
Puerto Rico Department of Education's Compliance with Title I – Supplemental Educational Services

FINAL AUDIT REPORT



ED-OIG/A04I0041
April 2009

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U.S. Department of Education
Office of Inspector General
Atlanta, GA

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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF INSPECTOR GENERAL

Audit Services
Region IV

April 21, 2009

Honorable Carlos Chardón
Secretary
Puerto Rico Department of Education
P.O. Box 190759
San Juan, Puerto Rico 00919-0759

Dear Secretary Chardón:

Enclosed is our final audit report, Control Number ED-OIG/A04I0041, entitled *Puerto Rico Department of Education's Compliance with Title I – Supplemental Educational Services (SES)*. This report incorporates the comments you provided in response to the draft report. If you have any additional comments or information that you believe may have a bearing on the resolution of this audit, you should send them directly to the following Education Department official, who will consider them before taking final Departmental action on this audit.

Joseph Conaty
Acting Assistant Secretary
Office of Elementary and Secondary Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

It is the policy of the U. S. Department of Education to expedite the resolution of audits by initiating timely action on the findings and recommendations contained therein. Therefore, receipt of your comments within 30 days would be appreciated.

In accordance with the Freedom of Information Act (5 U.S.C. § 552), reports issued by the Office of Inspector General are available to members of the press and general public to the extent information contained therein is not subject to exemptions in the Act.

Sincerely,

/s/

Denise M. Wempe
Regional Inspector General for Audit

Enclosure

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Acronyms/Abbreviations Used in this Report

| | |
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| AMAR | AMAR Educational Services, Inc. |
| AYP | Adequate Yearly Progress |
| C.F.R. | Code of Federal Regulations |
| Department | U.S. Department of Education |
| ESEA | Elementary and Secondary Education Act |
| LEA | Local Educational Agency |
| OESE | Office of Elementary and Secondary Education |
| PRDE | Puerto Rico Department of Education |
| RL | Rocket Learning, Inc. |
| SEA | State Educational Agency |
| SES | Supplemental Educational Services |

EXECUTIVE SUMMARY

The objectives of the audit were to determine whether the Puerto Rico Department of Education (PRDE) (1) ensured that contracts awarded to Supplemental Educational Services (SES) providers contained the elements specified in Title I of the Elementary and Secondary Education Act (ESEA) and its implementing regulations; (2) ensured that the contractors provided SES in accordance with the contract terms; and (3) properly approved SES providers.

We found that the contracts PRDE entered into with SES providers to provide SES to eligible students attending Title I schools during the school year 2006-2007 generally contained the elements required by Title I of the ESEA and its implementing regulations. However, PRDE did not include several specific Title I requirements in the individual student agreements established with the SES providers as specified under section 1116(e)(3) of the ESEA. We also found that PRDE lacked control mechanisms to ensure that the SES providers provided the services in accordance with the terms of the contracts. As a result, it paid the SES providers \$6,250 in questioned costs – \$4,411 for services provided to non-eligible students and \$1,839 for services not rendered – and \$16,092 in unsupported costs. Also, PRDE did not withhold \$44,177 in fees due from the SES providers' invoices in payment for the use of its facilities to provide the contracted services. In addition, although PRDE properly approved SES providers, it did not ensure that parents of eligible school children selected the SES provider of their choice. Specifically, PRDE did not ensure that parents were informed of the identity of all approved SES providers and failed to coordinate school orientation activities as required by its own regulation, which restricted parents in selecting an SES provider.

We recommend that the Assistant Secretary for Elementary and Secondary Education (OESE) require PRDE to —

- Establish controls to ensure that the individual student agreements established with the providers include all the elements required by Title I of the ESEA and its implementing regulations;
- Provide documentation demonstrating that the students identified by the auditors as ineligible to receive SES were, in fact, eligible and documentation demonstrating that the students identified by the auditors as not having received SES did in fact, receive such services, or return to the U.S. Department of Education (Department) the \$6,250 in questioned costs paid for which such documentation is not provided;
- Provide supporting documentation for the unsupported charges or return to the Department that portion of the \$16,092 in unsupported costs paid;
- Establish controls to ensure that school directors properly verify SES forms before certifying that students come from low-income families to ensure that only eligible students participate in the program and that services are provided before processing providers' payments;

- Take appropriate actions to address the issue of services not rendered, and provide a response;
- Recover the \$44,177 from the providers for the amount owed for the use of its facilities to provide SES; review the remaining providers' payments to identify any other payment made without the appropriate deduction and recover the associated fee; and establish adequate controls to ensure that checks are issued for the correct amount;
- Ensure that PRDE teachers hired by all SES providers, who provide instruction in Spanish, English, or mathematics during regular school hours, do not provide SES to the same students they teach during the school day; and
- Establish adequate controls at the schools to ensure compliance with the elements specified in the Title I regulations for providing parents with choices of SES providers and ensure that the parents are presented with information identifying all SES providers from which they can select to meet their children's needs.

In its response to the draft audit report, PRDE generally concurred with Finding No. 1 (presented in the draft as Finding No. 3). However, PRDE did not concur with Finding No. 2 regarding the eligibility of SES students and the provision of minimum contact hours of SES, as well as Finding No. 3 (presented in the draft as Finding Nos. 1 and 2, respectively). PRDE submitted extensive supporting documentation to account for the expenditures questioned in the draft report and requested that the two findings be reconsidered and revised.

We considered PRDE's response and the additional documentation submitted and further revised the approach to Finding No. 3 and its related recommendation to better reflect the results of our review. However, PRDE did not provide any additional information that would warrant a change to Finding No. 2, nor did it provide information that would warrant a change to any of the related recommendations. PRDE's comments are summarized after the recommendations section of each finding. The full text of PRDE's response is included as Enclosure 1. Copies of the attachments that were included with the response are available upon request.

BACKGROUND

Title I, Part A of the ESEA, as amended, requires the local educational agencies (LEAs) to offer SES to students from low-income families¹ when the students attend a Title I school that is in the second year of school improvement or is identified for corrective action or restructuring.² During 2006-2007, PRDE identified a total of 578 schools that failed to make adequate yearly progress (AYP) for more than two consecutive years.

SES consists of tutoring and other supplemental academic enrichment services that are of high quality, researched-based, specifically designed to increase the academic achievement of eligible students and are in addition to instruction provided during the school day. State-approved SES providers, selected by the individual student's parent³ provide the services to eligible students under agreements with LEAs. An SEA is required to approve providers that meet the statutory and regulatory requirements for SES providers. A provider may be a non-profit entity, a for-profit entity, an LEA, an educational service agency, a public school, or a private school. An LEA is obligated to notify parents of eligible students of the availability of SES, the identity of approved providers, and a brief description of the services, qualifications, and demonstrated record of effectiveness of each provider. Parents of eligible students can select any approved provider that they feel will best meet their child's needs.

PRDE, in its role as an SEA, is responsible for approving SES providers, maintaining a State list of all approved providers, and monitoring the quality and effectiveness of services offered by the approved providers. In its role as an LEA, PRDE enters into contracts with third parties to provide SES. For the school year 2006-2007, PRDE awarded 47 contracts (including amendments) to 18 SES providers totaling \$112 million.

