UTAH SCHOOLS FOR THE DEAF AND BLIND

Memorandum of Understanding with Utah State University – Sound Beginnings Program

Findings and Recommendations
For the Period July 1, 2014 through March 31, 2015

Report No. DBS-16-SP1

OFFICE OF THE
UTAH STATE AUDITOR

AUDIT LEADERSHIP:

John Dougall, State Auditor
Van Christensen, CPA, CFE, Audit Director
Julie Wrigley, CPA, CFE, Audit Supervisor
Tyson Plastow, Special Projects Senior Auditor

REPORT NO. DBS-16-SP1

August 2, 2016

Joel Coleman, Superintendent
Utah Schools for the Deaf and Blind
742 Harrison Blvd.
Ogden, Utah 84404

and

Dr. Karl White, Sound Beginnings Program
Utah State University
2620 Old Main Hill
Logan, Utah 84322

Dear Mr. Coleman and Dr. White:

We have performed the procedures described below related to a Memorandum of Understanding (MOU) between the Utah Schools for the Deaf and Blind (USDB) and the Sound Beginnings Program at Utah State University (SB). The procedures applied to the time period of July 1, 2014 through March 31, 2015.

1. We reviewed the invoices from SB and the disbursements made by USDB for compliance with the terms of the MOU.

2. We reviewed USDB's internal control over the disbursements to SB.

3. We reviewed USDB's and SB's compliance with certain requirements of the MOU.

Our procedures were more limited than would be necessary to express an audit opinion on compliance or on the effectiveness of USDB's internal control or any part thereof. Accordingly, we do not express such opinions. Alternatively, we have identified the procedures we performed and the findings resulting from those procedures. Had we performed additional procedures or had we made an audit of the effectiveness of USDB's internal control, other matters might have come to our attention that would have been reported to you.

Our findings resulting from the above procedures are included in the attached findings and recommendations section of this report. We feel that the findings are key internal control weaknesses or important compliance issues to USDB and the SB Program.

By its nature, this report focuses on exceptions, weaknesses, and problems. This focus should not be understood to mean there are not also various strengths and accomplishments. We appreciate the courtesy and assistance extended to us by the personnel of USDB and SB during the course of the engagement, and we look forward to a continuing professional relationship. If you have any questions, please contact one of the following individuals:

> Julie Wrigley, Audit Supervisor, at 801-538-1340 or jwrigley@utah.gov, or
> Tyson Plastow, Special Projects Senior Auditor, at 801-234-0544 or tplastow@utah.gov.

Sincerely,

Van H Christensen

Van Christensen, CPA, CFE
Audit Director
vchristensen@utah.gov
801-538-1394

cc: Stan Albrecht, President, Utah State University
Nicole Martin, Director, Sound Beginnings Program
Scott Jones, Deputy Superintendent of Operations, Office of the State Board of Education
Debbie Davis, Internal Audit Director, Office of the State Board of Education
Jodi Bailey, Chief Audit Executive, Internal Audit Services, Utah State University

UTAH SCHOOLS FOR THE DEAF AND BLIND

Memorandum of Understanding with
Utah State University – Sound Beginnings Program

FOR THE PERIOD JULY 1, 2014 THROUGH MARCH 31, 2015

TABLE OF CONTENTS

UTAH SCHOOLS FOR THE DEAF AND BLIND

Memorandum of Understanding with
Utah State University – Sound Beginnings Program

FINDINGS AND RECOMMENDATIONS
FOR THE PERIOD JULY 1, 2014 THROUGH MARCH 31, 2015

BACKGROUND AND OVERALL FINDINGS

Utah Code 53A-25b-303 states that the Utah Schools for the Deaf and Blind (USDB) is responsible for the education of the deaf and hearing impaired children within the state. In September 2010, USDB and the Sound Beginnings Program at Utah State University (SB) entered into a Memorandum of Understanding (MOU) whereby SB would provide, on behalf of USDB, early intervention, pre-school, speech/language pathology, and audiology services to children in the USDB North Division who elected to attend the SB program. In 2013 and 2014, USDB experienced a high level of turnover in its administrative staff, including the superintendent, associate superintendent, a director for the USDB North Division, and human resource director, and in June 2014 the new USDB Superintendent worked with SB to revise the original MOU. The new MOU was effective on July 1, 2014. Due to USDB's concerns that USDB was paying too much for the services, the following year USDB entered negotiations to further revise the MOU and reimbursement structure. Despite negotiations and mediation, USDB and SB did not come to an agreement, and the MOU was dissolved.

We examined the expenses under the MOU from July 1, 2014 through March 31, 2015 to determine whether payments from USDB to SB complied with the terms of the MOU. The MOU allowed salary and benefits of employees at SB to be funded under certain conditions, but did not allow indirect costs such as maintenance and operation of facilities. Ultimately, the MOU limited that amount of salary and benefit "…to the amount a comparable employee of USDB would receive." The MOU also required SB to obtain pre-approval of certain items such as pay rates.

SB and the new administration at USDB interpreted certain clauses of the MOU differently due to the vagueness in the MOU. It appears USDB failed to clearly communicate its expectations to SB, so SB operated on historic expectations. The language of the MOU may reasonably be understood to support either interpretation.

As an example, USDB pays its employees based on a 183-day academic work year. Salaries are pro-rated to a monthly rate. In years prior to the 2014-2015 academic year, SB obtained approval to provide services beyond the 183-day work year. SB employees received a higher pro-rated compensation due to additional days worked at a USDB comparable daily rate. SB could reasonably claim it paid its employees at daily rates limited by the amount a comparable USDB employee would receive. However, USDB could reasonably claim that SB did not have approval for and SB staff should not have worked the additional days in the 2014-15 academic year, and therefore, SB staff should not have received a higher pro-rated salary. Failures on the part of both entities to clearly communicate and review expectations led to a cost variance and the eventual cancelation of the MOU.

We used USDB's interpretations to calculate the staffing costs paid to SB for the nine months reviewed, and estimated a cost variance of $106,891. We recognize the specific amount is debatable due to vagueness in the MOU. The estimated variance was caused by the following factors which are detailed in the findings in this report.

- Staffing levels – USDB pre-approved higher staffing levels than comparable USDB caseload practices.
- Salaried rates – SB employees worked extended days, as noted above, and had higher monthly pro-rated rates.
- Control failures – USDB did not obtain sufficient evidence verifying that the costs incurred by SB were in compliance with USDB's understanding of the MOU prior to approving payments. If USDB had properly reviewed any one of the nine invoices related to the period we reviewed, they would have identified at least a portion of the variance in costs. Also, SB relied on implied rather than documented and explicit approval of pay rates and other items that required pre-approval or approval from USDB.
- MOU ambiguity - The MOU contained subjective and vague language regarding certain terms and conditions and how compliance with those terms would be measured.

We also found that SB overcharged USDB by $11,655. This is attributable to:

- SB paying its hourly employees at higher rates than USDB.
- SB paying its teacher aides un-allowed benefits.

