2020 Annual Report on Preschool Special Education

OFFICE OF THE NEW YORK STATE COMPTROLLER

Thomas P. DiNapoli, State Comptroller

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Message from the Comptroller

June 2021

Special education programs fulfill a great need, providing a quality learning experience that accommodates the individual differences and needs of young people with disabilities. Many private special education providers use public funds conscientiously and in accordance with State laws, rules and regulations. However, others abuse the system and misuse the funding they receive from the State and local governments, squandering taxpayer dollars and depriving disabled children of the learning resources and opportunities they need and deserve.

Over the last decade, my office has found a troubling pattern of mismanagement, waste, and even fraud by numerous private providers of preschool special education services. Our audits have uncovered inaccurate and inappropriate self-reported program costs, as well as ineffective program monitoring and oversight. As a result, children needing special education services have been shortchanged by those private providers who have misused the public funds entrusted to them.

The State Legislature responded to these reports of abuse by passing legislation requiring my office to audit the expenses submitted for reimbursement by every provider of preschool special education services to the State Education Department (SED), and to report annually on our findings to the Governor and the Legislature. This is the seventh such annual report.

To improve oversight and management of this essential public program, we've coordinated our audit efforts with SED, the New York City Department of Education, the New York State Association of Counties, and the individual counties themselves. We also provide training to county officials and private providers to explain the importance of this initiative and to discuss the steps in the OSC audit process, the findings of our audits, and the need for strong internal controls.

As we carry out our responsibilities to monitor the costs for preschool special education services, my office will continue to emphasize the importance of critical internal controls and responsible external oversight.

Thomas P. DiNapoli
State Comptroller

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Executive Summary

The State Education Department (SED) oversees special education programs that provide services to students with disabilities between the ages of 3 and 21 in New York State. While most school-age students with disabilities in New York receive their educational services from public school districts, preschool special education services are predominantly provided by private providers. SED reports that, for the 2016-17 school year, about 80,000 preschool students with disabilities received services throughout the State from over 350 approved providers at an annual cost of almost $1.4 billion to the State and its local governments.

Private special education providers can be either for-profit or not-for-profit organizations. These providers must be approved by SED to deliver special education services to children. SED annually develops rates for preschool special education programs operated by approved providers based on actual costs reported to SED. These rates are used to reimburse providers for eligible costs determined by the reimbursement guidelines issued by SED and the cost reporting and claiming instructions defined in the Consolidated Fiscal Reporting and Claiming Manual (CFR Manual).

In 2004, the Office of the State Comptroller (OSC) began conducting audits of expenses submitted to SED by special education providers, focusing on their compliance with SED cost-reporting guidance and the accuracy and appropriateness of their reported program costs. These audits uncovered some concerning issues with payments to providers, including instances of apparent fraud. In June 2012, Comptroller DiNapoli announced a special education audit initiative, which involved a broader, sector-wide approach as well as multiple simultaneous individual audits, and proposed legislation to improve the oversight of preschool special education providers. As a result, Chapter 545 of the Laws of 2013 was signed into law on December 18, 2013 and became effective immediately, creating Section 4410-c of the Education Law. The law required the State Comptroller to audit the expenses reported to SED by every program provider of special education services for preschool children with disabilities, subject to the funding made available by the Legislature for such purpose. Section 200.18 of the Regulations of the Education Commissioner was amended in 2016 to make clear that SED reviews OSC's final audit reports in establishing tuition rates.

Since 2004, OSC has conducted 160 audits of expenses submitted to SED by special education providers. These audits have cumulatively identified over $101 million in recommended disallowances. Additionally, since the beginning of the preschool special education audit initiative, there have been 13 arrests and 11 guilty pleas, as well as $18,650,587 in court-ordered recoveries.

OSC Initiative Activities

As required by Section 4410-c of the Education Law, OSC developed a risk assessment process to prioritize the preschool special education audits to be undertaken in accordance with the initiative. OSC established an internal work group that identified a number of risk factors and applied them to multiple data sources. In 2020, work group activities included refining the risk assessment model to focus audits on schools representing higher risks.

Collaboration with Other State Agencies

OSC remains committed to its established protocols which call for suspected findings of fraud, abuse, or other potentially criminal misconduct identified during an audit to be referred to OSC's internal investigations unit as well as to external agencies with appropriate legal jurisdiction.

