



UTAH STATE BOARD OF EDUCATION

Internal Audit Department

Audit Brief

APA's Use of Special Education Funds (20-02)

Scope, Objective, and Methodology

On January 14, 2020, in response to a Settlement Agreement (Agreement) signed by the Utah State Board of Education (USBE or Board) and Utah Charter Academies doing business as American Preparatory Academy (APA), the Board authorized the USBE Internal Audit Department (IA) to audit APA's use of state special education funds expended during fiscal year (FY) 2019 for the following programs: 1) 1205 Add-on, 2) 1210 Self Contained, and 3) 1225 Impact Aid.

We obtained a list of transactions reflecting funds expended for each of the three special education programs and reconciled the expended amounts with the funding sources. For each program, we categorized transactions by type—payroll and non-payroll; we further categorized payroll transactions by position (i.e., case manager, 1:1 aide, and paraeducator). Within these categories, we used various methods to determine if the use of funds was allowable; methods include random samples, judgmental (i.e., subjective) selections, and analysis of all individuals in certain positions.

Findings

APA used funds for goods and services that were not “easily, obviously, and conveniently identified with specific special education activities or programs.” Additionally, APA did not comply with procurement and policy requirements. Based on the findings, we question funds in each program as follows:

Program	Total Amount of Funds	Amount Questioned	% of Total Questioned
1205	\$ 3,747,575.62	\$ 2,746,198.74	73%
1210	\$ 59,241.37	\$ 6,685.59	11%
1225	\$ 33,033.26	\$ 33,033.26	100%
Total	\$ 3,839,850.25	\$ 2,785,917.59	73%

Causes

- A. Complex special education regulations that lacked clear guidance in several areas (e.g., documentation, permissive use of funds, excess cost, paraeducators).
- B. Difficulty deciphering between the evolution of general education models, such as multi-tiered systems of support (MTSS) and specially designed instruction (i.e., special education).
- C. Program innovation that outpaced development and implementation of an internal control system that would ensure compliance with current regulations, including allowable application of funding sources to services.
- D. The governing board of APA contracted with American Preparatory Schools (APS) to provide management and academic services, including special education services; however, given the significance and comprehensiveness of the roles and responsibilities given to the provider, the Board may not have sufficient oversight to ensure a sound internal control system.

Effects

- A. Innovation in APA's education model outpacing revisions and updates to regulations, as well as internal control systems and financing structures, led to questioned state special education funds of almost \$2.8 million for fiscal year 2019. See Appendix A.
- B. Lack of comprehensive and well-designed regulations, and accompanying control activities, results in confusion and inefficiencies that negatively impacts program and financial effectiveness.
- C. Need for special education programs and dedicated funding for special education may change as evolution of innovative practices within general education models, such as multi-tiered systems of support (MTSS), continue.
- D. Use of untrained and unsupervised staff increases the risk that students with individualized education programs could be deprived Free and Appropriate Public Education, which is a requirement under the Individuals with Disabilities Education Act.
- E. Not following Utah Procurement Code, and related rules and policies, reduces transparency and increases the risk of waste and abuse of taxpayer funds on excessive payments for services.
- F. Identification of questionable use of state special education funds impacts previously filed financial and program reports used by policymakers and financing institutions. Additionally, both the LEA's and state's needed maintenance of effort level may be impacted.

Recommendations

The Board should review the questioned costs and determine the amount of funds APA will be required to reimburse the State of Utah in accordance with the provisions of the Agreement.

As the local education agency oversight body, APA's governing board should oversee the development, implementation, and operation of an internal control system to ensure compliance and accountability with regards to use of state special education funds. We acknowledge APA's recent efforts to revise processes and documentation to ensure a greater level of accountability for use of funds.

We acknowledge USBE's recent efforts to update the Special Education Rules Manual, and encourage a process to receive on-going feedback, providing clarifications when needed. Furthermore, we recommend the USBE review and revise rules and guidelines for paraeducators.

Finally, the USBE should collaborate with local education agencies, the Legislature, and the US Department of Education to consider policy actions that will more clearly differentiate between general education efforts, such as multi-tiered systems of support (i.e., individually-responsive supports), and specially designed instruction. Allocation of funds between general education and special education programs and/or restrictions on funds for special education programs, factoring in the federal maintenance of effort requirement, should also be considered.

Management Response

See Appendix C

Auditor Concluding Remarks

As stated in Appendix D, the special education funds identified as questioned costs were not used in accordance with the restrictions placed on those funds (i.e., the funds were misused because they were not for legitimate/allowable expenses).



Utah State Board of Education
Internal Audit Department

**APA's Use of State
Special Education Funds**

20-02

Report No. 20-02

**APA's Use of State
Special Education Funds**

November 5, 2020

Audit Performed by:

Chief Audit Executive Debbie Davis, CPA

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November 5, 2020

Chair Mark Huntsman
Utah State Board of Education
250 East 500 South
Salt Lake City, UT 84111

Chair Dee Henderson
American Preparatory Academy
12892 Pony Express Rd
Draper, UT 84020

Dear Chair Huntsman and Chair Henderson

On January 14, 2020 in accordance with The Bylaws of the Utah State Board of Education (Board) and upon signing the Settlement Agreement with Utah Charter Academies, doing business as American Preparatory Academy (APA), the Board authorized the Internal Audit Department (IA) to perform an audit to review APA's use of state special education funds during fiscal year 2019. IA obtained relevant information and documentation from staff of the Utah State Board of Education (USB E) and the APA administrative team, and performed the following procedures:

1. Gained an understanding, through research and inquiry, of applicable federal regulations, Utah Code, administrative code, and policy; and
2. Reviewed and analyzed use of state special education funds during fiscal year 2019.

We have identified the procedures performed during the audit above and the conclusions from those procedures are included in this report with suggestions for improvement.

Internal audits are conducted in conformance with the current *International Standards for the Professional Practice of Internal Auditing*, consistent with *Utah Code Annotated* and *Utah Administrative Code*.

By its nature, this report focuses on exceptions and questioned costs. This focus should not be understood to mean APA does not demonstrate various strengths and accomplishments. We appreciate the courtesy and assistance extended to us by staff of the USB E and by APA's administrative team during the audit. APA's response to the audit is included as Appendix C.

This report is intended for the information and use of the Board and APA. If you have questions, please contact me at (801) 538-7639 or debbie.davis@schools.utah.gov.

Chair Huntsman, Chair Henderson

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November 5, 2020

Sincerely,

A handwritten signature in black ink that reads "Deborah Davis". The signature is written in a cursive style with a large initial "D".

Deborah Davis, CPA

Chief Audit Executive, Utah State Board of Education

cc: Members of the Utah State Board of Education (USB E)
Sydnee Dickson, State Superintendent of Public Instruction, USB E
Scott Jones, Deputy Superintendent of Operations, USB E
Patty Norman, Deputy Superintendent of Student Achievement, USB E
Members of the American Preparatory Academy (APA) Board
Carolyn Sharette, Executive Director, APA
Members of the State Charter School Board

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I. Background, Scope, and Objective

In the spring and summer of 2019, the Utah State Board of Education (USBE) Special Education Services staff conducted a monitoring visit at Utah Charter Academies dba American Preparatory Academy (APA). The result of the monitoring was a Notice of Non-Compliance and Corrective Action (Notice) that identified, among other items, \$4,032,551.78 in unallowable costs pertaining to state special education programs. The findings of this monitoring were appealed and in December 2019, representatives of the USBE and APA participated in mediation regarding the Notice. The result of the mediation was a signed Settlement Agreement (Agreement) that included a stipulation for “a new audit of APA’s use of State Special Education Funds for FY19 (Section 3)” with a scope “limited to a determination of whether the State Special education funds were incurred for expenses that qualified for State Special Education funds during FY2019 (Section 3.b).” The Agreement was signed by the entities on January 13 and 14, 2020, respectively.

Initially, it was thought that USBE Special Education Fiscal Monitors would complete the required audit; however, the Settlement Agreement required the USBE “to complete the audit in a fair and impartial manner and consistent with generally applicable accounting and auditing standards (Section 3.d).” Because the USBE Internal Audit Department (IA) both follows the International Standards for the Professional Practice of Internal Auditing, which are generally applicable standards and is independent of USBE daily operations (i.e., an impartial party); it was determined that IA would complete the required audit. See Appendix B for information on the differences in Auditing and Monitoring.

The audit was started on February 4, 2020, and was completed as resources and documentation were available. In accordance with the Agreement, stipulation 3.c Audit Conference, which required the USBE “to hear APA’s explanations of the accounting and cost treatment,” we met with APA several times, in addition to phone calls and emails, including:

Date	Meeting Description
February 11, 2020	Opening conference
February 28, 2020	Gain an understanding of APA’s special education program and accounting processes
April 30, 2020	Gain an understanding of payroll documentation
June 3, 2020	Discuss documentation
July 1, 2020	Review individualized education program (IEP) files and discuss procurement
September 8, 2020	Closing conference

In accordance with the Agreement, stipulation 3.d Results of the Audit, this report provides “an explanation of any disallowed expenditures and the reasons why those expenses were disallowed.” Such explanations are included as findings; see Appendix A for questioned costs.

II. Methodology

To determine whether the APA used FY2019 state special education funds for eligible purposes, we used the following Methodology:

- A. We requested the general ledger detail for each special education program (i.e., 1205 Special Education Add-on, 1210 Self-contained, and 1225 Impact Aid) identified by the USBE Fiscal Monitoring to be included in the audit.
- B. For each special education program, we categorized the transactions as either Payroll or Non-Payroll.
- C. We scanned the detail transactions in each program for items that were unusual, potentially high risk, or not-representative of the remaining transactions.
 - 1. For program 1205, we judgmentally selected eight Non-payroll and one Payroll transaction for additional review.
 - 2. For program 1210, we judgmentally selected one Non-payroll transaction for additional review.
 - 3. For program 1225, a judgmental selection was not deemed necessary.
- D. From the remaining Non-payroll transactions in each program, if applicable, we selected a random sample of 10% of the population.
- E. We reconciled the Payroll transaction amounts with APA's subsidiary special education payroll ledgers. From the payroll ledgers we summarized employees by their title; Case Manager, 1:1 Aide, or Paraeducator. We selected a random sample of employees from each list of categorized employees for each program, as applicable.

Appendix A is a summary table that reflects the total amount (i.e., population) of FY2019 state funds provided to APA for special education program expenses. Funds are categorized by program, type, and analysis methodology. The table then shows the total dollar amount reviewed and questioned, with the percentage of the amount reviewed that is questioned. That percentage was then applied to the population, if appropriate for the analysis methodology used (i.e., sample).

III. Findings

Findings are organized according to program and transaction type (i.e., payroll or non-payroll).

Finding elements include:

1. **Criteria:** What should happen (e.g., code, statute, best practices)?
2. **Condition:** What is happening?
3. **Cause:** Why did the Condition happen?
4. **Effect:** What is the impact? Why should you care?
5. **Recommendation:** What action could be considered to resolve the Cause?

The Causes, Effects and Recommendations for all findings are summarized and presented in Sections IV - VI. The table in Appendix A reflects questioned use of funds by special education program, and type of transaction. Questioned costs were not shown on a finding by finding basis due to the potential for duplication given transactions with multiple findings.

A. Program 1205 – Add-on

1. Payroll: 1:1 Aide

Criteria: Utah Admin. Code R277-524 Appropriate Assignments or Duties for Paraprofessionals, states:

Paraprofessionals may:

- A. provide individual or small group assistance or tutoring to students under the direct supervision of a licensed teacher during times when students would not otherwise be receiving instruction from a teacher.
- B. assist with classroom organization and management, such as organizing instructional or other materials;
- C. provide assistance in computer laboratories;
- D. conduct parental involvement activities;
- E. provide support in library or media centers;
- F. act as translators;
- G. provide supervision for students in non-instructional settings.

Special Education Rule X.A Allocation of State Revenues for Programs for Students with Disabilities, states:

9. State special education funds may be spent only for direct costs, as provided in these Rules. Direct costs are those elements of cost which can be easily, obviously, and conveniently identified with specific special education activities or programs, as

distinguished from those costs incurred for several different activities or programs and whose elements are not readily identifiable with specific special education activities.

Condition: Two out of two (100%) of the 1:1 aides reviewed provided services that were not easily, obviously, and conveniently identified with special education activities and/or for which they were not adequately trained/qualified. Therefore, the direct costs associated with these personnel are questioned.

- a. Each of the 1:1 aides provided a sworn statement that they delivered 100% of the grade-level curriculum. For both aides the supporting documentation does not support a conclusion that they were adequately qualified and/or trained to deliver 100% of the grade-level curriculum.
- b. For each 1:1 aide, we reviewed one of the student's IEPs to whom they were assigned to provide services throughout the 2018-2019 school year. In both cases, the aide provided services to the students that were not consistent with the IEP and therefore not related to special education.

2. Payroll: Paraeducator

Criteria: Special Education Rules VIII.S. Records Retention Requirements, states:

As required by Federal regulations, all records related to Federal grant funds and compliance shall be retained by the USBE staff and the LEA for three years (or longer if under an audit exception) after completion of the activity for which they used the funds (2 CFR 11 215.53).

1. Records related to grant funds shall be kept that fully show:
 - a. The amount of funds under the grant;
 - b. How the funds were used;
 - c. The total cost of the project;
 - d. The share of that cost provided from other sources; and
 - e. Other records to facilitate an effective audit.

Auditor interpretation: Given an LEA must be able to demonstrate the total cost of the project (i.e., federal, state, and local funds); the share of the total project provided from funds other than federal (i.e., state and local); and other records to facilitate an effective audit; an LEA must maintain adequate documentation to reflect the work performed in compliance with IDEA Part B regardless of the origination of those funds. Furthermore, restricted funds inherently carry with them the responsibility for an entity to adequately document the use of those funds.

Special Education Rules IX.D. Personnel Development, states:

2. Paraeducators, when used to carry out Part B of the IDEA, must be appropriately trained and supervised, and utilized in accordance with the Utah State Board of Education Paraeducator Standards.

Utah Standards for Instructional Paraeducators (approved by the Board in the February 2016 Board meeting), states:

After training and under the supervision of licensed or certified personnel, the instructional paraeducator will:

Standard 1, Core Competencies, Knowledge

- A. Have knowledge and proficiency in assigned instructional area such as:
 - Reading/reading readiness
 - Math/math readiness
 - Writing/writing readiness
- B. Have knowledge of strategies, techniques, and delivery methods of instruction.

Special Education Rule X.A. Allocation of State Revenues for Programs for Students with Disabilities, states:

9. State special education funds may be spent only for direct costs, as provided in these Rules. Direct costs are those elements of cost which can be easily, obviously, and conveniently identified with specific special education activities or programs, as distinguished from those costs incurred for several different activities or programs and whose elements are not readily identifiable with specific special education activities.

Condition: Twenty-five out of 25 (100%) paraeducators reviewed provided services that were not easily, obviously, and conveniently identified with special education activities and/or were not adequately trained. Therefore, the direct costs associated with these personnel are questioned.

- a. For one out of 25 (4%) paraeducators providing special education services, APA did not maintain records to reflect the work performed. Specifically, records were not provided to facilitate an effective audit on the use of state special education funds.
- b. Of the remaining 24 paraeducators with records to review, twenty-four out of 24 (100%) paraeducators provided services to all students in the classroom, both students receiving special education and students not receiving special education.
 - i. Seventeen out of 24 (71%) paraeducators were assigned to provide services to all students in the homeroom.
 - ii. Nineteen out of 24 (79%) paraeducators were assigned to provide direct instruction in intensive courses, held outside the homeroom.
 - 1) Nineteen out of 19 (100%) paraeducators provided direct instruction to all students in the intensive courses.

- 2) Eleven of the 19 (58%) paraeducators taught at least one intensive course that had no students receiving special education in the class.
- iii. We interviewed 15 paraeducators regarding their roles and responsibilities. Not all questions pertained to all paraeducators and not all paraeducators answered every question, so the population amounts for each question vary. We noted:
- 1) Nine out of nine (100%) paraeducators who worked in the homeroom said they were assigned to help the entire class. Five of the nine (56%) stated they worked with, and/or focused on, students with IEPs.
 - 2) Nine out of nine (100%) paraeducators who taught courses said their course was a general education course.
 - 3) Eleven out of 13 (85%) paraeducators stated their course was attended by all students, both students receiving special education and students not receiving special education. Two out of 13 (15%) stated their course was only attended by students without IEPs.
 - 4) Finally, when we asked paraeducators approximately what percentage of time was spent working with students with IEPs, from 13 paraeducator responses, the average (i.e., when a range was provided the middle of the range was used) amount of time was 36%.
- c. Twelve out of 25 (48%) paraeducators within the sample started working for APA in school year 2018-2019. All 12 (100%) paraeducators were assigned to provide direct instruction to students in reading, math, spelling, and/or English. For eight of the 12 (67%) paraeducators, documentation does not support that they received training commensurate with their assignments (i.e., they did not have training in at least one of the core subjects wherein they were providing direct instruction) prior to providing the instruction.
- d. We reviewed 10 student's IEP files who were reportedly receiving specially designed instruction (SDI) from a special education paraeducator. In seven of the 10 (70%), the specially designed modification as noted on the Lesson Progress Charts (LPC) did not align with the IEP.

Per APA, LPCs are an internal communication tool for anyone providing instruction to students with an individualized education program to communicate regarding the instruction and the student progress to others on the academic team. LPCs are not work certifications for grant purposes, but they do provide evidence of SDI to IEP students.

3. Non-Payroll

Criteria: APA Policy Manual Chapter B – Business Operations, B-1.9 Cash Disbursements, states:

H.2.b \$1,001 - \$5,000 The purchaser shall obtain at least two (2) competitive quotes and purchase item/service from supplier offering the lowest quote. Quotes must be attached to the purchase documentation and maintained as part of the LEA's records.

H.2.c \$5,001 - \$10,001 The purchaser shall obtain at least two (2) competitive quotes and purchase item/service from supplier offering the lowest quote meeting specifications. Quotes must be attached to the purchase documentation and maintained as part of the LEA's records.

H.2.e Greater than 50,001 The LEA shall enter into a competitive bid process or RFP in compliance with Utah Code 63G-6a sections 601-612 and 701-711, or use an approved vendor list with an invitation for bids or an RFP in compliance with Utah Code 63G-6a-403-404.

I.1. Sole source procurement shall only be used if a product or service is unique and can be easily proven as one of kind, offered by only one vendor. If there is more than one potential bidder or offer for a particular item, sole source does not apply... 2. All sole source requests estimated to be \$50,000 and above must be posted for public comment in accordance with Utah Code 63G-6a-802 and 406. 3. Sole source justification should be documented according to Utah Code 63G-6a-802 and be approved by administration.

Utah Code Ann. §63G-6a-802 Award of contract without engaging in a standard procurement process, states:

(1) A procurement unit may award a contract for a procurement item without engaging in a standard procurement process if the procurement official determines in writing that:

(a) there is only one source for the procurement item;

(b)(i) transitional costs are a significant consideration...

(ii) the results of a cost -benefit analysis demonstrate that transitional costs are unreasonable or cost-prohibitive, and that the award of a contract without engaging in a standard procurement process is in the best interest of the procurement unit;

(c) the award of a contract is under circumstances...that make awarding the contract through a standard procurement process impractical..."

Utah Code Ann. §63G-6a-102 Purpose of chapter, states:

The underlying purposes and policies of this chapter are:

(1) to ensure transparency in the public procurement process;

(2) to ensure the fair and equitable treatment of all persons who participate in the public procurement process;

- (3) to provide increased economy in state procurement activities; and
- (4) to foster effective broad-based competition within the free enterprise system.