FINDINGS AND RECOMMENDATIONS

1. OVERCHARGES AND COST VARIANCES IN SB PROGRAM

We examined nine monthly invoices billed to USDB by the SB program for the period July 1, 2014 through March 31, 2015 and found variances between what USDB would have allowed for staffing costs when compared with staffing costs at SB. The variances are attributable to four factors:

a. SB allowed employees to work additional days above and beyond the 183 days that comparable USDB employees work in a year:
   1) Audiologists worked an average of 260 days
   2) Speech/Language Pathologists worked an average of 204.67 days
   3) Early Interventionists worked an average of 197 days
   4) Teachers worked an average of 205.33 days
b. For comparable caseloads, USDB pre-approved SB to use higher staffing levels than USDB uses to provide services to its clientele;

c. SB provided leave benefits to teacher aides despite the fact that leave benefits were not included in the SB budget and USDB does not pay teacher aides for leave;

d. SB employed hourly employees at higher rates than comparable USDB employees receive.

The variances and overcharges are detailed by staff position in the table below.

Position	Amount	Cause of Variances and Overcharges
	Variances	
Speech Language Pathologist	$ 50,728	USDB pre-approved staffing levels in excess of USDB practice by .74 FTE for this position and comparable caseload. SB employees were scheduled to work a combined total of 65 more days than comparable USDB employees.
Early Interventionist	$3,686	SB employees worked 14 more days than comparable USDB employees.
Audiologist	$ 38,584	USDB pre-approved staffing levels in excess of USDB practice by .32 FTE for this position and comparable caseload. SB employees worked a combined total of 154 more days than comparable USDB employees.
Teacher	$ 13,893	SB employees worked a combined total of 67 more days than comparable USDB employees.
Total Variance	$106,891	Differing interpretations of certain clauses in the MOU by USDB and SB
	Overcharges	
Teacher's Aide & Substitute	$ 8,151 $ 3,504	SB's pay rate for position exceeded USDB pay plan. • SB paid leave to ineligible employees. This leave was not authorized by the budget or MOU.
Total Overcharge	$11,655	
Estimated total overcharges and variances	**$ 118,546**	• $35,670 estimated due to additional days worked. • $71,221 estimated due to pre-approved higher staffing levels. • $11,655 due to overcharges.

The MOU indicates that reimbursement is limited by the following criteria:

- USDB will reimburse SB for staffing costs (salary and benefits) up to the amount comparable employees of USDB would receive. (*MOU 3.4.1 & 4.4.1)*
- Comparable costs shall be determined based on the USDB merit and negotiated pay schedules. *(MOU 3.4.4)*
- USDB will pay only the costs associated with a 1:5 adult-to-child ratio for teacher caseloads. (*MOU 3.4.2)*
- USU(SB) will establish staff schedules . . . USDB guidelines will be followed regarding caseloads. *(MOU 3.2.5)*
- Monthly billings [will be] for actual services rendered only and clear pre-approved rates apply. (*MOU 3.4.4)*

USDB paid the excess over comparable costs because of an inadequate review and approval of budgets and invoices as described in Finding No. 2 and because of a lack of specificity in the MOU as described in Finding No. 3. Also, as described in Finding No. 2, SB did not obtain explicit approval of certain items as required by the MOU, but rather relied on historical practice initiated and approved by prior USDB administrators. As a result of these problems, USDB paid more for direct services rendered by SB than it would have paid if USDB had provided the services.

Recommendations:

We recommend that USDB:

- **Pursue reimbursement for the $11,655 paid for teacher aide benefits and excessive rates for hourly employees that were not allowed under the MOU.**
- **Work with SB to determine whether reimbursement for charges related to the additional days worked is appropriate.**
- **Review other periods for charges in excess of comparable costs and determine whether reimbursement is appropriate.**
- **Improve procedures over review and approval of invoices as described in Finding No. 2.**
- **Examine existing MOU's and future MOU's to ensure that the language is clear and specific as outlined in Finding No. 3.**

We recommend that SB:

- **Reimburse USDB for the $11,655 paid for teacher aide benefits that were not allowed under the MOU.**
- **Work with USDB to determine whether reimbursement for charges related to the additional days worked by SB staff is appropriate.**
- **Ensure that explicit pre-approval is obtained when required by an MOU.**

2. INADEQUATE MONITORING AND INTERNAL CONTROLS OVER THE SB PROGRAM

USDB did not adequately monitor the SB program. Further, we noted that neither USDB nor SB fully complied with various requirements in the MOU that would have improved monitoring and may have prevented the variances and overcharges noted in Finding No. 1. We also noted several inadequacies in the MOU as described in Finding No. 3 that contributed to the inadequate monitoring of the program.

a. Problems with rate pre-approval for personnel services

- USDB paid invoices without pre-approving all pay rates for SB personnel and without verifying that they had approved the rates being charged on the invoices.
- SB charged USDB for personnel services without obtaining documentation of pre-approval for employee pay rates.

MOU 3.4.4 indicated that reimbursement would be provided on, “monthly billings for actual services rendered only and clear pre-approved rates apply.” SB states it submitted a budget to USDB for the 2014-2015 fiscal year; however, due to staff turnover at USDB, the former Associate Superintendent of USDB’s deletion of her emails, and a server failure at SB, we could find no evidence that USDB had explicitly approved SB’s budget. Budget approval would have been evidence of the pre-approval of rates. USDB should not have paid invoices without first approving rates and then verifying the billed rates against approved rates. While USDB’s payment of invoices may imply post-approval, SB failed to obtain and retain documented explicit pre-approval. Further, as discussed in Finding No. 3, the MOU did not establish a process for obtaining rate pre-approval.

b. Problems with comparable pay rates

- USDB paid all invoices without ensuring the pay rates were comparable with the USDB salary schedules and hourly pay rates.
- SB charged pay rates for the various hourly staff positions that exceeded the USDB hourly pay rates.
- SB charged pay rates for salaried staff positions that exceeded the USDB salary schedule because they included additional days above and beyond the USDB 183-day work year.

MOU 3.4.1 indicates that USDB will reimburse SB for salary and benefits up to the amount a comparable USDB employee would receive. MOU 3.4.4 adds that comparable costs shall be determined based on the USDB merit and negotiated pay schedules. It is apparent that USDB did not ensure that the pay rates charged were comparable to USDB’s rates prior to paying the invoices. Further, SB paid its salaried employees for additional days of work above and beyond a comparable USDB work year. While there is evidence that SB obtained approval in prior years for these additional days, there is no evidence that SB obtained approval to work additional days in 2014-2015. USDB's payment of invoices at higher pro-rated rates implies approval of additional work days, but SB failed to obtain documented explicit approval to work additional days, resulting in higher rates. As discussed in Finding No. 3, the MOU failed to establish and communicate a clear method of determining and reviewing rates.

c. Problems with caseloads/staffing levels

- USDB pre-approved staffing for speech/language pathologists, early interventionists, and audiologists at levels higher than comparable USDB levels.

MOU 3.2.5 establishes that USDB guidelines will be followed regarding caseloads; however, USDB did not have a written policy establishing staffing guidelines. In May 2014, administrators from USDB and SB met. USDB sent approved minutes (minutes) of that meeting to SB. The minutes document that USDB pre-approved SB staffing levels which exceeded comparable USDB levels as noted in Finding No. 1. As discussed in Finding No. 3, the MOU established staffing levels for teachers but failed to specify staffing levels for the positions noted above.

d. Problems with invoices

- USDB paid invoices without adequate supporting evidence for the amounts billed and did not perform a thorough review of the invoices prior to payment.
- SB did not present a sufficiently detailed invoice of actual services rendered and associated costs as required by the MOU and as outlined in the minutes.

