

# STATE OF CONNECTICUT



*AUDITORS' REPORT  
Private Providers of Special Education  
School Year 2015 - 2016*

**AUDITORS OF PUBLIC ACCOUNTS**  
JOHN C. GERAGOSIAN ❖ ROBERT J. KANE

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## EXECUTIVE SUMMARY

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### Audit Objectives and Overview

The purpose of this audit was to determine whether private special education providers expended state and local funds for allowable costs and in accordance with the individualized education programs (IEP) for children receiving special education services.

Effective July 1, 2015, Public Act 15-5 (Sections 278 through 281) required the Auditors of Public Accounts (Auditors) to conduct audits of all approved and non-approved private providers of special education. The Auditors' duties related to these audits appear in Sections 2-90 (i) and 10-91g of the General Statutes. Public Act 15-5 also established a number of new requirements for the Connecticut State Department of Education (SDE), boards of education (BOE), private providers of special education services, and Regional Education Service Centers.

Public Act 15-5 was based on the findings and recommendations of the Municipal Opportunities and Regional Efficiencies (MORE) Commission.

We primarily reviewed documentation for the 2015-2016 school year. The private providers receive the majority of their revenues from local and regional school districts, also known as LEAs. The school districts are responsible for educational services and associated costs for students placed at a private provider. We selected 7 private providers for review and examined 63 student records. The private providers offer the following services: occupational therapy, speech and language pathology, and individual and group counseling.

### Findings and Recommendations

Our findings include:

**Finding 1** – Allowable costs are not defined by statute, regulation, or policy. Therefore, it is hard to make a clear determination whether providers expended state and local funds for costs considered acceptable.

**Finding 2** – We are concerned that school districts are not contracting for certain types of services with vendors to set forth reasonable expectations, including cost, prior to establishing individualized education programs.

**Finding 3** – There were no contracts between the school districts and private providers for 31 of the 63 student records reviewed (49%) at the 7 private providers.

**Finding 4** – We could not find evidence that statutorily required written contracts were executed for 24 of 46 (52%) students whose local district applied to the State Department of Education for excess cost grants.

**Finding 5** – Indirect services were provided by 1 of 7 (14%) private providers to fulfill the direct services requirement specified within the individualized education program, which is inappropriate.

## EXECUTIVE SUMMARY

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**Finding 6** – Services were often documented by the private providers; however, the thoroughness of documentation varied by private provider.

**Finding 7** – Documentation standards for private providers do not exist in Connecticut.

We recommend that the State Department of Education should:

- 1. Consider defining allowable types of costs for private providers.**
- 2. Determine whether a contract is in place between the school district and private provider prior to providing the district with an excess cost grant.**
- 3. Improve communications with school districts and special education providers to clarify how they can provide and document direct and indirect service requirements contained in the individualized education program.**
- 4. Consider working with private special education providers to develop and implement documentation requirements.**

# STATE OF CONNECTICUT



## AUDITORS OF PUBLIC ACCOUNTS

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February 22, 2018

### **AUDITORS' REPORT PRIVATE PROVIDERS OF SPECIAL EDUCATION FOR THE SCHOOL YEAR 2015-2016**

We have audited certain operations of the State Department of Education (SDE) and the following private special education providers: Ben Bronz Academy, Benhaven School, Community Child Guidance Clinic School, Intensive Education Academy, Meliora Academy, Oak Hill School at New Britain, and one other private provider that cannot be named due to restrictions under the Federal Education Rights and Privacy Act (FERPA) and the limited number of students available for review at that school. We examined individualized education programs (IEP), service provision records, and associated financial documents for 63 students in fulfillment of our duties under Section 10-91g of the General Statutes. The scope of our audit included, but was not necessarily limited to, the 2015-2016 school year. The objectives of our audit were to evaluate whether:

1. State and local funds to provide special education and related services were spent for allowable costs.
2. State and local funds to provide special education and related services from private providers were spent in accordance with each student's individualized education program.
3. Documentation supporting the special education services administered by the private providers was present and adequately maintained.

Our methodology included reviewing written policies, procedures, financial records, minutes of meetings, and other pertinent documents. We interviewed private providers and public school district personnel, and acquired information about private providers from the State Department of Education, including documents obtained as part of its private provider approval process. We reviewed special education services (e.g. occupational therapy and speech and language pathology) and tested selected transactions. We obtained an understanding of internal controls that we deemed significant within the context of the audit objectives and assessed whether such controls were properly designed and placed in operation. We tested certain of those controls to

obtain evidence regarding the effectiveness of their design and operation. We also obtained an understanding of legal provisions that are significant within the context of the audit objectives, and we assessed the risk that illegal acts, including fraud, and violations of contracts, grant agreements, or other legal provisions could occur. Based on that risk assessment, we designed and performed procedures to provide reasonable assurance of detecting instances of noncompliance significant to those provisions.

We conducted our audit in accordance with the standards applicable to performance audits contained in Government Auditing Standards, issued by the Comptroller General of the United States. Those standards require that we plan and perform our 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 such a basis. The accompanying Résumé of Operations is presented for informational purposes. This information was obtained from either SDE management or a private provider and was not subjected to the procedures applied in our audit of private providers.

For the areas audited, we determined that allowable costs are not defined and the use of written contracts is inconsistent, making it difficult to determine whether certain costs are acceptable. We found that 1 provider inappropriately used indirect services to fulfill its direct service requirements within an individualized education program. Documentation supporting the private provider special education services varied greatly, and there is no set standard with which to measure adequacy. In some cases, documentation was not present.

The State Auditors' Findings and Recommendations section in this report presents our findings and recommendations in accordance with Section 10-91g of the General Statutes.

## COMMENTS

### Background

Effective July 1, 2015, Public Act 15-5 (Sections 278 through 281) required the Auditors of Public Accounts (Auditors) to conduct audits of all approved and non-approved private providers of special education. The Auditors' duties related to these audits appear in Sections 2-90 (i) and 10-91g of the General Statutes. Public Act 15-5 also established a number of new requirements for the Connecticut State Department of Education, boards of education (BOE), private providers of special education services, and Regional Education Service Centers.

Public Act 15-5 was based on the findings and recommendations of the Municipal Opportunities and Regional Efficiencies (MORE) Commission. The MORE Commission report stated that special education in Connecticut is funded from 3 sources: 30% from state funds, 63% from local funds, and 7% from federal funds.

