

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE INSPECTOR GENERAL**

**AUDIT OF THE
OFFICE OF THE STATE SUPERINTENDENT
OF EDUCATION
NON-PUBLIC TUITION PROGRAM**



**CHARLES J. WILLOUGHBY
INSPECTOR GENERAL**

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Inspector General

Inspector General



August 28, 2012

Hosanna Mahaley
Director
Office of the State Superintendent of Education
810 First Street, N.E., 9th Floor
Washington, D.C. 20002

Dear Ms. Mahaley:

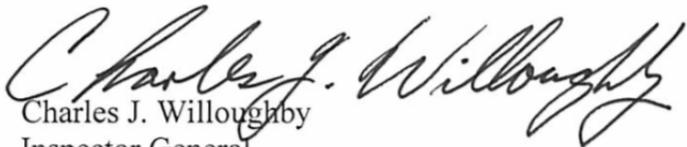
Enclosed is our final report summarizing the results of the Office of the Inspector General's (OIG) Audit of the Office of the State Superintendent of Education Non-Public Tuition Program (OIG No. 09-1-36MA).

As a result of our audit, we directed eight recommendations to the Office of the State Superintendent of Education (OSSE) for actions we consider necessary to correct identified deficiencies. We received a response to the draft audit report for OSSE on June 20, 2012. The full text of OSSE's response is included at Exhibit B.

We consider the actions taken by OSSE to be responsive to Recommendations 2, 4, 5, 6, 7, and 8. However, OSSE did not concur with Recommendation 1, and partially concurred with Recommendation 3. Accordingly, we request that OSSE reconsider its position taken on these two recommendations and provide a revised response to us within 60 days from the date of this final report.

We appreciate the cooperation and courtesies extended to our staff during this audit. If you have any questions, please contact me or Ronald W. King, Assistant Inspector General for Audits, at (202) 727-2540.

Sincerely,


Charles J. Willoughby
Inspector General

Enclosure

CJW/tda

cc: Mr. Allen Y. Lew, City Administrator

DISTRIBUTION:

The Honorable Vincent C. Gray, Mayor, District of Columbia
Mr. Allen Y. Lew, City Administrator, District of Columbia (via email)
Mr. Victor L. Hoskins, Deputy Mayor for Planning and Economic Development, District of Columbia
The Honorable Phil Mendelson, Chairman, Council of the District of Columbia (via email)
The Honorable Muriel Bowser, Chairperson, Committee on Government Operations, Council of the District of Columbia (via email)
The Honorable Phil Mendelson, Chairperson, Committee of the Whole
Mr. Brian Flowers, General Counsel to the Mayor (via email)
Mr. Christopher Murphy, Chief of Staff, Office of the Mayor (via email)
Ms. Janene Jackson, Director, Office of Policy and Legislative Affairs (via email)
Mr. Pedro Ribeiro, Director, Office of Communications, (via email)
Mr. Eric Goulet, Budget Director, Mayor's Office of Budget and Finance
Ms. Nyasha Smith, Secretary to the Council (1 copy and via email)
Mr. Irvin B. Nathan, Attorney General for the District of Columbia (via email)
Dr. Natwar M. Gandhi, Chief Financial Officer (1 copy and via email)
Mr. William DiVello, Executive Director, Office of Integrity and Oversight, Office of the Chief Financial Officer (via email)
Ms. Yolanda Branche, D.C. Auditor
Mr. Phillip Lattimore, Director and Chief Risk Officer, Office of Risk Management (via email)
Ms. Jeanette M. Franzel, Managing Director, FMA, GAO, Attention: Norma J. Samuel (via email)
The Honorable Eleanor Holmes Norton, D.C. Delegate, House of Representatives, Attention: Bradley Truding (via email)
The Honorable Darrell Issa, Chairman, House Committee on Oversight and Government Reform, Attention: Howie Denis (via email)
The Honorable Elijah Cummings, Ranking Member, House Committee on Oversight and Government Reform, Attention: Yvette Cravins (via email)
The Honorable Trey Gowdy, Chairman, House Subcommittee on Health Care, the District of Columbia, the Census and the National Archives, Attention: Anna Bartlett (via email)
The Honorable Danny Davis, Ranking Member, House Subcommittee on Health Care, the District of Columbia, the Census, and the National Archives, Attention: Yul Edwards (via email)
The Honorable Joseph Lieberman, Chairman, Senate Committee on Homeland Security and Governmental Affairs, Attention: Holly Idelson (via email)
The Honorable Susan Collins, Ranking Member, Senate Committee on Homeland Security and Governmental Affairs, Attention: Daniel Jenkins (via email)
The Honorable Daniel K. Akaka, Chairman, Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, Attention: Aaron Woolf (via email)

The Honorable Ron Johnson, Ranking Member, Senate Subcommittee on Oversight of
Government Management, the Federal Workforce, and the District of Columbia

The Honorable Harold Rogers, Chairman, House Committee on Appropriations, Attention:
Kaitlyn Eisner-Poor (via email)

The Honorable Norman D. Dicks, Ranking Member, House Committee on Appropriations,
Attention: Laura Hogshead (via email)

The Honorable Jo Ann Emerson, Chairman, House Subcommittee on Financial Services and
General Government, Attention: John Martens (via email)

The Honorable José E. Serrano, Ranking Member, House Subcommittee on Financial Services
and General Government, Attention: Laura Hogshead (via email)

The Honorable Daniel K. Inouye, Chairman, Senate Committee on Appropriations,
Attention: Charles Houy

The Honorable Thad Cochran, Ranking Member, Senate Committee on Appropriations

The Honorable Richard Durbin, Chairman, Senate Subcommittee on Financial Services and
General Government, Attention: Marianne Upton (via email)

The Honorable Jerry Moran, Ranking Member, Senate Subcommittee on Financial Services and
General Government, Attention: Dale Cabaniss (via email)

ACRONYMS

BITSSE	Billing and Invoice Tracking System for Special Education
CFSA	Child and Family Services Agency
COA	Certificate of Approval
DCMR	District of Columbia Municipal Regulations
DCPS	District of Columbia Public Schools
DMH	Department of Mental Health
DSE	Department of Specialized Education (OSSE/DSE)
FAPE	Free Appropriate Public Education
FY	Fiscal Year
IDEA	Individuals with Disabilities Education Act
IEP	Individual Education Plan
LEA	Local Education Agency
LRE	Least Restrictive Environment
NPPU	Non-Public Payment Unit
OCFO	Office of the Chief Financial Officer
OSSE	Office of State Superintendent of Education
SEA	State Education Agency
SEDS	Special Education Data System
SEO	State Education Office
SRO	Student Residency Office
SY	School Year

TABLE OF CONTENTS

EXECUTIVE DIGEST.....	i
SUMMARY OF RECOMMENDATIONS.....	ii
MANAGEMENT RESPONSES AND OIG COMMENTS.....	ii
INTRODUCTION.....	1
BACKGROUND.....	1
OBJECTIVES, SCOPE, AND METHODOLOGY.....	3
PRIOR REVIEWS.....	3
FINDINGS AND RECOMMENDATIONS.....	4
FINDING 1: IDENTIFICATION OF SPECIAL EDUCATION STUDENTS.....	4
FINDING 2: NON-PUBLIC PAYMENT DISPUTES PROCESS.....	9
FINDING 3: MONITORING CERTIFICATE OF APPROVAL PROCESS.....	14
EXHIBITS.....	20
EXHIBIT A: SUMMARY OF POTENTIAL BENEFITS RESULTING FROM AUDIT.....	20
EXHIBIT B: OSSE’S RESPONSE TO THE DRAFT REPORT.....	22

EXECUTIVE DIGEST

OVERVIEW

This report summarizes the results of the District of Columbia Office of the Inspector General's (OIG) Audit of the Office of State Superintendent of Education (OSSE) Non-Public Tuition Program (OIG No. 09-1-36MA). This was a planned audit included in our Fiscal Year (FY) 2009 Audit and Inspection Plan. Our audit objectives were to determine whether OSSE: (1) operated the non-public tuition program in an efficient, effective, and economical manner; (2) complied with applicable laws, regulations, polices, and procedures for making non-public tuition payments; and (3) implemented internal controls to safeguard against fraud, waste, and abuse.

CONCLUSIONS

This report contains three findings that detail the conditions found during our review. Our first finding concerns OSSE's inability to effectively and accurately account for special education students in the Non-Public Tuition Program. Specifically, we found that student data were reported incorrectly and student enrollment information was missing from OSSE's database. Additionally, we identified special education students in the Non-Public Tuition Program who lacked an Individualized Education Program (IEP), which documents a student disability and the services needed to achieve learning success, and is required for placement in the Non-Public Tuition Program. These conditions exist due to the lack of controls over the process of enrolling students in the Non-Public Tuition Program.

Our second finding revealed that OSSE did not adequately provide proper management and oversight of the dispute process. We found that OSSE did not maintain supporting documentation for disputes involving services provided to special education students. Further, OSSE's written policies and procedures did not include the role of the Special Master in the dispute process. The absence of effective and inclusive written policies and procedures governing operations increases the risk of inconsistent practices.

