

ESSA Challenges, Updates, and Overcoming the Implementation Hurdles



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In the News

United States Department of Justice

THE UNITED STATES ATTORNEY'S OFFICE
NORTHERN DISTRICT OF ILLINOIS

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Department of Justice
U.S. Attorney's Office
Northern District of Illinois

FOR IMMEDIATE RELEASE Monday, October 23, 2017

Father-and-Son Executives of Tutoring Companies Sentenced to Federal Prison in Connection with \$11 Million Fraud Scheme

CHICAGO – The father-and-son executives of two suburban Chicago tutoring companies have been sentenced to federal prison for orchestrating an \$11 million fraud scheme that killed more than 100 school districts around the country, including Illinois.

From 2008 to 2014, JOVHAR SOULTANALI and his son, KABIR KASSAM, fraudulently obtained funds from the school districts by misrepresenting the nature of their companies' tutoring services and falsely inflating invoices for tutoring work that was never performed. Soubtanal and Kassam also paid bribes to school officials and teachers to make sure the fraud was not detected. The bribes included a Caribbean cruise for an assistant principal in Texas and an outing to a gentlemen's club for a state education official in New Mexico.

Soubtanal, 64, of Morton Grove, IL, and Kassam, 38, of Wheeling, IL, each pleaded guilty last year to one count of mail fraud. U.S. District Judge Amy J. St. Eve on Friday sentenced Soubtanal to six years in prison, and Kassam to five years and ten months in prison.

The sentencing was announced by Joel R. Levin, Acting United States Attorney for the Northern District of Illinois; John P. Sedlak, Acting Special Agent-in-Charge of the Chicago office of the Federal Bureau of Investigation; and Thomas D. Uy Jr., Special Agent-in-Charge of the North Central Region of the U.S. Department of Education Office of Inspector General. The Chicago Public Schools Office of Inspector General assisted in the investigation.

"Defendants abused the trust that the Department of Education placed in them to carry out a massive fraud that was not merely extensive, but also egregious," Assistant U.S. Attorney Kevin Trivett and Barry Jones argued in the government's sentencing memorandum. "The fraud in this case had a significant impact on both the failing school districts that allowed their federal funds to be defrauded and on the students at those school districts."

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In the News

United States Department of Justice

THE UNITED STATES ATTORNEY'S OFFICE
EASTERN DISTRICT OF MISSOURI

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Department of Justice
U.S. Attorney's Office
Eastern District of Missouri

FOR IMMEDIATE RELEASE Friday, October 13, 2017

DeSoto Woman Sentenced for Embezzling \$1.6 Million from Grandview School District

St. Louis, MO – Angela Huskey, was sentenced to 63 months in prison on mail fraud charges in connection with her embezzlement of approximately \$1.6 million from the Grandview R-2 School District. She was ordered to pay \$4,813,900.45 in restitution.

According to court documents, Huskey worked for Grandview for more than 20 years, being elevated to the position of business manager in 2009. In court today, Huskey admitted that she embezzled no less than \$1.6 million from the school district during that time, falsifying the school district's records to conceal her crimes. In some cases, Huskey admitted, she concealed her embezzlement by inflating the reported wages for other employees of the school district, causing those individuals to pay excess taxes to the Internal Revenue Service. As a result, those individuals paid an additional \$24,968.28 in income taxes they did not in fact owe.

Huskey, 51, DeSoto, MO, pled guilty in June to one felony count of mail fraud and appeared today for sentencing before United States District Judge Rodney W. Sippel.

The case was investigated by the Federal Bureau of Investigation, Assistant United States Attorney Owen Carnell is handling the case for the U.S. Attorney's Office.

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In the News

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Allowability

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ESSA District-level Uses of Funds

- District-level Administrative Costs
- District-wide Initiatives
- Homeless Children and Youths (ALL homeless students) (ESSA Section 1113(C))
- Neglected and/or delinquent children
- Early childhood education programs
- 1% Parent and Family Engagement (ESSA Section 1116(a)(3))
- 5% Financial Incentives and Rewards (ESSA Section 1113(c)(4))
- 5% Public School Choice Transportation (ESSA Section 1111(D))
- Equitable Services
- School Improvement (as applicable (ESSA Section 1003))

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ESSA District-level Uses of Funds (cont.)