We reviewed contracts awarded to two of the 18 SES providers for services rendered during the school year 2006-2007 to eligible students that attended Title I schools in their second year of school improvement, in corrective action, or in restructuring – one contract was awarded to AMAR Educational Services, Inc. (AMAR) totaling \$15,951,280 and the other to Rocket Learning, Inc. (RL) totaling \$13,105,680. During the period of the contracts,⁴ AMAR provided services to 166 schools and RL provided services to 152 schools. We also partially reviewed the contract awarded to AMAR to provide SES during the school year 2007-2008 totaling \$22,089,780.⁵ From the three contracts, we selected a sample of 12 schools (six per contractor) and 65 students (35 from AMAR and 30 from RL), and reviewed 12 paid invoices – six from AMAR totaling \$439,046 and six from RL totaling \$444,496.

¹ The “low-income” family determination is based on the same data that an LEA uses to allocate Title I, Part A funds to its schools under section 1113(c)(1) of Title I.

² Under the ESEA, Title I schools that fail to make AYP for two consecutive years are identified for school improvement; schools that do not make AYP for four years are identified for corrective action; and those that do not make AYP for five years are identified for restructuring.

³ A “parent” includes a legal guardian or other person standing *in loco parentis* (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare).

⁴ November 21, 2006 – June 30, 2007.

⁵ For this contract only a sample of five students was selected to determine whether the process followed by PRDE to provide services to the students during the previous year remained unchanged and services were rendered appropriately.

AUDIT RESULTS

We found that the contracts PRDE entered into with SES providers to provide SES to eligible students attending Title I schools during the school year 2006-2007 generally contained the elements required by section 1116(e) of the Title I of the ESEA and its implementing regulations. However, PRDE did not include several specific Title I requirements in the individual student agreements established with the SES providers as specified under section 1116(e)(3) of the ESEA. We also found that PRDE lacked control mechanisms to ensure that the contractors provided the services in accordance with the terms of contracts. As a result, PRDE paid the contractors \$6,250 in questioned costs – \$4,411 for services provided to non-eligible students and \$1,839 for services not rendered – and \$16,092 in unsupported costs. Also, PRDE did not withhold \$44,177 in fees due from the SES providers’ invoices in payment for the use of its facilities to provide the contracted services. In addition, although PRDE properly approved SES providers, it did not ensure that parents of eligible school children selected the SES provider of their choice. Specifically PRDE did not ensure that parents were informed of the identity of all approved SES providers and failed to coordinate school orientation activities with all approved SES providers as required by its own regulation, which restricted parents in their selection of an SES provider.

FINDING NO. 1 – Title I Requirements Not Included in Individual Student Agreements

As part of the registration process followed to enroll students in the SES program, PRDE established individual student agreements⁶ with the SES providers selected by the parents, based on the requirements of section 1116(e)(3) of Title I of the ESEA and its implementing regulations. However, PRDE lacked controls to ensure that the individual student agreements for the school years 2006-2007 and 2007-2008 included all the required elements.

Under section 1116(e)(3), of the ESEA, the LEA shall enter into an agreement with an SES provider selected by the parent. The agreement must include, among other terms, a requirement that the LEA–

develop, in consultation with parents (and the provider chosen by the parents), a statement of specific achievement goals for the student, how the student’s progress will be measured, a timetable for improving achievement; describe how the student’s parents and the student’s teacher or teachers will be regularly informed of the student’s progress; provide for the termination of such agreement if the provider is unable to meet such goals and timetables; contain provisions with respect to the making of payments to the provider by the local educational agency; and prohibit the provider from disclosing to the public the identity of any student eligible for, or receiving, supplemental educational services under this subsection without the written permission of the parents of such student.^[7]

⁶ The agreements are known as form “SES 102.”

⁷ The requirements are detailed in section 1116(e)(3)(A)-(E) of the ESEA; 34 C.F.R. § 200.46(b)(2)(i).

The individual student agreements for the school years 2006-2007 and 2007-2008 did not include the following required elements –

- Information on how the parents and teachers would be regularly informed of the students' progress;
- A timetable or timeline for improving the students' achievement, specifically for the school year 2007-2008;
- A provision for terminating the agreement if the provider failed to meet student progress goals and timetables;
- Provisions governing payment for the services, including provisions addressing missed sessions; and
- A provision prohibiting the provider from disclosing to the public the identity of any student eligible for, or receiving SES, without the written permission of the student's parents.

Because the individual student agreements did not contain all of the information required by Title I and its implementing regulations, parents and teachers were not adequately informed about the SES program provisions and their rights to information.

Recommendation:

We recommend that the Assistant Secretary for OESE require PRDE to—

- 1.1 Establish controls to ensure that the individual student agreements established with the providers include all the elements required by Title I of the ESEA and its implementing regulations.

PRDE's Comments

PRDE basically agreed with the finding and stated that it was working to improve the individual student agreements to include all the elements required by the Title I regulations. However, PRDE disagreed that the agreements lacked information on how the parents and teachers would be regularly informed of the students' progress. According to PRDE, the agreements currently require that the providers inform the parents and teachers of the SES students' progress after a certain number of hours of tutoring, agreed upon between the providers and the parents, are performed.

OIG's Response

We acknowledge that PRDE is working to improve the individual student agreements to include all the elements required by the Title I regulations. Although the form submitted in PRDE's response included the required element on informing parents and teachers, it pertained to the agreement used for school year 2008-2009, not the one used for the school years reviewed (2006-2007 and 2007-2008). Therefore, we did not change the finding. We also did not change the recommendation because the recommendation addresses general controls that PRDE must establish to ensure that the individual student agreements include all the elements required by the Title I statute and implementing regulations, not only the requirement on informing parents and teachers.

FINDING NO. 2 – Contract Terms Not Enforced

PRDE lacked controls to ensure that AMAR and RL provided SES to eligible public school students during the school year 2006-2007 in accordance with the terms of the contract between PRDE and the provider and lacked controls to ensure that services were rendered. Specifically, PRDE failed to follow its own SES guidelines and did not enforce the terms of the contracts. As a result, it paid the SES providers questioned costs totaling \$6,250 – \$4,411 for services provided to non-eligible students and \$1,839 for services not rendered⁸ – and unsupported costs totaling \$16,092. In addition, PRDE did not (1) deduct the \$44,177 in fees from providers' payments for the use of PRDE's facilities to provide the services to the students in accordance with the terms of the contracts; (2) ensure that RL provided students a minimum of 40 contact hours of SES, as required by PRDE; and (3) preclude AMAR and RL from contracting with PRDE teachers to provide SES after school hours to the same students to whom they provided instruction in Spanish, English, or mathematics during regular school hours, a practice prohibited by PRDE policy.

Under 34 C.F.R. § 76.702, “[a] State and a subgrantee shall use fiscal control and fund accounting procedures that insure proper disbursement of and accounting for Federal funds.” In addition, 34 C.F.R. § 80.20(a)(3) provides that “[e]ffective control and accountability must be maintained for all grant and subgrant cash....”

SES Provided to Non-Eligible Students

PRDE failed to properly identify non-eligible students who received SES during the school year 2006-2007. As a result, it paid \$4,411 in questioned costs – \$3,335 to AMAR and \$1,076 to RL. In addition, PRDE paid the two contractors \$16,092 in unsupported costs – \$7,781 to AMAR and \$8,311 to RL. Specifically, school directors did not properly verify SES forms before certifying that students were from low-income families. Absent such verification, PRDE has no controls to prevent ineligible students from participating in the SES program, and we found that ineligible students participated in the program.

