regularly scheduled times throughout the school year. Under DoE's contracts, the providers are to be paid on the basis of student attendance at the sessions. Specifically, each provider is to be paid a certain amount for each hour of student attendance during the year (e.g., \$50 per hour), up to a maximum number of hours for each individual student (e.g., 65 hours). The tutoring sessions may be provided at the schools (on-site) or at other locations (off-site). In the 2006-07 school year, DoE paid its SES providers a net total of more than \$74 million for their tutoring sessions.

The SES Program is administered in accordance with the NCLB Act and certain other federal guidelines. DoE has also developed an SES Policy and Implementation Manual for Providers and School Administrators (SES Manual). DoE's Office of Special Projects is responsible for

administering the SES Program in New York City. To assist them in their management and oversight of the program, DoE developed web-based systems to allow providers to record the information necessary to submit monthly billings and check for the proper security clearances for the SES tutors.

## **AUDIT FINDINGS AND RECOMMENDATIONS**

### *Accuracy of Amounts Billed for Services*

Students attending SES tutoring sessions are to record their attendance on a prescribed attendance sheet. According to the Manual, the students are required to both sign in and sign out, and record both their time of arrival and their time of departure. Each student's DoE identification number is also to be recorded on the attendance sheet, and the tutor and a SES provider supervisor are required to sign the attendance sheet. The SES provider is required to enter the information from the attendance sheets onto DoE's NCLB database on a monthly basis. DoE uses this NCLB database to pay the SES provider. The DoE pays SES providers based upon the actual hours of tutoring services rendered, the setting in which the tutoring services are rendered and the number of students being tutored at one time.

The primary control that DoE relies on to ensure the accuracy of the attendance information and its resulting payment, is a monthly certification signed by the SES provider. There are automated edits in the system to limit the frequency of tutoring sessions paid for a student but the DoE does not routinely audit the attendance information to check its accuracy after the fact. (The OAG staff have conducted one desk review of attendance information.) In the absence of on site audit verification procedures, DoE is at risk of overpaying its SES providers. For

example, if a provider claimed attendance at a session by a student who did not actually attend the session or a full hour of attendance by a student who attended for only a half hour, DoE could not detect the error. Rather, DoE would pay for the time that was claimed, and as a result, overpay the provider.

To determine if overpayments are occurring, we tested a small sample of attendance sheets for students at 26 providers. We judgmentally selected for audit 26 of the largest providers in the 2005-06 and 2006-07 school years, ensuring there was a representative mixture of on-site, off-site and on-line providers and that each provider continued to have a contract for the 2007-08 school year. Together, the 26 providers were paid \$52.9 million in the 2005-06 school year and \$67.1 million in the 2006-07 school year.

We then randomly selected 10 to 40 students from each provider and requested the students' SES attendance sheets for selected periods during the 2005-06, 2006-07 and 2007-08 school years. In total, we requested 486 attendance sheets, for which the providers were paid a total of \$144,829 to provide tutoring services.

We found that 3 of the 26 providers over billed for 23 of the 52 students we tested. The overbillings totaled \$1,850. These amounts were overbilled because some of the attendance sheet information for these students was not entered accurately on the NCLB database. For example, in one instance, a student's attendance sheet showed that the student attended a tutoring session for 105 minutes. However, the provider claimed that the student attended the full 120 minute session on this day.

In addition, we found that 16 of the providers may have overbilled additional amounts for 94 of their 216 students. In these instances,

the students' attendance sheets either were not fully completed or were not completed in accordance with SES requirements, and as a result, there was less assurance the tutoring hours claimed by the providers were accurate.

For example:

- For four providers, the session start and end times (i.e., sign-in/sign-out times) were pre-entered on some of the attendance sheets. As a result, there was no assurance the students actually attended the sessions for the times indicated.
- For 16 providers, the students' signatures (for their arrival and/or departure times) were not always present on the attendance sheets. As a result, there was no assurance the students attended the sessions for the times claimed.
- For 16 providers, the students' arrival and/or departure times were not recorded on some of the attendance sheets. As a result, there was no assurance the students actually attended the full sessions, as was claimed by the providers.
- For 12 providers, the students' DoE identification numbers (IDs) were not always recorded on the attendance sheets. As a result, there was less assurance the students actually attended the sessions.
- For 11 providers, the tutors and supervisors had not always signed the attendance sheets. As a result, there was less assurance the attendance sheets were accurate.

One of the providers held on-line sessions at both schools and students' homes and used an automated log to record the times the on-line students logged on and off from the on-line tutoring sessions. When we examined the log for the 20 students in our sample, we found that 10 of the students were always logged on to their tutoring sessions at midnight. Further, according to the automated log, nine of these 10 students logged on at the school; the other student logged on from home. Officials from the provider attributed these errors to a "computer glitch," but in the absence of reliable attendance records, there is no assurance the 10 students participated in the sessions for the times claimed by the provider. We note that the SES Manual does not describe how student attendance should be recorded in on-line sessions.

The providers are required by their contracts with DoE to retain the students' SES attendance sheets for a period of at least six years. However, 7 of the 26 providers we selected for testing were unable to provide us with some or all of the attendance sheets we requested. One of the providers could not provide the attendance sheets for any of the students we selected, and the other six providers could not provide some of the attendance sheets for some of the students we selected.

In addition, as is described later in this report, during the 2007-08 school year, we observed 21 tutoring sessions conducted by 8 of the 26 providers in our sample, and at those sessions, we observed a number of questionable attendance practices, as follows:

- For one provider, the session start and end times were pre-entered on some of the attendance sheets.