MOU 3.4.4 specifies that "USU [SB] will record and present the detailed, itemized record of actual services rendered and the monthly costs associated with those services." The same section of the MOU further specifies that the USDB Associate Superintendent will verify the SB staff by name with the USDB Business Office. The MOU did not specify how SB needed to present records. The minutes specified that SB would provide work logs for every teacher, aide, speech/language pathologist, and audiologist along with the invoice. Previously both parties agreed upon an invoice format that provided a list of employees with their monthly compensation and benefit charges. However, this does not appear to have met the requirements of the MOU. Further, USDB did not verify the list of SB employees included with the invoices. When we inquired, the USDB Associate Superintendent stated that she only recognized half of the names on the invoices. SB told us they did not provide the work logs as required by the minutes because USDB failed to provide them with the work log format to be used.

USDB and SB should have ensured that there was documented evidence of approval of pay rates and staffing levels, and that the rates and staffing levels were comparable with USDB practice. SB should have provided the work logs regardless of not receiving instructions on format. USDB should not have paid invoices without ensuring that the pay rates and staffing levels were appropriate and without performing a thorough review of appropriate and adequate documentation. Further, where the MOU did not provide enough specificity and guidance, the two parties should have clarified and documented the resolution of those issues.

It should be noted that USDB entered mediation with SB during the early months of 2015 to re-negotiate the MOU and eventually cancelled the MOU in April 2015 when an agreement could not be reached. As a result of the inadequate monitoring and controls over the SB program, the lack of compliance with certain requirements of the MOU as noted, and weaknesses in the MOU addressed further in Finding No. 3, SB incurred and USDB paid $118,546 more in costs for services as estimated in Finding No. 1.

Recommendations:

We recommend that USDB:

- **Only pay invoices that have been properly reviewed, approved, and billed at rates that were previously agreed upon by both parties.**
- **Ensure that all elements of an agreement are clear and properly communicated in order to conduct an effective review (see Finding No. 3).**

We recommend that SB:

- **Obtain and retain documentation showing that all charges and rates have been explicitly approved and previously agreed upon by both parties.**
- **Provide documentation, such as work logs, as required by a documented agreement.**
- **Ensure that all elements of an agreement are clear and properly communicated.**

3. LACK OF SPECIFICITY IN MEMORANDUM OF UNDERSTANDING

The MOU between USDB and SB (referred to in the MOU as "USU") contained language that is subjective and vague and, therefore, led to increased risk that the SB Program would incur costs in excess of costs that USDB would incur to provide the services. We found the following examples of inadequate wording in the MOU (italics added):

- MOU 1.a., "*The USDB/USU collaborative programs described in this agreement may include enhanced service levels, experimental curriculum, and creative program design, beyond the requirements of a Free Appropriate Public Education (FAPE)*." Without further clarification in the MOU, this wording could reasonably be interpreted to justify additional charges USDB may not have intended to fund, including the additional days worked above and beyond USDB's work year.

- MOU 1 b, "[agreement provides] ... *Audiological services in accordance with USDB eligibility guidelines and in accordance with Utah State Board of Education Rules and Regulations for 0-22 year old children living in Utah who elect to come to Logan as a* *demonstration program."* The MOU does not specify the level of audiological services. Without further clarification USDB is at an increased risk for excessive costs.

- MOU 3.2.5, "*USDB guidelines will be followed regarding caseloads."* However, with the exception of the teacher/student ratio, the MOU does not provide guidelines for any other staff position. As evidenced in Finding No. 1, this increases the risk for more FTEs being hired, resulting in increased costs.

- MOU 3.4.4, "*Monthly billings for actual services rendered and clear pre-approved rates apply*." The MOU does not establish a process of obtaining pre-approved rates. Without such a clarification USDB is at greater risk of inferring approval of improper and higher rates.

- MOU 3.4.4, "*…USU will record and present the detailed, itemized record of actual services rendered and the monthly costs associated with those services.*" The MOU does not specify the method in which SB will present the detailed, itemized record and what should be included in invoices. Without clarification in the MOU, USDB may not have been able to review all charges in a timely manner, increasing the risk of paying unverified and unapproved costs.

The MOU was modified by current USDB administration in 2014 and was an improvement over the original MOU established in 2010. However, the problems noted above persisted. This failure to accurately and specifically communicate expectations through the MOU increased the difficulty of performing adequate reviews of billings and resulted in cost variances and overcharges as reported at Finding No. 1**.**

Recommendation:

We recommend that USDB and SB evaluate any existing MOU's to identify vague and subjective language that may increase USDB's or SB's risk for unnecessary costs or charges. We also recommend that USDB and SB ensure that future agreements clearly specify key elements of agreements and pay structures.

AUDITOR'S CONCLUDING REMARKS

SB's response (see Attachment B) indicates that SB fails to recognize its own shortcomings under the MOU while blaming the USDB for all of the problems we reported. This report identified weaknesses with the actions, or lack thereof, of both parties. It is concerning that SB is unwilling to first recognize and then correct the failings within its operation and oversight. For example, SB disagrees with all recommendations to Finding No. 1. This recommendation includes an encouragement to work with USDB to further evaluate certain information and ensure that explicit pre-approval is obtained when required by an MOU.

SB's unwillingness to even consider these simple recommendations highlights the resistant and uncooperative attitude they have taken towards this audit. SB was slow to provide requested information which delayed the audit and wasted time and effort. Also, SB's lack of professionalism in its communication highlights USU's inadequate supervision of SB.

The following are issues from SB's response that are particularly concerning:

- SB's response acknowledges that the MOU requires certain pre-approvals, but disputes that pre-approval needs to be written. Since SB has been unable to provide sufficient evidence that certain pre-approvals were granted, it is reasonable to expect that these approvals should have been distilled to writing. Receiving written pre-approvals helps provide clarity of expectations and agreements, particularly within organizations with employee turnover. It is a common business practice to document pre-approvals in writing.

- MOU 4.4.1 identifies a maximum amount that USDB will pay "up to the amount a comparable employee of USDB would receive." If SB submitted an invoice in excess of this limit, it would have violated the MOU. If USDB paid more than the limit, then it would have violated the MOU. The burden rests on both parties.

- It could be argued that without pre-approval, USDB could have claim on any payment to SB where pre-approval was required but not provided.

- SB's response argues that because USDB incorrectly overpaid certain invoices this indicates that pre-approval requirements of the MOU were met. Rather, it appears that SB benefited from USDB's inadequate oversight.

- SB indicates that USDB never provided the negotiated pay schedules, but it also appears that SB never requested those pay schedules despite being aware that "[c]omparable costs" were to be based on those schedules.

- SB claims that provisions in the MOU allowing for "enhanced service levels" means that they can charge more than a "comparable employee of USDB would receive." While the

MOU does allow for "enhanced service levels" it does not indicate that USDB will pay for these enhanced services. In addition, we question how USDB could justify paying for "enhanced service levels" for only a small segment of its student population. Finally, we question why USDB would pay more for services from SB than it would cost USDB to provide itself. USDB's obligation according to the MOU is to fund direct services at clear, pre-approved rates.