The following summarizes the statutory requirements that relate to our audits of private providers:

- Private providers of special education services are defined as organizations that receive state or local funding to provide special education services under an individualized education program (IEP) or services plan (ISP). The Auditors, while acting as an agent of local and regional boards of education, will audit the records and accounts of private providers that have agreements with the boards and have received any state or local funds for special education.
- The audits are to be performed for each private provider at least once during a seven-year period. Each year, the audits should be evenly split between approved and non-approved private providers, as practical, with priority given to those private providers that 1) received the greatest total amount of state or local funds for the provision of special education services, 2) served the highest number of special education students, and 3) received the highest proportion of state and local funds in relation to their total operational expenses.
- Annually, each local and regional board of education will provide the Auditors with the number of students under its jurisdiction who receive special education services from private providers and the amounts paid to such private providers during the previous fiscal year.

### Changes to Special Education Statutes

In February of 2017, our office released an [Interim Report on Special Education Private Provider Audits](#). That report included several recommendations that would allow our office the flexibility and discretion to conduct these special education audits in a more effective manner

based on limited resources possessed by our office. These recommendations included a request that the General Assembly enact specific changes to the special education audit statutes.

During the 2017 legislative session, the General Assembly passed [Public Act 17-173](#). Under the act (in sections 6 through 8), the auditors must conduct such audits as often as they deem necessary using a risk-based approach, rather than auditing each provider at least once every seven years as required by prior law. The act also removes the requirement that half of these audits conducted in a year must be of SDE-approved private providers, and the other half be of non-approved private providers. Instead, it specifies that our office must audit both types of providers.

Additionally, the act requires boards of education and private providers to give the auditors any information the auditors deem necessary to conduct the audit.

### **Explanation of Differences between the Interim and Current Reports**

This report differs from the interim report in several important areas, including: audit objectives, identification of types of private providers, number of student records audited, and report findings and recommendations. These differences evolved after gaining additional knowledge in this audit area, further discussions with personnel from the State Department of Education, access to additional databases, and subsequent analyses.

**Audit objectives.** The interim report identified 3 audit objectives: 1) determining whether private providers delivered the required services in accordance with the individualized education program; 2) assessing the quality and benefit of services; and 3) obtaining unit cost measures to compare reasonableness of costs. Building on the experience and knowledge gained from the interim audit, we refined the second and third audit objectives: 2) determining whether state and local funds to provide special education and related services were expended for allowable costs; and 3) assessing whether documentation supporting the special education services administered by the private providers was present and adequately maintained.

**Types of private providers.** The interim report referred to 123 approved private providers; however, subsequent discussions with the State Department of Education clarified that the department's automated systems do not have separate categories for SDE-approved private providers and out-of-state private providers approved by the state in which they are located. When we remove the out-of-state providers and the providers with multiple locations, there are 68 SDE-approved private providers. The current report contains additional information on other types of private providers that we learned about since the interim report.

**Student records examined.** The interim report contained information on 6 private providers and 51 student records. We include information pertaining to a 7th private provider in this report. This information, which was not available until after publication of the interim report, brings the total number of student records audited to 63.

**Findings and recommendations.** Because we refined our audit objectives in the current report, the findings and recommendations also differ. Many of the recommendations from the interim report were implemented in [Public Act 17-173](#) (Section 6-8), and are discussed in this report in the changes to special education statutes section.

## **Legislative Requirements and Private Providers**

According to the original special education audit language in Section 10-91g (c), The Auditors of Public Accounts shall conduct the audit described in subsection (b) of this section as follows: (1) At least once for each private provider of special education services during a period of 7 years, except that no private provider of special education services shall have its records and accounts so examined more than once during such five-year period, unless the auditors have found a problem with the records and accounts of such private provider of special education services during such five-year period; (2) as practical, approximately half of such audits conducted in a year shall be of private providers of special education services approved by the Department of Education and approximately half of such audits conducted in such year shall be of private providers of special education services not approved by the Department of Education; and (3) priority of conducting such audits, as practical, shall be given to those private providers of special education services (A) that receive the greatest total amount of state or local funds for the provision of special education services to students, (B) that provide special education services to the highest number of students for whom an individual services plan has been written by a local or regional board of education, and (C) that have a highest proportion of state and local funds for the provision of special education services in relation to their total operational expenses.

To identify the universe of private providers to audit during the 7-year audit cycle, we interviewed SDE personnel and requested information maintained in two SDE databases.

SDE-approved private providers must be located in Connecticut, be considered a provider of special education, and be meeting and maintaining SDE requirements for such approval. SDE non-approved providers fall into one of the following four types:

1. Connecticut provider of special education program that is not approved by SDE;
2. Connecticut provider of a transitional/vocational program that is certified as a vendor by a state agency other than SDE (e.g., Department of Developmental Services);
3. Out-of-state provider approved by the home state and, therefore, is recognized by SDE as having an out-of-state approval (reciprocity); or
4. Out-of-state provider that is NOT approved by the home state and, therefore, NOT recognized by SDE (no reciprocity).

Table 1 shows the distinctions between these types of private providers.

<b>Table 1. Distinctions Between Types of Private Providers</b>				
<b>Located in CT?</b>	<b>Considered Provider of Special Education?</b>	<b>Meet or Maintain Requirements for SDE Approval?</b>	<b>If Not Located in CT, Approved by Home State?</b>	<b>Type of Private Provider</b>
Yes	Yes	Yes	N/A	SDE-approved providers (APSEPs)
				<b>SDE non-approved providers:</b>
Yes	Yes	No	N/A	CT provider of special education program not approved by SDE
Yes	No	N/A	N/A	CT provider of transitional/vocational program certified as vendor by an agency other than SDE
No	Yes	N/A	Yes	Out-of-state provider approved by the home state and, therefore, recognized by SDE as having this out-of-state approval (reciprocity)
No	Yes	N/A	No	Out-of-state provider NOT approved by the home state and, therefore, NOT recognized by SDE (no reciprocity)

## **Reporting**

Each audited private provider and SDE was given an opportunity to comment on the findings and recommendations, and their responses are included within this report. In accordance with Section 10-91g (e), we will distribute this report to the school districts sending students to the private provider, the Commissioner of the State Department of Education, and the joint standing committee of the General Assembly having cognizance of matters relating to education. The audited private providers will also receive this report.

