

Audit Report

Maryland State Department of Education

August 2009



OFFICE OF LEGISLATIVE AUDITS
DEPARTMENT OF LEGISLATIVE SERVICES
MARYLAND GENERAL ASSEMBLY

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Karl S. Aro
Executive Director

DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF LEGISLATIVE AUDITS
MARYLAND GENERAL ASSEMBLY

August 27, 2009

Bruce A. Myers, CPA
Legislative Auditor

Delegate Steven J. DeBoy, Sr., Co-Chair, Joint Audit Committee
Senator Verna L. Jones, Co-Chair, Joint Audit Committee
Members of Joint Audit Committee
Annapolis, Maryland

Ladies and Gentlemen:

We have audited the Maryland State Department of Education (MSDE) for the period beginning July 1, 2005 and ending June 30, 2008. MSDE is responsible for setting statewide goals for school performance, monitoring school achievement, distributing financial aid, and providing technical assistance to local school and library systems. MSDE also provides services to people with disabilities, and oversees child care programs and family support centers in the State.

Our audit disclosed that certain aspects of MSDE's loaned educator program, which was established to obtain the temporary services of local school system employees, appeared to be in conflict with State law and regulations. During fiscal year 2009, MSDE employed 66 loaned educators from 17 school systems with an annual cost of approximately \$8.5 million, of which 26 educators had been on loan continuously to MSDE for at least five years. According to an Opinion of the Attorney General, such services should be provided on a temporary basis or otherwise the educators should become State employees. Some of these individuals held management positions, which raises certain ethics issues. Disclosure of the extent of the loaned educator program in MSDE's annual budget submission was not comprehensive.

MSDE needs to improve its oversight of the child care programs by ensuring that inspections of licensed child care facilities are performed timely as required by State law. Our review of inspections for 100 child care facilities disclosed that 76 facilities were missing at least one required inspection and/or were not inspected timely at least once during our audit period. Additionally, MSDE did not adequately monitor local departments of social services processing of child care subsidy applications and related payments, which totaled \$99 million during fiscal year 2008.

Our audit further disclosed that MSDE will likely require a \$13.3 million general fund deficiency appropriation to fund certain federal expenditures that were never recovered. MSDE also did not adequately monitor the contractor responsible for assisting and awarding funds to family support centers. Finally, our audit noted control and record keeping deficiencies relating to other areas such as information systems security, purchases and disbursements, and equipment.

An Executive Summary of our findings can be found on page 5. MSDE's response to this audit is included in Appendix A to this report. Auditor comments related to certain of MSDE's responses can be found in Appendix B. We wish to acknowledge the cooperation extended to us during the course of this audit by MSDE.

Respectfully submitted,

Bruce A. Myers, CPA
Legislative Auditor

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* **Denotes item repeated in full or part from preceding audit report**

Executive Summary

Legislative Audit Report on Maryland State Department of Education (MSDE) August 2009

- **Certain aspects of MSDE's loaned educator program, as presently implemented, appear to be in conflict with State law and regulations. In addition, this program raises concerns with the applicability of the State ethics laws and regulations. Finally, the extent and total costs of the program were not specifically disclosed to the General Assembly's budget committees.**

MSDE should use the loaned educators on a temporary basis in accordance with State laws and regulations, determine the applicability of certain ethics issues, and fully disclose the total number of educators and the related costs.

- **Inspections of child care facilities were not conducted as required. Timely monitoring of the local department of social services was not performed to ensure the propriety of eligibility determinations and related payments of the State's Child Care Subsidy Program. Also, procedures had not been established to verify certain child care provider billing information.**

MSDE should adequately monitor child care facilities and the State's Child Care Subsidy Program, and establish better controls over payments.

- **MSDE recorded unsubstantiated federal fund revenues totaling approximately \$13.3 million at June 30, 2008.**

MSDE should ensure that all accrued revenues are properly supported and continue to address the funding of the related deficit.

- **Adequate monitoring procedures were not employed as related to a prior contract to manage State family support centers. Furthermore, a new \$15.9 million management agreement included limited oversight requirements.**

MSDE should establish procedures to ensure the vendor was properly invoicing the State and performing contractual requirements. MSDE should also amend the current agreement to help enhance oversight.

- **Certain aspects of the Maryland Business Enterprise Program for the Blind did not appear to be in accordance with State laws and regulations. Also, there was no assurance that blind individuals benefited as intended.**

MSDE should ensure the vending program is operated in accordance with State laws and regulations and is benefitting the blind as intended.

- **Adequate procedures and controls were not in place for determining client eligibility, developing treatment plans, and approving the purchases of goods and services for Division of Rehabilitation Services clients.**

MSDE should require that independent employees ensure the propriety of client eligibility determinations, treatment plans, and the purchases of goods or services on behalf of clients.

- **We also noted control and record keeping deficiencies relating to information systems security and control, purchases and disbursements, nonpublic special education expenditures, and equipment. For example, access to a critical database was not adequately protected and an adequate information technology disaster recovery plan did not exist.**

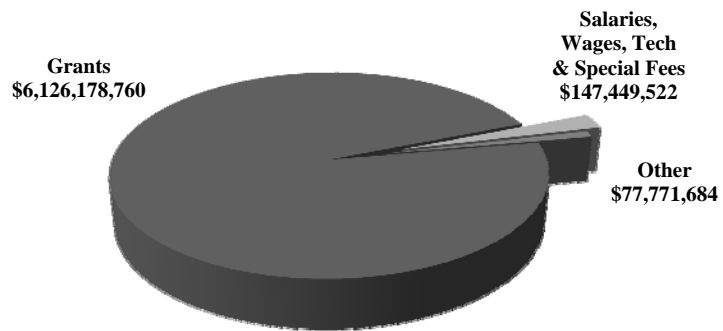
MSDE should take the recommended actions to improve information systems security and internal controls and record keeping in these areas. MSDE should also restrict access to critical data and develop and implement a comprehensive disaster recovery plan.

Background Information

Agency Responsibilities

The Maryland State Department of Education (MSDE), as the staff agency of the State Board of Education, supports the development and operation of educational and library programs throughout the State. MSDE is responsible for setting statewide goals for school performance, monitoring school achievement, distributing financial aid, and providing technical assistance to local school and library systems. MSDE also provides services to people with disabilities, and oversees child care programs and family support centers in the State. MSDE also operated educational programs in the State's correctional facilities until July 1, 2008 at which time this responsibility was transferred to the Department of Labor Licensing and Regulation. According to the State's records, during fiscal year 2008, MSDE's expenditures totaled approximately \$6.35 billion, the vast majority of which related to grants awarded to local education agencies.

Fiscal Year 2008 Expenditures



Source: State records

Organizational Change

Chapter 585, Laws of Maryland 2005, effective July 1, 2005, created the Early Childhood Development Division within MSDE and transferred certain duties and responsibilities of the Department of Human Resources' (DHR) Child Care Administration and Social Services Administration, and the Executive Department's Office for Children, Youth and Families to the newly created Division. This law also transferred the After School Opportunity Fund from DHR to MSDE.

Status of Findings From Preceding Audit Report

Our audit included a review to determine the status of the 20 findings contained in our preceding audit report dated June 14, 2006. We determined that MSDE satisfactorily resolved 14 findings; the remaining 6 findings are repeated in this report, 4 of which were combined into 2 findings.

Our audit also included, as a result of the aforementioned organizational change, a review to determine the status of the eight findings in our preceding audit report, dated March 7, 2005, on the Department of Human Resources – Child Care Administration and one finding in our preceding audit report, dated March 18, 2005, on the Department of Human Resources – Social Services Administration. We determined that seven of these nine findings were satisfactorily addressed; the remaining two findings were not resolved and are included in this report as one finding.

Informational Comments

Federal Sanctions for School-Based Health Services

Potential federal audit sanctions totaling \$32.8 million are under consideration by the United States Department of Health and Human Services. These potential sanctions resulted from a federal audit report issued in May 2007, which focused on Medicaid expenditures for school-based health services that were claimed by the local education agencies (LEAs) in fiscal years 2002 through 2004. The sanctions were principally based on the lack of adequate support for the rates claimed for school-based health services. These rates were established by the Department of Health and Mental Hygiene (DHMH) in conjunction with the Maryland State Department of Education (MSDE) and were uniformly charged by all local school systems as instructed by MSDE. DHMH and MSDE disagreed with the federal audit report findings and appealed the refund recommendation in June 2007.¹ To the extent the sanctions are not reduced and any disallowances are not recovered from the respective local school systems, the sanctions will need to be paid with State general funds.

Local Retirement and Pension Contributions

The State provides financial assistance to various local jurisdictions through MSDE. Some of this assistance is used to fund the employers' portion of the retirement and pension costs for certain local school system and library employees who are members of the Maryland State Retirement and Pension System. In this regard, because the local jurisdictions also receive federal financial assistance for some of these benefits, the local jurisdictions are required to reimburse MSDE for the portions of these costs paid on behalf of employees that were covered by federal funds (that is, for which they received duplicate payments). According to MSDE's records, during fiscal year 2008, the local jurisdictions remitted \$29.1 million to MSDE related to these duplicate payments.

¹ Similar sanctions were imposed as a result of a March 2003 federal audit report, which focused on expenditures claimed in fiscal year 2000. DHMH and MSDE disagreed and appealed these sanctions and the federal government reduced its claim from \$19.9 million to \$16.4 million, which was recovered by the Federal Government in July 2007. DHMH has requested five LEAs to reimburse the State \$13 million for their respective portions of the sanctions over the next three years. However, four of the five LEAs have appealed DHMH's request to the Office of Administrative Hearings. Notwithstanding the appeal, in fiscal year 2009, DHMH began withholding a portion of the five LEAs' current medical assistance reimbursement payments to fund the \$13 million of sanctions.

MSDE management advised us that the State Retirement Agency (SRA) is responsible for verifying the accuracy of these remittances to MSDE. In this regard, SRA contracts with an independent certified public accounting firm to perform a compliance review of the eligibility of the participants in the State retirement and pension system. However, the review does not include any procedures to ensure the propriety of the aforementioned remittances for duplicate payments. This condition was noted in our audit report of SRA dated April 13, 2009 and, in its response to that report, SRA agreed to work with MSDE to ensure the full amounts are remitted by the local jurisdictions.

LEA Reporting of Individuals With Qualifying Crimes

MSDE has initiated certain procedures to identify employees of entities providing education services in Maryland that have committed certain criminal offenses and to improve its procedures for the timely suspension of the certification of individuals convicted of qualifying crimes. However, our review disclosed that certain LEAs did not notify MSDE of individuals convicted of qualified crimes to allow for timely revocation of their teacher certifications. Delays in LEA reporting were also noted during our preceding audit. MSDE management advised us that it was aware of the problem and had discussed the issue with the respective LEAs. Senior MSDE management believes that it lacks the legal authority to require LEAs to provide timely notification.

Classes Being Taught by Non-Highly Qualified Teachers

State law requires that individuals employed as teachers in the Maryland public school system be certified by MSDE. In addition, the Federal No Child Left Behind legislation required all teachers in the public school system be “highly qualified” no later than the 2005/2006 school year. Generally, MSDE believes that professionally certified teachers who are teaching within their areas of certification would meet this federal standard.

