



UNITED STATES DEPARTMENT OF EDUCATION

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Control Number
ED-OIG/A06-E0028

June 15, 2005

Commissioner Shirley Neeley
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

Dear Commissioner Neeley:

This Final Audit Report, entitled Texas Department of Education's Compliance with the Unsafe School Choice Option, presents the results of our audit. The purpose of the audit was to determine whether (1) Texas's Unsafe School Choice Option (USCO) policy complied with Title IX, Part E, Subpart 2, Section 9532 of the Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind (NCLB) Act of 2001, and applicable U.S. Department of Education (Department) guidance, and (2) whether the Texas Education Agency (TEA) adequately implemented the policy at the State and local education agency (LEA) levels. Our review covered school years 2002-2003 for reporting requirements and the start of 2003-2004 for victim transfers and corrective action plans.

We provided a draft of this report to TEA. In its response to our draft report, TEA officials did not agree with our findings and only concurred with Recommendations 1.1 and 1.2. We summarized TEA's comments in the body of the report and included the complete response as an Attachment to the report.

BACKGROUND

The USCO in the ESEA § 9532 requires that states receiving funds under this Act establish and implement a statewide policy requiring that students attending a persistently dangerous public school, or students who become victims of a violent criminal offense while on the grounds of a public school they attend, be allowed to attend a safe public school. The Department issued Unsafe School Choice Option Non-Regulatory Guidance in May 2004. (This guidance was issued in draft form in July 2002.)

In consultation with representatives from seven LEAs, TEA defined a "persistently dangerous school" (PDS) as a regular instructional campus¹ that reported three or more selected mandatory expellable disciplinary incidents per 1,000 students in each of the prior three consecutive school years. Mandatory expulsion offenses under State law, which have been used to make this determination, are:

- Used, exhibited, or possessed a firearm;
- Used, exhibited, or possessed a club;
- Used, exhibited, or possessed a weapon, such as a short-barrel firearm, switchblade knife, brass knuckles, or mace;
- Arson;
- Murder, attempted murder;
- Indecency with a child;
- Aggravated kidnapping;
- Aggravated assault of a school employee;
- Aggravated assault of a student;
- Sexual assault or aggravated sexual assault of a school employee;
- Sexual assault or aggravated sexual assault of a student;
- Felony controlled substance; and
- Felony alcohol violation.

In July 2003, TEA distributed a letter notifying LEAs and charter schools of the USCO policy and provided guidance on the data reporting requirements, the actions required of TEA and LEAs for any school designated as a PDS, and the actions required of LEAs for the transfer of student victims.

TEA designated six schools in school year 2002-2003 and five schools in 2003-2004 as meeting Texas's definition of a PDS. All 11 schools appealed the designation. TEA conducted reviews of the disciplinary incidents reported by the 11 schools and determined that all 11 schools incorrectly reported disciplinary incidents and removed the PDS designations. As a result, Texas had no PDS schools for the school years 2002-2003 and 2003-2004.

We conducted this audit at three LEAs—Dallas Independent School District (ISD), Houston ISD, and El Paso ISD. We also visited three schools within each LEA, for a total of nine schools.

¹ TEA requires only regular campuses to implement its USCO policy. TEA excluded campuses, both regular and charter, which are Alternative Instructional, Juvenile Justice Alternative Education Program, Disciplinary Alternative Education Program, and Budgeted.

AUDIT RESULTS

We determined that Texas's USCO policy did not fully comply with the ESEA § 9532 and Department guidance, and TEA did not adequately implement the policy at the State and LEA levels. Specifically, (1) TEA and the LEAs inadequately implemented the victim transfer policy; (2) TEA did not establish procedures to report violent criminal offenses committed by unknown perpetrators; (3) LEAs did not report all USCO incidents and incorrectly reported incidents to TEA; and (4) LEAs' inadequate documentation of drug incidents made it impossible to determine if all USCO drug incidents were reported.

FINDING NO. 1: TEA and LEAs Inadequately Implemented the USCO Transfer Option

TEA provided inadequate guidance to LEAs regarding the USCO victim transfer option, which resulted in LEAs not implementing the USCO victim transfer option. To comply with the ESEA § 9532, each State must establish a policy requiring that students attending a PDS or students who are victims of a violent criminal offense, while in or on the grounds of a public school that they attend, be allowed to attend a safe public school. The *Department's USCO Non-Regulatory Guidance*, dated July 23, 2002, states that an LEA should offer, generally within 10 calendar days, an opportunity to transfer to a safe public school to any student who has been the victim of a violent criminal offense. The Department issued revised *Non-Regulatory Guidance* in May 2004, which changed the 10 days to 14 days.

In July 2003, TEA provided *Guidelines for LEA Victim Transfer Policies* to the LEAs and charter schools. This guidance provided information on the data reporting requirements, the actions required of TEA and LEAs for any school designated as a PDS, and the actions required of LEAs for the transfer of student victims. The guidance stated, "each district and charter school must develop a local policy to guide transfers for students who are victims of a violent criminal act, whether or not they are located on campus required to implement the School Safety Choice Option." The guidelines also stated that the policy must include "Timelines and procedures under which parents may request transfers" and "Timelines for processing and approving transfer requests."

USCO requires that a student who becomes a victim of a violent criminal offense while in or on the school grounds be allowed to attend a safe public school within the LEA. Initial Department *Non-Regulatory Guidance* stated that an LEA *should offer* the victim an opportunity to transfer to a safe public school. The Department's May 2004, *Non-Regulatory Guidance* states that the student *must be offered* an opportunity to transfer to a safe public school. However, TEA's guidance incorrectly instructed LEAs to establish procedures where the victim *may request* the transfer. Additionally, the guidelines failed to mention the Department's original suggested timeline of "generally within 10 calendar days." Also, TEA did not monitor the LEAs to determine if the USCO transfer was implemented.