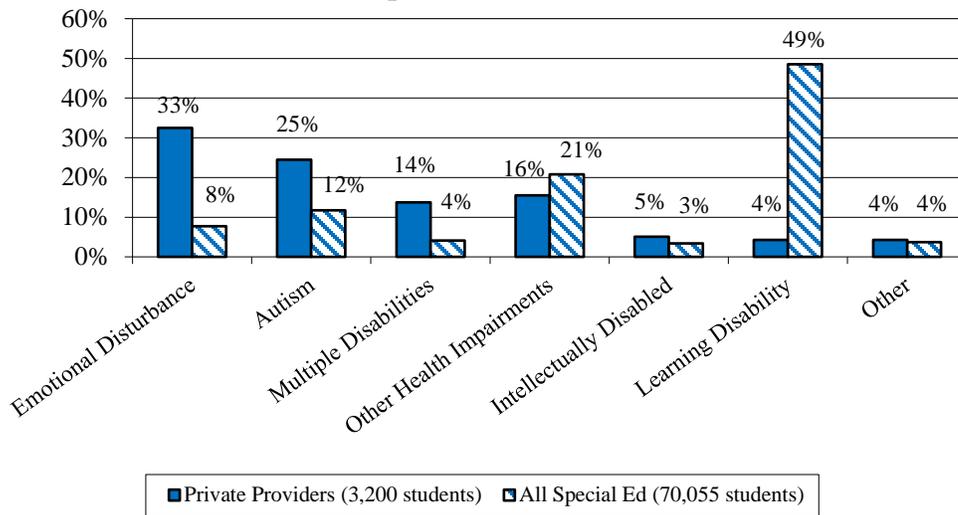
## **Overview of Private Providers of Special Education Services**

### **Students Served**

EdSight is a public portal for the State Department of Education containing data on students, educators, instruction, and performance. EdSight data indicated there were 522,906 Connecticut students in grades K-12 during the 2015-16 school year. Special education students totaled 70,055, which represents 13.4% of the student population. Approximately 3,200 of the 70,055, or 5% of the special education students, and 0.6% of the total student population were educated by an SDE approved or non-approved private provider of special education.

Figure 1 shows that, for the 70,055 special education students in Connecticut, the most prevalent primary disability is categorized as a learning disability, which includes speech or language impairment. The subset of 3,200 special education students educated by private providers, in contrast, are more likely to have primary disabilities of emotional disturbance or autism.

**Figure 1. 2015-16 Comparison of Disability Type for All Special Education Students vs. Students Placed With Private Providers of Special Education**



**Private Provider Types**

Table 2 gives details of student and provider counts by the type of private provider. Information regarding the 202 SDE non-approved private providers is also included in this table. Table 2 shows that the majority of students (85.6%) attend programs at SDE-approved private providers.

Category (Data as of Fall 2015)	Total No. of Providers	No. of Providers with Students	No. of Students	Percent of Students
<b>SDE-approved</b> private providers of special education programs (APSEPs)	<b>68</b>	<b>66</b>	<b>2,738</b>	<b>85.6%</b>
<b>SDE non-approved</b> providers of special education:				
CT provider <i>not approved</i> by SDE as an APSEP	10	10	76	2.3%
Provider of transitional/vocational program <i>certified as a vendor</i> by a state agency other than SDE	92	40	236	7.4%
Out-of-state provider approved by the home state and, therefore, <i>recognized by SDE</i>	94	41	140	4.4%
Out-of-state provider NOT approved by the home state and, therefore, <i>not recognized by SDE</i>	6	5	10	0.3%
<b>Subtotal</b>	<b>202</b>	<b>96</b>	<b>462</b>	<b>14.4%</b>
<b>Total</b>	<b>270</b>	<b>162</b>	<b>3,200</b>	<b>100%</b>

## **Tuition**

Costs associated with services at each private provider may vary, depending on the nature of services provided. The 7 audited private providers administered services to students with autism, emotional disturbances, and other disabilities to populations ranging from approximately 20 to 50 students. Table 3 summarizes data provided by SDE for the tuition days and costs at the 7 audited private providers as of March 2016. We note that the data may not represent the total population at each private provider as SDE only captures the data for students for whom the school district sought excess cost grant reimbursement. Students within each school have varying service requirements that may be reflected in the range of tuition costs.

<b>Private Providers</b>	<b>Tuition Days</b>	<b>Tuition Cost</b>	<b>Average Cost per Tuition Day</b>
Meliora Academy	10,415	\$9,074,784	\$871
Benhaven School	10,458	5,748,450	550
Oak Hill at New Britain	7,370	3,274,349	444
Other - Unnamed Provider (Due to FERPA)	10,134	3,819,983	377
Community Child Guidance Clinic School	5,941	2,104,027	354
Intensive Education Academy	5,904	1,939,333	328
Ben Bronz Academy	4,128	1,150,185	279

## **Confidential Information**

Some of our reports and certain supporting documentation related to private provider audits may include student information that we must keep confidential in accordance with both the Federal Educational Records Privacy Act (FERPA) and Section 10-10a (e) of the General Statutes. As it relates to the audits, FERPA protects the privacy of student education records. Section 10-10a (e) of the General Statutes indicates that the records contained in the SDE Public School Information System “shall not be considered a public record for the purposes of section 1-210 of the Freedom of Information Act.” Therefore, all of our work papers and reports must be monitored to protect personally identifiable student information. Before issuing any report related to private provider audits, we will submit a draft to SDE for review and approval for privacy compliance purposes. SDE reviewed this report for those purposes. For reports containing protected data, public distribution is prohibited.

## **Related Audit Reports**

Background information may be found in the February 6, 2017 APA report titled [Interim Report on Special Education Private Provider Audits](#). We are also issuing 2 other audits providing detailed descriptions of the SDE process for approving and monitoring: 1) [The State Department of Education’s Approval Process of Private Special Education Programs and Oversight of Non-](#)

[approved Programs](#); and 2) [Approval and Monitoring of Contracts or Other Arrangements Between Local and Regional Boards of Education and Private Providers of Special Education](#).

**STATE AUDITORS’ FINDINGS AND RECOMMENDATIONS**

Based on audits of 7 private special education providers, findings and associated recommendations are presented below for each of the 3 audit objectives. The following table shows which private providers we asked to respond to each recommendation and which recommendations applied to the State Department of Education or the school districts. We did not request a response from the school districts since we were acting as their agent during the audited period.