Our third finding addresses deficiencies in OSSE's monitoring operations over Certificate of Approval (COA) issuance. OSSE incorrectly reported non-public special education schools as having received valid COAs. OSSE's website listed non-public special education schools that lacked valid COAs, issued by OSSE, to officially operate as non-public special education schools and service special education students. Also, the OSSE monitoring tool used to conduct site visits failed to include a review of background checks and/or certifications of personnel working directly with special education students. As a result, OSSE allowed District students to attend non-public special education schools that lacked appropriate certification and failed to obtain assurance that school personnel were fit and qualified to work with these children. This condition jeopardizes the welfare of District students and wards with disabilities.

EXECUTIVE DIGEST

SUMMARY OF RECOMMENDATIONS

We directed eight recommendations to the Office of the State Superintendent of Education (OSSE) that we believe are necessary to correct the deficiencies noted in this report. The recommendations center, in part, on:

- Reconciling appropriate supporting documentation with DCPS' list of students in the Non-Public Tuition Program on an annual basis to accurately account for all students in the program.
- Completing IEPs for all students in the Non-Public Tuition Program before they are accepted into the program.
- Revising written policies and procedures to include key responsibilities of the Office of the Special Master in the non-public payment dispute process.
- Maintaining all supporting documentation related to the dispute process, which includes dispute letters sent to providers.
- Incorporating into the application review process background checks of personnel who work directly with special education students.
- Ensuring that all non-public special education schools servicing District residents possess valid COAs.

A summary of potential benefits resulting from this audit is included at Exhibit A.

MANAGEMENT RESPONSES AND OIG COMMENTS

We received a response to the draft audit report for OSSE on June 20, 2012. The full text of OSSE's response is included at Exhibit B. We consider the actions taken by OSSE to be responsive to Recommendations 2, 4, 5, 6, 7, and 8. However, OSSE did not concur with Recommendation 1, and partially concurred with Recommendation 3. Accordingly, we request that OSSE reconsider its position taken on these two recommendations and provide a revised response to us within 60 days from the date of this final report.

INTRODUCTION

BACKGROUND

The Office of the State Superintendent of Education (OSSE) is the independent State Education Agency (SEA) for the District of Columbia. Pursuant to the District of Columbia Public Education Reform Amendment Act of 2007 (D.C. Law 17-0009), OSSE officially began operations on June 12, 2007. OSSE is required by the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400 - 1419 (2004))¹ to ensure that all children with disabilities living in the District receive a Free Appropriate Public Education (FAPE)² in the Least Restrictive Environment (LRE),³ which includes special education and related services. The services provided to a student are based on a completed IEP at no cost to the student. OSSE is responsible for paying tuition and related service for students in the Non-Public Tuition Program.

OSSE's Non-Public Tuition Program provides tuition payments to non-public special education schools⁴ that provide services to DCPS students. Specifically, OSSE pays for: (1) private tuition, board, and services identified in a student's IEP; and (2) private tuition, board, and services identified in the IEPs for students who have been declared wards of the District by the Child and Family Services Agency (CFSA) and the Department of Mental Health (DMH).

Special Education non-public tuition covers several types of services, including day and residential tuition to private education organization; payment for related services at non-public facilities; education evaluations performed independently of DCPS; parental transportation reimbursement for certain expenses; and other costs related to special equipment and tutoring.

Assessment and Placement

OSSE's Special Education Division provides support for the assessment and placement of children with disabilities. OSSE ensures that IDEA requirements are met during the IEP process, as well as when making decisions regarding student placement. However, OSSE does not make

¹ The IDEA describes the types of disabilities covered by the law. Covered disabilities include mental retardation, hearing impairment, speech or language impairment, visual impairments, serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities.

² As codified in the U.S. Code, the IDEA states that a "free appropriate public education is available to all children with disabilities residing in the State between the ages 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school." 20 U.S.C.A. § 1412(a)(1)(A) (West, Westlaw through P.L. 112-28). Title 5-E DCMR § 3000.1 mirrors the IDEA, requiring the District to provide FAPE to all children with disabilities, ages 3 to 23, who are residents or wards of the District.

³ The IDEA mandates that to the maximum extent, all children with disabilities should be educated with their non-disabled peers in the least restrictive environment.

⁴ Non-Public Special Education Schools are privately owned and operated offering educational services to students with disabilities.

INTRODUCTION

the determination regarding the assessment of a disabled child's needs. This is the role of the IEP team from the Local Education Agency (LEA).⁵ The LEA is responsible for identifying students with disabilities, and maintaining records regarding all students enrolled in non-public schools.

In assessing a child's need for special services, the LEA must exhaust all possible remedies for providing services within a regular classroom setting before determining that the child's needs cannot be met in the regular classroom environment. Once all possible remedies have been exhausted and a LEA believes a child requires placement in a more restrictive environment, a child will receive an IEP. However, prior to an IEP team meeting, the LEA must document in the Special Education Data System (SEDS) the need for a more restrictive environment.

Invoice Responsibility

OSSE's Non-Public Payment Unit (NPPU) processes invoices for services provided to special education students, which includes: (1) day or residential non-public special education schools; (2) District wards with IEPs attending public school in surrounding counties; and (3) related services such as compensatory education and evaluations of students in non-public special education schools and public schools in surrounding counties. Conversely, the LEA is responsible for paying invoices for related services provided to students with disabilities enrolled in schools within its jurisdiction.

Special Education Data System (SEDS)

During our audit, we found that both OSSE and the Office of Student Residency in DCPS maintain data on special education students attending non-public schools. OSSE uses SEDS, a comprehensive data system designed to support high quality and seamless services to students with disabilities within the District. The data housed in SEDS are transmitted daily from the Student Tracking and Reporting System (STARS)⁶ into SEDS, which also contains data manually entered by the LEAs and DCPS. SEDS should be used by all LEAs to assist with tracking the delivery of special education services to students in the District. SEDS is maintained by a contractor under OSSE's oversight.

⁵ Local Education Agency (LEA) includes DCPS and independent public charter schools.

⁶ DCPS' STARS, the "Student Tracking and Reporting System," generates student report cards and transcripts, and it also contains other student data.

INTRODUCTION

OBJECTIVES, SCOPE, AND METHODOLOGY

Our audit objectives were to determine whether OSSE: (1) operated the non-public tuition program in an efficient, effective, and economical manner; (2) complied with applicable laws, regulations, policies, and procedures for making non-public tuition payments; and (3) implemented internal controls to safeguard against fraud, waste, and abuse. The scope of this audit covered transactions that occurred during fiscal year (FY) 2008 through FY 2009.

To accomplish our objectives, we conducted interviews with appropriate personnel. We met with OSSE's senior officials and other employees to gain an understanding of the process, policies, and procedures used to record student information. In addition, we contacted DCPS officials to determine their role in identifying students with special needs. We reviewed relevant financial and operational records to assess the adequacy of internal controls over: (1) identification of special education students in the Non-Public Tuition Program; (2) monitoring and issuance of COAs; and (3) the dispute process. We reviewed all applicable laws and regulations, policies, and procedures governing non-public tuition services. Further, we reviewed the Enrollment Census Report for DCPS and District public charter schools.

Our audit relied on computer-processed data as a basis for our findings and recommendations. We did not conduct tests of either the reliability of the data or controls over the computer-based system that produced the data. 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.

PRIOR REVIEWS

D.C. Code § 38-1804.02(d)(2) (Supp. 2011) requires an annual audit to evaluate the accuracy of the fall enrollment count for DCPS and D.C. public charter schools. OSSE is responsible for the annual audit, and contracts the audit engagement. The current contractor, Thompson, Cobb, Bazilio & Associates, PC (TCBA) conducted a census audit entitled, "District of Columbia Public Schools Enrollment Census," issued on October 9, 2009. TCBA's review discovered that there was a net difference between students reported in STARS and the number of students confirmed by non-public schools. According to the report, these differences resulted from a failure to timely update STARS with student data. Further, non-public schools did not timely or adequately notify DCPS and/or OSSE when the placement of a student was changed by other District agencies. The report also noted instances where students enrolled in private schools were not attending those schools.

FINDINGS AND RECOMMENDATIONS

FINDING 1: IDENTIFICATION OF SPECIAL EDUCATION STUDENTS
--

SYNOPSIS

OSSE did not effectively maintain current and accurate student information. Specifically, our review identified instances of conflicting data where student information was reported differently by OSSE and DCPS. There were also several instances of students missing from OSSE's database (SEDS), but reflected in DCPS' database (STARS). We believe these conditions occurred because OSSE and DCPS databases do not have the capability to interface with one another. Unreliable student information could result in untimely services to eligible special education students.

DISCUSSION

Students with disabilities are entitled to a free, appropriate public education (FAPE) according to District regulations. Specifically, 5-E DCMR § 3000.1 provide:

All local education agencies (LEA) in the District of Columbia shall ensure, pursuant to the Individuals with Disabilities Education Act (IDEA), that all children with disabilities, ages three to twenty-two, who are residents or wards of the District of Columbia, have available to them a free appropriate public education (FAPE) and that the rights of these children and their parents are protected.

