The State of Delaware's Compliance with No Child Left Behind Public School Choice and Supplemental Educational Services Provisions

FINAL AUDIT REPORT

Control Number ED-OIG/A03F0002
November 2005

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U.S. Department of Education
Office of Inspector General
Philadelphia, Pennsylvania

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EXECUTIVE SUMMARY

The objectives of our audit were to determine if (1) the Delaware Department of Education (DDE) had an adequate process in place to review local educational agency (LEA) and school compliance with adequate yearly progress (AYP), public school choice, including the Unsafe School Choice Option (USCO), and supplemental educational services (SES) provisions of the Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act (NCLB) of 2001 (P.L.107-110) and applicable regulations; (2) LEAs provided to students attending schools identified for improvement (failed AYP two consecutive years) the option of attending another public school; and (3) LEAs provided SES to students attending schools that failed to make AYP while identified for improvement, corrective action or restructuring during the 2003-2004 school year. Our audit covered implementation of the above objectives during the 2004-2005 school year, as this was the period when the 2003-2004 AYP determinations would be in effect.

To accomplish our objectives, we reviewed compliance with AYP, public school choice, including the USCO, and SES provisions of ESEA and the implementing regulations. In addition, we reviewed documents from three judgmentally selected LEAs (Christina, Indian River and Marion T. Academy) with schools identified for improvement, corrective action or restructuring, and the documentation related to the LEAs' compliance with the public school choice, including the USCO, and SES provisions of ESEA and the implementing regulations.

Our audit disclosed that DDE adequately reviewed LEA and school compliance with AYP. However, DDE did not have a process in place to adequately monitor LEA and school compliance with the school choice, including the USCO, and SES provisions of ESEA. Our audit also disclosed that none of the three LEAs fully complied with the public school choice, including the USCO, and SES provisions of the ESEA and the implementing regulations.

We recommend that DDE document and implement internal controls pertaining to the process for reviewing LEA and school compliance with school choice, including the USCO, and SES provisions. Specifically, regarding school choice, DDE should address the deficiencies related to parental notification letters, the offering of the school choice options and the budgeting of required funds. Regarding SES, DDE should address the deficiencies related to the parental notification letters, and the availability of supplemental services and service providers. In addition, DDE should address the training of personnel, incident reporting, and the calculations relating to the persistently dangerous schools determination for the USCO.

In its response to our draft report, DDE concurred with our findings and recommendations, except for finding number 4. In its response, DDE discussed the corrective actions it has taken or plans to take to address our recommendations. Although DDE disagreed with finding number 4, it stated that the recommendations involve processes that are currently under revision and the recommendations will prove to be helpful as it refines its USCO reporting process and strengthens internal controls. DDE's comments are summarized after each finding and the complete response is included as Appendix B to this report.

BACKGROUND

Title I, Part A of the ESEA, as amended by the No Child Left Behind Act of 2001 (P.L.107-110), significantly increases the choices available to the parents of students attending Title I schools that fail to meet state standards, including immediate relief, beginning with the 2002-2003 school year, for students in schools that were previously identified for improvement or corrective action under the 1994 reauthorization of the ESEA. LEAs must offer all students attending schools identified for improvement, corrective action, or restructuring the choice to attend a public school not identified for improvement,[1] corrective action, or restructuring, which may include a public charter school within the LEA. The LEA must provide students transportation to the new school.

A school must offer SES to low-income students if it fails to make AYP after being identified for improvement, or while in corrective action, or restructuring. SES providers must be approved by the state and offer services tailored to help participating students meet challenging state academic standards.

ESEA establishes joint funding for school choice related transportation and SES. Unless a lesser amount is needed to meet demand for school choice related transportation and to satisfy all requests for SES, an LEA must spend up to an amount equal to 20 percent of its Title I, Part A allocation, before any reservations, on: 1) school choice related transportation; 2) SES; or 3) a combination of 1 and 2.

Section 1116(c)(1)(A) of the ESEA requires states to review LEAs for compliance with the public school choice and SES provisions of the ESEA. Section 1116 (b) and (e) of the ESEA and 34 C.F.R. § 200.36 and 200.37 outline requirements for school choice and SES parental notification letters. For school choice parental notification, Section 1116 (b)(6) of the ESEA and 34 C.F.R. § 200.37 require that an LEA promptly provide parents of each student enrolled in a school identified for improvement with notice that includes, among other things, (1) an explanation of how the school compares in terms of academic achievement to other schools served by the LEA and state educational agency; (2) an explanation of the parents' option to transfer their child to another public school, which may include charter schools, or obtain SES; (3) identification of the schools to which a child may transfer and information on the academic achievement of those schools; and (4) notice that the LEA will provide or pay for transportation for the student to another public school. Section 1116(b)(1)(E) of the ESEA requires an LEA to give priority to the lowest achieving children from low-income families if funds are not sufficient to serve all eligible families.

For SES parental notification, Section 1116(e)(2)(A) of the ESEA and 34 C.F.R. § 200.37 require the LEA to provide, at a minimum, annual notice to parents of (1) the availability of services and how parents of eligible children can obtain the services for their child; (2) the identity of approved providers within or near the LEA; and (3) a brief description of the services, qualifications, and demonstrated effectiveness of each provider. According to 34 C.F.R. § 200.36(c), the state, LEA, or school is required to provide information to parents directly, through such means as regular mail. Section 1116 (e)(2)(C) of the ESEA requires the LEA to

[1] A school is identified for improvement after failing AYP for two consecutive years.

apply fair and equitable procedures for serving students if the number of spaces at approved providers is not sufficient to serve all eligible students. Section 1116 (b)(10)(C) of the ESEA requires the LEA to give priority to the lowest achieving eligible students if funds are not sufficient to provide SES to all eligible students.

