

AMENDED
Resolution of NCLB SES Complaint Investigation
April 23, 2013

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SUBJECT: San Antonio Independent School District
Education Advantage!, LLC
Variations Educational Services

Student Sign-in Sheets Submitted for Invoice Payment
Provision of SES to Eligible Students

This amended letter serves to resolve the February 15, 2013 complaint filed by **San Antonio Independent School District** (district) concerning the named Provider. The agency's state-level investigation findings and conclusion are reported in this letter.

The agency's investigation was conducted under *Title I, Section 1116(e) of the Elementary and Secondary Education Act, No Child Left Behind Act (NCLB) and the Supplemental Educational Services (SES) Non-Regulatory Guidance, January 14, 2009.*

Complaint Allegation for Named Providers

The district alleged that several providers, including Education Advantage!, LLC and Variations Educational Services, had 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 Local 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. While the district continues to conduct its local investigation, the agency accepted its findings and documentation to be sufficient for a state-level review.

The district became aware of similar improprieties concerning Education Advantage after it submitted its complaint to the agency. The district supplemented its complaint on April 11, 2013 and submitted additional supporting documentation.

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 district staff and parents
 - interviews or written statements of students
 - responses submitted by providers
1. The schools subject to this investigation are Rogers Middle School, Tafolla Middle School, Rhodes Middle School, and Sam Houston High School.
 2. The district submitted a sampling of statements written by students and their tutoring sign-in attendance sheets. On its review, the district finds that a number of students did not receive most or any SES tutoring or the learning tool that the students were entitled to receive.
 3. With regard to **Variations Educational Services** (Variations), a middle school student submitted a complaint on January 28, 2013, because Variations had not started tutoring the student. However, the records in EZ SES Management System showed that the student received services. When shown a copy of the sign-in sheet submitted for payment, the student stated that the signature on the form was forged and the student stated that tutoring services were not received on the dates and times listed on the form. The district interviewed additional students. While some students stated they had received tutoring, none of the students were tutored on the dates or times submitted by Variations. In addition, a number of students stated that the signatures on the documents were not their signatures. The district notified Variations of the suspect documents on January 29, 2013. Two days

later, a representative of Variations submitted a number of sign-in sheets to the district with tutoring dates and times that had yet to be completed.

District Conclusion

The district concluded that the actions of the providers violated the agreement it had with each respective provider. The district stated that the SES providers failed to provide pertinent 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). In addition, the data provided is wholly or partially false, and therefore, the submission for payment was not compliant with the terms of the SES agreement and not duly earned.

SES Provider Responses to TEA's Complaint Investigation

On February 26, 2013, the agency sent a written notice to each provider concerning the complaint filed by the district. Each provider was given an opportunity to respond and submit any information for consideration in the resolution of the complaint.

Education Advantage! : Education Advantage did not submit a written response to the agency's notice of investigation.

Variations: On March 8, 2013, Variations responded timely to the agency's notice of investigation. In its response, Variations explained that it had turned over attendance records to the district, reviewed other records submitted to them by their tutors, conducted their own interviews, and revamped their procedures to address the problem. Variations had determined that "two individuals failed to follow instructions from Variations in their dealing with affected students. These individuals have been terminated from their employment with Variations." "Their errors have damaged Variations as well, due to the revenue it will lose, as well as the loss of upfront program costs." No supporting documentation was submitted to the agency.

TEA State-level Findings

As part of its investigation, the agency reviewed the following:

- information submitted by the district including
 - student sign-in sheets
 - student witness statements
 - written correspondence between the providers and the district
- responses submitted by the providers

The agency's findings, conclusions, and corrective actions are presented for each Provider as follows.

Education Advantage!

1. The Provider was not identified as part of the district's original complaint because the district did not discover the improprieties until after the district submitted its complaint to

the agency. However, the agency finds sufficient facts to investigate the Provider as part of the district's February 15, 2013 complaint.