While MSDE established procedures to monitor LEA use of highly qualified teachers, there are still a large number of classes being taught by teachers that are not highly qualified (not teaching within their area of certification). In response to our prior audit report, MSDE prepared periodic reports of teachers that do not meet the federal criteria for being highly qualified since the teachers were not certified in the subject area in which they taught. LEAs were responsible for addressing the non-highly qualified teachers in their annual master plan updates submitted to MSDE. However, according to MSDE records, during the 2008/2009 school year, approximately 17,900 of the 115,700 classes (or 15

percent) were taught by teachers that were not highly qualified. This issue is particularly significant for one LEA, in which approximately 5,400 of the 11,100 classes (or 49 percent) were taught by teachers that were not highly qualified.

While the federal law currently has no penalty provision for noncompliance, given the significant amount of federal funding received for education by MSDE (approximately \$926 million budgeted for fiscal year 2009 according to the Department of Budget and Management's fiscal year 2010 budget highlights), this issue needs to be monitored.

Findings and Recommendations

Loaned Educator Program

Background

MSDE contracted with a number of local education agencies (LEAs) to obtain personnel under the loaned educator program. MSDE has been using the program for approximately 30 years under which educators are borrowed from LEAs to do specific jobs at MSDE for which their particular skills are deemed necessary by MSDE. During fiscal years 2006 through 2008, according to MSDE records, there was an average of 78 loaned educators annually working at MSDE, with related salary and fringe benefits costs of approximately \$8.8 million (total 3-year cost was \$26.5 million).² MSDE charged these costs as contractual expenditures.

For fiscal year 2009, MSDE had 66 loaned educator contracts from 17 LEAs across the State (see summary to the right), with a total cost of approximately \$8.5 million. While these individuals are not State employees and are not included in MSDE's 1,600 budgeted fiscal year 2009 authorized positions, the contracts would represent approximately 7 percent of its budgeted payroll costs and 4 percent of its budgeted positions for that year. The number of educators and the related cost has increased significantly over the life of the program. For example, a Department of Fiscal Services (currently, the Department of Legislative Services) analysis of the fiscal year 1990 operating budget reported that there were 21 loaned educators with a total cost of approximately \$897,000.

Loaned Educator Contracts		
Fiscal Year 2009		
LEA	Count	Cost
Anne Arundel	9	\$1,177,659
Baltimore City	5	569,461
Baltimore	13	1,810,988
Carroll	2	216,236
Cecil	2	238,086
Charles	2	213,109
Dorchester	2	252,731
Frederick	3	452,438
Harford	3	358,693
Howard	6	880,554
Montgomery	6	872,016
Prince George's	6	751,857
Queen Anne's	3	322,376
Other	4	399,277
Total	66	\$8,515,480

Source: MSDE records

While some loaned educators stay at MSDE for a few years and then return to their local school systems, numerous educators have stayed at MSDE for extended periods of time. See the table on the following page for a summary of the loaned educator program by position and cost.

² During the "loaned" period, the educator continues to be an employee of the LEA, and remains on the LEA's payroll. The MSDE payments reflect reimbursement by MSDE to the applicable LEA for salary and certain fringe benefits costs.

Summary of Positions and Contract Costs

Position	Number of Educators	Costs (Salary with Certain Fringe Benefits)			Duration of Contracts		
		Range (\$)		Average	Range (yrs)		Average
		Low	High		Low	High	
Chief	3	112,000	157,000	135,000	1	5	3.3
Coordinator	5	115,000	185,000	144,000	3	15	7.6
Director	12	135,000	197,000	159,000	1	14	4.6
Executive Management	3	157,000	181,000	167,000	5	8	6.5
Manager	7	107,000	123,000	117,000	1	8.5	5.5
Specialist	36	82,000	155,000	116,000	1	11	3.3

Source: MSDE

State regulations provide for the loaned educator program and require that related contracts be in writing, include the duration of the loan, the terms of the financial reimbursement, and that the educator's tenure rights may not be affected. The regulations further provide that the contracts shall be signed by the local school superintendent and by the Secretary-Treasurer of the State Board of Education (who by law is the State Superintendent of Schools) and shall be filed by the Secretary in the Office of the Board. In addition, the educator and several MSDE representatives also sign the contracts.

Finding 1

Certain aspects of the loaned educator program as presently implemented appear to be in conflict with State law or regulations.

Analysis

As presently implemented, certain aspects of the loaned educator program appear to be in conflict with State law and regulations. Our review disclosed the following conditions:

- Certain positions filled by loaned educators appeared to be in conflict with provisions of State law. Specifically, MSDE used 15 loaned educators as professional assistants such as Executive Management and Directors, most of which held these positions for extended periods of time. The Education Article of the Annotated Code of Maryland provides that professional

assistants must be authorized by the State Board of Education, be provided for in the State budget and shall be in the executive service, management service, or special appointments in the State Personnel Management System (that is, State employees).

In response to our inquires, MSDE obtained an Opinion of the Attorney General which concluded that MSDE may enter into loaned educator contracts with local school systems to obtain the services of employees of those school systems on a temporary basis. If a loaned educator is to work for MSDE for more than a brief period of time, the individual should become a State employee in the State Personnel Management System. In this regard, as previously noted, there were 21 educators that had worked for MSDE for between 5 and 10 consecutive years and 5 educators that had worked for MSDE for more than 10 years. Furthermore, the April 2009 Joint Chairmen's Report on the fiscal year 2010 Operating Budget provided that it is the intent of the General Assembly that the MSDE practice of entering into contracts with LEAs allowing local personnel to provide services to the State while remaining on the LEA payroll be used in special, short-term projects, where local talent is a necessity.

- Not all loaned educator contracts were approved as required by governing State regulations, which state that a contract for each loaned educator shall be signed by the Secretary-Treasurer of the State Board of Education and, when signed, shall be filed by the Secretary in the Office of the State Board. However, MSDE's internal policy only required the "initial" contract year for loaned educators (regardless of the eventual period of participation in the program) that were directors and higher level positions be approved by the Board and signed by the Secretary-Treasurer. Based on our review, 60 of the 66 loaned educator contracts for fiscal year 2009 were not signed by the Secretary-Treasurer as required by State regulations, although the contracts were approved by other MSDE personnel. In addition, MSDE did not comply with its internal policy as those unsigned contracts included several "initial" contracts for directors and higher level positions.

Recommendation 1

We recommend that MSDE

- a. enter into loaned educator contracts with local school systems to obtain the services of employees of the local school systems only on a temporary basis; and**
- b. obtain required signatures on each loaned educator contract, and ensure that the contracts are filed as required by State regulations.**

Finding 2

The loaned educator program, as currently implemented, raises concerns regarding the applicability of the State's financial disclosure requirements and possible conflict of interest issues under the Maryland Public Ethics law.

Analysis

The nature of the management and supervisory positions being filled by loaned educators raises concerns about the applicability of the State's financial disclosure requirements and, in some cases, raises possible conflict of interest issues under the Maryland Public Ethics law. Specifically, as noted in Finding 1, MSDE allowed loaned educators to serve in administrative positions, including positions involved in programmatic and fiscal decisions that have statewide impact including their own LEA. In addition, we noted that three of the loaned educators signed certain documents relating to their own contracts, in their capacity as MSDE officials. Furthermore, certain documents relating to 31 loaned educator contracts for fiscal year 2009 were signed by other loaned educators in their capacity as MSDE officials, 4 of which were signed by educators coming from the loaned educators own LEA. Although, in these cases, other MSDE representatives also signed the contracts, a conflict of interest issue may still exist.

We further noted that the loaned educator contracts do not require the individuals to submit financial disclosure statements, as required of State employees holding similar positions. In this regard, only 4 of the 66 current loaned educators had filed financial disclosure statements with the State Ethics Commission, although all 66 of these educators would have been required to file if they were State employees.

We were advised by the staff of the State Ethics Commission that the nature of the arrangement between MSDE and the LEAs raises concerns with the applicability of the financial disclosure requirements and possible conflict of interest issues under the Maryland Public Ethics law.

Recommendation 2

We recommend that MSDE obtain a formal opinion of the State Ethics Commission regarding the applicability of the financial disclosure requirements to loaned educators and possible conflict of interest issues under the Maryland Public Ethics law.

Finding 3

The extent and total cost of the loaned educator program were not specifically disclosed to the General Assembly's budget committees and to the State Board of Education.

Analysis

The loaned educator program was not fully disclosed to the General Assembly's budget committees and to the State Board of Education. Although MSDE provided a list of contracts as part of their budget submission, it did not identify all the loaned educator contracts and did not disclose the total cost of those contracts. Specifically, in their fiscal year 2009 budget submission, MSDE only reported 14 "loaned educator" contracts totaling \$1.2 million while the remaining contracts were listed as "education contracts". In addition, the reported cost of the contracts did not include approximately \$830,000 in retirement contributions for the current 66 loaned educators that were being paid by the State under provisions of the Teachers Retirement System³. Furthermore, the budget committees have requested additional information about the loaned educator program. In this regard, the April 2009 *Joint Chairmen's Report* provided that MSDE provide the budget committees with certain information such as the number of loaned educator contracts.

We further noted that MSDE did not provide the State Board of Education with a listing of the loaned educators each year. Rather, as noted in Finding 1, MSDE only notified the Board of the initial contracts for certain positions.

The lack of full disclosure of the actual costs of the contracts is significant because the loaned educators were sometimes paid salaries significantly higher than State employees serving in similar positions. For example, one loaned educator who was serving in a particular job classification was paid an annual salary that was 22 percent higher than a State employee who had served in the same job classification for a considerably longer period of time.

MSDE did not go through the traditional process used when hiring State employees to ensure that these individuals were in fact the most qualified for the positions. MSDE management advised us that the loaned educators had specific and unique skills needed to develop and implement education policy and programs, and that obtaining the services of these individuals required paying a

³ The State funds the retirement of teachers at a rate of 11.7 percent (compared with regular State employees who are funded at a rate of 8.73 percent). The retirement costs of those LEA employees under the Teachers Retirement Program are paid directly by the State (primarily via grants to LEAs under the Aid to Education budget program) and are not included in the loaned educator contract costs.

competitive wage. While these loaned educators may be qualified for the positions, MSDE may have identified other qualified individuals through a traditional hiring process.

Recommendation 3

We recommend that MSDE disclose the full extent of the loaned educator program (including an annual listing of the number and cost of the loaned educators and the related salary information, including retirement costs paid by the State under the State Teacher Retirement System) to the General Assembly’s budget committees and to the State Board of Education.

Child Care Programs

Background

Since July 1, 2005, the Maryland State Department of Education (MSDE) has been responsible for child care programs in the State, including licensing, monitoring compliance with regulations (for example, ensuring that child care facilities meet health and safety standards), and taking enforcement actions. According to MSDE records, as of September 24, 2008, there were 8,967 family child care homes and 2,751 child care centers licensed by MSDE.