The U.S. Department of Education (ED) allocated $30,708,190 in Title I funds to DDE for the 2004-2005 school year. DDE allocated Title I funds during this period to 30 of its 32 LEAs.

DDE administered the Delaware Statewide Testing Program (DSTP) in the spring of 2004, and established an AYP performance target of 57 percent for English Language Arts (ELA), and 33 percent for Math. For the 2004-2005 school year, DDE provided the final AYP determinations to the LEAs by August 6, 2004.

Based on the results of the DSTP, 13 schools in 7 LEAs were identified as needing improvement—6 schools were in the second year of improvement, and 7 schools were in the third year of improvement. For the 3 LEAs we reviewed, 11 of 1,572 (.70 percent) eligible students at the five choice schools we reviewed exercised their right to school choice, and 6 of 708 (.85 percent) eligible students enrolled in SES at the two schools that we reviewed that were required to provide SES. School year 2004-2005 was the first full year of DDE's SES implementation.

According to the Unsafe School Choice Option, Title IX, Part E, Subpart 2, Section 9532, a student is allowed to transfer from one school to another school when the school the student is attending is determined to be "persistently dangerous," and/or the student becomes the victim of a violent crime at that school. DDE determined that a persistently dangerous school (PDS) was one that had five qualified incidents[2] per 100 students, for a period of three consecutive years. No DDE schools were identified as PDS, and no student was identified as a victim of a violent crime during the audit period.

AUDIT RESULTS

We concluded that: (1) DDE adequately reviewed LEA and school compliance with AYP, (2) DDE did not have a process in place to adequately monitor LEA and school compliance with public school choice, including the USCO, and SES provisions, (3) the LEAs did not fully provide to students the option of attending another public school, (4) the LEAs failed to provide SES to students, and (5) both DDE and the LEAs need to strengthen their internal controls relative to DDE's USCO persistently dangerous schools determinations.

Finding 1 – DDE Should Develop a Process to Adequately Monitor LEA Compliance with the ESEA Public School Choice and SES Provisions

DDE did not adequately monitor LEA compliance with ESEA's public school choice and SES provisions. Although DDE provided guidance to LEAs, it did not have a process, including

[2] A list of qualified incidents is included as an Appendix to the report.

documented policies and procedures, to monitor compliance. We found that DDE did not review LEAs' school choice or SES letters for content to ensure each letter met federal regulations and guidelines . Section 1116(c)(1)(A) of the ESEA requires a state to annually review the progress of each LEA receiving Title I funds to determine if each LEA is carrying out its responsibilities under Section 1116 of the ESEA.[3] DDE left the implementation of the choice and SES provisions to the LEAs . As a result of DDE's failure to adequately monitor LEA compliance, all three LEAs we reviewed did not comply fully with the parental notification requirements, and did not accurately determine student enrollment. A DDE official informed us that DDE planned to review the school choice and SES notification letters in the future.

In addition, DDE did not determine if all LEAs offered the school choice option to students who attended a school identified in need of improvement. One LEA, Marion T. Academy Charter School (MTA), eliminated the school choice option for some students. MTA also failed to budget funds to meet the federal spending requirement for school choice transportation.

If DDE had a process in place to adequately monitor LEA compliance as required by the ESEA, the associated risks of the issues discussed in Findings No. 2 and 3 could have been mitigated.

Recommendations:

1.1 We recommend that the Assistant Secretary for Elementary and Secondary Education, in collaboration with the Assistant Deputy Secretary for Innovation and Improvement require DDE to develop, document, and implement a process to monitor LEA compliance with public school choice and SES provisions, including ensuring that LEAs are spending the requisite amount for school choice transportation costs and SES.

DDE Comments:
DDE concurred with our finding and recommendation. DDE stated that it will expand its Quality Review Process to include an annual review of all LEAs that must implement NCLB provisions, and provide them with timely feedback. DDE also provided information on the corrective actions it plans to take.

Finding 2 - LEAs Did Not Comply with School Choice Requirements

The school choice parental notification letters sent by all of the LEAs reviewed failed to include all of the information required by ESEA, and based on the enrollment data provided by each LEA, also failed to reach all students enrolled on the first day of school. In addition, the charter school LEA (MTA) eliminated some school choice options for students, and also failed to budget the minimum amount of funds for school choice transportation costs.

School Choice Notification Letter Deficiencies

As indicated in the table below, the school choice parental notification letters for two (Christina School District (CSD) and MTA) of the three LEAs we reviewed did not include all of the

[3] LEA responsibilities under Section 1116 of ESEA are discussed in detail in the **BACKGROUND** section of this report.

minimum required information as required by Section 1116 (b)(6) of the ESEA and 34 Code of Federal Regulations (C.F.R.) § 200.37.[4]

Table 1

School Choice parental notification letter requirements:	Christina School District		Indian River School District		Marion T. Academy	
	YES	NO		NO	YES	NO
1) Identify the reasons why the specific schools were rated as in need of improvement		**v**			**v**	
2) Identify each public school, which may include charter schools, that the parent can select		**v**				**v**
3) Include information on the academic achievement of the schools that the parent may select and a comparison to the child's current school		**v**				**v**
4) State that the LEA will provide or pay for transportation		**v**				**v**
5) Explain what the specific school, LEA or Delaware Department of Education is doing to help the school address the achievement problem		**v ***			**v**	

***** CSD's letter only included information on the continuation of past instructional efforts. The letter did not address any other efforts or new initiatives to address the achievement issues.

The two LEAs were unaware of the information required to be included in the school choice notification letters, and because DDE did not monitor the LEA's progress, both letters were deficient. As a result, parents could not make a fully informed decision whether to transfer their children from a school identified for improvement.