Utah Code Ann. §63G-6a-1204(7) Multi-year contracts, states:

- (7) A multiyear contract, including any renewal periods, may not exceed a period of five years, unless:
 - (a) the procurement officer determines, in writing, that:
 - (i) a longer period is necessary in order to obtain the procurement item;
 - (ii) a longer period is customary for industry standards; or
 - (iii) a longer period is in the best interest of the procurement unit; and
 - (b) the written determination described in Subsection (7)(a) is included in the file relating to the procurement.

Utah Code Ann. §63G-6a-1202. Standard contract clauses encouraged, states:

A procurement unit is encouraged to establish standard contract clauses to assist the procurement unit and to help contractors and potential contractors to understand applicable requirements.

Utah Code Ann. §63G-6a-1205. Regulation of contract types -- Permitted and prohibited contract types, states:

- (3) A procurement official may not use a type of contract, other than a firm fixed price contract, unless the procurement official makes [certain] written determination[s]..."

Utah APA Policy Manual Chapter B – Business Operations, B-1.2 Management Agreement Provisions, states:

Entering into contracts or expenditures by APS employees on behalf of UCA over ten thousand dollars (\$10,000) is not authorized without prior board approval.

Utah APA Policy Manual Chapter B – Business Operations, B-5.1 Travel Reimbursement, states:

Per IRS regulations, reimbursement for travel between campuses is made for the trip between campuses only, not to a campus from home or from the campus to home.

Special Education Rule X.A. Allocation of State Revenues for Programs for Students with Disabilities, states:

9. State special education funds may be spent only for direct costs, as provided in these Rules. Direct costs are those elements of cost which can be easily, obviously, and conveniently identified with specific special education activities or programs, as distinguished from those costs incurred for several different activities or programs and whose elements are not readily identifiable with specific special education activities.

Condition: Twenty-seven out of 57 (47%) transactions either were not compliant with procurement and policy requirements or were not for goods or services that were easily, obviously, and conveniently identified with special education; some transactions had multiple findings. Therefore, the costs associated with these transactions are questioned.

Procurement Process

- a. Four procurements, related to 14 transactions, did not follow the required procurement process (e.g., sole source, competitive bidding, RFP) - including documentation requirements - for the level of funds ultimately expended as an outcome of the procurement process (e.g., >\$1,000, >5,000, >10,000).
 - i. While performing the audit work noted above, two additional procurements for speech services, related to four additional transactions, were identified that, likewise, did not follow the required procurement process. The contractor payments under these contracts were charged to the Federal IDEA program; therefore, we will not include transaction expenditures related to these contracts as questioned costs.

Contracts

- b. One contract with an occupational therapist (OT), related to seven transactions, indicated, "This Agreement shall be effective on the date signed and for the remainder of the specified school year [2017-2018 school year]." Therefore, the contract expired at the end of school year 2017-2018 and was not in effect for school year (SY) 2018-2019, though the vendor was paid during SY18-19, which is synonymous with fiscal year (FY) 2019.

Additionally, it was not evident that APA's board approved the contract, though total annual expenditures to the vendor during FY 2019 exceeded \$10,000.

- c. One contract with an OT, related to four transactions, did not include a contract period, a maximum contract value, terms and conditions, or specific agreed upon hourly rate, though reference was made to providing payment at an hourly rate as agreed.

Additionally, it was not evident that APA's board approved the contract though total expenditures for FY2019 exceeded \$10,000.

- i. While performing the audit work noted above, two additional procurements for speech services were identified while reviewing additional four transactions, that had contract expenditures exceeding \$10,000 during the fiscal year. These procurements, likewise, did not include the first three items and/or evidence of board approval. The contractor payments under these contracts were charged to the Federal IDEA program; therefore, we will not include transaction expenditures related to these contracts as questioned costs.
- d. The contract with the school's management and academic service provider (American Preparatory Schools), related to one transaction, includes a contract period with a renewal period greater than the five years allowed by Procurement Code. Additionally,

the contract does not include a maximum contract value. Contract expenditures allocated to Program 1205 were almost \$300,000 during fiscal year 2019; additional contract expenditures were allocated to other programs and functions, including Program 1225.

Direct Costs

- e. The supporting documentation for the allocation of the monthly contract payment to Program 1205 did not reflect that the allocation was for specific special education activities or programs, as follows:
 - i. APA indicated that the charges were estimated by employee.
 - ii. At least three employees, who had estimated time attributed to special education, were not included on the 2019 APA Org Chart as being in a role (i.e., an Academic Director) to have their time chargeable to special education. The Special Education Program Memorandum of Understanding (MOU) indicated the roles and responsibilities attributable to special education programs.
 - iii. Finally, some of the responsibilities outlined in the MOU are not responsibilities specific to special education, such as, “Recruit, hire, and train all Academic Directors”, “Oversee curriculum development and organization”, “Organize and oversee staff training and professional development”, and “Provide analysis student and teacher performance data including LPCs, Huddles, EOY evaluations and high stakes testing data.”

While specific activities were not identified for the special education director, because of the nature of the position, we assume that the time attributed to state special education was a direct cost (i.e., only for special education activities and programs) and is therefore allowable.

- f. For two transactions, the employee’s commute was not reduced from the mileage claimed.
- g. One expenditure was for a school assembly attended by all students, not just students receiving special education services.
- h. Three employee reimbursements were expenditures for incentives and/or parties, which are not considered direct costs of special education.
- i. Two transactions were to procure sign-language interpretation services for a parent at a parent teacher conference that was being held for all students.
- j. In four transactions, two speech services providers were reimbursed for items (e.g., incentives, classroom items, activity items) not included in their respective contracts (i.e., they were treated as employees rather than contractors).

B. Program 1210 – Self Contained

1. Payroll: 1:1 Aide and Paraeducator

Criteria and Condition: See III.A.1 and 2 above.

C. Program 1225 – Impact Aid

1. Non-Payroll

Criteria: See III.A.4 Criteria (above)

Condition: The contract with the school’s management and academic service provider (American Preparatory Schools), related to one transaction, includes a contract period with a renewal period greater than the five years allowed by Procurement Code. Additionally, the contract does not include a maximum contract value. Contract expenditures allocated to Program 1225 exceeded \$30,000 during fiscal year 2019; additional contract expenditures were allocated to other programs and functions, including Program 1205.

Further, there was no supporting documentation maintained for the allocation of the monthly contract payment to Program 1225; APA indicated that the charges were for general special education services and training of special education staff.

IV. Causes

The findings noted above have various causes, which are summarized below.

A. Special Education Regulations

Special education programs are subject to both federal and state program and financial requirements. The USBE Special Education Rules Manual (Manual) was adopted into rule R277-750 and provides additional clarification on federal and state special education program regulations. The Manual did not provide clear guidance in several areas. For example:

- Some terminology used is confusing (e.g., use of IDEA Part B)
- There is insufficient detail (e.g., documentation, paraeducators)
- It conflates federal program and financial and state program and financial requirements (e.g., excess cost, permissive use of funds)

Therefore, applying the requirements of the Manual in practice was challenging and subject to interpretation. Adequate clarification was either not provided and/or sought as needed to ensure compliance with the regulations.

B. Evolution within General Education

To meet the needs of students, general education evolves. One such evolution is multi-tiered system of supports (MTSS), which, per the USBE website, “addresses both academic and behavioral needs of all students through the integration of data, practices, and systems.” With general education evolving to address student needs, there is more difficulty in deciphering between MTSS and specially designed instruction (i.e., special education). That difficulty extends to identifying allowable funding sources for each type of service.

C. Innovation

APA indicated they have worked to create an inclusive education model where students with special needs can reach their full academic potential by receiving specially designed instruction alongside their peers to the greatest extent possible. The innovation that led to a dynamic education model to meet the needs of students was not applied to the development and implementation of an internal control system (e.g., training, policies and procedures, forms, data collection, monitoring) that would ensure compliance with current special education regulations, including allowable application of special education funding sources to services.

D. Internal Control System

The APA governing board contracted with American Preparatory Schools (APS) to provide management and academic services, including special education services; however, given the significance and comprehensiveness of the roles and responsibilities given to the provider, the APA governing board may not have sufficient independence and objectivity to provide sufficient oversight to ensure a sound internal control system. Specific concerns with elements of the internal control system that may have contributed to the findings are noted below.

1. A control environment with clearly assigned roles and responsibilities. We noted the following:
 - a. During the interviews of special education paraeducators, which was how the paraeducators were identified to us by the school’s executive team we noted:
 - i. 12 out of the 15 (80%) paraeducators identified themselves (i.e., job titles) as a teacher and/or instructor,
 - ii. three out of 15 (20%) paraeducators identified themselves as a paraeducator, and
 - iii. one out of 15 (7%) paraeducators mentioned special education in their title.
 - b. When we asked the paraeducators whether they considered themselves a special education employee, a general education employee, or both, we noted:
 - i. five out of 15 (33%) considered themselves a general education employee,
 - ii. nine out of 15 (60%) considered themselves a general education employee and a special education employee, and
 - iii. one out of 15 (7%) considered themselves as a special education employee only.

- c. Within the training documents provided by APA we noted variations of the titles used for paraeducators, such as: parapro instructor, MTSS paraprofessional, special education paraprofessional, and MTSS special education paraprofessional.
2. Reliable information and communication (i.e., documentation and data). We noted discrepancies when comparing records; examples include:
 - a. Six out of 24 (25%) individuals in the payroll subsidiary ledger were listed as case managers; however, the APA organization chart listed these individuals as 1:1 aides or paraeducators.
 - b. IA selected three case managers who were paid with self-contained funds and reviewed their caseload to ensure Program 1210 funds were being spent on self-contained students. For all three case managers, IA identified self-contained students on each of the case managers caseloads; however, 20 out of the 63 (32%) student's with IEPs reviewed, did not attend APA in the stated year according to Utah eTranscript and Record Exchange (UTREx).
 - i. 7 of the 20 (35%) attended another LEA
 - ii. 10 of the 20 (50%) graduated the previous year
 - iii. 1 of the 20 (5%) graduated the previous year and attended another LEA in the reported school year
 - iv. 2 of the 20 (10%) had no record in UTREx for the student in the reported year.
 - c. Course records provided by APA included lists of intensive courses taught by paraeducators; however, upon reviewing coaching logs we identified additional classes taught [i.e., two out of 12 (17%) paraeducators] that were not identified by APA.
3. Control activities, which according to Standards for Internal Control in the Federal Government, are "necessary actions management establishes through policies and procedures to achieve objectives and respond to risks in the internal control system." We noted the following:
 - a. APA's Policy and Procedure Manual includes policies and procedures regarding Human Resources (Chapter C) and Academics (Chapter G), which chapter also includes special education. These policies and procedures were not comprehensively designed, were not comprehensively implemented, and/or were not sufficiently monitored for operating effectiveness. For example, related to policies and procedures for training staff:

Training	# of Paraeducators Reviewed	# Not Employed at Time of Training	# Employed Who Did Not Participate	% of Employees Who Were Not Employed or Did Not Participate
Summer Training - APA Paraprofessional & MTSS Training 7.30.2018 - 8.3.2018	12	9	0	75%
Preservice Training - APA Para and MTSS Training Required by Law 8.6.2018 - 8.10.2018	12	6	2	67%
Professional Development 10.31.2018	12	6	0	50%
Professional Development 1.18.2019	12	6	3	75%
Actual coaching records	12	NA	2	17%
Self-study Module in Special Education and Curriculum	12	NA	3	25%

Also related to the Summer Training included in the table above, we noted:

- i. For the three paraeducators that did participate in the training, the average amount of time (i.e., courses) spent in special education specific classes was only 10%.
- ii. Of the ten SPED courses available (i.e., not all courses were related to SPED), the three paraeducators that did participate only attended two courses (20%) on average.

From the paraeducator interviews we also noted:

- i. Of the 13 paraeducators who stated they were assigned to work with students with IEPs, four (31%) stated they did not receive any training.
- b. Chapter B – Business Operations of APA’s Policy and Procedure Manual includes various internal discrepancies and/or inconsistencies (see table below), as well as out-of-date references to Utah Code (63G-6a-403, 63G-6a-404, 63G-6a-408), that may have caused confusion for employees trying to comply with policy and follow procedures.

B-1.9 Cash Disbursements	B-2 Various
<p>B. ...All expenditures of the LEA are to be consistent with applicable state and federal laws and regulations.</p> <p>G. The LEA has designated State Procurement Code as its purchasing policy.</p>	<p>B-2.1 General Procurement: Procurement of goods and services will follow the state procurement code where possible as established by law for public agencies...</p>

<p>H.c \$5,001-\$10K The purchaser shall obtain at least two competitive quotes and purchase item/service from supplier offering the lowest quote meeting specifications.</p>	
<p>H.d \$10,001-\$50K The purchaser shall obtain at least two competitive quotes and purchase item/service from supplier offering the lowest quote meeting specifications.</p>	<p>B-2.1 General Procurement: Purchases of \$5,000 or greater will be made after three bids are received and evaluated for price, quality, delivery, and customer service.</p>
<p>H.e > \$50K The LEA shall enter into a competitive bid process or RFP in compliance with Utah Code 63G-6a sections 601-612 and 701-711, or use an approved vendor list with an invitation for bids or an RFP in compliance with Utah Code 63G-6a403 and 404.</p>	
<p>H.b \$1,001 - \$5K The signature of the requestor, immediate supervisor...and business administrator are required on the purchase order or check request form M. Purchase Orders: An expenditure authorization form (purchase order or requisition) is required for all purchases.</p>	<p>B-2.4 Purchase Orders: Purchase Orders should be issued for all purchases of \$2,500 or greater and may be issued for purchases less than \$2500 as appropriate...Staff members in need of goods and services must present a request to the CFO, Operations Manager, or Curriculum Specialist for procurement.</p>
<p>J. Credit/Purchase Cards If a card is issued to the LEA as a whole, a log should be kept documenting which employee checked out the card...</p>	<p>B-3.3 Debit or Credit Card Purchases Debit and credit cards may be issued to employees as approved by the Board and under written agreement with the employee named on the card and in accordance with the terms of the school's VISA Card Agreement.</p>
<p>K.1 Travel - Mileage Mileage reimbursement forms should be completed by employees within 45 days of return from travel. The form must include the dates and purpose of travel, destination(s), time of departure and return, and mileage.</p>	<p>B-5.1 Travel Reimbursement Employees who use personal vehicles for approved school-authorized business will be reimbursed for mileage providing a mileage log is maintained for the trip and submitted for reimbursement via the Expense Report.</p>

L. Reimbursement Requests Supporting documentation, including detailed receipts and justification for departure from the standard purchase order process, is required.

B-2.2 Classroom, Admin, and Small Purchases

Teachers, Instructors, and other staff may spend an annual allotment (classroom/admin budget) on approved classroom supplies and inventory at their leisure - up to the budgeted amount.

Reimbursement will be made by submitting an Expense Report with original invoices or receipts stapled to the back of them.

- c. Chapter B – Business Operations of APA’s Policy and Procedure Manual did not include procedures for how to procure items when the extent of the services needed was unknown.
- d. Chapter B – Business Operations of APA’s Policy and Procedure Manual did not include procedures to ensure documentation for sole source procurements was compliant with regulations.
- e. Chapter B – Business Operations of APA’s Policy and Procedure Manual requires transactions to have supporting documentation and be approved. However:
 - i. The policies and procedures do not require supporting documentation sufficient to ensure approvers will clearly know which funding source expenditures should be charged to. Approvers made incorrect assumptions about which funding sources expenditures should be charged to.
 - ii. The expense/employee reimbursement form is not clear and as such is not filled out consistently. For example, the Supplies ‘Amount’ field may indicate a quantity or a dollar amount.
 - iii. The expense/employee reimbursement form does not include a field to document the justification for departure from the standard purchase order process as is required in Chapter B – Business Operations B-1.9L Reimbursement Requests.
- f. APA’s Policy and Procedure Manual includes policies and procedures to both hire employees to provide services and to contract with vendors for services. However, once hired or contracted with, policies and procedures – such as ensuring program staff were aware of the difference and what it meant regarding use of funds - were not sufficient to ensure the distinction between employee and contracted vendor was maintained.
- g. The Management Agreement, including the Special Education Program Memorandum of Understanding (MOU), between APA and APS did not specify an invoicing process, rather it indicated simply that the Management Agreement was the invoice. This stipulation regarding invoicing is not sufficient to ensure that the allocation of management agreement expenditures to special education were appropriate. Also, it does not clearly indicate how the fee was determined and which enrollment number was used. Given the lack of an invoicing process, the rotating board member approval of these contract payments is not sufficient to ensure amounts paid to the provider were appropriate and reasonable.

- h. Though APA and APS have had a contractual relationship for the provision of management and academic services for the school for over a decade, the responsibilities and obligations of APS related to special education were not explicitly outlined until the MOU was approved by the board on February 25, 2020.

V. Effects

Potential effects of the above Conditions and Causes include:

- A. Innovation in APA's education model outpacing revisions and updates to regulations, as well as internal control systems and financing structures, led to questioned state special education funds of almost \$2.8 million for fiscal year 2019. See Appendix A.
- B. Lack of comprehensive and well-designed regulations, and accompanying control activities, results in confusion and inefficiencies that negatively impacts program and financial effectiveness.
- C. Need for special education programs and dedicated funding for special education may change as evolution of innovative practices within general education models, such as multi-tiered systems of support (MTSS), continue.
- D. Use of untrained and unsupervised staff increases the risk that students with individualized education programs could be deprived Free and Appropriate Public Education, which is a requirement under the Individuals with Disabilities Education Act.
- E. Not following Utah Procurement Code, and related rules and policies, reduces transparency and increases the risk of waste and abuse of taxpayer funds on excessive payments for services.
- F. Identification of questionable use of state special education funds impacts previously filed financial and program reports used by policymakers and financing institutions. Additionally, the LEA's and state's needed maintenance of effort level may be impacted.

VI. Recommendations

Recommendations are provided as suggestions to address the Conditions and Causes noted above.

Although recommendations are provided, it is the responsibility of the respective governing boards and administrative teams to understand the findings and take appropriate corrective action.

Recommendations should not be construed as an audit requirement for governing boards and administrative teams; they are suggestions to help promote continuous improvement that will mitigate the risk of future noncompliance.

A. Questioned Use of Funds

The Utah State Board of Education (Board or USBE) should review the table in Appendix A in context of the findings above and determine the amount of questioned fiscal year 2019 funds, if any, APA will be required to reimburse to the State of Utah. The total amount of funds questioned is: \$2,785,917.59 (73%) of the fiscal year 2019 state special education funds provided.

If funds are to be reimbursed, the USBE should establish repayment terms in accordance with the Settlement Agreement.

Further, based on this determination, the USBE should also ensure necessary adjustments to financial and program reports, and federal maintenance of effort calculations, are made.

B. Special Education Regulations

The USBE has been in process of updating the Special Education Rules Manual (Manual) for several months; and questions identified during the audit have been addressed as part of the revision process. We acknowledge Board action in the August 2020 Board Meeting to adopt the revised manual as part of R277-750. The rule will become effective pending the completion of the administrative rules' approval process, which is anticipated on October 9, 2020.

The Special Education Services (SES) section should establish a formal, documented process to receive on-going questions and feedback on the Manual. The process should include a communication protocol, with a timeline, to notify LEAs of additional or updated guidance in response to feedback. In accordance with the documented process and as needed for clarification, APA should submit questions and feedback to SES.

Further, the USBE should review rules and guidelines for paraeducators to ensure the rules and guidelines are consistent (terminology and application to general education and special education), current, and easily accessible. Once complete, information should be provided to local education agencies.