2. The district identified 13 students for whom attendance was recorded and the students stated that they had not received any tutoring at all. In addition, eight (8) students reported that their sign-in sheets had been modified to include additional hours for which they had not received tutoring.
3. Certain tutors that the Provider hired were district employees. Therefore, the district interviewed their employees and was able to confirm that the students had not, in fact, received the tutoring.
4. On March 6, 2013, the district requested the Provider to identify any students for whom attendance was entered incorrectly and correct the data in the EZ SES Management System and to submit a new invoice for January to reflect accurate information for the students who actually received tutoring.
5. On February 21, 2013, the district notified the Provider of the following, "Allegations have recently been made that logs provided by Education Advantage were falsified and the district is in the process of completing its investigation into these serious allegations. Therefore, Education Advantage's agreement with the district is suspended."
6. On February 28, 2013, the district notified the Provider that the invoices the Provider submitted in January 2013 were questionable and rejected for payment through EZ SES Management System.
7. On March 5, 2013, the Provider explained to the district, "We are a national company operating since 2007. In that time we have never had a complaint filed against us regarding billing or the falsification of documents."
8. The state of California reported that the provider had not been approved due to failure to submit the 2011-2012 SES accountability report. Florida submitted documentation reporting that contracts with Education Advantage!, LLC had been terminated by districts due to failure to serve students in a timely manner as well as lack of attendance in a mandatory meeting for the 2012-2013 school year.
9. On April, 4, 2013, the certified letter addressed to Antwan Oliver, president of Education Advantage!, LLC, was received by the agency unopened. Further state-level investigations on April 8, 2013, revealed that Education Advantage!, LLC had relinquished their keys to the business address on record without a forwarding address.
10. On April 8, 2013, the agency received the unopened certified letter sent to Variations Educational Services on February 27, 2013 containing the notice of investigation and request for documentation. The Provider was not responsive to TEA requests and did not provide a current business address. Failure to amend the state application is a misrepresentation of information to TEA.

Requirements

TEA requires through its SES State Application Provisions and Assurances that Providers submit amendments regarding business contact information.

Conclusion for Education Advantage!

Education Advantage! 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 for Education Advantage!

Category of Violation(s): Category 1: Serious

Under the agency's Standards and Mechanism for the Removal of SES Providers, the Provider's violations are serious. The Provider will be notified of its removal from the TEA State-approved SES Provider List under separate notice.

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 district must reassign all students currently enrolled with Education Advantage to another provider of the parent's choice. The district must contact each of the parents to allow the parents to select the SES provider(s) of their choice.

Variations Educational Services
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1. On January 29, 2013, the district notified Variations of a complaint from a student at Rhodes Middle School yesterday who stated that tutoring had not started. In addition, the student was able to demonstrate that the signature on the document is not the student's signature. The district spoke to the other students at Rhodes Middle School for whom time-sheets were submitted in December 2012. The students stated that they did not receive tutoring and indicated that the signature on the attendance/time sheets were not the signature of the student. Further, the district wrote to the Provider, "We would appreciate if you would investigate this matter from your end as well and let us know what you find by this afternoon. Please be advised that falsification of documentation and forgery are a violation of your contract with [the district] and, if substantiated, may lead to the cancellation of your contract."
2. On January 29, 2013, Variations acknowledged receipt of the district's notice.
3. The district submitted written statements from eight (8) students who attend Rogers Middle School and Rhodes Middle School. The students wrote their statements on February 6, 2013, January 28, 2013, and some statements are undated.

4. In response to the district's complaint, Variations' attorney, Mr. Thomas S. Harmon, stated that Variations "turned over attendance records to the [district], reviewed other records submitted to them by their tutors, conducted their own interviews, and revamped their procedures to address the problem." Variations "determined after the review permitted thus far, that two individuals failed to follow instructions from Variations in their dealings with affected students." These individuals have been terminated from their employment with Variations... "Their errors have damaged Variations as well, due t the revenue it will lose, as well as the loss of upfront program costs."
5. Variations refutes the district's investigation because the witness statements "don't recite an incident date or location, and none describe the name of the SES provider." In addition, because the statements reviewed by Variations concern Rogers Middle School, "which suggests the problem was localized, as opposed to systemic." Variations said the statements students made are "innocuous" or "non-supportive" of any accusations.
6. Variations commented on the students' statements as follows:

S1 "got a tablet but didn't start tutoring for three months because [the tutor] was tutoring different people." Variations commented, "at least other students were getting tutored, evidence again in favor of our client."

S2 said the "tablet had broken and ...completed two lessons." Variations commented, "That alone doesn't indicate tutoring couldn't be or wasn't performed."