During our exit conference with CSD officials, they requested guidance in making their school choice and SES letters fully compliant. To fulfill the request the audit team contacted U.S. Department of Education (ED) program officials and made arrangements for ED to work with DDE and LEA officials. DDE officials informed us that they plan to incorporate a review of the letters as part of their annual quality control review process.

[4] The first column of Table 1 identifies the minimum required information per the listed criteria.
[5] Both middle schools failed AYP for two consecutive years and no other school choice options were available.

Parents Were Not Notified of School Improvement Status

We determined that parents of 505 students, enrolled on or before the first day of school from all three LEAs reviewed, did not receive school choice letters notifying them of their child's school's improvement status. According to ESEA Section 1116(b)(1)(E)(i), parents of students enrolled at schools identified for improvement must be notified of the school choice option prior to the first day of the school year.

All three LEAs utilized student enrollment data generated prior to the first day of school, and then failed to implement a procedure, such as providing the parents with written information at enrollment, to account for students enrolling after the enrollment data were generated, up until the first day of school. For example, CSD used its enrollment data as of August 14, 2004, and its first day of school was August 30, 2004. Any parent whose child enrolled after August 14, 2004, up until August 30, 2004, did not receive any notification of the school's improvement status.

Consequently, parents of 137 students at MTA, 113 students at CSD (56 students at Wilson Elementary School and 57 students at Pulaski Intermediate School) , and 255 students at Indian River School District (IRSD) [91 students at Selbyville Middle School and 164 students at Sussex Central Middle School (SCMS)] were not properly notified. *Table 2* below provides the dates each LEA generated its data and the first day of school for its students.

Table 2

LEA	Enrollment Data Generation Date	First Day of School
Christina School District	August 14, 2004	August 30, 2004
Marion T. Academy	May 1, 2004	August 23, 2004
Indian River School District	August 12 &13, 2004	September 7, 2004

MTA Students Were Not Offered the School Choice Option

MTA restricted the ESEA school choice option of attending a school not identified for improvement for parents of 102[6] students originally assigned to a "feeder school" [7] also identified for improvement. MTA failed to attempt to enter into a cooperative agreement with another LEA that would have allowed for parents of students with a home "feeder" school identified for improvement to select the school choice option and transfer to a school not identified for improvement. Section 1116 (b)(1)(E)(i) of the ESEA requires the LEA to provide all students enrolled in the school with the option to transfer to another public school served by the local educational agency, which may include a public charter school, that has not been identified for school improvement. In the case of MTA, a charter school that is also considered its own LEA, Section 1116 (b)(11) of the ESEA states that if all public schools served by the local educational agency to which a child may transfer are identified for school improvement, corrective action or restructuring, the agency shall, to the extent practicable, establish a cooperative agreement with other local educational agencies in the area for a transfer. MTA failed to consider the ESEA requirement allowing a student to attend a school, even one located within another LEA, not identified for improvement. In doing so, MTA restricted the school

[6] These 102 students are exclusive of the aforementioned 137 students that did not receive parental notification letters.
[7] The term "*feeder school*" is defined as a school from which students are drawn to attend another school, usually located in the same geographic area.

choice option resulting in the parents of the 102 students not being offered the school choice option to transfer to another school.

MTA Did Not Budget Funds for School Choice Transportation

MTA did not budget funds to meet the federal spending requirement for school choice transportation costs. ESEA Section 1116(b)(10)(A) requires that unless a lesser amount is needed to comply with school choice transportation and to satisfy all requests for supplemental educational services, a local education agency shall spend an amount equal to 20 percent of its Title I allocation. MTA believed that the only school choice for a parent was the "home" feeder school and since transportation was already established by the home school district, MTA did not budget funds for ESEA school choice transportation. As a result, MTA would not have had adequate funding to accommodate the transportation costs associated with the school choice option if students had been offered and had exercised the school choice option.

Recommendations:

We recommend that the Assistant Secretary for Elementary and Secondary Education, in collaboration with the Assistant Deputy Secretary for Innovation and Improvement, require DDE to:

2.1 Develop a process to ensure that: 1) LEA school choice notification letters are updated to include all of the required information listed in *Table 1*, and 2) all LEAs attempt to provide, to the extent possible, a school choice option of a school not identified for improvement.

2.2 Require all LEAs to implement a plan to notify those students enrolling after the initial notification letter distribution and before the first day of school.

DDE Comments:
DDE concurred with our finding and recommendations. In its response DDE informed us of the corrective actions it plans to take. DDE provided a sample choice letter to LEAs, which it also posted on its website. DDE has also worked with MTA to ensure it complies with the choice regulations, and has provided technical assistance in developing and administering a Memorandum of Understanding with its neighboring LEAs. In addition, DDE is developing guidance and training to help schools implement a procedure to address students enrolling after the initial notification letter distribution and the first day of school.

OIG Comments:
We reviewed the sample school choice letter and found that it is not fully compliant with NCLB requirements. The school choice letter does not include a place for the school to: 1) identify each public school that the parent can select to transfer their child to; and 2) provide information on the academic achievement of the schools that the parent may select and a comparison to the child's current school. We recommend that DDE revise the sample letter to include this information.

Finding 3 –Two LEAs Did Not Comply With Supplemental Educational Service Requirements

The SES parental notification letters sent by CSD and IRSD failed to include all of the information required by the ESEA. In addition, IRSD had procedural failures contributing to the insufficient implementation of SES at one school, as it made available to parents only two of the nine state-approved SES providers. Furthermore, IRSD failed to ensure that the parents of students at one school (SCMS) were notified of the SES available to their children.