MSDE also oversees the State’s Child Care Subsidy Program, also known as purchase of care (POC), which provides financial assistance to eligible families to meet their child care needs. This program is administered by the 24 local departments of social services (LDSSs) and is funded by both State general funds and federal funds. According to MSDE’s records, during fiscal year 2008, POC expenditures totaled approximately \$99 million (\$37.5 million in general funds and \$61.5 million in federal funds).

Finding 4

Inspections of child care facilities were not conducted as required.

Analysis

MSDE did not conduct inspections of child care facilities as required. The primary purpose of the inspections is to ensure that child care facilities protect the general health and safety of children under their care. State regulations require MSDE to conduct at least one unannounced inspection of each child care facility per 12-month period and at least one announced inspection per 24-month period. However, our test of 100 child care facilities for evidence of appropriate inspections during the period from July 2005 to September 2008 disclosed that 76 facilities were either missing at least one required inspection (100 missing inspections in

total) and/or were not inspected timely in at least one instance (inspections were at least 2 months late in 34 instances in total) as noted in the below table. According to MSDE records, these 76 facilities were required to have approximately 360 inspections during this period.

Test Results – Inspections of Child Care Facilities

Subdivision	Facilities Tested	Facilities with Missing/Late Inspections	Missing or Late Inspections		
			Missing	Late	Total
Anne Arundel	10	7	2	5	7
Baltimore City	20	18	24	7	31
Baltimore	20	17	9	14	23
Carroll	10	7	9	1	10
Montgomery	20	9	12	3	15
Prince George's	20	18	44	4	48
Total	100	76	100	34	134

Source: MSDE records

The aforementioned conditions were caused, in part, because inspection data on MSDE's Child Care Administration Tracking System (CCATS) were not properly updated and were not used to ensure inspections were performed in a timely manner. For example, our comparison of the inspection data on CCATS to actual inspection files for 20 facilities (included in the 100 facilities tested above) disclosed that completed inspections for 7 of the facilities were not recorded in CCATS.

Recommendation 4

We recommend that MSDE

- a. conduct inspections of child care facilities as required, and**
- b. use the available features on CCATS to maintain a comprehensive record of the inspections to help ensure all inspections are performed in a timely manner.**

Finding 5

Timely monitoring of the LDSSs was not performed to ensure the propriety of eligibility determinations and related payments, and procedures had not been established to verify certain child care provider billing information.

Analysis

MSDE did not ensure that POC applications and related payments were processed properly. Specifically, our review disclosed the following conditions:

- MSDE did not conduct timely monitoring of the LDSSs to ensure the propriety of eligibility determinations and related payments. MSDE used the Comprehensive Program Review System (CPRS) to monitor the POC program. CPRS consists of two levels of review of caseworker transactions. The primary review is performed by LDSS supervisors to verify the propriety of the case worker's determination of recipients' eligibility and subsidy payment amounts. The secondary review is conducted by MSDE to determine the accuracy of the LDSS supervisory reviews. However, as of June 30, 2008, MSDE had not performed secondary reviews for 19 of the 24 LDSS within the 18-month period required by MSDE policy. For example, one LDSS, which according to MSDE records accounted for \$32 million (32 percent) of the fiscal year 2008 POC expenditures, had not been reviewed since MSDE assumed responsibility for the program in July 2005.
- MSDE had not established procedures to verify attendance reported by child care providers on their biweekly invoices that was used to determine amounts due the providers. MSDE management advised us that each provider maintains attendance records and that an authorized adult must sign in and out for each child. However, MSDE inspections of the providers are not designed to verify the propriety of payments; therefore, inspections do not include a comparison of these attendance records to attendance reported on the invoices submitted by the providers. Consequently, MSDE would not detect overpayments made for care that was not provided.

Similar conditions were commented upon in our preceding audit report of the Department of Human Resources' (DHR) Child Care Administration.

Recommendation 5

We recommend that MSDE

- a. conduct timely monitoring of the LDSSs to ensure the propriety of POC eligibility determinations and related payments; and**
- b. review, at least on a test basis, POC attendance records maintained by the providers to verify the amounts invoiced.**

Finding 6

Access to critical system functions in CCATS was not sufficiently restricted or controlled.

Analysis

MSDE did not sufficiently restrict access to critical system functions in CCATS, which is used, in part, to process licenses and payments to child care providers under the POC program. As a result, certain individuals could process transactions without independent approval and which were not consistent with their job duties. For example, we noted that 34 licensing supervisors and 22 regional managers had the capability to both initiate and approve child care licenses. These individuals were generally responsible for approving the child care licenses normally created (initiated) by licensing specialists. Consequently, unauthorized transactions could be processed by these individuals without detection.

Recommendation 6

We recommend that MSDE

- a. restrict access to critical system functions in CCATS to individuals who require such access to perform their job duties, and**
- b. ensure that employees with the capability to create licenses not also have the ability to approve the transaction.**

Federal Funds**Finding 7**

MSDE recorded unsubstantiated federal fund revenues totaling approximately \$13.3 million at June 30, 2008.

Analysis

MSDE recorded unsubstantiated federal fund revenues totaling approximately \$13.3 million at June 30, 2008 related to the federal Temporary Assistance to Needy Families (TANF) grant. The unsupported revenue relates to MSDE's failure to recover TANF grant expenditures incurred during fiscal years 2002 and 2003, and was also commented upon in preceding audit report. DHR (which processes the federal fund recoveries) advised that the TANF federal fund grants for those years have already been fully used and are no longer available to reimburse the MSDE expenditures. MSDE management informed us that it is working with the Department of Budget and Management (DBM) to resolve the funding of the \$13.3 million deficit (for example, requesting a deficiency appropriation) and eliminate the future need for this accrual.

Recommendation 7

We recommend that MSDE

- a. ensure that all accrued revenues are properly supported (repeat), and**
- b. continue working with DBM to address the funding of this deficit.**

Family Support Centers

Finding 8

Adequate monitoring procedures were not in place for a prior contract to manage family support centers and a new \$15.9 million management agreement included limited oversight requirements.

Analysis

MSDE did not adequately monitor a prior contract to manage family support centers (FSCs) and the new management agreement did not include adequate terms to ensure sufficient oversight. FSCs provide developmental, educational, and health services to young parents and their children. Responsibility for managing the FSCs was transferred from DHR to MSDE effective July 1, 2005. According to MSDE records, during fiscal years 2006 through 2008, MSDE paid a vendor approximately \$15.4 million to manage and award grants to 25 FSCs and to provide technical assistance and monitoring, training, and evaluation services. These payments were made under a previous procurement by DHR, which was competitively bid and awarded in July 2003 in accordance with State procurement regulations.

Upon expiration of the contract on June 30, 2008, MSDE entered into a grant agreement, totaling \$15.9 million, with the same vendor to perform similar services during fiscal years 2009 through 2011. MSDE management advised us that it used a grant to provide it with more flexibility in managing the vendor. In addition, MSDE believes that this vendor had extensive expertise in dealing with the FSCs and was well qualified to provide continued program oversight and management. Our review disclosed the following conditions:

- MSDE did not adequately substantiate amounts invoiced by the vendor under the contract that expired in fiscal year 2008 or ensure agreed-upon services were provided under both the prior contract and current grant agreement. The vendor was to provide grants management services (such as review of FSCs' grant proposals and distribution of related funds) and contract management services (such as oversight and management of the FSCs and ensuring FSCs obtained required audits). The contract included a budget for grants to the FSCs and for vendor overhead costs (such as payroll and supplies). However, the vendor invoices and expenditure reports did not provide sufficient details

(such as the grants disbursed to each FSC and the tasks provided to support overhead costs being billed) to ensure the propriety of the amounts paid to the vendor under the prior contract. In addition, MSDE did not ensure the vendor performed the services provided for in the contract or subsequent grant agreement.

- Although the vendor was to be paid approximately \$861,000 a year for monitoring the FSCs under the current grant agreement, the agreement eliminated certain safeguards contained in the prior contract. Specifically, several of the monitoring provisions in the previous contract were not included in the grant agreement, such as requiring the vendor to monitor the FSCs, ensuring that FSCs obtained annual independent audits, and resolving any related deficiencies, which reduces accountability and effective oversight of both the vendor and the FSCs.

Recommendation 8

We recommend that MSDE

- a. verify the propriety of the previous vendor invoices, including amounts paid to FSCs, and recover any overpayments detected;**
- b. conduct site visits on a test basis to verify that the parties provide the agreed-upon services; and**
- c. amend the grant agreement to ensure that requirements for adequate oversight provisions, including appropriate monitoring procedures over the activity of the FSCs, are included.**

Division of Rehabilitation Services

Finding 9

Certain aspects of the Maryland Business Enterprise Program for the Blind were not in accordance with State laws and regulations, and there was no assurance that blind individuals benefited as intended.

Analysis

MSDE's Division of Rehabilitation Services (DORS) did not appear to operate certain aspects of the Maryland Business Enterprise Program for the Blind (MBEPB) in accordance with State laws and regulations or ensure that blind individuals benefited as intended. As a State program, the law provides that MBEPB has priority to operate vending machines and other vending facilities on property controlled by the Department of General Services (DGS) as MBEPB's objective is to prepare individuals to operate successful vending and food service operations in public facilities. DORS delegated the operation of the vending machines to Blind Industries and Services of Maryland (BISM), a nonprofit

organization that provides services, training and stable employment opportunities to blind adults. During the period from October 1, 2007 to September 30, 2008, BISM's commissions from vending services, as reported to MSDE, totaled \$404,500 based on related sales of approximately \$1.7 million. Our review disclosed the following conditions:

- BISM has been operating these services without a current contract. The most recent contract, which stipulated the commissions BISM was to remit to the State and provided direction on how the program was to be operated (for example, requiring the employment of blind individuals), expired in May 2002.
- During fiscal year 2008, BISM subcontracted the vending services to several for-profit vending companies that were not required to employ blind individuals. The aforementioned expired BISM contract prohibited BISM from subcontracting any portion of the vending services without obtaining prior written approval. DORS management advised us that it became aware of the subcontracts in June 2008, but could not provide us with the effective dates or written approval of the subcontracts.

DORS originally contracted with BISM to operate the vending program because State law requires State agencies to buy supplies and services from BISM, if the supplies and services are available from BISM at fair market prices and the supplies and services are not available from the Maryland Correctional Enterprises. However, the Maryland Court of Appeals ruled that the aforementioned law does not apply when BISM does not actually provide the supplies and services⁴. Since BISM no longer provides the services, it would appear the requirement to use BISM no longer applies.

DORS management advised us that it questioned the legality of BISM's use of the subcontractors, but it believed that there was no alternative given the requirement to use BISM established in State law. However, DORS management reached this conclusion without consulting with counsel or DGS to determine whether BISM's subcontracting of the services precluded the aforementioned requirement to use BISM. Rather, DORS management accepted BISM's assertion that it was compliant with State law since BISM claimed it was "partnering" with the vendors.

- All vending machine income (less cost of goods sold, including reasonable service and maintenance costs) was not received by DORS as required by State law. Instead, as previously noted, only a commission was received from

⁴ Blind Industries and Services of Maryland vs. the Maryland Department of General Services [371 Md. 221 (2002)]

BISM based on rates established in the aforementioned expired contract. In addition, DORS relied on BISM's reported sales to determine the propriety of the income remitted and did not independently verify the amounts reported.