None of the LEAs that we reviewed had established procedures to formally offer victims of violent crime the right to transfer to another school as required by USCO. Also, none of the LEAs established timelines for processing and approving transfer requests.² Instead, LEAs relied on existing transfer policies that allow students to transfer if certain conditions exist and the student/parent initiates the transfer. The policies we reviewed did not have established timelines for processing and approving a transfer request.

LEA officials stated that victims of a violent criminal act would be allowed to transfer under the existing transfer policies. However, school administrators, who had victims of a violent criminal act in school year 2002-2003, were unable to provide documentation that these victims were offered the option to transfer to another school.

Because the USCO policy transfer option is not included in the LEAs' written policies, school administrators and parents may be unaware that the transfer option is available, and victims of violent crime are potentially placed at undue risk because they are not formally offered the right to transfer to another school.

RECOMMENDATIONS

We recommend that the Assistant Deputy Secretary for Safe and Drug-Free Schools work with TEA to—

- 1.1 Revise its *Guidelines for LEA Victim Transfer Policies* to reflect the intent of the USCO. Specifically, the guidelines should instruct LEAs to *offer* victims of a violent criminal offense the option to transfer to another school within 14 calendar days.
- 1.2 Review LEAs' transfer policies for compliance with Texas's USCO policy and confirm that students who are victims of a violent crime are provided the option to transfer to a safe school. Also, TEA should instruct LEAs to retain documentation to show that victims' parents were notified of the USCO transfer option and whether a transfer was requested and completed.

TEA'S COMMENTS

TEA did not concur with the finding. However, TEA stated in its response "...through standard program guidance updates and data reviews has already began several actions which address the two recommendations." TEA outlined the standard program guidance updates and data reviews that have been or will be completed including:

- revisions to the July 2003 Unsafe School Choice Option statewide guidance that an offer to transfer must occur within 14 calendar days after it has been determined that a student has become the victim of a violent criminal offense;

² El Paso ISD (the district that had campuses identified as PDS in 2002-2003 and 2003-2004) issued a proposed transfer policy on 9/30/03 that stated victims of violent criminal act **may request** a transfer and the district shall respond to the request within 10 school days.

- implementation of the pilot phase of a performance-based monitoring (PBM) system that includes a review of program compliance for NCLB programs;
- revisions to its Title IX NCLB USCO Compliance Checklist used during its monitoring and interventions process to include specifics, such as, transfer offers and transportation needs of students who have become the victim of a violent criminal offense; and
- instruction to the LEAs to retain documentation to show that victims' parents were notified of the USCO transfer option and whether a transfer was requested and completed and this documentation be submitted to TEA upon request.

OIG'S RESPONSE

Nothing in TEA's response caused us to change our finding or recommendations. TEA did not provide its reasons for disagreeing with our finding. TEA provided information on how they are revising policies and guidance to better comply with the intent of the USCO. We agree with the standard program guidance updates and data reviews relating to the USCO transfer option.

FINDING NO. 2: TEA Did Not Establish Procedures to Report Violent Criminal Offenses Committed By Unknown Perpetrators

TEA has not established procedures to report violent criminal offenses committed by unknown perpetrators. For example, Houston ISD did not report a USCO incident because the perpetrator was unknown. Our review of disciplinary files at Waltrip High School found that an attempted sexual assault of a young girl was never reported. A student heard the girl's screams and went to investigate, scared the perpetrator off, but the perpetrator was never found. Since the perpetrator was never identified, the attempted sexual assault was never reported to TEA.

Houston ISD officials also informed us of another incident that occurred at Booker T. Washington High School, which we did not visit. In April 2003, a group of students argued with two other students. A fight started and one student was stabbed in the chest. The student was taken to the Urgent Care Center at a local hospital and was unable to return to school immediately. The principal stated that a full-scale investigation was conducted but no one was officially charged. Since the school officials were unable to determine which student stabbed the victim, the aggravated assault was never reported to TEA.

The Department's *Unsafe School Choice Option Non-Regulatory Guidance* encourages State Educational Agencies to use data that relates to incidents (number of offenses) in determining whether a school is a PDS even when the offender is not apprehended and subsequently disciplined.

To comply with USCO, TEA used its existing data system for LEAs to report student incidents. To report incidents to TEA, LEAs start with the perpetrator's name and other identifying data, and then select codes describing the disciplinary offense and resulting punishment. For its USCO policy, TEA selected 13 codes that describe violent criminal offenses that require mandatory expulsion of the perpetrator. However, TEA did not establish procedures for LEAs to report disciplinary incidents that are committed by an unknown perpetrator including the violent criminal offenses that are considered USCO incidents.

Houston ISD officials stated they are unable to report these types of incidents because the current reporting system requires the perpetrator's name. TEA officials stated that they did not consider situations where the perpetrator was unknown. As a result, violent criminal offenses committed by unknown perpetrators are not reported to TEA and, therefore, those offenses are not included in the PDS calculation.

RECOMMENDATION

- 2.1 We recommend that the Assistant Deputy Secretary for Safe and Drug-Free Schools provide technical assistance to TEA to establish procedures and implement a process for LEAs to report disciplinary incidents that are committed by an unknown perpetrator.

TEA'S COMMENTS

TEA did not concur with the finding. Specifically, TEA stated that it is in compliance with the requirement to report violent criminal offenses committed by unknown perpetrators and that it has provided guidance on procedures for LEAs to report violent and criminal incidents committed by an unknown perpetrator. Also, TEA stated that the state law requires that the board of trustees of each school district shall publish an annual report for the district and for each campus and include a statement of the number, rate, type of violent or criminal incidents that occurred on each district campus.

In regards to identifying schools that are PDS, TEA stated that it has developed an indicator to determine PDS based on very detailed, objective, valid, and reliable data on specific, individual violent and disciplinary incidents attributable to individual school sites. The response also noted, "It is not necessary for the measure to capture every violent or disciplinary incident. The measure must serve as a reliable and robust indicator of the degree of safety on a campus relative to others, and correlate with unreported and immeasurable factors that make a campus unsafe for students."