Office of the State Superintendent of Education

OSSE has authority over all state special education functions in the District. OSSE provides the SEA function for payment of tuition and/or related services provided to special education students attending non-public special education schools. The OSSE Special Education Division is responsible for approving payment of invoices for non-public special education services.

OSSE has responsibility to ensure that all children with disabilities within the District receive a FAPE in the LRE. The IDEA states that FAPE includes both special education and related services, which must be provided to each child with a disability according to the child's IEP. OSSE's NPPU is the division within OSSE that performs the functions of receiving, reviewing, and approving invoices for payment of services rendered to special education students who attend non-public special education schools. For the school year (SY) 2008-2009, OSSE reported 3,341 special education students attending non-public special education schools.

FINDINGS AND RECOMMENDATIONS

District of Columbia Public Schools

DCPS acts as the LEA for the District, which includes DCPS and the public charter schools. The LEA is responsible for payment of tuition and/or related services of non-public providers servicing students enrolled in its jurisdiction.

We obtained a “Residency Report” from the DCPS Student Residency Office (SRO), to determine the number of special education students enrolled in the Non-Public Tuition Program for SY 2008-2009. The report listed 2,263 special education students.

Residency Regulations and Procedures

Title 5-A DCMR § A5000.1 states:

Public education in the District of Columbia includes the District of Columbia Public Schools system and all public charter schools. All students in such schools must have proof of residency in the District of Columbia or pay tuition. A determination of residency status shall be made annually for each student.

Annual Confirmation of District Residency. In order to receive a free education, a student’s District residency must be verified every year. Title 5-A DCMR § A5002.1 states:

The residency status of each student enrolled in a public school in the District of Columbia shall be verified annually at the school attended by the student no earlier than April 1 and no later than October 5 for the school year that begins on or after July 1 of each year.

OSSE and DCPS have the responsibility of enforcing and administering the rules and regulations for verifying and documenting the residency status of each student. Since July 2000, OSSE, formerly the State Education Office (SEO), assumed legal responsibility for establishing and enforcing rules for documenting and verifying residency for DCPS and District public charter school students. However, OSSE relies on DCPS and District public charter schools to administer and enforce the rules.

According to the Student Residency Office (SRO), several steps are involved in verifying the residency status of students with disabilities. First, if a special education student desires placement at a non-public school, rather than a DCPS or District public charter school, the parents will have to obtain authorization from DCPS for the student’s placement in or transfer to a non-public special education school. Then, DCPS, District agencies (such as CFSA), or the

FINDINGS AND RECOMMENDATIONS

courts can grant authorization for the student's enrollment in a non-public special education school. This process includes an assessment of the student, to determine the type of services needed to assist the student in achieving success.

Inconsistency of Data

For our review, DCPS and OSSE each provided documentation for students enrolled in the Non-public Special Education Program during SY 2008-2009. The SRO provided a report of the special education students enrolled through DCPS, and identified a total of 2,263 students enrolled in 92 participating non-public special education schools. OSSE's report listed 3,341 students in the Non-Public Tuition Program and 148 participating non-public special education schools, which is 1,078 more students than DCPS reported for the same time period.

We compared OSSE's and DCPS' reports to verify the authenticity of student data listed in each report. The attributes used to verify student data were: student name, identification number, and school name and code. We found that 194 special education students listed in DCPS' report were not listed in OSSE's report.

Next, we conducted tests to determine the accuracy of each report and found 109 special education students who were listed on both the OSSE and DCPS reports. However, the reports had the following discrepancy:

- The OSSE report reflected that 103 of the 109 students listed were enrolled in particular schools, but the DCPS report reflected different enrollment for the same 103 students.

Our review determined a lack of cohesiveness between OSSE and DCPS in the tracking and reporting of special education students enrolled in the Non-Public Tuition Program. As a result, the agencies had difficulty maintaining accurate and complete information necessary to manage the program and measure its effectiveness. Without these internal controls in place, the District cannot effectively and efficiently manage resources for the Non-Public Tuition Program. When the NPPU cannot definitively determine the number of special education students enrolled in the Non-Public Tuition Program, it cannot ensure that it pays tuition only for those students eligible to receive special education services.

In view of these deficiencies, OSSE and DCPS should work collaboratively to implement a cohesive information management system that will compile and maintain accurate special education student data for the District.

FINDINGS AND RECOMMENDATIONS

Individualized Education Program Verification

DCPS is responsible for ensuring that individuals identified as special education students have received IEPs. We statistically sampled 371 special education students in the Non-Public Tuition Program to determine if these students received IEPs documenting their disabilities. If students do not have completed IEPs, OSSE is unable to identify and verify whether appropriate services have been rendered to the students, and to make proper payments for such services. Our review revealed that:

- 253 students had IEPs;
- 64 students had expired IEPs; and
- 54 students did not have completed IEPs, even though 46 of these students were actively enrolled in the Non-Public Tuition Program (1 student was not found in SEDS).

According to OSSE's policies and procedures, the LEA must complete an initial evaluation, including the eligibility determination, within 120 days of receiving a written referral regarding a child suspected of having a disability. OSSE policies also state that an IEP is needed before a student is placed in the Non-Public Tuition Program. Because OSSE placed students in the Non-Public Tuition Program without an IEP outlining their disability, these students may not have received the appropriate tutelage to assist with their disability, which could hinder students' academic achievement.

RECOMMENDATIONS

We recommend that the State Superintendent of Education, OSSE:

1. Annually reconcile OSSE's student data with DCPS' list of students enrolled in the Non-Public Tuition Program to improve the accuracy and completeness of data.

OSSE RESPONSE

OSSE disagreed with this recommendation and indicated that they currently have an accurate system in place. Also, management indicated that OSSE is engaged in efforts to ensure data accuracy, which included a current audit of SEDS.

OIG COMMENT

OSSE response did not meet the intent of the recommendation. We agree that there is a system in place that OSSE and DCPS use SEDS in identifying and tracking students in the Non-Public Tuition Program. As stated in our report, we relied on computer-

FINDINGS AND RECOMMENDATIONS

processed data as a basis for our findings and recommendations. Also, we did not conduct tests of either the reliability of the data or controls over the computer-based system that produced the data. However, we conducted tests of the reports that DCPS and OSSE provided, which identified students enrolled in the Non-Public Tuition Program. Our comparison of both reports revealed inconsistency in the number of students enrolled, as well as, the particular school at which the student was enrolled. Accordingly, we request that OSSE revise its response to this recommendation.

2. Ensure that all students have IEPs completed before enrolling them in the Non-Public Tuition Programs, as required by OSSE policies.

OSSE RESPONSE

OSSE concurred with the recommendation and currently has systems in place to ensure proper recording and reporting of IEPs for all District of Columbia students enrolled in the Non-Public Tuition Program.

OIG COMMENT

We consider OSSE's actions to be responsive to the recommendation.

3. Ensure that the NPPU has an accurate listing of students enrolled in the Non-Public Tuition Program and has verified that each student has a completed IEP before approving invoices for payment of non-public school tuition.

OSSE RESPONSE

OSSE's response partially addresses the intent of the recommendation. OSSE stated that the verification process of student IEPs in SEDS is necessary before approving invoices for payment, which has been the practice of the NPU since January 2009, but does not believe that any further action is necessary.

OIG COMMENT

OSSE's response partially meets the intent of the recommendation. However, the intent of the recommendation was to ensure that OSSE verifies the IEP status of each student before invoices are approved for payment. Our review found students with expired IEPs, and students who did not have completed IEPs, but were enrolled in the Non-Public Tuition Program. Accordingly, we request that OSSE revise its response to this recommendation relative to its processes of verifying students' IEPs status before authorizing payment of invoices.

FINDINGS AND RECOMMENDATIONS

FINDING 2: NON-PUBLIC PAYMENT DISPUTE PROCESS
--

SYNOPSIS

During SY 2009, OSSE paid \$165.9 million for services provided to students enrolled in the Non-Public Tuition Program. OSSE did not properly maintain dispute records as required. We found that OSSE did not maintain complete dispute records. We found instances in which initial and final dispute letters were missing from the dispute file. This occurred because of inadequate management oversight of the process. As a result, OSSE cannot support decisions and measure the effectiveness of its dispute process without complete and accurate records.

Also, OSSE's written policies and procedures governing the dispute process excluded the role of the Special Master in the dispute process. According to *Petties v. District of Columbia*, Civ. No. 95-0148 (D.D.C. Aug. 5, 2009), the Special Master's role is an integral part of the dispute process. The Special Master serves as a mediator between OSSE and the non-public school when the parties cannot agree on the payment of services rendered to students. Therefore, if agreement regarding the disputed services is not remotely obtainable, the Special Master will review the disputed services and make a final determination whether OSSE will pay for the services at issue. Also, due to the serious nature of potential lawsuits, OSSE needs to include the role of the Special Master in its written policies and procedures to assure plaintiffs, courts, and city officials that the necessary steps are taken to improve the dispute process. Failure to document the Special Master's role in the dispute process hinders OSSE's ability to demonstrate compliance with the *Petties* court order.