State law provides that all vending machine income (after deducting the costs of the goods sold, including reasonable service and maintenance costs) is to be distributed to DORS to support MBEPB unless the machines are managed by a blind person licensed by DORS. In our opinion, since BISM no longer directly manages the vending machines, all the income and not just a commission should have been remitted to DORS.

Recommendation 9

We recommend that MSDE

- a. consult with counsel and DGS regarding the requirement to use BISM for these services and determine the most appropriate method for providing vending services in accordance with MBEPB's objective,**
- b. enter into a contract with any vendor providing vending machine services on MSDE's behalf, and**
- c. ensure that vending income is remitted to DORS in accordance with State law.**

Finding 10

Adequate procedures and controls were not in place for determining DORS client eligibility, for developing client treatment plans, and for approving the purchases of goods and services for clients.

Analysis

DORS had not established adequate separation of duties or compensating independent review and approval over client eligibility determinations, the related treatment plans, and the related purchases of goods and services on behalf of the clients up to \$5,000. Specifically, DORS management advised us that, in cases when the projected costs of an Individual Plan for Employment are expected to be less than \$5,000, Vocational Rehabilitation Technical Specialists with delegated authority have the ability to approve the plan and issue authorizations. Although certain procedures were established to review these functions (for example, reviewing a selection of case files on a test basis to ensure decisions were appropriate and payments were proper), the frequency and number of reviews was limited. Specifically, DORS management advised us that only two cases per specialist are randomly reviewed and approved by the district supervisor on a

monthly basis. In addition, these procedures did not ensure that all disbursements were subject to independent review and approval. Our test of transactions authorized without independent approvals did not disclose any apparent improper payments.

A similar condition was commented upon in our preceding audit report. DORS helps enable persons with physical or mental disabilities to live and work independently by providing medical and vocational evaluation, counseling and guidance, as well as training in vocations and independent-living skills. In addition, DORS provides reader and interpreter services, physical and mental restoration, and rehabilitation engineering to help persons with disabilities find and keep jobs. According to MSDE records, during fiscal year 2008, DORS client services expenditures totaled approximately \$12.8 million.

Recommendation 10

We again recommend that independent approval be obtained for the determination of client eligibility, for treatment plans, and for the purchases of goods or services on behalf of clients.

Information Systems Security and Control

Background

MSDE Information Technology (IT) operations are decentralized over six sites, including the MSDE Headquarters. Each site's IT operation functions as a separate entity, with each site having its own applications, network components, and program change control procedures. However, most of the network administration is performed by the Office of Information Technology (OIT), which is located at MSDE Headquarters. In conducting our audit, we selected the MSDE Headquarters for our general controls, security, and network reviews and focused our review on certain systems including the Child Care Administration Tracking System and the Annual Financial Reporting System, which is used to track grant payments to LEAs. OIT operates and maintains a wide area network spread throughout the various MSDE offices, which provides connectivity and Internet access to connected sites. OIT also maintains the email system, the MDSE website, and key applications.

Finding 11**An adequate information technology disaster recovery plan did not exist.****Analysis**

MSDE did not have an adequate information technology disaster recovery plan for recovering from disaster scenarios (for example, a fire). Specifically, MSDE's plan did not adequately address certain requirements of the Department of Budget and Management's *IT Disaster Recovery Guidelines*. For example, MSDE's plan did not adequately address restoration of network connectivity, strategic application recovery priorities, equipment replacement, and provisions for testing. Without a complete disaster recovery plan, a disaster could cause significant delays, for an undetermined period of time, in restoring operations above and beyond the expected delays that would exist in a planned recovery scenario.

Recommendation 11

We recommend that MSDE develop and implement a comprehensive information systems disaster recovery plan in accordance with the aforementioned *IT Disaster Recovery Guidelines*.

Finding 12**A default administrative database account unnecessarily had full access to a critical database.****Analysis**

A default administrative database account had full access to a critical database, which was used to process and track teachers' certifications. Since this account includes local server administrators by default, all local administrators on the database server had full administrative access to this database. In addition, anyone able to achieve local server administrator privileges would automatically have full administrative access to this database and could perform unauthorized modifications to critical data.

Recommendation 12

We recommend that access to this database be limited to only those individuals requiring such access.

Finding 13

Monitoring of security related events for critical network devices was inadequate, and several critical servers were improperly located in the network.

Analysis

Monitoring of security related events for critical network devices, that are capable of protecting the internal network from security risks, was inadequate and several critical servers were improperly located in the network. Specifically, we noted the following conditions:

- A network appliance, that was capable of consolidating security logs from numerous network devices for centralized analysis, monitoring and control, was not effectively used. In this regard, we were advised that MSDE did not perform any documented follow-up of unusual security events. In addition, the critical security related events did not include some significant firewall events (such as failed logon attempts) that should have been monitored. As a result, the effectiveness of the appliance to monitor critical network activity was limited.
- There was no documentation evidencing that reviews of the intrusion protection system's (IPS) log files and related email alerts were performed. In addition, we were advised that MSDE personnel were not adequately reviewing reports of security.
- Seven publicly accessible servers were located within the internal network rather than in a separate network zone. The Department of Information Technology's *State Network Security Standard* states that all publicly accessible servers must be placed in a protected network zone.

Recommendation 13

We recommend that MSDE

- a. effectively use the capabilities of the network appliance by capturing all critical firewall security related events;**
- b. perform timely reviews and investigations of critical security related events identified by the appliance and the IPS;**
- c. document all reviews of critical log files and security related reports; and**
- d. relocate its publicly accessible servers to a separate, protected network zone.**

Purchases and Disbursements

Finding 14

MSDE did not procure certain goods and services and make the related payments in accordance with State regulations.

Analysis

MSDE did not procure certain goods and services and make related payments in accordance with State regulations. For example, our review disclosed the following conditions:

- Certain contracts were approved after all, or a portion, of the services included in the contracts had been performed. Specifically, our test of 25 invoices totaling approximately \$3.1 million disclosed that, for 10 invoices totaling \$141,032, the beginning dates of services invoiced and paid for were prior to the related contract being approved. For example, on an invoice processed in August 2008, MSDE paid \$14,560 for services performed during the period from July through December 2007. However, the related contract was not approved by the Board of Public Works until April 2008. A similar condition was noted in our prior audit report.
- For 8 of the 25 aforementioned tested invoices totaling approximately \$1.2 million, MSDE had not obtained adequate documentation (such as time sheets to document hours worked) to support the amounts billed and paid. Similar conditions were noted in our two preceding audit reports.
- MSDE created certain purchase orders and/or redirected certain payments to vendors other than those on the related purchase orders. During fiscal years 2006 through 2008, MSDE processed 5,336 payments totaling \$17.3 million to vendors other than the one on the related purchase orders. Some of the payments were valid due to circumstances such as the vendor changing names after the purchase order was executed. However, our test of 16 of these payments totaling \$126,000 disclosed that 10 payments totaling \$66,000 were made to entities unrelated to the one on the approved purchase order. While the payments made under these purchase orders may have been valid, the processing of payments to different vendors under one purchase order circumvented certain online controls, such as proper tracking of vendor payments to ensure the total payments to a vendor do not exceed related contract amounts. This situation also could ultimately result in duplicate and/or erroneous payments and/or the circumvention of control agency approvals. A similar condition was noted in our preceding audit report.

Recommendation 14

We recommend that MSDE

- a. ensure that contracts are prepared and approved before the related work is performed (repeat);**
- b. obtain adequate documentation to document the work performed and to support the amounts billed (repeat);**
- c. create only valid purchase orders (repeat); and**
- d. identity all payments redirected to a vendor other than the one on the related purchase order, determine the propriety of the transactions, and take appropriate corrective action.**

Nonpublic Special Education Costs

Finding 15

Certain LEA reported expenditures used by MSDE to calculate State funding for nonpublic special education were not verified.

Analysis

Prior to fiscal year 2008, MSDE did not have a process in place to adequately verify expenditures reported by LEAs used to calculate State funding for nonpublic special education. MSDE reimburses LEAs for a portion of nonpublic special education costs based on the actual costs of these services reported by the LEAs. MSDE management advised us that, for fiscal year 2008 activity, it started verifying all expenditures reported by the LEAs with data received independently from the nonpublic schools but that, in prior years, expenditures were only verified on a test basis.

However, our review disclosed that the reviews performed for fiscal year 2008 were not completed as of the time of our review in October 2008 and the reviews in prior years were not sufficient to ensure all payments were proper. In this regard, our review of State reimbursements during fiscal years 2006 through 2007 for 15 students disclosed that for 5 students, for which the State reimbursed the LEAs \$107,776, the amount reported as paid by the LEAs (and that was reimbursed by MSDE) was \$75,000 more than the amount reported as received by the respective nonpublic schools. This difference was not adequately investigated and resolved by MSDE. During fiscal year 2008, the State reimbursed LEAs approximately \$120 million for nonpublic special education services.

Recommendation 15

We recommend that MSDE

- a. reconcile expenditures reported by the LEAs with corresponding amounts reported by the schools in a timely manner, and**
- b. investigate and resolve any noted discrepancies including recovering any overpayments.**

Equipment

Finding 16

Equipment records were not maintained in accordance with the Department of General Services' *Inventory Control Manual*.

Analysis

MSDE did not maintain its equipment records in accordance with the Department of General Services' (DGS) *Inventory Control Manual*. MSDE maintained separate inventory records for equipment located at its headquarters and at DORS. Our review of MSDE's procedures and controls at these locations disclosed the following conditions:

- The DORS control account which, according to MSDE records, accounted for equipment totaling approximately \$8.5 million, was generated from the same source data used to post the detail records. As a result, the control account did not provide an independent control over amounts recorded in the detail records.
- Approximately 9,400 of the 23,300 items recorded on the MSDE headquarters' detailed records (including approximately 3,700 items identified during our preceding audit) lacked critical information, such as the value of the equipment. In addition, numerous items lacked other information such as purchase date, purchase order, and serial numbers. MSDE management advised us that it was in the process of gathering the missing information and that the detailed records should be completed by December 2009.

The DGS *Inventory Control Manual* requires that a control account and detail records be independently maintained to properly reflect all transactions for all categories of property. The value of MSDE's equipment, including DORS equipment, as of June 30, 2008 as reported to DGS totaled approximately \$29.3 million. Similar conditions have been commented upon in our four preceding audit reports dating back to 1998.

Recommendation 16

We again recommend that MSDE comply with the *Inventory Control Manual* requirements.

Audit Scope, Objectives, and Methodology

We have audited the Maryland State Department of Education (MSDE) for the period beginning July 1, 2005 and ending June 30, 2008. The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

As prescribed by the State Government Article, Section 2-1221 of the Annotated Code of Maryland, the objectives of this audit were to examine MSDE's financial transactions, records and internal control, and to evaluate its compliance with applicable State laws, rules, and regulations. The areas addressed by the audit included grants for aid to education to local education agencies (including the Bridge to Excellence program), other educational grants and contracts, child care programs, teacher certification, payroll, and certain activities of the Division of Rehabilitation Services. We also determined the status of the findings contained in our preceding audit report on MSDE, and, as a result of an organizational change, the status of all findings included in our preceding audit report on the Department of Human Resources – Child Care Administration and the status of one finding included in a preceding audit report on the Department of Human Resources – Social Services Administration.

