



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF INSPECTOR GENERAL

THE INSPECTOR GENERAL

MAR 30 2007

Control Number  
ED-OIG/A06G0002

Raymond Simon  
Deputy Secretary  
U.S. Department of Education  
400 Maryland Ave, SW, Room  
7W310 Washington, DC 20202

Dear Mr. Simon:

This **Final Audit Report** presents the results of our audit of the Individuals with Disabilities Education Act (IDEA), Part B requirements at schools under the supervision of the Department of the Interior's (Interior) Bureau of Indian Affairs (BIA). Our objective was to determine whether the Department of Education's oversight of Interior's IDEA, Part B programs was adequate to disclose potential problems. Our review covered the period July 1, 2001, through September 30, 2003.

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## BACKGROUND

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The Department of Education (Department) provides funding for disadvantaged and disabled students to the BIA through the Department of the Interior. The BIA allocates these funds to elementary and secondary schools operated or funded by the Secretary of the Interior, including tribal-operated schools that are funded by the BIA. The BIA received over \$111 million in IDEA, Part B<sup>1</sup> funds, which included administrative and other non-direct service costs, for 7,474 students with disabilities for fiscal years 2001-2002 and 2002-2003. Overall, the Department provided over \$140 million in education funds to BIA in 2002 and \$188 million in 2003. During our two-year audit period, Interior received over \$328<sup>2</sup> million in funding from the Department.

The Department's Office of Special Education Programs (OSEP) provides leadership and fiscal resources to assist State and local efforts to educate children with disabilities to

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<sup>1</sup> Pursuant to 34 C.F.R. § 300.715(b), "The Secretary provides amounts to the Secretary of the Interior to meet the need for assistance for the education of children with disabilities on reservations aged 5 to 21.... The amount of the payment for any fiscal year is equal to 80 percent of the amount allotted...."

<sup>2</sup> This figure includes \$138.9 million (\$111 million for 5-21 year olds and \$27.8 million for 3-5 year olds) in IDEA, Part B; \$9.9 million in IDEA, Part C; \$129.5 million in Title I; \$21.8 million in Title II; \$16.2 million in Title IV; and \$12.1 million in various smaller Department programs.

improve results for those children and to ensure equal protection of the law. Its programs assist public agencies to provide all infants, toddlers, children, and youth with disabilities early intervention services and a free appropriate public education, which emphasizes challenging standards and access to the general curriculum to the extent appropriate.

The Office of Indian Education Programs (OIEP),<sup>1</sup> located within the BIA in the Department of the Interior, provides technical assistance and oversight responsibility for 185 BIA-funded elementary and secondary schools and two post-secondary colleges. The Center for School Improvement (CSI), a component of OIEP, is responsible for assisting with the implementation of the policies, plans, regulations, and guidelines of the OIEP. The CSI, located in Albuquerque, New Mexico, carries out the OIEP's function as the State Education Agency (SEA) for Department programs. To help manage the schools, BIA has 24 regional agencies, called education line offices (line office) that are similar to public school districts.

IDEA, Part B requires the Department to provide funds to the Secretary of the Interior to assist in providing special education and related services to children with disabilities. From the amount appropriated for any fiscal year, the Department reserves 1.226 percent to provide assistance to the Secretary of the Interior of which 80 percent is allotted for serving children ages 5 through 21 with disabilities. From the amount allotted for serving children ages 5 through 21, Interior may use five percent of its payment for administrative costs. The Secretary of the Interior is required to submit information to the Department that it meets the requirements of IDEA. In addition, the Secretary of the Interior provides several assurances, including an assurance that Interior will cooperate with the Department in its compliance with monitoring and oversight requirements.