C. Evolution within General Education

In 2012, via a letter issued by Melody Musgrove, Ed.D., Director of the Office of Special Education Programs, the US Department of Education recognized the impact of innovative practices within education. The letter includes, *“OSEP [Office of Special Education Programs] recognizes that classrooms across the country are changing as the field of special education responds to innovative practices and increasingly flexible methods of teaching. While the needs of many learners can be met using such methods, they do not replace the need of a child with a disability for unique,*

individualized instruction that responds to his or her disability and enables the child to meet the educational standards within the jurisdiction of the public agency that apply to all children.”

Given the evolution of models and practices within both general education and special education, and in context of available performance and financial data, the USBE should consider policy actions to more clearly differentiate between general education efforts, such as MTSS, and specially designed instruction (i.e., special education). Potential policy actions should also consider appropriate funding levels for general education and special education programs, factoring in federal maintenance of effort requirements. Further the USBE should collaborate with local education agencies, the Legislature, and the US Department of Education on these efforts.

D. Innovation

The APA governing board should oversee the development and implementation of an internal control system, inclusive of qualified personnel, necessary policies and procedures, forms, data collection methods, training, and internal monitoring to ensure compliance with current special education regulations and allowable application of special education funding sources to services.

E. Internal Control System

We acknowledge APA has been in-process of updating systems, processes, and documentation related to special education programs for several months. The APA governing board should continue oversight to ensure compliance with the requirement in R277-113-6 *LEA Governing Board Fiscal Responsibilities* to ensure “that LEA administration establish, document, and maintain an effective internal control system for the LEA” in consideration of Standards for Internal Control in the Federal Government or the Internal Control Integrate Framework. Specific areas of focus should include those outlined in Section IV.D Internal Control System.

Furthermore, the governing board should require accountability from its management and academic services provider, American Preparatory Schools (APS), related to the school’s special education program. The APA governing board should review the contract with APS and consider amending it to include more comprehensive stipulations related to the monthly invoicing process and allocation of the expense to programs, such as the special education programs. As part of the contract review process, the governing board should consider incorporating the Special Education Program Memorandum of Understanding into the contract. Finally, the governing board should consider hiring a direct report employee(s), with access to systems and data, who reports regularly to the governing board, independent of the provider.

VII. Appendices

Appendix A – Questioned Use of Special Education Funds

Appendix B – Differences in Monitoring and Auditing

Appendix C - APA's Response

Appendix D – Auditor Concluding Remarks

Appendix A

Questioned Costs - State Special Education Funds

Type: P = Payroll, NP = Non-Payroll

Methodology: PP = Population, R = Random, J = Judgmental

Program: 1205 Add-On							
Program	Type	Methodology	Total Population of Dollars	Amount Reviewed	Amount Questioned	% Questioned of Amount Reviewed	PROJECTION Amount Questioned of Total Population
1205 - Case Manager	P	PP & R	\$ 931,787.25	\$ 931,787.25	\$ -	0%	\$ -
1205 - 1:1 Aide	P	R	\$ 288,307.57	\$ 50,291.02	\$ 50,291.02	100%	\$ 288,307.57
1205 - Paraeducator	P	R	\$ 2,064,726.41	\$ 207,078.70	\$ 207,078.70	100%	\$ 2,064,726.41
1205	P	J	\$ 8,303.33	\$ 8,303.33	\$ -	0%	\$ -
1205 Subtotal			\$ 3,293,124.56	\$ 1,197,460.30	\$ 257,369.72		\$ 2,353,033.98
1205	NP*	R	\$ 440,300.75	\$ 50,242.27	\$ 47,078.88	*	\$ 379,014.45
1205	NP	J	\$ 14,150.31	\$ 4,910.31	\$ 4,910.31	100%	\$ 14,150.31
1205 Subtotal			\$ 454,451.06	\$ 55,152.58	\$ 51,989.19		\$ 393,164.76
1205 Total			\$ 3,747,575.62	\$ 1,252,612.88	\$ 309,358.91		\$ 2,746,198.74

*Amount questioned was split between contract transactions and non-contract transactions. To determine the Total Population Questioned, we applied the Percent Questioned of Amount Reviewed for non-contract transactions to all non-contract transactions; for contract transactions reviewed, if the procurement or contract was questioned, we applied a 100% error rate to all transactions of the procurement/contract in the Total Population.

Program: 1210 Self Contained							
Program	Type	Methodology	Total Population	Amount Reviewed	Amount Questioned	% Questioned of Amount Reviewed	Amount Questioned of Total Population
1210	P	PP & R	\$ 59,205.03	\$ 59,205.03	\$ 6,685.59	11%	\$ 6,685.59
1210	NP	J	\$ 36.33	\$ 36.33	\$ -	0%	\$ -
1210 Total			\$ 59,241.36	\$ 59,241.36	\$ 6,685.59		\$ 6,685.59

Program: 1225 Impact Aid							
Program	Type	Methodology	Total Population	Amount Reviewed	Amount Questioned	% Questioned of Amount Reviewed	Amount Questioned of Total Population
1225	NP	R	\$ 33,033.26	\$ 5,505.54	\$ 5,505.54	100%	\$ 33,033.26
1225 Total			\$ 33,033.26	\$ 5,505.54	\$ 5,505.54		\$ 33,033.26

Combined Total		
Program Totals	Total Population	Amount of Total Population Questioned
1205 Total	\$ 3,747,575.62	\$ 2,746,198.74
1210 Total	\$ 59,241.36	\$ 6,685.59
1225 Total	\$ 33,033.26	\$ 33,033.26
Combined Total	\$ 3,839,850.24	\$ 2,785,917.59

Appendix B

Differences in Auditing and Monitoring

The Background, Scope, and Objectives section of the report included the following:

“In the spring and summer of 2019, the Utah State Board of Education (USBE) Special Education Services staff conducted a monitoring visit at Utah Charter Academies doing business as American Preparatory Academy (APA). The result of the monitoring was a Notice of Non-Compliance and Corrective Action (Notice) that identified, among other items, \$4,032,551.78 in unallowable costs pertaining to state special education programs.”

Appendix A of the report shows that the audit questions \$2,785,917.59 of state special education funds, a difference from the monitoring unallowable amount of \$1,246,634.19.

Why the difference?

First, Internal Audit identified approximately \$8,400 of program 1220 Extended Year Stipend funds and over \$200,000 of program 1205 Add-on state special education funds, that did not have underlying expenditures. This means that APA carried the funds forward to be applied to expenses in a future fiscal year. As the funds were technically not spent during fiscal year 2019, Internal Audit did not include them in the total population of funds subject to audit.

The remaining difference of approximately \$1,000,000 is due to differences in auditing and monitoring, and revisions to APA’s general ledger in the months between when the monitoring was completed and before the audit began.

Monitoring

Monitoring of state programs is required according to R277-114 *Corrective Action and Withdrawal or Reduction of Program Funds* and helps ensure accountability for use of funds provided by taxpayers. Monitoring follows established state policies and procedures and for special education programs is done by employees in the USBE Special Education Section.

The Monitoring team questioned all state special education funds expended during fiscal year 2019 based on the following conclusions:

- Lack of a financial management system as required by regulation
- Lack of written policies and procedures to determine the allowability of costs
- Lack of adequate documentation
- Lack of designed and implemented internal controls

To Internal Audit's knowledge, the above conclusions were not based on an analysis of specific transactions as at the time of monitoring APA did not code transactions to specific programs in its general ledger; this was done in subsidiary ledgers. However, prior to the Settlement Agreement, to ensure compliance with program accounting requirements in R277-113-6 and facilitate further state reviews, APA revised its general ledger to assign expenditures to specific programs.

Auditing

The Utah State Board of Education is required by law to have an internal audit function to objectively evaluate governance, risk management, internal controls, and compliance. The internal audit function 1) complies with International Standards for the Professional Practice of Internal Auditing, 2) is independent of daily management operations of the USBE, and 3) reports directly to the Board.

Internal Audit questioned state special education funds based on findings outlined in the report; findings were issued based on an analysis of detailed transactions, services provided by employees to students, and professional development activities. APA's revision of its general ledger to assign expenditures to specific programs helped resolve one of the concerns identified by the Monitoring team and helped facilitate a more detailed audit. The audit confirmed some concerns with policies and procedures, documentation, and internal controls.

Additional information regarding auditing and monitoring, both of which are assurance services is available in the following documents:

Internal Audit: Auditing or Monitoring

<https://schools.utah.gov/file/60183a99-edb5-4b2d-af92-30cde8584ecd>

Assurance Services

<https://schools.utah.gov/file/e92f0f1c-0c5b-4a9f-b1fc-73728d0fc087>



APPENDIX C

AMERICAN PREPARATORY ACADEMY

The Utah State Board of Education (USBE) Internal Audit Department redacted employee initials and names, and student initials, in this response to ensure data privacy.

The response from American Preparatory Academy comprises report pages 24-74 (document pages 31 - 81) of this document. Please contact the USBE Internal Audit Department for accessibility assistance on this section.

Document Map

1. Letter from UCA to USBE
2. USBE Internal Audit Brief
3. APA's response to the Audit Brief
4. USBE Internal Audit Report, with APA's Response incorporated in blue text
5. APA's Summary Table of Costs





October 6, 2020

Dear State Board of Education and Audit Committee Members,

On behalf of Utah Charter Academies dba American Preparatory Academy (“APA”), we express our appreciation for the professionalism demonstrated by the USBE audit team. We believe Debbie Davis and Kevin John genuinely sought to understand APA’s innovative special education model, which created a productive working environment and resulted in greater understanding.

The success of APA is and has always been founded on our passion to serve children. This audit identified areas where we can improve our service to both APA’s students and their families. We have embraced those recommendations. We have already begun implementing many of the recommendations and **are committed to implementing others**. We appreciate efforts by the USBE to review APA’s model and to clarify rules and appropriate procedures and we will take immediate steps to reconcile any non-compliant operations when identified.

As noted on the USBE website, “Charter Schools...allow educators freedom to try new strategies to inspire students and to experiment with innovative ways of educating students.” In fact, the SCSB is legally charged “To meet the unique learning styles and needs of students” by requesting applications for Charters that “seek to expand the types of instructional methods and programs offered by schools” (53G-5-301). This innovation will inevitably lead to some confusion around compliance as new models are developed. Indeed, reconciling innovation and compliance can perhaps be one of the biggest challenges facing charter schools, which are mandated to innovate.

Any concerns should not be interpreted as attempts by APA to push the boundaries of compliance. To the contrary, it reflects our mission to explore innovative instructional models that are best for children. The benefits we seek relate to the education of students who chose to attend APA, and we will work with USBE and its staff to balance historical compliance models with attempts to improve education through innovation.

Let there be no doubt – APA is committed to compliance with all state and federal laws and rules. While intentional misappropriation or non-compliance may justify the repayment of state education funds, non-compliance resulting from confusing regulations arising from a school diligently (and transparently) exploring innovative ways to serve the needs of children should be resolved prospectively so as not to disincentivize innovation.

We acknowledge that the events of the past year have been trying at times and have resulted in frustration on both sides. That is not APA’s desire. It is our hope that the conclusion of this audit can be the beginning a relationship where goodwill is assumed. APA would welcome the opportunity to represent a compliant leadership role that will benefit Utah’s charter school community in the years to come.

With sincere appreciation,

UCA Governing Board and Staff

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UTAH STATE BOARD OF EDUCATION
Internal Audit Department

Audit Brief

APA’s Use of Special Education Funds (20-02)

Scope, Objective, and Methodology

On January 14, 2020, in response to a Settlement Agreement (Agreement) signed by the Utah State Board of Education (USBE or Board) and Utah Charter Academies doing business as American Preparatory Academy (APA), the Board authorized the USBE Internal Audit Department (IA) to audit APA’s use of state special education funds expended during fiscal year (FY) 2019 for the following programs: 1) 1205 Add-on, 2) 1210 Self Contained, and 3) 1225 Impact Aid.

We obtained a list of transactions reflecting funds expended for each of the three special education programs and reconciled the expended amounts with the funding sources. For each program, we categorized transactions by type—payroll and non-payroll; we further categorized payroll transactions by position (i.e., case manager, 1:1 aide, and paraeducator). Within these categories, we used various methods to determine if the use of funds was allowable; methods include random samples, judgmental (i.e., subjective) selections, and analysis of all individuals in certain positions.

Findings

APA used funds for goods and services that were not “easily, obviously, and conveniently identified with specific special education activities or programs.” Additionally, APA did not comply with procurement and policy requirements. Based on the findings, we question funds in each program as follows:

Program	Total Amount of Funds	Amount Questioned	% of Total Questioned
1205	\$ 3,747,575.62	\$ 2,746,198.74	73%
1210	\$ 59,241.37	\$ 6,685.59	11%
1225	\$ 33,033.26	\$ 33,033.26	100%
Total	\$ 3,839,850.25	\$ 2,785,917.59	73%

Causes

- A. Complex special education regulations that lacked clear guidance in several areas (e.g., documentation, permissive use of funds, excess cost, paraeducators).
- B. Difficulty deciphering between the evolution of general education models, such as multi-tiered systems of support (MTSS) and specially designed instruction (i.e., special education).
- C. Program innovation that outpaced development and implementation of an internal control system that would ensure compliance with current regulations, including allowable application of

funding sources to services.

- D. The governing board of APA contracted with American Preparatory Schools (APS) to provide management and academic services, including special education services; however, given the significance and comprehensiveness of the roles and responsibilities given to the provider, the Board may not have sufficient oversight to ensure a sound internal control system.

Effects

- A. Innovation in APA's education model outpacing revisions and updates to regulations, as well as internal control systems and financing structures, led to questioned state special education funds of almost \$2.8 million for fiscal year 2019. See Appendix A.
- B. Lack of comprehensive and well-designed regulations, and accompanying control activities, results in confusion and inefficiencies that negatively impacts program and financial effectiveness.
- C. Need for special education programs and dedicated funding for special education may change as evolution of innovative practices within general education models, such as multi-tiered systems of support (MTSS), continue.
- D. Use of untrained and unsupervised staff increases the risk that students with individualized education programs could be deprived Free and Appropriate Public Education, which is a requirement under the Individuals with Disabilities Education Act.
- E. Not following Utah Procurement Code, and related rules and policies, reduces transparency and increases the risk of waste and abuse of taxpayer funds on excessive payments for services.
- F. Identification of questionable use of state special education funds impacts previously filed financial and program reports used by policymakers and financing institutions. Additionally, both the LEA's and state's needed maintenance of effort level may be impacted.

Recommendations

The Board should review the questioned costs and determine the amount of funds APA will be required to reimburse the State of Utah in accordance with the provisions of the Agreement.

As the local education agency oversight body, APA's governing board should oversee the development, implementation, and operation of an internal control system to ensure compliance and accountability with regards to use of state special education funds. We acknowledge APA's recent efforts to revise processes and documentation to ensure a greater level of accountability for use of funds.

We acknowledge USBE's recent efforts to update the Special Education Rules Manual, and encourage a process to receive on-going feedback, providing clarifications when needed. Furthermore, we recommend the USBE review and revise rules and guidelines for paraeducators.

Finally, the USBE should collaborate with local education agencies, the Legislature, and the US

Department of Education to consider policy actions that will more clearly differentiate between general education efforts, such as multi-tiered systems of support (i.e., individually-responsive supports), and specially designed instruction. Allocation of funds between general education and special education programs and/or restrictions on funds for special education programs, factoring in the federal maintenance of effort requirement, should also be considered.

**APA Response to the USBE’s Internal
Audit Department Audit Brief
October 6, 2020**

OVERVIEW

For over 17 years, APA has provided outstanding education to many thousands of Utah students. Founded on the overriding principle of dedication to what is best for its students, APA has continually sought to provide outstanding education through innovation, modernization and hard work. Among other things, APA provides extensive after-hours classes in economically disadvantaged areas to assist students in learning and parents with childcare. It also provides more class instruction and more special education opportunities than state and federal laws require. As a result, APA’s model has been successful for its students.

This is particularly true in the area of special education. Since 2003, APA has used an innovative and inclusive special education program designed to help students achieve the highest possible level of academic achievement in the least restrictive environment (“LRE”). Specifically, special education students receive specially designed instruction (“SDI”) in accordance with their Individualized Education Plans (“IEPs”). For elementary students, this typically means that IEP students receive general education in their homeroom class alongside their peers, with the assistance of a special education paraeducator. Additionally, elementary students with IEPs attend small-sized classes, or “Intensives,” that focus on specific academic subjects. All students rotate through these Intensives and are placed in small groups that correspond to their level of development and learning needs. Likewise, at the secondary level, IEP students in grades 7 through 12 may attend a general classroom, where IEP students receive additional support from a paraeducator, and specialty classes, where the content and teaching methodology are adapted to the students’ specific needs as determined by the IEP team and set forth in their IEPs. In this manner, the needs of all special education students are met while they are taught with and learn alongside their general education peers, to the extent possible, who are at a similar level of development. This model is designed to minimize the stigma of being a special education student by allowing them to rotate through their Intensives alongside all other students. As a result of this highly inclusive, innovative model, many parents have specifically selected APA for their children with IEPs.

Despite its tremendous success, questions about APA’s accounting procedures have arisen. **There has never been any claim that APA misappropriated any funds.** Rather, the issues that arose were whether APA had correctly accounted for and applied special education funds. As a result, earlier this year, the USBE and APA agreed to an audit of APA’s use of state special education funds. APA welcomed and actively participated in the audit and appreciates the efforts of the auditors (the “Auditors”). Indeed, as set forth below, the Auditors have identified a number of important issues which benefit all LEAs.

As the USBE considers how to proceed with the Audit, APA submits this response to (1) highlight a few of the items identified by the auditors; (2) suggest a proper resolution of questioned funds; and (3) correct factual inaccuracies in the Audit Brief and the Internal Audit Report.

I. Auditors' Conclusions

APA responds to the Auditors' specific findings and conclusions below. Importantly, while the Auditors "questioned" certain program expenditures, this was largely based on questions as to the adequacy of submitted documentation. They did not find that any of the funds were misused or misappropriated. To the contrary, all of the funds, including the questioned funds, were spent on paraeducators, case managers, related service providers, and 1:1 aides, who worked with and taught special education students.

The Auditors did not lay blame for the perceived insufficiency of documentation completely on APA. To the contrary, the Auditors made clear that the number one cause for the questioned funds was "[c]omplex special education regulations that lacked clear guidance in several areas (e.g., documentation, permissive use of funds, excess costs, paraeducators)." Audit Brief at 1 (emphasis added). It also concluded that the perceived deficiencies were caused by "[d]ifficulty deciphering between the evolution of general education models, such as multi-tiered systems of support (MTSS) and specifically designed instruction (i.e., special education)." *Id.*

In short, the Auditors found that the questioned money was spent on legitimate education expenses and that any documentation errors were inadvertent mistakes caused, at least in part, by confusion over the complex regulations and lack of clear guidance.

II. Recommended Resolution

As set forth above, the Auditors correctly found that the questioned funds were spent on legitimate school expenses. They also found that the deficiencies in documentation were caused, at least in part, by (1) the lack of clear guidance as to the training and documentation requirements for LEAs with regard to special education; and (2) the complex and confusing state of Special Education Rules. Additionally, as the USBE is aware, for 17 years, APA has diligently sought to comply with its state and federal obligations. Indeed, APA has successfully met the requirements of the USBE's published SES Framework every year for 17 years.

While finding that APA used all of its funds to pay for legitimate education expenses and dutifully endeavored to comply with its legal obligations, the Auditors nonetheless questioned \$2,785,917.59 of funds spent on paraeducators, case managers, related service providers, and 1:1 aides. As set forth below, APA believes that those funds were properly spent to meet the unique needs of its special education students. Rather, this appears to have been a documentation question that can and should be corrected prospectively. Future APA students should not be deprived of millions of education funds that were properly spent, but not correctly documented.

Moreover, even if the USBE concludes that APA failed to properly document the use of special education funds, it should not require repayment of questioned funds.