OIG'S RESPONSE

Nothing in TEA's response caused us to change our finding or recommendation. We disagree that TEA is in compliance with the requirement to report violent criminal offenses committed by unknown perpetrators. Disciplinary data published by each district in its annual report is not used by TEA to identify schools that are PDS and, therefore, does not aid in compliance with the requirement to report violent criminal offenses committed by unknown perpetrators.

TEA requires LEAs to report violent criminal offenses using the perpetrator's name and other identifying data, and then by one of 13 codes, determined by TEA, that describe the offense. Under the current system, without a perpetrator's name, LEAs are unable to report to TEA the violent criminal offense committed and these offenses are not included in the PDS calculation. Therefore, until TEA has established a procedure that allows LEAs to report violent criminal offenses committed by unknown perpetrators, it has not fully complied with the USCO.

FINDING NO. 3 – LEAs Did Not Report All USCO Incidents and Incorrectly Reported Incidents to TEA

USCO incidents occurred in school year 2002-2003 at the three LEAs we visited and were not reported or were incorrectly reported. Our review of disciplinary files for school year 2002-2003 found that the three LEAs did not always select the appropriate discipline code when reporting an incident to TEA or failed to report the incident at all. We found that—

- Dallas ISD - Reported three USCO incidents at Zumwalt Middle School (Zumwalt) for school year 2002-2003. However, Zumwalt did not report an additional USCO incident that occurred that same year. On April 11, 2003, during lunch, two perpetrators shot at a teacher on school campus. The two perpetrators were detained; the firearm was confiscated; and an incident report was prepared. The shooting was not reported as a violent offense that occurred at Zumwalt because the two perpetrators were students at two other Dallas ISD schools, South Oak Cliff and Lacey Alternative. For the perpetrator that was found with the firearm, South Oak Cliff officials incorrectly reported the incident to TEA under the serious misconduct code instead of the possession of a firearm code. Based on TEA data, Lacey Alternative officials never reported the incident to TEA even though the student was determined to be the perpetrator who shot the firearm at the teacher. In the end, this very serious USCO incident that involved three different schools, one of which had a teacher that was shot at by a student, was never reported. Because the incident was never reported, it was never considered in the PDS calculation for school year 2002-2003.
- Houston ISD - Reported three USCO incidents at Hartman Middle School (Hartman) for school year 2002-2003. However, Hartman officials did not report three USCO incidents involving brass knuckles for the same school year. Hartman officials indicated in its documentation that three students were found in possession of brass knuckles; however, officials incorrectly reported the incidents to TEA under the codes of disorderly conduct and fighting instead of the correct code of possession of a weapon. For one of these students, Hartman officials indicated in its documentation that the student was in “Possession of Prohibited Weapon –(Brass Knuckles), but still used the disorderly conduct code. The Principal at Hartman stated that inadequate discipline reporting procedures were the reason that the three incidents were not reported correctly.
- El Paso ISD - Reported seven USCO incidents at Chapin High School (Chapin) for school year 2002-2003. Chapin officials incorrectly reported six of the seven USCO incidents. Two of the seven incidents occurred in the 2001-2002 school year but Chapin also reported the two incidents in 2002-2003 because the students had not completed the year of mandatory expulsion. Chapin also incorrectly reported a student found in possession of a lighter under the arson code and another student found in possession of a non-illegal knife also under the arson code. The final three incidents were actually one incident of a canister of pepper spray being released in the school’s hallway. Chapin officials correctly reported the incident as a USCO incident. However, this one incident was reported to TEA as three separate incidents because three perpetrators were determined to be involved.

Based on these incorrectly reported incidents, Chapin was designated as a PDS in school year 2003-2004. Chapin appealed this decision but still had to inform its parents of the PDS designation and offer parents the option to transfer their students to a non-PDS. As part of the appeals process, TEA reviewed the prior three years disciplinary incidents and determined that Chapin had incorrectly reported incidents and removed the PDS designation. If Chapin had reported its USCO incidents correctly, it would have never been designated as a PDS in school year 2003-2004.

For the current school year, Dallas ISD compares the USCO incidents reported to the district to the source documents at the schools. Houston ISD is in the planning stages of a similar type of review, and El Paso ISD improved the disciplinary reporting form used by its schools and incorporated the review of discipline records as part of its internal audit.

When USCO incidents are not accurately reported, TEA cannot be assured that “persistently dangerous” determinations are correct.

RECOMMENDATIONS

We recommend that the Assistant Deputy Secretary for Safe and Drug-Free Schools—

- 3.1 Require TEA to verify that Dallas ISD, Houston ISD, and El Paso ISD implemented the corrective actions to accurately collect and report USCO incidents to TEA.
- 3.2 Verify the corrective actions TEA took corrected the problems we identified. If the corrective actions did not correct the problems, then require TEA to provide technical assistance to all LEAs and schools within the State to ensure procedures and processes for collecting and reporting USCO incidents effectively report the required data.

TEA’S COMMENTS

TEA did not concur with the finding or recommendations. TEA stated that it “has fully complied in the implementation of the state’s USCO policy with the ESEA Section 9532 and Department guidance.” However, TEA explained in its response “...alternative corrective actions we have already taken.” Further, “TEA and the LEAs listed and all LEAs in the State have completed the corrections needed to ensure accurate collection and reporting of USCO incidents” to TEA in relation to the 2002-2003 and 2003-2004 data reviewed by the audit.