SES Notification Letter Deficiencies

The SES option parental notification letters for two of the LEAs we reviewed did not fully comply with Section 1116(e)(2)(A) of the ESEA, 34 C.F.R. § 200.36 and 200.37, which state that the letters must:

1. Identify each approved service provider within the LEA, in its general geographic location, or accessible through technology such as distance learning;
2. Describe the services, qualifications and evidence of effectiveness for each provider;
3. Describe the procedures and timelines that parents must follow in selecting a provider to serve their child; and
4. Be easily understandable; in a uniform format, including alternate formats, upon request; and, to the extent practicable, in a language the parents can understand.

Although CSD and IRSD distributed the notification letters to parents timely, both LEAs' letters did not contain any of the required information listed above. Both CSD and IRSD were unaware of the required SES notification letter content. In addition, DDE did not monitor the LEAs' compliance with the regulations, as required by the law. As a result, both of the letters were deficient; and parents could not make a fully informed decision regarding the SES providers.

CSD Did Not Follow Its SES Provider Notification Procedure

CSD did not notify a state-approved SES provider that parents of two students had selected it in September 2004 as an SES provider. CSD policy indicated that an SES provider was to be immediately notified of its selection by a parent.

The district official who was directly responsible for notifying the selected SES provider did not know why the SES provider had not been contacted. CSD's decision not to notify the provider ultimately resulted in the SES services being provided by the LEA, as opposed to an outside entity.

SCMS Parents Were Not Notified Of All SES Providers

Parents of SCMS students were not given a comprehensive list of approved, applicable SES providers. According to 34 C.F.R. § 200.37(b)(5)(ii)(A), *IRSD* was required to provide parents the identity of all approved SES providers within the local educational agency or whose services are reasonably available in neighboring local educational agencies or through distance learning.

An IRSD official decided to limit the SES provider options to only those providers she felt could offer services meeting the students' needs . As a result, parents were unable to select from the comprehensive list of approved, applicable SES providers, as only two choices were offered .

SCMS SES Provider Mailing

IRSD was not given the opportunity to and did not review the SES application package sent to parents of eligible students at SCMS. SCMS mailed the application package to parents on behalf of an SES provider. Section 1116(e)(2)(A) of the ESEA and 34 C.F.R. § 200.36(b) states that the LEA is responsible for notifying the parents about the availability of services. The information about the services should be provided directly to the parents so that there is sufficient time to allow them to select providers. The provider mailing did not allow the parents sufficient time to select SES, as the indicated deadline date on the SES application form had passed by the time the parents received it. In addition, the application form required the parents to contact the SES provider if services were desired from another provider, as opposed to appropriately contacting the school directly. The parent should not be contacting a provider if services are desired from another provider. This information may have been confusing and not easily understandable to the parents. Section 1116(e)(2)(A) of the ESEA, also states that the SES notification to parents must be easily understandable. IRSD did not ensure that the parents of eligible students at SCMS were notified of the SES available to their children. As a result parents were not accurately informed of the SES application process and timeline, possibly leading to a lack of participation.

Recommendations:

We recommend that the Assistant Secretary for Elementary and Secondary Education, in collaboration with the Assistant Deputy Secretary for Innovation and Improvement, require DDE to:

3.1 Develop a process to ensure that the LEAs' SES notification letters are updated to include all of the required information.

3.2 Monitor the LEAs to ensure that parents are provided a list of all approved SES providers and that parental choices of SES providers are granted.

3.3 Require LEAs to develop a process to ensure that SES information provided to parents of eligible students is communicated in a clear, timely, and effective manner.

DDE Comments:
DDE concurred with our finding and recommendations. DDE updated its webpage to include sections for parents, providers, and LEAs. The parent section of the web page explains SES in detail. The web page also includes the approved vendor list, with the service provided and area served for each vendor, information on the guidance for SES, a sample provider selection form, a sample vendor contract, and a sample SES letter. In addition, DDE plans to monitor SES through its Quality Review process. DDE is also developing guidance on helping schools implement a procedure to address clear, timely and effective SES parental notification. Training on this guidance is to be provided by January 31, 2006. DDE also plans to continue to work with

state parental advocacy groups to ensure that parents understand the SES legislation, and procedures, and have knowledge of eligible providers in their area.

OIG Comments:
We reviewed the sample SES letter and found that it is not fully compliant with NCLB requirements. The SES letter does not include a timeline and procedures that parents are to follow in selecting a provider. In addition, the letter does not include information on the qualifications and evidence of the effectiveness for each provider. We recommend that DDE revise the sample letter to include the timeline and provider selection procedures. DDE should also ensure that the letter, the approved provider list, or the parental section of the SES webpage include the information on the qualifications and evidence of effectiveness of each provider.

Finding 4 – Strengthening of Internal Controls Relative to DDE's USCO Policy for Persistently Dangerous Schools Determinations is Needed

We found that all three LEAs reviewed had internal control weaknesses relating to the incident reporting that was used to determine the PDS designation. Officials responsible for incident reporting were not trained, and we found that all PDS incidents were not reported to DDE. In addition, DDE failed to incorporate timely data into its PDS determinations and did not have documented policies and procedures for the PDS process.

School-Level Administrators Were Not Trained

At all of the LEAs reviewed, the school-level administrators responsible for completing the incident reports used to document reportable incidents of violence did not attend training. School administrators were responsible for determining whether a student-related incident qualified as a reportable incident , according to Delaware state law and the state's USCO policy. Although the administrators were informed of the state training pertaining to PDS incident reporting, absences across all three LEAs caused informational gaps relative to the implementation of the PDS requirements. The SEA should have ensured that the administrators received appropriate training and technical assistance pertaining to the collection and reporting of incident data to ensure complete, accurate and reliable data across LEAs in the state.