III. Response to Factual Conclusions

As set forth below, APA responds to a number of the Auditors' factual conclusions. For the USBE's convenience, the Auditors' conclusions are set forth in italics and APA's responses are set forth in bold.

A. Easily, Obviously and Conveniently Identified

Auditor's Conclusion: APA used funds for goods and services that were not “easily, obviously, and conveniently identified with specific special education activities or programs.” Additionally, APA did not comply with procurement and policy requirements.

Management Response: The Auditors concluded that in some circumstances they could not “easily, obviously, and conveniently” associate the specific special education activity or program with the related expense. Again, to be clear, **the Auditors did not find that APA had misused or misappropriated any funds. To the contrary, all of the money received by APA was properly spent on legitimate education expenses.**

Moreover, the Auditor’s determination appears to be that, based on the samples they selected, they were unable to “easily, obviously, and conveniently” connect the money spent with a special education expense. That finding conflates direct “costs” and direct “services.” A cost is an expense associated with special education delivery, such as the *cost* for a special education teacher, or the *cost* for a special education paraprofessional. A service that is provided to special education students is not required to be “easily, obviously, and conveniently identified.” This is an important distinction when considering that some services will not be “easily” identifiable – for example when a student is receiving services alongside non-IEP students in a classroom, or in other service model settings where the goal is to keep the service as confidential as possible. Therefore, the term “direct” is not appropriately applied to “services” when using the “easily, obviously, and conveniently” standard.

The Auditor’s application of the “easily” standard for direct costs to all special education expenses creates an incorrect and overly restrictive standard. In Utah, LEAs are required to provide SDI and other related services to all students with an IEP. LEAs are also required by federal law to provide those services in the “least restrictive environment.” And, as a charter school, APA is encouraged to develop innovative, new models of public education. To satisfy its state and federal legal requirements, APA has developed a model that is designed to provide special education in the LRE by providing special education students with SDI in classes with their peers.¹ Whenever possible, APA tries to avoid pulling special education students out of the classroom into a more restrictive environment. To do so, APA creates numerous instructional groups at differing levels so that, most of the time, special education students are taught and receive their SDI in classes with and alongside their peers.

To staff this model, APA hires supplemental employees – special education teachers and special education paraeducators (both of whom qualify as direct costs and excess costs) to assist in delivering the SDI required to fulfill each special education student’s IEP.

This has been a powerful academic model. Special education students are given the specific instruction pursuant to their IEP, but they avoid the stigma associated with being separated from their peers. Additionally, this model strengthens the social and emotional

¹ This model was created nearly 20 years ago, with careful consideration of both state and federal laws.

health and wellbeing of the special education students. Indeed, APA student outcomes demonstrate the effectiveness of this model, as does APA parent satisfaction and its students' scores on the annual state UPIPS monitoring over the past 17 years of operation. However, because the purpose of this model is to avoid identifying and segregating special education students it can be more difficult to trace the expense to the specific special education service. Indeed, to be successful in implementing its model, at least some of the special education services that APA provides will not be “easily, obviously, and conveniently” identified. This does not, however, mean that special education services are not being provided or that the associated costs are not legitimate special education costs. To the contrary, the money spent to hire the supplemental staff, including special education teachers and paraeducators, is a legitimate special education expense.

APA has created an innovative, robust and effective special education program. Some of the costs associated with that program are “easily, obviously, and conveniently” identified. However, because many of its services are provided in the LRE, some of APA’s special education expenses may not be “easily, obviously, and conveniently” identified. Even so, as long as those costs can be identified and linked to the specific special education service, they should qualify for state special education funds.

In short, the USBE should not require LEAs to brand special education students to make services provided to them “easily, obviously, and conveniently” identified. To the contrary, LEAs should be encouraged to provide special education students the services they need without being segregated and suffering the stigma often associated with an IEP.² And, as LEAs make these services less visible and more inclusive, the USBE can and should provide guidance to enable and encourage LEAs to be able to provide the documentation needed for these innovative models.

B. Absence of Clear Guidance

Auditor’s Conclusion: “Complex special education regulations that [sic] lacked clear guidance in several areas (e.g., documentation, permissive use of funds, excess cost, paraeducators).”

Management Response: APA appreciates the Auditors’ recognition that LEAs have not been given clear guidance in several areas material to this audit. In APA’s experience, LEAs could benefit from clear guidance on the following points:

- **Documentation:** Until May 2020, the USBE had not provided sample documents for standard SDI documentation. While USBE rules state that documentation of SDI must be maintained, there has never been any published guidance regarding what documentation should be maintained.
- **Permissive Use of Funds, Incidental Benefits and Excess Costs:** Under federal law, APA’s use of paraprofessionals (supplemental employees hired for the purpose of

² With regard to the procurement requirements, as the Auditors noted, APA has largely complied with its procurement requirements. There are a few exceptions and APA has already taken steps to ensure that all procurement requirements are complied with in the future.

creating the LRE for IEP students) is an allowable cost under IDEA, even if they teach in a “regular” class and one or more general education students benefit. *See* 34 C.F.R. § 300.28. The key under federal law is that the employee must be supplemental, meaning the employee would not have been hired but for the need to provide SDI to the special education student. APA has always sought to comply with federal law. Notwithstanding federal law, the Auditors question all expenses where a paraeducator taught both general and special education students. Indeed, contrary to federal law, the Auditors have questioned whether state special education funds may be used if the good or services provide an incidental benefit to general education. This interpretation creates a higher standard for the use of state special education funds than for the use of federal special education funds. APA does not believe that is what the legislature intended and clear guidance on this issue would benefit all LEAs.

- ***Paraeducators:*** APA’s paraeducators are highly qualified, trained and supervised to provide special education services. While the USBE has published guidelines stating that paraeducators must be trained and supervised, it has not published any guidance as to how to document paraeducator training and supervision. All of APA’s paraeducators are extensively trained in all subjects that they teach. APA provided this documentation to the Auditors. However, APA’s training program is labeled “Coaching Program” because the training occurs one-on-one. This may have confused the Auditors. While there is no guideline on how to document their training and supervision, the Auditors questioned APA’s documentation and, as a result, the expenses. Given this confusion, it would be beneficial for the USBE to publish specific guidance on the documents to be maintained to demonstrate that paraeducators are sufficiently trained and supervised.

C. Evolution of Education Models

Auditor’s Conclusion: “*Difficulty deciphering between the evolution of general education models, such as multi-tiered systems of support (MTSS) and specially designed instruction (i.e., special education).*”

Management Response: This is an important issue in need of significant attention. In APA’s experience, students across the state have increasing needs of an acute nature. These needs are not limited to academics. Rather, students are suffering from significant social, emotional and mental health disorders that are disrupting their academic progress and success. Now more than ever, LEAs need to be cautious of how students are taught and treated. Among other things, it is vital that IEP students avoid being segregated and stigmatized. Whenever possible, students need to be taught in the LRE, alongside their peers. Doing so inevitably requires many supplemental employees to work with special education students in general education settings. But to avoid singling out special education students, those supplemental employees must, at times, also help and incidentally benefit general education students.

If LEAs cannot use state special education funds to educate special education students in general education classes, they will be unable to meet the growing emotional, social and mental health needs of their special education students. Instead, they will be

forced to revert to more traditional “segregate and educate” approaches. Again, APA does not believe that that is what the Utah Legislature intended.

As the USBE members are undoubtedly aware, parents often search for different education options to meet their children’s unique needs. Many are concerned about their children being labeled or segregated from their peers. As a result, some parents will not even allow their children to be evaluated for special education services. Indeed, it is likely that every LEA serves a group of students who would qualify for IDEA, but whose parents refuse to allow them to be identified as such. Other parents object to any IEP that proposes to separate their children from their peers. These issues are persistent and require LEAs to develop innovative programs to address the unique needs of their IEP students without pulling them away from their peers or branding them as special education students.

To address these complex and ever-changing issues, LEAs need greater flexibility and freedom to innovate. LEAs should be encouraged to create new models of education to meet the unique needs of special education students. APA hopes that the USBE will be open to and establish rules that promote and facilitate this innovation.

D. Program Innovation

Auditor’s Conclusion: “Program innovation that outpaced development and implementation of an internal control system that would ensure compliance with current regulations, including allowable application of funding sources to services.”

Management Response: As the Auditors recognized, APA has developed an innovative program designed to provide special education students with SDI in the LRE. APA is committed to taking whatever steps are necessary to ensure that its accounting practices satisfy its legal requirements. While APA has already implemented additional internal controls and accounting procedures, it welcomes direction from the USBE on the documentation to be maintained and the accounting procedures to be followed.

E. Management Contract

Auditor’s Conclusion: “The governing board of APA contracted with American Preparatory Schools (APS) to provide management and academic services, including special education services; however, given the significance and comprehensiveness of the roles and responsibilities given to the provider, the Board may not have sufficient oversight to ensure a sound internal control system.”

Management Response: In light of the increasing complexity of state restricted funds and accounting requirements, the APA Board has invested tens of thousands of dollars in more robust accounting systems, as well as additional personnel. There may have been a time that APA Board members had familial or other relationships with the management of APS. That is no longer the case. Additionally, the APA Board has retained a board consultant to provide additional feedback to the APA Board, as well as separate legal counsel to advise them. The APA Board meets monthly to ensure that it has the information necessary to oversee and direct the school. Additionally, the APA Board manages its contract with APS consistent with the contractual terms.

F. Miscellaneous Effects

1. Innovation Outpacing Regulation

Auditor's Conclusion: "Innovation in APA's education model outpacing revisions and updates to regulations, as well as internal control systems and financing structures, led to questioned state special education funds of almost \$2.8 million for fiscal year 2019. See Appendix A."

Management Response: As the Auditors have concluded, the concerns over APA's accounting procedures and this audit were the result of APA's innovation outpacing traditional school models of education. APA has not misappropriated or misused any funds. To the contrary, all of the money allocated to APA has been used for legitimate education purposes and all special education funds have been used to provide SDI to special education students.

2. Lack of Comprehensive and Well-Designed Regulations

Auditor's Conclusion: "Lack of comprehensive and well-designed regulations, and accompanying control activities, results in confusion and inefficiencies that negatively impacts program and financial effectiveness."

Management Response: APA agrees that lack of comprehensive and well-defined regulations has caused confusion surrounding the use of special education funds. Despite that, APA has continued to provide outstanding special education services.

3. Needs for Special Education Programs and Funding Are Changing

Auditor's Conclusion: "Need for special education programs and dedicated funding for special education may change as evolution of innovative practices within general education models, such as multi-tiered systems of support (MTSS), continue."

Management Response: APA agrees that special education needs are changing and, as a result, believes that special education programs must change as well. The USBE should likewise modify its regulations to allow LEAs to meet the changing special education needs. As the USBE is aware, there are millions of 1205 program dollars resting in LEA bank accounts due to annual carry-forward balances. Those funds can and should be used to meet the mental, emotional and educational needs of students throughout the state annually, as they are appropriated.

4. Use of Untrained and Unsupervised Staff

Auditor's Conclusion: "Use of untrained and unsupervised staff increases the risk that students with individualized education programs could be deprived Free and Appropriate Public Education, which is a requirement under the Individuals with Disabilities Education Act."

Management Response: APA agrees that the use of untrained and unsupervised staff could deprive students of a Free and Appropriate Public Education. That is not the case here. APA's teachers and paraeducators are thoroughly trained and properly

supervised. We provided extensive documentation demonstrating that is the case. Indeed, in APA's recent accreditation review (Oct. 2020), evaluators concluded that APA had one of the most robust and comprehensive training programs they had ever seen in a school system. Additionally, APA is widely recognized as a regional training center for Direct Instruction (a common curriculum used with special needs children) and has trained many school staff from many different schools and across several states. All of APA's instructional staff are rigorously trained. In addition to traditional supervision provided by coaches, directors, and mentor teachers, APA is one of the only schools in Utah to have audio and video cameras in each and every classroom district-wide, which are used in part for teacher supervision support.

5. Procurement Code

Auditor's Conclusion: "Not following Utah Procurement Code, and related rules and policies, reduces transparency and increases the risk of waste and abuse of taxpayer funds on excessive payments for services."

Management Response: APA agrees that it is important to follow the Utah Procurement Code and is committed to doing so. While the Auditors did not identify any waste or misuse of taxpayer funds, it was found that some related service provider contracts may not have met state procurement requirements. APA has reached out to the state procurement director for guidance related to some of the more complex contract questions and is committed to complete compliance with the Utah Procurement Code. Moreover, it was found that APA's procurement policies needed to be updated to code. That work has already begun.

G. Recommendations

1. USBE Review

Auditor's Conclusion: "The Board should review the questioned costs and determine the amount of funds, if any, APA will be required to reimburse the State of Utah in accordance with the provisions of the Agreement."

Management Response: As noted above, the Auditors did not find that APA misused or misspent any funds. They questioned certain expenditures and have invited the USBE to determine whether any amount of those funds should be repaid. See Audit at 18. In doing so, the Auditors made clear that the USBE can determine that APA should not be required to repay any of the funds. Given that none of the funds were found to be used for non-educational expenses and given the lack of clarity and confusion identified by the Auditors that contributed to the accounting issues, the USBE should not require repayment of the funds.

2. Internal Control System

Auditor's Conclusion: "As the local education agency oversight body, APA's governing board should oversee the development, implementation, and operation of an internal control system to ensure compliance and accountability with regards to use of state special education

funds. We acknowledge APA's recent efforts to revise processes and documentation to ensure a greater level of accountability for use of funds."

Management Response: As the Auditors noted, APA has revised its process and documentation procedures. Indeed, during the 2020 school year, APA purchased and implemented a more precise tracking system for all accounting procedures, including documentation of SDI and more specific time and effort tracking. Additionally, during this fiscal year, APA has increased the detail of these systems even more. APA is committed to aligning its systems with state requirements, as has been its practice in all other areas of education administration, and looks forward to clear, published special education guidance from USBE.

3. Special Education Rules Manual

Auditor's Conclusion: "We acknowledge USBE's recent efforts to update the Special Education Rules Manual, and encourage a process to receive on-going feedback, providing clarifications when needed. Furthermore, we recommend the USBE review and revise rules and guidelines for paraeducators."

Management Response: APA agrees with this recommendation. APA hopes that the USBE will involve LEAs in revising the Special Education Rules Manual. Among other things, the manual should be modified to provide more flexibility in providing special education services. It should also be modified to allow for special education services to be provided in the LRE. This may result in incidental benefits to other students but, like federal law, Utah law should not preclude an inclusive model. Additionally, the manual should not be changed to prevent LEAs from using special education funds to identify students with special needs.

4. Collaboration

Auditor's Conclusion: "Finally, the USBE should collaborate with local education agencies, the Legislature, and the US Department of Education to consider policy actions that will more clearly differentiate between general education efforts, such as multi-tiered systems of support (i.e., individually-responsive supports), and specially designed instruction. Allocation of funds between general education and special education programs and/or restrictions on funds for special education programs, factoring in the federal maintenance of effort requirement, should also be considered."

Management Response: APA strongly supports this recommendation. APA hopes to be a part of this process and welcomes an increase in collaboration with the USBE and its staff.

CONCLUSION

As the Auditors correctly concluded, APA spent all of the "questioned" funds on supplemental educational services, including paraeducators, case managers, related service providers and 1:1 aides. While the Auditors identified questions with APA's documents, it made clear that any errors were of omission created by "[c]omplex special education regulations that

lacked clear guidance in several areas (e.g., documentation, permissive use of funds, excess costs, paraeducators)” and “[d]ifficulty deciphering between the evolution of general education models, such as multi-tiered systems of support (MTSS) and specifically designed instruction (i.e., special education).” Audit Brief at 1. As set forth above, APA has diligently and transparently complied with the Special Education Rules as it understood them. To the extent that there are questioned costs, we feel it is clear that the questions do not rise to the level of repayment of funds. If USBE feels that any portion of the funds necessitate response beyond the policy and documentation changes already undertaken by APA, we feel it would be most appropriate to allow carryover of those funds to be used for the benefit of existing and future special education students.



Utah State Board of Education

Internal Audit Department

APA's Use of State Special Education Funds 20-02

Report No. 20-02

**APA's Use of State
Special Education Funds**

November 5, 2020

Audit Performed by:

Chief Audit Executive

Debbie Davis, CPA

Audit Manager

Kevin John, CFE

November 5, 2020

Chair Mark Huntsman
Utah State Board of Education
250 East 500 South
Salt Lake City, UT 84111

Chair Dee Henderson
American Preparatory Academy 12892 Pony Express Rd
Draper, UT 84020

Dear Chair Huntsman and Chair Henderson

On January 14, 2020 in accordance with The Bylaws of the Utah State Board of Education (Board) and upon signing the Settlement Agreement with Utah Charter Academies, doing business as American Preparatory Academy (APA), the Board authorized the Internal Audit Department (IA) to perform an audit to review APA's use of state special education funds during fiscal year 2019. IA obtained relevant information and documentation from staff of the Utah State Board of Education (USBE) and the APA administrative team, and performed the following procedures:

1. Gained an understanding, through research and inquiry, of applicable federal regulations, Utah Code, administrative code, and policy; and
2. Reviewed and analyzed use of state special education funds during fiscal year 2019.

We have identified the procedures performed during the audit above and the conclusions from those procedures are included in this report with suggestions for improvement.

Internal audits are conducted in conformance with the current *International Standards for the Professional Practice of Internal Auditing*, consistent with *Utah Code Annotated* and *Utah Administrative Code*.

By its nature, this report focuses on exceptions and questioned costs. This focus should not be understood to mean APA does not demonstrate various strengths and accomplishments. We appreciate the courtesy and assistance extended to us by staff of the USBE and by APA's administrative team during the audit. APA's response to the audit is included as Appendix C.

This report is intended for the information and use of the Board and APA. If you have questions, please contact me at (801) 538-7639 or debbie.davis@schools.utah.gov.

Chair Huntsman, Chair Henderson

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November 5, 2020

Sincerely,

Deborah Davis, CPA

Chief Audit Executive, Utah State Board of Education

cc: Members of the Utah State Board of Education (USBE)
Sydnee Dickson, State Superintendent of Public Instruction, USBE
Scott Jones, Deputy Superintendent of Operations, USBE
Patty Norman, Deputy Superintendent of Student Achievement, USBE
Members of the American Preparatory Academy (APA) Board
Carolyn Sharette, Executive Director, APA
Members of the State Charter School Board

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I. Background, Scope, and Objective

In the spring and summer of 2019, the Utah State Board of Education (USBE) Special Education Services staff conducted a monitoring visit at Utah Charter Academies dba American Preparatory Academy (APA). The result of the monitoring was a Notice of Non-Compliance and Corrective Action (Notice) that identified, among other items, \$4,032,551.78 in unallowable costs pertaining to state special education programs. The findings of this monitoring were appealed and in December 2019, representatives of the USBE and APA participated in mediation regarding the Notice. The result of the mediation was a signed Settlement Agreement (Agreement) that included a stipulation for “a new audit of APA’s use of State Special Education Funds for FY19 (Section 3)” with a scope “limited to a determination of whether the State Special education funds were incurred for expenses that qualified for State Special Education funds during FY2019 (Section 3.b).” The Agreement was signed by the entities on January 13 and 14, 2020, respectively.

Initially, it was thought that USBE Special Education Fiscal Monitors would complete the required audit; however, the Settlement Agreement required the USBE “to complete the audit in a fair and impartial manner and consistent with generally applicable accounting and auditing standards (Section 3.d).” Because the USBE Internal Audit Department (IA) both follows the International Standards for the Professional Practice of Internal Auditing, which are generally applicable standards and is independent of USBE daily operations (i.e., an impartial party); it was determined that IA would complete the required audit. See Appendix B for information on the differences in Auditing and Monitoring.