- At one provider, the students signed both in and out (both name and times) at beginning of the session.
- In both visits to one provider, the sessions started later than the sign-in times entered on the attendance sheets. Specifically, on April 29, 2008, the session started at 4:05 p.m. instead of the 3:30 p.m. scheduled start time, and on May 7, 2008, the session started at 4:00 p.m. instead of the scheduled 3:30 p.m. start time. (We did not observe the entire sessions to determine when they ended.)

It thus appears that DoE's risk of overpayments in the SES Program is both widespread and significant. We recommend DoE develop a process for reducing this risk. In particular, we recommend DoE take action to address the inappropriate attendance practices identified by our audit, and establish a process for verifying selected provider billings on a routine basis.

We recognize that, since DoE's Office of Special Projects has limited staffing (only three to five staff in total) and other responsibilities in addition to the SES Program, it is not easily able to visit provider locations to review student attendance sheets. However, we note that a few such visits a year could be productive and assistance could be provided by DoE's Auditor General's Office. Student attendance sheets could be reviewed by DoE monitors when they observe tutoring sessions (as is discussed later in this report, the monitors observe the sessions to determine whether they are being provided in accordance with contract requirements).

### Recommendations

1. Establish a process for verifying selected provider billings on a test basis and recover any amounts not supported by attendance sheets.
2. Address the inappropriate attendance practices identified by our audit (i.e., pre-entered sign-in and sign-out times, lack of student signatures and student IDs, lack of tutor signatures, etc.) by reminding the providers of the attendance practices required by the SES Manual, and observe selected tutoring sessions to determine whether appropriate attendance practices are being used.
3. Modify the SES Manual to describe the attendance records that should be maintained for on-line sessions.

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### *Adherence to Contract Requirements*

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The SES Program was created to help schools improve their students' skills in English Language Arts/Reading and Math, as certain targeted students are to be offered additional tutoring in these subjects. These optional tutoring sessions are to be held before or after school or on weekends, and in groups small enough to ensure that the students receive adequate attention from the tutors.

The tutors must be qualified in their subjects, must present the subjects in accordance with State standards, must develop individual tutoring plans for each student, must closely monitor the students' progress in completing the plans, and must communicate certain information about this progress to the students' schools and parents. These tutoring requirements are contained in DoE's contracts with its SES providers, and DoE is responsible for monitoring the providers'

performance to ensure that they comply with the requirements.

DoE is to fulfill this responsibility, in part, by visiting both on-site and off-site tutoring locations to observe actual tutoring sessions. According to the SES Manual, these visits are to be conducted by DoE monitors, who are to record their observations on a prescribed monitoring checklist and are to assess such matters as:

- the tutors' qualifications and their management and use of school space;
- the quality of instruction and alignment with State standards;
- the availability of student plans and progress reports; and
- the tutors' communication with the students' schools and parents.

To assess DoE's efforts to monitor the programs, we reviewed the completed monitoring checklists and supporting documentation for all of DoE's monitoring visits to tutoring sessions conducted on the 26 providers in our sample for the three school years 2005-06, 2006-07 and 2007-08.

We found that 7 of the 26 providers were not visited at all by DoE staff during the three-year period and 14 providers were visited only once. We further determined that none of the 21 off-site locations operated by the 26 providers were visited during this period. DoE officials told us that they did not visit a single off-site tutoring location for any SES provider.

In addition, even though the SES Manual was amended before the 2007-08 school year to require parents to be surveyed when tutoring sessions were held in the student's home, no

such surveys were conducted during the 2007-08 school year.

The SES tutoring sessions in New York City are conducted by thousands of different tutors. DoE relies on the SES providers to supervise these tutors and ensure that their tutoring sessions comply with contract requirements. However, if DoE does not observe a sufficient number of tutoring sessions at each provider, it cannot be assured the providers are, in fact, providing adequate supervision and the tutoring sessions are, in fact, complying with contract requirements.

The monitoring checklists we reviewed show that the providers are not always providing adequate supervision and the tutoring sessions are not always complying with contract requirements. For example:

- A DoE monitor noted that a provider was not complying with the 8 to 1 student-to-tutor ratio stipulated in its contract, as one tutoring session had an 11 to 1 ratio and two others had 13 to 1 ratios.
- A DoE monitor noted that, contrary to contract requirements, math was not being taught in any of the tutoring sessions offered by a particular provider.

We identified similar instances of noncompliance in the spring of 2008 when we observed 21 tutoring sessions conducted by 8 of the 26 providers in our sample. For example, in two of the sessions that we observed (conducted by two different providers), the providers were not in compliance with the student-to-tutor ratio stipulated in their contracts. Both providers should have had a ratio of 10 to 1, but one provider had a ratio of 18 to 1 and the other provider had a ratio of 12 to 1.

Also, when we were reviewing our sample of student attendance sheets, we noted that, contrary to contract requirements, three tutoring sessions (conducted by two different providers) were held during regular school hours. For example, one of the sessions was held on Wednesday, January 16, 2008, from 11:35 a.m. to 12:20 p.m.

We also identified a provider that stopped providing services in the middle of the term. We were made of aware of this provider by officials at the school where the tutoring sessions were held. The officials told us that, contrary to program requirements, the provider terminated the sessions without giving advance notice to either the school or the students' parents.

When we spoke with the provider's officials, they told us the sessions stopped because all the students had attended for the 65 maximum hours allotted to each student under the contract. However, we determined that this was not true, as attendance records showed that 5 of the 15 enrolled students had only attended between 3 to 31 hours each. According to school officials, the provider told them it was stopping the sessions because the students were not attending regularly. We recommend DoE take appropriate corrective action with this provider.