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## AUDIT RESULTS

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OSEP did not provide adequate oversight of BIA's IDEA, Part B programs from September 2001 to September 2003. Although OIEP provided some programmatic oversight of BIA programs in the form of comments and feedback on the annual performance reports submitted by BIA, OSEP officials did not perform sufficient on-site visits to BIA schools or BIA offices in Albuquerque. As a result, the Department was unaware of the inadequate documentation substantiating the special education and related services provided by the schools to children with disabilities, or the lack of accounting procedures at BIA to account for IDEA, Part B funds. Consequently, the Department was unable to take timely corrective action.

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<sup>1</sup> Interior recently reorganized OIEP creating a Bureau of Indian Education (BIE). The BIE will be a co-equal bureau with the Bureau of Indian Affairs and will report directly to the Assistant Secretary of Indian Affairs. The Center for School Improvement (CSI) that serves as the State Education Agency (SEA) is now the Division of Compliance, Monitoring, and Accountability (DCMA). For purposes of this report, all references will be to the entities as structured during the audit period.

Subsequent to our audit period, several Department program offices, including OSEP, required BIA to submit a corrective action plan. The corrective action plan is a crosscutting effort by the Department to address problems at BIA regarding the funding it receives through various Department programs. BIA is required to submit quarterly updates regarding its progress toward completing the milestones identified in the corrective action plan. The corrective action plan contains steps to address programmatic and fiduciary compliance. In addition, Department staff conducts monthly teleconferences with BIA staff to provide technical assistance.

We received your comments concurring with Recommendations 1.1 and 1.2, generally concurring with Recommendation 1.3, and non-concurring with Recommendation 1.4. The comments are summarized at the end of the finding along with the OIG's response. The full text of your comments is included as Attachment 2 to the report.

**Finding: The Department Did Not Provide Adequate Oversight of IDEA, Part B Programs**

During our audit period, OSEP's limited monitoring of IDEA, Part B programs at BIA and its associated schools was not sufficient to identify and correct problems at BIA and its schools. For example, BIA was unable to demonstrate that it provided the planned special education and related services, in accordance with the Individualized Education Programs (IEP), to 68 percent of the students in our sample at the seven schools we audited. In addition, BIA was unable to adequately account for the entire \$111 million of IDEA, Part B funds appropriated during our audit period.

From 1998 to 2005, OSEP conducted two monitoring visits at various BIA locations. The first of these monitoring visits occurred at seven BIA-funded line offices and eight schools from September 1998 through May 1999 (report dated April 2000); the second monitoring visit occurred at two line offices, two schools, and the CSI offices in September 2005 (report dated January 2006). These reports contained findings regarding BIA's compliance with IDEA, Part B requirements, including the lack of a system-wide service coordination plan, failure to place students in the least restrictive environment, lack of extended school year services for all students who needed those services, and repeat deficiencies from previous OSEP visits. However, OSEP's reports did not identify the issues identified by the OIG regarding the lack of documentation for the services provided by the schools or the lack of accounting procedures at BIA (see Attachment 1 for the issues identified in the final BIA summary report, A06F0019, dated March 28, 2007).

In addition to the monitoring visits, BIA submitted Annual Performance Reports (APR) for OSEP's review. The APR contain numerous tables that included, but were not limited to, personnel employed to provide special education and related services for children with disabilities and a report of children with disabilities exiting special education. The APR did not contain the required financial or accounting information for the IDEA, Part B funds.

We also identified a high level of non-direct expenditures during our audit period. BIA is entitled to keep five percent of IDEA, Part B funds for 5-21 year olds, for administrative purposes (34 C.F.R. § 300.262(a)). In addition, BIA used funds beyond the five percent administrative fee for training to address identified needs for in-service preparation and for the salaries of Special Education Coordinators (SEC) at the area line offices. As a result, in FY 2002-2003, BIA reserved \$6 million for the Comprehensive System of Personnel Development (CSPD) program (staff training), and over \$2.4 million for SECs' salaries in the line offices. This resulted in BIA using approximately 19 percent of IDEA, Part B funds for non-direct services in FY 2002-2003. Additionally, BIA used at least 10 percent of the IDEA, Part B funds for non-direct services in 2001-2002. The exact percentage of non-direct services could not be determined for FY 2001-2002 because of the lack of documentation at BIA. Due to BIA's high level of non-direct expenditures, some students may not have received required services.