TEA outlined procedures and processes that have been developed to ensure data integrity for LEAs:

- data integrity indicators to evaluate discipline data in the newly developed PBM system;
- additional context edits to alert LEAs to problems at the time the submission is being prepared;
- summary reports on these discipline data integrity indicators to give LEAs sufficient time to review the results presented in these reports and make any necessary improvements in data submission procedures;

- Data Integrity Manual both to assist LEAs in interpreting the results of the discipline data integrity indicators and to ensure that accurate and current information was disseminated statewide;
- focused data analysis document, which is a comprehensive resource available for use by LEAs in reviewing their data reporting practices;
- formal communication process with the 20 regional educational service centers across the state to build effective capacity that ensures the ongoing dissemination of accurate and current information;
- random monitoring throughout the PBM system to ensure the integrity of data submitted to TEA and to ensure the integrity of the system as a whole; and
- an “imminent risk” component in the PBM system that allows for an agency response to occur at anytime it is determined to be necessary and appropriate including, at the agency’s option, an on-site investigation and/or the application of interventions and sanctions as needed.

In regard to the 2002-2003 school year data specifically cited in the draft audit report, TEA stated it made on-site audits of all district campuses listed as PDS campuses in 2003 and found the same problems this audit points out, and stated that it is working with all LEAs in the state to ensure that accurate data is reported.

OIG’S RESPONSE

As this finding points out because USCO incidents were not accurately reported, one school was classified as a PDS when it should not have been, and because other schools did not provide accurate information, TEA did not have assurance that LEAs provided reliable data for making “persistently dangerous” determinations. We agree with the data integrity procedures and processes developed to assist LEAs to fully and accurately report all USCO incidents. We are also pleased that TEA and the LEAs listed in our audit report and all LEAs in the State have completed the corrections needed to ensure accurate collection and reporting of USCO incidents to TEA in relation to the 2002-2003 and 2003-2004 data reviewed by the audit. The corrective actions outlined by TEA appear to correct the problems we identified. However, we did not do additional audit work to confirm that the corrective actions were implemented. We changed our recommendations to require verification that the corrective actions were implemented.

FINDING NO. 4 – LEAs’ Inadequate Documentation of Drug Incidents Made It Impossible to Determine if All USCO Drug Incidents Were Reported

Three USCO drug incidents were not correctly reported and numerous other potential USCO drug incidents were inadequately documented at one LEA. Another LEA provided inadequate documentation of numerous marijuana incidents for school year 2002-2003. We reviewed disciplinary files at six schools and found numerous drug incidents involving marijuana and three incidents of controlled substances. Texas’s USCO policy includes a felony controlled substance violation as one of the 13 mandatory expellable incidents in its definition of a PDS.

Appendix E of Texas’s Public Education Information Management System Data Standards states examples of a felony controlled substance violation would include possession of “ 4 ounces or more of marijuana, any amount of cocaine and other controlled substances.” Specifically, we found—

- Houston ISD – Reported 49 drug incidents, at three schools, as non-felony incidents to TEA. However, two incidents involved a controlled substance of Amyl Nitrate, nicknamed “poppers”, and another incident involved Xanax, nicknamed “bars.” All three of those incidents should have been reported as felony incidents. The remaining 46 incidents involved other drugs-- Milby High School had 12 incidents; Hartman Middle School had 14 incidents, and Waltrip High School had 20 incidents.
- Dallas ISD – Reported 14 marijuana incidents, at three schools, as non-felony incidents to TEA. Comstock Middle School had 2 marijuana incidents; Zumwalt Middle School had 2 incidents, and Spruce High School had 10 incidents.

School administrators at all six schools stated that the ISD police departments were involved in all drug incidents. In marijuana incidents, the ISD police determined whether the amount of marijuana confiscated was 4 ounces or more. School administrators stated that the ISD police inform them verbally whether the marijuana incident was a felony or non-felony incident. However, school administrators at both LEAs did not document the amount of marijuana confiscated. Dallas ISD officials stated that 4 ounces of marijuana was a large amount of marijuana, and it was rare that a student was caught with that large of an amount.

Because the amount of marijuana involved in these 60 drug incidents (46 at Houston ISD and 14 at Dallas ISD) were not documented, we could not determine if the marijuana incidents were accurately reported to TEA. Additionally, because three felony drug incidents were incorrectly reported as non-felony incidents, TEA did not receive accurate information on those incidents.

RECOMMENDATIONS

We recommend that the Assistant Deputy Secretary for Safe and Drug-Free Schools—

- 4.1 Require TEA to verify that Houston ISD implemented the corrective actions to accurately report USCO drug incidents to TEA.
- 4.2 Verify the corrective actions TEA took corrected the problems we identified. If the corrective actions did not correct the problems, then require TEA to provide technical assistance to all LEAs and schools within the State to ensure procedures and processes for documenting the number of drug incidents and the amount of drugs confiscated are accurately reported.

TEA'S COMMENTS

TEA did not concur with the finding or recommendations. TEA stated that it has fully complied in the implementation of the state's USCO policy with the ESEA Section 9532 and Department guidance, and explained alternative corrective actions it has already taken. TEA also stated that TEA and the LEAs listed in the audit report and all LEAs in the State have completed the corrections needed to ensure accurate collection and reporting of drug incidents included as USCO incidents to TEA in relation to the 2002-2003 and 2003-2004 data reviewed by the audit.

TEA stated that LEA staff is required to follow the mandatory expulsion requirement and retain the required documentation for felony or non-felony drug offense as determined by a police officer or a school resource officer. TEA also stated that the state law was updated in 2003 to include reporting and documentation requirements for LEAs for felony and non-felony drug offenses. For audit purposes, LEAs are required to obtain and retain documentation for five years. TEA stated that it has taken action to ensure the listed districts and all districts in Texas take appropriate corrective actions to collect and report accurately data, which includes all USCO incidents.