DISCUSSION

OSSE's NPPU has authority to either approve or disapprove invoices. A dispute occurs when OSSE disagrees with charges listed on invoices submitted by providers. According to OSSE, if charges are disputed, NPPU tries to resolve the issue(s) as quickly as possible through constant communication with the provider and/or requesting additional documentation. If that does not resolve the problem, OSSE sends a dispute letter documenting the disputed services to the provider.

According to OSSE, the Billing and Invoice Tracking System for Special Education (BITSSE) was developed in January 2009 to record and manage invoice payments for special education services provided to District students.

FINDINGS AND RECOMMENDATIONS

Invoice and Dispute Process

Providers submit invoices for payment to the Office of the Chief Financial Officer (OCFO) by the 5th and 15th of each month. The invoices are submitted either by mail (regular or express) or hand-delivery. Once received, invoices are date-stamped and entered into a tracking log by OCFO clerical staff. OCFO scans the invoices into BITSSE. An electronic notification is sent to OSSE to verify the validity of the services invoiced. OSSE can dispute any charge submitted on an invoice and/or the supporting documentation referencing the services provided. A provider's invoice can bill for multiple services and students and OSSE may approve or disapprove all or some of the services listed.

An NPPU supervisor prepares and maintains a log that tracks the status of all ongoing disputes. NPPU indicated that its goal is to resolve every dispute effectively and expeditiously. Our review of the OSSE dispute log found that it contained 44 disputes, which were listed as either ongoing or resolved. The dispute dates ranged from January 2009 to July 2010. We identified duplication of disputes, and were able to determine that of the 44 most recent and current disputed cases, 37 were resolved, while only 7 remained unresolved. The dollar amount for the 44 disputes totaled \$191,957. Unresolved disputes totaled \$13,155. OSSE has paid only \$9,130 of the \$191,957 amount billed, because providers failed to respond to the disputed charges in the appropriate timeframe.

In the event there is a dispute with an invoice, OSSE sends the provider a dispute letter. If the provider does not respond within 15 business days, the issue is considered resolved and OSSE's payment (if any) is understood to be the provider's acceptance as payment in full. If the provider responds to the dispute letter via written objection, OSSE will consider the response, and also permit the provider to submit additional documentation to help resolve the case.

If OSSE continues to dispute the charges after receiving the provider's written objection and documentation, OSSE has 10 business days within which to reject the claim, in writing, which serves as the final administrative decision on the disputed invoice. OSSE's written rejection also must include notice of the provider's right to request a hearing before the Special Master. If the provider requests a hearing before the Special Master, the matter is resolved through arbitration-type proceedings. Otherwise, OSSE's written rejection resolves the issue.

Role of the Special Master

Pursuant to the *Petties* court order, the Office of the Special Master's role is to provide final resolution of disputed charges. If OSSE and the provider are unable to reach an agreement on disputed charges, the provider may file a request with the Office of the Special Master for a proceeding to review the facts and provide a final resolution.

FINDINGS AND RECOMMENDATIONS

However, we found that OSSE’s policies and procedures governing the payment of invoices for special education service providers did not provide written policies or procedures on the role of the Special Master in the dispute process. OSSE’s officials showed a general disregard or lack of concern for revising office policies and procedures to include the Special Master’s role in the dispute process. Failure to establish written procedures to cover the Special Master role in the dispute process may hinder OSSE’s ability to comply with the *Petties* court order.

File Review

Title 1 DCMR § 1502.1 states that District agency “heads shall establish controls over the creation of records to ensure that adequate and proper records are made and preserved in the District government.” Additionally, 1 DCMR § 1502.4 provides that agencies shall document directives of office programs, policies, and procedures. Further, 1 DCMR § 1503.1 requires District agencies to establish controls over the maintenance and use of records. We found that OSSE did not have adequate written office policies and procedures outlining processes over file maintenance of disputes. Management is responsible for documenting and informing staff of office procedures which would provide assurance of effective controls over office operations, as well as, accountability of performance by staff. As a result of inadequate office policies and procedures, OSSE was not in compliance with District laws and regulations on preserving records having not maintained adequate supporting documentation of disputes.

OSSE maintained ongoing dispute files that lacked adequate supporting documentation regarding final case resolution. We found that 30 of the 44 files reviewed had a “dispute letter” informing the provider of the disputed services. The remaining 14 files did not. In addition, 13 of the 30 files lacked supporting documentation of final resolution. We found discrepancies between OSSE’s dispute log and dispute files. We noted that OSSE’s dispute log identified seven disputes as unresolved; however, our file review identified an additional six disputes for which there was a lack of supporting documentation indicating final resolution. Therefore, we consider these 6 disputes to be unresolved as well. Based on our review, we were unable to determine whether OSSE paid the disputed services invoiced. Table 2 below summarizes the results of our review.

Table 2. Review of OSSE Payment Dispute Files

OSSE’s Dispute Log Total	Dispute Letters Not in Files	Dispute Letters in Files	Final Decision Letters in Files	Final Decision Letters Not in Files
44	14	30	17	13

FINDINGS AND RECOMMENDATIONS

RECOMMENDATIONS

We recommend that the State Superintendent of Education, OSSE:

4. Develop written policies and procedures outlining the key responsibilities of the Office of the Special Master in the NPPU dispute process.

OSSE RESPONSE

Management indicated that OSSE has proposed regulations that would replace the role of the Special Master with a system utilizing the District Office of Administrative Hearings.

OIG COMMENT

We consider OSSE's comments and actions taken to be responsive and meet the intent of the recommendation.

5. Revise written policies and procedures to include the processes for the preparation and retention of adequate supporting documentation for the NPPU dispute process.

OSSE RESPONSE

OSSE believes that it has adequate procedures in place and indicated in its response that it will conduct a thorough review to ensure the supporting documentation is readily available.

OIG COMMENT

We consider OSSE's comments to be responsive to the recommendation.

6. Implement additional procedures in the NPPU payment process to ensure that providers are properly certified by OSSE to service special education students prior to approving invoices for payment.

OSSE RESPONSE

OSSE noted in its response that D.C. law permits it to place students in non-public schools via court order. However, OSSE indicated that immediate action has been taken in implementing new office policy and procedures that will ensure payments are made only to approved schools sanctioned by OSSE.

FINDINGS AND RECOMMENDATIONS

OIG COMMENT

OSSE's actions taken are responsive and meet the intent of the recommendation.

FINDINGS AND RECOMMENDATIONS

FINDING 3: MONITORING CERTIFICATE OF APPROVAL PROCESS

SYNOPSIS

Our audit disclosed a weakness in OSSE's monitoring operations. OSSE's Non-Public Monitoring Unit is responsible for issuing COAs to non-public special education schools and conducting school site visits. We found that OSSE incorrectly reported non-public schools' certification status to service special education students. The OSSE website listed non-public schools that did not have valid COAs, which are required to provide services to special education students, as active and participating providers servicing District special education students. As a result, OSSE allowed District students to attend non-public schools that lacked appropriate authority and certification to service these students. This condition increases the risk that District students or wards with disabilities will not receive appropriate educational services specific to their individual disabilities.

DISCUSSION

D.C. Code §§ 38-2561.01 - .16 (Supp. 2011) and 5-A DCMR § 2800.2 authorize OSSE to issue COAs to special education providers. The monitoring function was transferred from DCPS to OSSE in June 2007. The Non-Public Monitoring Unit's responsibilities include issuing COAs, monitoring non-public schools that provide services to District special education students, and conducting site visits to ensure that the schools adhere to applicable District and federal laws and regulations. The OSSE website outlines the COA process entities must follow in order to serve as a non-public special education school for District students.

Certificate of Approval

The OSSE website lists the providers of "day" and "residential"⁷ non-public special education schools.⁸ We conducted tests to determine whether providers that obtained COAs were listed on OSSE's website as active and participating providers servicing District special education

⁷ D.C. Code § 38-2561.01(11) states "residential child care facility" is a program that provides care for children 24 hours a day with a structured set of services and activities designed to achieve objectives related to the needs of the children served.

⁸ D.C. Code § 38-2561.01(7)(A) states "non public special education school or program" means a privately owned or operated preschool, school, education organization and/or programs no matter how titled, that maintains or conducts classes for the purpose of offering instruction, for a consideration, profit, or tuition to students with disabilities.

FINDINGS AND RECOMMENDATIONS

students. In addition, we reviewed OSSE's files and determined that the agency issued 71 COAs to non-public special education day schools and 45 COAs to non-public special education residential schools.

Non-Public Day Special Education Schools

We verified that 60 of the 71 (85 percent) non-public day schools that received COAs were listed on the OSSE website. We also verified that 24 of 84 (29 percent) non-public special education day schools listed on the website did not have valid COAs.