- LEA plan (ESSA Section 1112) must describe how the LEA will:
 - Monitor student's progress in meeting challenging State academic standards
 - Includes implementing a "well-rounded program of instruction"
- Address disparities in teacher distribution
- Meet its responsibilities re: comprehensive support and improvement
- Provide effective parent and family engagement
- Coordinate and integrate services with preschool programs
- Coordinate academic and CTE content
- Support efforts to reduce the overuse of discipline practices that remove students from the classroom

ESSA District-level Uses of Funds (cont.)

(continued from the prior slide)

- Facilitate transition Middle to High School to postsecondary
 - Coordination with IHEs, dual or concurrent enrollment
- Where LEA uses funds for preschool
 - Ensure services comply with Head Start Act
- For English Learners with Disabilities under IDEA how the program will meet the student's IEP
- Ensure its Title I or III language program (as applicable):
 - Informs parents on reasons for child's selection;
 - Details the program, including right to opt out; and
 - Effectively communicates with EL parents including regular meetings

ESSA School-level Uses of Funds



IT IS IN YOUR PLAN!!

Schoolwide/Targeted Assistance Plan

- Educational expenses
- Increase performance
- Well-rounded education
- Serving eligible students, parents and/or teachers

School Improvement (as applicable (ESSA Section 1003))

- Focus/Priority Schools (2017-2018 year only)
- Schools in targeted/comprehensive improvement



School Improvement

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Types of School Improvement Funding

- ESSA 1003(a) School Improvement
 - Mandatory (7%)
- ESSA 1003A (Direct Student Services)
 - Optional (3%)
- School Improvement Grant (SIG) Funds (NCLB 1003(g))
 - Carryover from NCLB

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School Improvement Funds Sec. 1003(a)

Mandatory: 7% set-aside
 To implement comprehensive and targeted support and improvement activities.

95% for grants to LEAs

- Formula or Competitive Basis
- Subgrants are for no more than 4 years (may include planning year)

Services may be provided directly by SEA with approval of the LEA

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Direct Student Services Sec. 1003A

Optional 3% set-aside

- 1% of that 3% for State Administration
- Remainder subgranted to LEAs, with priority to LEAs with high percentage of schools identified for comprehensive or targeted support
 - 1% Outreach and communications to parents
 - 2% Administration
 - Remainder for allowable uses of funds
- To provide funds to targeted and comprehensive identified schools
- Consultation with LEAs

School Improvement Funds (SIG FUNDS) NCLB 1003(g)

A State may, at its discretion, use any remaining SIG funds either:

1. Consistent with the SIG final requirements; or
2. Consistent with the requirements of section 1003 of the ESEA, as amended by the ESSA.

A State that decides to use some/all its SIG funds consistent with ESSA 1003 may permit an LEA that is currently implementing SIG to transition to the requirements of section 1003 with its remaining SIG funds.

- ED Letter, dated Jan 9, 2018

Targeted Support and Improvement Sec. 1111(d)(2)

Any school in which any subgroup of students is consistently underperforming.

- Applies to all public schools, not only Title I schools

Failure to improve:

- State discretion; and
- If Title I school and fail to improve move to Comprehensive Support and Improvement.

Comprehensive Support and Improvement SEC. 1111(c)(4)(D)

States must establish a methodology for identifying schools for comprehensive support that must include:

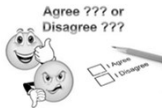
1. At least the lowest performing 5% Title I schools;
2. **All public high schools** in the State failing to graduate 1/3 or more of their students; and
 - At SEA discretion this may include an extended year adjusted graduation rate
3. **Title I schools** in which any subgroup, on its own, would be identified as lowest-performing 5% and has not improved (as defined by the State)

Fail to improve in 4 years (or less): State discretion re: "more rigorous interventions"

Equitable Services



Consultation




Written affirmation that timely and meaningful consultation occurred. (ESSA Section 1117(b))

LEAs must give option that timely and meaningful consultation did not occur or that the program design is not equitable with respect to eligible private school children.

When Disagreement, the LEA must provide in writing:

- The basis of the disagreement,
- The LEA's decision, and
- The right to complain.

Ombudsman



Each State has an ombudsman to monitor and enforce these equitable services requirements. (ESSA Section 1117(a)(3)(b))

The primary responsibilities:

- To monitor and enforce equitable services requirements in Title I and Title VIII.
- Includes developing monitoring protocols under titles that require equitable services.