- SB's contradictory response argues its costs are lower when using indirect costs not allowable for reimbursement under the MOU, and then argues that its costs are higher but they are entitled to that higher cost. A reasonable reading of the MOU would be that USDB is contracting for services that are to be provided at an equal or lower cost than the equivalent services provided by USDB.

We stand by our recommendations and encourage both parties to resolve their outstanding disagreements, clarify shared expectations, and implement meaningful performance metrics before working together in the future. While we believe USDB is responsible for the majority of the oversight issues we noted, we believe it is clear that SB also shares some of the responsibility.

USDB
Utah Schools for the Deaf & the Blind

USDB Response to Audit Report No. DBS-16-SP1

Background and Overall Findings: 1) USDB allowed SB to exceed costs and overpaid for services when compared to USDB direct costs. 2) USDB did not verify costs and compliance with the MOU, and SB did not receive required pre-approval or approval from USDB. 3) The MOU contained subjective and vague language deficiencies regarding terms and conditions and compliance, which violated the terms of the MOU by allowing SB to operate with higher pay rates and staffing levels than exist at USDB.

USDB Response: Although the audit period covers a nine month period during FY15, the documented inadequacies and problems come from an improper agreement that was memorialized and automatically renewed for approximately five years, mostly before the efforts of the current USDB administration to implement generally accepted business practices and proper financial controls. Despite the ongoing multi-year imbalance, the USDB administration effectively assessed and properly remedied the SB MOU situation over a period of approximately 18 months. This work was accomplished while also conducting a thorough top to bottom internal review of business practices and improving systems and controls agency wide.

The scope of the audit also did not include significant non-financial performance concerns and federal and state legal compliance risks introduced by the outsourcing of USDB's core mission activities to SB. Even if the funding problems would have been resolved, it is unlikely USDB would have been allowed to implement responsible performance monitoring of SB.

Finding 1: OVERCHARGES AND COST VARIANCES IN SB PROGRAM

USDB Response: USDB concurs with finding 1 and in fact this was one of two main purposes behind USDB's Spring 2015 request to significantly renegotiate the MOU with SB. Although the audit report estimates a nine month cost overcharge of $118,546 during FY15, USDB data demonstrates the proposed FY16 SB budget request would have resulted in more than $350,000 of overcharges.

***Audit Recommendations**: USDB 1) Pursue reimbursement for the $11,655 paid for teacher aide benefits and excessive rates for hourly employees that were not allowed under the MOU; 2) Work with SB to determine whether reimbursement for charges related to the additional days worked is appropriate; 3) Review other periods for charges in excess of comparable costs and determine whether reimbursement is appropriate; 4) Improve procedures over review and approval of invoices as described in Finding No. 2; 5) Examine existing MOUs and future MOUs to ensure the language is clear and specific as outlined in Finding No. 3.*

USDB Response: USDB concurs with this recommendation and will invoice Utah State University for the $11,655 in unauthorized teacher aide benefits and excessive rates for hourly employees that were not allowed under the MOU. USDB will also consider invoicing SB for $106,891 for other variances identified in the audit.

Based upon previous history of disagreements and the extreme difficulty of enforcing legal compliance with SB, USDB has determined that working with SB to recover additional charges in excess of comparable costs and reviewing and determining appropriate reimbursements for periods outside the nine month analysis will likely require significant resources far beyond whatever amount is recoverable. Consequently, it is unlikely USDB will be able to recover any amount from SB beyond the figures specifically identified by the Office of the State Auditor, despite reliable estimates and supporting performance data demonstrating a pattern of SB annually billing amounts up to four times the actual costs for USDB to provide services directly.

USDB concurs with the recommendations to improve review procedures and approval of invoices. USDB also concurs with the recommendation to examine existing and future MOUs for clear and specific language. USDB has already implemented these procedures within the past year. Current practice is to have all contracts and memorandums of understanding reviewed by legal counsel before final approval.

Finding 2: Inadequate Monitoring and Internal Controls over the SB Program

USDB Response: USDB concurs with finding 2, including problems with pre-approval of rates for personnel services, comparable pay rates, caseloads/staffing levels, and invoices. When USDB brought these specific items to the attention of SB during the FY15 renewal period, USDB received such overwhelming push back and opposition that the mediation clause in the MOU was requested in a good faith attempt to produce an agreement that would be sustainable for USDB. When mediation failed, USDB exercised the ultimate contractual control, which was to cancel the MOU.

Audit Recommendations*: USDB 1) only pay invoices that have been properly reviewed, approved, and billed at rates previously agreed upon by both parties, and 2) ensure all elements of an agreement are clear and properly communicated in order to conduct an effective review.*

USDB Response: USDB concurs with this recommendation and the administration has implemented these practices since 2013, with the exception of the SB MOU because it was drafted before the current USDB administration. While in the process of implementing these controls over SB, difficulties arose which eventually led to the discontinuance of the MOU altogether. USDB recently had the Board review its oversight of contracts and approve new contract threshold limitations, and legal staff is currently reviewing contractual terms and conditions for routine service agreements. In addition, the USDB business office has implemented revised policies and procedures governing monitoring and internal controls of contracts.

Finding 3: Lack of Specificity in Memorandum of Understanding

USDB Response: USDB concurs with this finding.

Audit Recommendations: *USDB evaluate existing MOUs to identify vague and subjective language that may increase risk of unnecessary costs. Also ensure future agreements clearly specify key elements of agreements and pay structures.*

USDB Response: USDB has been evaluating existing agreements and creating improved agreements consistent with these recommendations over the past three years. Each time an agreement comes up for renewal the language is scrutinized and improved to reduce risk of uncertainty and clarify pay structures. All current contracts and memorandums of understanding are reviewed by legal counsel before final approval.

EMMA ECCLES JONES
College of Education & Human Services
UtahStateUniversity

DEPARTMENT OF COMMUNICATIVE
DISORDERS AND DEAF EDUCATION

BACKGROUND AND OVERALL FINDINGS

Utah State University's Sound Beginnings Program (SB) is committed to collaborating with various public and private organizations to provide high quality services to children who are deaf or hard of hearing and their families as a part of our graduate training programs in audiology, speech-language pathology, and deaf education. We appreciate the time and efforts by the State Auditor's Office to review the activities conducted under the Memorandum of Understanding (MOU) between the Utah State Schools for the Deaf and the Blind (USDB) and SB. We will continue to review and carefully consider the findings and conclusions of Audit Report No. DBS-16-SP1 to improve the way that future collaborative efforts are conducted.

At the core of this audit, which was requested by the current USDB leadership, is a recent dispute over the terms and performance of the MOU between USDB and SB.[1] The MOU was signed in July 2010 and USDB and SB successfully operated under the MOU for almost five years without dispute. The first time SB was informed about any concerns was a letter from USDB dated May 19, 2015.

As the report acknowledges, SB and USDB's current administration interpret certain clauses in the MOU differently. Further, the report concluded that the language of the MOU may reasonably be understood to support either interpretation. For this reason, SB objects to the audit's reliance on USDB's interpretation to calculate costs and determine whether the terms of the MOU were met. SB believes the most reasonable approach to interpreting and enforcing the MOU is to rely on the course of conduct throughout the term during which the parties operated under the contract.