According to clause number 3 of the contracts between PRDE and the SES providers and in accordance with section 1116(e) of the ESEA, the SES providers were to provide services to eligible students – students from low-income families who attended a Title I school in its second year of improvement, in corrective action, or in restructuring. Section 1116(e)(12)(A) defines an eligible child as “a child from a low-income family, as determined by the LEA for purposes of allocating funds to schools under section 1113(c)(1).”

PRDE based student eligibility on family income and the number of members in a family. To be eligible to participate in the SES program, a student's family income had to be below the poverty level established by PRDE during the school year. We selected a sample of 65 students⁹ who received SES during the school years 2006-2007 and 2007-2008, and reviewed the socioeconomic study forms PRDE used to determine student eligibility. We found four students who received services but were ineligible, and we could not determine the eligibility of 17 additional students who received services because either the income information was missing from the forms (two

⁸ Of the \$1,839, \$1,140 related to services not rendered during the school year 2007-2008.

⁹ 60 students from the school year 2006-2007 and five students from the school year 2007-2008.

students) or the forms could not be located for our review (15 students). Specifically, of the 65 students' forms reviewed:

- We could not determine eligibility for two students (or 3 percent of our sample) because the family income information was missing from the forms. For both students, the school director signed the SES enrollment form certifying that the students were from low-income families. Based on our review, PRDE paid unsupported costs of \$2,152 to AMAR for SES provided to these two students.
- We found four students ineligible for the services received (or 6 percent of our sample) because the reported family income was above the poverty level established by PRDE for the school year 2006-2007. Although the parents of all four students reported income above that established by PRDE for eligibility determination, the directors of the schools signed the SES enrollment form certifying that the four students were from low-income families, and, as such, those students received SES, which resulted in questioned costs of \$4,411.
- We verified that 44 students¹⁰ (or 68 percent of our sample) were eligible to receive SES based on the information reported on the forms reviewed.
- PRDE could not locate the forms for the remaining 15 students (or 23 percent of our sample), resulting in additional unsupported costs of \$13,940 – \$7,781 paid to AMAR for seven students and \$6,159 paid to RL for eight students.

Services Not Rendered

PRDE paid \$1,839 in questioned costs for services not rendered – \$699 to RL during the school year 2006-2007 and \$1,140 to AMAR during the school year 2007-2008. PRDE did not have adequate controls in place to ensure services at the schools were rendered. PRDE relied on the supporting documentation submitted by the SES providers to pay the invoices. Once the invoices were received by PRDE's SES Central Division, the invoices and supporting documentation were reviewed and certified as correct by PRDE's SES Coordinator who would then send them to the Payment Division for payment processing. The lack of controls to ensure services were rendered before processing providers' invoices left SES grant funds vulnerable to mismanagement and misuse.

We interviewed the parents of 27 of the 65 sampled students. Two of them stated that services had not been provided to their children and allowed us to interview their children. One student stated she never attended the SES sessions but signed the attendance rosters in exchange for extra points.¹¹ The other student stated she attended on six or seven¹² occasions but signed the attendance rosters as if she had received all the required contact hours when asked to do so by the SES teacher.

We asked the two teachers listed as providing services to these two students about the allegations. One teacher, contracted by AMAR, stated that she certified providing SES to the student at the request of the AMAR School Coordinator, even though the student attended only one session. The

¹⁰ Includes the five students selected from the 2007-2008 school year.

¹¹ Based on the information provided by the student, the extra points were given by the English teacher.

¹² Based on seven occasions the student attended at a rate of 2 hours per day, the student received only 14 contact hours.

teacher agreed that she had not provided the services but stated that the AMAR School Coordinator had requested that she certify the attendance roster because the student had received the services from another teacher. In response to the request, she signed the document because she was new to the program. The student claimed to not know the teacher nor to have received any services at all. The other teacher, contracted by RL, stated that the student would not show up to the sessions and she had to constantly look for her but maintained that the student eventually made up all the sessions she had missed. However, the parent stated that the student did not attend all the sessions, that she was not obtaining the help she needed, and that the service appeared to be more like a day care than SES. As a result, we question costs paid of \$1,140 to AMAR and \$699¹³ to RL for services not rendered for the two students identified, for a total of \$1,839.

Fees Not Deducted From Payments

PRDE did not deduct a 5 percent fee established in the SES contracts from the payments made to the SES providers for the use of PRDE's facilities to provide SES to the students. As a result, PRDE made overpayments to AMAR and RL totaling \$44,177 – \$21,952 and \$22,225, respectively.

According to clause number 30 of the contracts, SES providers were required to pay PRDE a 5 percent fee from the total earned from providing SES services to students in each school for the use of PRDE's facilities in providing those services. PRDE was allowed to deduct the 5 percent fee from every school invoice¹⁴ submitted by the service providers. However, in our review of 12 paid invoices, we found that, although the withholdings were processed by PRDE's Payment Division, the 12 checks issued to AMAR and RL did not contain the appropriate withholdings. Therefore, the two SES providers owe PRDE at least \$44,177 based on the payments reviewed, and possibly more. For all provider payments reviewed, PRDE consistently failed to deduct the 5 percent fee. Therefore, subsequent payments were likely to have the same error.¹⁵ In addition, the error could have occurred in payments made on other SES provider contracts.

Minimum Contact Hours of Services Not Provided to Students

PRDE lacked controls to ensure that RL provided students a minimum of 40 contact hours of SES, as required by the contract terms and PRDE's SES Policies. In our review of the six invoices PRDE paid to RL and the supporting documentation, we found that RL did not provide the required minimum of 40 contact hours in five of the six schools to 78 (18 percent) of 433 students that received services during the period reviewed.¹⁶

PRDE's SES Policy and Procedures Manual, Circular Letter 10-2006-2007, and clause number 5 of the contract between PRDE and the SES providers require a guarantee of a minimum of 40 contact hours with the participating students during a given period based

¹³ We estimated the \$699 in questioned costs based on 26 contact hours missed at a rate of \$26.90 per hour from the 40 contact hours contracted. The contract established that a total of 40 hours would be provided to every student at a rate of \$26.90 per hour. RL invoiced PRDE for the full amount of hours contracted.

¹⁴ SES providers identified the invoices by school and billed based on the amount of students served at each school.

¹⁵ We calculated the possible overpayments based on the payments, not included in our review, made to the two SES providers prior to presenting the issue to PRDE's attention. For the total dollar amount of these invoices, PRDE may have overpaid AMAR and RL \$1,939,995 in subsequent payments – \$1,002,902 (\$20,058,033 x 5 percent=\$1,002,902) and \$937,093 (\$18,741,862 x 5 percent=\$937,093), respectively.

¹⁶ Although RL did not provide the minimum amount of hours, it billed PRDE according to the hours provided.

on the rate established by the SES provider. Under the terms of the Policy and Procedures Manual (revised on October 2006) and the contract, if a student cannot attend a session, the SES provider is responsible for coordinating with the parents and the student for another date to provide a make up session for the one missed.

SES Teachers Provided Instruction During Regular School Hours to the Same Students

We found that four teachers in three of the 12 schools sampled provided instruction in Spanish, English, or mathematics during regular school hours and were contracted to provide SES during after-school hours to the same students they taught during the regular school day. Three of the four teachers were contracted by RL and one was contracted by AMAR.