### **Other Department Funds Might Be at Risk**

BIA was unable to adequately account for the entire \$111 million of IDEA, Part B funds appropriated during our audit period, and we determined the remaining \$217 million in other Department funds might be at risk. Several factors contributed to BIA being a potential high-risk entity:

- BIA was unable to provide reliable and usable information regarding the distribution of the IDEA, Part B funds to the schools. Funding data provided to the schools was incomplete and detailed expense reports were not always provided.
- BIA was unable to adequately account for amounts expended for the CSPD program, the SEC, and administrative costs. The amounts expended for the CSPD program were available for 2002-2003 only. Although SEC and administrative costs were available for 2001-2002 and 2002-2003, detailed expense reports were not available.
- BIA did not have accounting procedures established to adequately account for IDEA, Part B funds expended. For example, in 2001-2002, BIA could account for most IDEA, Part B funds disbursed directly to the tribal-operated schools. However, BIA could not account for IDEA, Part B funds disbursed to individual BIA-operated schools.
- In 2002-2003, BIA budgeted \$6 million for CSPD of which \$5.3 million was for contracts with colleges and universities (colleges) for various training programs. We reviewed expenditures for the four colleges and determined that none of the colleges expended all of their IDEA, Part B funds for 2002-2003. The four colleges had over \$1.7 million remaining in their accounts, before BIA obligated over \$2.2 million in IDEA, Part B funds for the next year. According to a BIA official, this was done to prevent the IDEA, Part B funds from being used for expenses incurred elsewhere within BIA. In addition, BIA de-obligated over

\$400,000 in FY 2002-2003 IDEA, Part B funds from these four colleges and due to poor accounting records could not identify where the de-obligated funds went.

- In July 2002, BIA in Albuquerque ran out of money, including IDEA, Part B funds, because it did not have a system established to track expenditures to the budgeted amount. Consequently, there were insufficient funds to cover the fourth quarter salaries that totaled approximately \$500,000, and BIA provided alternate BIA funds to cover the \$500,000 shortfall. When the BIA received the next year's (2002-2003) funds, \$500,000 was withheld from CSI's CSPD funds to reimburse BIA.
- Interior's FY 2004 Performance and Accountability Report indicated that BIA needed to improve its financial management organization and processes. The independent auditors found that BIA financial management policies and procedures were not fully developed or consistently applied throughout BIA.
- The Government Accountability Office's (GAO) September 2003 Report – *Expenditures in Selected Schools Are Comparable to Similar Public Schools, But Data Are Insufficient to Judge Adequacy of Funding and Formulas* – stated that most BIA school operating funds are provided by Interior through the standard Federal budget process; however, the agency has little financial data to inform its school budget proposals. Because BIA does not collect detailed expenditure data from its schools, GAO was unable to assess the overall adequacy of the funding.

Because BIA did not adequately account for the IDEA, Part B funds and it functioned as the SEA for all other Department programs, we determined that all Education funds administered by Interior, totaling over \$328 million during our audit period, might be at risk. Subsequently, the Department has worked with BIA to develop a corrective action plan to address a variety of issues at BIA. The corrective action plan contains steps to address programmatic and fiduciary compliance including, but not limited to, improving administrative, organizational, and management capability and program and financial accountability. In addition, the Department has imposed certain conditions on BIA's continuing eligibility for IDEA, Part B funding.

## **Recommendations**

We recommend that the Deputy Secretary—

- 1.1 Continue with the implementation of the current corrective action plan; but if BIA deviates from the plan, or fails to successfully complete the plan, the Department's Management Improvement Team should evaluate whether to identify BIA as a high-risk entity.
- 1.2 Instruct the applicable principal offices to coordinate with Interior to ensure BIA properly accounts for all Education funding received.