Audit Findings

In 2020, OSC completed 10 audits of preschool special education providers' expenses submitted to SED (see Appendixes A and B). These audits cumulatively identified over $4.4 million in recommended disallowances, or more than 3 percent of the total claimed expenses of $139.3 million for the audit period. Ten additional preschool special education audits were in progress as of April 30, 2021.

Disallowed expenses range from costs claimed as direct care services provided to children to administrative expenses and services. Over the course of this initiative, OSC's audits of expenses submitted to SED by certain special education providers identified widespread mismanagement and blatant misuse of public funds intended for the education of children with disabilities, as well as outright fraud. However, results of the years-long preschool special education initiative indicate steady improvement in these areas.

The audits completed in 2020 indicate ongoing inaccuracies in cost reporting by special education providers, with certain categories continuing to be of concern. These include errors related to the allocation and/or inappropriate claiming of personal service and other than personal service (OTPS) expenses including those from other programs and insufficiently documented related-party transactions. While audit work continued virtually in 2020 due to the COVID-19 pandemic, the inability to conduct on-site work at provider locations slowed the pace of OSC's special education audits. The dollar amount of audit findings and number of audits decreased from $11.2 million for 18 audits in 2019 to $4.4 million for 10 audits in 2020.

The 2020 audit findings are summarized as follows:

Expenses Claimed for Costs from Other Programs – Private special education providers can offer more than preschool special educational services to their students. For instance, they may also offer evaluation services, day care services, and early intervention services. However, payments for services under these types of programs are based on fixed fees, as opposed to reported costs.

Providers are required to report all revenues, expenses (including personal service and OTPS), staffing, enrollment, and agency administration costs on their Consolidated Fiscal Report (CFR). Some program costs may relate to multiple programs and require providers to allocate these costs among the programs benefiting from the expense. All costs are self-reported within the CFR in the aggregate and by program. Allocation of costs among the programs can be complicated when shared costs are allocated to programs reimbursed by different State agencies. The Consolidated Fiscal Reporting and Claiming Manual (CFR Manual) and the Reimbursable Cost Manual (RCM) explain in detail recommended methods by which various types of costs should be allocated and reported on the CFR.

OSC audits completed and issued in 2020 identified over $2.6 million (or about 60 percent of total disallowances) in expenses from other programs charged to the preschool programs. The costs claimed from other programs include both payroll-related expenses and OTPS expenses:

- **Allocation of Payroll Expenses –** The RCM requires salaries of employees who perform tasks for more than one program to be allocated among all programs for which they work. Furthermore, providers must maintain appropriate documentation reflecting the allocation methodology used to distribute hours worked. Four of the 10 audits (40 percent) identified a total of over $1.8 million in payroll costs from other programs charged to the preschool programs. This represents a moderate reduction from 2019, when eight of 18 audits (44 percent) identified over $3.1 million in improperly allocated payroll expenses.
- **OTPS Expenses –** SED guidelines require that any expenditure that cannot be charged directly to a specific program be allocated across all programs and/or entities that benefit from the expenditure (e.g., general maintenance and overhead expenses). The RCM requires providers to maintain documentation of the methodologies used to allocate costs to the various programs they operate. In 2020, five of 10 audits identified problems related to the allocation of OTPS costs and/or the inappropriate claiming of expenses from other programs. The dollar amount of these findings was over $773,000.

Personal Service-Related Findings – In addition to the allocation of payroll expenses from other programs previously noted, OSC audits completed and issued in 2020 identified over $278,000 of unsupported or ineligible payroll-related expenses:

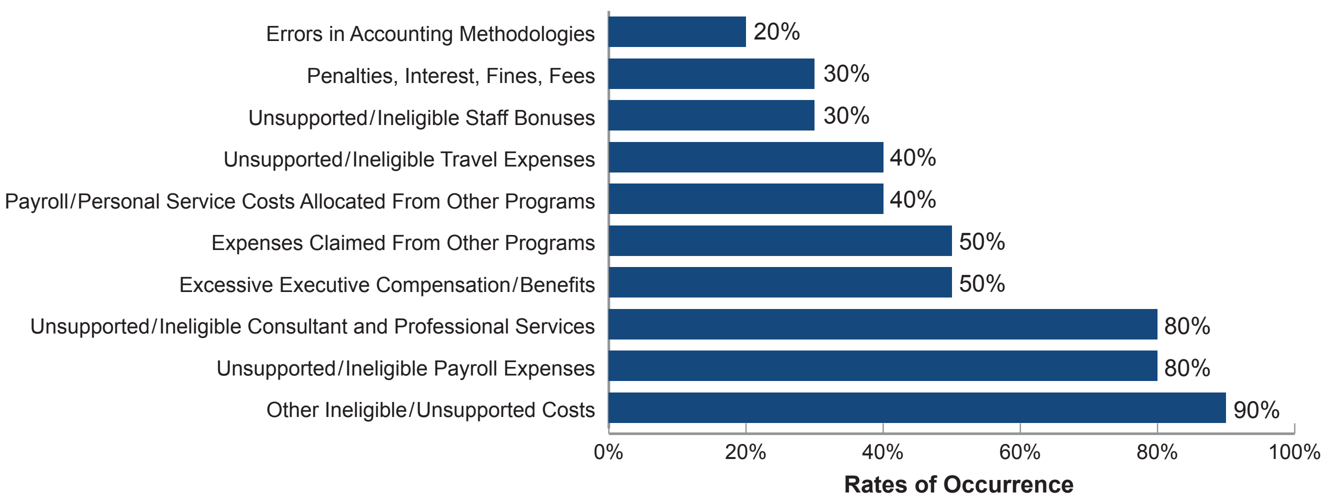
- **Unsupported or Ineligible Payroll Expenses –** SED requires providers to base employee compensation on approved and documented payrolls, which are supported by time and attendance records for all employees. Also, Section 200.9 of the Regulations of the Commissioner of Education (Regulations) states that providers shall maintain adequate records to document direct and/or indirect service hours provided, as well as time spent on all other activities related to each student served. Eight of the 10 audits in 2020, with a total recommended disallowance of approximately $268,000, found issues with the maintenance of payroll records and other documentation required by the RCM.
- **Unsupported Bonuses –** SED requires that salary bonuses be based on merit and be supported by performance evaluations to be eligible for reimbursement. In 2020, three of the 10 audits, with a total recommended disallowance of over $10,000, found evidence of ineligible bonuses.

Findings Related to OTPS Expenses – According to the RCM, costs reported on the CFR are considered for reimbursement if they are reasonable, necessary, directly related to the special education program, and properly documented. In addition, expenses of a personal nature are not reimbursable. OSC audits completed and issued in 2020 identified over $1 million in unsupported or ineligible OTPS-related expenses.

- **Unsupported/Ineligible Costs –** In 2020, nine of 10 audited programs had findings of ineligible expenses, which were either not program-related or not supported by adequate documentation. The 2020 disallowed amount was more than $700,000.
  - **Insufficiently Documented Related-Party Transactions –** The RCM states that costs will be considered for reimbursement provided they are reasonable, necessary, directly related to the special education program, and sufficiently documented. Although only one of the 10 audits claimed costs incurred by its wholly owned subsidiary, the $329,448 in findings for the one provider represented 47 percent of total unsupported/ineligible OTPS costs auditors found.
  - **Misreporting of Offsetting Revenue –** According to the RCM, any funding received from a governmental agency or unit for a specific education program will be offset by SED against the appropriate program in the calculation of the tuition rate so that costs will not be reimbursed more than once by public funds. Revenue reported on the incorrect CFR line and not offset against program costs results in costs being reimbursed more than once by public funds. In 2020, four the 10 audits found over $218,000 in misreported offsetting revenue.
  - **Unsupported Depreciation Expense –** The RCM states that costs must be reasonable, necessary, directly related to the special education program, and sufficiently documented. The RCM also states that entities operating approved programs should retain all pertinent accounting, allocation, and enrollment/attendance records supporting reported data directly or indirectly related to the establishment of tuition rates for seven years following the end of each reporting year. Information relating to the acquisition of fixed assets, equipment, land or building improvements, and any related financing arrangements and grants must be retained as long as the facility is used by any education program the provider operates if this period exceeds seven years. Moreover, costs will not be reimbursable on field audit without appropriate written documentation. Four of the 10 audits issued in 2020 identified over $116,000 in recommended disallowances for insufficient depreciation expense documentation.