In planning and conducting our audit, we focused on the major financial-related areas of operations based on assessments of materiality and risk. Our audit procedures included inquiries of appropriate personnel, inspections of documents and records, and observations of MSDE's operations. We also tested transactions and performed other auditing procedures that we considered necessary to achieve our objectives. Data provided in this report for background or informational purposes were deemed reasonable, but were not independently verified.

Our audit did not include an evaluation of internal controls for federal financial assistance programs and an assessment of MSDE's compliance with federal laws and regulations pertaining to those programs because the State of Maryland engages an independent accounting firm to annually audit such programs administered by State agencies, including MSDE.

MSDE's management is responsible for establishing and maintaining effective internal control. Internal control is a process designed to provide reasonable assurance that objectives pertaining to the reliability of financial records,

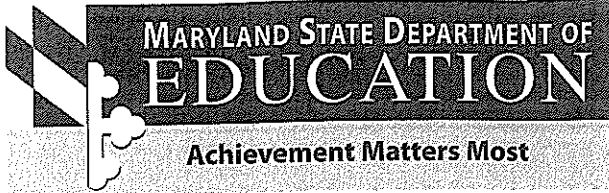
effectiveness and efficiency of operations including safeguarding of assets, and compliance with applicable laws, rules, and regulations are achieved.

Because of inherent limitations in internal control, errors or fraud may nevertheless occur and not be detected. Also, projections of any evaluation of internal control to future periods are subject to the risk that conditions may change or compliance with policies and procedures may deteriorate.

Our reports are designed to assist the Maryland General Assembly in exercising its legislative oversight function and to provide constructive recommendations for improving State operations. As a result, our reports generally do not address activities we reviewed that are functioning properly.

This report includes findings relating to conditions that we consider to be significant deficiencies in the design or operation of internal control that could adversely affect MSDE's ability to maintain reliable financial records, operate effectively and efficiently, and/or comply with applicable laws, rules, and regulations. Our report also includes findings regarding significant instances of noncompliance with applicable laws, rules, or regulations. Other less significant findings were communicated to MSDE that did not warrant inclusion in this report.

MSDE's response to our findings and recommendations is included as an appendix to this report. As prescribed in the State Government Article, Section 2-1224 of the Annotated Code of Maryland, we will advise MSDE regarding the results of our review of its response.



Nancy S. Grasmick
State Superintendent of Schools

200 West Baltimore Street • Baltimore, MD 21201 • 410-767-0100 • 410-333-6442 TTY/TDD

August 19, 2009


Mr. Bruce A. Myers, CPA
Legislative Auditor
Office of Legislative Audits
301 West Preston Street
Baltimore, Maryland 21201

Dear Mr. Myers:

Enclosed is the Maryland State Department of Education (MSDE) responses to the draft audit report for the period beginning July 1, 2005 and ending June 30, 2008. We certainly appreciate the efforts of your audit staff in providing us with recommendations for improvement and developing a cooperative relationship with our agency personnel.

Please be assured that this Department is giving significant attention to all of the items identified in the audit report. Should you have any additional questions or need any additional clarification, please contact me at (410) 767-0462 or Ms. Suzanne Ayres, Director of Audit at (410) 767-0104. Again, thank you for your assistance.

Sincerely,


Dr. Nancy S. Grasmick
State Superintendent of Schools

NSG/SA/dgn

Enclosure

c: Dr. John E. Smeallie
Suzanne Ayres
Richard McElroy

Maryland State Department of Education

Response to Legislative Audit Report

For the Period of: 07/01/05 to 06/30/08

Finding 1

Certain aspects of the loaned educator program as presently implemented appear to be in conflict with State law or regulations.

Recommendation 1

We recommend that MSDE

- a. enter into loaned educator contracts with local school systems to obtain the services of employees of the local school systems only on a temporary basis; and**
- b. obtain required signatures on each loaned educator contract, and ensure that the contracts are filed as required by State regulations.**

* **MSDE RESPONSE:** MSDE disagrees with the Office of Legislative Audits Finding that the use of loaned educators “appears to be in conflict with State law and regulation.” MSDE sought and on June 1, 2009 received an Attorney General’s Opinion which held that the use of loaned educators was legal. The Attorney General opined that MSDE could employ loaned educators within temporal limits. This was the first time that such limits were placed on loaned educators. MSDE has used loaned educators to fulfill professional functions for over 30 years; during that course of time, some loaned educators worked at MSDE for extended periods. During this audit, for the first time in 30 years, the auditors questioned the legality of utilizing loaned educators. Since receiving the Attorney General’s Opinion, MSDE has taken steps to begin converting appropriate loaned educator functions to regular positions.

Some contracts for fiscal year 2009 did not have all signatures and some were not obtained timely; however, during the period in which these contracts were being finalized, cost containments implemented through action by the Board of Public Works became an urgent priority, and budgetary considerations – including some program funds for loaned educators –were in flux. MSDE concurs that all signatures should be present in a timely way on the contract documents.

Regarding Recommendation 1a: Going forward and consistent with requirements contained in the April, 2009 *Joint Chairmen’s Report*, MSDE will provide a report on the number of loaned educator contracts and any conversion of these personnel to regular positions to the General Assembly by December 15, 2009. Additionally, MSDE will enter into contracts with local education agencies for new loaned educators only for special, short-term projects in which local talent is required. MSDE is already providing necessary notification to the budget committees in special circumstances prior to entering into any new loaned educator contract.

Regarding Recommendation 1b: MSDE has implemented a corrective action plan to ensure that required signatures are obtained on contracts in a timely manner.

* See Appendix B for related auditor comment.

The Agency has reinforced with Divisions and with Human Resources and Procurement staff that the loaned educators should not be allowed to start unless all signatures are in place. As part of MSDE's process of continuous improvement, internal controls have been strengthened to ensure that a loaned educator should not begin work until contracts have been fully completed with all required signatures. As of July, 2009, all loaned educator contracts have been fully completed by local school systems with their required signatures. Similarly, as of August, 2009, all remaining required signatures are in place. Articulated process steps with clearly defined roles for the Division of Business Services, the Office of Human Resources, and Division Heads will ensure a systematic monitoring of loaned educator agreements commencing in January of each fiscal year and resulting in completed contracts by July of each new fiscal year.

Finding 2

The loaned educator program, as currently implemented, raises concerns regarding the applicability of the State's financial disclosure requirements and possible conflict of interest issues under the Maryland Public Ethics law.

Recommendation 2

We recommend that MSDE obtain a formal opinion of the State Ethics Commission regarding the applicability of the financial disclosure requirements to loaned educators and possible conflict of interest issues under the Maryland Public Ethics law.

- * **MSDE RESPONSE:** Before responding to the finding, MSDE wants to clarify that the following statement (part of the second sentence in the second paragraph of the Analysis Section) is inaccurate: “. . . although all 66 of these educators would have been required to file if they were State employees.” In fact, according to criteria included in the *Maryland State Ethics Commission Financial Disclosure Filer Identification Manual*, only a subset of loaned educators is required to file financial disclosure statements. MSDE requests that this portion of the Analysis be removed or modified in the Final report.

MSDE disagrees with Finding 2. MSDE is confident that no conflict of interest has arisen in the loaned educator program. MSDE requested from the Office of Legislative Audits contact information for the State Ethics Commission staff member mentioned in the analysis who advised that the nature of the arrangement between MSDE and the LEAs raises concerns with the applicability of the financial disclosure requirements and possible conflict of interest issues under the Maryland Public Ethics law. MSDE immediately contacted Mr. Robert Hahn, Executive Director of the Ethics Commission, to discuss those issues. Mr. Hahn

- * See Appendix B for related auditor comment.

explained that he spoke to the auditors in a general sense and indicated to them that – theoretically -- the dual relationship with an LEA and MSDE could impair a loaned educator in carrying out certain State duties. He explained that, if such a situation arises, it needs to be dealt with on a case-by-case basis. As to filing financial disclosure statements, Mr. Hahn noted that local school system employees file financial disclosure statements as directed by their own local boards. Some disclosure statements are as comprehensive as the State financial disclosure statements; some are much less comprehensive. He recommended adding to future loaned educator agreements, as appropriate, the requirement to file State financial disclosure statements along with a statement that the loaned educator is subject to the State Ethics law requirements. Mr. Hahn did not suggest that MSDE seek a formal ethics opinion, and MSDE believes a formal opinion is not necessary. In the FY 2011 Loaned Educator Agreements, MSDE will add the following terms:

- Loaned educators performing functions equivalent to those performed by MSDE employees required to file financial disclosure statements will file State financial disclosure statements; and
- Loaned educators are subject to the State Ethics law requirements

While some “Loaned Employee Request” forms contain initiating signatures of loaned educators, those forms are not contracts. As noted in the analysis and above, compensating controls (e.g., multiple MSDE representatives signing authorizations) are in place with regard to all aspects of the loaned educator engagement process. Additionally, organizational structure and internal controls ensure that similar protections are in place for programmatic and fiscal decisions. There is no reason that loaned educators, including those from the same LEA, cannot exercise supervisory control over subordinate loaned educators; this is analogous to both state and local organizational supervisory structure. MSDE administrative staff and the State Superintendent are always sensitive to ethics concerns, however. Therefore, process revisions are being instituted that will remove any potential for non-unique signatures at all levels for loaned educator authorizations and agreements. These have already been operationalized for some FY 2010 loaned educator agreements.

Finding 3

The extent and total cost of the loaned educator program were not specifically disclosed to the General Assembly’s budget committees and to the State Board of Education.

Recommendation 3

We recommend that MSDE disclose the full extent of the loaned educator program (including an annual listing of the number and cost of the loaned educators and the related salary information, including retirement costs paid by the State under the State Teacher Retirement System) to the General Assembly’s budget committees and to the State Board of Education.

- * **MSDE Response:** MSDE disagrees with the Finding. The Agency has been forthright in submission of budget requests to DBM for these contracts. All contracts have been fully disclosed through the comprehensive budgetary process and budget briefings to the General Assembly and its staff. To further clarify the budget presentation, we will require Division Heads, in developing their annual budget documents, to use the term “Loaned Educator” for these contracts and to designate the individual’s function. Additionally, these will be reported in a unique Agency expenditure object.

The use of loaned educators as noted above was presented and discussed with General Assembly budget committees during the 2009 Legislative Session, and extensive reporting was provided. Consistent with requirements contained in the April, 2009 *Joint Chairmen’s Report*, MSDE will provide a report on the number of loaned educator contracts and any conversion of these personnel to regular positions to the General Assembly by December 15, 2009. MSDE is already providing notifications to the budget committees in special circumstances prior to entering into any new loaned educator contract.

The Agency has provided information to the State Board of Education consistent with existing policy. It is beyond the scope of this audit to recommend specific methodology with regard to communication with the State Board of Education; however, in the interest of ongoing transparency, MSDE will work with the State Board to further assess what it deems an appropriate level of budget detail.