OIG'S RESPONSE

We disagree that TEA has fully complied in the implementation of the state's USCO policy with the ESEA Section 9532 and Department guidance. Specifically, because the amount of marijuana involved in 60 drug incidents were not documented, we could not determine if the marijuana incidents were accurately reported to TEA. Additionally, because felony drug incidents were incorrectly reported as non-felony incidents, TEA did not receive accurate information on those incidents. We agreed with the 2003 update to the state law to include reporting and documentation requirements for LEAs for felony and non-felony drug offenses. We are also pleased that TEA and the LEAs listed and all LEAs in the State have completed the corrections needed to ensure accurate collection and reporting of drug incidents included as USCO incidents to TEA in relation to the 2002-2003 and 2003-2004 data reviewed by the audit. The corrective actions outlined by TEA appear to correct the problems we identified. However, we did not do additional audit work to confirm that the corrective actions were implemented. We changed our recommendations to require verification that the corrective actions were implemented.

OTHER MATTERS

Although TEA ultimately did not have any schools designated as PDS during our audit period, it had not established procedures to monitor the corrective action plan that was required of a school once it was identified as a PDS. TEA, in its July 31, 2003, letter to the Superintendents stated that LEAs should develop a corrective action plan and implement that plan in a timely manner. The letter stated that an example of timely development of a corrective action plan is within 20 school days from the time that the LEA learns that the school has been designated as a PDS. Further, the letter states that TEA should approve the school's corrective action plan, provide

technical assistance as the plan is implemented, and monitor the timely completion of the approved plan. TEA officials stated that the reason they have not established the monitoring procedures is because they focused their attention on developing the definition of a PDS, and procedures take time to develop.

OBJECTIVE, SCOPE, AND METHODOLOGY

Our objective was to determine whether Texas's USCO policy complied with Title IX, Part E, Subpart 2, § 9532 of the ESEA and applicable Department guidance, and whether the TEA adequately implemented the policy at the State and LEA levels for the period July 1, 2002, to December 31, 2003. Our review covered school years 2002-2003 for reporting requirements and the start of 2003-2004 for victim transfers and corrective action plans.

To accomplish our objective, we interviewed TEA officials responsible for the development and implementation of Texas's USCO policy and reviewed related documents. We reviewed three LEAs--El Paso, Dallas, and Houston. We selected El Paso because the district had four schools in the 2002-2003 and one school in the 2003-2004 school years that were initially designated as PDS. For the remaining two LEAs, our selection criteria were based on size, Dallas and Houston being the two largest districts in the State. At the three LEAs, we interviewed district administrative staff to determine how Texas's USCO policy was implemented at the local level. We also reviewed the LEAs' written policies addressing the USCO transfer option for students attending a PDS school and for students who were the victims of a violent crime.

At El Paso, we selected one high school, one middle school, and one elementary school. The high school and middle school were selected because the schools had received the PDS designation by TEA. We selected an elementary school as the third campus because we wanted to review the disciplinary reporting process at all grade levels. Mesita Elementary was selected because it had reported a USCO incident in the 2002-2003 school year. For the Dallas and Houston districts, we revised our selection criteria concentrating only on high schools and middle schools that had reported a significant number of USCO incidents based on student population as well as local and district police officers' opinions of the most violent schools. Based on these criteria, we selected two middle schools and one high school in Dallas, and two high schools and one middle school in Houston. The nine schools selected and their reported PDS incidents for school year 2002-2003 are listed below.

		Houston ISD
Terrace Hills Middle - 0	Spruce High - 5	Waltrip High - 2
Chapin High - 7	Comstock Middle - 5	Milby High - 4
Mesita Elementary - 1	Zumwalt Middle - 6	Hartman Middle -3

At these nine schools in three LEAs, we interviewed school administrators, on-campus security staff, health care staff, and school resource officers (local police officers assigned to the schools) to determine if the schools complied with the USCO policy. At each of the nine campuses, we obtained all USCO and non-USCO disciplinary incidents reported to TEA for the 2002-2003 school year. We reviewed available student disciplinary documents for the 2002-2003 school year, including all USCO incidents reported to TEA, to determine whether the USCO disciplinary incidents were correctly reported to TEA. We also selected a random sample of 30 non-USCO incidents to determine whether non-USCO disciplinary incidents were correctly reported to TEA. We compared the USCO incidents on TEA's database with the districts' reported USCO incidents for each of the nine selected schools.

We relied primarily on written documentation from TEA, the LEAs, and the campuses to support the implementation of the State's USCO policy. However, we relied upon the computerized student disciplinary data provided by each LEA for 2002-2003 disciplinary incidents at the nine schools. We verified the student disciplinary data for accuracy and completeness by comparing selected handwritten incident forms at the campus level to the computerized records at the district level. We verified the authenticity by comparing computer-processed data to campus documents. After performing these limited data reliability tests, we noted several discrepancies that cast doubt on the data's validity. We concluded that the data was not sufficiently reliable to be used in meeting the audit's objectives. However, when this computer-processed data is viewed in context with other available evidence, including our complete review of disciplinary records at the nine schools for school year 2002-2003, we believe the opinions, conclusions, and recommendations relating to the LEAs not reporting and/or inaccurately reporting disciplinary incidents in this report are valid.

We performed our fieldwork at TEA's offices in Austin, Texas, during August 2004 and at the selected LEAs and schools during the months of August, September, and October 2004. We held an exit conference with TEA officials on February 3, 2005. Our audit was performed in accordance with generally accepted government auditing standards appropriate to the scope of the review 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 the 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 U.S. Department of Education official, who will consider them before taking final Departmental action on this audit:

Deborah A. Price
Assistant Deputy Secretary for Safe and Drug-Free Schools
U.S. Department of Education
400 Maryland Avenue, S.W., Room 3E300
Washington, DC 20202-6450

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 greatly 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.

If you have any questions or wish to discuss the contents of this report, please contact me, at 214-661-9530. Please refer to the control number in all correspondence related to this report.