We also recommend that the Deputy Secretary instruct the Office of Special Education and Rehabilitative Services to—

- 1.3 Ensure that BIA monitoring teams include financial personnel, as well as programmatic personnel, to evaluate financial matters and check for compliance with financial requirements.
- 1.4 Ensure that BIA complies with the limit for administrative expenditures contained in the IDEA Improvement Act of 2004 by disallowing any request from BIA for non-direct expenditures that would exceed the five percent administrative limit.

### **Auditee's Comments**

The Deputy Secretary stated the Department believes that OSEP's monitoring activities provided the needed oversight and identified the substantive issues identified by the OIG. OSEP has implemented a multi-faceted monitoring process that includes both off-site and on-site oversight activities. Given the expense and complexity of on-site monitoring along with the availability of communication technology, OSEP has developed numerous methods for off-site monitoring. These activities include, desk audits of BIA's general supervision, assessment and data collection systems, and receiving and responding to self-assessments, improvement plans, and Annual Performance Reports.

In addition, while conducting on-site monitoring, OSEP reviewed student records and collected interview data from teachers, related services providers and administrators regarding the provision of required special education and related services as specified in children's IEPs. However, no findings of noncompliance were made with regards to the provision of special education and related services.

The Department concurred with Recommendations 1.1 and 1.2 and said it has already taken steps to address the recommendations. Regarding Recommendation 1.3, the Department stated that staff would be trained to conduct monitoring of financial matters. However, it did not agree that it is essential to have financial personnel on every monitoring visit but rather financial personnel could be consulted prior to a visit or requested to participate in visits to States that are at high risk for financial mismanagement. The Department did not concur with Recommendation 1.4 because it believes that it does not have legal authority to instruct BIA to limit the amount of IDEA funds spent on non-direct services. However, the Department said changes made by the IDEA Improvement Act of 2004, enacted December 3, 2004, now require BIA to allocate all Part B funds for the education of children with disabilities aged 5 through 21, except for the five percent set-aside for administration, to BIA-funded schools. Therefore, BIA no longer has the discretion to use IDEA funds for non-direct services.

### **OIG's Response**

While we acknowledge that OSEP has provided both on and off-site monitoring, as well as placing BIA on a corrective action plan, these measures did not identify the significant financial issues presented in this report. We do not agree that consulting with financial personnel prior to a visit substitutes for having a financial person on site reviewing documentation. Our audit work determined that BIA could not adequately account for the entire \$111 million of IDEA, Part B funds appropriated during our audit period and is at high risk for financial mismanagement. Additionally, Interior's FY 2004 Performance and Accountability Report indicated that BIA needed to improve its financial management processes, and the independent auditors found that BIA financial management policies and procedures were not fully developed or consistently applied throughout BIA. Lastly, the GAO's September 2003 audit report determined that because BIA does not collect detailed expenditure data from its schools, GAO was unable to assess the overall adequacy of funding to the schools. Even with all this information at hand, the Department did not identify that BIA had financial problems and place them on a corrective action plan prior to our audit work. Therefore, it is our opinion that off-site monitoring with programmatic personnel and consultation with financial personnel before an actual on-site monitoring visit will not identify future financial issues. Therefore, we did not change Recommendation 1.3.

Regarding Recommendation 1.4, we identified a high level of non-direct expenditures during our audit period. In July 2001, in response to a BIA inquiry, OSEP officials agreed to BIA's request to use additional funds beyond the five percent administrative fee. BIA used the funds for training to address identified needs for in-service preparation and for the salaries of the Special Education Coordinators at the area line offices. The Department agreed to the expenditures, which resulted in at least 10 percent of IDEA, Part B funds being used for non-direct services in FY 2001- 2002 and 19 percent being used in FY 2002-2003. The Department states that changes made in the IDEA Improvement Act of 2004, 20 U.S.C § 1411(h)(1)(A), limits BIA's discretion in the use of IDEA funds for non-direct services. As a result, we have changed Recommendation 1.4 to require the Department to ensure BIA complies with the limit for administrative expenditures contained in the IDEA Improvement Act of 2004 by disallowing any request from BIA for non-direct expenditures that would exceed the five percent administrative limit.