The Agency disagrees regarding the inclusion of Teacher Retirement system payments in the Loaned Educator costs. Retirement costs are not an expense to local school systems. Thus, these are not reimbursable costs. If MSDE included retirement costs in payments to local school systems, the local school systems would have to return that payment to MSDE. It would not be appropriate to reimburse a local school system for a cost it does not incur. It is not an additional cost to the State.

To develop and implement education policy and programs, it is essential for MSDE to acquire the services of individuals with expertise – and, most

* See Appendix B for related auditor comment.

importantly, Maryland school system-based experience – in curriculum alignment, assessment, leadership, certification, teacher quality, graduation requirements, etc. Obtaining the services of individuals who have specific and unique skills requires paying a competitive wage. It is a fact that local school system salaries are higher than State salaries. MSDE believes the money for loaned educators has been money well spent. MSDE has used loaned educators to fulfill professional functions for over 30 years. The use of loaned educators, in part, has allowed MSDE to attain Maryland’s position as the #1 public school system in the nation.

Child Care Programs

Finding 4

Inspections of child care facilities were not conducted as required.

Recommendation 4

We recommend that MSDE

- a. conduct inspections of child care facilities as required, and**
- b. use the available features on CCATS to maintain a comprehensive record of the inspections to help ensure all inspections are performed in a timely manner.**

MSDE Response: In addressing both issues of Recommendation 4, MSDE agrees that inspection of Child Care facilities need to be performed according to requirements specified by State regulations. Consequently, it has strengthened its controls and procedures in this area. Specifically, the agency has taken the following actions to provide assurance that reviews are conducted on a timely basis and that the available features of CCATS are utilized to achieve this objective:

- A directive, effective May 1, 2009, was issued by the Director for the Office of Child Care to all Licensing Staff requiring that the results of inspections be entered into CCATS within ten days of the inspection. This action will ensure that all inspections are appropriately documented for easy tracking within CCATS. Compliance with this requirement is being monitored during scheduled MSDE reviews of Regional Offices.
- As of May 1, 2009, the Chief of the Licensing Branch began to reinforce the importance of entering inspection results into CCATS on a timely basis and will continue to do so via the following communication channels:
 - a. Monthly Regional Manager meetings
 - b. Through MSDE’s Licensing Training coordinator
 - c. Monthly CCATS user group meetings.

- Licensing Staff will use CCATS reports (including the CCATS 052 Report: - Continuing Licenses - Inspection Tracking Report) to monitor performance and ensure timely scheduling of appropriate inspection visits. Compliance with this requirement is being monitored during scheduled MSDE reviews of Regional Offices.

MSDE employs a total of 87 licensing specialists and 20 lead licensing specialists state-wide for a total of 107 specialists who have responsibility for conducting inspections of child care facilities. There are currently 11,486 child care facilities, 2,737 child care centers and 8,749 family child care homes. Each facility is inspected three times during a two-year period. At a minimum that means a total of 34,458 inspection visits during the two years, resulting in an average of 17,229 routine inspections per year. Lead specialists carry a reduced case load due to additional responsibilities. Based on the number of facilities alone the case to specialist ratio is 1:107. When the reduced case load criteria assignment for a lead specialist is factored in, the case load per specialist becomes 1:112. The National Association for the Education of Young (NAEYC) “believes that, on the average, regulators’ caseloads should be no more than 75 centers and large family child care homes or the equivalent; NAEYC recommends 50 as a more desirable number.”

Finding 5

Timely monitoring of the LDSSs was not performed to ensure the propriety of eligibility determinations and related payments, and procedures had not been established to verify certain child care provider billing information.

Recommendation 5

We recommend that MSDE

- a. conduct timely monitoring of the LDSSs to ensure the propriety of POC eligibility determinations and related payments; and**
- b. review, at least on a test basis, POC attendance records maintained by the providers to verify the amounts invoiced.**

* **MSDE Response:** Before responding to the Recommendation, MSDE wants to clarify that the following statement included in the second bullet point of the Analysis Section is inaccurate: “MSDE management advised us that each provider maintains attendance records and that an authorized adult must sign in and out for each child.” The inclusion of the statement “that an authorized adult must sign in and out” has subsequently been found to be incorrect, and MSDE requests that this portion of the statement be removed in the Final Report.

* See Appendix B for related auditor comment.

Regarding Recommendation 5a: The Child Care Subsidy Branch, through a Circular Letter, has developed monitoring procedures under which the Local Departments of Social Services (LDSS) are reviewed to assure adherence with State and Federal regulations and policy. The procedure outlines the process (with no time-frame specified) for reviews to be conducted. There is no mandate, regulation, or policy that requires MSDE to conduct these reviews according to an 18-month schedule. The agency concurs that the second-level reviews of the Local Departments of Social Services (LDSS) should be conducted in a timely manner. Prior to February 11, 2008, not all reviews were made within the self-imposed time-frame due to the need to assign the five Child Care Subsidy (CCS) employees to perform testing regarding the implementation of the CCATS system. Consequently, due to the resulting staff shortage, the reviews were temporarily suspended. To address this situation, a schedule was developed during January 2008, that reflected planned LDSS reviews based on an 18-month review period. Since that time, MSDE has performed the reviews on a timely basis and has utilized a tracking log to monitor that reviews were performed within the self-imposed 18-month requirement. Also, as a result of this audit, on October 22, 2008, a written policy regarding the need to perform these reviews within the 18-month period was developed and placed in the Purchase of Care (POC) Comprehensive Program Review Desk Guide. In compliance with the written policy, MSDE has developed a schedule of LDSS reviews through the end of calendar year 2009. Completing reviews according to this schedule will help to ensure the propriety of POC eligibility determinations and related payments; it will also ensure that they are performed on a timely basis.

Regarding Recommendation 5b: Modifications to Child Care Regulations (COMAR 13A.15.03.03B & 13A.16.03.03A(2)) are being developed that will require that attendance sheets of children who attend Child Care Centers and Family Homes be signed by the child's guardian. It is expected that these new regulatory requirements will be effective on or about January 4, 2010. Also, at this time, the Child Care payment function will be reassigned from the LDSSs to an outside contractor with MSDE vetting the contract. Consequently, once the modified regulations have been implemented, child care payments will only be made by the vendor after a comparison is made between the signed invoice and attendance sheets. Coincidentally, MSDE will begin performing a verification of a 10 % sample of payments by placing phone calls to the child's guardian to verify attendance information on which the payments were made. Any differences will be investigated, resolved, and billing adjustments made. MSDE will retain documentation regarding this verification process. MSDE will also perform the phone call verification procedures for Informal Child Care providers, to which the revised regulations will not apply.

Finding 6

Access to critical system functions in CCATS was not sufficiently restricted or controlled.

Recommendation 6

We recommend that MSDE

- a. restrict access to critical system functions in CCATS to individuals who require such access to perform their job duties, and**
- b. ensure that employees with the capability to create licenses not also have the ability to approve the transaction.**

MSDE Response: Regarding Recommendation 6a: During the development of CCATS by the Department of Human Resources, a security matrix was developed to identify the roles (job functions) within the system and tasks (permissions) that can be performed by each role. The security matrix was originally established prior to system implementation at the Department of Human Resources in 2003 and was reviewed and updated during 2005 and 2007. By December 31, 2009, MSDE will conduct another review of the security matrix to determine that tasks (permissions) are appropriately assigned to roles (job functions), thereby providing assurance that CCATS users only have access to the functions needed to perform their job responsibilities. As a result of the review, MSDE will modify the security matrix and the CCATS security database with any identified designation and/or permission modifications. In the future, similar reviews will be performed and documented on an annual basis.

Regarding Recommendation 6b: MSDE has conducted a review of the security matrix and identified four roles (job functions) that currently have the ability to create and approve a license. The four CCATS roles are: licensing supervisor, regional manager, Office of Licensing, and Office of Program Standards. These functions were established to ensure continuity of operations in the absence of the regional manager. The regional offices carry high caseloads, and many have large backlogs. The offices cannot afford to delay the issuance of licenses when a regional manager is on vacation or is absent for any length of time. In addition, staffing shortages exacerbate the situation. MSDE has examined the segregation of duties issue. A modification to the CCATS system is required to ensure approved roles within the system have the appropriate segregation of duties for license creation and approval. MSDE has commenced discussions with the vendor regarding the necessary software changes and anticipates that they will be implemented within CCATS no later than July 1, 2010. This estimate is based on past experience in making changes to the system, which require: analysis of the issue, coding changes, testing, and migration. In the interim, MSDE has

developed manual procedures that will provide a temporary control to ensure that employees with the capability to create a license do not also have the ability to approve the license. These procedures were issued and became effective on August 5, 2009. Adherence to the procedures will be monitored through regional office reviews and the tracking functions within CCATS.

The Child Care Automated Tracking System (CCATS) is a comprehensive data management and tracking system with a variety of security levels defined within the system and set-up to ensure process integrity. A full review of the security log-on ids was conducted during May, 2009. According to records of CCATS log-on information there are a total of 28 licensing supervisor permissions and 15 regional manger designations within CCATS. While this number is greater than the actual number of licensing staff, CCATS has three distinct components – production (the actual live data system), UAT (User Acceptance Testing environment – not a live system), and Training (used for training staff – also not a live system). Therefore, there are permissions that have been established for UAT and Training that would allow staff multiple permissions to conduct testing and training activities. These permissions cannot be used to gain access to the production environment. MSDE is of the opinion that Admin permissions assigned to staff (including the vendor) are appropriate and required so that these individuals can effectively manage the system and perform their job responsibilities.

Federal Funds

Finding 7

MSDE recorded unsubstantiated federal fund revenues totaling approximately \$13.3 million at June 30, 2008.

Recommendation 7

We recommend that MSDE

- a. ensure that all accrued revenues are properly supported (repeat), and**
- b. continue working with DBM to address the funding of this deficit.**

* **MSDE Response:** Regarding Recommendation 7a: MSDE disagrees with the identification of this item as a repeat finding. As indicated by the OLA, this fund revenue was a key element of a finding in our previous audit. Since that time, MSDE complied with all of the recommendation in the report. MSDE worked with DHR to identify alternative funding for the TANF funds that were identified

* See Appendix B for related auditor comment.

in DHR's state plan that were not recovered on behalf of MSDE. MSDE worked with DBM and the Office of the Comptroller to establish a Special revenue account and identified audit recoveries as a source to offset the unrecovered funds. *MSDE received approval from DBM to use this process.* Subsequently, this solution was reversed as a valid option. Once again, MSDE complied with the decision, discontinued the previously recommended and approved practice, and funds were reverted. MSDE will continue to seek deficiency funding for these unrecovered funds, but does not have fiscal authority to correct this situation independently.

MSDE does not disagree with the facts of the finding as presented by the OLA. However, the dispute is with the identification of this situation as a repeat finding. By definition a repeat finding is when a situation happens again, and when the agency has not taken corrective action to address a previously identified weakness. That is not the case here. There were no additional unsupported revenues identified in our audit report. Furthermore, MSDE does not have the authority to resolve this issue independently.

Regarding Recommendation 7b: MSDE has worked and will continue to work with DBM to resolve this issue.