Sincerely,

/s/
Sherri L. Demmel
Regional Inspector General
for Audit

Attachment



TEXAS EDUCATION AGENCY

1701 North Congress Ave. ★ Austin, Texas 78701-1494 ★ 512/463-9734 ★ FAX: 512/463-9838 ★ <http://www.tea.state.tx.us>

Shirley J. Neeley, Ed.D.
Commissioner
May 9, 2005

Sherri L. Demmel
Regional Inspector General for Audit
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United States Department of Education
1999 Bryan Street, Harwood Center, Suite 2630
Dallas, Texas 75201-6817

Dear Ms. Demmel:

Attached is the official response of the Texas Education Agency (TEA) to the Draft Audit Report, entitled Texas Department of Education's Compliance with the Unsafe School Choice Option, Control Number ED-OIG/A06-E0028, mailed March 24, 2005, by the United States Department of Education's Office of the Inspector General. The purpose of the audit was to determine whether:

- (1) Texas' Unsafe School Choice Option (USCO) policy complied with Title IX, Part E, Subpart 2, Section 9532 of the Elementary and Secondary Education Act (ESEA), as amended by the No Child Left Behind Act of 2001, and applicable U.S. Department of Education guidance, and
- (2) whether TEA adequately implemented the policy at the State and local education agency (LEA) levels.

We have structured this response in accordance with the format specified in the Administrative Matters section of the Draft Audit Report. For those findings with which we do not concur, we have stated our reasons for disagreement, provided data to support our position, identified the alternative corrective actions we have taken or plan to take, and indicated the targeted completion dates.

Thank you for the opportunity to review the Draft Audit Report and to submit our proposals for corrective actions. I believe that this response addresses the concerns cited in the Draft Audit Report, and I hope that our responses will be included in the final audit report. The Texas Education Agency appreciates the efforts of the Office of Inspector General to ensure Texas' compliance with the Unsafe School Choice Option, and we are firmly committed to ensuring that the state and all school districts and campuses comply with these requirements.

Sincerely,

Shirley J. Neeley, Ed.D.
Attachment

"Good, Better, Best—never let it rest—until your good is better—and your better is BEST!"

**Texas Education Agency Response to the Draft Audit Report
Compliance with the Unsafe School Choice Option
Control Number ED-OIG/A06-E0028**

FINDING 1: TEA and LEAs Inadequately Implemented the USCO Transfer Option

The Texas Education Agency (TEA) does not concur with this finding; however, through standard program guidance updates and data reviews has already began several actions which address the two recommendations.

OIG recommends that the Deputy Under Secretary for Safe and Drug-Free Schools work with TEA to –

1.1 Revise its Guidelines for LEA Victim Transfer Policies to reflect the intent of the USCO. Specifically, the guidelines should instruct LEAs to offer victims of a violent criminal offense the option to transfer to another school within 14 calendar days.

By the end of June 2005, TEA will update the July 2003 Unsafe School Choice Option statewide guidance, based on specific information made available through the May 2004 U.S. Department of Education Guidance addressing the specifics of the victim transfer policy. Specific revisions will address issues such as:

- the offer to transfer must occur within 14 calendar days after it has been determined that a student has become the victim of a violent criminal offense;
- address transportation needs; and
- if the district is a single attendance district and has no other grade-appropriate campuses to transfer the student, encourage the negotiation of an agreement with a neighboring district to accept such transfers.

In October 2005, TEA will begin the review process of the criteria and methodology for identifying persistently dangerous schools for 2006.

1.2 Review LEAs' transfer policies for compliance with Texas USCO policy and confirm that students who are victims of a violent crime are provided the option to transfer to a safe school. Also, TEA should instruct LEAs to retain documentation to show that victims' parents were notified of the USCO transfer option and whether a transfer was requested and completed.

In February 2005 TEA implemented the pilot phase of the newly developed performance-based monitoring (PBM) system which includes a review of program compliance for programs under the No Child Left Behind (NCLB) Act. Any time an LEA is required to review program compliance for any program under NCLB, the Title IX USCO Compliance Checklist is required to be completed and submitted, as appropriate, to TEA. Random verification of the compliance checklist data will also be conducted by TEA.

In June 2005, the Division of NCLB Program Coordination will revise and expand the Title IX NCLB USCO Compliance Checklist, used during TEA's monitoring and interventions process, to include

specifics about the transfer policy, especially as it relates to victims of a violent criminal offense, i.e., include specifics under the policy such as:

- the offer to transfer must occur within 14 calendar days after it has been determined that a student has become the victim of a violent criminal offense;
- address transportation needs; and
- if the district is a single attendance district and has no other grade-appropriate campuses to transfer the student, encourage the negotiation of an agreement with a neighboring district to accept such transfers.

The Division of NLCB Program Coordination will instruct LEAs to retain documentation to show that victims' parents were notified of the USCO transfer option and whether a transfer was requested and completed to be submitted to TEA upon request.

FINDING 2: TEA Did Not Establish Procedures to Report Violent Criminal Offenses Committed by Unknown Perpetrators

2.1 OIG recommends that the Deputy Under Secretary For Safe and Drug-Free Schools work with TEA to establish procedures and implement a process for LEAs to report disciplinary incidents that are committed by an unknown perpetrator.

TEA does not concur with this finding and recommendation, as TEA is in compliance with the requirement to report violent criminal offenses committed by unknown perpetrators. The State of Texas requires by law and has provided guidance on procedures for LEAs to report violent and criminal incidents committed by an unknown perpetrator. Texas Education Code (TEC §39.052(a)(4) requires that the board of trustees of each school district shall publish an annual report for the district and for each campus and include "a statement of the number, rate, and type of violent or criminal incidents that occurred on each district campus, to the extent permitted under the Family Educational Rights and Privacy Act of 1974(20 U.S.C. Section 1232g)." Guidance is provided to school districts in reporting violent or criminal incidents (<http://www.tea.state.tx.us/taa/comm071904.html>).