If DoE is to detect, correct and prevent such instances of noncompliance, it must provide adequate monitoring coverage to its SES providers. We recognize that there is a limited number of staff available in the Office of Special Projects, and this staff must monitor programs at more than 1,000 locations in New York City. DoE has hired 10 part-time monitors (e.g., retired teachers, principals and guidance counselors), but these additional monitors may not be sufficient to cover more than 1,000 locations. Therefore, DoE officials may need to consider

developing some form of a risk-based system for selecting providers to monitor or audit. For example, DoE could consider such factors as provider billing patterns or the location of the service when selecting providers to monitor.

We also recommend DoE formally communicate the results of its monitoring visits to the providers, follow up with the providers to ensure that any needed corrective actions have been taken, and document their follow-up efforts. Currently, DoE does not always do these things. DoE officials stated that, if a monitor identifies significant issues as a result of a monitoring visit, DoE will call the provider to discuss the issues. However, DoE does not have a process in place for documenting either its follow-up actions or the provider's corrective actions. As a result, we could not readily determine whether the issues identified in the monitoring checklists had been corrected.

If SES tutoring sessions are not provided in accordance with contract requirements - and in particular, if English Language Arts/Reading and Math are not taught in the sessions, and the sessions are not small enough to ensure that the students receive adequate attention from the tutors - the SES Program is less likely to achieve its goal of improving students' performance in English Language Arts/Reading and Math. It is therefore important that DoE adequately monitor the sessions and ensure that critical contract requirements are being met.

### **Recommendations**

4. Review the deployment of the part-time monitors to ensure that providers at both off-site and on-site locations are visited as part of the efforts to monitor SES program requirements.

5. Develop a risk-based system to select providers for monitoring visits. Include in the assessment the results of past visits, the results from this audit and other relevant factors. Conduct monitoring visits to these high risk providers and test for compliance with attendance requirements and other matters.
6. Survey parents about the tutoring sessions held in students' homes.
7. Take appropriate corrective action with the provider that stopped providing services in the middle of the term without giving advance notice.
8. Formally communicate the results of monitoring visits to the providers, follow up with the providers to ensure that any needed corrective actions have been taken, and document the follow-up efforts.

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### *Criminal History Checks*

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All individuals providing tutoring services or otherwise coming into contact with students under DoE's SES contracts are required by the contracts to be checked for criminal histories. This requirement applies to all individuals employed by, volunteering for, or working in a consulting relationship with the provider who may have direct contact with SES students or work in or visit a location during times that students are served. This includes provider employees who deliver services on-line, at the students' homes and/or have any contact with students via telephone, e-mail or the internet. Under State law, all full-time teachers, substitute teachers and nearly all other school workers are subject to the same requirement, which is intended to prevent individuals with certain criminal backgrounds from teaching or otherwise having contact with children in the schools.

The criminal history check is to be performed by the New York State Division of Criminal Justice Services (DCJS). Individuals who have not already obtained a clearance and are seeking work with an SES provider must have their fingerprints taken by DoE or the State Education Department, which sends the fingerprints and other background information to DCJS. DCJS checks its own fingerprint database and forwards the fingerprints to the FBI for a national database check. If a criminal history is identified, the individual's status is reviewed by DoE and the individual is either granted or denied clearance for participation in the SES Program. The results of the criminal history check are entered onto the Personnel Eligibility Tracking System (PETS) by DoE staff. The DoE expects SES providers not to employ anyone until the individual has received proper clearance and the system should prevent an SES provider from billing for a tutor who has not received clearance.

Control over who is allowed to work and who is not allowed to work rests with the SES providers in that they should only employ (and bill) for individuals that have received proper clearance. To determine if the SES providers were following this requirement, we requested information from the 26 sampled providers as to who was working on the SES Program for our audit period. We compared the security clearance status on PETS for the individuals employed by the 26 sampled providers in either tutoring or other positions involving contact with students in the SES Program (at the time of our audit there were 8,680 such individuals).

We found 37 individuals at 10 of the 26 providers working with students without proper criminal history checks. For 7 of these 37 individuals, DoE claimed that criminal history checks were not required to be done because they were minors and thus not

required to be fingerprinted. However, based upon the State Education Department's regulations, minors are required to be fingerprinted if they are tutoring students at a school other than their own. The seven students we identified are not enrolled at the same school as the students they tutor and therefore, should have been fingerprinted and cleared before working with students.

We also identified an additional 156 individuals who were working for the SES providers but were listed on PETS as ineligible and inactive. DoE officials stated that because these individuals were designated ineligible and inactive on PETS, these individuals did not work with SES students. While we cannot confirm whether all 156 individuals worked with SES students and/or were paid, we did determine that one provider, who employed 9 of the 156 individuals, did use and bill for an unapproved tutor.

The SES provider circumvented DoE's control system by employing an unapproved individual as a tutor in the SES program. This further highlights the importance of site visits by DoE staff.

We note that it is not difficult for the providers to determine whether an employee has been cleared to work with students. Providers have access to PETS, and need only enter the employee's name and certain other information on the system to determine whether the individual has been cleared. We also note that it is not difficult for DoE to monitor provider compliance with this requirement, as DoE can easily cross-check provider employee payroll records against PETS to ensure that the employees are, in fact, cleared.

As a result of this breakdown in the employee clearance process, there was an increased risk students could be tutored by individuals with

criminal backgrounds or come into contact with such individuals employed in other capacities in the SES Program.