S3 stated "don't (sic) need tutoring." Variations commented, "Though [the student's] grammar suggests otherwise. The disinterest might, however, suggest a motivation to avoid tutoring even if offered or provided."
7. In his affidavit, signed on March 8, 2013, in the State of Maryland, Mr. Onyinye Agwuna, the director of Variations, stated, "Beginning November 2012, Variations provided tutoring services to students within the District. A total of four tutors were employed for this purpose. Our records show that at least fifty-eight students were tutored between October, 2012 and January, 2013."
8. Mr. Agwuna wrote, "The first time we received any complaint about the tutoring services being provided was on January 24, 2013, when we received a phone call from a parent complaining that the student had not started her tutoring sessions. On January 25, 2013 two Variations representative went to the complainant's home to orient the student on our online tutoring program pending assignment of a live tutor. On January 29, 2013, Variations received an e-mail from a District representative indicating a "student had not received any tutoring and claiming that a signature on a document was not [the student's signature]."
9. Mr. Agwuna further explained, "I would also note in defense of the allegations that some interactions with the students were online, through the utilization of the tablets which we had given them to monitor their studies. Many times students or their parents would request that we not conduct live tutoring because they prefer online tutoring as it is more convenient."

10. Variations indicates that it has taken the following corrective actions:

- a. Variations stated, "The site coordinator whose responsibility it was to ensure that the documents in question were complete and accurate has been terminated from employment with Variations."
- b. Variations indicates that "the billings specialist who was responsible for reviewing and validating the invoices substantiating documents received from the site coordinators has also been terminated from employment with Variations. To prevent a similar occurrence in the future, we will be calling parents to verify hours that have been submitted by the tutors and reviewing on a company-wide basis all student records to ensure that each student has the required documentation, such as a parent consent form, a learning tool receipt form and attendance sheet, etc."
- c. In addition, "Going forward, all invoices are now input by the office manager and reviewed by a director prior to submission to the District."

11. Finally, Variations stated that they "have also viewed and are willing to revise invoices relating to those situations where the tutoring was suspect, but need to be able to talk with the students and the parents to corroborate records that were obtained by Variations that indicate tutoring timeframes on the part of Variations' staff. Otherwise, we risk assuming too much or too little in favor of Variations or the District. Any credits or offsets that result may then be used as an offset against amounts still owed to Variations."

12. The district's investigation was prompted by a student complaint in January 2013. The evidence provided by the district included Variation's student attendance sign-in sheets that were submitted to the district for payment and written statements from students.

Student statements

13. The student indicated that tablet was received and several tests were completed during the Christmas break. The man who gave the student the tablet visited the student to ask how many tests the student completed. Then, "a woman" came to visit the student to ask how the tutorial sessions were coming. The student told the woman that tutoring had not been provided. The woman informed the student that a tutor would come on Saturday.

14. The student indicated that tutoring had not been received from Variations and stated that the signature was not that of the student.

15. I never heard of this program. "I don't know what's happening...that is not my signature [because] I don't even know how to right cursive. I'm 100% percent sure I didn't sign up for that...and as you can see that's not my handwriting. I've never gotten help."

16. I received the tablet in October 2012, but I did not receive tutoring in December 2012. "I didn't write my name at the bottom of the paper. It's not my signature."

17. I never signed up for Variations Educational Services. "That is not even my signature. I do not even know how to write in cursive but my mom signed me up for tutoring but with

a different group called *Tutors with Computers*, but they are saying that I am not signed up with them for some reason. When I know that they came to my house to sign me up with *Tutors with Computers*.”

18. I received my tablet on Sunday, February 3, 2013. I started tutoring already. I am not sure if I signed the paper. The student indicated that tutoring was not received in December 2012.
19. “My [parent] signed me up for Variations and [Variations] never called me to do the tutoring.” The student called Variations’ representative and asked when the tutoring was to begin. The representative told the student that tutoring would begin in a week. “Then they never called me back.” “The teacher showed me the signature and it was not mine.” The student received the tablet, but was not tutored.
20. The agency reviewed Variations’ “Student Attendance Record” (sign in sheets) used to report the students’ tutoring hours to the district for payment. The hours ranged from one hour to 12 hours and 45 minutes.
21. The agency finds that Variations reported that each of the students (subject to this investigation) received tutoring in December 2012 and Variations attempted to submit the documentation to the district for payment of their services.
22. The agency finds that not all student signatures on Variations’ sign-in sheets matched the student signatures on their written statements. This investigation could not determine who signed the student’s name on Variations’ student attendance forms or when. The district interviewed the students subject to this investigation. The agency determined it was not necessary to re-interview each student due to the receipt of written statements. The agency does not find a reason to question the authenticity of the written statements or discredit the students’ statements or signatures.
23. The tutors named on the students’ attendance records are: (1) **Ifeoma Ebede**, (2) **Sabbath Obot**, and (3) **Eloke Okonkwo**.

Requirements

TEA requires through its SES State Application Provisions and Assurances that Providers submit amendments regarding business contact information.

