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Michael L. Williams
Commissioner

Resolution of NCLBSES Complaint Investigation

VIA EMAIL

cnash@wifisd.net
info@believ-n-u.com
jenningsdemetria@yahoo.com

July 8, 2013

Christy Nash
Director of State and Federal Programs
Wichita Falls Independent School District
P.O. Box 97533
1104 Broad
Wichita Falls, TX 76307-7533
(940) 235-1026

Demetria Jennings, Executive Director
Believe-N-U Youth Empowerment
201 E. Clay St.
Richmond, VA 23219
804-648-7323

Subject: Wichita Falls Independent School District
Believe-N-U Youth Empowerment
Invoicing for SES Tutoring Services Not Provided

To the Parties Addressed:

This letter serves to resolve the April 16, 2013 complaint filed by Wichita Falls Independent School District (district) concerning Believe –N-U Youth Empowerment, LLC., (Provider). The Provider is approved to provide Supplemental Educational Services (SES) in Texas. The Texas Education Agency's (TEA) state-level investigation findings and conclusion are reported in this letter and is final. TEA acknowledges that it did not resolve this complaint within the 60-day timeline.

Regulations

Districts and state-approved SES Providers are required to follow all federal and state laws, rules, and policies. Further, parties are required to follow the terms of your SES Agreement (contract), the SES state application, including the provider Provisions and Assurances and Code of Business Ethics.

State-approved SES providers and districts are subject to monitoring, investigation, and sanctions in accordance with federal and state regulations and established policies.

Authorities

This investigation was conducted pursuant to and under the following authorities and provisions:

- *Federal Law: Title I, Section 1116(e) of the Elementary and Secondary Education Act, No Child Left Behind Act (NCLB).*
- *Letter, signed by the Commissioner of Education, February 19, 2013. Federal Policy: The Supplemental Educational Services (SES) Non-Regulatory Guidance, January 14, 2009.*

- *TEA SES Application and its Provisions and Assurances and Code of Professional Conduct and Business Ethics for Supplemental Educational Services Providers as amended January 8, 2008.*
- *TEA Policy: SES Complaint Procedures, To The Administrator Addressed Letter, signed by the Commissioner of Education, November 22, 2010.*
- *TEA Policy: Standards and Mechanics for the Removal of Standards and Mechanics for Removing SES Providers from the State-Approved List, To The Administrator Addressed*

Allegations

On April 30, 2013 the district filed a complaint alleging the Provider submitted fraudulent documentation for payment of an invoice for services in February, 2013. The district alleged that the provider submitted fraudulent documentation, specifically, student tutoring sign-in / attendance sheets, to invoice the district for payment for tutoring services that were not provided to the students. The district asserts that the falsified information and documents violate the contracts between the district and the companies. In addition, the district believes that the providers violated federal SES regulations and the state application provisions and assurances, including the SES Code of Business Ethics.

District Level Investigation

In accordance with the state-level NCLB/SES Provider complaint process, the district submitted its preliminary findings and supporting documentation to the agency for a state-level investigation. The district contacted the Provider through a letter dated April 16, 2013. The agency accepted the district findings and documentation to be sufficient for a state-level review.

The district's findings and conclusions are based on the following:

- complaints
- inspection of student tutoring attendance sign-in sheets
- auditing of invoices and payments
- validation of data entered in the EZ SES Management System
- interviews with parents
- interviews or written statements of students
- response submitted by the Provider

The district determined that the invoice submitted by the Provider for February was false.

Provider Response to Dallas ISD:

Thank you for the notification regarding the invoicing irregularities that were discovered in our February 2013 invoice. As indicated in our initial emailed response to the notice, we have now looked into the matter in order to determine what happened to create the noted irregularities. After receiving your notice, we contacted both the Area Supervisor and State Contact to obtain their responses to the details found within the notice. Our Area Supervisor assured us that tutoring had indeed taken place at the designated location, and that he had receipts and student work to support his claim. We were further assured that the supporting documentation would be forwarded to us so that we may supply it to you. Unfortunately, we did not receive that documentation and, when contacted regarding the expected submission, our Area Supervisor then advised that the information that he mentioned was insufficient to support his claim. Both the Area Supervisor and our State Contact, Mr. King, have worked in SES programs in Texas for years with another company and came highly recommended. He, along with the other staff members mentioned in the notice, has since been discharged. We appreciate the opportunity that we have been given to respond to the notice that you sent. We are also appreciative of being alerted to the improprieties that were brought to light as a result of your notice. It was our understanding that tutoring