The audit was started on February 4, 2020, and was completed as resources and documentation were available. In accordance with the Agreement, stipulation 3.c Audit Conference, which required the USBE “to hear APA’s explanations of the accounting and cost treatment,” we met with APA several times, in addition to phone calls and emails, including:

Date	Meeting Description
February 11, 2020	Opening conference
February 28, 2020	Gain an understanding of APA’s special education program and accounting processes
April 30, 2020	Gain an understanding of payroll documentation
June 3, 2020	Discuss documentation
July 1, 2020	Review individualized education program (IEP) files and discuss procurement
September 8, 2020	Closing conference

In accordance with the Agreement, stipulation 3.d Results of the Audit, this report provides “an explanation of any disallowed expenditures and the reasons why those expenses were disallowed.” Such explanations are included as findings; see Appendix A for questioned costs.

II. Methodology

To determine whether the APA used FY2019 state special education funds for eligible purposes, we used the following Methodology:

- A.** We requested the general ledger detail for each special education program (i.e., 1205 Special Education Add-on, 1210 Self-contained, and 1225 Impact Aid) identified by the USBE Fiscal Monitoring to be included in the audit.
- B.** For each special education program, we categorized the transactions as either Payroll or Non-Payroll.
- C.** We scanned the detail transactions in each program for items that were unusual, potentially high risk, or not-representative of the remaining transactions.
 - 1. For program 1205, we judgmentally selected eight Non-payroll and one Payroll transaction for additional review.
 - 2. For program 1210, we judgmentally selected one Non-payroll transaction for additional review.
 - 3. For program 1225, a judgmental selection was not deemed necessary.
- D.** From the remaining Non-payroll transactions in each program, if applicable, we selected a random sample of 10% of the population.
- E.** We reconciled the Payroll transaction amounts with APA's subsidiary special education payroll ledgers. From the payroll ledgers we summarized employees by their title; Case Manager, 1:1 Aide, or Paraeducator. We selected a random sample of employees from each list of categorized employees for each program, as applicable.

Appendix A is a summary table that reflects the total amount (i.e., population) of FY2019 state funds provided to APA for special education program expenses. Funds are categorized by program, type, and analysis methodology. The table then shows the total dollar amount reviewed and questioned, with the percentage of the amount reviewed that is questioned. That percentage was then applied to the population, if appropriate for the analysis methodology used (i.e., sample).

III. Findings

Findings are organized according to program and transaction type (i.e., payroll or non-payroll).

Finding elements include:

1. **Criteria:** What should happen (e.g., code, statute, best practices)?
2. **Condition:** What is happening?
3. **Cause:** Why did the Condition happen?
4. **Effect:** What is the impact? Why should you care?
5. **Recommendation:** What action could be considered to resolve the Cause?

The Causes, Effects and Recommendations for all findings are summarized and presented in Sections IV - VI. The table in Appendix A reflects questioned use of funds by special education program, and type of transaction. Questioned costs were not shown on a finding by finding basis due to the potential for duplication given transactions with multiple findings.

A. Program 1205 – Add-on

1. Payroll: 1:1 Aide

Criteria: Utah Admin. Code R277-524 Appropriate Assignments or Duties for Paraprofessionals, states:

Paraprofessionals may:

- A. provide individual or small group assistance or tutoring to students under the direct supervision of a licensed teacher during times when students would not otherwise be receiving instruction from a teacher.
- B. assist with classroom organization and management, such as organizing instructional or other materials;
- C. provide assistance in computer laboratories;
- D. conduct parental involvement activities;
- E. provide support in library or media centers;
- F. act as translators;
- G. provide supervision for students in non-instructional settings.

Special Education Rule X.A Allocation of State Revenues for Programs for Students with Disabilities, states:

9. State special education funds may be spent only for direct costs, as provided in these Rules. Direct costs are those elements of cost which can be easily, obviously, and conveniently identified with specific special education activities or programs, as distinguished from those costs incurred for several different activities or programs and whose elements are not readily identifiable with specific special education activities.

Condition: Two out of two (100%) of the 1:1 aides reviewed provided services that were not easily, obviously, and conveniently identified with special education activities and/or for which they were not adequately trained/qualified. Therefore, the direct costs associated with these personnel are questioned.

1:1 Aides provided services that were “Easily, Obviously, and Conveniently Identified”

APA’s 1:1 aides are assigned to IEP students for 100% of their working hours, and 100% of the activities they conduct are with that IEP student, or in meetings related to that IEP student. Their duties are clearly easily, obviously and conveniently identifiable as direct special education costs. We provided work schedules showing that the 1:1 aides spent 100% of their time delivering special education services to students. As this audit took place during the COVID closure and summer break, auditors were unable to visit the school and observe 1:1 aides in their position. We feel seeing the program would have enabled the auditors to more accurately judge the services provided by APA’s 1:1 aides.

- a. Each of the 1:1 aides provided a sworn statement that they delivered 100% of the grade-level curriculum. For both aides the supporting documentation does not support a conclusion that they were adequately qualified and/or trained to deliver 100% of the grade-level curriculum.

The auditors here claim that supporting documentation does not support that the 1:1 aides were adequately trained and qualified to teach 100% of the grade-level curriculum.

We respond to the question regarding APA’s 1:1 aide qualifications and training with these contentions:

1. APA’s 1:1 Aides are Highly Qualified

- A. ***“Qualified” is Defined by ESSA Standards as Adopted by USBE.*** USBE’s published guidance for “Standard 1, Core Competencies, Knowledge” quoted in the audit and located on the USBE’s Special Education: Paraeducators website (<https://www.schools.utah.gov/specialeducation/programs/paraeducator>) adopts the federal ESSA standard for paraeducator Core Competencies.
- B. ***APA’s 1:1 Aides are Highly Qualified by ESSA Standard.*** 100% of our paraeducators, including the 1:1 aides addressed in this section, meet federal highly qualified standards under ESSA.

2. APA’s 1:1 Aides are Sufficiently Trained

- A. ***USBE Gives LEAs Authority to Determine Knowledge & Proficiency Standards.*** USBE’s published guidance includes a superscript that was not included in the auditor’s report, that ascribes ***determination of a paraeducator’s knowledge and proficiency to LEAs.***
- B. ***APA’s 1:1 Aides are Trained to Proficiency.*** APA provided extensive training specific to our 1:1 aides’ roles. APA has provided documentation demonstrating such training.

These contentions are supported in the details below:

1. APA’s 1:1 Aides are Highly Qualified

- A. ***“Qualified” is Defined by ESSA Standards as Adopted by USBE***

The federal government has very specific requirements as to what qualifies a paraeducator. To meet this standard, a paraeducator must have successfully completed an associate’s degree, the equivalent college credits, or passed an assessment demonstrating knowledge and proficiency in core academic areas. In a February 2016 Board Meeting, USBE adopted the ESSA standard for demonstrating knowledge competencies for its special education paraeducators in the “Utah Standards for Paraeducators” (<https://www.schools.utah.gov/file/f2bf3491-a553-4085-83d1-5a5be1ea6ba8>). This standard is located on the USBE’s Special Education Paraeducator website (<https://www.schools.utah.gov/specialeducation/programs/paraeducator>).

Utah accepts the Parapro exam in alignment with the ESSA assessment option as a way for paraeducators to certify as highly qualified. Under ESSA, highly qualified paraeducators have demonstrated “essential knowledge and skills required for effective performance as an instructional paraeducator.”

B. APA’s 1:1 Aides Are Highly Qualified by ESSA Standards.

100% of our paraeducators, including the 1:1 aides addressed in this section, meet federal highly qualified standards under ESSA. We have provided evidence of such, as shown in the Parapro exam results below:

School District : American Preparatory Academy, UT
 Test Completed : 2016-11-22 16:37:09

School District : American Preparatory Academy, UT
 Test Completed : 2016-11-16 19:26:54

Content Categories	Your Score
Reading	22 out of 25
Mathematics	25 out of 25
Writing	22 out of 25
Scaled Score	480

Content Categories	Your Score
Reading	21 out of 25
Mathematics	19 out of 25
Writing	20 out of 25
Scaled Score	472

2. APA’s 1:1 Aides are Sufficiently Trained

A. USBE Gives LEAs Authority to Determine Knowledge & Proficiency Standards.

USBE’s published guidance, referenced above as “Utah Standards for Paraeducators” includes a superscript that was not included in the auditor’s report, that ascribes the authority for determining a paraeducator’s knowledge and proficiency to LEAs:

“After training and under the supervision of licensed or certified personnel, the instructional paraeducator will:

Standard 1, Core Competencies, Knowledge

A. Have knowledge and proficiency¹ in assigned instructional area such as:

- Reading/reading readiness*
- Math/math readiness*
- Writing/writing readiness*

B. Have knowledge of strategies, techniques, and delivery methods of instruction.

¹ as determined by LEAs”

It is our contention that APA determines what is considered proficient, not the SEA.

B. APA’s 1:1 Aides are Trained to Proficiency

APA provided extensive quantitative information that proves our 1:1 aides (and all our paraeducators) received training.

*According to the USBE’s own “Utah Standard for Paraeducators”, the qualitative aspects of training which result in **standards of proficiency** are delegated to the LEAs. Therefore, only quantitative information (demonstrating that training did occur) should be sought and considered by the audit team, and the statement by the auditors that “supporting documentation does not support a conclusion that they were adequately ... trained” is a declaration outside the scope of the auditor’s purview as it makes a qualitative judgment, which is outside the SEA’s published delegation.*

We attest that our 1:1 aides are trained to proficiency in their special education roles.

2. Payroll: 1:1 Aide

Condition:

Part a.

- a. Each of the 1:1 aides provided a sworn statement that they delivered 100% of the grade-level curriculum. For both aides the supporting documentation does not support a conclusion that they were adequately trained and/or qualified to deliver 100% of the grade-level curriculum.

*Both 1:1 aides were **fully qualified and trained** to deliver the curriculum they were assigned to teach to both students they were assigned to in the 2018-19 school year.*

██████ was a paraeducator with APA for several years before she moved into a SPED 1:1 aide position in the 2018-19 school year. ██████ met the criteria under federal requirements and state standards as a Highly Qualified Paraeducator to meet those requirements in her role as a 1:1 aide. In her position as a paraeducator in prior years, she attended annual training weeks, and participated in the Coaching Program, which is an intensive 1:1 training that all APA paraprofessionals who teach groups of children undergo. ██████ had thirteen (13) 1:1 training sessions in Reading curriculum and sixteen (16) 1:1 training sessions in Mathematics curriculum prior to her being assigned as a 1:1 aide. All of these training sessions are documented and are included in the documents supplied to the auditors. ██████ confirmed that she was trained in the specific duties assigned to her. She stated: “I was coached and trained on a daily or weekly (at a minimum) basis by the Case Managers, Homeroom Teachers and Academic Directors. The frequency for this support was regular. I met with the homeroom teacher and case manager on a regular basis to discuss all issues pertaining to ██████ and ██████ (students).”

*██████, also a highly-qualified paraeducator (by federal standards), attended 35 hours of training during training week in August 2018, and attended PDs on October 31, 2018 and January 19, 2019. ██████ received additional instruction and training specifically on what was needed for her to serve the students to whom she was assigned. ██████ was assigned to ██████ (student initials) for the first seven months of the school year. ██████ provided behavior support as the student attended classes **which were***

taught by other teachers. The audit document is inaccurate as [REDACTED] did NOT provide grade level curriculum to [REDACTED]. During April and May, [REDACTED] worked with a student named [REDACTED]. [REDACTED] provided instruction in grade-level curriculum, in collaboration with and under the direction of the Special Education Teacher/Case Manager and General Ed Teachers to [REDACTED]. Instead of receiving the 1:1 training through the coaching program, because [REDACTED] had only one student, her training focused on the specific skills and knowledge needed to deliver SDI to just that one student. This training came 1:1 from the Special Educators, General Educator and Administrators. According to [REDACTED], "I received weekly and sometimes daily training and coaching on how best to support him. I met with his Case Manager and Homeroom Teacher weekly to review his learning plan, lessons being taught, his progress and any accommodations needed to adhere to his IEP. In both of these situations I was directed and supervised by Case Managers and Administration in any and all academic decisions for the student."

The grade-level curriculum is housed in the 180-day plan for the grade. The curriculum is created by certified teachers. The Special Education Teacher/Case Manager and General Ed Teacher designed the instruction specifically for [REDACTED] by modifying the content, methodology and delivery of the grade-level curriculum and trained [REDACTED] on what curriculum to deliver and how to deliver it. Under the direction and supervision of the Special Education teacher and General Education teacher, [REDACTED] delivered instruction specialized for [REDACTED], recorded data, and then reviewed that data and student progress, weekly, with the team. This is a typical and well-understood model of content development and delivery of SDI to students.

This information provides evidence that both 1:1 aides were highly qualified and rigorously trained to fulfill their responsibilities appropriately as a paraprofessional.

1. Program 1205 – Add-on

A. Payroll: 1:1 Aide

- b.** For each 1:1 aide, we reviewed one of the student's IEPs to whom they were assigned to provide services throughout the 2018-2019 school year. In both cases, the aide provided services to the students that were not consistent with the IEP and therefore not related to special education.

These students were specifically assigned to "Self-Contained" settings, identifying that the student is not able to attend the general education classroom for academic services. This means that the student will, by necessity, receive all of their academic instruction in the self-contained setting.

We believe that the auditor may have been operating on the misunderstanding that all academic services must be specifically written in the IEP. However, it is not required that all the academic services the student will receive be listed in the IEP when the student's IEP dictates a placement of a self-contained classroom, as all academic instruction required for the student to receive a FAPE is transferred must be provided to the student.

Conclusion to this Section:

- *Both 1:1 aides were qualified according to federal standards.*
- *Both were highly trained in general and specific areas to ensure their preparation for their assignments.*

- *Both provided services directly outlined in the student's IEP.*
- *100% of the cost of the aides is direct, and easily, obviously and conveniently identified as special education costs.*

We assert there is no justification for questioning the costs attributed to the 1:1 aides. \$182,990.92

2. Payroll: Paraeducator

Criteria: Special Education Rules VIII.S. Records Retention Requirements, states:

As required by Federal regulations, all records related to Federal grant funds and compliance shall be retained by the USBE staff and the LEA for three years (or longer if under an audit exception) after completion of the activity for which they used the funds (2 CFR 11 215.53).

1. Records related to grant funds shall be kept that fully show:
 - a. The amount of funds under the grant;
 - b. How the funds were used;
 - c. The total cost of the project;
 - d. The share of that cost provided from other sources; and
 - e. Other records to facilitate an effective audit.

Auditor interpretation: Given an LEA must be able to demonstrate the total cost of the project (i.e., federal, state, and local funds); the share of the total project provided from funds other than federal (i.e., state and local); and other records to facilitate an effective audit; an LEA must maintain adequate documentation to reflect the work performed in compliance with IDEA Part B regardless of the origination of those funds. Furthermore, restricted funds inherently carry with them the responsibility for an entity to adequately document the use of those funds.

Special Education Rules IX.D. Personnel Development, states:

2. Paraeducators, when used to carry out Part B of the IDEA, must be appropriately trained and supervised, and utilized in accordance with the Utah State Board of Education Paraeducator Standards.

Utah Standards for Instructional Paraeducators (approved by the Board in the February 2016 Board meeting), states:

After training and under the supervision of licensed or certified personnel, the instructional paraeducator will:

Standard 1, Core Competencies, Knowledge

- A. Have knowledge and proficiency in assigned instructional area such as:
 - Reading/reading readiness
 - Math/math readiness
 - Writing/writing readiness
- B. Have knowledge of strategies, techniques, and delivery methods of instruction.

Special Education Rule X.A. Allocation of State Revenues for Programs for Students with Disabilities, states:

9. State special education funds may be spent only for direct costs, as provided in these Rules. Direct costs are those elements of cost which can be easily, obviously, and conveniently identified with specific special education activities or programs, as distinguished from those costs incurred for several different activities or programs and whose elements are not readily identifiable with specific special education activities.

Condition: Twenty-five out of 25 (100%) paraeducators reviewed provided services that were not easily, obviously, and conveniently identified with special education activities and/or were not adequately trained. Therefore, the direct costs associated with these personnel are questioned.

We respond to the questions regarding APA's paraeducators with these contentions:

1. Confusion Between Direct Costs and Direct Services

We believe that the confusion between direct costs and direct services related to special education is an area of deep misunderstanding among many stakeholders in public education in Utah. Traditionally in education finance, direct costs are defined as costs directly attributable to delivery of education (services and programs), as opposed to indirect costs, which are defined as costs not directly attributable to education programs, such as utilities or facility costs. It makes sense to say that a "direct cost" should be easily, obviously and conveniently identified as a direct (as opposed to an indirect) cost. And it makes sense that special education program costs should all be direct costs. For example, the cost of instructional staff, or curriculum, or training are direct costs in special education, but utilities and custodial expenses are not.

*However, we have discovered that program employees (as opposed to finance employees) often mistakenly define "direct costs" to ALSO mean "direct services". The result of this conflation is program employees who mistakenly believe that all of their program's **services** (not just costs) must be "easily, obviously and conveniently" identifiable in order to be allowable under their program rules. We find ourselves in particular difficulty because it appears that the special education team at the USBE believes that no special education service is allowable if it is not easily, obviously and conveniently identifiable. **This is a serious error, which when followed on may result in a violation of IDEA** which we will address below.*

*We agree that all direct costs should be easily identifiable, but we believe that services **MUST NOT** be required to be easily identifiable.*

2. Direct Services are Not Required to be "Easily, Obviously, and Conveniently Identified"

As innovative LEAs develop models that serve their IEP students in the "least-restrictive" environment (LRE), IEP students may increasingly receive their special education in what look like regular classrooms, alongside their peers. In these models of special education delivery, the IEP student is receiving SDI (special education) and yet it might be impossible to identify it "easily, obviously, and conveniently." At APA, in light of the increasing mental health challenges our children are facing in Utah, we have determined that minimizing the stigma associated with special education is a primary objective of our program, and an important way we reduce stigma is to make the special education services our children receive as "invisible" as possible to other students and staff. To achieve this outcome, we employ a

“push-in” model combined with a comprehensive Least-Restrictive Environment inclusion model as opposed to a “pull-out” model. In our view, services should not be easily, obviously, and conveniently identified if we are endeavoring to create the LRE.

Thus, it is easy to see how the “easily, obviously, and conveniently” standard can and should apply to direct **costs** (education program cost versus utilities or other indirect costs), and **yet it does not apply at all to services** and should not be applied there.

At APA we hire numerous supplemental employees to create the least-restrictive environment for our students. We believe a supplemental employee, hired for the purpose of creating the LRE and delivering education services to our students is both a direct cost and an allowable cost under special education. If the special education paraeducators are not currently designated as allowable costs, we believe the USBE should take steps to write rule to ensure that this is the case so that LEAs across the state may continue to use push-in and innovative inclusive models to provide special education services.

Conclusion of this Section: It is our belief that the Auditor’s have misapplied the “easily, obviously, and conveniently” standard to services instead of “costs” and doing so creates an incorrect and overly restrictive standard.

3. APA’s Paraeducators are Highly Qualified

- a. **“Qualified” is Defined by ESSA Standards as Adopted by USBE.** USBE’s published guidance for “Standard 1, Core Competencies, Knowledge” quoted in the audit and located on the USBE’s Special Education: Paraeducators website (<https://www.schools.utah.gov/specialeducation/programs/paraeducator>) adopts the federal ESSA standard for paraeducator Core Competencies.
- b. **APA’s Paraeducators are Highly Qualified by ESSA Standard.** 100% of our paraeducators met federal highly qualified standards under ESSA during the 18-19 school year.