We recommend DoE take immediate action to ensure that these individuals are removed from SES activities involving contact with students until they have been granted criminal history clearance for such activities. We also recommend DoE take immediate action to confirm the clearance status of the individuals employed by the other providers (i.e., those not in our sample) in positions involving contact with students, and ensure that any individuals without clearance are removed from SES activities until they obtain clearance.

### **Recommendations**

9. Request payroll information from SES providers at regular intervals and compare the payroll information to PETS. Follow up with the SES providers for all individuals on the providers' payroll and not listed as cleared on PETS.
10. Determine if the 156 individuals we identified as having worked for the SES providers did, in fact, provide tutoring services. If it is determined these individuals were not cleared, recover all payments made for their services.
11. Routinely monitor whether the providers are complying with the requirement for criminal history checks, and take prompt corrective action if instances of noncompliance are identified.

### **AUDIT SCOPE AND METHODOLOGY**

We audited DoE's monitoring of its SES providers for the period October 1, 2005, through October 1, 2008. To accomplish our audit objectives, we interviewed DoE officials

and met with SES providers and officials from the State Education Department. We also reviewed the SES Manual, the NCLB Act, and DoE records relating to the SES Program.

In particular, for a judgmental sample of 26 SES providers, we reviewed selected student attendance sheets, attendance data entered by the providers on DoE's NCLB database, facility fee charges, and monitoring checklists. We also observed 21 tutoring sessions conducted by 8 of the providers in the spring of 2008, and reviewed PETS to determine whether certain of the providers' employees had received criminal history checks and been cleared to work with students. Details about our various sampling methodologies are provided throughout the report.

We conducted our audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational

independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

## **AUTHORITY**

This audit was performed in accordance with the State Comptroller's authority under Article V, Section 1 of the State Constitution, and Article III, Section 33 of the General Municipal Law.

## **REPORTING REQUIREMENTS**

A draft copy of this report was provided to DoE officials for their review and comments. Their comments were considered in preparing this final report, and are included as Appendix A. Appendix B contains State Comptroller's Comments that address selected matters contained in DoE's response.

DoE officials generally agreed with our recommendations but disagreed with our assessment that controls are weak in the area of verification of services rendered.

We request that within 90 days of the final release of this report, New York City Department of Education officials report to the State Comptroller advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

## **CONTRIBUTORS TO THE REPORT**

Major contributors to this report include Kenrick Sifontes, Sheila Jones, Tania Atria, Hector Arismendi, Trina Clarke, David Schaeffer, Natalie Sherman, Grace Seery and Dana Newhouse.

## APPENDIX A- AUDITEE RESPONSE



### THE NEW YORK CITY DEPARTMENT OF EDUCATION

JOEL I. KLEIN, *Chancellor*

George J. Raab III, Chief Financial Officer

March 16, 2009

Steven E. Sossei  
Audit Director  
Office of the State Comptroller  
Division of State Government Accountability  
110 State Street, 11th Floor  
Albany, NY 12236

Re: Draft Audit Report: *Monitoring of Supplemental Educational Services Providers*  
Number 2007-N-22

Dear Mr. Sossei:

Thank you for allowing the Department of Education ("DOE") input to the findings and recommendations made in the Office of the State Comptroller's ("Comptroller") draft audit report titled *Monitoring of Supplemental Educational Services Providers* ("Report"). Our formal response consists of (1) this cover letter, which addresses general observations and overarching points, and (2) the detailed response which addresses your itemized findings.

We wish to thank the Comptroller for recognizing two practical, operational factors. The first is the complexity of providing services -- the DOE now serves approximately 55,000 students through No Child Left Behind ("NCLB") Supplemental Educational Services ("SES") in myriad sites and through a variety of media, throughout the City. In excess of 100 private providers are involved. Secondly, as is the case with most public agencies in this historic time, the number of Department staff that we can dedicate to on-site monitoring is gated by a compelling need to deploy resources among many programs, not merely SES.

Additionally, it should be noted that our relationship with private SES providers is founded in provider pre-approval by the New York State Education Department ("SED"). As you know, SED publishes an SES "Request for Qualifications" annually that invites interested parties to apply. Providers are subsequently reviewed by SED and approved based upon their ability to offer quality tutoring in certain subject areas. Those applicants which pass this critical first screening must undergo further review by the Department to assess pricing and security clearance factors. If the SED-approved provider does, in fact, clear DOE review, then we are bound to execute an agreement prescribing services already approved by the SED.

The Department has constructed a solid framework of support for NCLB by setting high standards for implementing SES and building strong relationships with SES providers. We are therefore disappointed that the Report is not consistently accurate in characterizing the Department's efforts to rationally implement the operational side of the SES program. In one such regard, we point to the observation that "[t]he primary control that DOE relies on to ensure the accuracy of the attendance information and its resulting payment is a monthly certification

\*  
Comment  
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\* See State Comptroller's Comment, page 22.

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THE NEW YORK CITY DEPARTMENT OF EDUCATION

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George J. Raab III, Chief Financial Officer

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March 16, 2009  
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signed by the SES provider. There are no automated edits in the system to identify data entry errors that could lead to overpayments and the DOE does not audit the attendance information to check its accuracy after the fact.” (Report, p. 4).

The reality is that the provider’s certification, while functioning as a significant deterrent to submitting misleading information, is not the NCLB system’s *primary* control. Rather, it is one of several controls that, together, provide reasonable assurances against inaccuracies and fraud. Thus, after the providers certify attendance information - and before payments are made - NCLB system data is matched with data in the Department’s student information database, Automate the Schools, to confirm that each student has been eligible for service during the service period; that the hours for which payment is sought will not exceed the daily cap, the contracted amount and per pupil allocation; that the provider has been approved by the NYSED to serve the grade associated with the student; that the provider has not made duplicate attendance entries; and, that no other SES provider is claiming payment for the same student.

