



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF INSPECTOR GENERAL

Audit Services
New York Audit Region

September 25, 2007

Control Number
ED-OIG/A02H0001

Honorable Rafael Aragunde-Torres
Secretary
Puerto Rico Department of Education
P.O. Box 190759
San Juan, Puerto Rico 00919-0759

Dear Secretary Aragunde-Torres:

This **Final Audit Report**, entitled *Puerto Rico Department of Education's Use of Charter Schools Program Funds*, presents the results of our audit. Our objective was to determine whether the Puerto Rico Department of Education (PRDE) (1) was authorized by State law to establish charter schools and (2) used Charter Schools Program funds to operate charter schools.

BACKGROUND

The Charter Schools Program (CSP) was authorized under Title X, Part C of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Improving America's School Act (IASA) of 1994. The program was amended in October 1998 by the Charter School Expansion Act of 1998, and in January 2001 by the No Child Left Behind Act of 2001 (NCLB).

The CSP is intended to enhance parent and student choices among public schools to assist in promoting comprehensive educational reform and give more students the opportunity to learn to meet challenging standards. Grants are for periods of not more than three years.

In 1995 and 1999, PRDE submitted CSP grant applications to the U.S. Department of Education (Department). The Department awarded PRDE two CSP grants, one in 1996 for \$4,337,950, and one in 1999 for \$5,875,000. The IASA was the Federal law in effect at the time PRDE submitted both CSP grant applications to the Department. Puerto Rico Law 18 of June 16, 1993¹ was the State law in existence at that time. The law was repealed by Law 149 of June 30, 1999.²

¹ Law 18 was known as the "Community Schools Development Act."

² Law 149 was known as the "Organic Law of the Puerto Rico Public Department of Education." The law was created to establish Puerto Rico's public policy for education.

AUDIT RESULTS

PRDE was authorized by State law to establish charter schools under a CSP grant awarded in 1996. In addition, PRDE properly used these CSP grant funds to operate the authorized charter schools. However, PRDE improperly used \$5,015,367³ in CSP grant funds awarded in 1999 to operate unauthorized charter schools.

In its comments to the draft report, PRDE did not concur with our finding and recommendation 1.1. The comments are summarized after the recommendations section of this report. The full text of PRDE's comments on the draft report is included as an Attachment to the report.

FINDING – PRDE Improperly Used \$5,015,367 in Charter Schools Funds to Operate Unauthorized Charter Schools.

PRDE was not authorized by State law to operate charter schools under a CSP grant awarded in 1999. On June 30, 1999, one month after PRDE submitted its CSP grant application to the Department, Puerto Rico repealed Law 18, the State law that had enabled PRDE to establish charter schools. The new State law (Law 149) did not include certain provisions required under the IASA to make PRDE eligible to participate in the CSP. As a result, PRDE improperly used \$5,015,367 under the CSP grant awarded in 1999. A high-level PRDE official agreed that Law 149 reduced significantly the level of autonomy that the community schools had under Law 18 and made PRDE ineligible to receive CSP funds. The official also stated that the PRDE administration in office at the time the law changed did not recognize this and continued to draw down funds to operate the charter schools.

Pursuant to § 10306(1)(A) of the IASA, charter schools must operate in accordance with an enabling State statute and are exempt from significant State or local rules that inhibit the flexible operation and management of public schools. Puerto Rico Law 149 limits the flexible operation and management of the community schools in Puerto Rico, as set forth in Article 1.02 of the law, which states:

This law does not foresee that each school be a separate universe, without connection with the others and outside the jurisdiction of the Department.⁴ On the contrary, all the schools are part of the Public Educational System of Puerto Rico; and are under the jurisdiction of the Secretary. . . .

. . . [No] disposition of this Law reduces the authority that the Constitution grants the Secretary to direct the public education in Puerto Rico. Even when some of the administrative functions are transferred from the central level of the Department to the community schools, they should follow the normative order that the Secretary establishes for the Public Educational System.

³ This was the amount of Charter Schools Program funds PRDE drew down.

⁴ The "Department" refers to PRDE.

In addition, according to § 10306(1)(B) of the IASA, a charter school is to be created by a developer⁵ as a public school, or adapted by a developer from an existing public school. Puerto Rico Law 149 does not include a provision for having a developer create a community school, as the Federal law requires. Rather, schools are conferred the community school status through a constituent letter from the PRDE Secretary.

Finally, § 10301(a)(1) of the IASA promotes enhancement of parent and student choices among public schools. Puerto Rico Law 149 provides that almost all schools qualify as community schools. Providing for almost all public schools to become community schools was also inconsistent with the intent of the IASA.

The improper use of unauthorized Charter Schools grant funds adversely affected the funding of other eligible Charter Schools programs.

Recommendations

We recommend that the Assistant Deputy Secretary for the Office of Innovation and Improvement require PRDE to:

- 1.1 Return to the Department \$5,015,367 in CSP funds it was not authorized to receive;
- 1.2 Ensure that it continuously monitors changes in State and Federal laws to determine their effect on PRDE and its authority to receive Federal funds.