As contended in the section regarding 1:1 aides, according to “Utah Standards for Paraeducators,” APA’s paraeducators must be highly qualified by ESSA Standards. APA’s paras who do not have an Associate Degree, or who have not successfully completed two years of college, are required to pass the parapro exam. Thus, all of APA’s paraeducators were “Highly Qualified” by USBE standards, and we submitted documentation supporting this claim.

4. APA’s Paraeducators are Sufficiently Trained

- a. **USBE Gives LEAs Authority to Determine Knowledge & Proficiency Standards.** USBE’s published guidance includes a superscript that was not included in the auditor’s report, that ascribes **determination of a paraeducator’s knowledge and proficiency to LEAs.**
- b. **APA’s Paraeducators are Trained to Proficiency.** APA provided extensive training specific to the roles of our special education paraeducators. APA has provided documentation demonstrating such training.

Again, as previously contended, USBE’s published documentation for paraeducator training (partially recited by the auditors above) **actually ascribes the authority for determining a paraeducator’s knowledge and proficiency to LEAs** (bold added for emphasis). From the USBE Special Education website:

“After training and under the supervision of licensed or certified personnel, the instructional paraeducator will:

Standard 1, Core Competencies, Knowledge

B. **Have knowledge and proficiency¹** in assigned instructional area such as:

- Reading/reading readiness
- Math/math readiness
- Writing/writing readiness

C. Have knowledge of strategies, techniques, and delivery methods of instruction.
¹ **as determined by LEAs”**

We argue this USBE published policy document places the qualitative aspects of our staff training outside the scope of this audit.

*We additionally assert that our paraeducators receive exceptional and robust training at APA. Specifically, with regard to the training table included in the report on of the Audit Report, there was not a clear understanding by the auditors about APA’s training programs. APA employs intentional redundancy in our professional development (training) opportunities. Training week is obviously only attended by employees who are currently hired employees. For employees hired after training week, they are trained individually through the Coaching Program (along with all who attended training week - ALL teachers and paraeducators participate in the Coaching Program). We must not have adequately described the comprehensive, individualized scope of our Coaching Program, because the auditors acknowledge the paraeducators’ participation in this program but yet still deemed participants in the Coaching Program as “untrained”. **It is not possible for a paraprofessional to participate in the Coaching Program and remain “untrained”.** Here we refer to the table (page 24) wherein “Actual coaching records” was recorded. The auditors report reflects that the paraeducators participated in coaching (training) by the data in the “Actual coaching records” column. It appears to us that the auditors may have interpreted coaching as something other than the intensive, rigorous 1:1 training that it is.*

To clarify further, APA’s Coaching Program provides one-on-one training with employees that is directly specific to the classes and curriculum they are teaching. The coach works side-by-side with the paraeducator and provides modeling and immediate feedback to quickly improve the paraeducator’s teaching skills and understanding of course materials. 1:1 coaching is the most rigorous, focused and effective form of training as our coaches work one-on-one with each paraeducator specific to their class assignments. Training forms are kept for each training session with the coach and the goals for improvement are built upon at each subsequent training session. All paraprofessionals assigned to classes with multiple students undergo the Coaching Program. Documentation of the Coaching Program has been provided, and we welcome requests for further clarification if needed. We have modeled all of our professional development under standards for best practices, as demonstrated in this study (<https://files.eric.ed.gov/fulltext/EJ1118436.pdf>).

- a. For one out of 25 (4%) paraeducators providing special education services, APA did not maintain records to reflect the work performed. Specifically, records were not provided to facilitate an effective audit on the use of state special education funds.
- b. Of the remaining 24 paraeducators with records to review, twenty-four out of 24 (100%) paraeducators provided services to all students in the classroom, both students receiving special education and students not receiving special education.
 - i. Seventeen out of 24 (71%) paraeducators were assigned to provide services to all students in the homeroom.

This is accurate - the paraeducators are assigned to ensure the IEP students' needs are met during the homeroom class time, as a supplemental employee to the general education homeroom teacher. As allowed under 34 CFR 300.208 (a)(1) Permissive Use of Funds, other students may also benefit from the paraeducator being in the homeroom classroom. This code identifies allowable costs for:

***(1) Services and aids that also benefit nondisabled children.** For the costs of special education and related services, and supplementary aids and services, provided in a regular class or other education-related setting to a child with a disability in accordance with the IEP of the child, even if one or more nondisabled children benefit from these services.*

- ii. Nineteen out of 24 (79%) paraeducators were assigned to provide direct instruction in intensive courses, held outside the homeroom.

This is accurate. Our supplemental employees provide SDI to our special education students and their peers in small, intensive groups that are not in a homeroom. We are unaware of any law or rule in effect in 2018-19 that prohibits this, and as supplemental employees their wages are allowable.

- 1) Nineteen out of 19 (100%) paraeducators provided direct instruction to all students in the intensive courses.

This is accurate. See i and ii above.

- 2) Eleven of the 19 (58%) paraeducators taught at least one intensive course that had no students receiving special education in the class.

This could be accurate, as our groups are fluid, with students moving in and out of groups according to their weekly scores. Class rosters may change each week. APA hires many supplemental employees to create this very robust LRE for our IEP students. There are times when those supplemental employees may spend an hour teaching a class where there isn't currently an IEP student enrolled, HOWEVER, the classes were created to provide the LRE and the costs for the supplemental employee should be allowable.

- iii. We interviewed 15 paraeducators regarding their roles and responsibilities. Not all questions pertained to all paraeducators and not all paraeducators answered every question, so the population amounts for each question vary. We noted:

- 1) Nine out of nine (100%) paraeducators who worked in the homeroom said they were assigned to help the entire class. Five of the nine (56%) stated they worked with, and/or focused on, students with IEPs.

The paraeducators answered the question accurately. Paraeducators' primary role in the homeroom classroom is to ensure the IEPs of students are fulfilled and

this is their first priority. These supplemental employees are also able to help other students as needed, (see b.i above) as long as the IEP students' needs are being met.

- 2) Nine out of nine (100%) paraeducators who taught courses said their course was a general education course.

That would be the correct answer for a paraeducator to give. A paraeducator who is not a licensed special education teacher would not claim to be teaching a "special education" class at APA. And the intensive groups classes at APA are not "special education courses", although they may have students on IEPs in them receiving SDI. This is part of APA's LRE program. So, it makes sense the paraeducator would not report their courses as "special education" courses. We are unaware of any law or rule that requires the paraeducator to be assigned to teach a "special education" named course in order for their wages to be allowable costs for special education.

- 3) Eleven out of 13 (85%) paraeducators stated their course was attended by all students, both students receiving special education and students not receiving special education. Two out of 13 (15%) stated their course was only attended by students without IEPs.

It is true that Courses may be attended by students on IEPs and students not on IEPs.

- 4) Finally, when we asked paraeducators approximately what percentage of time was spent working with students with IEPs, from 13 paraeducator responses, the average (i.e., when a range was provided the middle of the range was used) amount of time was 36%.

*This would be a very difficult question to answer accurately without reviewing the LPC (work log) for each week for each paraeducator as the paraeducator assignments vary according to the needs of the IEP students at the school. APA tracks the time a paraeducator spends directly with IEP students throughout the day and has improved the tracking process each year. **Our records indicate that approximately 63% of a paraeducators time is spent supporting IEP students directly.** However, these supplemental employees are needed at school all day as IEP students' needs do not arise on a schedule.*

- c. Twelve out of 25 (48%) paraeducators within the sample started working for APA in school year 2018-2019. All 12 (100%) paraeducators were assigned to provide direct instruction to students in reading, math, spelling, and/or English. For eight of the 12 (67%) paraeducators, documentation does not support that they received training commensurate with their assignments (i.e., they did not have training in at least one of the core subjects wherein they were providing direct instruction) prior to providing the instruction.

We have reviewed all twelve (12) of the paraeducators mentioned above. According to the auditor's own document entitled "12 Paraeducators Training.xlsx", they acknowledge that 10

of the 12 paraeducators participated in the Coaching Program--which is intensive and thorough 1:1 training in the specific classes that they were teaching. The coaching database which we submitted during the audit records how many class-specific trainings for reading, math and spelling the paraeducators received.

*The Coaching Program at APA provides rigorous, specific 1:1 training from experts in the course curriculum and pedagogical skills, AND the SDI for any IEP students (adaptations needed beyond the course itself). The Coaching Program at APA is the most intensive modality of training, and **each paraeducator received coaching in each class or subject that they were assigned to teach**, including 10 of the 12 in the sample.*

While the auditor has acknowledged that 10 of the 12 employees in the sample group chosen have coaching forms documenting their training (there is a "yes" in the coaching forms column on the auditor's own document), the conclusion they cite regarding paraprofessionals being untrained does not reflect that the Coaching Program participation provided course-specific, 1:1 training. According to the auditor's own table "12 Paraeducators Training.xlsx" 10 of the paraeducators participated in the Coaching Program, which meets the criteria for course-specific training.

Of the remaining two (2) paraeducators: one employee [REDACTED] attended training week and preservice and received training at those events. She did not participate in coaching as she was terminated on September 7th of that school year, prior to the beginning of intensive group instruction. So [REDACTED] never taught a course for which she was untrained. The last paraeducator in the sample was [REDACTED]. As a secondary paraeducator, she received her training in the classroom with the secondary coach and documentation of her participation in the Coaching Database was submitted to the auditors (on the secondary tab).

Conclusion of this section: We provided documentation showing that all paraeducators were trained in all courses they teach.

- d. We reviewed 10 student's IEP files who were reportedly receiving specially designed instruction (SDI) from a special education paraeducator. In seven of the 10 (70%), the specially designed modification as noted on the Lesson Progress Charts (LPC) did not align with the IEP.

Per APA, LPCs are an internal communication tool for anyone providing instruction to students with an individualized education program to communicate regarding the instruction and the student progress to others on the academic team. LPCs are not work certifications for grant purposes, but they do provide evidence of SDI to IEP students.

*The LPC notes indicate the adaptations in delivery the teacher/paraeducator may make during a class, or a special accommodation they make such as a seat in close proximity to the teacher, or extra repetitions or one-on-one help given to a student. Although the LPC "modifications" listed may not be in the IEP, they are still appropriate adaptations in instruction for the student. The auditor's statement that the modifications "did not align" with the IEP is misleading because the phrase "did not align" implies that there is then a MIS-alignment between the modification and the IEP. **This is not the case. Teachers are never limited to ONLY providing***

interventions listed in a student's IEP. In fact, they are expected to provide real-time adjustments to students in the form of modifications. The practice of providing modifications that are needed but not explicitly written in the IEP is standard practice. While we agree that it is always good practice to improve the specificity of an IEP, the standard set in this section that all modifications must be listed in the IEP is not a reasonable or practiced standard in special education.

Non-Payroll

Criteria: APA Policy Manual Chapter B – Business Operations, B-1.9 Cash Disbursements, states:

2. If the total purchase is between:

H.2.b. \$1,001 - \$5,000 The purchaser shall obtain at least two (2) competitive quotes and purchase item/service from supplier offering the lowest quote. Quotes must be attached to the purchase documentation and maintained as part of the LEA's records.

H.2.c. \$5,001 - \$10,001 The purchaser shall obtain at least two (2) competitive quotes and purchase item/service from supplier offering the lowest quote meeting specifications. Quotes must be attached to the purchase documentation and maintained as part of the LEA's records.

H.2.e Greater than 50,001 The LEA shall enter into a competitive bid process or RFP in compliance with Utah Code 63G-6a sections 601-612 and 701-711, or use an approved vendor list with an invitation for bids or an RFP in compliance with Utah Code 63G-6a-403- 404.

I.1. Sole source procurement shall only be used if a product or service is unique and can be easily proven as one of kind, offered by only one vendor. If there is more than one potential bidder or offer for a particular item, sole source does not apply... 2. All sole source requests estimated to be \$50,000 and above must be posted for public comment in accordance with Utah Code 63G-6a-802 and 406. 3. Sole source justification should be documented according to Utah Code 63G-6a-802 and be approved by administration.

This section is interpreted at APA to apply to purchases, not consulting services. Consulting services are addressed in the same chapter and section under F(1)(d).

Utah Code Ann. §63G-6a-802 Award of contract without engaging in a standard procurement process, states:

- (1) A procurement unit may award a contract for a procurement item without engaging in a standard procurement process if the procurement official determines in writing that:
 - (a) there is only one source for the procurement item;
 - (b) (i) transitional costs are a significant consideration...
 - (ii) the results of a cost -benefit analysis demonstrate that transitional costs are unreasonable or cost-prohibitive, and that the award of a contract without

engaging in a standard procurement process is in the best interest of the procurement unit;

(c) the award of a contract is under circumstances...that make awarding the contract through a standard procurement process impractical..."

Utah Code Ann. §63G-6a-102 Purpose of chapter, states:

The underlying purposes and policies of this chapter are:

- (1) to ensure transparency in the public procurement process;
- (2) to ensure the fair and equitable treatment of all persons who participate in the public procurement process;
- (3) to provide increased economy in state procurement activities; and
- (4) to foster effective broad-based competition within the free enterprise system.

Utah Code Ann. §63G-6a-1204(7) Multi-year contracts, states:

- (7) A multiyear contract, including any renewal periods, may not exceed a period of five years, unless:
 - (a) the procurement officer determines, in writing, that:
 - (i) a longer period is necessary in order to obtain the procurement item;
 - (ii) a longer period is customary for industry standards; or
 - (iii) a longer period is in the best interest of the procurement unit; and
 - (b) the written determination described in Subsection (7)(a) is included in the file relating to the procurement.

Utah Code Ann. §63G-6a-1202. Standard contract clauses encouraged, states:

A procurement unit is encouraged to establish standard contract clauses to assist the procurement unit and to help contractors and potential contractors to understand applicable requirements.

Utah Code Ann. §63G-6a-1205. Regulation of contract types -- Permitted and prohibited contract types, states:

- (3) A procurement official may not use a type of contract, other than a firm fixed price contract, unless the procurement official makes [certain] written determination[s]..."

Utah APA Policy Manual Chapter B – Business Operations, B-1.2 Management Agreement Provisions, states:

Entering into contracts or expenditures by APS employees on behalf of APA over ten thousand dollars (\$10,000) is not authorized without prior board approval.

Utah APA Policy Manual Chapter B – Business Operations, B-5.1 Travel Reimbursement, states:

Per IRS regulations, reimbursement for travel between campuses is made for the trip between campuses only, not to a campus from home or from the campus to home.

Special Education Rule X.A. Allocation of State Revenues for Programs for Students with

Disabilities, states:

9. State special education funds may be spent only for direct costs, as provided in these Rules. Direct costs are those elements of cost which can be easily, obviously, and conveniently identified with specific special education activities or programs, as distinguished from those costs incurred for several different activities or programs and whose elements are not readily identifiable with specific special education activities.

Condition: Twenty-seven out of 57 (47%) transactions either were not compliant with procurement and policy requirements or were not for goods or services that were easily, obviously, and conveniently identified with special education; some transactions had multiple findings. Therefore, the costs associated with these transactions are questioned.

- ***100% of the expenditures questioned related to the service providers (speech, P.T., O.T.) were dollars spent for actual services provided to IEP students. The auditors question the procurement process utilized to secure the services, but they do not question whether the monies were expended on student-generated costs.***
- *APA agrees that there were expenditures that were not allowable:*
 - *Translation services for a parent-teacher conference that was mistakenly coded as an IEP meeting (2 invoices - total \$258.25)*
 - *Cost of an assembly speaker where IEP students were not the only attendees, making it an unallowable cost (1 invoice - \$250)*
 - *SPED incentives - (3 invoices for reimbursements to special education teachers for items considered “party” items and thus disallowed - less than \$250 in total)*
 - *Mileage reimbursement - 2 invoices were inaccurate on the miles, failing to deduct the normal commute miles (less than \$30)*
 - *Reimbursement to Speech Therapists who are contractors, for allowable items (totalling \$305.31), which APA reimbursed, however the contractor’s contract didn’t explicitly say the contractor can be reimbursed for items purchased.*

Procurement Process

- a. Four procurements, related to 14 transactions, did not follow the required procurement process (e.g., sole source, competitive bidding, RFP) - including documentation requirements - for the level of funds ultimately expended as an outcome of the procurement process (e.g., >\$1,000, >5,000, >10,000).
 - i. While performing the audit work noted above, two additional procurements for speech services, related to four additional transactions, were identified that, likewise, did not follow the required procurement process. The contractor payments under these contracts were charged to the Federal IDEA program; therefore, we will not include transaction expenditures related to these contracts as questioned costs.

According to the state law and procurement rules, we believe we have appropriately procured the services in this section. The auditors note that APA’s policies contained more restrictive language, however we believe that language pertains to purchases and not consulting services acquisition. We also are aware of a grammatical error that resulted in APA technically violating its OWN internal procurement policy. We do not believe, however, that we were in violation of state procurement rules.

When referring back to the cited Utah Code (bold added for emphasis):

(1) The small purchase threshold for professional service providers and consultants is a maximum amount of \$100,000. (2) After reviewing the qualifications, the Director may obtain professional or consulting services up to a maximum of \$100,000 by direct negotiation” (R23-1-408).

As noted, Auditors quote APA’s Business Policy B-1.9 Cash Disbursements Section H (e.g., >\$1,000, >5,000, >10,000) relate to “Purchases.” The Section related to “Professional Services,” contained within the same policy, includes this phrase:

F. LEA Procurement Thresholds

1. d. “Professional services, such as architectural, engineering, accounting, legal, or consulting services less than \$100,001 shall be acquired using a competitive bidding or RFP process, or by selecting a provider from an approved vendor list created using an invitation for bids or an RFP under provisions in Utah Code 63G-6a-403 and 404 (Administrative Code R33-3).

F 1. d. above should have been “more than” if it is to align with Utah Code. APA’s governing board corrected this typographical error in August of 2019, just after the close of the audited year.

Conclusion: We emphasize that 100% of the services were delivered to our IEP students. We further note that 100% of our special education related consulting services for 2018-19 were for amounts less than \$100,000. Under State Procurement Code, these professional services would not have required an RFP process. But for a typographical error, these professional services would have been allowable under APA’s internal policy as well.

Contracts

- b. One contract with an occupational therapist (OT), related to seven transactions, indicated, “This Agreement shall be effective on the date signed and for the remainder of the specified school year [2017-2018 school year].” Therefore, the contract expired at the end of school year 2017-2018 and was not in effect for school year (SY) 2018-2019, though the vendor was paid during SY18-19, which is synonymous with fiscal year (FY) 2019.

Pending any clarification regarding Board approval of the contract, it should be noted that under the Utah Procurement Code, an existing contract can be extended up to 120 days (63G-6a-802.7), which may cover some, or all, of the payments made during FY19.

Additionally, it was not evident that APA’s board approved the contract, though total annual expenditures to the vendor during FY 2019 exceeded \$10,000.

APA admits that there are not board minutes approving the contract. APA points out that 100% of the dollars expended were for services rendered to IEP students at APA.

- c. One contract with an OT, related to four transactions, did not include a contract period, a

maximum contract value, terms and conditions, or specific agreed upon hourly rate, though reference was made to providing payment at an hourly rate as agreed.

Additionally, it was not evident that APA's board approved the contract though total expenditures for FY2019 exceeded \$10,000.

APA admits this contract was poorly written. APA admits that there are not board minutes approving the contract. APA points out that 100% of the dollars expended were for services rendered to IEP students at APA.

- i. While performing the audit work noted above, two additional procurements for speech services were identified while reviewing additional four transactions, that had contract expenditures exceeding \$10,000 during the fiscal year. These procurements, likewise, did not include the first three items and/or evidence of board approval. The contractor payments under these contracts were charged to the Federal IDEA program; therefore, we will not include transaction expenditures related to these contracts as questioned costs.
- d. The contract with the school's management and academic service provider (American Preparatory Schools), related to one transaction, includes a contract period with a renewal period greater than the five years allowed by Procurement Code. Additionally, the contract does not include a maximum contract value. Contract expenditures allocated to Program 1205 were almost \$300,000 during fiscal year 2019; additional contract expenditures were allocated to other programs and functions, including Program 1225.