LEAs Did Not Maintain Adequate Control Over The Reporting of Incidents

We found that the LEAs reviewed did not enforce the incident report review process. According to LEA and school officials, the schools were required to forward a hard copy of each incident to a specific LEA representative who was responsible for reviewing the report and determining whether the incident was considered a reportable offense. LEAs and schools were not required to maintain the original incident reports. DDE only required that the LEA print and retain the electronic system data entry form. DDE verified that the data in the system agreed with the data entry form. Although DDE used this verification process to reconcile the LEA hard copy incident reports with the state's electronic records, DDE acknowledged that this verification was ineffective and required an update. DDE cannot rely on a verification process that used hardcopies of electronic data entry and system data, as this information is one and the same, only in different formats. Furthermore, all three LEAs failed to systematically review and reconcile incidents. Two LEAs (CSD and IRSD) allowed the schools to enter the incident data directly into the state system, only reviewing the hard copy documentation received from the

schools . MTA utilized the LEA representative to determine whether an incident was a reportable offense warranting entry into the state system , however; the representative did not review all incidents, only those received from the school administrators . Section 1116(c)(1)(A) of the ESEA requires a state to annually review the progress of each LEA receiving Title I funds to determine if each LEA is carrying out its responsibilities. The failure of both DDE and the LEAs to control the incident reporting process may have resulted in insufficient and inaccurate incident reporting. As a result of the inadequate internal controls, we found five PDS incidents, at three schools that were not reported to DDE. We also found that DDE lacked written policies and procedures for PDS reporting.

DDE Did Not Utilize Timely Incident Reporting in the PDS Ratings

DDE failed to utilize the most recent school years incident reporting data in its 2004-2005 PDS determinations. DDE's USCO policy stated that the PDS determinations were to be based on three consecutive years' data. According to a DDE official, the process of collecting data and calculating the PDS determination had changed from school year 2003 to 2004 and as a result, DDE was in the process of updating its methodology with the intent of incorporating the most recent school year incident reporting data into the PDS calculations.

A DDE official, responsible for the PDS calculations, believed that the PDS determinations were required by July 1, 2004, and since the school year ends on June 30, 2004, one day did not allow sufficient time for the calculations. Based on the official's belief, she assumed that the July 1, 2004 PDS determinations were to be based on the school years' data from two, three and four years prior, instead of one, two and three years prior data . In addition, DDE did not have documented policies and procedures on how to calculate the PDS determinations . As a result, the PDS determinations for each school, as reported by the state, were not based on the correct data.

Recommendations:

We recommend that the Assistant Deputy Secretary, Office of Safe and Drug-Free Schools require DDE to:

4.1 Develop and implement written policies and procedures for incident reporting, and DDE's PDS determination process.

4.2 Develop and implement written policies and procedures to ensure that the most recent incident reporting data is used in the PDS determinations.

4.3 Develop a process to ensure that school administrators, responsible for the documentation and reporting of school incidents, receive the appropriate training.

4.4 Monitor the LEA incident reporting process by implementing a process to verify that all incidents have been reported, to ensure that the statewide school PDS determinations are complete, accurate, and reliable, and that documentation of all incidents is maintained.

DDE Comments:
DDE did not concur with our finding. DDE stated it provided numerous training sessions throughout the year and that reference resources for daily use are given in hardcopy and electronic formats and through personal communication. DDE also stated that the process and procedure for reporting incidents is specific and clearly delineated in state education law and Department of Education regulation. DDE also stated that the collection instrument is electronic and completed online thru four different data reporting mechanisms. In addition, DDE stated that it utilizes the federally submitted and approved PDS definition, process, and procedure for Delaware identification of PDS.

DDE was unaware that new or realigned administrators in IRSD and CSD were not trained, and stated that MTA administrators did receive training. DDE acknowledged the need to extend its technical assistance to the LEAs in an effort to improve the validity and reliability of the USCO data submitted by the LEAs. DDE further stated that it agrees that effective training and monitoring at the LEA level and review of reported USCO incidents as contained in Recommendations 4.1 through 4.4 are important steps towards ensuring that all school conduct incidents are properly reported. DDE stated that the recommendations involve processes presently under revision and implementation by DDE, and trust that by working with the Deputy Under Secretary the recommendations will prove to be helpful as the DDE seeks to refine its USCO reporting process and strengthening of internal controls relative to DDE's USCO Policy for PDS determinations.

OIG Comments:
We do not dispute that training was provided and reference resources are available; however, as stated in our finding and recognized by DDE, school-level administrators responsible for the incident reporting at the time of our audit did not attend training. Although DDE stated that MTA administrators did receive training, our audit disclosed otherwise.

DDE's comments did not address the issue relating to the review and verification of reported incidents and the fact that not all reportable incidents were reported to DDE. DDE also did not address DDE's lack of written policies and procedures for PDS reporting.

DDE was incorrect in stating that the process and procedure for incident reporting is delineated in Department of Education regulation. The process and procedure for reporting incidents is not delineated in Department of Education regulation, but is left to the state.

The U. S. Department of Education does not approve a state's PDS definition, process or procedure. DDE's comments did not address the issue of DDE using the incorrect school years incident data in its 2004-2005 PDS determinations and did not address DDE's intended corrective action(s). DDE's comments also did not address the fact that DDE did not have written policies and procedures relating to the PDS determination calculations, which is a significant process that should be documented to assist in ensuring that the correct process is followed in making the determinations. Nothing in DDE's response caused us to change our recommendations.

OBJECTIVES, SCOPE AND METHODOLOGY

The audit objectives were to determine whether: (1) the state education agency (SEA) had an adequate process in place to review local educational agency (LEA) and school compliance with adequate yearly progress (AYP), school choice, and supplemental educational services (SES) provisions of the Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act (NCLB) of 2001 (P.L.107-110) and the regulations; (2) LEAs provided to students attending schools identified for improvement (failed AYP two consecutive years) the option of attending another public school; and (3) LEAs provided SES to students attending schools that failed to make AYP while identified for improvement during the 2003-2004 school year.