\*  
**Comment**  
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Furthermore, the Department’ Office of Auditor General (“OAG”) has in fact provided audit coverage through desk reviews designed to test not only the validity of reported service encounters, but the security clearance status of instructors who provided those services. During the last school year selected SES providers were directed to submit – on a sample basis - student attendance records and progress reports and instructor time and payroll records. Review findings and recommendations were reported directly to the NCLB office, which acted upon them. This school year, the OAG is committed to completing another round of SES payment reviews.

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**Comment**  
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Another departure from what we consider fair comment occurs in the section of the Report captioned *Criminal History Checks*. The Department is legitimately proud of its implementation of SES generally and of its particular efforts with respect to safeguarding students who have opted to attend those programs. We are, therefore, more than a little concerned that the audit findings - an uncomfortably large proportion of which are purely speculative - are used to support a statement that there has been a “breakdown in the employee clearance process.” (Report, p. 10). While we are not suggesting that less than 100 percent compliance with the Department’s employee security clearance requirements is wholly acceptable, the conclusion reached by the auditors is hyperbolic, inflammatory and wrong.

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This agency has taken the matter of students’ safety seriously, so much so that it has proactively designed and implemented the Personnel Eligibility Tracking System (“PETS”) - an electronic program that is smart and effective. We have tied SES provider rosters to payments; we have provided training to providers in how the system must be used; we have imparted the message that it is in the providers’ best interests to avail themselves of the protection it affords their clients and their agency; and finally, we have required vendors to certify that the information for which they are responsible is correct and up-to-date. Not relying on that alone, we have taken additional steps to further mitigate risk by including reviews of employee clearance status as components of monitoring visits and OAG desk

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\* See State Comptroller’s Comments, page 22.



THE NEW YORK CITY DEPARTMENT OF EDUCATION

JOEL I. KLEIN, *Chancellor*

George J. Raab III, Chief Financial Officer

Department of  
Education

Steven E. Sossei  
March 16, 2009  
Page 3

reviews. If the auditors have seen or know about more robust systems or programs for tracking and confirming the security clearance status of contract vendors' employees, we ask that they share that information.

The Department is not so wedded to defending its achievements that it will not accept constructive criticism and recommendations that recognize and respect the conditions under which we operate. Therefore, notwithstanding that we voice certain exceptions to this Report, we thank the Comptroller for the many opportunities afforded to Department managers to discuss and address findings even before the issuance of the Report and for recommendations that - to the extent they are not already implemented - are achievable, on the whole.

Sincerely,

George Raab  
Chief Financial Officer

C: Photeine Anagnostopoulos  
Vincent Giordano  
Brian Fleischer  
Richard Carlo  
Sherry Hawn  
Marlene Malamy  
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**MONITORING OF SUPPLEMENTAL EDUCATIONAL SERVICES PROVIDERS: NEW YORK CITY DEPARTMENT OF EDUCATION RESPONSE TO FINDINGS AND RECOMMENDATIONS**

The following, with the attached cover letter of New York City Department of Education (“Department”) Chief Financial Officer George Raab, comprises the response to the State of New York Office of the Comptroller’s (“Comptroller”) draft audit report titled *Monitoring of Supplemental Educational Services Providers* (“Report”).

Preliminary to addressing the Report recommendations we offer the following to clarify certain points that have not been stated precisely and should be revised in the final report.

- *Audit Results – Summary* (Report, Page 2). “Providers are paid on the basis of student attendance at the tutoring sessions . . . (up to a maximum number of hours for each student).” In actuality, the providers are paid up to a maximum dollar value of service for each student. To illustrate (using fictitious numbers to facilitate explanation): If the annual per student SES allocation set by the state for the school year is \$2000, and an SES-eligible student enrolls in the ABC Tutoring SES program, which charges \$100/hour, then the maximum number of allowable hourly sessions would be 20. However, if that student leaves ABC Tutoring after 10 sessions (having used \$1000 of services) and enrolls in XYZ Tutoring, which charges \$50/hour, another 20 hours of service hours is available before reaching the dollar ceiling.
- *Adherence to Contract Requirements* (Report, Page 6). Contrary to the Report’s assertion that “tutors must be qualified in their subjects,” the NCLB Act requires no such expertise. Tutors need only meet the qualifications identified in the provider’s proposal and approved by the state. Thus, as long as the provider delivers instructional services under the “general supervision of a New York State certified teacher pursuant to section 120.4(d)(2)(iii) of the Regulations of the Commissioner of Education” (Fiscal Year 2008 Contract, §3 (T)) a provider may be approved for SES services notwithstanding that those services will be delivered by instructors who do not hold a teaching license in the subject area or, in fact, any license at all. Indeed, the state has approved SES providers that use instructors who do not have a college degree or are high school students. Since the Department is bound by the state’s approval in the matter of instructor qualifications, Department monitors are tasked with determining whether the instructors meet the qualifications under the terms of the state-approved plans.

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**RESPONSE TO RECOMMENDATIONS AND RELATED FINDINGS**

**Recommendation 1:** *Establish a process for verifying selected provider billings on a test basis and recover any amounts not supported by attendance sheets.* (Report, p. 6).

**Response:** The recommendation has been implemented.

\* See State Comptroller’s Comments, page 22.