Resolve all complaints.

National Network of Ombudsmen

- Working collaboratively (some State-level working groups) with public and private school representatives to improve relationships, foster communication and improve transparency.

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Title I, A Proportionate Share

Proportionate Share Formula (ESSA Section 1117(a)(4)):

1. LEA determines the participating public attendance school areas.
2. LEA determines number of children from low-income families residing in each participating area who attend public and private schools.
3. LEA determines proportion of children in private schools.
4. LEA applies the private school proportion to the LEA's total Title I allocation to determine the equitable services proportionate shared.

★ Funds must be expended in the current fiscal year. Most Likely, carryover is allowable for subsequent year equitable services, but it remains unclear.

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Title I, A Proportionate Share Example

Proportionate Share Formula (assuming LEA received \$1M Title I Funds):

Public School Attendance Area	Public School Low-Income Children	Private School Low Income Children	Total Low Income Children
A	500	120	620
B	300	9	309
C	200	6	206
D	350	15	365
Total	1,350	150	1,500
Proportion of Population	90%	10%	
Proportionate Share	\$900,000	\$100,000	

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Title I, A Proportionate Share Costs

-Administrative costs for equitable services (reasonable and necessary out of this set-aside)

-Parental Involvement (Proportionate amount of 1% Total Title I allocation)
- Using previous example (1% of \$1M allocation = \$1,000)

-Professional Development
- Optional, determined through consultation.

-All other activities for eligible private school students



Supplement Not Supplant



Auditor's SNS Test: The Presumptions of Supplanting 2 CFR 200, Subpart F Comp Supp

"What would have happened in the absence of the federal funds??"

3 Presumptions of Supplanting

1. Required to be made available under other federal, state, or local laws
2. Provided with non-federal funds in prior year
3. Provided services to Title I students and the same services were provided to non-Title I students using non-federal funds.



Title I, A SNS Sec. 1118(b)(1)-(2)

Standard: Federal funds must be used to supplement and in no case supplant state, and local resources

Test: To demonstrate compliance, the LEA shall demonstrate that the methodology used to allocate State and local funds to each school receiving assistance under this part ensures that the school receives all the State and local funds it would otherwise receive if it were not receiving Title I funds.

What does this mean?

The presumptions of supplanting do not apply to Title I, A!

ESSA Title I, A SNS (cont.) Sec. 1118(b)(2)-(4)

- No LEA shall be required to:
 - Identify individual costs or services as supplemental; or
 - Provide services through a particular instructional method or in a particular instructional setting to demonstrate compliance.

SNS is now a methodology test:

The LEA must have a written methodology to district state/local funds to its schools so that funds are distributed without regard to the school's Title I status.

Must be in place in time for the 18-19 school year.

Does This Methodology Work?

The LEA uses its state/local funding to ensure that each school has enough funds to pay for 1 teacher for every 30 students up to 20 teachers total, and \$5 per student for supplies, up to \$5,000 total.

At the end of its distribution, the LEA has \$3,000 left over so they distribute it among the non-Title I schools.

Does This Methodology Work?

The LEA distributes its state funds based on the characteristics of students in each school so that students with characteristics associated with educational disadvantage generate additional funding for their school.

The LEA provides:

- \$25 for every student;
- An additional \$25 for each economically disadvantaged student;
- An additional \$50 for each student with a disability; and
- An additional \$35 for each English learner.

Does This Methodology Work?

The LEA uses its state funding to ensure that each school has enough funds to pay for 1 teacher for every 30 students up to 20 teachers total.

The LEA provides state funding in each of its 6 non-Title I schools to pay for 20 teachers. In the remaining 4 schools, the LEA provides state funds to pay for 15 teachers because they are already using Title I funds to pay for 5 teachers so they don't need the state funds to cover those additional teachers.

Does This methodology Work?

The LEA distributes its state/local funds based on the grade level of the student as follows:

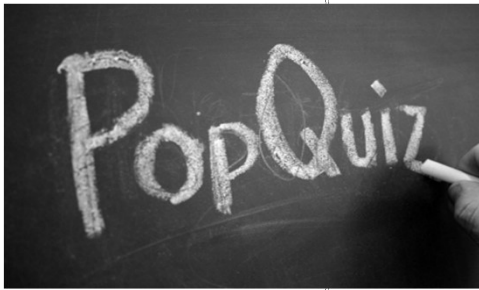
- All elementary school students receive \$90 per student;
- All middle school students receive \$65 per student; and
- All high school students receive \$80 per student.