Further, it is inaccurate to conclude that it cost more to provide the required services through SB compared to USDB. According to USDB's 2014 annual financial report, [2] the cost per self-contained student at USDB during 2013-14 was $43,488 and the cost per outreach student was $6,155 (see table excerpted from USDB's annual financial report below). During 2014-15, Sound Beginnings served 19 children in self-contained classrooms and 21 students in home-based programs (which we assume would be classified as "outreach students" in the USDB report). Using the cost per student estimates in the USDB report after subtracting the costs for transportation (which were paid directly by USDB to the transport company), the total cost for

---

[1] The Audit initially began as an inquiry into whether *"the services outlined in the contract were provided and that eligible individuals were served."* After SB provided extensive evidence showing that 40 children who were deaf or hard of hearing (DHH) were served by Sound Beginnings during 2014-15, that all of these children met the eligibility criteria stated in the MOU, and that the services outlined in their Individualized Education Plans (IEPs), Individualized Family Service Plans (IFSPs) or Preschool Service Plans (PSPs) were provided as per the MOU, without notice to SB, the audit inquiry shifted to *"to determine whether payments from USDB to SB complied with the terms of the MOU."*

[2] By statute (Utah Code section **53A-25b-201**), USDB is required to make an annual report to the Legislative Education Interim Committee that includes a "financial report." The last USDB report that estimated the "cost per student" was submitted (*www.utah.gov/pmn/files/115929.pdf*) in October 2014.

USDB to have served the 40 children that were served by SB would have been $784,557 [(19 self-contained x $34,489) + (21 outreach children x $6,155)]. SB however, provided enhanced service levels (as allowed by the MOU) to these children for $556,856. By having SB provide the services, the state saved $228,127.

UTAH SCHOOLS FOR THE DEAF AND THE BLIND
Average Estimated Cost per Student

		School Year 2013-2014
(Dec 1 counts)		
Self-Contained		349
Outreach		1748
Total Students Served		2097
Self-Contained Direct Costs		
	Instruction	22 199 85
	Related Services	9 209 60
	Transportation	8 999 16
Self Contained Direct Cost per Student		**40,408.61**
Outreach Direct Costs		
	Instruction	2 787 22
	Related Services	288 13
Outreach Direct Cost per Student		**3,075.35**
Indirect Costs		
	Administration	1 035 36
	Facility	908 18
	Support Service	1 136 35
Indirect Cost per Student		**3,079.88**
Total Cost per Self-Contained Student		**43,488.49**
Total Cost per Outreach Student		**6,155.24**

Even though the costs for SB to serve the children were significantly lower, preschool children served by SB had more audiology and speech language therapy services than children served by USDB and were able to attend summer school (which was not available for most USDB children). Furthermore, birth to 3-year old children served by SB received 3-4 home visits per month instead of one visit per month which was the average for USDB birth to 3-year old children. Based on USDB's report to the state legislature, the "comparable" costs for SB to serve these children were almost 30% lower than if the children had been served by USDB.

OVERCHARGES AND COST VARIANCE IN SB PROGRAM

The report concluded that there were $106,891 of *"variances between what USDB would have allowed for staffing costs when compared with staffing costs at SB"* and recommended that USDB *"work with SB to determine whether reimbursement for charges related to the additional days worked is appropriate."* The report also concluded that SB overcharged USDB by $14,835.

SB disagrees with the conclusions and recommendation because, as noted below, the estimated variance and overcharges were determined by applying conditions and limitations that are not included in the MOU.

The MOU does not require written approval. The MOU only refers to approval of teacher caseloads in paragraph 3.4.2, and pre-approval of rates (presumably this means hourly or daily pay rates for staff, but it is not specified) in MOU 3.4.4. Nowhere else does the MOU refer to approval of caseloads or rates. In these two places the MOU says approval is required, but it never specifies a mechanism or process for approval, nor does it say that approval must be documented in writing, nor is the word explicit ever used in the MOU. All the places in the report where SB is faulted for not obtaining explicit or documented approval go beyond the requirements of the MOU.

Definition of "comparable". The word "comparable" is used only four times in the MOU. In 4.4.1 it says USDB will reimburse costs of staff *"up to the amount a comparable employee of USDB would receive. Comparable costs shall be determined based on the USDB merit and negotiated pay schedules."* Almost exactly the same wording is used in 3.4.1 and 3.4.4 to say the same thing. Merriam-Webster defines "comparable" as "similar, like" or "capable of or suitable for comparison." If the signatories to the MOU had meant "exactly," instead of "comparable" that is what should have been written. Furthermore, because the MOU did not specify a process or criteria for determining "comparable," it is reasonably left to the signatories to define "comparable" for each circumstance during each year of the MOU or to revise the wording in the MOU. As discussed below, there is ample evidence that USDB knew exactly what each SB staff member was being paid, what the caseloads were, what services were being provided, and which children were being served. No one in the previous USDB administration or the current USDB administration ever objected to anything not being "comparable" from July 2010 to May 19, 2015.

"Comparability" is also used by the audit report to make judgements about the appropriateness of staffing levels, number of days worked per year, and caseloads – but none of these uses of "comparability" are included in the MOU.

Comparability applies to the same services. When the MOU says that *"USDB will reimburse these costs (salary and benefits) for these staff up to the amount a comparable employee of USDB would receive,"* the underlying assumption is that comparability will be determined in a situation where the same services are being provided by the SB employee and the USDB employee. In other words, the pay rate **AND** the amount of services provided need to be comparable to decide if the overall compensation is comparable. MOU paragraph 1a clearly authorizes SB to provide *"enhanced service levels."* It is inappropriate to expect the total compensation of two audiologists to be the same if one is working 2 days a week and the other is working 5 days a week. But that is exactly the type of *"enhanced service levels"* that were expected under the MOU. Therefore, it **is reasonable** to expect the daily compensation for an SB and a USDB employee who both have the same level of education and years of experience to be the same if they are both working the same amount of time. But it is **not reasonable** nor required by the MOU to expect that the total compensation for both individuals would be the same if one is working more days than the other.

Pre-Approval or Approval of Rates and Staffing Levels

The following evidence supports that rates and staffing levels for the services provided by SB from July 1, 2014 through March 31, 2015 were pre-approved and repeatedly re-approved during that time period.