The recommendation rests on findings derived from a sample of 486 attendance sheets representing services that were provided over a three year period (School Years 2005/2006 through 2007/2008) to between ten and 40 students by 26 SES providers who were paid a total of \$144,829 for those services. Although it is not immediately clear from reading the Report, we have been advised by the audit team that audit tests were not uniformly applied for all students, for all providers and for all years in that sample. That methodology is not necessarily problematic. However, the Report, as written, does not contain sufficient information about the testing protocols to facilitate drawing appropriate conclusions. As one example of this shortcoming, we read in the text accompanying the recommendation that three providers overbilled \$1,850 for 23 of 52 students tested by inaccurately entering information from the attendance sheets into the NCLB database. (Report, p. 4). What cannot be determined from the prose is the number of school years covered by the findings, the findings in each school year and the percentage of the total costs tested that is represented by the amount over-billed.

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It is further a concern that the Report findings jockey among reporting the number of students, number of attendance sheets and number of providers tested in such a manner as to make it difficult for the reader to assess the true import of the findings. To illustrate, the auditors offer that because student attendance sheets were not completed fully or in conformity with SES requirements “16 of the providers *may* [emphasis added] have overbilled [unstated and speculative] additional amounts for 94 of their 216 students.” That statement is followed by five bullets, each identifying an attendance form deficiency, and the number of providers whose attendance forms were deficient in that way. Although the implication is that a multitude of attendance forms failed to meet guidelines, the fact is that if one form was deficient in more than one way – e.g., the student’s identification number was missing and the supervisor did not sign it – that one form became the subject of two of the bullets.

Lastly, and more directly applicable to the recommendation, we dispute the auditors’ apparent working assumption that the Department has not tested SES provider billings. As addressed in the attached cover letter, last school year the Department’s Office of Auditor General conducted a review of billings - on a sample basis - covering ten of the largest SES providers and recommended recoupment in certain cases. A similar project - one that will test whether providers have corrected non-compliant conditions identified last year and that will include providers that were not in the earlier sample - is set to proceed this school year.

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**Recommendation 2:** *Address the inappropriate attendance practices identified by our audit (i.e., pre-entered sign-in and sign-out times, lack of student signatures and student IDs, lack of tutor signatures, etc.) by reminding the providers of the attendance practices required by the SES Manual, and observe selected tutoring sessions to determine whether appropriate attendance practices are being used.* (Report, p. 6).

**Response:** The recommendation has been implemented.

SES providers were advised by the NCLB Office before this school year’s SES service period started that they were expected to follow the mandates of the contract, which, among other requirements, sets out procedures for recording attendance. Monitors are checking compliance

\* See State Comptroller’s Comments, page 22.

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in real time; instances of non-compliance are communicated to the providers who are expected to take corrective action.

**Recommendation 3:** *Modify the SES Manual to describe the attendance records that should be maintained for on-line sessions. (Report, p. 6).*

**Response:** The Department will implement the recommendation in part.

On-line services can be provided either by a tutor who interacts with students in real-time over the internet or by an interactive computerized program. In the former case it would be efficacious to require the tutor to record his/her time on a form prescribed by the NCLB Office, sign that form and maintain it for review. The NCLB Office will advise the providers and amend the SES Manual accordingly. The students' participation, however, would still be evidenced by the computer-generated log-on/log-off records.

As for the programs that are not delivered "live" we have considered alternatives and have concluded that the computerized log-on/logoff records are sufficiently reliable proof of service and that there is no more practical way to proceed. We say that despite that we are aware that one provider of on-line services explained that a "computer glitch" caused the log-on times to default to midnight in a number of cases. Our position is that the providers are responsible for checking their systems to catch such anomalies and that their failure to do so will result in disallowance upon audit if errors are evident.

**Recommendation 4:** *Review the deployment of the part-time monitors to ensure that providers at both off-site and on-site locations are visited as part of the efforts to monitor SES program requirements. (Report, p. 9)*

**Response:** The recommendation has been implemented.

Beginning this school year, the scope of SES program monitors' fieldwork has been increased to include offsite service locations.

**Recommendation 5:** *Develop a risk based system to select providers for monitoring visits. Include in the assessment the results of past visits the results from this audit and other relevant factors. Conduct monitoring visits to these high risk providers and test for compliance with attendance requirements and other matters. (Report, p. 9).*

**Response:** The recommendation will be implemented.

The NCLB Office will review past monitoring reports and the results of OAG field reviews and, to the extent that the monitors have not already been assigned to the providers that were out of compliance with attendance, security clearance and other key guidelines, monitors will be assigned to visit those providers' sites during the spring 2009 semester.

**Recommendation 6:** *Survey parents about the tutoring sessions held in students' homes.* (Report, p. 9).

**Response:** The recommendation has been implemented.

NCLB monitors, including those who are bilingual, have been assigned to call parents of students who receive SES services at home. In addition, the NCLB Office is beginning a new program of calling randomly selected parents of students receiving in-school SES services to assess the parents' overall satisfaction with the providers' services and, more particularly, the providers' level of compliance with the requirements that they consult with parents in developing educational support plans and share information about the students' progress.

**Recommendation 7:** *Take appropriate corrective action with the provider that stopped providing services in the middle of the term without giving advance notice.*

**Response:** The recommendation cannot be implemented inasmuch as the conditions underlying the finding cannot be confirmed.