- **Consultant and Professional Services** – The RCM provides extensive guidance on the use of consultants and other professionals, the proper claiming of costs for their services, and related supporting documentation requirements. In addition, costs cannot be claimed for consultant services that could have been performed by a properly certified school officer or an employee who possesses the necessary technical skills. In 2020, the recommended disallowance for consultant and professional services in eight of the 10 audits issued totaled around $207,000.
- **Penalties, Interest, Fines, and Fees** – The RCM expressly states that fines, penalties, late fees, and certain forms of interest are not reimbursable. The RCM further states that costs resulting from violations of, or failure by, the entity to comply with federal, State, and/or local laws and regulations are not reimbursable. Additionally, interest on working capital loans will not be reimbursed if the entity files its CFR more than 90 days after the due date. In 2020, three of the 10 audits noted approximately $81,000 in recommended disallowances for non-reimbursable penalties, interest, fines, and late fees.

Patterns of Inappropriately Claimed Expenses for Preschool Special Education Services in New York State – 2020 Audit Findings



Conclusion

Preschool special education plays a critical role in the development of children with special needs. Accordingly, OSC continues its audits of these providers, identifying millions of dollars in inappropriate charges, including expenses claimed from other programs, reimbursements for unsupported expenditures, and costs incorrectly allocated to special education programs. OSC is committed to emphasizing the importance of strong internal controls and external oversight in order to provide necessary and appropriate special education services. OSC encourages State policymakers to uphold the State's long-standing commitment to special education programs and to ensure that they are financially sustainable for future generations.

Appendix A
2020 OSC Preschool Special Education Program Audits

Provider/Audit Name	Location	Audited Program Costs Reported on CFR	Number of Years in Scope	Total Disallowance
Behavior Analysts of New York, LLC	Westchester	$245,613	1	$2,082
Hebrew Academy for Special Children, Inc.	Kings	$51,953,007	3	$2,873,898
Kids Unlimited, PT, OT & SLP, PLLC	Kings	$8,813,841	3	$446,835
Mama Program, LLC	Queens	$9,779,807	3	$95,562
Mary Cariola Children's Center, Inc.	Monroe	$2,643,954	1	$12,744
Parsons Child and Family Center	Albany	$1,073,252	1	$247,699
SteppingStone Day School, Inc.	Queens	$46,281,019	3	$562,609
The Kelberman Center, Inc.	Oneida	$1,765,611	1	$23,616
Through Ages, Inc.	Kings	$13,721,447	3	$137,377
Wayne County Chapter NYSARC, Inc.	Wayne	$3,024,967	1	$20,988
Totals		**$139,302,518**		**$4,423,410**

Appendix B
OSC Preschool Special Education Program Audits Completed and Issued in 2020

Behavior Analysts of New York (BANY), LLC (2019-S-35) is a Westchester County for-profit organization authorized by SED to provide preschool Special Education Itinerant Teacher (SEIT) services to children with developmental disabilities who are between three and five years of age. For the reporting year ended June 30, 2015, BANY reported $245,613 in reimbursable costs for its SEIT preschool cost-based program. The OSC audit recommended disallowances of $2,082 in costs that did not comply with SED's requirements for reimbursement, including $1,134 in personal service costs resulting from either payment in excess of hours supportable by payroll records or lack of payroll records. The remaining $948 in OTPS costs included $466 in expenses with no or insufficient documentation and $482 in expenses not directly related to the preschool cost-based program.

Hebrew Academy for Special Children, Inc. (Hebrew Academy) (2018-S-68) is a New York City not-for-profit organization authorized by SED to provide preschool Special Education Itinerant Teacher services, full- and half-day Special Class and full- and half-day Special Class in an Integrated Setting programs to children with disabilities who are between the ages of three and five years. For the three fiscal years ended June 30, 2017, Hebrew Academy reported approximately $52 million in reimbursable costs for its SED preschool cost-based programs. The OSC audit focused primarily on expenses claimed on Hebrew Academy's CFR for the fiscal year ended June 30, 2017 and included certain expenses claimed on its CFRs for the two fiscal years ended June 30, 2016. The OSC audit recommended disallowances of $2,873,898 in costs that did not comply with SED's requirements for reimbursement, including:

- $1,707,290 in personal service costs related to improper allocations and supporting documentation, incorrect allocations between programs, and excess executive compensation.
- $1,166,608 in OTPS costs due to incorrect allocation of property costs, depreciation, and non-program costs, as well as insufficiently documented related-party costs, depreciation, and rent.