Family Support Centers

Finding 8

Adequate monitoring procedures were not in place for a prior contract to manage family support centers and a new \$15.9 million management agreement included limited oversight requirements.

Recommendation 8

We recommend that MSDE

- a. verify the propriety of the previous vendor invoices, including amounts paid to FSCs, and recover any overpayments detected;**
- b. conduct site visits on a test basis to verify that the parties provide the agreed-upon services; and**
- c. amend the grant agreement to ensure that requirements for adequate oversight provisions, including appropriate monitoring procedures over the activity of the FSCs, are included.**

- * **MSDE Response:** Before responding to the three issues in the Recommendation, MSDE requests that a modification be made in the Final Report regarding the following statement contained in the second paragraph of the Analysis Section: “MSDE management advised us that it used a grant to provide the vendor more flexibility in managing the Family Support Centers (FSC).” Actually, MSDE indicated during fieldwork that: “MSDE used a grant to provide it more flexibility in managing the Friends of the Family (FOF).” MSDE requests that this verbiage be reflected in the Final Report.

Regarding Recommendation 8a: While no evidence of overpayments was identified during the audit, MSDE, as discussed recently with the Office of Legislative Audits, will review the propriety of a sample of Friends of the Family and Family Support Centers FY2008 invoices. The review of the sample of Family Support Center invoices will occur during the site visits discussed in MSDE’s response to Recommendation 8b. MSDE will perform this limited testing for future years.

Regarding Recommendation 8b: MSDE agrees with this recommendation and will strengthen its desk monitoring reviews by monitoring Friends of the Family/Family Support Centers to verify performance data and center activities reported by Friends of the Family on a test basis in conjunction with the regularly planned fall and spring on-site monitoring visits for the statewide network of Judy Centers. The Judy Center on-site monitoring team will include one person designated for the sole and specific purpose of records review at the Family Support Center. An MSDE staff member will meet periodically with representatives of Friends of the Family to verify that activities are taking place in accordance with the grant requirements.

Regarding Recommendation 8c: MSDE agrees with this recommendation and will update the grant agreement to include the following:

- Requiring the vendor (Friends of the Family) to maintain the current level of monitoring and oversight of the Family Support Centers as the new legal entity Friends of the Family/Maryland Committee for Children.

Friends of the Family (FOF), having recently undergone a rigorous due diligence process to merge their agency with the Maryland Committee for Children (MCC), has had an external review of all programs and procedures pertaining to the operation of Family Support Centers and the FOF agency. The existing grant agreement between MSDE and FOF/MCC requires FOF/MCC to act as an Intermediary Agency to provide management services for Maryland’s network of community based Family Support Centers and In-Home Intervention Programs. The Intermediary services include grants management, technical assistance, monitoring,

- * See Appendix B for related auditor comment.

training, and evaluation. According to the Intermediary for Family Support Centers Grant agreement, the Intermediary must inform the MSDE Grant Manager of the disbursement of grants/funds to the local Family Support Centers in the form of quarterly and annual reports. The Intermediary also performs the following functions;

- Acts as the liaison between community organizations and the Maryland State Department of Education, Division of Early Childhood Development;
 - Monitors and evaluates Family Support Center functions including fiscal responsibilities;
 - Compiles and prepares all statistical reports, summaries and evaluations pertinent to the operation of the Family Support Centers and required components which are presented to the Maryland State Department of Education Grant Manager quarterly, annually and/or upon request.
- Ensuring that FOF/MCC will obtain annual independent audits from each of the FSCs, including invoice verification, which will be made available to the MSDE grant monitor.
 - Requiring the vendor to report to MSDE any deficiencies found during the independent audits of FSCs to ensure that deficiencies may be resolved and any overpayments recovered.

Division of Rehabilitation Services

Finding 9

Certain aspects of the Maryland Business Enterprise Program for the Blind were not in accordance with State laws and regulations, and there was no assurance that blind individuals benefited as intended.

Recommendation 9

We recommend that MSDE

- a. consult with counsel and DGS regarding the requirement to use BISM for these services and determine the most appropriate method for providing vending services in accordance with MBEPB's objective,**
- b. enter into a contract with any vendor providing vending machine services on MSDE's behalf, and**
- c. ensure that vending income is remitted to DORS in accordance with State law.**

- * **MSDE Response:** Prior to addressing the three issues in the Recommendation, MSDE requests that a misstatement of fact contained in the first paragraph of the Analysis Section be corrected. Specifically, the Analysis states that “DORS delegated the operation of the vending machines to Blind Industries and Services of Maryland (BISM).” This statement is incorrect. Rather, DORS contracted (not delegated) the operation of the vending machines and requests that this misstatement be corrected in the Final Report.

Regarding Recommendation 9a: It is under the legal purview of the Department of General Services (DGS), not MSDE, to determine procurement priorities (COMAR 21.11.05). On April 15, 2009, MSDE consulted with its counsel and DGS regarding BISM’s continued eligibility for its procurement priority under state law. While counsel to DGS stated that he considered BISM out of compliance with the conditions of its procurement priority, DGS has not yet revoked BISM’s priority; in fact, BISM is still listed on the DGS website as having this procurement authority. Upon action by the Department of General Services to remove automated vending services from BISM’s product and services list, MSDE will immediately cease honoring BISM’s procurement priority.

Regarding Recommendation 9b: MSDE has initiated a review of all contracts within the Maryland Business Enterprise Program for the Blind to assure that all contracts are current and up-to-date. All contracts will be awarded and up-to-date by the end of the calendar year.

Regarding Recommendation 9c: The Department disagrees with the analysis that vending machine income is not being remitted to DORS in accordance with State law. In the third bullet, the definition of vending machine income cited in the report is inaccurate/incomplete. COMAR 13A11.04.02(B)(28) states, “‘Vending machine income’ means receipts (other than those of a blind vendor) from vending machine operations on federal, State, county, municipal or private property after deducting the costs of goods sold (including reasonable service and maintenance costs in accordance with customary business practices of commercial vending concerns).” The analysis is therefore incorrect, as the income derived from the operation of the automated vending machines was received by MSDE in a manner consistent with customary business practices of commercial vending concerns and was therefore in compliance with State law. MSDE entered into a contract on April 1, 2009 with an independent accounting firm (Kahler and Associates) to conduct audits of its contracts with providers of automated vending services in order to assure that commissions due to MSDE are paid accurately. The audits of these companies, which include BISM, will be completed by October 31, 2009.

- * See Appendix B for related auditor comment.

Finding 10

Adequate procedures and controls were not in place for determining DORS client eligibility, for developing client treatment plans, and for approving the purchases of goods and services for clients.

Recommendation 10

We again recommend that independent approval be obtained for the determination of client eligibility, for treatment plans, and for the purchases of goods or services on behalf of clients.

- * **MSDE Response:** MSDE disagrees with Finding 10 and also with the designation as a repeat finding. The Finding implies that controls and procedures in this area are materially deficient, which is not the case. The following matrix is presented to clarify the functions cited in the finding that are performed by the Division of Rehabilitation Services (DORS) Rehabilitation Technical Specialist and Vocational Specialist 1 and 2 positions and the type of independent (supervisory) review and approval performed for the functions they perform.

Function	Rehabilitation Technical Specialist (88 positions) With Limited Delegated Authority		Vocational Rehabilitation Specialist I or II (60 positions) No Delegated Authority
	Transaction < \$5,000 Supervisory Approval Required?	Transaction > \$5,000 Supervisory Approval Required?	All Transactions Supervisory Approval Required?
Eligibility Determination Decisions	Yes	Yes	Yes
Development of Individual Plan for Employment (IPE)	No*	Yes	Yes
Development of Authorization (Requisition)	No*	Yes	Yes
Approval of goods and services	Yes	Yes	Yes
* Independent/supervisory review is performed on a limited sample basis based on the implemented corrective action from the last audit.			

* See Appendix B for related auditor comment.

The following points provide additional information associated with DORS controls and procedures regarding independent (supervisory) review performed in advance of the execution of the function.

- The inclusion of “eligibility decisions” by the auditors in the finding is incorrect. All eligibility decisions, for all rehabilitation specialists regardless of classification level, are reviewed by an independent party (the rehabilitation supervisor). This review is performed concurrent with the category assignment within the Division’s order of selection procedures.
- Only DORS rehabilitation technical specialists (Master’s level counselors with 2 or more years of experience) have limited delegated authority, within specific dollar limit thresholds, to: (1) initiate and sign Individual Plans for Employment (IPE); and (2) issue authorizations for services and commodities that are consistent with the signed IPE. All other rehabilitation specialists (VR specialists I and II) have a 100% review of all IPEs and authorizations.
- Prior to acceptance and prior to authorizing payment for goods and services, all (100%) case service authorizations are reviewed and approved by a second party who has neither approved the IPE nor issued the authorization.
- The case review of records process implemented in response to the prior Legislative Audit involves a two-prong approach: central office and local office administration of case reviews. A formal review process is conducted of all counselors regarding eligibility determinations, plans, and purchases of goods and services to ensure compliance with State and DORS policies and procedures.

In addition, the following post-activity oversight and monitoring provide additional assurance that adequate procedures and controls are in place regarding the cited functions:

- External team case reviews are conducted by a team consisting of Central Office Staff Specialists, the Regional Director, and a Supervisor and Technical Specialist from a different region.
- In addition, monthly internal reviews are conducted by the unit Supervisor on all cases closed as “rehabilitated” in the previous month. In addition, two randomly selected active cases from all counselors in the unit with delegated authority are reviewed. The results are then forwarded to Regional Directors and Central Office for review. Results of either review will be factored into the Performance Review process.
- Maryland DORS policies and practices relative to delegated authorities for rehabilitation specialists are consistent with other state Vocational

Rehabilitation agencies and grounded in federal regulations [34 CFR 361.45(d)(3)(ii) Development of the individualized plan for employment and 361.13(c)(1)(i) and (iv) State agency for administration].

To address Finding 15 of the June, 2006 Office of Legislative Audits report, MSDE issued DORS Directive 07-23. This Directive provides satisfactory controls and procedures regarding the recommended approvals contained in this Finding. Specifically, the Directive requires that supervisors, on a monthly basis, review for each Rehabilitation Technical Specialist with delegated authority two randomly selected eligibility determinations, Individual Plan for Employment (IPE), and related purchase authorizations prior to approval by the Technical Specialists. In view of the other controls discussed above, MSDE feels that its current controls regarding the preparation of IPEs and authorizations by Rehabilitation Technical Specialists with delegated authority are satisfactory. In fact, the corrective action policy applied through Directive 07-03 was reviewed and accepted as part of the ongoing quality control process at a meeting with Office of Legislative Audits staff on July 20, 2007.

Finally, as noted in the Analysis Section, the auditors' testing of transactions authorized without independent approvals did not disclose any improper payments, thereby providing evidence that DORS controls and procedures are functional and are effective. In summary, MSDE does have adequate procedures in place for determining DORS client eligibility, developing client treatment plans (IPEs), and for approving related purchase of goods and services for clients.

Information Systems Security and Control

Finding 11

An adequate information technology disaster recovery plan did not exist.

Recommendation 11

We recommend that MSDE develop and implement a comprehensive information systems disaster recovery plan in accordance with the aforementioned *IT Disaster Recovery Guidelines*.