1. Annual budgets showing all of the SB staff to be paid and the amount they would be paid were shared every Spring with administrators at USDB. Written documentation for this is available in numerous emails for the years 2010-11, 2011-12, 2012-13, 2013-14. Due to turnover in USDB leadership in 2013 and 2014, a former Associate Superintendent who left USDB in July of 2014 and erased all of her email, and a server crash at USU during this time period, we are unable to retrieve the email in which the 2014-15 budget was sent.
2. However, there is documentation that detailed worksheets, which were approved as to format and content for determining salaries by the USDB HR director (email of 3-11-2011) were used every year after 2010 to document the daily rates, number of days worked and which staff were working extra days during the summer. For example, the transmission of the budget for 2013-14 and the detailed worksheets is documented in an email sent to USDB administrators on May 7, 2013. This document contained all of the above information for 11 of the 12 salaried staff on the 2014-15 budget (the 12th person had not been hired yet).
3. On pages 3 and 6 of the report the auditor concluded that *"USDB pre-approved staffing levels in excess of USDB practice"* for speech language pathologists, audiologists, and early interventionists.
4. The audit states that *"SB operated on historic expectations"* which is certainly true. Previous discussions, procedures, and decisions established precedents that each party relied on for the ongoing work. Although what had happened each year since 2010-11 contributed to the "approval process," that was only one source of information. It is, however, an important source that should not be dismissed as only a historic expectation. The fact that these *"historic expectations"* were based on decisions and practices that had been the same for four previous years, and given that there is no evidence or claim by USDB, as far as we know, that the rules or procedures needed to be changed, it is logical that they would be the same for 2014-15.
5. On May 14, 2014 a meeting was held with USDB's Associate Superintendent for the Deaf, the Parent-Infant Program Director, the Finance Director, and the Northern Utah Area Director for Deaf programs to discuss the 2014-15 budget for services provided under the MOU. The minutes for that meeting document that USDB administrators authorized funding for SB during the 2014-15 year for 3.0 FTE teachers, 1.5 FTE speech-language therapists, 1.0 FTE Audiologists, .75 of an early intervention provider, and three 30-hour per week teacher aides. SB billed for this amount of personnel or less during 2014-15. SB asserts that the budget was presented during this meeting and was in fact the reason why the number of FTEs for each staff position were discussed during that meeting. Furthermore, we are not aware that anyone at USDB has disputed our assertion that the 2014-15 budget was reviewed at this meeting.

6. Minutes from a similar meeting of many of the same people on February 5, 2014 state that the SB Director will electronically send the 2014-15 budget projections to the USDB Finance Direct. This demonstrates that the 2014-15 SB budget was discussed multiple times with USDB administrators.
7. Paragraph 3.4.4 of the MOU stipulates that USDB is not to pay invoices *"Unless the particular individual meets the afore mentioned cost criteria (i.e., child to teacher ratio, hours served and what those services were for)."* Much more than suggesting that approval of the monthly invoices could be interpreted to imply approval as stated in the audit report, this paragraph from the MOU makes it clear that USDB approval of SB invoices certified that the conditions for payment (e.g., comparable rate, approved staffing levels, eligible children, and appropriate services) had been met. Such approval was done every month for 5 years.
8. The Utah Area North Director for the Deaf visited the Sound Beginnings Program regularly and participated in almost all of the IEP and IFSP meetings. She knew that SB staff were providing more services than would happen in a USDB program and never objected or raised questions.
9. Paragraph 1a of the MOU stipulates that *"The USDB/USU collaborative programs described in this agreement may include enhanced service levels, ...beyond the requirements of a Free and Appropriate Public Education (FAPE)."* Thus, from the day the MOU was signed in 2010, there was approval given by USDB administrators for SB to provide services over and above what would be provided in USDB programs. Therefore, comparability of pay rates cannot be determined without ensuring that the type, amount, and nature of the services are the same for the two people being compared.
10. MOU 3.2.5 gives SB authority to *"establish staff schedules"* within USDB guidelines regarding caseloads. The only guidelines regarding caseloads that USDB gave to SB for 2014-15 was a) that there must be at least a 5:1 child:teacher ratio; and, b) that the FTEs for various positions specified during in the May 14, 2014 meeting could not be exceeded. SB staffing was always within those parameters during 2014-15. Without additional guidance from USDB, SB was operating within the framework of the MOU to *"establish staff schedules"* to which USDB could have objected or raised questions at any time -- but they did not.

Additional Days Worked Were Approved and Consistent with the MOU

The audit report correctly concludes that SB's audiologists, speech-language pathologists (SLPs), the early intervention provider, and the teachers all worked more than 183 days during a year. The audit report also correctly states on pages 3 and 6 that these staffing levels were "pre-approved" by USDB. It is incorrect, however, is to say that these *"additional days are above and beyond the 183 days that comparable USDB employees work in a year."* USDB employees who only worked 183 days per year were by definition not "comparable" because SB employees were always approved by USDB to work more than 183 days. From the first time that SB used the USDB-approved salary calculation worksheets in 2011-12 to document the daily rate and number of extra days each SB employ would work during the coming year, it was clear to USDB administrators that SB employees were working more that 183 days per year. Except for 2014-15, for reasons explained above, there is a clear trail of email of detailed documentation about the additional days being worked every year. These additional days were within the framework of the MOU and were always approved by USDB. Invoices which included these days were also approved every month for 5 years. Further, the Utah Area North Director of Deaf Education knew that SB children attended summer school each year, and that SB audiologists worked on a 12-month schedule and she never raised questions or objected. Finally, some of the children served by SB had Extended Year Services written into their IEPs and IFSPs, so we were required by federal and state law to provide services to those children during the summer.

Higher Staffing Levels Were Approved and Consistent with the MOU

It is correct that SB had higher staffing levels for audiologists and SLPs than was the case for audiologists and SLPs working for USDB. But these staffing levels were specifically approved in the May 14, 2014 meeting and were consistent with the MOU which authorized SB to provide "*enhanced service levels*." The MOU also authorized SB to provide audiological services in accordance with USDB eligibility guidelines *"to 0-22-year-old children living in Utah who elect to come to Logan."*

The table on page 3 of the report says that "USDB pre-approved staffing levels in excess of USDB practice by .74 FTE for SLPs and .32 for audiologists and implies that this is not consistent with the MOU. Nowhere does the MOU say that the level of services must be comparable. The only time "comparable" is used in the MOU is to say that USDB will reimburse costs of staff *"up to the amount a comparable employee of USDB would receive"* and that *"Comparable costs shall be determined based on the USDB merit and negotiated pay schedules."* Nothing in the MOU prohibits SB from providing additional services or having any of the staff work extra days as long as the FTEs for staff to provide those services are pre-approved – which they were in the May 14, 2014 meeting.

Hourly Rates for Teacher Aides and Substitute Were Not Too High

The audit report concluded that SB's pay rate for teacher aides and a teacher substitute exceeded the USDB pay plan and was therefore not allowed by the MOU. We disagree because USDB administrators were authorized by the MOU to decide what met the standard of comparable pay and the pay rates were approved. USDB never notified SB during the time that the MOU was in effect that rates for hourly employees were too high, nor did they object to these rates. In fact, these rates were approved year after year when budgets were presented and clearly shown in the monthly invoices that were approved every month for over 5 years.

In the May 14, 2014 meeting, USDB administrators authorized SB to have 3 teacher aides to work 30 hours per week for a total of 90 hours per week during 2014-15. During the 40 weeks that were the focus of the audit (from July 1, 2014 to March 31, 2015) SB was authorized for 3,600 hours (40 weeks x 90 hours per week) of teacher aide work. During those 40 weeks, SB aides worked a total of 3,144 hours, or 456 hours less than authorized and approved by USDB. Even though the MOU says that pay rates are to *"be determined based on the USDB merit and negotiated pays schedules"* we had been told previously that this only applied to teachers, SLPs, audiologists, and early intervention providers. SB had been given the negotiated agreement showing the Steps and Lanes for teachers, SLPs, and audiologists, but were never given a "pay schedule" for teacher aides or teacher substitutes. To our knowledge, USDB administrators have not claimed that they provided such pay schedules. In fact, the first time we received pay schedules for teacher aides and substitutes was on July 20, 2016 when we received them in response to a request to the State Auditor's Office.