As reported, the finding associated with the recommendation is that during School Year 2007/2008, five of the 15 students who had enrolled with a particular SES provider had attended only between three to 31 hours each before services were stopped by the provider in the middle of the term. (Report, p. 8). According to the Department's records, however, 60 students had been enrolled with the provider between November 3, 2007 and April 5, 2008 and, on average, those students received 46.4 hours of tutoring. When we attempted to reconcile the apparent discrepancies we were advised by the auditors that their finding did not relate to the entire period of the SES provider's operation during the audited school year and that they had no basis for disputing the Department's information relative to the number of students served and the extent of service.

**Recommendation 8:** *Formally communicate the results of monitoring visits to the providers, follow up with the providers to ensure that any needed corrective actions have been taken and document follow-up efforts.*

**Response:** The recommendation has been implemented.

Monitoring occurred during each of the three years within the scope of audit and continues to occur this school year. It was only in 2006/2007 that copies of the monitoring reports were not sent to providers. During that school year, as in the others, any concerns we had were communicated to the providers. We assure the Comptroller and the public that there will be no slippage in our communications with respect to the monitors' findings and that necessary, documented follow-up is occurring.

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\* See State Comptroller's Comment, pages 22-23.

**Recommendation 9:** Request payroll information from SES providers at regular intervals and compare the payroll information to PETS. Follow up with the SES providers for all individuals on the providers' payroll and not listed as cleared on PETS.

**Response:** We cannot implement the recommendation as written.

The Report suggests that the Department could “easily” require providers to submit payroll records and manually match them to the information in the Department’s automated Personnel Eligibility Tracking System (PETS). We do not reject the recommendation without having given due consideration to the potential for its adaptability to our needs and existing organizational capacity.

In that context, we offer that even if the records were sought on a “periodic” basis it would take a considerable number of staff to collect and conduct manual comparisons of the hardcopy payroll records with PETS data, which comparisons will doubtlessly identify discrepancies requiring resolution. We say that because the payroll records, particularly for the large and multi-purposed providers, likely will include not only employees who fall within the scope of staff who must be fingerprinted pursuant to the SES contract, but employees who should not be in the PETS database at all, either because their duties on behalf of the SES program do not require security clearance or because their work assignment is in a program other than SES. As a case in point, we note that the Comptroller’s audit sample of 26 SES providers turned up records totaling 8,783 employees. After a considerable effort on the part of a team of auditors to match the hardcopy records with PETS data, the auditors preliminarily reported that 146 employees could not be found in PETS. Upon the Department’s inquiry, it came to light that 103 of that number were employed by the SES providers, but in programs other than SES. While we do not excuse that 30 staff - roughly one-third of one percent of the employees in the sample - were finally determined not to have been security cleared as required,<sup>1</sup> it is

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<sup>1</sup> The Department arrives at 30 as the number of staff that had not been security cleared, but should have been. The auditors report the number as 36. (Report p. 10). Our efforts to reconcile the numbers with the auditors before submitting the response have been unsuccessful. The 30 individuals do not include the seven SES employees under age 18 who were working in schools they did not attend. Such students are not required to be fingerprinted. The auditors are incorrect in citing “based on the State Education Department’s regulations, minors are required to be fingerprinted if they are tutoring students at a school other than their own.” First of all, the State Education Law fingerprinting requirement does not apply to the City of New York. See NYS Ed Law § 305(30)(a). Secondly, even if the requirement did apply, student tutors are only required to be fingerprinted if they are tutoring outside their *school district*. SED regulations on criminal background checks define “prospective school employee” as an individual who is “seeking a compensated position with a *covered school* and is not currently employed by such *covered school* or a student enrolled in the instructional program of a grade level in such *covered school*.” See Regulations of the Commissioner of Education §87.2(k) (emphasis added). The SED’s published “Who Must Be Fingerprinted Charts” clarify that fingerprinting is required for a “student employee (*i.e.*, lifeguard, tutor) not enrolled in grade level program of same *covered school*”. See <http://www.highered.nysed.gov/tcert/ospra/fingerprintingcharts.htm> (emphasis added). However, the definition of “covered school” makes clear that, in the case of public schools, it refers to the school district as a whole, not to an individual public school. See Regulations of the Commissioner of Education §87.2(e) (“**Covered school** means a board of cooperative educational services, a charter school, a *school district*, or any nonpublic or private elementary or secondary school that elects to fingerprint and seek clearance for prospective employees...”) (emphasis added).

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\* See State Comptroller’s Comments, page 23.

questionable whether the labor and time intensive process used to arrive at that finding is the most effective.

Therefore, although we do not consider the recommendation viable in terms of the suggested methodology, we embrace the underlying reasoning and will *continue* our program of ongoing training of SES providers, requiring security clearance compliance certification, and reviewing such compliance during on-site monitoring visits and desk reviews of SES service billings. We contend that these training, monitoring and review approaches are no less effective in furthering the legitimate interest in providing a safe environment for students than is the approach recommended by the Comptroller.

**Recommendation 10:** *Determine if the 156 individuals we identified as having worked for the SES providers did in fact provide tutoring services. If it is determined [that] these individuals were not cleared, recover all payments made for their services.*

**Response:** The recommendation will be implemented in relevant part.

The Department will follow up on the finding associated with the recommendation insofar as it is in the best interests of the Department and our students to bring the issue raised - but left unresolved in the Report - to conclusion.

Having said that, we respectfully seek the Comptroller's agreement to eliminate, or at least modify, the finding in the final report. In that regard we pose whether it is fair to imply in a report that will be made public that 156 of the individuals who were on providers' lists of employees or payrolls during the audit period and were identified in PETS as "ineligible" and "inactive" may actually have been working in the providers' SES program or in a capacity that would have required security clearance. That implication finds its ground in the statement: "While we cannot confirm whether all 156 individuals worked with SES students and/or were paid, we did determine that at least one of the 156 individuals worked as a SES tutor for one provider." (Report, page 10).