The contract does have a "maximum contract value," inferred by the student cap set by the USBE, as the fees are based on a per-student calculation. APA admits that the contract period needs to be adjusted to 5 years or less to align with current rules. The fact that the contract with APS may technically exceed the five-year period does not seem to us a material finding that would prompt disallowing of the funds. The consulting services are allowable costs according to USBE SER, the services were provided under the contract, and students benefited from them.

Direct Costs

- e. The supporting documentation for the allocation of the monthly contract payment to Program 1205 did not reflect that the allocation was for specific special education activities or programs, as follows:
 - i. APA indicated that the charges were estimated by employee.
This is a consulting agreement with a fee-for-service model.
 - ii. At least three employees, who had estimated time attributed to special education, were not included on the 2019 APA Org Chart as being in a role (i.e., an Academic Director) to have their time chargeable to special education. The Special Education Program Memorandum of Understanding (MOU) indicated the roles and responsibilities attributable to special education programs.
We were not given the names of these three questioned employees so that we could respond specifically, however all of the fees charged by APS for special

education services were for services that were actually provided.

- iii. Finally, some of the responsibilities outlined in the MOU are not responsibilities specific to special education, such as, “Recruit, hire, and train all Academic Directors”, “Oversee curriculum development and organization”, “Organize and oversee staff training and professional development”, and “Provide analysis student and teacher performance data including LPCs, Huddles, EOY evaluations and high stakes testing data.”

The MOU is specific to special education consulting services. While the above cited categories may seem like broad categories, the MOU states the duties relate to special education specifically in its title: “Special Education Program MOU”. Staff members listed on the MOU performed the responsibilities listed on the MOU as necessary tasks to ensure the special education team was fully staffed, trained, and prepared to meet student IEP needs and the program is compliant.

While specific activities were not identified for the special education director, because of the nature of the position, we assume that the time attributed to state special education was a direct cost (i.e., only for special education activities and programs) and is therefore allowable.

- f. For two transactions, the employee’s commute was not reduced from the mileage claimed.

APA agrees with this conclusion (total <\$30.00)

- g. One expenditure was for a school assembly attended by all students, not just students receiving special education services.

APA agrees with this conclusion (total \$250.00)

- h. Three employee reimbursements were expenditures for incentives and/or parties, which are not considered direct costs of special education.

APA agrees with this conclusion (total <\$250.00)

- i. Two transactions were to procure sign-language interpretation services for a parent at a parent teacher conference that was being held for all students.

APA agrees with this conclusion (total \$258.25)

- j. In four transactions, two speech services providers were reimbursed for items (e.g., incentives, classroom items, activity items) not included in their respective contracts (i.e., they were treated as employees rather than contractors).

APA agrees with this conclusion (total \$305.31)

E. Program 1210 – Self Contained

1. Payroll: 1:1 Aide and Paraeducator

Criteria and **Condition**: See III.A.1 and 2 above.

F. Program 1225 – Impact Aid

1. Non-Payroll

Criteria: See III.A.4 Criteria (above)

Condition: The contract with the school’s management and academic service provider (American Preparatory Schools), related to one transaction, includes a contract period with a renewal period greater than the five years allowed by Procurement Code. Additionally, the contract does not include a maximum contract value. Contract expenditures allocated to Program 1225 exceeded \$30,000 during fiscal year 2019; additional contract expenditures were allocated to other programs and functions, including Program 1205.

Further, there was no supporting documentation maintained for the allocation of the monthly contract payment to Program 1225; APA indicated that the charges were for general special education services and training of special education staff.

IV. Causes

The findings noted above have various causes, which are summarized below.

A. Special Education Regulations

Special education programs are subject to both federal and state program and financial requirements. The USBE Special Education Rules Manual (Manual) was adopted into rule R277-750 and provides additional clarification on federal and state special education program regulations.

The Manual did not provide clear guidance in several areas. For example:

- Some terminology used is confusing (e.g., use of IDEA Part B)
- There is insufficient detail (e.g., documentation, paraeducators)
- It conflates federal program and financial and state program and financial requirements (e.g., excess cost, permissive use of funds)

Therefore, applying the requirements of the Manual in practice was challenging and subject to interpretation. Adequate clarification was either not provided and/or sought as needed to ensure compliance with the regulations.

APA’s program has operated in compliance with state and federal special education laws and rules for 18 years. The USBE has provided annual monitoring through UPIPS throughout our history, and state monitors have designated APA’s program as meeting the requirement of special education. In 2019 our monitoring scores were at the lowest risk category, and our outcomes in student performance were above the state average.

B. Evolution within General Education

To meet the needs of students, general education evolves. One such evolution is multi-tiered system of supports (MTSS), which, per the USBE website, “addresses both academic and behavioral needs of all students through the integration of data, practices, and systems.” With general education evolving to address student needs, there is more difficulty in deciphering between MTSS and specially designed instruction (i.e., special education). That difficulty extends to identifying allowable funding sources for each type of service.

C. Innovation

APA indicated they have worked to create an inclusive education model where students with special needs can reach their full academic potential by receiving specially designed instruction alongside their peers to the greatest extent possible. The innovation that led to a dynamic education model to meet the needs of students was not applied to the development and implementation of an internal control system (e.g., training, policies and procedures, forms, data collection, monitoring) that would ensure compliance with current special education regulations, including allowable application of special education funding sources to services.

D. Internal Control System

The APA governing board contracted with American Preparatory Schools (APS) to provide management and academic services, including special education services; however, given the significance and comprehensiveness of the roles and responsibilities given to the provider, the APA governing board may not have sufficient independence and objectivity to provide sufficient oversight to ensure a sound internal control system. Specific concerns with elements of the internal control system that may have contributed to the findings are noted below.

1. A control environment with clearly assigned roles and responsibilities. We noted the following:
 - a. During the interviews of special education paraeducators, which was how the paraeducators were identified to us by the school’s executive team we noted:
 - i. 12 out of the 15 (80%) paraeducators identified themselves (i.e., job titles) as a teacher and/or instructor,
 - ii. three out of 15 (20%) paraeducators identified themselves as a paraeducator, and
 - iii. one out of 15 (7%) paraeducators mentioned special education in their title.
APA prefers the title “Instructor” for their paraeducators, and used that title for many years until state regulators expressed confusion about the title so we switched to “special education paraeducator.” Many of our employees have been with us for many years and have had several titles. We don’t see a strong correlation between the titles of our employees and a lack of internal controls, and we question the relevancy of this finding.
 - b. When we asked the paraeducators whether they considered themselves a special education employee, a general education employee, or both, we noted:
 - i. five out of 15 (33%) considered themselves a general education employee,

- ii. nine out of 15 (60%) considered themselves a general education employee and a special education employee, and
- iii. one out of 15 (7%) considered themselves as a special education employee only.
APA seeks to create an inclusive educational environment where the lines between general education and special education are not clearly viewed by observers. We admit we do not identify parts of our facility as “special education” rooms, nor do we identify employees as “general education” or “special education” employees in the environment, however we do make the distinction in our records and our HR department and finance department. We question the relevancy of this finding.
- c. Within the training documents provided by APA we noted variations of the titles used for paraeducators, such as: parapro instructor, MTSS paraprofessional, special education paraprofessional, and MTSS special education paraprofessional.

APA questions the relevancy of this finding.

2. Reliable information and communication (i.e., documentation and data). We noted discrepancies when comparing records; examples include:

- a. Six out of 24 (25%) individuals in the payroll subsidiary ledger were listed as case managers; however, the APA organization chart listed these individuals as 1:1 aides or paraeducators.

These employees were labelled in error by finance staff members that were unfamiliar with the program roles of employees. Errors were corrected as soon as they were identified.

- b. IA selected three case managers who were paid with self-contained funds and reviewed their caseload to ensure Program 1210 funds were being spent on self-contained students. For all three case managers, IA identified self-contained students on each of the case managers caseloads; however, 20 out of the 63 (32%) student’s with IEPs reviewed, did not attend APA in the stated year according to Utah eTranscript and Record Exchange (UTREx).
 - i. 7 of the 20 (35%) attended another LEA
 - ii. 10 of the 20 (50%) graduated the previous year
 - iii. 1 of the 20 (5%) graduated the previous year and attended another LEA in the reported school year
 - iv. 2 of the 20 (10%) had no record in UTREx for the student in the reported year.

Without the names of the students we are unable to clarify the discrepancies in dates/transfers but clearly the students attended APA or we would not have had them in our records and we are unsure what the materiality is of this finding.

- c. Course records provided by APA included lists of intensive courses taught by paraeducators; however, upon reviewing coaching logs we identified additional classes taught [i.e., two out of 12 (17%) paraeducators] that were not identified by APA.

This could be accurate, as our groups are fluid, with students moving in and out of groups (as well as new groups forming/dissolving as needed) according to their weekly scores. Class rosters may change each week.

3. Control activities, which according to Standards for Internal Control in the Federal Government,

are “necessary actions management establishes through policies and procedures to achieve objectives and respond to risks in the internal control system.” We noted the following:

- a. APA’s Policy and Procedure Manual includes policies and procedures regarding Human Resources (Chapter C) and Academics (Chapter G), which chapter also includes special education. These policies and procedures were not comprehensively designed, were not comprehensively implemented, and/or were not sufficiently monitored for operating effectiveness. For example, related to policies and procedures for training staff:

Training	# of Paraeducators Reviewed	# Not Employed at Time of Training	# Employed Who Did Not Participate	% of Employees Who Were Not Employed or Did Not Participate
Summer Training - APA Paraprofessional & MTSS Training 7.30.2018 - 8.3.2018	12	9	0	75%
Preservice Training - APA Para and MTSS Training Required by Law 8.6.2018 - 8.10.2018	12	6	2	67%
Professional Development 10.31.2018	12	6	0	50%
Professional Development 1.18.2019	12	6	3	75%
Actual coaching records	12	NA	2	17%
Self-study Module in Special Education and Curriculum	12	NA	3	25%

Also related to the Summer Training included in the table above, we noted:

- i. For the three paraeducators that did participate in the training, the average amount of time (i.e., courses) spent in special education specific classes was only 10%.
- ii. Of the ten SPED courses available (i.e., not all courses were related to SPED), the three paraeducators that did participate only attended two courses (20%) on average.

The title of training classes would not include “special education” because paraeducators need to be trained in reading, math and spelling instruction, as well as behavior management, social/emotional learning, and classroom management. All of these courses prepare them to teach IEP students; none of the courses would say “special education” in the title.

From the paraeducator interviews we also noted:

- i. Of the 13 paraeducators who stated they were assigned to work with students with IEPs, four (31%) stated they did not receive any training.

100% of APA’s paraeducators who teach students with disabilities are trained. We are unsure why the paraeducators may have responded this way but we are certain they all

received training.

- b. Chapter B – Business Operations of APA’s Policy and Procedure Manual includes various internal discrepancies and/or inconsistencies (see table below), as well as out-of-date references to Utah Code (63G-6a-403, 63G-6a-404, 63G-6a-408), that may have caused confusion for employees trying to comply with policy and follow procedures.

B-1.9 Cash Disbursements	B-2 Various
<p>B. ...All expenditures of the LEA are to be consistent with applicable state and federal laws and regulations.</p> <p>G. The LEA has designated State Procurement Code as its purchasing policy.</p>	<p>B-2.1 General Procurement: Procurement of goods and services will follow the state procurement code where possible as established by law for public agencies...</p>
<p>H.c \$5,001-\$10K The purchaser shall obtain at least two competitive quotes and purchase item/service from supplier offering the lowest quote meeting specifications.</p>	<p>B-2.1 General Procurement: Purchases of \$5,000 or greater will be made after three bids are received and evaluated for price, quality, delivery, and customer service.</p>
<p>H.d \$10,001-\$50K The purchaser shall obtain at least two competitive quotes and purchase item/service from supplier offering the lowest quote meeting specifications.</p>	
<p>H.e > \$50K The LEA shall enter into a competitive bid process or RFP in compliance with Utah Code 63G-6a sections 601-612 and 701-711, or use an approved vendor list with an invitation for bids or an RFP in compliance with Utah Code 63G-6a403 and 404.</p>	
<p>H.b \$1,001 - \$5K The signature of the requestor, immediate supervisor...and business administrator are required on the purchase order or check request form</p> <p>M. Purchase Orders: An expenditure authorization form (purchase order or requisition) is required for all purchases.</p>	<p>B-2.4 Purchase Orders: Purchase Orders should be issued for all purchases of \$2,500 or greater and may be issued for purchases less than \$2500 as appropriate...Staff members in need of goods and services must present a request to the CFO, Operations Manager, or Curriculum Specialist for procurement.</p>
<p>J. Credit/Purchase Cards If a card is issued to the LEA as a whole, a log should be kept documenting which employee checked out the card...</p>	<p>B-3.3 Debit or Credit Card Purchases Debit and credit cards may be issued to employees as approved by the Board and under written agreement with the employee named on the card and in accordance with the terms of the school’s VISA Card Agreement.</p>

<p>K.1 Travel - Mileage Mileage reimbursement forms should be completed by employees within 45 days of return from travel. The form must include the dates and purpose of travel, destination(s), time of departure and return, and mileage.</p>	<p>B-5.1 Travel Reimbursement Employees who use personal vehicles for approved school-authorized business will be reimbursed for mileage providing a mileage log is maintained for the trip and submitted for reimbursement via the Expense Report.</p>
<p>L. Reimbursement Requests Supporting documentation, including detailed receipts and justification for departure from the standard purchase order process, is required.</p>	<p>B-2.2 Classroom, Admin, and Small Purchases Teachers, Instructors, and other staff may spend an annual allotment (classroom/admin budget) on approved classroom supplies and inventory at their leisure - up to the budgeted amount. Reimbursement will be made by submitting an Expense Report with original invoices or receipts stapled to the back of them.</p>

- c. Chapter B – Business Operations of APA’s Policy and Procedure Manual did not include procedures for how to procure items when the extent of the services needed was unknown.

APA did not have clear procedures for the procurement of items when the extent of services was unknown. In the absence of a specific APA policy, we refer to the Utah Code where we were also unable to find any applicable guidance. We have sought guidance from the state procurement office and will update our policies to align with best practices.

- d. Chapter B – Business Operations of APA’s Policy and Procedure Manual did not include procedures to ensure documentation for sole source procurements was compliant with regulations.

In the absence of specific inclusion in APA policy, APA would refer to the Utah Code for sole source procurement documentation and compliance.

- e. Chapter B – Business Operations of APA’s Policy and Procedure Manual requires transactions to have supporting documentation and be approved. However:
- i. The policies and procedures do not require supporting documentation sufficient to ensure approvers will clearly know which funding source expenditures should be charged to. Approvers made incorrect assumptions about which funding sources expenditures should be charged to.

It is very difficult to reduce every possible judgment regarding funding source allocation decisions to written policy directive. Some business and financial processes involve an inherent amount of judgment and experience. Without reviewing the transactions supporting this cause, it is difficult to agree whether approvers made incorrect assumptions about funding sources.

- ii. The expense/employee reimbursement form is not clear and as such is not filled out consistently. For example, the Supplies ‘Amount’ field may indicate a quantity or a dollar

amount.

- iii. The expense/employee reimbursement form does not include a field to document the justification for departure from the standard purchase order process as is required in Chapter B – Business Operations B-1.9L Reimbursement Requests.

Regarding items ii and iii, APA has implemented a new expense reimbursement policy and form which we believe resolves issues such as those identified here.

- f. APA's Policy and Procedure Manual includes policies and procedures to both hire employees to provide services and to contract with vendors for services. However, once hired or contracted with, policies and procedures – such as ensuring program staff were aware of the difference and what it meant regarding use of funds - were not sufficient to ensure the distinction between employee and contracted vendor was maintained.

In the absence of specific inclusion in APA policy, APA would refer to the Utah Code for guidance.

- g. The Management Agreement, including the Special Education Program Memorandum of Understanding (MOU), between APA and APS did not specify an invoicing process, rather it indicated simply that the Management Agreement was the invoice. This stipulation regarding invoicing is not sufficient to ensure that the allocation of management agreement expenditures to special education were appropriate. Also, it does not clearly indicate how the fee was determined and which enrollment number was used. Given the lack of an invoicing process, the rotating board member approval of these contract payments is not sufficient to ensure amounts paid to the provider were appropriate and reasonable.

APS is unaware of any invoicing policy requirements; however, we are willing to implement a monthly invoicing process for this expense.

- h. Though APA and APS have had a contractual relationship for the provision of management and academic services for the school for over a decade, the responsibilities and obligations of APS related to special education were not explicitly outlined until the MOU was approved by the board on February 25, 2020.

APS confirms that this is accurate but is unaware of any requirements or regulations that have been violated.

V. Effects

Potential effects of the above Conditions and Causes include:

- A. Innovation in APA's education model outpacing revisions and updates to regulations, as well as internal control systems and financing structures, led to questioned state special education funds of almost \$2.8 million for fiscal year 2019. See Appendix A.
- B. Lack of comprehensive and well-designed regulations, and accompanying control activities, results in confusion and inefficiencies that negatively impacts program and financial effectiveness.

- C. Need for special education programs and dedicated funding for special education may change as evolution of innovative practices within general education models, such as multi-tiered systems of support (MTSS), continue.
- D. Use of untrained and unsupervised staff increases the risk that students with individualized education programs could be deprived Free and Appropriate Public Education, which is a requirement under the Individuals with Disabilities Education Act.
- E. Not following Utah Procurement Code, and related rules and policies, reduces transparency and increases the risk of waste and abuse of taxpayer funds on excessive payments for services.
- F. Identification of questionable use of state special education funds impacts previously filed financial and program reports used by policymakers and financing institutions. Additionally, the LEA's and state's needed maintenance of effort level may be impacted.

VI. Recommendations

Recommendations are provided as suggestions to address the Conditions and Causes noted above. Although recommendations are provided, it is the responsibility of the respective governing boards and administrative teams to understand the findings and take appropriate corrective action.

Recommendations should not be construed as an audit requirement for governing boards and administrative teams; they are suggestions to help promote continuous improvement that will mitigate the risk of future noncompliance.

A. Questioned Use of Funds

The Utah State Board of Education (Board or USBE) should review the table in Appendix A in context of the findings above and determine the amount of questioned fiscal year 2019 funds, if any, APA will be required to reimburse to the State of Utah. The total amount of funds questioned is: \$2,785,917.59 (73%) of the fiscal year 2019 state special education funds provided.

If funds are to be reimbursed, the USBE should establish repayment terms in accordance with the Settlement Agreement.

Further, based on this determination, the USBE should also ensure necessary adjustments to financial and program reports, and federal maintenance of effort calculations, are made.

B. Special Education Regulations

The USBE has been in process of updating the Special Education Rules Manual (Manual) for several months; and questions identified during the audit have been addressed as part of the revision process. We acknowledge Board action in the August 2020 Board Meeting to adopt the revised

manual as part of R277-750. The rule will become effective pending the completion of the administrative rules' approval process, which is anticipated on October 9, 2020.

The Special Education Services (SES) section should establish a formal, documented process to receive on-going questions and feedback on the Manual. The process should include a communication protocol, with a timeline, to notify LEAs of additional or updated guidance in response to feedback. In accordance with the documented process and as needed for clarification, APA should submit questions and feedback to SES.

Further, the USBE should review rules and guidelines for paraeducators to ensure the rules and guidelines are consistent (terminology and application to general education and special education), current, and easily accessible. Once complete, information should be provided to local education agencies.