According to PRDE's SES Policy and Procedures Manual (revised on October 2006), Circular Letter 10-2006-2007, and clause number 26 of the contracts between PRDE and the SES providers, teachers or librarians employed by PRDE to provide instruction in Spanish, English, or mathematics during regular school hours are prohibited from providing SES to those same students.

Recommendations:

We recommend that the Assistant Secretary for OESE require PRDE to—

- 2.1 Provide documentation demonstrating that the students identified by the auditors as ineligible to receive SES were, in fact, eligible and documentation demonstrating that the students identified by the auditors as not having received SES did in fact, receive such services, or return to the Department that portion of the \$6,250 in questioned costs paid for which such documentation is not provided;
- 2.2 Provide supporting documentation for the unsupported charges or return to the Department that portion of the \$16,092 in unsupported costs paid;
- 2.3 Establish controls to ensure that school directors properly verify SES forms before certifying that students come from low-income families to ensure that only eligible students participate in the program and ensure services are provided before processing providers' payments;
- 2.4 Take appropriate actions to address the issue of services not rendered, and provide a response;
- 2.5 Recover \$44,177 from the providers for the amount owed for the use of its facilities to provide SES; review the remaining providers' payments to identify any other payment made without the appropriate deduction and recover the associated fee; and establish adequate controls to ensure that checks are issued for the correct amount; and;
- 2.6 Ensure that PRDE teachers hired by all SES providers, who provide instruction in Spanish, English, or mathematics during regular school hours, do not provide SES to the same students they teach during the school day.

PRDE's Comments

In its response to the draft audit report, PRDE agreed with most of the finding but disagreed with the questioned costs regarding SES provided to non-eligible students and the provision of minimum contact hours of services. PRDE requested that the finding be reconsidered and revised.

PRDE's comments regarding each of the conditions identified in the draft audit report are summarized below.

SES Provided to Non-Eligible Students

PRDE submitted the socioeconomic study for 10 of the 21 students whose eligibility was questioned and other documents to demonstrate that it served eligible students, resulting in no harm to the Federal interest for these expenditures. The documents included a letter from the Department approving PRDE's use of data from the U.S. Department of Agriculture's National School Lunch Program to determine Title I eligibility for the school years 2008 through 2010, retroactive to July 1, 2007. According to PRDE, the data made all of PRDE's students eligible to receive SES. In addition, PRDE contended that under 7 C.F.R. § 245.4, similar to Provisions 2 and 3 of the National School Lunch Act, Puerto Rico was allowed to provide free meals or milk to all children in schools under its jurisdiction, regardless of the economic need of the child's family. Since the students were eligible to receive free or reduced-price lunches under the National School Lunch Program, they were also eligible for SES.

Services Not Rendered

PRDE stated that it recognizes the importance of proper supervision to ensure that SES is properly provided, especially given the large size and scope of its SES program. To protect the program's integrity, PRDE stated that it implemented a biometric record invoicing system to track SES student attendance and prevent any future false claims by its providers.

Fees Not Deducted From Payments

PRDE stated that it was in the process of reviewing invoices and expense reports of payments made to AMAR, RL, and all other SES providers whose contracts required the provider to pay a facilities fee, and recoup any funds in accordance with the terms of the applicable contract.

Minimum Contact Hours of Services Not Provided to Students

PRDE stated that it recognized the importance of proper controls and supervision to ensure that the required number of service hours is provided by its SES contractors, especially given the large size and scope of its SES program. However, it noted that the SES program is voluntary for students, and the extent to which students attend SES sessions cannot be controlled. Nonetheless, it implemented a biometric record invoicing system to track SES student attendance and the number of service hours provided.

SES Teachers Provided Instruction During Regular School Hours to the Same Students

PRDE acknowledged that this practice violated PRDE's internal SES and Procedures Manual (revised on October 2006), Circular Letter 10-2006-2007, and clause number 26 of both contracts, which established that teachers or librarians employed by PRDE who offered instruction in Spanish, English, or mathematics during regular school hours could not offer SES to the same students. PRDE stated that it was strengthening its monitoring procedures and contract enforcement to ensure that SES providers do not provide services to students with the same instructor who provided Spanish, English, or mathematics during regular school hours.

OIG's Response

We considered PRDE's response and the additional documentation submitted. However, we determined that the response did not warrant a change to our finding and recommendations.

Our response to each of the conditions identified in the draft report is summarized below.

SES Provided to Non-Eligible Students

PRDE provided a copy of the socioeconomic study forms for 10 of the 21 students whose eligibility was questioned. However, 1 of the 10 socioeconomic studies provided by PRDE had been previously submitted and reviewed during our fieldwork and we concluded that the income reported by the parents for the school year 2006-2007 was above the poverty level established by PRDE. Of the remaining nine forms, six belonged to the school year 2007-2008 and three to the school year 2005-2006, not to the school year 2006-2007, when the students' eligibility was questioned.

PRDE claimed that all students in schools under improvement were eligible to receive SES. PRDE also stated that the Director of Student Achievement and School Accountability within the Department approved PRDE's use of the triennial Socioeconomic Survey to determine Title I eligibility. However, the Department's letter stated that for determining the schools eligible for Title I, as well as each school's Title I allocation for the school year 2009-2010, PRDE may assume that its schools have the same percentage of students eligible for free and reduced priced lunches as it had in the most recent year for which PRDE collected the data and is not to be used to determine the individual student's eligibility for SES.

The additional documentation provided by PRDE in dispute of the finding does not cover the school year 2006-2007. School Directors interviewed acknowledged that PRDE's method of determining students' eligibility to receive SES was the use of the socioeconomic study. School Directors were required to verify such information and certify each individual student's enrollment form or SES 101 stating that the students came from a low income-family and were eligible to receive SES.

As a result, we maintain that PRDE failed to properly identify non-eligible students who received SES during the school year 2006-2007; therefore, it paid \$4,411 in questioned costs - \$3,335 to AMAR and \$1,076 to RL. In addition, PRDE paid the two contractors \$16,092 in unsupported costs - \$7,781 to AMAR and \$8,311 to RL.

Services Not Rendered

Although, PRDE is currently implementing a new biometric record invoicing system to track SES students' attendance, we maintain that PRDE still needs to establish controls to ensure services are actually provided before processing invoices for payment. The new biometric system is a good internal control measure to ensure that the students actually attend and that payment is made based on the amount of hours the students attended, but it does not guarantee that they will receive the services according to contract terms.

Fees Not Deducted From Payments

PRDE acknowledged that it did not deduct a 5 percent fee established in the SES contracts and responded that it is in the process of reviewing SES provider invoices. As a result, PRDE should recover the \$44,177 from the contractors for the amount owed for the use of PRDE's facilities to provide the contracted services and identify any additional amounts owed by SES providers.

Minimum Contact Hours of Services Not Provided to Students

We considered PRDE's comments that the SES program is voluntary for students, and it cannot control the extent to which students attend SES sessions. However, we maintain that the minimum of 40 contact hours should have been provided to the students based on contract terms and PRDE's internal guidelines. The 40 contact hour minimum for services provided to the students was established by PRDE in the contract, the SES Policy and Procedures Manual (revised on October 2006), and its Circular Letter 10-2006-2007. PRDE not only established that the number of hours could not be less than 40 but also added a requirement that if a student could not attend a session, the SES provider was responsible for coordinating with the parents and the students for another date to provide a make-up session for the one missed.

PRDE should be monitoring contract compliance and enforcing contract terms to avoid possible legal issues such as breach of contract, which could eventually jeopardize the use of Federal funds and affect the services provided to students.