was occurring on a regular basis, as evidenced by the operational funds that we continually provided to that district as well as the program completion incentives that we remitted to the Area Supervisor upon notification of a student's completion of their tutoring hours. As I'm sure you can imagine, we are extremely disappointed at this turn of events; this incident is not indicative of the programming or personnel that have been the cornerstone of Believe-N-U Youth Empowerment since our inception in 2009.

District Conclusion

The district concluded that the actions of the Provider violated the agreement it had with the Provider. The district stated that the SES Provider failed to provide accurate attendance data (i.e., student name, number of SES sessions for each student per month, dates of attendance, actual hours of service and amount owed) and that the data provided is wholly or partially false. Therefore, the submission for payment was not compliant with the terms of the SES agreement, and payment was not duly earned.

Provider Response to TEA

On May 1, the agency sent a written notice to the Provider concerning the complaint filed by the district. The Provider responded, submitting documentation for consideration in the resolution of the complaint. On May 1, 2013, Ms. Demetria Jennings, Executive Director of Believe-N-U Youth Empowerment, responded to TEA. Ms. Jennings response is as follows:

At no time has Believe-N-U Youth Empowerment knowingly submitted false invoices. Just as the district was presented with signed attendance documentation, so were we. It is our practice that the area supervisor provides first level reviews of the documentation presented while our state contact provides second level reviews, ensuring that all information submitted is accurate. At the corporate level, we perform quality control checks after program completion incentives have been provided to the students that have been noted as having completed all of their hours in EZSES. The aforementioned reviews, including the spot checks, were completed for students found on our December and January invoices, at which time all information proved accurate. The third level of review, quality control checks, were not yet conducted on students found on our February invoice because we had not yet received documentation from our area supervisor regarding the dissemination of program completion incentives; however, we were still under the impression that our first and second level reviews were conducted prior to the submission of the attendance sheets for that month.

As stated in our initial response to the Wichita Falls ISD on 4/24/13, once we were made aware of the irregularities in our invoicing, we immediately launched our own internal investigation. Our area supervisor advised us that he had supporting evidence of the tutoring that took place during that time and that he would provide it. Since operational funds were spent during that time, we were confident that he did indeed possess that documentation. Unfortunately, the area supervisor never produced the documentation that he claimed that he had in his possession and, as a result, was discharged. The same actions were repeated for the other parties involved. As we previously stated, these employees came to us highly recommended and had all worked in the Texas SES system for many years and presented as being very familiar with the rules and regulations for the district.

We are certainly frustrated in the fact that the invoices submitted were inaccurate and we regret that our checks and balances system did not catch these irregularities. Given the accuracy of the previous two invoices, we were confident that we were receiving correct documentation. Because of the time that it takes to ship program completion incentives, collect the appropriate signatures and then remit the signatures to us for our quality control checks we were unable to spot the irregularities prior to submission. Attached, please find the last program completion incentive sign off sheet that we received from the area supervisor, indicating that students had received their incentive after completing the program. Also, attached, please find the statements showing the operational funds that the area

supervisor was spending in order to facilitate tutoring (as far as we were told).

Thank you for the opportunity to respond to your notice. We take our business very seriously and are sincerely devastated to have had this situation occur. In our years of providing SES services in Virginia, we have never encountered employees who have operated in a manner unbecoming to our organization. We have always operated with the utmost integrity and respect in working with our districts and have always received praise and hearty recommendations from those we have worked with. To think that our company could receive sanction as a result of this incident is truly upsetting. Please note that we intend to fully cooperate with your investigation and, if there is anything that you need from us, please do not hesitate to ask.

The response included two transaction histories of Wal-Mart money cards, and a sign in sheet offering congratulations to students for completing Believe-N-U Youth Empowerment's Program.