The method by which the audit team attempted to "confirm" that the 156 staff were not employed as tutors remains puzzling despite that the Department has at various junctures sought clarification of their procedures. Based on representations made by the audit team to OAG managers, the auditors verbally requested that the providers produce a "record" demonstrating that the person who was identified in PETS as ineligible and inactive did not actually work with students. When we posed, at an informal meeting and subsequent conversations with the auditors, how they expected the providers to prove a negative, to wit, that the person did not work, a satisfactory answer was not provided. Indeed, at one point, OAG was advised that certain individuals within the pool of 156 were determined not to have been working at all, a statement that is at variance with the reported finding.

The Report having colored the case of all 156 with an example of one, the auditors invite the Department to do what they failed to do before reporting the condition, that is, to investigate the remaining 155 cases. We have agreed to do that. However, as to the matter of seeking recoupment from providers where we find that the individuals appearing in PETS in

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\* See State Comptroller's Comment, page 23.

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“ineligible” status were in fact working in the SES program as tutors, we remind the auditors that the information in PETS is linked to the SES payment system. What that means as far as the recommendation is concerned is that payment is not made when the person associated with the service is ineligible to work as reflected in PETS. Nonetheless, we may take other action under the terms of the contract as warranted by the findings the Department makes when it completes the Comptroller’s audit.

**Recommendation 11:** *Routinely monitor whether the providers are complying with the requirement for criminal history checks, and take prompt corrective action if instances of noncompliance are identified.*

**Response:** The recommendation has been implemented.

As stated elsewhere in the response and cover letter, monitoring visits include review of staff rosters and confirming clearance status in PETS.

## APPENDIX B - STATE COMPTROLLER'S COMMENTS

1. DoE officials cite various other controls in their systems as a counterpoint to our identification of the “monthly certification” being the primary control over payments. We considered these other controls in drawing our conclusions. The other controls cited by DoE are budget and service limiting controls. They are not controls that directly address the risk of making payments for services not rendered. As cited in our report, DoE staff did not visit any non-school locations to ascertain if services were being delivered in a manner consistent with the program requirements. They also did not monitor services provided in the home and they visited only a very small number of in-school locations.

2. At our opening conference and during the course of our audit, we asked OAG officials if they had audited any aspects of the SES Program and if so, to provide us with their findings. Government Audit Standards require that such inquiries be made and any such audit work be considered in planning the scope of the audit. We were informed that no audits or reviews of the SES Program had been performed. However, in the written response to our draft report, DoE officials stated that a review had indeed been performed. Had this information been provided we would have considered it during the audit.

We have made a change to the report to reflect that a review had been conducted by OAG staff. It should be noted that the OAG performed a desk review of documents requested from SES providers, not an on site audit. Despite the work's limitations, it noted many of the same issues we identified from our

audit. The report supports our audit conclusions. For example, DoE's OAG report noted that attendance sheets were not always filled out completely and accurately, some instructors were not eligible to provide SES services, and some instructors whose names appeared on the attendance sheets had provided services before receiving their security clearances.

3. We stand by the conclusions in our report. Moreover, as indicated in State Comptroller's Comment number 2, OAG's desk review of selected SES providers found that some instructors, whose names appeared on attendance sheets and/or who had provided SES services to students, had not yet received security clearances.

4. The report has been changed to state, “The providers are to be paid on the basis of a maximum dollar value of service and hours for each student.”

5. We acknowledge that the NCLB Act does not specifically require that tutors be qualified in their subjects. We also acknowledge that the Department monitors are tasked to determine whether instructions meet qualifications under the terms of the state-approved plans.

6. Audit tests were indeed uniformly and consistently applied when analyzing data for the students in our sample. The analysis was provided to OAG officials and included specific information such as the name of the student, the provider and the school year.

7. The SES Program is offered in two cycles (fall and spring) for the school

year. The 60 students represented the total number of students who were enrolled in the two cycles. Our audit tested the attendance sheets for the 15 students who were enrolled in the spring cycle. We stand by the information and conclusions in our report. DoE, in their response to the draft report, did not address the provider's sudden and arbitrary discontinuance of SES services to the five students. The provider's actions defeat the objectives of the SES Program.

8. In their limited desk review, the OAG requested attendance and other records from SES providers and matched them with the information contained in the SES NCLB database and PETS. OAG's review found, among other deficiencies, that some instructors were not eligible to provide SES services for the sampled days, the instructors identified in PETS were different from the instructors identified by signature on some attendance sheets, and some instructors whose names appeared on some attendance sheets had not yet been cleared to provide services according to PETS. It appears that the OAG, in its only review of SES data, was able to perform a task that they are now claiming is too onerous.
9. We strongly disagree with the DoE's position that students paid to work for SES providers do not need to be fingerprinted. Guidance published on the State Education Department's (SED) website clearly states that employees of SES providers that have contact with students, must be fingerprinted. These minors are not functioning as "student volunteers" but rather are SES provider employees. This is further supported by

other portions of SED's guidance that states student employees, having contact with students, that are not enrolled in the same grade and the same school must also be fingerprinted. We have made other changes to the numbers in the draft report based upon DoE's response.

10. As stated in the report, at least one of the 156 individuals that worked for an SES provider had in fact provided tutoring services, although the individual was not approved to do so. We have modified our report to clarify that we tested 9 of the 156 individuals and found one exception, an unapproved individual providing tutoring services to students.