Non-Public Residential Special Education Schools

Our review revealed that that only 22 of the 45 (49 percent) non-public residential special education schools with valid COAs were listed on the OSSE website. Further review indicated that 7 of 29 (24 percent) non-public special education residential schools listed on the website did not possess valid COAs.

Our review also revealed that 31 non-public institutions listed on OSSE's website did not possess a COA, but provided services to special education students. According to OSSE, these schools did not apply for COAs and, therefore, should not have been listed on the website as active and participating non-public schools servicing District special education students. OSSE's website should not provide misleading or confusing information to individuals who rely on it to make an informed decision about an appropriate school. Allowing students with disabilities to attend schools that are not properly certified to provide special education services increases the risk that these students will not receive appropriate educational services specific to their individual needs. Monitoring OSSE's website for accuracy will improve the reliability of special education school information to permit informed decision-making.

Tables 3 and 4 on the following pages list the 31 day and residential non-public schools that lacked valid COAs to provide services to the District's special education students.⁹

⁹ Our audit scope did not include determining whether attending students received appropriate services as reflected in their IEPs.

FINDINGS AND RECOMMENDATIONS

Table 3. Non-Public Special Education Day Schools Without COAs

Non-Public Special Education Day School	Certificate of Approval	Number of Enrolled Students
Academy for Ideal Education-Upper	No	10
Adult Curriculum Education Services	No	Unknown ¹⁰
Children’s Guild Anne Arundel	No	51
Dayspring Academy	No	Unknown
UCP Delrey School	No	Unknown
The Harbour School at Annapolis	No	13
The Harbour School at Baltimore	No	9
High Road School of Southern Maryland	No	8
High Road Upper School of PG County (Beltsville)	No	40
The Kellar School of Inova Kellar Center	No	5
Kennedy Krieger Schools-Montgomery County Campus	No	5
Leary School Jobsite, Fairfax County	No	22
National Children’s Center-NW	No	35
New Beginnings Vocational Prog. LLC	No	32
Oak Valley Center	No	6
Partners with Parent Early Learning Center	No	Unknown
Pathways School-Hyattsville	No	4
The Ridge School of Anne Arundel County	No	Unknown
The Ridge School of Montgomery County	No	7
Shorehaven School	No	Unknown
St. John’s Community Services-Anacostia SHS	No	12
St. John’s Community Services-Payne Elementary	No	10
The Village Academy of Washington, DC	No	41
Youth in Transition School	No	25

¹⁰ Unknown” in Tables 3 and 4 indicates schools that were not listed on OSSE’s report of current students enrolled in non-public special education schools.

FINDINGS AND RECOMMENDATIONS

Table 4. Non-Public Special Education Residential Schools Without COAs

Non-Public Special Education Residential School	Certificate of Approval	Number of Enrolled Students
Coastal Harbor Treatment Center	No	17
Devereux Georgia Treatment Center	No	11
Grafton School-Elm Street Campus	No	Unknown
Hallmark Youthcare	No	4
High Frontier Inc.	No	1
New Hope Carolinas	No	Unknown
Point Pleasant Pediatric Special Care	No	Unknown

Monitoring

OSSE’s Non-Public Monitoring Unit receives, reviews, and approves COA applications. The COA application is a detailed document requesting that applicants describe the school’s programs; accreditation; certification and licensing; physical facility; special education and related services provided by professional/paraprofessional staff; and staff qualifications. The application also requires that the applicant provide a statement of financial responsibility. According to OSSE, the Non-Public Monitoring Unit performed site visits of non-public residential schools in 2009, and site visits of non-public day schools in 2010.

Monitoring Tool

OSSE’s Non-Public Monitoring Unit uses a monitoring tool to conduct site visits of non-public schools. The monitoring tool was developed as a group effort to include the entire Monitoring Division, which includes the Non-Public Monitoring Unit, LEA Monitoring Unit, and the Part B & C Monitoring Unit.

OSSE’s monitoring tool, which consists of questions pertaining to non-public school operations and services provided to students, was approved by OSSE’s Director of the Monitoring Division, Deputy Director of Special Education Division, Chief of Staff, and Legal Counsel. The site visit includes reviewing vendor files and interviewing staff and students. Non-Public Monitoring Unit staff conduct the site visits. However, on occasion, circumstances require that OSSE staff external to the Monitoring Unit conduct site visits because some schools have a larger student population than others.

Our review revealed that OSSE neglected to implement measures for reviewing non-public school employees’ qualifications. In addition, the monitoring tool, along with the COA application, does not ensure that background checks are performed on non-public school employees who deal directly with special education students. We noted that DCPS requires

FINDINGS AND RECOMMENDATIONS

newly hired teachers to submit to background checks, as well as obtain proper certifications to teach in the District of Columbia. Further, DCPS verifies teachers' certifications annually. OSSE should institute a process to ensure that non-public special education schools conduct background checks of employees working directly with District students before approving COA applications. Risks associated with hiring unqualified personnel to work with special education students include: (1) students not obtaining a quality education; (2) the possibility of losing federal funding; and (3) the District government's exposure to liability for employing unqualified personnel to educate children with special needs.

Further, the COA application requests that potential providers submit proof of proper licensure of professional staff and their qualifications. OSSE reviews provider licensure every 3 years, when the provider reapplies for a COA. However, if a non-public institution's license is revoked during the 3-year period, OSSE will not be aware of the revocation until the non-public institution reapplies for a COA. Therefore, OSSE lacks adequate safeguards to ensure that special education students are serviced by properly qualified and licensed professional staff. This condition increases the risk that these students will not receive appropriate educational services commensurate with their special needs.

Review of NPPU Billing Report

The NPPU maintains a billing report of providers servicing special education students separately from a list maintained by OSSE's Monitoring Division, which issues COAs. The billing report we reviewed listed 240 providers that were paid for special education services, but did not include the type of services provided to the students. The payees included individuals, companies providing related services, and non-public schools. After identifying the providers that received payment for services rendered to special education students, we conducted tests to determine whether proper controls were established to ensure that proper certification for these providers was in place.

According to OSSE Monitoring Division officials, providers are required to obtain certification before providing services to special education students. Therefore, the only participants listed on OSSE's website should be those providers that have obtained the appropriate certification. We found that 38 of the 240 providers listed on the billing report had valid COAs. The remaining 202 providers were not properly certified by OSSE to provide services to special education students. In addition, we identified that some of the 202 providers were contractors with non-public schools. Non-public special education schools often contract for a variety of services to assist special education students.

FINDINGS AND RECOMMENDATIONS

OSSE does not require these contractors to obtain a COA because the non-public special education schools acquire the COA. However, we believe that OSSE should implement a review process for these contractors in order to assess their qualifications and ensure their ability to provide adequate and sufficient services as outlined in the IDEA.

We attribute these conditions to inadequate management controls over the OSSE certification and monitoring processes. Strengthening such controls will help ensure that District funds are not disbursed to providers not properly certified by OSSE to service students with disabilities.

RECOMMENDATIONS

We recommend that the State Superintendent of Education, OSSE:

7. Implement additional procedures in the application review process to incorporate background checks of personnel that work directly with special education students.

OSSE RESPONSE

OSSE agreed with the recommendation and will require schools to provide copies of updated background checks as part of each onsite monitoring visit, starting in fall 2012 school year.

OIG COMMENT

Action taken by OSSE is responsive and meets the intent of the recommendation.

8. Ensure that all non-public special education schools servicing District students possess proper and current COAs.

OSSE RESPONSE

OSSE agreed with recommendation and indicated in its response that it will continue its application and monitoring program to ensure that schools possess proper and current COAs.

OIG COMMENT

We consider OSSE's comments and actions taken to be responsive and meet the intent of the recommendation.

**EXHIBIT A. SUMMARY OF POTENTIAL BENEFITS
RESULTING FROM AUDIT**

Recommendation	Description of Benefit	Amount and Type of Benefit	Agency Reported Estimated Completion Date	Status¹¹
1	Compliance and Internal Control. Ensures accurate and complete data related to special education students in the Non-Public Tuition Program.	Non-Monetary	TBD	Unresolved
2	Internal Control. Ensures that students have completed IEPs before they are placed in the Non-Public Tuition Program.	Non-Monetary	TBD	Unresolved
3	Compliance and Internal Control. Ensures that each student enrolled in the special education program is properly vetted to receive the proper education to assist with their disability.	Non-Monetary	TBD	Open
4	Compliance and Internal Control. Establishes policies and procedures outlining the Office of the Special Master's responsibilities in the Non-Public Tuition Program dispute process.	Non-Monetary	TBD	Closed

¹¹ This column provides the status of a recommendation as of the report date. For final reports, “**Open**” means management and the OIG are in agreement on the action to be taken, but action is not complete. “**Closed**” means management has advised that the action necessary to correct the condition is complete. If a completion date was not provided, the date of management’s response is used. “**Unresolved**” means that management has neither agreed to take the recommended action nor proposed satisfactory alternative actions to correct the condition.