MSDE Response: MSDE agrees with the Finding. MSDE hired a vendor to assist in the development of its disaster recovery plan. The development is a multi-phase approach. Phase one resulted in the development of a plan based on

the *IT Disaster Recovery Guideline*. MSDE will initiate a second phase to revalidate the developed plan, strengthening and completing the information disaster recovery plan in accordance with the State's IT Disaster Recovery Guidelines

Finding 12

A default administrative database account unnecessarily had full access to a critical database.

Recommendation 12

We recommend that access to this database be limited to only those individuals requiring such access.

MSDE Response: The use of the default database administrative account cannot be removed globally, since doing so could potentially cause application systems malfunction. MSDE will analyze the technical feasibility of such a change by October 30, 2009. If feasible, access to the database will be limited to only those individuals requiring such access. As a compensating control, to prevent any unauthorized use, the local administrators group is monitoring the database.

Finding 13

Monitoring of security related events for critical network devices was inadequate, and several critical servers were improperly located in the network.

Recommendation 13

We recommend that MSDE

- a. effectively use the capabilities of the network appliance by capturing all critical firewall security related events;**
- b. perform timely reviews and investigations of critical security related events identified by the appliance and the IPS;**
- c. document all reviews of critical log files and security related reports; and**
- d. relocate its publicly accessible servers to a separate, protected network zone.**

MSDE Response: Regarding Recommendation 13a: MSDE is in the process of capturing all critical firewall security-related events that the current appliance is capable of capturing. This will be completed no later than September 30, 2009.

Regarding Recommendation 13b: MSDE is in the process of developing a more effective formal procedure for reviewing and investigating critical security-related events identified by the appliance and the Intrusion Detection System (IDS). The procedure will be completed and implemented no later than December 15, 2009.

Regarding Recommendation 13c: MSDE is in the process of developing a more effective formal procedure for documenting review of critical log files and security related reports. The procedure will be completed and implemented no later than December 15, 2009.

Regarding Recommendation 13d: MSDE will analyze the technical feasibility of moving any publicly accessible server not currently in the separate network zone to the separate network zone. Any identified server will be moved by March 31, 2010.

Purchases and Disbursements

Finding 14

MSDE did not procure certain goods and services and make the related payments in accordance with State regulations.

Recommendation 14

We recommend that MSDE

- a. ensure that contracts are prepared and approved before the related work is performed (repeat);**
- b. obtain adequate documentation to document the work performed and to support the amounts billed (repeat);**
- c. create only valid purchase orders (repeat); and**
- d. identify all payments redirected to a vendor other than the one on the related purchase order, determine the propriety of the transactions, and take appropriate corrective action.**

* **MSDE Response:** Regarding Recommendation 14a: MSDE has developed procedures to ensure that contracts are signed prior to the services being performed. In addition, discussion has been held with the Department's Executive Staff concerning the adherence to these procedures as well as reminding them of

* See Appendix B for related auditor comment.

the risk of personal liability to staff if services are provided prior to contract being approved.

Regarding recommendation 14b: MSDE has identified a standard Consultant Work Log Form that will strengthen and streamline this process across the Agency. The form complies with the General Accounting Division's Accounting Procedures Manual requirements. This process will be in place by December 31, 2009.

Regarding Recommendation 14c: The two cited payments totaling \$15,000 and associated with a vendor entitled "State of Maryland" were made prior to November 18, 2005, while fieldwork was being performed during the previous Legislative Audit and before MSDE was able to develop and implement corrective action.

Following the identification of State of Maryland purchase orders during the previous legislative audit, MSDE instituted additional control procedures. These procedures follow the Comptroller of the Treasury's General Accounting Division's Closing Instructions regarding the retention of General Fund appropriations via encumbrance for approved purchase orders, contracts, or other commitments for goods that have not been provided or for services that have not yet been rendered to the State. Specifically, at year end, the Division of Business Services (DBS) reviews all encumbrances to ensure that related Purchase Orders are created in accordance with State Closing Instructions. During the current audit period, several reviews were made of MSDE's year-end encumbrances, and no issues resulted. MSDE continues to follow State Closing Instructions to ensure that only valid purchase orders are created.

Regarding recommendation 14d: This issue was identified as a statewide weakness in the State accounting system (FMIS), which resulted in a directive from DBM requiring that change orders be developed to override a vendor on a purchase order. MSDE has fully implemented the procedures identified in the directive. Furthermore, MSDE will research and take appropriate action regarding the identified Purchase Orders.

Nonpublic Special Education Costs

Finding 15

Certain LEA reported expenditures used by MSDE to calculate State funding for nonpublic special education were not verified.

Recommendation 15

We recommend that MSDE

- a. reconcile expenditures reported by the LEAs with corresponding amounts reported by the schools in a timely manner, and**
- b. investigate and resolve any noted discrepancies including recovering any overpayments.**

* **MSDE Response:** MSDE disagrees that verifying the nonpublic special education costs for FY06 and FY07 on a sample basis resulted in overpayment. MSDE has investigated the possible \$75,000 overpayment related to the FY06 and FY07 billings for the five cited students. In response to the OLA's assertion, MSDE obtained copies of invoices from both the LEAs and the Nonpublic Schools for each of the 5 students cited. The amount reported by the LEAs to MSDE matched the actual invoice amounts for four of the students based on the documentation received from the LEAs and Nonpublic Schools. The LEA for the fifth student reported an amount that was less than the total tuition cost by one month. This resulted in the LEA not receiving reimbursement from MSDE for the one month not reported. Based on MSDE's internal reconciliation, it has been determined that an overpayment did not occur for any of the five cited instances; thus, MSDE disagrees with the statement "that this difference was not adequately investigated and resolved by MSDE."

During FY06-08, MSDE completed a "three-way" match of the total tuition cost between the MSDE Nonpublic Special Education Section, the LEA, and the Nonpublic Special Education Schools records for each fiscal year. In FY 08, MSDE revised the internal process from a 20 % sampling used for FY06 and FY07 to verifying 100% of the billing received from the LEAs and the nonpublic special education schools to strengthen the verification process. Any differences resulting from the FY 08 "three-way" verification process were investigated, resolved, and reflected in the final payments to the LEAs. This timely reconciliation was completed October 18, 2008. Also, as an additional control, the State Aid Audit Program tests, on a sample basis, the accuracy of expenditures reported to MSDE by the LEAs.

Equipment

Finding 16

Equipment records were not maintained in accordance with the Department of General Services' *Inventory Control Manual*.

* See Appendix B for related auditor comment.

Recommendation 16

We again recommend that MSDE comply with the *Inventory Control Manual* requirements.

MSDE Response: The Department agrees with the Finding and Recommendation and has developed corrective action plans to address the two cited conditions. Regarding the first cited condition, DORS currently has established written procedures that to a large extent already follow DGS inventory guidelines. DORS procedures require an independent monthly check between summary data obtained from a FMIS report to the detail records that are posted to its inventory database from originating accounting documentation. A Property Control Summary Report is also prepared, which follows the structure prescribed by Appendix 1 Section VI of the DGS Inventory Control Manual. To strengthen DORS existing written procedures, by October 1, 2009, DORS will develop a monthly reconciliation report that will reconcile the inventory value between the Property Control Summary Report and its inventory database. Any differences will be investigated and resolved. Furthermore, additional inventory classifications will be added to the Property Control Summary Report. Regarding the second cited condition, the lack of critical information in the Headquarters inventory records has been mentioned in prior audit reports. However, MSDE notes that substantial improvement has been made regarding this issue as a result of the implemented corrective action. The remaining missing critical information is in the process of being updated by the Fixed Asset Section in the Division of Business Services. Our goal is to have the matter completed by December 31, 2009, at which time the missing information will be populated in the Headquarters inventory records database. Additionally, the importance of adhering to DGS' Inventory Control Manual requirements has been reemphasized with the two units that maintain MSDE's inventory records.

APPENDIX B

Auditor's Comments on Agency Response

The Maryland State Department of Education (MSDE) disagreed with certain of our comments in its response (Appendix A) to the audit report. We continue to believe that the comments made in the report are valid. In accordance with State law, all areas of disagreement will be addressed through separate correspondence between this Office and MSDE. Auditor's comments are presented below about MSDE's responses to certain of the findings in this report.

Finding 1: Our report did not state that the use of loaned educators was illegal but that the actual use appeared to be in conflict with State law and regulation. This position was ultimately supported by the Attorney General's Opinion that was obtained subsequent to the conclusion of our audit fieldwork. As noted in our audit report, the Attorney General Opinion stated that loaned educators could be used to obtain services on a temporary basis and that if a loaned educator is to work for MSDE for more than a brief period, the individual should become a State employee. While the MSDE response implies that this was the first time such limits were placed on loaned educators, the law has not changed.

Finding 2: Based on our review of Section 15 of the State Government Article of the Annotated Code of Maryland (Maryland Public Ethics Law), we continue to believe that all 66 loaned educators would be required to file financial disclosure statements based on their generally high salaries and the nature of their duties at MSDE. Also, our report did not state that conflicts of interest existed but that the loaned educator program raised concerns regarding possible conflict of interest issues.

Finding 3: MSDE's response stated that it had been forthright in submission of budget requests and that all loaned educator contracts had been fully disclosed through the budgetary process. We continue to believe that MSDE needs to improve disclosure of the loaned educator contracts. The need for more disclosure is evidenced by the *Joint Chairmen's Report* request. Regarding retirement costs, we believe such costs do not need to be included in the contracts with the local school systems but should be disclosed so the total costs of the loaned educator contracts are transparent.

Finding 5: At the time of the audit, we were advised that each child care provider must maintain attendance records and an authorized adult must sign each child in and out. MSDE's response indicates that this was subsequently found to be incorrect. In any case, MSDE needs to establish procedures to independently verify attendance reported on provider invoices to determine the propriety of vendor invoices.

Finding 7: Although MSDE made efforts to address the conditions noted in the prior report, it is our judgment that due to the continued existence of a deficit balance and the recordation of unsupported accrued revenues that the prior conditions are repeated.

Finding 8: Minor wording changes, which do not affect the substance of the finding, were made to the audit report to address MSDE's concern.

Finding 9: MSDE disagreed with certain of our comments in its response to this audit report finding. We continue to believe that the comments made in the report are valid. For example, since the contract with BISM ended in 2002, we did not use the term "contracted". Also, the MSDE response recognizes that a commission was received instead of the net profits, which are required by State statute.

Finding 10: MSDE disagreed with certain of our comments in its response to this audit report finding. We continue to believe that the comments made in the report are valid. For example, MSDE could not provide us with evidence of the approvals noted in the response.

Finding 14: The two payments referred to in MSDE's response were not separately identified in the audit report.

Finding 15: Our audit report states that expenditures for nonpublic special education were not verified, but does not state that the lack of verification resulted in overpayments. Additionally, since the process in place during the course of the audit to investigate such differences was inadequate, MSDE did not investigate the differences between amounts it reimbursed and the amounts reported as received by the respective schools as related to five students until after we brought the matter to its attention. Consequently, the lack of overpayments does not negate the need for a verification process.

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