During 2014-15 SB paid teacher aides an average of $11.67 per hour which is higher than the $9.60 per hour rate that we were told in July 2016 that USDB pays most of their teacher aides. This should not be considered an overcharge for the following reasons:

1. Because USDB did not provide us with a pay schedule for teacher aides, we had no way of knowing what teacher aides at USDB were paid and we were never told. In fact, we were told that the rate we were paying was fine.
2. Teacher aides at SB had been paid at approximately the same rate every year since 2010-11. Each of those years, budgets with a clear indication of the rate for teacher aides were approved by USDB administrators.
3. The fact that USDB administrators had approved invoices showing the payments to teacher aides every month for almost 5 years, is, according to the language in the MOU cited previously, approval of those rates as being comparable.
4. Determining "comparability" of pay rates was up to the signatories of the MOU and USDB never objected to these rates nor indicated that it did not consider them to be comparable.

USDB Was Not Inappropriately Charged for Teacher Aides' Benefits in the Form of Paid Vacation, Holidays, and Sick Days

Paragraph 3.4.1 of the 2010 and 2014 versions of the MOU (changes in the 2014 version are shown with strikeouts and CAPS) stated that *"USU will employ staff to provide direct services to children enrolled in early intervention/educational programs at the ~~Logan~~ SOUND BEGINNINGS campus, including teachers, ~~teacher aides~~ PARAEDUCATORS, early interventionists, speech/language pathologists, and audiologists. USDB will reimburse these costs (salary and benefitS) up to the amount a comparable employee of USDB would receive."* SB was not provided with any other information or guidelines from USDB about this issue. The MOU specified that teacher aides (the wording was changed to paraeducators in the 2014 MOU but it refers to the same position) would be paid benefits, and USDB administrators approved the budgets each year from July 2010 through June 2012 in which charges for the standard USU fringe benefit package were included for teacher aides. In June 2012 SB was told that USDB would no longer approve fringe benefits as of July, 2012. When SB was instructed to stop invoicing USDB for teacher aides' fringe benefits, the Associate Superintendent for the Deaf told us that USDB had no problem if the teacher aides continued to receive benefits, but we would have to pay for the benefits from a different account. As of July, 2012 SB began paying for teacher aide's benefits from a different account and have not included charges for any benefits for teacher aides on invoices to USDB since that time. However, the SB teacher aides continued to receive paid vacation and sick leave as per USU policy for benefitted employees. Whenever one of the aides listed on the invoice took time off for vacation or sick leave, the duties of that person were covered by another SB employee who was paid from a different account. Thus, USDB received every hour of work that was billed for on the monthly invoices. At the time, it didn't occur to anyone, including the USDB administrators who were required to check and approve each monthly invoice, that paid sick leave and vacation were actually a part of the fringe benefit package since the SB invoices correctly charged $0 for teacher aid benefits each month. In retrospect, this should have been handled differently. However, the MOU specifically allowed for teacher aides to be paid benefits, the biweekly time cards submitted by aides showed when leave and sick days were taken so there was no deception, invoices were approved each month by USDB, and an SB staff member performed the aides' duties for all of the hours which were charged to USDB on the monthly invoices.

USDB Did Not Pay More for Direct Services Rendered by SB Than Would Have Been Paid if USDB Had Provided the Services

SB disagrees with the statement on page 4 of the audit report, *"USDB paid more for direct services rendered by SB than it would have paid if USDB had provided the services."* The audit found that daily rates for teachers, SLP's, audiologists and early intervention providers were the same for SB staff and USDB staff who had the same level of education and experience. Thus, if the same services had been provided, the cost would have been the same. But MOU paragraph 1a explicitly authorized SB staff to provide *"enhanced service levels."* It costs more to provide a 30-minute speech language therapy session 4 times per week than it does to provide a 30-minute speech language therapy session one time per week – but if the higher level of service was approved by USDB (as it was) this is not a violation of the MOU requirements. Similarly, it costs more to provide early intervention services to a child 4 times per month instead of one time per month. But that was the purpose of the MOU....to provide a *"demonstration program"* to determine the effects of such *"enhanced service levels."* Because daily rates for SB and USDB staff were the same, if exactly the same services had been provided by both USDB and SB, the costs would have been the same.

Recommendations

We disagree with each of the recommendations for SB on page 4 for this section of the report. First, no reimbursement for overpayment of hourly staff is needed because the hourly rates were approved and the total number of hours worked by aides were less than what was authorized by USDB. Second, there is no need to explore reimbursement for charges related to the additional days worked by SB staff because the MOU specifically authorizes *"enhanced service levels,"* which is another way of saying "additional days worked" and those additional days were pre-approved by USDB administrators. Third, the recommendation that *"explicit pre-approval be obtained when required by the MOU"* does not make sense because the MOU does not require *"explicit pre-approval"* for anything. The word "explicit" or any synonym of that word (e.g., written, documented) is never used in the MOU in association with approval or pre-approval.

INADEQUATE MONITORING AND INTERNAL CONTROLS OVER THE SB PROGRAM

SB disagrees with each of the five points used as examples in this section.

There Were No Problems with Rate Pre-Approval for Personnel Services

With regard to references to pre-approval in the MOU:

1. The MOU never says that there must be documentation of pre-approval.
2. As noted in the audit report, the MOU *"did not establish a process for pre-approval."* Therefore, whatever process was used for pre-approval could not have been a violation of the MOU.
3. There is ample evidence that USDB pre-approved payment rates on multiple occasions for all of the people listed on SB invoices for the period from July 1, 2014 to March 31, 2015.

Thus, the payments to SB by USDB did comply with the terms of the MOU and it is incorrect to conclude that *"SB charged USDB for personnel services without obtaining documentation of pre-approval for employee pay rates."* SB is being faulted for failing to do something that is not required by the MOU (documenting approval) and no evidence was presented that USDB claimed that pre-approval was not given.

There Were No Problems with Comparable Pay Rates

The report's conclusions in this section are based on a definition of "comparable" that is not included in the MOU and is consequently not the standard that can be used *"to determine whether payments from USB to SB complied with the terms of the MOU."* All pay rates were approved by USDB administrators and SB was told that the pay rates were comparable. Additionally, by approving payments for each person in the monthly invoices, USDB administrators affirmed that payment terms of the MOU had been met. The daily rates charged for teachers, audiologists, SLP's and early intervention providers were comparable for all of the salaried USDB and SB employees. Monthly rates were higher for SB employees because of additional days worked during the summer. These additional days were approved by USDB administrators and were consistent with MOU paragraph 1a which authorized SB to provide *"enhanced service levels."*

There Were No Problems with Caseloads/Staffing Levels

According to the report:

- The MOU established staffing levels for teachers, but not for any other employees.
- USDB did not provide SB with any other guidelines regarding caseloads.
- USDB administrators never objected to the caseloads/staff levels at SB.