Rec. No.	Finding No.	SDE	Meliora	Benhaven	Oak Hill New Britain	Unnamed (FERPA)	CCGCS	Intensive Education	Ben Bronz	LEA
1 and 2	1	*	*	*	*	*	*	*	*	
	2	*	*							
	3	*	*	*			*	*		
	4	*	*	*			*	*		*
3	5	*		*						
4	6	*								
	7	*	*	*	*	*	*	*	*	

**Allowable Costs Undefined and Contract Usage Inconsistent**

**Finding 1** – Allowable costs are not defined by statute, regulation, or policy. Therefore, it is hard to make a clear determination whether providers expended state and local funds for costs considered acceptable.

The first audit objective was to determine whether state and local funds to provide special education and related services were spent for allowable costs. Connecticut does not define types of allowable costs for private special education providers; therefore, we could not determine whether providers had expended state and local funds for allowable costs. These are matters related to costs incurred by the school districts.

Our review noted that the private providers are either structured as nonprofit organizations under Section 501(c)(3) of the Internal Revenue Code or S-corporations. These structures create different objectives, including whether they are motivated to provide services at a profit.

A nonprofit organization is approved by the Internal Revenue Services as a tax-exempt organization, which has limits to the amount of reserves that can be retained. There is some assurance within these rules that net reserves are not being retained and enriching its members. Certain of these rules include a limit on the amount of profits that can be generated and public reporting of its tax returns. We saw evidence of expenditures that appeared high, including employee benefits. However, without a definition of allowable costs, there is no clear criteria to measure against.

An S-corporation is a business in which all profits (or losses) are passed directly to the owner. S-corporations can generate unlimited profits. We saw evidence that the S-corporation charged significantly more than the nonprofit private providers. Without a clear definition of allowable costs, it is difficult to determine whether the for-profit provider overcharged school districts, despite evidence of a significant profit by the provider.

Notably, federal guidelines state that the school district cannot weigh costs when considering services in student individualized education programs. While the legislature charged our office with reviewing allowable costs, the school district must pay for any tuition-based amount, even if it far exceeds the total costs associated with educating students. The result is a net profit that certain providers can take as an owner’s draw. We found that one private provider did so.

**Finding 2** – We are concerned that school districts are not contracting for certain types of services with vendors to set forth reasonable expectations, including cost, prior to establishing individualized education programs.

It is evident that the way private providers are organized has a significant impact on the cost of special education services. Under the federal Individuals with Disabilities Education Act (IDEA), children with disabilities have an unconditional right to a free appropriate public education (FAPE). If a particular program or service is necessary to meet the special education needs of a student, the student must receive that service without regard to cost. However, cost may be a factor when choosing among multiple programs that all meet the student’s needs. Before consideration of an individualized education program, school districts should be contracting for certain types of services with vendors to set forth reasonable expectations, including cost.

Because Connecticut does not define what types of costs are allowable, it is more difficult to determine whether the costs shown in Table 4, are acceptable. These types of expenditures should elicit further review.

<b>Type</b>	<b>Amount in 2016</b>
Owner Draw Estimate:	\$825,000
Expenses for Employee:	
Apartment Rent	\$20,593
Apartment Telephone	\$1,500
Apartment Utilities	\$2,065
Cell Phone	\$1,400

**Finding 3** – There were no contracts between the school districts and private providers for 31 of the 63 student records reviewed (49%) at the 7 private providers.

There were no contracts between the school districts and private providers for 31 of the 63 student records reviewed (49%) at the 7 private providers. Many of the contracts we reviewed lacked language detailing the private provider’s calculation of tuition and charges for related services. In lieu of contracts, school districts and private providers appeared to rely only on the student IEP and a rate letter sent to the school district by the private provider. The General Statutes and regulations only require a contract between school districts and private providers when the districts apply to the State Department of Education for excess cost grants.

**Finding 4** – We could not find evidence that statutorily required written contracts were executed for 24 of 46 (52%) students whose local district applied to the State Department of Education for excess cost grants.

There was no evidence that contracts were executed for 24 of 46 students for which school districts applied to the State Department of Education for excess cost grants. Section 10-76d (d) of the Connecticut General Statutes requires a contract between a school district and a private provider for excess cost grant reimbursement for a special education student placed out of district. School districts may apply for these grants when the cost to educate a student exceeds the district’s basic contribution threshold by four and one half times the net current expenditures per pupil (NCEP) and basic contributions, according to the Special Education Excess Cost Grant User Guide Version 1.2, dated 8/2/2016. Contracts are not required when school districts do not seek excess cost grant reimbursement.

Aside from contracts being required for excess cost grants, sound business practice recommends that vendor contracts include specific language regarding the scope of services, including the contract term, cost of services, and specific provisions on how costs will be calculated, invoiced, and paid. Contracts should also contain clear provider performance objectives and measurements. Payments for services should be linked to those objectives. Contracts should also address standard terms and conditions, entity-specific provisions such as insurance requirements, employee qualifications, and grounds for termination. Both parties should sign the contracts.

School districts applied for excess cost grant reimbursement for 46 of 63, or 73%, of students. Our office examined the records for the 46 students to locate contracts between private providers and the school districts. There is no evidence of executed contracts for 24 of these 46, or 52%, of students. We did find that contracts were in place for 10 of 17, or 59%, of students for which the school districts filed no excess cost grant application (Table 5).