To achieve our objectives, we reviewed selected provisions of ESEA and the implementing regulations. We also interviewed officials from DDE, the three LEAs reviewed, school officials, and officials from the Delaware Auditor of Account's office. We reviewed documents provided by DDE, including (1) documents related to compliance with the ESEA provisions related to AYP, school choice, SES, and the implementation of the USCO policy, (2) the *State of Delaware Single Audit Report*, dated June 30, 2003, and (3) the Delaware Auditor of Accounts' audit report on DDE's eSchoolPlus system, for the period February 19, 2004, through March 31, 2004.

We also reviewed, for compliance with public school choice and SES provisions of the ESEA and the implementing regulations, three judgmentally selected LEAs from the universe of seven Delaware LEAs that had schools identified for improvement, corrective action, or restructuring for the 2004-2005 school year. We judgmentally selected these three LEAs based on total student enrollment. We selected one large LEA, one medium LEA, and one small LEA. We defined a large LEA as one with a student enrollment of 10,000 or more, a medium LEA as one with a student enrollment of 1,000 through 9,999, and a small LEA as one with a student enrollment of 999 or less. We selected CSD as the large LEA. CSD had four schools that failed AYP for at least two consecutive years, and one of these schools failed AYP for three consecutive years. The two schools we randomly selected from CSD were Wilson Elementary and Pulaski Intermediate. We selected IRSD as the medium LEA. We judgmentally selected two schools in IRSD, one of which failed AYP for two consecutive years (Selbyville Middle School), and the other failed AYP for three consecutive years (Sussex Central Middle School). Finally, we selected MTA as the small LEA.

In addition, we reviewed documents from the three selected LEAs. The documentation related to the LEAs' compliance with the public school choice and SES provisions of the ESEA and the implementing regulations, and included (1) school choice and SES parental notification letters sent by the five schools we reviewed; (2) documentation related to students eligible for and participating in school choice and SES; (3) documentation related to school choice transportation expenditures, and (4) persistently dangerous school incident reporting documentation. Our review of the school choice and SES parental notification letters focused on selected provisions of ESEA and the implementing regulations.

During the audit, we relied on computer-processed data in the eSchoolPlus system that contained student enrollment information for public school choice, SES, and reporting of incidents of violence. To assess the reliability and completeness of the public school choice and SES data,

we compared computer processed data obtained from DDE to lists of data used by the LEAs to generate public school choice and SES letters, and vice versa. To assess the reliability of student incident reporting, we compared the computer-processed data with incident forms, and vice-versa. Based on the work performed, we concluded that the data were sufficiently reliable for use in meeting the audit objectives.

We performed our audit work at DDE's administrative offices, and the administrative offices of the three LEAs reviewed from November 2004 through March 2005. We discussed the results of our audit with DDE officials on June 3, 2005. We performed our audit in accordance with generally accepted government auditing standards appropriate to the scope of the review described above.

STATEMENT ON INTERNAL CONTROLS

As part of our audit, we gained an understanding of DDE's internal controls for monitoring LEA compliance with school choice and SES requirements. We also gained a general understanding of DDE's policies and procedures related to AYP provisions of the ESEA. Though we did not assess the adequacy of DDE's internal controls, our compliance testing at the three LEAs we reviewed disclosed instances of non-compliance that might have been caused, in part, by weaknesses in DDE's system of internal controls for monitoring LEA compliance. These weaknesses are related to DDE's insufficient review of LEAs to determine whether (1) school choice and SES parental notification letters included all required information, (2) each LEA budgeted a sufficient amount of its Title I allocation to meet the federal spending requirement for school choice, (3) school choice and SES options were implemented, and (4) whether incidents contributing to the persistently dangerous school determinations were accurately reported and calculated. These weaknesses are discussed in the **AUDIT RESULTS** section of this report.

APPENDIX A

DDE PDS Offenses

Criminal violation; mandatory reports. --

a. A student or a school volunteer has been the victim of:

1. A violent felony,

2. An Assault III, or

3. An Unlawful Sexual Contact III,

as prohibited by Title 11, which occurred on school property or at a school function;

b. A school employee has been the victim of:

1. A violent felony,

2. An Assault III,

3. An Unlawful Sexual Contact III,

4. An Offensive Touching, or

5. A Terroristic Threatening,

as prohibited by Title 11, which occurred on school property or at a school function; or

c. A student has been the victim of:

1. A violent felony;

2. An assault in the third degree; or

3. Any sexual offense, as defined in § 761(d) of Title 11,

as prohibited by Title 11, when the school employee has reliable information that would lead a reasonable person to believe that the crime has been committed by another school employee, regardless of whether the offense occurred on school property or at a school function,

Delaware
Department of Education

DEPARTMENT OF EDUCATION

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Valerie A. Woodruff
Secretary of Education
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FAX: (302) 739-4654

August 26, 2005

Bernard E. Tadley
Regional Inspector General for Audit
U.S. Department of Education
The Wannamaker Building
100 Penn Square East, Suite 502
Philadelphia, PA 19107

Reference: ED-OIG/A03F0002

Dear Mr. Tadley,

This letter is in response to your July 29, 2005 draft audit report, "The State of Delaware's Compliance with No Child Left Behind Public School Choice and Supplemental Educational Services Provisions".

Finding 1 – DDE Should Develop a Process to Adequately Monitor LEA Compliance with the ESEA Public School Choice and SES Provisions

The DDOE concurs with Finding 1 and the recommendation.