TEA notes that the audit report also discusses Persistently Dangerous Schools (PDS) in the text on Finding 2. Texas has developed an indicator to determine PDS based on very detailed, objective, valid, and reliable data on specific, individual violent and disciplinary incidents attributable to individual school sites, as recommended in Unsafe School Choice Option Non-Regulatory Guidance (U.S.D.E. 2004, pp. 7-8). It is not necessary for the measure to capture every violent or disciplinary incident. The measure must serve as a reliable and robust indicator of the degree of safety on a campus relative to others, and correlate with unreported and immeasurable factors that make a campus unsafe for students. The standard is set to identify campuses with unsafe environments, based on reported incidents and on correlated, non-reported incidents that contribute to unsafe environments. The indicator used by the Texas USCO program is a robust measure of the violent and disciplinary incidents on school campuses.

FINDING 3: LEAs Did Not Report All USCO Incidents and Incorrectly Reported Incidents to TEA.

OIG recommends that the Deputy Under Secretary for Safe and Drug-Free Schools require TEA to –

- 3.1 Ensure that Dallas ISD, Houston ISD, and El Paso ISD take appropriate corrective actions to accurately collect and report USCO incidents to TEA.**
- 3.2 Work with all LEAs and schools within the State to ensure procedures and processes for collecting and reporting USCO incidents effectively report the required data.**

TEA does not concur with this finding or recommendations. In the following paragraphs, we explain our disagreement, identify data that supports our position, and explain the alternative corrective actions we have already taken that address this finding.

The Texas Education Agency has fully complied in the implementation of the state's USCO policy with the ESEA Section 9532 and Department guidance. TEA and the LEAs listed and all LEAs in the State have completed the corrections needed to ensure accurate collection and reporting of USCO incidents to TEA in relation to the 2002-2003 and 2003-2004 data reviewed by this audit.

Data integrity—i.e., ensuring that data are complete, accurate, and reliable—is a key component of TEA's newly developed performance-based monitoring (PBM) system. The PBM system uses the agency's comprehensive data collection systems to conduct annual state-level evaluations of student performance, program effectiveness, and data integrity. In the PBM system, data integrity indicators have been developed to evaluate a variety of data submitted by LEAs, including assessment data, dropout data, attendance data, and discipline data.

To ensure that LEAs are implementing procedures and processes that will result in the accurate collection and submission of discipline data including USCO incidents, TEA has most recently developed discipline data integrity indicators from the 2002-2003 and 2003-2004 discipline data submitted by all school districts through the Public Education Information Management System (PEIMS) 425 disciplinary record. LEAs are required to submit a PEIMS 425 record for each disciplinary action taken against any student that results in the removal from the regular classroom. The PEIMS Data Standards describe data submission requirements for this record in detail, including record layouts with examples and code tables with definitions for each code. A series of edits (2 field edits and 49 context edits) are performed as part of the data submission process. The PEIMS Data Standards are reviewed annually. In 2003, TEA updated its PEIMS 425 disciplinary record and added three new mandatory expellable incidents (aggravated robbery, manslaughter, and criminally negligent homicide). Also, in 2004, the Agency separated the illegal knife code from the local knife code to add illegal knife as an incident code to the PEIMS 425 disciplinary record. These additions are expected to be included in the list of criteria used in identifying campuses for inclusion on the list of PDS campuses for 2006. As the discipline data integrity indicators were developed, additional context edits were developed to alert LEAs to problems at the time the submission is being prepared.

In April 2005, LEAs were provided with individualized summary reports on these discipline data integrity indicators to give them sufficient time to review the results presented in these reports and make any necessary improvements in data submission procedures prior to submitting their 2004-2005 discipline data in June 2005.

Attachment

In addition, the agency developed a Data Integrity Manual both to assist LEAs in interpreting the results of the discipline data integrity indicators and to ensure that accurate and current information was disseminated statewide as a resource to support LEAs in their ongoing obligation to comply with State and federal discipline reporting requirements.

The agency also developed a focused data analysis document, which is a comprehensive resource available for use by LEAs in reviewing their data reporting practices. The focused data analysis provides LEAs with an opportunity to work closely with relevant stakeholders to implement an ongoing self-evaluation process focused on improving the integrity of data submitted to the agency. The specific purpose of the focused data analysis is to identify and determine factors contributing to data anomalies and to gather information in order to develop a continuous improvement plan that addresses data reporting issues and/or programmatic concerns. At the same time, the PBM system includes other intervention strategies, including program effectiveness reviews and, if necessary and appropriate, on-site visits that can be implemented if concerns about the integrity of a particular LEA's discipline data warrant more intensive agency involvement.

Recognizing the critical role that Texas' regional education service centers (ESCs) play in providing technical assistance to LEAs, the agency has implemented a formal process with the twenty regional ESCs across the state to build effective capacity that ensures the ongoing dissemination of accurate and current information concerning all aspects of the PBM system. Monthly videoconferencing is combined with on-site training as appropriate to ensure that the state's regional ESCs are equipped to serve as LEAs' first point of contact and technical assistance provider for PBM activities and requirements. The twenty ESCs, in turn, provide regular videoconferencing and on-site training opportunities for the LEAs in their region. (A similar process has also been implemented by the agency's PEIMS Division in working with the ESC PEIMS coordinators.)

Finally, there are two components that serve as system safeguards in the PBM system. First, random monitoring occurs throughout the system to ensure the integrity of data submitted to TEA and to ensure the integrity of the PBM system as a whole. Second, the PBM system recognizes that LEAs may unexpectedly demonstrate performance, compliance, or data integrity concerns that are outside of the formal annual evaluation process but that are determined to be extremely serious. To address these unique situations, the PBM system includes an "imminent risk" component that allows for an agency response to occur at anytime it is determined to be necessary and appropriate. This response includes, at the agency's option, an on-site investigation and/or the application of interventions and sanctions as needed.

During the 2005-2006 school year, the agency will again evaluate LEAs' discipline data and issue individualized summary reports. The 2005 discipline data integrity report will include an evaluation of discipline data submitted by LEAs for the 2003-2004 and 2004-2005 school years. This report will be the basis of TEA monitoring and intervention of LEAs' discipline data during the 2005-2006 school year.