SES Teachers Provided Instruction During Regular School Hours to the Same Students

PRDE acknowledged that this practice violated PRDE's internal SES Procedures Manual, Circular Letter 10-2006-2007, and clause number 26 of both contracts. We agree that PRDE should continue strengthening its monitoring procedures and contract enforcement to ensure that SES providers do not provide services to students with the same instructor who provided Spanish, English, or mathematics during regular school hours.

FINDING NO. 3 – Lack of Controls to Ensure Parents Selected the SES Provider of Choice

PRDE lacked adequate controls to ensure that it complied with all requirements of section 1116(e) of the ESEA and its implementing regulations, as well as with its own regulations. Specifically, PRDE lacked controls to ensure parents of eligible school children selected the SES provider of their choice. PRDE did not ensure that parents were informed of the identity of all approved SES providers, which, in effect, restricted parents in their selection of an SES provider.

PRDE also failed to coordinate school orientation activities with all approved SES providers as required by its own regulation. Such orientation activities are intended to provide parents with as many choices as possible to assist them in selecting an SES provider to meet the needs of their children. As a result of PRDE's failure to coordinate orientation activities, parents were limited to the choice of only a few providers, and, in some instances, to only one provider.

Section 1116(e)(4)(A) of the ESEA requires an SEA, in consultation with LEAs, parents, teachers, and other interested members of the public, to promote maximum participation by providers to ensure, to the extent practicable, that parents have as many choices as possible.

Under section 1116(e)(2)(A) of the ESEA, each LEA must provide annual notice to parents, among other things, of the availability of services and the identity of approved providers of those services that are within the LEA or whose services are reasonably available in neighboring LEAs. If requested, the LEA must assist parents in choosing a provider from the list of approved providers maintained by the State.

In addition, PRDE's SES Policy and Procedures Manual (revised on October 2006), and Circular Letter 10-2006-2007 (dated October 23, 2006) require (1) school directors to coordinate orientation activities for the parents of eligible students with the companies and organizations, or both, that appeared on the approved list of providers, and (2) the selection of the provider to be exclusively the parents' responsibility.

During our site visits to the 12 selected schools, we found that seven of the 12 school directors (or 58 percent) did not ensure that parents were informed of the identity of all approved SES providers for the school year 2006-2007 and did not coordinate orientation activities with all approved SES providers. Although the seven school directors maintained an updated list of approved providers, they did not invite all the providers to orientation activities to promote their services to parents of eligible school students.¹⁷ Only the providers that contacted the schools, either by telephone or school visits, were invited to participate in the orientation activities; therefore, all approved providers were not identified and made available to the parents. Providers that did not contact or visit the schools never had the opportunity to interact with the parents and promote their services.

Furthermore, one of the 12 school directors interviewed acknowledged that the school only had RL as its provider for that school year. The school director provided a school memorandum dated September 26, 2006 addressed to the parents stating that RL, a business that had the support of PRDE and the faculty of the school, was going to be the company providing SES during the school

¹⁷ Orientation activities were coordinated every year at the beginning of the school year. Of the 12 school directors interviewed, 5 stated that for the school year 2007-2008, they invited the SES providers that contacted the school either by telephone or school visits to the SES orientation.

year 2006-2007. The memorandum further stated that the school had started its first year under improvement,¹⁸ and in accordance with the ESEA, SES would be provided at the school in subject areas, such as Spanish, English, and mathematics. Two parents of children attending this school were interviewed and confirmed that they were not given any other provider options.

We contacted the parents of 27 of the 65 sampled students to determine whether they had been given the opportunity to select the SES provider of their choice.¹⁹ Of the 27 parents,

- Twelve (or 44 percent) were given the opportunity to select the SES provider of their choice. Of these 12 parents, three (or 25 percent) participated in an election process where they voted for one SES provider.
- The remaining 15 parents (or 56 percent) were not given the opportunity to select the SES provider of their choice. Of these 15 parents, three stated that the enrollment form already had the name of the provider; two stated they signed up with the provider that had served the school during the previous year; two stated they signed up with the provider their children preferred from those that had previously provided SES at the school; one stated there was an election process but they did not participate; and seven stated they just signed the documents provided to them authorizing their children to receive the services but did not know the SES provider.

Recommendation:

We recommend that the Assistant Secretary for OESE require PRDE to —

- 3.1 Establish adequate controls at the schools to ensure compliance with the elements specified in the Title I regulations for providing parents with choices of SES providers and ensure that the parents are presented with information identifying all SES providers from which they can select to meet their children's needs.

PRDE's Comments

PRDE disagreed with our finding and requested that the finding be withdrawn. PRDE contended that our sample size was small given the large number of schools in which students received SES, over 600, and that approximately 90,000 PRDE students received SES in 2006-2007, such that PRDE had achieved maximum enrollment in its SES program.²⁰ PRDE also stated that it does ensure, through a number of different media, that parents of eligible SES students have access to as many SES providers as possible, as follows —

- School districts provide at least two open houses for parents to meet any eligible SES providers. In addition, parents are sent a letter explaining SES, the open house dates, and a full list of the addresses and telephone numbers of SES provider staff.

¹⁸ Although the memorandum stated that the school had started its first year under improvement, the school was actually in its second year; therefore it was eligible to receive SES.

¹⁹ Of the 65 students sampled, 5 received SES during the school year 2007-2008.

²⁰ PRDE notes that the parents of only 27 students of the 65 students sampled were contacted, a sample size of approximately .07 percent of the total number of the PRDE students receiving SES.

- Each school provides brochures for the students to take home to parents, explaining SES, how to apply for SES, and providing contact information for PRDE who can assist with any questions or concerns.
- For schools required to provide SES, school principals invite parents to assemblies at the school with SES providers to discuss SES enrollment options.
- The back of the SES application form lists all of the eligible SES providers that parents can select.

OIG's Response

We considered PRDE's comments and acknowledge that PRDE implemented controls to disseminate information about the SES program to the parents. As a result, we further revised the approach of the finding and its related recommendation to better reflect the results of our review. However, we maintain that PRDE (1) lacked controls to ensure parents selected the SES provider of their choice, (2) did not ensure that parents were informed of the identity of all approved providers for the school year 2006-2007, and (3) did not coordinate orientation activities with all PRDE's approved SES providers at the schools visited. As a result, PRDE restricted parents' selection of SES providers by limiting their choice to the selection of only a few providers, and, in some instances, to only one provider. PRDE also claimed that the back of the SES application form listed the names all of the eligible SES providers that parents can select. However, this process started for the school year 2007-2008. Although the sample size was small given the large number of schools PRDE claimed to have enrolled in the SES program, the results of our visits and interviews disclosed that parents were limited to selected SES providers due to the schools' methodology of disseminating the information. For example, school directors limited the presence of SES providers at school assemblies to only those that contacted the school, either by telephone or school visits; and school directors continued to limit SES providers in school year 2007-2008 to those that contacted the school. In effect, even though the back of the SES application listed the names of all eligible SES providers, only selected SES providers were invited to the school to promote services. We maintain our position that PRDE needs to establish adequate controls at the schools to ensure that parents are allowed to select an SES provider from those available that they feel will best meet the needs of their children and not only the ones school directors allow to participate in school assemblies.