Conclusion for Variations

Variations 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 for Variations

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 violations are systemic. The probation period will be for six (6) consecutive months. 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 district must reassign all students subject to the falsified documents in this investigation from the Provider to another provider of the parent's choice. The district must contact each of the parents to allow the parents to select the SES provider(s) of their choice.
3. 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 the 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 the providers 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).

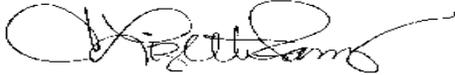
Referral

The San Antonio Independent School District and the TEA referred this complaint to the U.S. Department of Education's Office of Inspector General (ED/OIG). Therefore, this investigation report will be provided to ED/OIG.

Contacts

TEA Investigations	Emi Johnson	512.463.9342	complaintsmanagement@tea.state.tx.us
TEA SES Program	Becca Marsh	512.936.2256	sisdivision@tea.state.tx.us
TEA SES Program	Leticia Govea	512.463.1427	sisdivision@tea.state.tx.us
TCDSS Assistance	Brandon Spenrath	512.919.5169	brandon.spenrath@esc13.txed.net

Respectfully,



C. Lizette Ramos, Program Specialist

Enclosure(s): Applicable Requirements

Courtesy Copy:

U.S. Department of Education, Office of Inspector General, Dallas, TX
Chief Deputy and Deputy Commissioners' Office, TEA
Accreditation Department, TEA
School Improvement and Support Division, TEA
TCDSS, Region XIII Education Service Center

Enclosure

Federal and State SES Requirements

RE: San Antonio Independent School District
Education Advantage!, LLC
Variations Educational Services

Applicable requirements for the resolution of the above-referenced complaint are as follows:

1. *Title I, Section 1116(e) of the Elementary and Secondary Education Act, No Child Left Behind Act (NCLB).*
 2. *Supplemental Educational Services (SES) Non-Regulatory Guidance, January 14, 2009.*
 3. *SES Assurances and Code of Ethics, TEA SES Application, 2012-2013*
- Under Item **D-3** of the NCLB SES Federal Guidance (2009), the TEA has standards and techniques for withdrawing approval of an SES provider and removing the provider from the State-approved list. The TEA may remove an SES provider from the approved list if the provider fails to provide SES consistent with applicable health, safety, and civil rights requirements, or fails to meet any of the regulatory or statutory requirements, particularly after more than one violation.

NOTE: The agency included the “Standards and Mechanisms for Removal of SES Providers” with its Notice of Complaint Investigation, dated March 1, 2013.

- Under Item **E-5** of the Federal Guidance, the district may impose conditions so long as they are reasonable, do not subject SES providers to more stringent requirements than apply to other contractors of the district, and do not have the effect of inappropriately limiting education options for parents. The LEA may include administrative provisions to deal with this issue.

For example, an LEA may require that all employees of a provider undergo background checks if the LEA requires this for all entities with whom it enters into contracts for direct services to students. Or, an LEA might require that each provider carry a reasonable amount of liability insurance if the LEA requires this of other contractors that serve its

NOTE: The agency included the “Standards and Mechanisms for Removal of SES Providers” with its Notice of Complaint Investigation, dated March 1, 2013.

students. These types of conditions are allowable, so long as they are reasonable, do not subject SES providers to more stringent requirements than apply to other contractors of the LEA, and do not have the effect of inappropriately limiting educational options for parents. Similarly, an LEA may include in its contracts with providers administrative provisions dealing with such issues as the fees charged to providers for the use of school facilities, the frequency of payments to providers, and whether payment. Further, LEAs may terminate an agreement if a provider fails to meet additional administrative or operational terms that may be included in the agreement, such as conducting background checks on the provider's employees, provided those terms are reasonable, do not subject the provider to more stringent requirements than apply to other contractors of the LEA, and do not have the effect of inappropriately limiting educational options for students and their parents.

If an LEA terminates a provider's services, the LEA should, if possible, allow the students the provider served to receive SES from another provider. The LEA might accommodate students with their second or third choice of provider if their original provider is no longer able to serve them.

- Under Item **G-9**, the **parent** must enroll their child for services.
- Under Item **G-14**, the **district** is responsible for personalizing the SES process for parents, to help parents complete the enrollment forms, including having a contact person who can assist them with questions or an easy way for the parents to return the enrollment forms to the school.
- Under **H-9**, if parents subject to this complaint are not satisfied with the SES provider, the parent may request and receive a new provider any time during the year. It is the districts discretion to allow for such changes. If a number of parents request a change of a particular SES provider, the TEA should be notified so that TEA can monitor the SES provider more carefully.
- Under **H-21**, the district may immediately terminate its contract with you under certain circumstances and in accordance with the termination clause in the contract. The district does not need approval from TEA to terminate its contract with you. A termination from a district does not necessarily mean you are removed from the state approved list. However, the district must notify TEA of its action and TEA will consider that action in further determinations.