Recommendation 1.1 (DDOE should) Develop, document, and implement a process to monitor LEA compliance with public school choice and SES provisions, including budgeting funds for school choice transportation cost.

As part of the Delaware Educational Support System, the Delaware Department of Education (DDOE) annually conducts the Quality Review Process of all LEAs in the state of Delaware. The Quality Review monitors LEAs compliance with federal and state regulations related to accountability and school improvement, and monitors their use of resources to improve academics. It provides feedback and offers technical assistance in reconciling the findings. Recently, the process has included the review of select districts and their procedures for implementing the choice and supplemental educational services options, and provided recommendations for improvement where necessary, as well as commendations for appropriate practice. The Quality Review Process will be expanded to annually review all LEAs that must implement NCLB provisions, and to provide them

with timely feedback on proper implementation, especially with regard to parental notification. The following corrective actions address this recommendation:

- In August, 2005 the DDOE notified all LEAs of the status of their schools in improvement, and provided guidance with regard to the sanctions (including references from both the DE State Administrative Code and the NCLB Act of 2001), how to implement them properly, and sample parent letters for both choice and supplemental educational services. A sample copy of the letter and the attachments are included as **Attachment A**.

- DDOE is currently reviewing the Quality Review Process to ensure effective documentation and monitoring of LEA compliance with public school choice and SES provisions. These enhancements will be completed for implementation by January 1, 2006.

Finding 2: LEAs Did Not Comply With School Choice Requirements

The DDOE concurs with Finding 2 and the recommendations.

Recommendation 2.1: (DDOE should) Develop a process to ensure that: 1) LEA school choice notification letters are updated to include all of the required information listed in *Table 1*, and 2) all LEAs attempt to provide, to the extent possible, a school choice option of a school not identified for improvement.

The following corrective actions address this recommendation:

- In August of 2005, the DDOE notified all LEAs of the status of their schools in improvement, and within the notification, provided explicit guidance (referring both to the State Administrative Code and Section 1116 of NCLB) regarding the content of the school choice letters and a sample choice letter to be used as a reference. A sample letter with attachments is included in Attachment A. The samples are also posted on the DDOE Website under School Improvement.

- During the 2004-2005 Quality Reviews, select districts were monitored for compliance with the Choice Requirements. This included the review of parental notification documents and interviews with administrators and parents. The DDOE provided the select LEAs with their findings and with guidance to make corrections where needed as they related to parental notification.

- Prior to the start of this (2005-2006) school year, DDOE has worked with the Marion T. Academy Charter School to ensure that they comply with the choice regulations. The school has received technical assistance in developing and

administering a Memorandum of Understanding with its neighboring LEAs, and also with the development of their choice notification letter. The DDOE will continue to monitor Marion T. Academy as part of the quality Review during the 2005-2006 school year.

- The DDOE is currently reviewing the Quality Review Process to ensure that all LEAs with schools identified for improvement will be monitored to ensure that LEA school choice notification letters include all of the required information, and that all LEAs attempt to provide, to the extent possible, a school choice option of a school not identified for improvement. These enhancements will be completed for implementation by January 1, 2006.

Recommendation 2.2: (DDOE should) Require all LEAs to implement a plan to account for those students enrolling after the initial notification letter distribution and before the first day of school.

The following corrective actions address this recommendation:

- In August of 2005, the DDOE notified all LEAs of the status of their schools in improvement, and within the notification, provided explicit guidance (referring both to the State Administrative Code and section 1116 of NCLB) regarding the content of the school choice letters and a sample choice letter to be used as a reference. The letter also clarifies their responsibility to provide notification between the initial notification and the first day of school. A sample letter with attachments is included in Attachment A. The samples are also posted on the DOE Website under School Improvement.

- The DDOE is developing additional guidance on helping schools implement a procedure to address students enrolling after the initial notification letter distribution and the first day of school. Training on this guidance will be provided to all district and charter schools by January 31, 2006.

Finding 3: Two LEAs Did Not Comply With Supplemental Educational Service Requirements

The DDOE concurs with Finding 3 and the recommendations.

Recommendation 3.1: (DDOE should) Develop a process to ensure that the LEA's SES notification letters are updated to include all of the required information.

The following corrective actions address this recommendation:

- In August, 2005 the DDOE notified all LEAs of the status of their schools in improvement, and within the notification provided guidance (including references from both the DE State Administrative Code and the NCLB Act of 2001), regarding the content of the Supplemental Educational Services letters, and sample parent letter for supplemental educational services. A sample letter with attachments is included in Attachment A.

- The DDOE Supplemental Educational Service web page was updated to include sections for parents, providers, and districts. It also includes information on the guidance for SES and sample letters for districts to send to parents (www.doe.state.de.us, School Improvement).

- During the 2004-2005 Quality Reviews, select districts were monitored for compliance with the Supplemental Educational Services Requirements. This included the review of parental notification documents, and interviews with administrators and parents. The DDOE provided the select LEAs with their findings, and with guidance to make corrections where needed as they related to parental notification

- The DDOE is currently reviewing the Quality Review Process to ensure that all LEAs with schools identified for improvement will be monitored to ensure Supplemental Educational Service compliance. These enhancements will be completed for implementation by January 1, 2006.

Recommendation 3.2: (DDOE should) Monitor the LEAs to ensure that parents are provided a list of all approved SES providers and that parental choices of SES providers are granted.

The following corrective actions address this recommendation:

- In August, 2005 the DDOE notified all LEAs of the status of their schools in improvement, and provided guidance with regard to the sanctions (including references from both the DE State Administrative Code and the NCLB Act of 2001), how to implement them properly, and sample parent letters for supplemental educational services. A sample letter with attachments is included in Attachment A.
- The DDOE Supplemental Educational Service web page section for parents explains Supplemental Educational Services in detail. In addition, the redesigned webpage includes the Approved Vendor List (which was a part of the former webpage). The Approved Vendor list describes the service provided by each

vendor and the area served. Also, the site gives guidance on questions parent can ask about SES, sample provider selection form, and a sample vendor contract. (www.doe.state.de.us, School Improvement).