TEA State-level Findings

During its investigation, the agency reviewed the following:

- information submitted by the district including,
 - student sign-in sheets
 - student witness statements
 - parent written statement
 - written correspondence between the providers and the district
- response and documentation submitted by the providers

The agency's findings, conclusions, and corrective actions for the Provider are based on the following:

1. The district submitted 13 sign in sheets with student statements that the signature on the sign in sheet is not their's and they did not receive tutoring.
2. The district submitted 8 sign in sheets with student statements that a representative told them if they signed a blank sheet 7 times, they would receive a tablet. The students admitted the signatures were their's but they never received tutoring, nor did they receive a tablet.
3. A parent's written statement that a gentleman came to her house and told her that her son would receive tutoring over spring break for one to two hours a day for the full week and when her son had been tutored for a week, he would receive a tablet. The gentleman asked the mother and son to sign a form 7 times. He did not tell them it was a signature form for tutoring. Her child never received tutoring.
4. Documentation received from Provider:
 - a. Transaction History for two Wal-Mart Money Cards
 - i. These transaction histories show amounts and dates of purchases and ATM withdrawals, but they do not show detail that would substantiate the Provider's claim of "operational funds being spent to facilitate tutoring".
 - b. Program Incentive Sign Off Sheet
 - i. The names of the 21 students who submitted written statements of never receiving tutoring, and the student whose mother submitted a written statement, do not appear on the sign in sheet.

Conclusion:

The Provider falsified information on students' tutoring sign-in attendance sheets and submitted the falsified information to the district for the purposes of payment for tutoring services that were not provided to the students.

Corrective Action

Category of Violation(s): Category 2: Systemic /Probation (6 months)

Under the agency's Standards and Mechanism for the Removal of SES Providers, the Provider's violation is systemic. The probation period will be for six (6) consecutive months from the date of this letter. A single instance of noncompliance found by TEA during the probation period will elevate the provider to Category 1 for immediate removal.

1. The district must report the agency's investigative findings at the next public meeting of the district's Board of Trustees, as a board agenda item.
2. The Provider must provide the district a full and current list of its employees with date of births and any other identifiers necessary for the district to verify that the Provider's representatives, tutors, recruiters met the district's **fingerprinting and criminal history record review** as required by state law and the state SES application.

Applicable Regulations are included as an enclosure/attachment.

The TEA will carefully monitor SES providers that are placed on probationary status. The probationary status is because of a number of students involved and the fact that the SES providers failed to (1) monitor the provision of SES by their employees and representatives, (2) identify and self-report their findings to the district, and (3) take immediate corrective actions.

Should the TEA substantiate another complaint concerning an SES Provider on probation, the TEA will apply the Standards for Removal criteria and may remove the Provider from the State-approved SES Provider List.

Invoicing / payment disputes are contractual matters. The TEA does not have jurisdiction and authority to resolve such disputes between the district and Provider.

Appeal of TEA's Decision

The TEA's decision is final and there is no administrative appeal at TEA.

The district or Provider may appeal this decision to the Secretary of Education, U.S. Department of Education. The TEA will consider these findings in the selection of providers for the next SES application year.

This concludes TEA's state-level investigation. Should you have any questions, please contact the TEA or Texas Center for District and School Support (TCDSS).

Texas Education Agency
Wichita Falls ISD
Believe-N-U Youth Empowerment, LLC

NCLB/SES Complaint Investigation
July 2, 2013

Contacts

TEA Investigations	Emi Johnson	512.463.9342
TEA SES Program	Becca Marsh	512.936.2256
TEA SES Program	Leticia Govea	512.463.1427
TCDSS Assistance	Brandon Spenrath	512.919.5169

complaintsmanagement@tea.state.tx.us
sisdivision@tea.state.tx.us
sisdivision@tea.state.tx.us
brandon.spenrath@esc13.txed.net

Respectfully,



Becca Marsh, Division of School Improvement and Support

Enclosure(s): Applicable Requirements

Courtesy Copy:

Accreditation Department, TEA
School Improvement and Support Division, TEA
TCDSS, Region XIII Education Service Center

Enc: Applicable Requirements

cc: Sally Partridge, Associate Commissioner
Accreditation and School Improvement

Leticia Govea, Manager
School Improvement and Support

Brandon Spenrath, Coordinator for SES

Texas Education Agency
Wichita Falls ISD
Believe-N-U Youth Empowerment, LLC

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Texas Center for District and School Support
Region 13 ESC