In regard to the 2002-03 school year data specifically cited in the draft audit report, TEA in January of 2003 provided all districts error reports concerning the PEIMS 425 Record. These included all USCO incidents, and the error reports required districts to send to TEA corrective action plans to

ensure accurate collection and reporting of the PEIMS 425 Records. TEA required all superintendents to sign off on all procedures in the corrective action plans of the districts. TEA was aware and was in the process of working with districts to report correctly USCO data in March 2003 before the definition of PDS was established. Part of the implementation of the USCO policy was to make on-site data audits of each LEA's campus that made the PDS list to validate the data desk audit system. By June 2003, LEAs had provided corrective action plans to the agency which informed the agency that some campuses miscoded crimes and did not have the required documentation needed to report accurately the mandatory expulsions required by state law in TEC, Section 37.007 and used in the calculation of a PDS campus. The TEA Data Unit made on-site audits of all district campuses listed as PDS campuses in 2003 and found the same problems this audit points out. TEA is in a Continuous Improvement Planning cycle in working with all LEAs in the state to ensure that accurate data is reported for use in complying with State and federal reporting requirements, including the USCO policy requirements.

FINDING 4: LEAs' Inadequate Documentation of Drug Incidents Made It Impossible to Determine if All USCO Drug Incidents Were Reported.

OIG recommends that the Deputy Under Secretary for Safe and Drug-Free Schools require TEA to –

- 4.1 Ensure Houston ISD takes appropriate corrective actions to accurately report USCO drug incidents to TEA.**
- 4.2 Establish and implement procedures for all LEAs in the state to document the amount of drugs confiscated to ensure drug incidents are accurately reported.**

TEA does not concur with this finding and recommendations. In the following paragraphs, we explain our disagreement, identify data that supports our position, and explain the alternative corrective actions we have already taken that address this finding.

TEA has fully complied in the implementation of the State's USCO policy with the ESEA Section 9532 and Department guidance. TEA, the LEAs listed in the Draft Audit Report, and all LEAs in the State have procedures under Texas Education Code (TEC) 37.007, the PEIMS Data Standards (Appendix E: Additional information related to Discipline) and the Region XX ESC PEIMS 425 training video. We have completed the corrections needed to ensure accurate collection and reporting of drug incidents included as USCO incidents to TEA in relation to the 2002-2003 and 2003-2004 data reviewed by this audit.

TEC Section 37.007 (a) (3) states that a student shall be expelled from a school if the student, on school property or while attending a school-sponsored or school-related activity, engages in conduct specified by Sections 37.006 (a) (2) (C) or (D) if the conduct is punishable as a felony. TEC 37.006 (a) (2) (C) indicates "sells, gives, or delivers to another person or possesses or uses or is under the influence of: marihuana or a controlled substance, as defined by Chapter 481, Health and Safety Code, or by 21 U.S.C. Section 801 et seq. or a dangerous drug, as defined by Chapter 483, Health and Safety Code." LEA staff is required to follow the mandatory expulsion requirement of this section of the TEC by calling law enforcement and retaining the required documentation of felony or non-felony offense as determined by a police officer or a School Resource Officer (SRO). LEAs are required to obtain and retain PEIMS documentation for five

years for audit purposes as stated in the PEIMS data standards. In the PEIMS Data Standards under Appendix E: (Additional information related to Discipline) on page E.1, the LEA must follow the following procedure required for felony drug offenses used in the Texas USCO policy: "If the student has been alleged to have committed an offense as described in TEC Section 37.007, then a district official holding the expulsion hearing must present substantiated documentation of the alleged behavior as provided by a law enforcement agency or as created/obtained by the school district administrator. (Refer to PEIMS Data Standards, Section 2. 425 Student Disciplinary Action Record for more information on this requirement)."

TEC Section 37.015 requires, "The principal of a public or private primary or secondary school, or a person designated by the principal under Subsection (d), shall notify any school district police department and the police department of the municipality in which the school is located or, if the school is not in a municipality, the sheriff of the county in which the school is located if the principal has reasonable grounds to believe that any of the following activities occur in school, on school property, or at a school-sponsored or school-related activity on or off school property, whether or not the activity is investigated by school security officers . . . (4) the use, sale, or possession of a controlled substance, drug paraphernalia, or marihuana under Chapter 481, Health and Safety Code . . . [and] (7) conduct that may constitute a criminal offense for which a student may be expelled under Section 37.007 (a), (d), or (e)."

The State law for Texas requires LEAs to report felony drug offenses, thereby giving the LEAs the required documentation procedures for the USCO incidents used in the PDS identification. The TEC was updated in 2003 to include the 37.015 Section (7) reporting and documentation requirements for LEAs. Also in 2003 the Texas Legislature added TEC, Section 37.008 (m-1) which states, "The commissioner shall develop a process for evaluating a school district disciplinary alternative education program electronically. The commissioner shall also develop a system and standards for review of the evaluation or use systems already available to the agency. The system must be designed to identify districts that are at high risk of having inaccurate disciplinary alternative education program data or of failing to comply with disciplinary alternative education program requirements. The commissioner shall notify the board of trustees of a district of any objection the commissioner has to the district's disciplinary alternative education program data or of a violation of a law or rule revealed by the data, including any violation of disciplinary alternative education program requirements, or of any recommendation by the commissioner concerning the data. If the data reflect that a penal law has been violated, the commissioner shall notify the county attorney, district attorney, or criminal district attorney, as appropriate, and the attorney general. The commissioner is entitled to access to all district records the commissioner considers necessary or appropriate for the review, analysis, or approval of disciplinary alternative education program data."

TEA has taken action to ensure the listed district and all districts in Texas take appropriate corrective actions to collect and report accurately PEIMS 425 data which includes all USCO incidents, as described above and in the response to Finding 3.