OTHER MATTERS

Lack of Documentation to Support Changes to a Proposal Before Awarding a Contract

PRDE did not adequately document the approval of a change to the proposal submitted by AMAR before awarding the contract to provide SES during the school year 2006-2007. The application used to recertify contractors as SES providers, submitted and signed by AMAR's President on July 21, 2006, was evaluated and approved by PRDE based on a proposed rate of \$26.25 per hour for 41 hours of tutoring services offered per student, for a total of \$1,076.25 to be allocated per student. However, the contract was awarded at a rate of \$27.11 per hour, for a total of \$1,111.51 allocated per student. This resulted in a difference of \$35.26 (\$1,076.25-\$1,111.51) in the total allocation per student for every 41 hours of tutoring services offered.

The documentation provided by PRDE to support the rate increase after it had previously approved the proposed rate was a letter dated November 7, 2006, addressed to the SES Coordinator. In the letter, the President of AMAR requested a rate increase from \$1,096 to \$1,111.51, without providing any further explanation for why the request was being made. In addition, the rate of \$1,096 included in the letter as the basis for the increase was not AMAR's original proposed rate of \$1,076.25. Other than the signed contract, we were unable to find documentation supporting PRDE's approval for the rate increase requested by AMAR. The rate increase resulted in additional costs to PRDE of \$382,606.

We suggest that PRDE establish adequate internal controls to ensure that proper documentation of all procurement transactions is preserved to avoid the risk of subsequent disputes with contractors and potential overpayment for services.

PRDE's Comments

PRDE provided documentation to demonstrate that it adequately documented the rate change in accordance with the cost principles in OMB Circular A-87. The documentation included a letter AMAR addressed to the PRDE SES Coordinator, dated November 7, 2006, requesting the rate increase. In the letter, AMAR requested an increase in the rate from \$1,096 per student to \$1,111.51 (from \$26.25 per hour to \$27.11). PRDE also included a memorandum from the former Secretary of PRDE, dated November 21, 2006, approving the rate increase.

OIG's Response

Although we considered PRDE's comments and the documentation submitted, we maintain that, as an internal control measure, changes to proposed and approved rates should be adequately justified and documented before awarding a contract. The letter from AMAR's President to the SES Coordinator, dated November 7, 2006, provided in PRDE's response, was reviewed during the audit and discussed with the SES Coordinator. We determined that the letter did not provide sufficient evidence to justify the rate increase.

PRDE also submitted an additional document as evidence of approval for the rate increase.

However, the document submitted was sent to PRDE's Secretary on November 21, 2006, the same day the contract was awarded. The document contained the name of the 17 companies approved to provide SES during the school year 2006-2007, the rate per hour, and the amount of the contract. Although the rate in that document matched the one in the contract, PRDE did not document why and under what terms it accepted the rate increase requested by AMAR's president after his proposal had already been evaluated and selected based on the previous proposed rate.

OBJECTIVES, SCOPE, AND METHODOLOGY

Our audit objectives were to determine whether PRDE (1) ensured that contracts entered into with SES providers contained the elements specified in Title I of the ESEA and its implementing regulations; (2) ensured that the contractors provided SES in accordance with the contract terms; and (3) properly approved SES providers. The scope of the audit was contract activities from November 21, 2006, through June 30, 2007.²¹

For the school year 2006-2007, PRDE awarded 47 contracts (including amendments) to 18 SES providers totaling \$112 million. To achieve our audit objectives, we judgmentally selected the two highest-dollar SES contracts PRDE awarded during the school year 2006-2007, one awarded to AMAR in the amount of \$15,951,280 and one to RL in the amount of \$13,105,680. We determined the number of schools served by each contractor under the contracts (AMAR served 10,851 students in 166 schools and RL served 10,358 in 193 schools) and from those schools, selected a sample of 12 schools, eleven randomly and one judgmentally²² (six schools per contractor), and 60 students who received services, to determine whether the services were rendered according to contract terms (30 from AMAR and 30 from RL).

We also judgmentally selected five additional students who received services from AMAR during the school year 2007-2008, to determine whether the process to provide services to the students had changed from the previous school year and also to determine whether services were rendered appropriately. We also –

- Reviewed the contracts awarded to the two SES providers selected for review to determine whether the contracts contained the elements specified in the Title I-SES regulations;
- Reviewed documentation and interviewed PRDE officials, parents, and students to determine whether PRDE ensured that the contractors provided the services following contract terms;
- Reviewed the process PRDE followed for identifying and selecting contractors as approved SES providers²³ and notifying parents of the availability of services and their right to select the provider of their choice; and
- Reviewed documentation and interviewed PRDE and school officials to determine whether PRDE maintained an approved list of providers.

²¹ Although the scope of the audit was contract activities for the school year 2006-2007, we also reviewed transactions from the school year 2007-2008 based on information that came to our attention during the audit.

²² The school was judgmentally selected based on information that came to our attention during the audit.

²³ We reviewed PRDE's process for reviewing proposals and selecting the SES providers for the school year 2006-2007.

For the 12 schools and the 60 students randomly selected for review, we –

- Conducted site visits, reviewed SES-related documentation, and interviewed school directors, teachers contracted to provide the services, and personnel contracted as SES coordinators to determine whether the schools were following the established Federal and State guidelines and regulations in managing the program;
- Reviewed the process used to determine student eligibility;
- Interviewed by telephone the parents of 23 of the 60 sampled students,²⁴ and two students²⁵ who answered on behalf of their parents, to determine whether the parents were informed of the availability of SES in the schools, selected the SES provider of their choice from PRDE's approved list of providers, were informed of their child's academic progress, signed the proper documentation, and were satisfied with the services provided; and
- Selected for review 12 invoices²⁶ submitted by the contractors for the 12 sampled schools (six invoices per contractor) to determine whether the services were provided following contract terms.

For the five additional students judgmentally selected for review that received services from AMAR, we

- Reviewed the process followed to determine student eligibility;
- Interviewed by telephone the parents of four of the five students²⁷ to determine whether the parents were informed of the availability of SES in the schools, selected the SES provider of their choice from PRDE's approved list of providers, were informed of their child's academic progress, signed the proper documentation; and were satisfied with the services provided; and
- Verified if the invoice submitted by the contractor was properly certified and paid.

We performed our fieldwork at PRDE's Office of Federal Affairs. We conducted this performance 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.

²⁴ The remaining 37 parents could not be reached, either because their telephone numbers were no longer in service, or they did not answer the calls.

²⁵ The two students had already graduated from high school.

²⁶ Based on the information provided, AMAR submitted 166 invoices and RL submitted 193, for a total of 359 invoices (one invoice per school).

²⁷ The fifth parent could not be reached.

Enclosure 1

**Puerto Rico Department of Education
Response to Draft Audit Report: ED-OIG/A04I0041**

Submitted to:
Ms. Denise M. Wempe
U.S. Department of Education
Office of Inspector General
61 Forsyth SW
Room 18T71
Atlanta, GA 30303

This document is the response of the Puerto Rico Department of Education ("PRDE") to the U.S. Department of Education's Office of Inspector General ("OIG") Draft Audit Report ED-OIG/A04I0041 ("Draft Audit Report"), issued February 4, 2009, entitled *Puerto Rico Department of Education's Compliance with Title I – Supplemental Education Services (SES)*. OIG reviewed Title I Supplemental Educational Services (SES) that PRDE provided to students for the 2006-2007 and 2007-2008 award years. OIG concluded that PRDE did not properly administer some of its Title I funds expended on SES over that time period. OIG specifically questioned a number of PRDE's SES expenditures through contracts awarded to AMAR Educational Services, Inc. ("AMAR") and Rocket Learning, Inc. ("RL"), the participation rate of SES providers, and the requirements included within the individual student agreements.