PRDE Comments

PRDE disagreed with our finding and recommendation 1.1. PRDE recognized that it is our position that a change in Puerto Rico law, specifically the repeal of Law 18 and the enactment of Law 149, invalidated PRDE's eligibility to participate in the CSP. However, PRDE disagreed with that interpretation and stated that it was further investigating the relationship between Puerto Rico Law 149 and the CSP program. PRDE alleged that the Department reviewed and approved the CSP applications PRDE submitted in 1995 and 1999, and that PRDE implemented the CSP program consistent with those approved applications.

OIG Reply

We considered PRDE's response, but did not change our finding and recommendation 1.1. We maintain our position that PRDE was not authorized by Law 149 to operate charter schools under the CSP grant awarded in 1999. As a result, PRDE must return to the Department \$5,015,367 in CSP funds it was not authorized to receive.

⁵ The IASA defines "developer" as an individual or group of individuals (including a public or private nonprofit organization), which may include teachers, administrators and other school staff, parents, or other members of the local community in which a charter school project will be carried out.

OBJECTIVE, SCOPE, AND METHODOLOGY

The objective of our audit was to determine whether PRDE (1) was authorized by State law to establish charter schools and (2) used Charter Schools Program funds to operate charter schools.

To accomplish the audit objective, we reviewed Puerto Rico Law 18 of June 16, 1993, and Puerto Rico Law 149 of June 30, 1999. We also reviewed the IASA, the Charter School Expansion Act of 1998, and the CSP provisions included in the NCLB. In addition, we reviewed the applications for CSP grants and the annual reports of the operations and activities of the charter schools PRDE submitted to the Department. We also reviewed the expenditures associated with both grants and the amount of CSP funds PRDE drew down under the 1996 and 1999 CSP grants, as reflected in the Department's Grant Administration and Payment System (GAPS).

To review the expenditures associated with the 1996 and 1999 grants, we relied on computer-processed data obtained from PRDE. The data consisted of excel spreadsheets containing the expenses associated with each grant, detailed by account. To assess the reliability of the data, we compared the expenditure data obtained from PRDE, with the expenditure data that appeared in GAPS. Based on the comparison, we concluded that the computer-processed data were sufficiently reliable for the purpose of our audit. We did not review source documents; specifically, we did not review invoices and cancelled checks.

We performed our fieldwork at PRDE, from October 18, 2006, through February 22, 2007, the date of our exit conference.

We conducted the audit in accordance with generally accepted government auditing standards appropriate to the limited scope of the audit described above.

ADMINISTRATIVE MATTERS

Statements that managerial practices need improvements, as well as other conclusions and recommendations in this report, represent the opinions of the Office of Inspector General. Determinations of corrective action to be taken will be made by the appropriate Department of Education officials.

If you have any additional comments or information that you believe may have a bearing on the resolution of this audit, you should send them directly to the following Education Department official, who will consider them before taking final Departmental action on this audit:

Morgan Brown
Assistant Deputy Secretary/Office of Innovation and Improvement
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

It is the policy of the U. S. Department of Education to expedite the resolution of audits by initiating timely action on the findings and recommendations contained therein. Therefore, receipt of your comments within 30 days would be appreciated.

In accordance with the Freedom of Information Act (5 U.S.C. §552), reports issued by the Office of Inspector General are available to members of the press and general public to the extent information contained therein is not subject to exemptions in the Act.

Sincerely,

/s/

Daniel P. Schultz
Regional Inspector General for Audit

Attachment



Commonwealth of Puerto Rico
DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

September 7, 2007

VIA EMAIL AND REGULAR MAIL

Daniel P. Schultz (Daniel.Schultz@ed.gov)
U.S. Department of Education, Office of Inspector General
Financial Square
32 Old Slip, 26th Floor
New York, NY 10005

RE: Response to Draft Audit Report ED-OIG/A02H0001

Dear Mr. Schultz:

Thank you for the opportunity to respond to Draft Audit Report ED-OIG/A02H0001 entitled *Puerto Rico Department of Education Use of Charter Schools Program Funds*.

In the draft audit report, the Office of Inspector General (OIG) alleges that the Puerto Rico Department of Education (PRDE) improperly used \$5,015,367 in Public Charter School Program (CSP) funds and recommends that PRDE return that amount to the U.S. Department of Education. The Puerto Rico Department of Education disagrees with that recommendation.

As described in the draft audit report, PRDE submitted CSP applications in 1995 and 1999. These applications were reviewed and approved by the U.S. Department of Education. PRDE implemented the CSP program consistent with these approved applications. PRDE recognizes that it is OIG's position that a change in Puerto Rico law, specifically the repeal of Law 18 and the enactment of State Law 149, invalidated PRDE's eligibility to participate in the CSP program. PRDE disagrees with this interpretation, but is further investigating the relationship between Puerto Rico Law 149 and the CSP program.

We appreciate this opportunity to respond to this audit and take this matter seriously. Please feel free to contact me if you have any additional questions.

Sincerely,

Rafael Aragunde-Torres
Secretary

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