**EXHIBIT A. SUMMARY OF POTENTIAL BENEFITS
RESULTING FROM AUDIT**

Recommendation	Description of Benefit	Amount and Type of Benefit	Agency Reported Estimated Completion Date	Status¹²
5	Compliance and Internal Control. Ensures that all essential records are properly and adequately maintained to support financial transactions.	Non-Monetary	TBD	Closed
6	Compliance and Internal Control. Establishes adequate controls to ensure that providers receiving payment for invoices submitted have obtained proper certification before payment is made.	Non-Monetary	TBD	Closed
7	Internal Control. Ensures that background checks are performed on personnel that work closely with students in the Non-Public Tuition Program.	Non-Monetary	TBD	Closed
8	Internal Control. Ensures that OSSE providers possess the proper certification to service special education students.	Non-Monetary	TBD	Closed

¹² This column provides the status of a recommendation as of the report date. For final reports, “Open” means management and the OIG are in agreement on the action to be taken, but action is not complete. “Closed” means management has advised that the action necessary to correct the condition is complete. If a completion date was not provided, the date of management’s response is used. “Unresolved” means that management has neither agreed to take the recommended action nor proposed satisfactory alternative actions to correct the condition.

EXHIBIT B. OSSE'S RESPONSE TO THE DRAFT REPORT



Office of the
State Superintendent of Education

June 20, 2012

Charles J. Willoughby
Inspector General
Government of the District of Columbia
Office of the Inspector General
717 14th Street, N.W.
Washington, D.C. 20005

Re: Audit of the Office of the State Superintendent of Education Non-Public Tuition Program, OIG No. 09-1-36MA

Dear Mr. Willoughby:

We appreciate the opportunity to review the draft report dated May 3, 2012, summarizing the results of the Office of the Inspector General's ("OIG") Audit of the Office of the State Superintendent of Education ("OSSE") Non-Public Tuition Payment Program often referred to as the Nonpublic Payment Unit (NPU). We understand this report is part of the OIG's Fiscal Year 2009 Audit and Inspection Program, which occurred shortly after OSSE "stood up" the NPU in January 2009. In this regard, given that the NPU had been functioning for less than a year at the time this review began, policies and procedures have often been refined or new policies introduced since the review was conducted. We hope the following information further clarifies issues reviewed by OIG during this Audit and NPU as it functions today. We are available to discuss this response at your convenience.

I. Response to OIG Audit Findings

OSSE wishes to clarify several statements in the draft report that bear on OIG's audit findings. In summary:

Under District of Columbia law, payment of tuition for students with disabilities placed in non-public schools is a state level expense. D.C. Official Code §38-2907. OSSE's Non-Public Payment Unit ("NPU") within the Division of Specialized Education ("DSE") does not oversee an educational tuition program, as the title and various other sections of the audit report suggest (*see e.g.*, recommendation number 2 regarding the enrollment of students by OSSE in the Non-Public Tuition Program), but rather the NPU manages the payment of invoices, including invoice verification, from non-public special education schools serving District of Columbia children.

Students with disabilities may be placed in a non-public special education school by a local educational agency (LEA) or by the order of an administrative hearing officer or court of competent jurisdiction. The draft report does not recognize that in addition to the District of

810 First Street, NE, 9th floor, Washington, DC 20002
Phone: 202.727.6436 • Fax: 202.727.2019 • www.osse.dc.gov

EXHIBIT B. OSSE'S RESPONSE TO THE DRAFT REPORT

Columbia Public Schools (DCPS) as an LEA, a District of Columbia public charter school LEA may also place students with disabilities into non-public schools. Accordingly, DCPS is one of fifty-four (54) LEAs in the District. Public charter schools, however, may elect DCPS to serve as the school's LEA for purposes of special education and in such cases the schools are informally referred to as "District charters." D.C. Official Code §38-1802.10(c). For charter schools that make this election, DCPS serves as the LEA responsible for meeting the requirements of the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §1400 *et seq.*, including but not limited to performing evaluations and determining the eligibility of a student for services under the IDEA and convening Individualized Educational Program ("IEP") Team meetings to determine a child's services and educational placement. The remaining public charter schools that do not make this election are informally referred to as "independent charter LEAs" with the same responsibilities as DCPS for compliance with the IDEA. As such, independent charter LEAs may place students with disabilities into a non-public school just as DCPS does. Under these circumstances, the draft report should define "LEA" as "DCPS and independent charter LEAs" (footnote 5 and page 5).

The draft report notes that OSSE uses the Special Education Data System ("SEDS") while DCPS uses STARS. This is true, but needs further clarification. OSSE established and maintains SEDS as the single system of record for tracking a child's referral and progress through the special education process. SEDS includes all information about assessment, eligibility determination, required supports and services and the site of special education services. Since December 2009, OSSE has mandated that DCPS and all public charter schools must use SEDS. Certain student demographic information in SEDS (e.g., the student's name, date of birth, address, student identification number) is derived from data feeds from the Student Tracking and Reporting System (STARS), the DCPS student enrollment system, as well as ProActive (formerly OLAMS), which is the student enrollment system for the District's public charter schools maintained by the Public Charter School Board.

In addition, the draft report does not fully describe the process by which a student may be placed in a non-public special education school. In Finding 1 regarding the Identification of Special Education Students, the report states that for "a student who desires placement at a non-public school, rather than a DCPS or District public charter school, the parents will have to obtain authorization from DCPS for the student's placement in or transfer to a non-public special education school. Then, DCPS, District agencies (such as CFSA), or the courts can grant authorization for the student's enrollment in a non-public special education school."

"Placement" is a term used in the IDEA to denote the educational environment in which a child with a disability receives services (e.g., general education, separate classroom, separate schools, etc.). 34 C.F.R. §300.115. Before an LEA makes a final decision to place a child in a non-public school, the LEA must follow OSSE's Policies and Procedures for Placement Review, first implemented in October 2008, which requires the LEA to submit a justification for removal statement to OSSE, which OSSE will review along with student records provided by the LEA and make a recommendation in regard to the placement. District Charters (i.e., public charter schools that have elected DCPS to serve as their LEA for special education purposes) may also appeal to DCPS for assistance in regard to the placement. It is the responsibility of the IEP Team to make decisions regarding a student's placement. OSSE, in the ordinary course, does

EXHIBIT B. OSSE'S RESPONSE TO THE DRAFT REPORT

not determine a child's placement.¹ Parents who are not satisfied with the IEP Team's decision may file an administrative due process complaint. A hearing officer may review and make a determination in regard to the student's placement, which could be a placement into a non-public school. District of Columbia students are not "transferred" into a non-public school but remain enrolled in the sending LEA although the student will attend the non-public school.

Finding 1: Identification of Special Education Students

Discrepancy Between SEDS and DCPS Residency Report

In this finding, OIG concludes that OSSE did not effectively maintain current and accurate student information. Specifically, the draft audit report states that for school year 2008-2009, OSSE reported 3,341 special education students attending non-public special education schools whereas a Residency Report from the DCPS Student Residency Office listed 2,268 special education students. Based on this observation, OIG identified a concern that eligible students may not be receiving timely services. (Draft report p. 4.)

OSSE maintains SEDS as the single official database of record for the provision of Part B services in the District. OSSE worked with all LEAs to ensure input of all student information into SEDS during the 2010-2011 school year, and OSSE has verified that all LEAs are actively using the system. Accordingly, SEDS is the official source of student data for children with IEPs, including but not limited to data regarding children placed in non-public special education schools. Data from the DCPS Student Residency Office, while corollary, is not the definitive source of information on District students who receive special education services. Moreover, information from the DCPS Student Residency Office does not include students placed into non-public schools by independent charter LEAs, which accounts, at least in part, for the discrepancy with SEDS.

OSSE has taken steps to ensure the accuracy of student data in SEDS, which facilitates the proper management of the special education process for students, including the timely delivery of services. Since launching SEDS, OSSE maintains a system of continuous improvement and refinement which includes annual version releases and system updates, based on user feedback, and a robust training model which includes a Train-the-Trainer design to support LEA capacity building and direct user training via in person and on-line modalities. Trainings to support LEAs occur on a monthly basis. In addition, OSSE has created a series of monthly data management reports to ensure that LEAs are given the tools necessary to track compliance at the aggregate level for all students in their schools. An example of such a tool is the LEA Planning and Performance (P&P) Report. The LEA P&P provides LEAs with an "at-a-glance" update on the status of key special education events in the LEA, as well as a 30-60-90 day view of upcoming due dates, to assist with planning and resource management. It is a tool that LEAs may use to research, review, and understand student information and thereby further ensure data accuracy as well as the timely delivery of services.

¹ The IDEA authorizes an SEA to provide direct services, including making placement decisions, in certain limited circumstance, including but not limited to when an LEA is unable to establish and maintain programs of FAPE. 34 C.F.R. §300.227.