C. Evolution within General Education

In 2012, via a letter issued by Melody Musgrove, Ed.D., Director of the Office of Special Education Programs, the US Department of Education recognized the impact of innovative practices within education. The letter includes, *“OSEP [Office of Special Education Programs] recognizes that classrooms across the country are changing as the field of special education responds to innovative practices and increasingly flexible methods of teaching. While the needs of many learners can be met using such methods, they do not replace the need of a child with a disability for unique, individualized instruction that responds to his or her disability and enables the child to meet the educational standards within the jurisdiction of the public agency that apply to all children.”*

Given the evolution of models and practices within both general education and special education, and in context of available performance and financial data, the USBE should consider policy actions to more clearly differentiate between general education efforts, such as MTSS, and specially designed instruction (i.e., special education). Potential policy actions should also consider appropriate funding levels for general education and special education programs, factoring in federal maintenance of effort requirements. Further the USBE should collaborate with local education agencies, the Legislature, and the US Department of Education on these efforts.

D. Innovation

The APA governing board should oversee the development and implementation of an internal control system, inclusive of qualified personnel, necessary policies and procedures, forms, data collection methods, training, and internal monitoring to ensure compliance with current special education regulations and allowable application of special education funding sources to services.

E. Internal Control System

We acknowledge APA has been in-process of updating systems, processes, and documentation

related to special education programs for several months. The APA governing board should continue oversight to ensure compliance with the requirement in R277-113-6 *LEA Governing Board Fiscal Responsibilities* to ensure “that LEA administration establish, document, and maintain an effective internal control system for the LEA” in consideration of Standards for Internal Control in the Federal Government or the Internal Control Integrate Framework. Specific areas of focus should include those outlined in Section IV.D Internal Control System.

Furthermore, the governing board should require accountability from its management and academic services provider, American Preparatory Schools (APS), related to the school’s special education program. The APA governing board should review the contract with APS and consider amending it to include more comprehensive stipulations related to the monthly invoicing process and allocation of the expense to programs, such as the special education programs. As part of the contract review process, the governing board should consider incorporating the Special Education Program Memorandum of Understanding into the contract. Finally, the governing board should consider hiring a direct report employee(s), with access to systems and data, who reports regularly to the governing board, independent of the provider.

Below is APA's analysis of the questioned costs, compared with the Auditor's questioned costs totals. Green cells represent agreement between APA and the Auditors' conclusions. Yellow cells represent costs that APA respectfully submits should be adjusted. The purpose in having 2 analyses is that we provide 2 options for treatment of paraprofessional costs, represented in row 3 on both tables. The remaining lines on the tables are identical.

Analysis 1						
Program	Total Population \$	Explanation	Audit % Questioned	APA Claim % Valid	APA Valid \$	
1205 - Case Manager	\$931,787.25	We agree with the auditors that all of our costs for our certified special education teachers are allowable.	0%	100%	\$931,787.25	
1205 - 1:1 Aide	\$288,307.57	We submit that 100% of our 1:1 aides are qualified and trained, and are easily identifiable as special education costs.	100%	100%	\$288,307.57	
1205 - Paraeducator	\$2,064,726.41	OPTION 1: We submit that 100% of our paraeducators are qualified and trained and as supplemental employees, hired to create the LRE, their wages are 100% allowable.	100%	100%	\$2,064,726.41	
1205	\$8,303.33	We don't know what costs this amount represents. Audit report did not contain detail-level information.	0%	0%	\$0.00	
1205	\$440,300.75	Management contract: 290,000 We submit the MOU for consulting services is a valid and allowable costs. Related Services: 100% of these services were provided to IEP students and we believe were provided in accordance with state procurement code. 150300.75.	*	100%	\$440,300.75	
1205	\$14,150.31	We don't know what costs this amount represents. Audit report did not contain detail-level information.	100%	0%	\$0.00	
1210	\$59,205.03	We don't know what costs this amount represents. Audit report did not contain detail-level information.	11%	89%	\$52,692.48	
1210	\$36.33	We don't know what costs this amount represents. Audit report did not contain detail-level information.	0%	100%	\$36.33	
1225	\$33,033.26	We concede this amount.	100%	0%	\$0.00	
TOTALS	\$3,839,850.24				\$3,777,850.79	
					CONCEDED TOTALS	\$61,999.45

*Amount questioned was split between contract transactions and non-contract transactions. To determine the Total Population Questioned, we applied the Percent Questioned of Amount Reviewed for non-contract transactions to all non-contract transactions; for contract transactions reviewed, if the procurement or contract was questioned, we applied a 100% error rate to all transactions of the procurement/contract in the Total Population.

Analysis 2						
Program	Total Population \$	Explanation	Audit % Questioned	APA Claim % Valid	APA Valid \$	
1205 - Case Manager	\$931,787.25	We agree with the auditors that all of our costs for our certified special education teachers are allowable.	0%	100%	\$931,787.25	
1205 - 1:1 Aide	\$288,307.57	We submit that 100% of our 1:1 aides are qualified and trained, and are easily identifiable as special education costs.	100%	100%	\$288,307.57	
1205 - Paraeducator	\$2,064,726.41	OPTION 2: We submit that 100% of our paraeducators are qualified and trained and as supplemental employees, hired to create the LRE, their wages are 100% allowable. However, if the standard is held that their wages are only allowable when they are serving IEP students directly, this would make 63% of their wages allowable.	100%	63%	\$1,300,777.64	
1205	\$8,303.33	We don't know what costs this amount represents. Audit report did not contain detail-level information.	0%	0%	\$0.00	
1205	\$440,300.75	Management contract: 290,000 We submit the MOU for consulting services is a valid and allowable costs. Related Services: 100% of these services were provided to IEP students and we believe were provided in accordance with state procurement code. 150300.75.	*	100%	\$440,300.75	
1205	\$14,150.31	We don't know what costs this amount represents. Audit report did not contain detail-level information.	100%	0%	\$0.00	
1210	\$59,205.03	We don't know what costs this amount represents. Audit report did not contain detail-level information.	11%	89%	\$52,692.48	
1210	\$36.33	We don't know what costs this amount represents. Audit report did not contain detail-level information.	0%	100%	\$36.33	
1225	\$33,033.26	We concede this amount.	100%	0%	\$0.00	
TOTALS	\$3,839,850.24				\$3,013,902.02	
					CONCEDED TOTALS	\$825,948.23

*Amount questioned was split between contract transactions and non-contract transactions. To determine the Total Population Questioned, we applied the Percent Questioned of Amount Reviewed for non-contract transactions to all non-contract transactions; for contract transactions reviewed, if the procurement or contract was questioned, we applied a 100% error rate to all transactions of the procurement/contract in the Total Population.

Appendix E

Auditor's Concluding Remarks

Internal Audit initially requested supporting documentation from American Preparatory Academy (APA) for the transactions and employees selected for sample audit work on March 24, 2020; APA responded to this request, and multiple other requests for additional or clarifying documentation over the course of the audit.

On September 8, 2020, Internal Audit met with APA in an exit conference to receive feedback and answer questions related to the Report (i.e., APA's Use of State Special Education Funds Audit Report). Further, Internal Audit indicated we would take additional feedback and questions on the Report through September 10, 2020; this deadline was extended to September 14, 2020 at 5pm due to the windstorm. Internal Audit addressed feedback and questions provided through the extended deadline.

Based on the response provided by APA (i.e., Management Response Appendix C); it appears that questions still remain. Therefore, the following are concluding remarks by Internal Audit to ensure elements of the Report are clearly understood.

- A. **Use of Funds:** Section VI.A of the Report states: "The total amount of funds questioned is: \$2,785,917.59 (73%) of the fiscal year 2019 state special education funds provided."

The audit identified that special education funds were used for supplemental employees, services to students, etc.; however, the special education funds identified as questioned costs WERE NOT used in accordance with the restrictions placed on those funds (i.e., the funds were misused because they were not for legitimate/allowable expenses). Further, noncompliance with Utah Procurement Code increases the risk of waste of funds, lack of transparency to the public, and lack of competition.

The Utah State Board of Education (Board) will determine the extent to which the questioned costs are disallowed costs.

- B. **Innovate and Outpace:** The term "innovative" is used by APA to describe its instructional model. APA also states that its methods are "outpacing traditional school models of education." Any use of the term "innovate" in any of its forms in the Report should be understood to mean "non-standard," "changed," and/or "differing from the norm." Any use of the term "outpace" in any of its forms in the Report should be understood to mean "non-compliant," "inadequate," and/or "misaligned."

The scope of the audit DID NOT include consideration of the quality or performance outcomes of the instructional methods used in APA's special education program; rather, as per Section I of the Report, the scope of the audit was "limited to a determination of whether the State Special

education funds were incurred for [qualified] expenses...". The conclusion of the audit, as identified in the Report, is to question \$2.8 million of state special education funds that APA used for its instructional methods that did not comply with special education regulations and that were not supported by an effective internal control system.

- C. **Special Education Regulations:** Section IV.A of the Report states: "The [Special Education Rules] Manual did not provide clear guidance in several areas."

APA stated in its response that lack of clarity within special education regulations is "the number one" cause of the findings. Lack of clear guidance is listed as item A, the first item, in Section IV of the Report; however, the Report states: "The findings noted have various causes, which are summarized below." The Report makes no attempt to assign proportionality between the findings and the causes.

Furthermore, if APA needed additional clarification, based on the auditors' experience, the USBE was available and willing to provide needed clarification on an individual basis.

- D. **Documentation:** Documentation is addressed in multiple Causes in the Report; Section IV.A, Section IV.C, and Section IV.D of the Report.

APA's response stated, "...any documentation errors were inadvertent mistakes, caused at least in part, by confusion over the complex regulations and lack of clear guidance." Although regulations may have been one factor in concerns with documentation, as noted in the Report, APA's documentation errors were the result of multiple Causes (e.g., ineffective system of internal controls).

- E. **Easily, Obviously, and Conveniently Identified:** Section III of the Report includes criteria for use of state special education funds that is specifically found in the Special Education Rules Manual adopted by R277-750. This criteria states "9. State special education funds may be spent only for direct costs, as provided in these Rules. Direct costs are those elements of cost which can be easily, obviously, and conveniently identified with specific special education activities or programs, as distinguished from those costs incurred for several different activities or programs and whose elements are not readily identifiable with specific special education activities."

In other words, for a state special education cost (i.e., good or service; item or action) to be an allowable expenditure of the restricted funds, it must meet two provisions. First, it must be "identified with specific special education activities or programs (i.e., the good or service is clearly tied to special education)." Second, the cost (i.e., good or service) must be "distinguished from costs incurred for several different activities or programs (i.e., the good or service is clearly tied to special education)."

The provision(s), with associated adverbs (i.e., easily, obviously, conveniently), ensure the restricted and limited funds are reserved to serve the intended students and not inadvertently spent on activities or programs that can not be distinguished from special education. Given the requirements of the restricted funds, APA must have adequately documented the cost and all basic cost considerations (e.g., cost was necessary and reasonable, conforms to fund limitations, incurred specifically for special education). When documented appropriately, all goods and

services (i.e., costs) associated with special education will be easily identifiable. When special education costs (i.e., goods and services) are not easily identifiable by the appropriate personnel, what assurances can be provided that the goods and services agreed upon in the IEP were and are provided to the students? Meeting the above provisions does not mean that services are identifiable to students receiving those services, other students, and other school staff.

As noted in Section IV.C, APA's internal control system was not developed or implemented to ensure compliance with current special education regulations.

- F. **Supplemental Employees and Permissive Use of Funds:** The Report reflects that costs for case managers, 1:1 aides, and paraeducators were charged to state special education funds.

Permissive Use of Funds

APA acknowledged this in its response stating: "...APA creates numerous instructional groups at differing levels so that, most of the time, special education students are taught and receive their [specially designed instruction] in classes with and alongside their peers...To staff this model [APA's innovative education model], APA hires supplemental employees – special education teachers and special education paraeducators..." Furthermore APA noted, "all students rotate through these intensives and are placed in small groups that correspond to their level of development and learning needs," and "there are times when those supplemental employees may spend an hour teaching a class where there isn't currently an IEP student enrolled." APA cited federal special education "permissive use of funds (i.e., incidental benefit)" criteria as a basis for this model.

As the audit was specific to use of state special education funds, state criteria (see D. above) rather than the federal "permissive use of funds" criteria cited by APA, was used to evaluate this circumstance. Even if the federal criteria were applied though, Section III.A.2 of the Report noted findings that reflect concerns with compliance. For example:

- Nineteen out of 19 (100%) paraeducators provided direct instruction to all students in the intensive courses.
- Eleven of the 19 (58%) paraeducators taught at least one intensive course that had no students receiving special education in the class.
- Nine out of nine (100%) paraeducators [interviewed] who worked in the homeroom said they were assigned to help the entire class.
- Nine out of nine (100%) paraeducators who taught courses said their course was a general education course.

APA's statements noted above, along with evidence in the Report as excerpted above, reflect that APA's paraeducators are an essential part of its program for all students, both students with and without IEPs. Furthermore, without special education paraeducators, APA would not be able to provide the daily small group services the students without IEPs rely on. Therefore, this contributed to the conclusion to question the cost of paraeducators charged to state special education funds.

The above is also indicative of APA's difficulty deciphering between and providing differentiated instruction (e.g., MTSS) for students without an IEP and specially designed instruction for

students with an IEP (see Section IV.B). It is also indicative of APAs lack of a fully effective internal control system that clearly identifies roles and responsibilities for staff.

Paraeducator Time Spent with Students with IEPs

Section III.A.2, Condition b.iii.4) of the Report states: “Finally, when we asked paraeducators approximately what percentage of time was spent working with students with IEPs, from 13 paraeducator responses, the average amount of time was 36%.”

APA’s response states that they “track the time a paraeducator spends directly with IEP students throughout the day” and based on this data, APA arrived at the conclusion that 63% of paraeducator’s time was spent with students with IEPs. Multiple times during the course of the audit, we requested documentation supporting employee time charged to state special education funds; APA did not provide a time tracking tool for special education staff with an allocation rate to state special education funds. Because we were unable to confirm the amount of time paraeducators spent working directly with students with IEPs, along with the other findings listed in the Report, the entire cost attributed to paraeducators is questioned.

Furthermore, if 63% of paraeducator time was directly spent with students with IEPs, that means 37% of paraeducator time was spent with students without IEPs. To APA this 37% represents incidental benefit as discussed above; however, given incidental benefit is a federal cost principle and not a state cost principle, per auditor judgment this is another reason to question the paraeducator cost charged to state special education funds.

- G. **1:1 Aides:** Section III.A.1, Condition a., of the Report states: “Each of the 1:1 aides provided a sworn statement that they delivered 100% of the grade-level curriculum. For both aides the supporting documentation does not support a conclusion that they were adequately qualified and/or trained to deliver 100% of the grade-level curriculum.”

Section III.A.1, Condition b., of the Report States: “For each 1:1 aide, we reviewed one of the student’s IEPs to whom they were assigned to provide services throughout the 2018-2019 school year. In both cases, the aide provided services to the students that were not consistent with the IEP and therefore not related to special education.”

The Report does not question that special education services were provided to the students served by the 1:1 aides; however, it does question whether the amount of 1:1 aide time charged to special education funds aligns with the events and services as documented by APA. Given that we could not clearly conclude on the use of funds based on the limited documentation provided by APA, the full amount of 1:1 aide funds is questioned; additional details related to the two student IEPs reviewed as part of the sample, are provided below.

- According to the IEP, one student received 1995 minutes weekly (i.e., full-time) of special education services (i.e., specialized behavior instruction and specialized academics) in the special education location (i.e., self-contained). The student’s goals were related to social emotional present levels. However, the paraeducator provided a sworn statement that she “delivered 100% of academics for the bulk of the time they were attending special classes,” and that “our goal was to transition [the student] out to the general ed classroom, my instruction and monitoring was gradually faded out to the

point where [the student was] fully transitioned out into the general ed classroom at about 100% at the end of 2019.” Although the student was transitioned out, the IEP never stated as much.

- According to documentation provided by APA one student received services from a 1:1 aide from February 2019 to June 2019; however, APA’s response states that those services were only provided “during April and May.” According to the student’s IEP, the student was provided approximately 120 minutes daily of specialized instruction in the general education setting and another four hours of speech monthly, up until a change of placement occurred in late March. APA provided a completed change of placement form, from March 28, 2019 to May 30, 2019, moving the student from regular class to a special class (i.e., self-contained); however, no evidence was provided to suggest a functional behavior assessment and behavior intervention services and modifications to address the behavior were provided. Nor were there modifications to the student’s IEP indicating how the behavior that resulted in “special classes” was related to present levels, associated goals, measurements, and/or services. Related to the paraeducator workload, APA provided a signed statement from the paraeducator stating, “as a special class teacher I delivered 100% of his grade-level instruction.” The question remains why a student requiring only two hours of special designed instruction in a general education environment would require a 1:1 special education aide to provide 100% of their grade-level instruction.

In both cases, even though some of the services provided did not appear to be special education related, the services were charged as costs to state special education funds.

- H. **Highly Qualified and Trained:** Training of paraeducators providing services to students with IEPs is discussed in Section III.A.1, Condition a. and III.A.2 of the Report.

APA’s response states: “it is not possible for a paraprofessional to participate in the Coaching Program and remain untrained.” The Utah Standards for Instructional Paraeducators require that only “after training and under the supervision of licensed or certificated personnel” can a paraeducator provide services (emphasis added). As reflected in the Report (see Section III.A.2, Condition c. and Section IV.D.3), it is possible to participate in the coaching program and not be trained before providing services given. As APA indicated in its response, coaching occurs while the services are being provided (i.e., “The coach works side-by-side with the paraeducator...”).

In consideration of the concerns regarding adequate training and concerns further explained in item E above, it appears the line between licensed educators (i.e., those who teach) and supplemental employees (i.e., generally those who tutor and assist, under direct supervision, during times when students would not be instructed from a teacher) at APA has been blurred, as supplemental employees at APA provide instruction to students up to 100% of the time. Further evidence of this is from a paraeducator who informed us during an interview that she thought she was applying for an aide position but ended up “teaching.” An outstanding question (not within the scope and objective of this audit) is, what is the impact on students with IEPs?

Finally, we note that the basis for questioning costs is not solely on the premise that the service was provided by an underqualified individual; therefore, even if the qualification point is conceded, the questioned costs would remain.

- I. **IEP Modifications:** Section III.A.2.d of the Report states: “In seven of the ten (70%), the specially designed modification as noted on the Lesson Progress Charts (LPC) did not align with the IEP.”

“Align with the IEP” means that, at the very least, a teacher or paraeducator providing services must provide the modifications guaranteed in the IEP. Based on the LPC documentation provided by APA, the IEP-required modifications were not provided by the “teacher” (e.g., teacher, paraeducator). We concur with APA’s response that “teachers are never limited to ONLY providing interventions listed in a student’ IEP.”

Conclusion

APA funded costs (i.e., people, goods, services) using restricted special education funds that could not be “distinguished from those costs incurred for several different activities or programs and whose elements are not readily identifiable with specific special education activities” (SER X.9); therefore, these costs (i.e., misused funds) are questioned.

We acknowledge APA’s position, which is that these costs were incurred to provide activities and programs to students with disabilities, and any benefits derived by the students receiving general education was purely incidental. However, we do not believe APA provided adequate evidence to support its position; instead, as the Report reflects, APA used restricted special education dollars to fund its program, which was designed to benefit all students.

Given that students with IEPs are entitled first to general education services covered by general education funds, but also to special education services covered by special education funds, the audit questions costs charged to special education funds for APA’s program (i.e., paraeducators in all homerooms and teaching small group, intensive courses) that is designed to benefit all students.

As noted in the Report, the role of the audit was to determine if costs should be questioned; the role of the Board is then to determine if questioned costs will ultimately be disallowed.