OMB Circular A-87, *Attachment A, Paragraph C.1* provides that costs must be necessary and reasonable for proper and efficient performance and administration of federal awards, be allocable to federal awards, and be adequately documented. In order to recover funds, there must be an analysis reflecting the value of the program services actually obtained in a determination of harm to the Federal interest. 20 U.S.C. 1234a(a)(2). The U.S. Department of Education ("USDE") may require recipients to return only an amount that is proportional to the extent of the harm its violation caused to an identifiable Federal interest associated with the program. 34 C.F.R. § 81.32(a)(1).

PRDE's response below, based on each Draft Audit Report finding, should resolve most of OIG's concerns by providing extensive supporting documentation in the form of exhibits, and explains the documentation for the expenditures questioned by OIG.

I. FINDING NO. 1 – SES Contract Terms

Eligibility of SES Students

OIG found that PRDE failed to properly identify non-eligible students who received SES during 2006-2007 and 2007-2008 from AMAR and RL. Therefore, OIG questioned \$4,411 in costs (\$3,335 to AMAR and \$1,076 to RL) and found that \$16,092 in costs are unsupported (\$7,781 to AMAR and \$8,311 to RL).

OIG selected a sample of 65 students who received SES during school years 2006-2007 and 2007-2008, and reviewed the socioeconomic study forms PRDE used to determine student eligibility. OIG made findings costs related to 21 SES students. Specifically, with regards to its sample, OIG's findings were as follows:

- OIG could not determine eligibility for two students because the family income was missing from the forms. Therefore, OIG stated that PRDE paid unsupported costs of \$2,152 to AMAR.
- OIG stated that four students were ineligible for SES because the reported family income was above the poverty level established by PRDE for school year 2006-2007. Therefore, OIG stated that PRDE made unallowable expenditures in the amount of \$4,411.
- OIG stated that PRDE could not locate the forms for the 15 students. Therefore, OIG found that PRDE had unsupported costs of \$13,940 (\$7,781 paid to AMAR for seven students and \$6,159 paid to RL for eight students).¹

In response, PRDE submits Socioeconomic studies for a number of the students whose eligibility was questioned by OIG.² The Socioeconomic data is available for:

- [REDACTED]
- [REDACTED]³
- [REDACTED]⁴
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

¹ OIG provided a list of all of the students in question. See EX 1.
² See EX 2. PRDE has also provided the National School Lunch Program Income Eligibility Guidelines for school year 2006-07.
³ Because it not clear which school year, 2006-2007 or 2007-2008, was at issue with regard to this student's eligibility, PRDE is providing the Socioeconomic study for 2007-2008.
⁴ See *Id.*

- [REDACTED]
- [REDACTED]

In addition, under 7 C.F.R. § 245.4, similar to Provision 2 and 3 schools under the National School Lunch Act, Puerto Rico is allowed to provide free meals or milk to all children in schools under their jurisdiction, regardless of the economic need of the child's family. In order to do so, PRDE's statistical survey, performed triennially, must be approved by the Food and Nutrition Service within the U.S. Department of Agriculture. PRDE received a letter, dated May 1, 2008, from Mr. James E. Harmon, Regional Director for Special Nutrition Programs, approving Puerto Rico's triennial Socioeconomic Survey report for School Years 2008 through 2010, retroactive to July 1, 2007.⁵ Also, Dr. Zollie Stevenson, Jr., Director of Student Achievement and School Accountability within USDE approved PRDE's use of this data to determine Title I eligibility.⁶ Any student who is eligible for free or reduced-price lunches under the National School Lunch Act is deemed to be from a "low-income family" and eligible for SES.⁷ Because all of PRDE's students are eligible for the National School Lunch program, they are also all eligible for SES. Therefore, the documents provided demonstrate that PRDE served eligible students, such that there is no harm to the Federal interest for these expenditures.

Costs for Services Rendered

OIG found that PRDE paid \$1,839 in questioned costs for services not rendered (\$699 to RL during school year 2006-2007 and \$1,140 to AMAR during school year 2007-2008). OIG interviewed the parents of 27 of the 65 sampled students, and found that two of the students did not receive services in accordance with each provider's contractual obligations. OIG found that one student never attended SES sessions, but signed the attendance rosters, and that one student attended on six or seven occasions, but signed the attendance rosters as if she had received all the required contact hours.

PRDE recognizes the importance of proper supervision to ensure that SES was properly provided, especially given the large size and scope of its SES program. Therefore, it discussed these alleged incidents with USDE's OIG regional office in Puerto Rico, and has referred to the OIG any other reported allegations of false claims submitted for payment and other matters related to non-performance of contractual obligations by SES providers. Moreover, to protect the program's integrity, PRDE has implemented a biometric record invoicing system to track SES student attendance and to prevent any future false claims by its SES providers. PRDE hired AsisTEC to implement and administer the biometric record invoicing system.

⁵ See EX 3.

⁶ See EX 4.

⁷ See No Child Left Behind Act, Sec. 1707; Sec. 1116(e)(12).

The biometric record invoicing system requires that each SES provider signs students in and out by using a finger printing system. At the beginning and end of each tutoring session, each SES student must place his or her finger on the biometric meter to measure attendance. Each SES student's fingerprint data has been collected and stored electronically by PRDE, such that when a student places his or her finger on the meter, the system will only recognize eligible SES students.⁸ The biometric record invoicing system records both SES student attendance and the amount of time that the student was tutored by the applicable SES provider. In order to receive payment for services from PRDE, the SES provider must submit the biometric attendance record, and PRDE will pay the vendor its hourly rate based on the actual amount of time each SES student received tutoring services, as measured by the record. Approximately 25% to 30% of SES participants enrolled in current cycle are using this new system. It is expected that 100% of students participating in SES will use this new system for the next SES cycle.

Facilities Fees

OIG found that PRDE did not deduct a 5 percent fee established in its SES contracts with AMAR and RL from payments made to those contractors for the use of PRDE's facilities to provide SES. Specifically, OIG found that PRDE made overpayments during school year 2006-2007 in the amount of \$44,177 (\$21,952 to AMAR and \$22,225 to RL) without recouping the fee. Therefore, OIG recommended that the Assistant Secretary for Elementary and Secondary Education (OESE) require PRDE to recover \$44,177 from these contractors. As evidence of its findings, OIG points to six invoices submitted by AMAR and six invoices submitted by RL, none of which contains a 5 percent facilities fee.

PRDE appreciates OIG's attention to this matter. PRDE is in the process of reviewing invoices and expense reports of payments to AMAR, RL, and all other SES providers whose contracts require the provider to pay a facilities fee. To the extent that PRDE is owed facilities fees from its SES providers, it will recoup any monies in accordance with the terms of the applicable contract.

Contact Hours for Providers

OIG found that PRDE lacked controls to ensure that RL provided SES students with a minimum of 40 contact hours as required by the contract terms. OIG stated that 78 of the 433 students sampled did not receive the required minimum of 40 hours of SES.