What if only the elementary schools are Title I schools?

What About Districtwide Expenditures?

USDE applying the original presumptions of supplanting!!

- Examples at last year's NASTID conference that apply a specific cost test for district level expenditures.
- For state-mandated requirements, and
- For same services to Title I students/schools and Non-Title I students/schools.
- ED is using the methodology test to apply this specific cost test!



SNS Pop Quiz Question 1

Winter Elementary, a schoolwide school, paid for a new STEM software program last year using local funds. It was so successful that this year, the school wants to purchase it again but use Title I funds to pay for it.

- Is this supplanting?
- Is this allowable?

SNS Pop Quiz Question 2

Bartlett Elementary, a targeted assistance school, heard about that great STEM software program and now wants to purchase it to use for all students using its Title I funds.

Is this supplanting?

Is this allowable?

SNS Pop Quiz Question 3

A state law requires teacher-to-student ratios of 1 teacher for every 30 students. A schoolwide school has 120 students in third grade and 4 teachers. One of the teachers is paid with Title I, the remaining three are paid with State funds. May the district pay for that 1 teacher with Title I funds.

Is this supplanting?

Is this allowable?

SNS Pop Quiz Question 4

An LEA uses district-level Title I funds to pay for a Truancy Officer. The officer's main job is to assist with reducing truancy rates in the district so that academic achievement rates increase.

Is this supplanting?

Is this allowable?

SNS Pop Quiz Question 5

An LEA with all Title I, schoolwide schools uses district-level Title I funds to pay for a Director of Student Privacy. The central office position advises schools on student privacy issues and complaints.

Is this supplanting?

Is this allowable?

ESSA Flexibility



Title V – Transferability Sec. 5103

Now allows SEAs or LEAs to transfer all of their funds under:

- Title II, Part A (Professional Development),
- Title IV, Part A (Student Support), or
- Sec. 4204(c)(3) (Awards for Youth Development Programs – State only),

Between those provisions, and into (but not out of):

- Title I Part A (Academic Disadvantaged),
- Title, I, Part C (Migrant),
- Title I, Part D (Neglected and Delinquent),
- Title III, Part A (English Learners), or
- Title V, Part B (Rural Education).

Transferability Requirements

Ideas from Districts... Moving Title IV, A funds into Title I, A:

Before a transfer funds all programs (except Title I, Part D and Title V, Part A) the District must engage in timely and meaningful consultation with appropriate private school officials.

If you transfer into Title I, Part A, do you include the transferred amounts in the equitable services calculation?

- Conflicting guidance on this issue, but **USDE SAYS YES!**
- Sec. 1117(a)(4) says equitable services calculated before any transfers. Sec. 5013 says follows rules under which program is transferred to. But USDE Guidance says to include transferred amounts.

Transferability Benefits?

Ideas from Districts... Moving Title IV, A funds into Title II, A:

Before a transfer funds all programs (except Title I, Part D and Title V, Part A) the District must engage in timely and meaningful consultation with appropriate private school officials.

If you transfer into Title II, Part A, do you include the transferred amounts in the equitable services calculation?

- **YES!**
- Sec. 5013 says follows rules under which program is transferred to.
- ESSA Fiscal Guidance makes clear you calculate the set-aside based on Title II, Part A allocation, less administrative costs.

Consolidated Administration

The SEA/LEA may consolidate any amounts specifically made available to it for SEA/LEA administration under one or more of the ESSA programs. (ESSA Sections 8201 and 8203)

Uses of Funds: The SEA shall use funds for the administration of the programs included in the consolidation in addition to statutory allowable uses.

Consolidated Admin (cont.)

Consolidated Admin funds may also be used for (ESSA Section 8201(b)):

- A. The coordination of consolidated programs;
- B. The establishment and operation of peer-review mechanisms;
- C. Admin and State-activities under Title VIII;
- D. The dissemination of information regarding model programs and practices;
- E. Technical assistance;
- F. Training personnel engaged in audit and other monitoring activities;
- G. Implementation of the Cooperative Audit Resolution and Oversight Initiative (CAROI)
- H. Implementation of fiscal support teams

Time and Effort Documentation



Documenting Staff Salaries

Must document staff salaries (UGG Section 200.403(a))

- Based on records that accurately reflect the work performed and identify the cost objective that the employee is working on.