May an LEA (i.e., school district) terminate the services provided to an individual student?

Yes. An LEA may terminate a provider's provision of SES to an individual student if the provider is unable to meet the student's specific achievement goals and the timetable set out in the agreement between the LEA and provider [Section 1116(e) (3) (C); 34 C.F.R. §200.46(b) (2) (ii)]. The agreement between an LEA and a provider must specify the terms and processes for terminating services. An LEA's authority to terminate an agreement is limited to services provided to an individual student (or students) and should not cover all students served by a provider. An LEA may also terminate its agreement with a provider if the provider violates provisions in the agreement, such as provisions regarding student progress reports, invoicing payment for services, protecting student privacy, and complying with applicable health, safety, and civil rights laws.

Further, LEAs may terminate an agreement if a provider fails to meet additional administrative or operational terms that may be included in the agreement, such as conducting background checks on the provider's employees, provided those terms are reasonable; do not subject the provider to more stringent requirements than apply to other contractors of the LEA, and do not have the effect of inappropriately limiting educational options for students and their parents.

If an LEA terminates a provider's services, the LEA should, if possible, allow the students the provider served to receive SES from another provider. The LEA might accommodate students with their second or third choice of provider if their original provider is no longer able to serve them.

However, under no circumstances may an LEA refuse to offer as an option to parents any provider on the State-approved list because of program design concerns. If an LEA has general concerns about the quality of a provider's services, the LEA should make its concerns known to the SEA (TEA).

Additionally, it is not within an LEA's authority to remove a provider from the State-approved provider list or to terminate an agreement with a provider for generally failing to raise student achievement.

Only an SEA may withdraw approval of a provider if, for two consecutive years, the provider does not contribute to increasing the academic proficiency of the students it serves [Section 1116(e)(4)(D); 34 C.F.R. §200.47(a)(4)(ii)].

- **I.1-4 The Role of the Parent in Selecting a Provider.** At the local level, parents must be able to choose from among all SES providers approved by the State and available to serve students. If they so choose, parents may obtain assistance from the LEA in selecting a provider [Section 1116(e)(2)(B); 34 C.F.R. §200.46(a)(2)].

Parents should also have an option to change or terminate services, if they are not satisfied with the services they are receiving.

**Supplemental Educational Service Provider
Final Notice of Provider Status: Probation
Effective Date: March 26, 2013**

Agwuna Onyinye, Director
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(832) 377-8378

This letter serves as notice that the decision to remove **VARIATIONS** (Provider) from the Texas State-approved Supplemental Education Services (SES) provider list is effective as of the date of this letter. Provider timely responded to TEA's April 15, 2013 preliminary notice.

Summary of Review and Findings:

Provider was placed on Probationary Status by the agency through a state-level investigation report dated March 26, 2013. The probationary period is from March 26, 2013 to September 26, 2013, six (6) months.

Provider Responded to Complaint filed by San Antonio Independent School District

On March 8, 2013, Provider responded timely to TEA's notice of investigation. In its response, Provider explained that it had turned over attendance records to the district, reviewed other records submitted to them by their tutors, conducted their own interviews, and revamped their procedures to address the problem. Provider determined that "two individuals failed to follow instructions from Provider in their dealing with affected students. Provider terminated individuals involved. "Their errors have damaged Variations as well, due to the revenue it will lose, as well as the loss of upfront program costs." No supporting documentation was submitted to the agency.

Certified Mail Returned

On April 8, 2013, a certified letter sent to Agwuna Onyinye, Director of Variations. The certified mail was returned to TEA stamped with "unclaimed".

Provider responded to TEA when it received TEA's Preliminary Notice of Removal. Provider submitted a written response on April 19, 2013, requesting TEA reconsideration its decision. Provider did not need to amend its SES Application, as there is no change in the Provider contact information.

Final Decision:

Provider is not removed from the Texas state-approved SES Provider List for 2012-2013.

Provider Status: Probation

Should you have any questions concerning this notice, you may contact the Office of Special Investigations at (512) 463-9342 or complaintsmanagement@tea.state.tx.us.

Respectfully,



Ms. Emi Johnson, Director