<b>Table 5. Evidence of Contracts and Excess Cost Grant Applications for 63 Students</b>				
		<b>LEA applied for excess cost grant?</b>		<b>Total</b>
Contract found?		Yes	No	
	Yes	22	10	32
	No	24	7	31
	<b>Total</b>	46	17	63

*Recommendation:* The State Department of Education should consider defining allowable types of costs for private providers of special education services. **(See Recommendation 1.)**

*Private Provider Responses:*

*Meliora Response:*

“While we agree that defining allowable costs for private providers would be helpful, it would need to account for the differences in private programs as it relates to population of students served, level of services (educational and related services), type of services provided i.e. ABA which requires a high level of training to maintain RBT credentials for staff, 1:1 staff to student ratio and BCBA staffing to meet the supervision guidelines for the RBT's (5% of the hours spent providing applied behavior analytic services per month, individual and group supervision, competency assessments and group trainings related to the RBT Task List) as well as ensuring guidelines set by the BACB are met (2 hours of supervision time for every ten hours of programming). In our case this equates to needing 6.25 hours of BCBA supervision per student per week (412.5 hours per week) and a total of eight full time BCBA's on staff. Additional comments regarding total tuition costs: The total tuition costs that are summarized by the state audit are accurate. However, it is important to note that our school's tuition is high due in part to 5 reasons:

- Our school accepts some very challenging students - most of whom have not succeeded in other special education programs. Some of our students require 2:1 or occasionally 3:1 support.
- Several students receive extended day services - at times with 2 staff members assigned to them. This can increase the number of hours the student is supported by 8-10 hours per week. Additionally, students who exhibit behaviors which are explosive or pose a safety threat to staff in times of escalation require that in addition to their typical 2:1 staffing 6-8 other persons must be in the building working to support the student and staff in case of an escalation needing physical management. This additional staffing is not billed to districts. It should also be noted given our student

population staff injuries may and do occur thus the cost of providing adequate insurance and Workers Compensation is high.

- Our school has a highly atypical tuition model that varies significantly depending on the ancillary therapy services that are delivered. This can result in more than a 50 % difference in tuition costs between students. While we realize that this is atypical, we believe that it is ultimately “fairer” to the majority of districts that send students to us. So, a student who receives 10 or more hours of therapy (as mandated by the PPT) is charged a higher tuition than a student who has only 3 hours of therapy.
- Some students' PPT's require a different type of Speech and Language therapy services than our staff can provide. This includes students who require feeding therapy and present with high risks of aspiration/choking, oral motor treatments, AAC interventions and Relatedness Training. In these cases, we are required to sub-contract out these services. This can result in significant costs that are simply passed on to the districts e.g., if we are billed for SLT at \$130/hour, this fee is added to the student's overall tuition. We are working hard to reduce the number of students for whom this is true by providing continuing education to our Meliora Speech - Language Pathologists via outside trainings and overlapping with outside providers to learn the needed techniques.
- Staffing accounts for a significant fraction of our tuition. Our school's model is to have 1:1 or 2:1 support along with sufficient BCBA support and Special Education teachers. There is a roughly 2:1 ratio of direct staff supports to students.”

*Benhaven Response:*

“Benhaven has no objection to the SDE defining allowable types of costs. We would have concerns if rates were set for those costs. There is significant difference in the type and level of need of students served by private providers that may be difficult to capture in a rate setting methodology. There is a great deal of specialization involved in our work and in the work of all the private providers and to try to standardize the cost has the potential to severely limit services. Benhaven would be happy to work with SDE in this area if SDE were to look for assistance.”

*Oak Hill at New Britain Response:*

“Each private provider serves students with an immense variety of needs. The challenge would be to standardize in some way the allowable cost, bearing in mind that each student has individual needs. We are concerned that FAPE for them could be compromised, if something the student needs to access and benefit from their education, that is working for them, is not considered an allowable cost. Some examples are: art therapy, daily transportation to

vocational placement, round the clock staffing, suctioning equipment, mechanical lifts and positioning equipment, etc. Table 4 seems specific to a provider and may need to be addressed accordingly. In addition, cost standards would need to consider the student population that each school serves, staff salaries, length of school year, services that are available and needed. Again, considering cost of a private provider can have FAPE implications for that student. Students with the most significant needs attend private school, as these needs cannot be addressed by public school districts. When a student is outplaced, they are outplaced in a placement that has the expertise that are required for that student to access and benefit from their education. Due to the nature of our duty to serve students with some of the most significant needs, our staff training opportunities must be enhanced, worker's compensation cost many times is higher, etc. Furthermore, what we also must consider is, if in-state providers are not able to provide appropriate services due to set allowable costs, this will increase outplacements in out-of-state schools. If students' needs are not appropriately met during their education, there could be compensatory costs to the state after graduation."

*Intensive Education Academy Response:*

"Agree with this recommendation. It is always helpful to have examples and specifics in order to weigh judgements. Specifically it would be helpful to provide guidelines as to how to bill required consulting services such as BCBA, OT, Speech and Psychology. In order to provide services in a less restrictive setting within the program it is often recommended at PPTS and placed on pg. 8 of the IEP that a child receive a specific consult time, These consults require cost of staffing hours that are not billable but required by the IEP.

On another topic, I would be interested in understanding what types of employee benefits you found to be excessive affecting program cost."

*Unnamed Provider (Due to FERPA) Response:*

"We recognize the recommendations will require further clarification, grounded in an in-depth understanding of the unique operational challenges of our diverse organizations. With that in mind, I shared these findings with the Executive Committee of CAPSEF. The Board unanimously agreed we would welcome the opportunity to actively participate in a work group focused on developing guiding practices in all of the areas identified. It is our belief this collaborative effort would be of mutual benefit in providing the clarity, consistency and high standards we all seek in serving the most vulnerable students of our State."

*Community Child Guidance Clinic School Response:*

“I agree that the State Department of Education should define allowable types of costs to ensure that there are checks and balances in regards to the services that students are provided. I think this would be beneficial to all providers. This would allow for our programs to be more competitive.”

*Ben Bronz Response:*

Ben Bronz did not provide a response.

*SDE Response:*

- “Defining “allowable costs” would require a determination of “allowable services.” “Allowable services” in an individualized education program (IEP) are individualized and cannot necessarily be defined or limited by a list of allowable services. Rather, the services need to be driven by the individual needs of the student as defined in the IEP.
- As identified in the audit report, “federal guidelines state that the consideration of costs is not permitted by the school district when considering services in student IEPs.” Students with disabilities have an unconditional right to a free appropriate public education (FAPE). If a particular program or service is necessary to appropriately meet the special education needs of a student, then that service must be provided without regard to cost.”
- The IEP determines the required components of the program and services necessary for the student to receive FAPE. Once the IEP has determined the student needs, the district may explore programs that can provide such services. If there are multiple programs that can implement the IEP, then, location, transportation implications, and cost can be considered when making a determination of placement. Other considerations must factor in the placement decision such as input from the student and parents/guardians.
- Consideration must also be noted regarding the cost of services based on location in Connecticut where availability, cost of living, and costs for services vary depending on geography.”