Kids Unlimited, PT, OT & SLP, PLLC (Kids Unlimited) (2020-S-33) is a New York City for-profit organization authorized by SED to provide Special Education Itinerant Teacher (SEIT) services to children with disabilities who are between the ages of three and five years. For the three fiscal years ended June 30, 2015, Kids Unlimited reported approximately $8.8 million in reimbursable costs for its SEIT preschool cost-based program. The OSC audit recommended disallowances of $446,835 in costs that did not comply with SED's requirements for reimbursement, including:

- $264,189 in compensation exceeding average regional levels.
- $173,650 in overclaimed health insurance benefits for three officers.

- $6,281 in unsupported depreciation expenses.
- $2,205 for Internet and phone service lacking supporting invoices.
- $510 in unnecessary or non-program-related cable television service.

Mama Program, LLC (Mama Program) (2019-S-73) is a New York City for-profit organization authorized by SED to provide preschool Special Education Itinerant Teacher (SEIT) services to children with disabilities who are between three and five years of age. The OSC audit focused primarily on expenses claimed on Mama Program's CFR for the fiscal year ended June 30, 2015 and included certain expenses claimed on its CFRs for the two fiscal years ended June 30, 2014. For the three fiscal years ended June 30, 2015, Mama Program reported approximately $9.78 million in reimbursable costs for its SEIT preschool cost-based program. The OSC audit recommended disallowances of $95,562 in costs that did not comply with SED's requirements for reimbursement, including:

- $62,350 in unsupported or insufficiently supported expenses, including accounting fees, consultant services costs, and depreciation.
- $26,876 in personal service costs for the Executive Director's pension contributions that were not proportionately similar to other employees.
- $6,336 for insurance expenses relating to another period.

Mary Cariola Children's Center, Inc. (Mary Cariola) (2020-S-25) is a Monroe County not-for-profit organization authorized by SED to provide, among other programs, preschool special education services to children with disabilities who are three and four years of age. For the fiscal year ended June 30, 2016, Mary Cariola reported approximately $2.6 million in reimbursable costs for its Preschool Special Class – over 2.5 hours per day and Preschool Special Class – 2.5 hours per day. The OSC audit recommended disallowances of $12,744 in costs that did not comply with SED's requirements for reimbursement: $10,063 in personal service costs, consisting of $9,025 in non-reimbursable compensation not supported by employee time records and $1,038 in executive bonus compensation, and $2,681 in OTPS costs for non-allowable agency administrative costs, food, and miscellaneous items.

Parsons Child and Family Center (Parsons) (2019-S-25) is an Albany County not-for-profit organization authorized by SED to provide, among other programs, preschool special education services to children with disabilities who are between three and five years of age. For the fiscal year ended June 30, 2015, Parsons reported approximately $1.2 million in reimbursable costs for its three rate-based preschool education programs: Preschool Special Class – over 2.5 hours per day, Preschool Integrated Special Class – over 2.5 hours per day, and Preschool Integrated Special Class – 2.5 hours per day. The OSC audit recommended disallowances of $247,699 in costs that did not comply with SED's requirements for reimbursement, as follows:

- $188,149 in understated revenue not offset against the Integrated Programs' costs, causing costs to be reimbursed more than once by public funds.

- $46,843 in OTPS costs, including: $26,002 in unsupported expenses; $15,425 in incorrectly allocated expenses; $4,059 in other non-reimbursable costs such as working capital interest, professional fees, and food for staff; and $1,357 in parent-agency administration costs ineligible for reimbursement.
- $12,707 in personal service costs, including: $4,522 in compensation duplicating an employee's workers' compensation award; $7,152 in incorrectly allocated compensation; and $1,033 in executive compensation in excess of regional compensation limits.