PRDE recognizes the importance of proper controls and supervision to ensure that the requisite numbers of service hours are provided by its SES contractors, especially given the large size and scope of its SES program. However, PRDE also notes that the SES program is voluntary for students, and it cannot control the extent to which students attend SES sessions. Nonetheless, as

⁸ For a more thorough description of the biometric record invoicing system, see EX 5.

mentioned above, PRDE has implemented a biometric record invoicing system to track SES student attendance and the number of hours of service provided. The biometric system addresses this issue effectively, as it tracks the beginning and end of each SES tutoring session, such that PRDE can monitor the number of hours each student attends SES.

SES is a voluntary program for eligible PRDE students; students are not required to attend SES tutoring sessions. PRDE's contracts with SES providers for school year 2006-2007 required that vendors provide 40 hours of SES services to each eligible student. However, neither PRDE nor its SES providers can force eligible SES students to attend tutoring sessions. Therefore, in some cases, SES tutors were present, but not all of students who signed up for SES attended the sessions. Because SES providers adhered to their contractual obligations to make SES tutors available for the agreed upon times, PRDE did not penalize the providers for the lack of student attendance. Nonetheless, PRDE's biometric record system has been implemented to more accurately track the number of hours its SES contractors provide services to students. As noted above, in order to receive payment for services from PRDE, the SES provider now must submit a biometric attendance record for each student with any invoices. SES provider invoices are now produced by a third-party, AsisTEC, the vendor that assists PRDE in implementing and administering the system, such that PRDE has another, independent source verifying the number of hours of SES tutoring to each student, in addition to PRDE staff. PRDE will pay the vendor its hourly rate based upon the actual amount of time each SES student received tutoring services, as measured by the record, and verified by AsisTEC and PRDE staff.

SES Teacher Policy

OIG found that four teachers in the schools it sampled provided instruction during regular school hours, were contracted to provide SES, and provided those services to the same students during after-school hours. According to OIG, three of the teachers were contracted by RL and one by AMAR.

PRDE acknowledges that this practice violated PRDE's internal SES and Procedures Manual, Circular Letter 10-2006-2007, and clause twenty-six of both contracts, which establishes that teachers or librarians employed by PRDE that offered instruction in Spanish, English, or mathematics during regular school hours cannot offer SES to the same students. PRDE is currently strengthening its monitoring procedures and contract enforcement to ensure that SES providers do not provide SES services to students with the same instructor who provided Spanish, English, or mathematics instruction during regular school hours.

FINDING NO. 2 – Participation of SES Providers

OIG stated that PRDE did not ensure maximum participation of SES providers at its schools, which restricted the choice of parents of eligible school children to the selection of only a few providers, and, in some instances, to only one provider. OIG stated that this was a violation of

PRDE's SES Policy and Procedures Manual and Circular Letter 10-2006-2007, dated October 23, 2006, which established that:

- 1) School directors should coordinate orientation activities for the parents of eligible students with the companies and/or organizations that appeared on the approved list of providers; and
- 2) The selection of the provider will be exclusively the responsibility of the parent, mother, or guardian.

Specifically, OIG stated that during its site visits to twelve selected schools, it found that seven school directors did not grant parents full access to the list of approved SES providers for school year 2006-2007. OIG found that the seven school directors maintained an updated list of approved providers, but did not invite all the providers to orientation activities with parents of eligible school students to promote their services; only the providers that contacted the schools, either by telephone or school visits, were invited to participate in the orientation activities.

PRDE notes that OIG's sample size, twelve schools, is small, given the large number of schools in which students received SES, over 600, and that approximately 90,000 PRDE students received SES in 2006-2007, such that PRDE has achieved maximum enrollment in its SES program.⁹ PRDE also states that it does in fact ensure that, through a number of different media, parents of eligible SES students have access to as many SES providers as possible, as follows:

- School districts provide at least two open houses for parents to meet any eligible SES providers. In addition, parents are sent a letter explaining SES, the open house dates, and a full list of the addresses and telephone numbers of SES provider staff.¹⁰
- Each school provides brochures for the students to take home to parents, explaining SES, how to apply for SES, and providing contact information for PRDE who can assist with any questions or concerns.¹¹
- For schools required to provide SES, school principals invite parents to assemblies at the school with SES providers to discuss SES enrollment options.
- The back of the SES application form lists all of the eligible SES providers that parents can select.¹²

For these reasons, and especially because the SES application provides a full list of providers, the allegation that PRDE did not ensure maximum participation of SES providers at its schools and restricted the choice of parents of eligible school children is factually incorrect. Therefore, PRDE asks that this finding be withdrawn.

⁹ PRDE notes that only the parents of only 27 students of the 65 students sampled were contacted, a sample size of approximately .07 percent of the total number of the PRDE students receiving SES.

¹⁰ See EX 6 for an example of the materials.

¹¹ See EX 7.

¹² See EX 8.

II. FINDING NO. 3 – Title I Requirements in Individual Student Agreements

OIG stated that PRDE's individual student agreements, established as part of its registration process to enroll SES students, did not include all of the required elements for school years 2006-2007 and 2007-2008. PRDE agrees largely with this finding and is working to improve its form to include all of the required elements. However, PRDE does disagree with the following aspect of OIG's finding that the following element was lacking in PRDE's individual student agreements:

“[I]nformation on how the parents and teachers would be regularly informed of the students' progress.”

In fact, the agreement does require that the provider inform the parents and teacher of the SES student's progress after a certain number of hours of tutoring, agreed upon between the provider and parent, are performed.¹³

III. OTHER MATTERS

OIG found that PRDE did not adequately document the approval of a change to the proposal submitted by AMAR before awarding the contract to provide SES during school year 2006-2007. OIG stated that the application used to recertify contractors as SES providers, submitted and signed by AMAR's President on July 21, 2006, was evaluated and approved by PRDE based on a proposed rate of \$26.25 per hour for 41 hours of tutoring services offered per student, for a total of \$1,076.25 to be allocated per student. The contract was awarded at a rate of \$27.11 per hour, for a total of \$1,111.51 allocated per student. This resulted in a difference of \$35.26 (\$1,111.51 – \$1,076.25) in the total allocation per student for every 41 hours of tutoring services offered.

PRDE has provided documentation to support the increase in rate. AMAR sent a letter, addressed to the SES Coordinator, dated November 7, 2006, requesting the rate increase.¹⁴ In the letter, AMAR requested an increase in the rate from \$1,096 per student to \$1,111.51 per student (from \$26.25 per hour to \$27.11). PRDE approved the rate increase, which was within the allowable rate, in a memorandum from the former Secretary of PRDE, dated November 21,

¹³ See EX 9.

¹⁴ See EX 10.

2006.¹⁵ These documents demonstrate that PRDE adequately documented the rate change in accordance with the cost principles in OMB Circular A-87.

IV. CONCLUSION

In closing, PRDE respectfully disagrees with OIG's Draft Audit Report Finding No. 1 regarding (1) Eligibility of SES students, and (2) Contact Hours for SES Providers, as well as Finding No. 2 regarding Participation of SES Providers. PRDE respectfully requests that these findings be reconsidered and revised. PRDE agrees and shares the concerns that OIG raised in Draft Audit Report Finding No.1 regarding (1) SES Services Not Rendered, (2) Provider Facilities Fees Not Deducted and (3) PRDE's SES Teacher Policy, as well as, Finding No. 3 regarding PRDE's Individual Student Agreements for SES. PRDE appreciates the opportunity to comment and will continue to work to ensure that all SES providers follow PRDE's SES policies and fulfill all contractual obligations.

¹⁵ See EX 11.