*Auditors’ Concluding*

*Comments:* Because SDE does not define allowable costs, the types of charges listed in Table 4 appear to be permissive. We suggest that attempts can be made to control costs while also meeting student needs. Controlling costs would better position the state to do more with its resources, including helping more children receive services.

*Recommendation:* The State Department of Education should determine whether a contract is in place between the school district and private provider prior to providing the district with an excess cost grant. (**Recommendation 2.**)

*Private Provider  
Responses:*

*Meliora Response:*

“We would agree that contracts for services should be in place prior to accessing an excess cost grant. We have contracts for all of our students which include the relevant information regarding each student's services taken directly from the IEP document. In most cases, contracts are sent by the sending district and we work with them to clarify as needed.”

*Benhaven Response:*

“Benhaven suggests the IEP should be the contract. The IEP is agreed upon by all members of the team, sets expectations for progress and delineates the scope of services. Other requirements are mandated by law and would not need a contract. Benhaven's letter regarding tuition would cover the business aspects of the placement. Benhaven would be happy to work with SDE in this area if SDE were to look for assistance.”

*Oak Hill at New Britain Response:*

“It is to each party's advantage to have a contract in place, including measures of performance, prior to the start of educational services by the provider. The Statement in the report on page 12: “Contracts should also contain clear service-provider performance objectives and measurements. Payments for services should be linked to those objectives” needs further guidance on what can possible measures be. Measures of student success on their goals and objectives is tied to student performance, availability to learn, teaching strategies and student-specific supports provided. Student learning is always a goal for any educator and instruction must be adjusted and modified to meet individual needs of the students, so that they are successful in meeting criteria on their goals and objectives. Considering the population of students that private providers serve, meeting criteria on IEP goals and objectives is slow and is dependent on many factors not necessarily related to the private providers' quality of program. This was also recognized within Connecticut System for Educator Evaluation and Development (SEED). Measures would need to be based on other parameters in addition to student progress parameters.”

*Intensive Education Academy Response:*

“At the time of a referral Intensive Education Academy is often asked to provide the current cost of program. We provide a list of services and tuition costs on a letterhead. Those are listed as the cost for the current year. The actual bill that the LEA receives is determined as the result of each PPT and IEP. Cost will vary if IEP services are reduced or increased. The district sends a contract post PPT however at times they can arrive several months later or not at all. We would appreciate that a contract is required within a reasonable time limit

since they protect student interests as well as the LEA and private state approved.

We would also like the per diem formula in the contract after a discussion with the LEA and Private since our calendars do not always match. There will also need to be a statement concerning the fact that cost will be adjusted if services, supports or length of day change as the result of a PPT and IEP change.”

*Unnamed Provider (Due to FERPA) Response:*

“We recognize the recommendations will require further clarification, grounded in an in-depth understanding of the unique operational challenges of our diverse organizations. With that in mind, I shared these findings with the Executive Committee of CAPSEF. The Board unanimously agreed we would welcome the opportunity to actively participate in a work group focused on developing guiding practices in all of the areas identified. It is our belief this collaborative effort would be of mutual benefit in providing the clarity, consistency and high standards we all seek in serving the most vulnerable students of our State.”

*Community Child Guidance Clinic School Response:*

“It makes sense for the State Department of Education to annually (or at the time a new student enrolls in the private program) receive a report that details services for the school. Transparency is key in providing services and it is necessary for districts to be able to apply for excess cost grants. This would help ease the sometimes very expensive tuition costs that they incur.”

*Ben Bronz Response:*

Ben Bronz did not provide a response.

*SDE Response:*

“This recommendation will be given careful review. However, the SDE believes that it is proper to consider an individualized educational program (IEP) which contains the information required by statute, and which is accepted by a provider when it agrees to provide services required by the IEP to a student, as a contract for purposes of the excess cost grant. The finding notes that SDE reported that an IEP itself is not considered a contract. An SDE attorney did express that view in response to the specific question of whether an IEP, standing alone, constitutes a contract. That was an entirely appropriate – and unremarkable – response to an abstract legal question posed without context. It does not resolve the issue here, however. The issue here is not whether an IEP by itself is a contract, but rather whether a private special education provider, in agreeing with an LEA to provide services to one of the LEA’s students in accordance with the student’s IEP in exchange for payment has taken on a contractual commitment to provide those services in the sense contemplated by the excess cost statute. While the IEP standing alone may not be a contract in a technical legal sense, the IEP describes what the provider

must do for the student. By accepting the student, the provider agrees to implement the IEP. In SDE's view, this acceptance creates a contractual commitment on the part of the provider. Notably, counsel also explained to the auditor that the SDE has characterized an IEP as a contract in the particular context at issue here. Counsel provided the auditor with a portion of the Department's Special Education Excess Cost Grant User's Guide noting that the Guide provides that a school district would be eligible for the excess cost grant if it assumes responsibility for providing special education instruction, "and provides for such services through a contract with the facility in the form of an IEP . . . ." SDE's Excess Cost Guide for LEAs thus gives the IEP, which is accepted by the provider, the status of a contract for the purposes of eligibility of the excess cost grant. Therefore, a school district has complied with the prerequisite for payment where the terms of the IEP met the requirements for payment stated in the statute. The SDE will consider suggesting that school districts review the documents they currently use in outplacing students with providers pursuant to IEPs in order to determine whether it may be appropriate to utilize a more formal document in the future, giving due consideration to not imposing a requirement which may result in school districts incurring significant legal fees. The Department's position is that a school district has complied with the prerequisite for payment where the terms of the IEP met the requirements for payment stated in the statute."

*Auditors' Concluding*

*Comments:*

The IEP does not contain all of the elements that constitute a complete contract. They include cost, frequency and duration of services, and other provisions to ensure a complete understanding of what services the provider is performing, and how much they cost. Having a contract in place with clear provisions helps ensure the state and school districts receive the services they are paying for and the student receives the services they need.

**Indirect Services Billed as Direct Services**

The second audit objective was to determine whether state and local funds to provide special education and related services have been expended in accordance with the individualized education program for each child. We found that invoices matched the agreed-upon tuition amounts for 63 of 63, or 100%, of student records we reviewed. Students attending private special education facilities often receive related services in addition to their academic education, such as physical therapy, occupational therapy, speech and language pathology services, and counseling services. We compared invoices and agreed-upon tuition amounts pertaining to the 63 students. The invoices matched the agreements in all cases.