- Examples:
 - Schoolwide Program
 - Title I Public School Administration
 - Title II Administration
 - Equitable Services
 - Equitable Services Administration
 - Parental Involvement
 - Consolidated Administration (ESSA Section 8203)

Salary Documentation

These records **MUST** (UGG Section 200.430(i)(1)):

1. Be supported by a system of internal controls which provides reasonable assurance charges are accurate, allowable and allocable;
2. Be incorporated into official records;
3. Reasonably reflect total activity for which employee is compensated;
4. Encompass all activities (federal and non-federal);
5. Comply with established accounting policies and practices; and
6. Support distribution among specific activities or cost objectives.

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Flexibility v. Internal Controls

FLEXIBILITY

- Use Percentages or Hours
- No signature required
- No set timeframe for documentation
- Electronic system permitted



INTERNAL CONTROLS

- Accuracy
- Reliability
- Allocability
- Official Record
- Meeting Accounting Policies and Practices

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Noncompliance

• For a non-Federal entity where the records do not meet these standards:

- USDE may require personnel activity reports (PARs), including prescribed certifications or equivalent documentation that support the records as required in this section. UGG Section 200.430(i)(8)
- PARs are not defined!!

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May our agency continue to follow our time and effort system under the Prior OMB Circular Rules?

Yes!
If your agency had a **compliant** system under A-21, A-87, or A-122 that should meet the requirements under the UGG.

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May our agency change our current time and effort practices based on the current UGG standard?

Yes!
Any new system would be compliant assuming it meets the new 6 requirements.


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AEFFA Proposed T&E Flexibility

1. Certification of Actual Time Worked
2. Blanket Certification
3. Official Record of Employee Activities
4. Electronic Submissions/Approvals
5. Roll-up Time and Effort Tracking
6. Allocation of Effort Using a Basis Other than Time

June 15, 2016 Letter from AEFFA, located at www.bruman.com

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Documentation

Allowability Documentation

EDGAR – 2 CFR 200.403(g)
 To meet allowability requirements... costs must be adequately documented.

EDGAR – 76.730 – 76.731
 Shall keep records to show compliance with program requirements.

- The amount of funds;
- How funds were used;
- Total cost of the project;
- Share of the cost provided from other sources; and
- Other records to facilitate an effective audit.

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How Long?

Retention Requirements For Records

EDGAR – 2 CFR 200.333

Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report.

BUT, need to keep records for 5 years under GEPA (General Education Provisions Act) at 34 CFR 81.31(c)

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Know Where your Documents Are?

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"I am not disorganized — I know exactly where everything is!
The newer stuff is on top and the older stuff is on the bottom."

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How Maintain Documentation?

o When original records are electronic and cannot be altered, there is no need to create and retain paper copies. (UGG Section 200.335)

o When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided they:

- o Are subject to periodic quality control reviews;
- o Provide reasonable safeguards against alteration; and
- o Remain readable.

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Documentation *HOT* BUTTON Issues



Are records kept by school, grant, fiscal year?

Do you backup documentation?
o Where and how often?

What happens when staff retire or voluntarily leave?

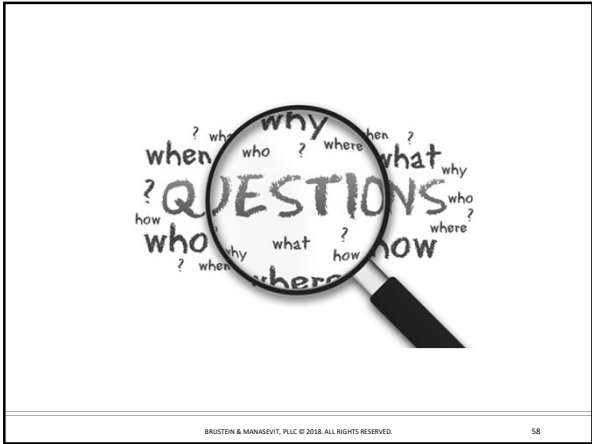
What happens when staff are fired?

What happens when a school closes?

Staff keep documentation at home?

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