EXHIBIT B. OSSE'S RESPONSE TO THE DRAFT REPORT

In addition to continuous system upgrades and trainings, OSSE maintains a SEDS resource site at which webinar trainings and related key documents (e.g. user guides) are posted and are immediately accessible. The SEDS Resource site, located at: <https://sites.google.com/a/dc.gov/seds-help-resources/>, is also for electronic user requests to ensure a timely response to information requests. There is also a regularly updated "Frequently Asked Questions" (FAQ) document on the site (<https://sites.google.com/a/dc.gov/seds-help-resources/faqs>). Last, OSSE provides LEAs with a dedicated point of contact for each LEA and also maintains a help desk for users, whereby users are provided with immediate access by phone and email to help them problem solve and to receive guidance. The Help Desk's hours of operation are Monday- Friday, 7:30 am -6 pm.

To ensure ongoing maintenance and refinement of these data systems and support services, DSE created and filled a position of Director of Special Data Management in 2011. It is this individual's responsibility to ensure alignment between systems, create validation processes that result in accurate, timely, and valid data collection and reporting, and address data system issues in consultation with DSE leadership. Under the direction of this individual, the agency is currently engaged in a data accuracy audit to ensure that student information is updated and accurate.

OSSE is confident that the multifaceted special education data reforms it has implemented over the past three years have resulted in systemic improvements and up-to-date, comprehensive student data for all District of Columbia students with IEPs.

Residency Verification

OIG's finding number 1 also makes certain statements about District regulations and procedures regarding residency verification for DCPS and public charter school students. The report states that "OSSE relies on DCPS and the District public charter schools to administer and enforce the rules." This statement is not entirely accurate. Both now and at the time of the audit, DCPS and public charter schools require parents to provide proof of residency at the time of enrollment. No later than October 5 of each school year, an independent accounting firm retained by OSSE conducts an official count referred to as the annual enrollment audit.

Expired and Incomplete IEPs

Finally, the draft report concludes, in finding 1, that out of 371 students attending non-public schools, 64 had expired IEPs and 54 did not have completed IEPs at the time of the audit. OSSE notes that reference to "expired" IEPs may be a misnomer in this context. The IDEA requires the LEA to review IEPs at least annually and to perform reevaluations of a student's eligibility every three years. The 54 "expired" IEPs that OIG observed may have been instances where the responsible LEA had not yet performed its annual review of the IEP or the triennial evaluation. In such cases, the NPU would contact the LEA to confirm the child is still receiving services and in addition to confirming the necessity to update an IEP. Rarely if ever would NPU deny an invoice for payment if an IEP in the system is outdated to prevent any disruption to a child's continuing services – based upon the IEP team's failure to update the appropriate documentation. However, OSSE identifies late IEPs, it notifies the LEA and requires corrective action.

EXHIBIT B. OSSE'S RESPONSE TO THE DRAFT REPORT

Reviewing of a student's IEP has been an integral part of the NPU invoice payment verification process since January, 2009.

Response to Recommendations on Finding 1: Identification of Special Education Students

OSSE believes that current practices in place at OSSE address proper identification of students eligible for special education services paid for by the District of Columbia.

- OIG Recommendation No. 1: *Annually reconcile OSSE's student data with DCPS' list of students enrolled in the Non-Public Tuition Program to improve the accuracy and completeness of data.*

OSSE Response: An accurate system of records is in place. SEDS is the District's system of record. OSSE mandates use of SEDS by all public schools, trains on its use, and is continually engaged in efforts to ensure data accuracy including a current audit of SEDS. OSSE often works closely with the DCPS Student Residency Office which does not include students placed by independent charter school LEAs.

- OIG Recommendation No. 2: *Ensure that all students have IEPs completed before enrolling them in the Non-Public Tuition Programs, as required by OSSE policies.*

OSSE Response: As explained in detail above, OSSE NPU strictly manages the payment of invoices from non-public special education schools and providers serving District of Columbia students placed by District LEAs. OSSE, in the ordinary course, does not place students into non-public schools. Moreover, students placed in non-public schools maintain their enrollment in the sending LEA while they attend the non-public school.

- OIG Recommendation No. 3: *Ensure that the NPU has an accurate listing of students enrolled in the Non-Public Tuition Program and has verified that each student has a completed IEP before approving invoices for payment of non-public school tuition.*

OSSE Response: OSSE agrees that verification of student IEPs in SEDS, the District's system of record, is necessary before approving invoices for payment and this has been the NPU's practice since January 2009. OSSE does not believe that any further action in regard to this recommendation is necessary.

Finding 2: Non-public Payment Dispute Process

Role of the Special Master

The draft report finds that OSSE failed to establish policies and procedures outlining the Special Master's responsibilities in the invoice dispute process, and based on this finding, OIG concludes that OSSE may be unable to comply with *Petties v. the District of Columbia* (D.D.C.) (Civ.

EXHIBIT B. OSSE'S RESPONSE TO THE DRAFT REPORT

Action 95 -0148). The Special Master's responsibilities are outlined in the most recent payment order dated, August 5, 2009 (Payment Order)² in *Petties* as well as prior orders dating back to the July 8, 1997 appointment of the Special Master. As required by the Payment Order, OSSE gave written notice to all non-public special education schools and providers, of the requirements of the Order, including the role of the Special Master. In addition, the Payment Order requires OSSE to include in its final administrative decision for each dispute that a non-public school or provider has a right to request a hearing before the Special Master, the deadline for doing so, and the contact information for the Special Master. OSSE's NPU has followed this procedure since it began managing invoice payments in January 2009. Contrary to the finding in the Report, OSSE works closely with the Special Master and has a high regard for her involvement in this process particularly with regard to the invoice dispute process. The Special Master's role and responsibilities are clearly defined by court order.

OSSE recently proposed regulations to institutionalize the effective policies and procedures of the Payment Order and other reforms made to date with regard to the resolution of invoice disputes. 59 *D.C. Register* 4867 (May 11, 2012). The proposed regulations, entitled "Invoice Processing for Special Education Providers Serving District of Columbia Children with Disabilities Funded by the District of Columbia" are expected to be adopted as final on or about June 22, 2012. These rules were reviewed and approved by *Petties* class counsel and the Special Master prior to proposal, and hold all parties accountable in a way that is transparent and sustainable. In this regard, once the court vacates its payment order, the Special Master's role in the dispute resolution process will be conducted by the Office of Administrative Hearings (OAH). These regulations continue the process for timely payment of proper invoices and continued service delivery to District of Columbia students without the court oversight required by *Petties*.

NPU Files

OIG's draft report also includes a finding that OSSE did not properly maintain its records of disputes. Specifically, OIG indicates that NPU files did not in some instances have the initial dispute letter or the final dispute resolution letter and that there were discrepancies between the NPU files and its separate log of disputes. Based on this observation, OIG concludes that OSSE cannot support its dispute decisions or measure the effectiveness of the dispute process.

OSSE's payment and dispute processes are subject to very strict timelines pursuant to the *Petties* Payment Order, and OSSE has been required to submit reports to the court on the status of every dispute on a monthly basis since the inception of OSSE's management of the payment process in January, 2009. These reports provide details related to each non-public payment and dispute, including without limitation the date that a letter of the initial dispute was mailed, the basis for the dispute, a description by OSSE of its review of the dispute, and the current status of the dispute. OSSE recognizes OIG's concern that OSSE comply with District of Columbia regulations regarding the maintenance of agency records, including the establishment of controls for the creation, preservation and use of records. 1 DCMR §§1502.1, 1502.4 and 1503.1.

² The August 5, 2009 Payment Order revised the November 8, 2004 Payment Order but did not alter the previously established role of the Special Master.

EXHIBIT B. OSSE'S RESPONSE TO THE DRAFT REPORT

Currently, the monthly *Petties* payment and invoice reports are OSSE's official records documenting the invoice dispute process and OSSE maintains that they are accurate. They provide evidence that disputes are documented, investigated, and resolved in keeping with the requirements of the *Petties* Payment Order.

Response to Recommendations on Finding 2

- OIG Recommendation No. 4: *Develop written policies and procedures outlining the key responsibilities of the Office of the Special Master in the NPPU dispute process.*

OSSE Response: The *Petties* Payment Order outlines the Special Master's responsibilities. Notice of the order has been given to non-public schools and providers. OSSE has proposed regulations that would replace the role of the Special Master with a system that utilizes the District's Office of Administrative Hearings.

- OIG Recommendation No. 5: *Revise written policies and procedures to include the processes for the preparation and retention of adequate supporting documentation for the NPPU dispute process.*

OSSE Response: OSSE believes that it has adequate procedures in place, and will based on this recommendation conduct a thorough review to ensure the supporting documentation is readily available.

- OIG Recommendation No. 6: *Implement additional procedures in the NPPU payment process to ensure that providers are properly certified to service special education students prior to approving invoices for payment.*

OSSE Response: This recommendation is listed in OIG's draft report in regard to finding 2, but it appears to relate to finding 3. See below. OSSE disagrees with the recommendation as stated because District of Columbia law permits the placement of students in non-public schools that have not been approved by OSSE when a court or hearing officer orders the placement. In regard to District students placed by LEAs, OSSE has implemented procedures to ensure the accuracy of its list of approved schools and only pays invoices from approved schools.