Therefore, SB met the requirements of the MOU regarding caseloads and staffing levels by maintaining at least a 5:1 child:teacher ratio and obtaining pre-approval for staffing levels and extra days worked. The report noted that *"USDB pre-approved staffing for speech/language pathologists, early interventionists, and audiologists at higher levels than comparable USDB levels."* If the word "comparable" had been omitted from this sentence it would have been correct. It is incorrect to conclude that because SB staffing levels were higher than USDB staffing levels, that the terms of the MOU were violated. The MOU never says that the intensity, frequency, or nature of services at SB must be the same as services at USDB. No information in the report demonstrates that there were any problems with how caseloads/staffing levels were determined.

There Were No Problems with Invoices

The audit report concluded that *"SB did not present a sufficiently detailed invoice of actual services rendered and associated costs as required by the MOU and as outlined in the minutes."*

Because USDB was responsible for approving and paying invoices, it was USDB's responsibility to tell SB what information was needed and the format in which invoices should be presented. Paragraph 3.4.4 is the only time that billings are mentioned in the MOU and invoices are never mentioned. The following four points are made in paragraph 3.4.4:

1. *Monthly billings for actual services rendered only and clear pre-approved rates apply.*
2. *USU [SB] will record and present the detailed, itemized record of actual services rendered and the monthly costs associated with those services.*
3. *Comparable costs shall be determined based on the USDB merit and negotiated pay schedules.*
4. *USDB Associate Superintendent for the Deaf will verify the staff, by name (off the list provided by USU), with the USDB Business Office. Unless the particular individual meets the afore mentioned cost criteria (i.e. child to teacher ratio, hours served and what those services were for) USDB will not pay for anything provided beyond established cost measures.*

It is clear that at least # 3 and possibly #2 are not related to the format or content for monthly invoices. **Point #1** states that billings (i.e., invoices) are to be submitted monthly ---which was done. **Point #2** says that USU is to "record and present the detailed, itemized record of actual services, but it is not clear that this information should be submitted with the monthly invoices or whether the information is to be recorded and presented when it is requested. Because the "record of actual services" for children served at SB consisted of 100's of pages for each child (e.g., IEPs or IFSP documents and progress notes, assessment results, lesson plans, parent-teacher conference notes, attendance records, etc.), it would have been impractical to have included all of these *"detailed, itemized record of actual services"* with each invoice. Because SB was serving 35-40 children each month during 2014-15, each invoice would have consisted of 3,500 to 10,000 pages if all of this information had been included. The fact that USDB administrators never requested during the 5 years that SB provide more data than what was submitted on the monthly invoices during 2014-15 is strong evidence that USDB did not intend for this information to be submitted with each monthly invoice. **Point #3** is important, but has nothing to do with the format or content of the invoices which supports our belief that everything in this paragraph is not about the submission of monthly invoices. **Point #4** notes that invoices will not be paid unless the "*afore mentioned cost criteria*" are met. The fact that all of the invoices were paid is further evidence that USDB administrators throughout the five years thought that the format and content of the invoices met the requirements of the MOU.

With regard to Point #2, there were numerous other ways in which SB recorded detailed, itemized records of actual services. As noted above, SB maintained a file for each child that contained the IEP or IFSP, documentation of progress in meeting the IEP/IFSP goals, attendance records, assessment results, lesson plans, etc. These records were available to USDB administrators whenever they wanted them. Also, in the Fall of 2014 USDB implemented a web-based data system called Lumen Touch to record and store information about services to children. The Associate Superintendent for the Deaf came to Logan to train SB staff in the use of the system and she indicated that this system would take the place of the work logs mentioned in the May 14, 2014 meeting. After two different training sessions and numerous system failures, we were told to suspend recording information in the Lumen Touch system until USDB was able to "work out the bugs" – but that did not happen during 2014-15. Finally, for all children younger than 36 months of age, monthly information about services was entered into the Baby and Toddler Online Tracking System (BTOTS) that was maintained by the Utah Department of Health. USDB had continuous access to the information in the BTOTS system.

In summary, there is no evidence that the MOU requirements outlined in paragraph 3.4.4 were not completely met during 2014-15.

Recommendations

SB disagrees with all but one of the recommendations at the end of this section because these recommendations imply that the requirements of the MOU were not being met or they are inconsistent with the requirements of the MOU. Specifically:

- Invoices were approved each month and SB was never told that there were any concerns about the content or format. This is *prima facie* evidence that USDB administrators were satisfied with the invoices and agreed that the form and content of the invoices were consistent with the requirements of the MOU.
- The MOUs between USDB and SB never required documentation or explicit approval. Therefore, it is inappropriate to use this as a standard "*to determine whether payments from USDB or SB complied with the terms of the MOU.*"
- SB recorded and provided all of the documentation about services provided to children that was requested by USDB. The request for work logs in the May 14, 2014 meeting was superseded by the BTOTS system and the implementation of the online Lumen Touch system that was later put on hold due to performance and access problems.

We do agree that "*all elements of an agreement [should be] clear and properly communicated.*" In fact, we thought this had happened quite well with the existing MOUs from July, 2010 until we were surprised to receive a letter dated May 19, 2015 which suggested that USDB was not happy with the cost of services provided under the MOU.

LACK OF SPECIFICITY IN THE MEMORANDUM OF UNDERSTANDING

The first sentence of this section repeats the mistake that has contributed to false conclusions in the previous sections of the report. Specifically, the MOU does not ever say that the total cost of services or the nature, frequency, duration, or intensity of services should be the same for both USDB and SB. Payment rates for individuals who have the same level of education, the same years of experience, and are performing the same job should be similar and should be based on the USDB merit and negotiated pay schedules....and they were. However, SB was specifically authorized to provide "*enhanced service levels*" and was pre-approved by USDB administrators from 2010 through 2015 to have more audiology and SLP staff than is typical in USDB and to have professional staff work more than 183 days a year.

Page 1 of the audit report states that, "*the language of the MOU may reasonably be understood to support either interpretation.*" However, in reaching its conclusion about amounts invoiced under the MOU, the audit used "*USDB's [current] interpretation*" to determine cost levels permitted by the MOU rather than the parties ongoing course of conduct. SB objects to the audit's reliance on USDB's interpretation of costs and the consequential finding of cost variances.

SB administrators believe we operated in good faith and complied with all of the requirements of the MOU. Those instances in the report where it is concluded that SB was not in compliance are where the criteria for judgement were not in the MOU (e.g., requiring explicit or documented approval when the MOU never uses that language) or when specific words and phrases are misinterpreted from the intent of the MOU (e.g., the word "comparable" was applied to situations not mentioned in the MOU)

If the performance of SB is judged strictly by the requirements of the MOU, there were no overcharges and no excessive staffing levels. Approvals and pre-approvals were obtained as required, payment rates for SB staff were comparable to USDB employees who had the same education and years of experience and were working in similar jobs, and monthly invoices were submitted as requested by USDB. Consistent with its mission, properly performing under the terms of the MOU, SB provided valuable education services to children who are deaf or hard of hearing and their families, and used SB activities to enhance graduate training programs for teachers and clinicians preparing to work with children who are deaf or hard of hearing.

Additional information and support for each of the points made in this response are available from karl.white@usu.edu.

Karl R White

Karl R. White, PhD
Director, National Center for Hearing Assessment and Management
Emma Eccles Jones Endowed Chair in Early Childhood Education
Professor of Psychology
Utah State University
2615 Old Main Hill
Logan, UT 84322
(435) 797-3013