**Finding 5** – Indirect services were provided by 1 of 7 (14%) private providers to fulfill the direct services requirement specified within the individualized education program, which is inappropriate.

A direct service is provided to the student in a one-on-one or group setting, whereas indirect services may be provided to other people who work directly with the child and may include staff and parent consultations, program development, and monitoring of progress. According to the January 2015 State Department of Education Bureau of Special Education IEP Manual and Forms, SDE considers services listed on page 11 of the IEP direct services unless otherwise indicated. SDE staff confirmed it is not appropriate for a provider to fulfill direct service requirements with indirect services. One of the 7 providers (14%) used indirect services to fulfill direct service requirements within the IEP. The provider indicated that it changed its practice immediately after we brought it to their attention.

*Recommendation:* The State Department of Education should improve communications with school districts and special education providers to clarify how they can provide and document direct and indirect service requirements contained in the individualized education program. (**See Recommendation 3.**)

*Private Provider*

*Responses:*

*Benhaven Response:*

“Variation exists between districts and schools. Benhaven welcomes guidance from SDE and would be happy to participate in developing that guidance.”

*Oak Hill at New Britain Response:*

“Most of the private providers work closely with many public school districts, sometimes as many as 40-60. Most of the private providers experience variations in the interpretation of the regulations, including variations on documentation requirements. With implementation of standardized documentation requirements to document direct services for purposes of billing Medicaid, this could be eliminated. The Connecticut Association for Private State Approved Facilities (CAPSEF) has advocated for uniformity of this system. We have high hopes that appropriate State Departments will facilitate that uniformity. Our school reflects therapeutic recommendations developed within integrated therapies and monitoring within scope of integrated services within students’ IEP goals and objectives.”

*Intensive Education Academy Response:*

“Agreed, Special Education has tremendous needs for documentation and it is a constant challenge to monitor IEPs, services, schedules and billing making sure that IEPs are met and children receive all the supports for which they are

entitled. District to district different tools are used to document and the same is true of Private facilities. It would be helpful to have study groups to 1. Have specific guidelines as to exactly what is required for the documentation 2. Some ideas as to efficient methods to communicate between facilities that share students. To mandate another yearly report will add another form to take us from our actual student work. It would be helpful if we can determine and agree on what exactly the audit needs for proof will be required and include this documentation in our current systems.(Example: Power School, IBP Direct Services Etc ... )

It would also be helpful to have guidelines as to how services should be addressed regarding missed services student absence, refusal, behavior that interferes with the service.”

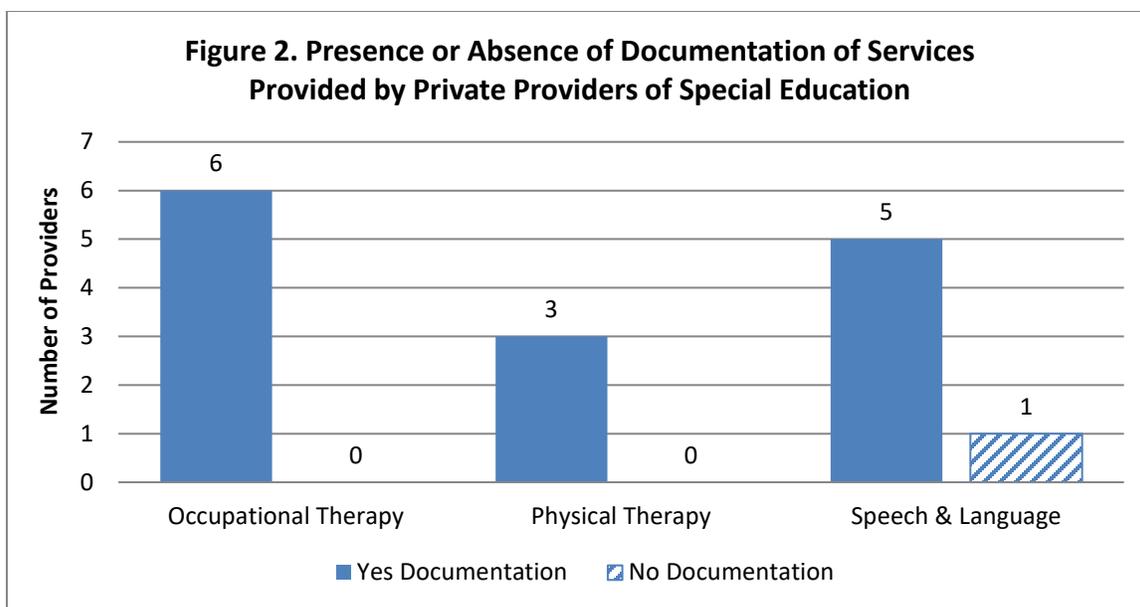
*SDE Response:* “The Bureau of Special Education will continue to meet with and provide technical assistance to Approved Private Special Education Programs (APSEPs)/organizations and districts to facilitate a collaborative approach to supporting students with intensive learning needs. The district is responsible for determining standards and expectations related to the direct and indirect service requirements for the student as documented in the IEP. Arrangement should be made for the documentation of the provision of these services through agreement between the district and the APSEP. Documentation requirements should mirror those required within each district in the provision of services at the local level and/or within Regional Educational Service Center special education programs.”

### **Documentation Requirements Undefined**

**Finding 6** – Services were often documented by the private providers; however, the thoroughness of documentation varied by private provider.

The third audit objective was to determine whether documentation supporting the special education services administered by the private providers was present and adequately maintained. We found that private providers often documented provision of supporting special education direct services; however, the thoroughness of documentation varied by provider. Documentation is one way to assess whether the private provider delivered the services specified in the IEP. Without documentation, we could not determine whether the provider did not deliver the services, or that the provider delivered the services, but failed to document it.

We found evidence that students received services specified in their IEP for the 63 student records examined in this audit. Each private provider may administer a unique set of related services, including occupational therapy, physical therapy, and speech and language pathology services. With the exception of speech and language pathology services for one private provider, the private providers documented services offered to the students reviewed (Figure 2).



Some of the private providers we examined maintained detailed documentation of services delivered, including date, type of service, amount of time, and name of the student and related services provider. However, we did not find thorough documentation for all 7 providers. The most common reasons that providers did not deliver IEP-required services to students are that the professional or student was absent or unavailable on the date of the service.