- The DDOE is currently reviewing the Quality Review Process to ensure that all LEAs with schools identified for improvement will be monitored to ensure LEAs provide parents with lists of approved SES providers and that parental choice is granted. These enhancements will be completed for implementation by January 1, 2006.

Recommendation 3.3: (DDOE should) Require LEAs to develop a process to ensure that SES information provided to parents of eligible students is communicated in a clear, timely, and effective manner

The following corrective actions address this recommendation:

- In August, 2005 the DDOE notified all LEAs of the status of their schools in improvement, and provided guidance with regard to the sanctions (including references from both the DE State Administrative Code and the NCLB Act of 2001), how to implement them properly, and sample parent letters for supplemental educational services. A sample letter with the attachment is included in Attachment A.
- During the 2004-2005 Quality Reviews, select districts were monitored for compliance with the Supplemental Educational Services Requirements. This included the review of parental notification documents, and interviews with administrators and parents. The DDOE provided the select LEAs with their findings, and with guidance to make corrections where needed as they related to parental notification.
- The DDOE is developing additional guidance on helping schools implement a procedure to address the clear, timely and effective manner of parent notification on SES. Training on this guidance will be provided to all district and charter schools by January 31, 2006.
- The DDOE is currently reviewing the Quality Review Process to ensure that all LEAs with schools identified for improvement will be monitored to ensure LEAs provide parents with information on SES in a clear, timely and effective manner. These enhancements will be completed for implementation by January 1, 2006.
- The DDOE will continue to work with state parental advocacy organizations such as the State Parental Advisory Group, and the Rodel Charitable Foundation's Parent School to ensure that parents understand the SES legislation, procedures, and have knowledge of eligible providers in their area.

Finding 4. Strengthening of Internal Controls Relative to DDE's USCO Policy for Persistently Dangerous Schools Determinations is Needed

DDOE does not concur with Finding 4. The following articulates our reasons for disagreement together with the data to support our position.

School-Level Administrators Were Not Trained

DDOE provides numerous trainings for school-level and district-level administrators. This training is offered throughout the year. The training contains reporting mandates by Delaware Law, Delaware Department of Education regulations, and federal law. Reference resources for training and daily use are given via hard copy, electronic version (email), website, and personal communication.

LEAs Did Not Maintain Adequate Control Over The Reporting of Incidents

DDOE regulation 601 mandates LEAs to follow state law for school crime reporting to the police and to the DDOE, Delaware Law T-14 S-4112. In addition to those crimes mandated by this law, the DDOE regulation 601mandates other acts of misconduct also be reported to the DDOE. The process and procedure for reporting is specific and clearly delineated in state education law and Department of Education regulation. The data collection instrument is electronic and completed online thru four different data reporting mechanisms. Reference resources for training and daily use are given via hard copy, electronic version (email), website, and personal communication. Training is conducted in conjunction with administrators, the Department of Justice, law enforcement and the DDOE.

DDE Did Not Utilize Timely Incident Reporting in the PDS Rating

The DDOE utilizes the federally submitted and approved PDS definition, process, and procedure for Delaware identification of persistently dangerous schools.

The report makes the following recommendations:

4.1 Develop and implement written policies and procedures for incident reporting, and DDOE's PDS determination.

4.2 Develop and implement written policies and procedures to ensure that the most recent incident reporting data is used in the PDS determinations.

4.3 Develop a process to ensure that school administrators, responsible for the documentation and reporting of school incidents, receive the appropriate training.

4.4 Monitor the LEA incident reporting process by implementing a process to verify that all incidents have been reported, to ensure that the statewide school PDS determinations are complete, accurate, and reliable, and that documentation of all incidents is maintained.

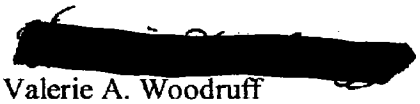
While the DDOE had not been made aware of the new administrators in the Indian River School District that had not received appropriate training or the realignment of administrators in the Christina School District that assumed new positions without necessary training, the Marion T. Academy Charter School did receive numerous administrative trainings. Considering these items cited in the Draft Audit Report, the DDOE has acknowledged the need to extend its technical assistance to the LEAs in an effort to improve the validity and reliability of the USCO data submitted by the LEAs.

Furthermore, as evidenced by current policies and procedures in place, the DDOE agrees that effective training and monitoring at the LEA level and review of reported USCO incidents as contained in 4.1, 4.2, 4.3, 4.4 are important steps towards ensuring that all school conduct incidents are properly reported by the LEAs.

Recommendations 4.1, 4.2, 4.3, 4.4 involve processes presently under revision and implementation by the DDOE. We trust that by working with the Deputy Under Secretary the above-noted processes will prove to be helpful as the DDOE seeks to refine its USCO reporting process and "strengthening of internal controls relative to DDOE's USCO Policy for persistently dangerous schools determinations".

If you have any questions or need further information, please contact Martha Brooks at (302) 739-3772 or mbrooks@doe.k12.de.us.

Sincerely,



Valerie A. Woodruff
Secretary of Education

VAW/dcs
Attachment: Attachment A
cc: Lewis Atkinson, Ed.D., Associate Secretary, Adult Education & Workforce Development
Martha Brooks, Ed.D., Associate Secretary, Curriculum & Instructional Improvement
Robin Case, Director, Career & Technical Education & School Climate
Ronald Houston, Director, School Improvement
Malik Stewart, Education Associate, School Improvement & Quality Assurance