SteppingStone Day School, Inc. (SteppingStone) (2020-S-23) is a New York City not-for-profit organization authorized by SED to provide preschool full-day Special Class and preschool full-day Special Class in an Integrated Setting services to children with disabilities who are between the ages of three and five years. During the two fiscal years ended June 30, 2017, SED also approved SteppingStone to provide half-day Special Class services. For the three fiscal years ended June 30, 2018, SteppingStone reported approximately $46.3 million in reimbursable costs for the SED preschool cost-based programs. The audit focused primarily on the fiscal year ended June 30, 2018 but also included certain expenses that SteppingStone claimed on its CFRs for the two fiscal years ended June 30, 2017. For the three fiscal years ended June 30, 2018, the OSC audit recommended disallowances of $562,609 in costs that did not comply with SED's requirements for reimbursement, as follows:

- $188,584 in day care expenses overallocated to the SED preschool cost-based programs.
- $185,407 in non-reimbursable compensation-related costs, including $131,312 in unsupported compensation costs incorrectly charged to the SED preschool cost-based programs; $44,706 in non-reimbursable overtime compensation expenses not included in the employees' contracts, unsupported compensation expenses, and compensation expenses unrelated to the cost-based programs; and $9,389 in compensation costs in excess of the regional average.
- $176,149 in overallocated expenses to the SED preschool cost-based programs, excess mortgage interest expense, and other unallowable expenses not complying with RCM guidelines.
- $12,469 in unreported offsetting revenue.

The Kelberman Center, Inc. (Kelberman) (2019-S-57**)** is a Utica not-for-profit authorized by SED to provide preschool special education services to children with disabilities who are between three and five years of age. For the fiscal year ended June 30, 2017, Kelberman reported approximately $1.77 million in reimbursable costs for its one rate-based Preschool Special Class Program – over 2.5 hours per day. The OSC audit recommended disallowances of $23,616 in costs that did not comply with SED's requirements for reimbursement as follows:

- $20,435 in non-reimbursable advertising costs for the purpose of recruiting students.
- $1,600 in longevity payments calculated only on years of service and not in addition to, or as a supplement to, employee performance awards, as required.
- $910 in stipend payments not directly related to its rate-based Preschool Special Class Program – over 2.5 hours per day.
- $671 in miscellaneous ineligible expenses, including food for staff, non-audit services, costs not directly related to the rate-based Preschool Special Class – over 2.5 hours per day, tax paid for travel expenses, and expenses without sufficient supporting documentation.

Through Ages, Inc. (Through Ages) (2019-S-56**)** is a New York City for-profit organization authorized by SED to provide preschool Special Education Itinerant Teacher (SEIT) services to children with disabilities who are between the ages of three and five years. For the three fiscal years ended June 30, 2015, Through Ages reported approximately $13.7 million in reimbursable costs for the SEIT preschool cost-based program. This audit focused primarily on expenses claimed on Through Ages' CFR for the fiscal year ended June 30, 2015 and certain expenses claimed on its CFRs for the two fiscal years ended June 30, 2014. For the three fiscal years ended June 30, 2015, the OSC audit recommended disallowances of $137,377 in costs that did not comply with SED's requirements for reimbursement, as follows:

- $119,780 in consulting costs, including computer service costs and audit and accounting service costs, lacking sufficient invoice detail.
- $7,366 in unsupported insurance and office expenses, as well as ineligible food for staff and gifts.
- $5,200 in underreported offsetting revenue.
- $3,144 in overreported depreciation expense.
- $1,537 in costs not directly related to the SEIT preschool cost-based program.
- $350 in excessive compensation.

Wayne County Chapter NYSARC, Inc. (ARC Wayne) (2020-S-30**)** is a Wayne County not-for-profit organization authorized by SED to provide, among other programs, preschool special education services to children with disabilities who are three and four years of age. During the audit period, ARC Wayne operated three rate-based special education programs: Preschool Special Class – over 2.5 hours per day, Preschool Integrated Special Class – over 2.5 hours per day, and Preschool Integrated Special Class – 2.5 hours per day. For the fiscal year ended June 30, 2017, ARC Wayne reported approximately $3 million in reimbursable costs for the rate-based programs on its CFRs. For the fiscal year ended June 30, 2017, the OSC audit recommended disallowances of $20,988 in costs reported by ARC Wayne that did not comply with SED's requirements for reimbursement, as follows:

- $12,299 in offsetting revenue, including $11,284 in revenue for the Preschool Integrated Special Class – 2.5 hours per day program not offset by revenue received for students without disabilities and $1,015 in Preschool Integrated Special Class – over 2.5 hours program staffing costs for services for students without disabilities in excess of this revenue.
- $7,759 in inappropriately allocated one-time bonus payments and enhancement pay.
- $626 in insufficiently supported compensation costs.
- $304 in OTPS costs for non-allowable food.

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