**Finding 7** – Documentation standards for private providers do not exist in Connecticut.

Connecticut does not have documentation standards for private special education providers to follow. The ability to examine consistent documentation of private provider services is one way for our office to comply with its statutory charge to assess whether the private provider delivered the services specified in the IEP. Connecticut statutes, regulations, or State Department of Education guidelines do not require documentation, or provide guidance or standards for private provider documentation of related services. We found private provider documentation typically included the date, type of service, amount of time, and names of the students and related service providers. Documentation requirements for private providers exist in New York within the Reimbursable Cost Manual for Programs Receiving Funding Under Article 81 and/or Article 89 of the Education Law to Educate Students with Disabilities, July 2015 Edition, State of New York Education Department Rate Setting Unit. It states, “Related service records must be maintained for each child and each service session, indicating the date, duration, nature and scope of service provided, with the name, license or certification number and signature of the related service provider.” Connecticut does not have a similar standard.

*Recommendation:* The State Department of Education should consider working with private special education providers to develop and implement documentation requirements. **(See Recommendation 4.)**

*Private Provider  
Responses:*

*Meliora Response:*

“We agree that the state should have adequate documentation re the therapy services that are delivered by the private education providers. While we believe that we have provided adequate documentation for all of our students, we would agree to accepting the requirements mentioned in the report (based on the New York Education Department). It would be crucial that therapists and administrators be part of the development of this requirement to ensure feasibility of implementation.”

*Benhaven Response:*

“Documentation for direct services should now be uniform with the requirement as of 12-1-17 that private providers submit data to school districts for Medicaid reimbursement. The Medicaid forms provide a standardized way to collect and report that data. Benhaven welcomes guidance from SDE regarding indirect service documentation and would be happy to work with SDE to outline those requirements.”

*Oak Hill at New Britain Response:*

“Page 11 of the IEP that breaks down the special education and related service hours is used to document direct services. Page 8, the accommodations page, also asks for identification of Required Supports for Personnel to fully implement the IEP including integrated and consultative services. Since the audit evidence shows that there were variations, it is clear that further clarification or communication would need to happen. To ensure that everyone is interpreting the requirements and implementing them with fidelity, a stakeholders group comprised of different private providers and public-school representatives, led by SDE, should develop a guideline, a communication plan and a technical assistance plan. Uniform Medicaid billing forms, that could accept data from different electronic records systems, would guide documentation for direct services.”

*Intensive Education Academy Response:*

“Perhaps this could possibly be done though collaboration with CAPSEF as a topic for monthly meetings which the State consultants have so generously done in the past with problem solving other topics.

Another thought about documentation: If though communication with ConnCase the Privates became familiar through discussion of LEA needs, we may be able to support them more. For example on excess cost... apparently there is a report due in Feb. for excess cost. If the Privates knew generally about this they would be more aware about letting districts know earlier about

possible changes they would be recommending for student services at year end PPTs.

In regard to service provider-performance objectives and measurement and payments linked to those objectives ... there would need to be specific guidelines for this documentation (p1S para. I) so the requirement would be implemented consistently from district to district.”

*Unnamed Provider (Due to FERPA) Response:*

“We recognize the recommendations will require further clarification, grounded in an in-depth understanding of the unique operational challenges of our diverse organizations. With that in mind, I shared these findings with the Executive Committee of CAPSEF. The Board unanimously agreed we would welcome the opportunity to actively participate in a work group focused on developing guiding practices in all of the areas identified. It is our belief this collaborative effort would be of mutual benefit in providing the clarity, consistency and high standards we all seek in serving the most vulnerable students of our State.”

*Community Child Guidance Clinic School Response:*

“All state approved private special education providers would benefit from standardized documentation for our related service providers. This could be done monthly or annually. Uniformity in documentation would be beneficial to all private special education facilities.”

*Ben Bronz Response:*

Ben Bronz did not provide a response.

*SDE Response:*

“The Bureau of Special Education will continue to work with both APSEPs and districts to facilitate the development of appropriate documentation of services provided to students served in these schools. However, the parties to these agreements are responsible for the final determination of what will be appropriate documentation for the purposes of meeting the requirements of the IEP.”

*Auditors’ Concluding  
Comments:*

While it is true that the parties currently set the documentation standards, it is appropriate for the State Department of Education to set uniform documentation standards for consistency purposes and to attempt to control costs while also meeting student needs. These standards would help ensure that the state and school districts are getting what they are paying for and students are receiving the services they need.

While Benhaven may be using the guidance from Medicaid as its standard for documentation, SDE has not fully adopted these standards and may do so when it finalizes its regulations.

## RECOMMENDATIONS

This is our first audit of private providers, and there are no prior audit recommendations to address. Our current audit resulted in four recommendations.

### *Current Audit Recommendations:*

- 1. The State Department of Education should consider defining allowable types of costs for private providers of special education services.**

Comment:

Connecticut does not define types of allowable costs for private special education providers. Therefore, we could not determine whether private providers had expended state and local funds for allowable costs.

- 2. The State Department of Education should determine whether a contract is in place between the school district and private provider prior to providing the district with an excess cost grant.**

Comment:

Prior to establishing individualized education programs, school districts should be contracting for certain types of services with vendors to set forth reasonable expectations, including cost. There were no contracts between the school districts and private providers for 49% of the student records reviewed. There was no evidence that contracts were executed for 52% of students for which school districts applied to the State Department of Education for excess cost grants.

- 3. The State Department of Education should improve communications with school districts and special education providers to clarify how they can provide and document direct and indirect service requirements contained in the individualized education program.**

Comment:

One private provider used indirect services to fulfill the direct service requirement within the individualized education programs. The provider immediately corrected this matter, but this situation illustrates the need for the State Department of Education to improve communications with private providers regarding the requirements

- 4. The State Department of Education should consider working with private special education providers to develop and implement documentation requirements.**

Comment:

There is no established standard for private providers to use when documenting that they delivered special education services. The State Department of Education should establish uniform standards. These standards would help ensure that school districts and the state are getting what they are paying for and students are receiving the services they need.

## **Acknowledgement**

The Auditors of Public Accounts would like to recognize the auditors who contributed to this report:

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**CONCLUSION**

In conclusion, we wish to express our appreciation for the cooperation and courtesies extended to our representatives by the personnel of the State Department of Education, school districts, and private special education providers during the course of our examination.



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