Finding 3: Monitoring Certificate of Approval Process

Unapproved Non-public Schools

The report indicates that several non-public schools identified at the time of the investigation as current COA holders as reported on OSSE's website, did not hold COAs.

EXHIBIT B. OSSE'S RESPONSE TO THE DRAFT REPORT

Historically, hard copy binders have been maintained for every non-public program whose COA has been approved by the District. Since assuming responsibility for oversight of non-public programs from DCPS, OSSE has developed and maintained electronic tracking tools denoting the status of every non-public program which has applied for, or been granted, a COA. OSSE has also systematized its updates to the list of COA approved schools. OSSE currently maintains three lists of approved non-public schools on its website, identifying the residential treatment centers, psychiatric residential treatment facilities, and day schools that have active COAs. OSSE currently updates the lists of approved non-public schools on a monthly or bimonthly basis, depending on the issuance of new COAs; the most recent update was made to these lists on May 4, 2012. In addition, OSSE monitors completed an audit of non-public school records to ensure that only non-public schools with COAs were included on these published lists.

OIG concludes that OSSE allowed District students to attend non-public schools that lacked appropriate authority and certification which increased the risk that District students would not receive appropriate education services. In response to this concern, OSSE notes that not all non-public schools that serve District students are required to maintain a COA. Students may be placed in non-public schools by an administrative hearing officer presiding over a due process complaint in which a student's placement is at issue. District of Columbia law permits hearing officers, as well as courts of competent jurisdiction, to deviate from the ordinary prescription that District students may only be placed in approved schools. D.C. Official Code §38-2561.03(b). Administrative or court involvement in a child's placement typically would include a showing that the non-public school is able meet the child's educational need in accordance with the IEP. Similarly, other District agencies may place students in non-public schools although OSSE pays the student's tuition; non-public schools that receive placements only from these other agencies are not required to maintain a certificate of approval from OSSE, but again, it is expected that those agencies review the non-public school's program to ensure that it is adequate to meet the child's needs.

OSSE issued regulations subsequent to the audit requiring a non-public school without a COA who receives a student placement by order of a hearing officer to apply for a COA. 5 DCMR §A-2800.5. However, if the non-public school does not meet the regulatory requirements for a COA, the student may remain at the non-public school until an IEP Team identifies a new placement.

OSSE conducts an on-site inspection of approved non-public programs at least once every three years, in accordance with District of Columbia law and regulations. D.C. Official Code §38-2561.09 and 5 DCMR §A-2800 et seq. In addition the COA regulations ensure compliance with federal and local laws related to serving students with disabilities. These regulations, which are located at: <http://osse.dc.gov/publication/special-education-policy-dcmr-title-5-chapter-28-section-2800-2899>, establish roles and responsibilities of both the LEA placing the child into a non-public program and the non-public program designated to serve the child. Through both these regulations and OSSE's Policy and Procedures for Placement Review, <http://osse.dc.gov/publication/policies-and-procedures-placement-review>, OSSE ensures that IEP team decision making related to placement into a separate setting occurs in alignment with the IDEA.

EXHIBIT B. OSSE'S RESPONSE TO THE DRAFT REPORT

Personnel Background Checks

The draft report recommends that OSSE implement additional procedures in the application review process to incorporate background checks of personnel that work directly with special education students. OSSE began using a new monitoring tool in non-public monitoring visits in 2010 and also aligned the COA application process with the District's new, more rigorous, regulatory requirements. Since then, the non-public monitoring team has continued to expand the scope of the monitoring and application tools to address a broader scope of federal and local regulatory compliance. As part of the application process, and on an annual basis thereafter, OSSE currently requires each non-public school or program to assure that it maintains personnel files, including evidence of child protective service and criminal background checks, as required by 5 DCMR §A-2823.4.

Although OSSE currently requires each non-public school or program to assure that it maintains evidence of child protective service and criminal background checks, as required by 5 DCMR §A-2823.4, for all personnel, beginning in fall 2012, OSSE will require schools to provide copies of updated background checks as part of each onsite monitoring visit.

Response to Recommendations on Finding 3

- **OIG Recommendation No. 7:** *Implement additional procedures in the application review process to incorporate background checks of personnel that work directly with special education students.*

OSSE Response: OSSE agrees with this recommendation and notes that it has reviewed the background checks of personnel as part of the COA application process since 2010. Additionally, OSSE requires annual certification from non-public schools of compliance with special education laws and regulations include the requirements in regard to background checks. Beginning in fall 2012, OSSE will require schools to provide copies of updated background checks as part of each onsite monitoring visit

- **OIG Recommendation No. 8:** *Ensure that all non-public special education schools servicing District students possess proper and current COAs.*

OSSE Response: OSSE agrees with this recommendation with the caveat that District of Columbia law permits a court or hearing officer to place a student in a non-public school without a COA. OSSE continues its application and monitoring program to ensure that schools possess proper and current COAs.

II. Other Comments to Draft Report

OSSE wishes to clarify that, while perhaps not central to OIG's findings, other statements in the draft report may inadvertently create a misunderstanding regarding requirements under the IDEA

EXHIBIT B. OSSE'S RESPONSE TO THE DRAFT REPORT

or District of Columbia law and the policies and procedures of OSSE and other District of Columbia agencies.

First, while the draft report correctly describes that an LEA must exhaust all avenues of supplementary aides and services to enable a child with a disability to receive services in the general education environment, the draft report also states that such exhaustion must occur *before* a child receives an IEP. (Draft Report p. 2.) The decision that a child is eligible to receive special education services under the IDEA is based on an evaluation of the child and the determination by a staff of qualified professionals that a child with a disability needs specialized instruction in order to make academic progress. There is no requirement that the LEA must first exhaust the use of supplementary aids in the general education environment before a child receives an IEP. In addition, while SEDS does include a module requiring IEP Teams to justify the need for placing a child in a more restrictive environment, the draft report appears to conclude that IEP Team meetings only occur when the LEA is considering a change to a more restrictive setting. (Draft Report p. 2.) IEP Team meetings are convened for purposes other than consideration of changing a child's placement to a more restrictive environment. Under the IDEA, IEP Teams must meet to review the IEP at least once per year and may convene at other times as determined necessary by the team or at the request of the parent. 34 C.F.R. §300.324.

Second, the draft report contains a misstatement regarding OSSE's payment of room and board for students placed in residential treatment facilities by the Child and Family Services Agency ("CFSA") and the Department of Youth and Rehabilitation Services ("DYRS"). Although OSSE pays for tuition and room and board of students placed in non-public schools by LEAs or by the order of a court or administrative hearing officer, OSSE only pays for the tuition of students placed by CFSA and DYRS. CFSA and DYRS pay the room and board for the students which they place while OSSE pays the tuition. OSSE pays tuition for all District of Columbia students placed in non-public day schools.

Third, and finally, the draft report contains a minor inaccuracy regarding the invoice processing responsibility of the NPU. First, while OSSE pays for compensatory education services provided to District of Columbia students attending non-public schools as ordered by an administrative hearing officer or court order, compensatory education are not related services as defined by the IDEA. These services are a form a relief that a hearing officer or court may order an LEA to provide because of some past denial of a free and appropriate public education (FAPE) for the student. LEAs are responsible for implementation of compensatory education order by a court or hearing officer. Non-public schools are not authorized to invoice OSSE for these expenses.

III. Conclusion

OSSE continues to strengthen its monitoring and oversight functions as the State Education Agency for the District of Columbia and appreciates OIG's consideration and review of its Non-public Payment Unit. In the five years since the Public Education Reform Amendment Act created OSSE, targeted initiatives demonstrate sustained improvements in the agency as the SEA.

EXHIBIT B. OSSE'S RESPONSE TO THE DRAFT REPORT

OSSE's Division of Specialized Education has transformed the COA process for non-public special education schools and monitoring of those schools for compliance with federal and District of Columbia law applicable to children with disabilities. Improved systems and procedures have been put in place to account for the status of approved schools. The on-sight monitoring and inspection of non-public schools occurs as required by law and findings of non-compliance are identified and tracked for corrective action.

The NPU within the Division of Specialized Education also has established a strong invoice payment and dispute process. As recognized in the draft report, OSSE created BITTSE for the purpose of tracking the payment of invoices, which has greatly enhanced the District's ability to timely pay invoices from non-public schools. The District of Columbia Court of Appeals in the *Petties* case, recognized that the District has achieved 99% in timely payment of invoices. In this regard, the District record of timely payments to special education providers, with minimal disputes merits dismissal of the *Petties* case, in large part due to the performance of the NPU. Disputes have been managed in accordance with the *Petties* Payment Order and proposed regulations will ensure that those procedures are institutionalized.

We appreciate the advance opportunity to comment on this report. If you have any questions, please feel free to contact the Assistant Superintendent for Specialized Education, [REDACTED]

Very truly yours,


Hosanna Mahaley
State Superintendent of Education

cc: Mr. Allen Y. Lew, City Administrator