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## OBJECTIVE, SCOPE, AND METHODOLOGY

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Our objective was to determine whether the Department of Education's oversight of Interior's IDEA, Part B programs is adequate to disclose potential problems.

To accomplish our objective, we—

- Audited seven BIA schools (resulting in five audit reports), this work also included audit work at three line offices and the BIA office in Albuquerque, New Mexico.
- Reviewed detailed expense reports and payroll information for IDEA, Part B expenditures for BIA and compared the information to budget information.
- Reviewed Federal Distribution Documents (FDD) and other financial information at BIA.
- Reviewed Department monitoring reports.
- Interviewed various Department of Interior BIA officials in Albuquerque, New Mexico, and Washington, DC, line office officials, and school administrators.
- Interviewed Department of Education officials.

BIA officials provided a document generated from the FDD system with school IDEA, Part B funding levels. We determined this information to be unusable because, although the FDD documents identified the total funding amount, they did not break down the funding amounts to the individual schools or to the line offices. Additionally, the FDD information at BIA was incomplete and other financial data provided was unreliable.

As part of our audit, we conducted an assessment of internal controls, policies, procedures, and practices applicable to the Department's oversight of BIA's administration of IDEA, Part B funds. Our testing identified weaknesses in the Department of Education's oversight for IDEA, Part B funds. These weaknesses are discussed in the AUDIT RESULTS section of this report.

We conducted our fieldwork at BIA between September 2003 and June 2004. We conducted our fieldwork at the Department during September 2003 and January 2006, and we held an exit conference with Department officials on August 2, 2006.

Our audit was performed in accordance with generally accepted government auditing standards appropriate to the scope of the review described above.

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## ADMINISTRATIVE MATTERS

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Corrective actions proposed (resolution phase) and implemented (closure phase) by your office will be monitored and tracked through the Department's Audit Accountability and Resolution Tracking System (AARTS). Department policy requires that you develop a final corrective action plan (CAP) for our review in the automated system within 30 days of the issuance of this report. The CAP should set forth the specific action items, and targeted completion dates, necessary to implement final corrective actions on the findings and recommendations contained in this final audit report. An electronic copy of this report has been provided to your Audit Liaison Officer.

In accordance with the Inspector General Act of 1978, as amended, the Office of Inspector General is required to report to Congress twice a year on the audits that remain unresolved after six months from the date of issuance.

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, please call Sherri Demmel, Regional Inspector General for Audit, at (214) 661-9526.

Sincerely,

/s/

John P. Higgins, Jr.

Attachments

**Summary of Findings and Recommendations for the BIA Summary Report  
(ACN A06F0019, dated March 28, 2007)**

The seven BIA schools reviewed did not administer IDEA, Part B funds in accordance with applicable requirements, laws, and regulations and were unable to demonstrate that 68 percent of the students in our sample received the planned special education and related services in accordance with their IEPs. In addition, because the CSI was unable to adequately account for the entire \$111 million of IDEA, Part B funds appropriated during our audit period, we determined that other Department of Education funds also administered by Interior and valued at over \$217<sup>2</sup> million, might be at risk during the two-year audit period.

**Finding 1: IDEA, Part B, Special Education Services May Not Have Been Provided to 5 through 21 Year Old Children With Disabilities**

BIA was unable to demonstrate that the seven schools audited provided the planned special education and related services in accordance with their IEP to 68 percent of the students in our sample. Of the 194 students with disabilities we reviewed, 131 either did not receive the services as described in their IEP, or we could not determine if they were provided.

We concluded that these conditions occurred because school officials did not have procedures in place to both ensure and document that special education and related services were provided in accordance with the student's IEP. Based on the high error rate found at the seven schools, IDEA, Part B funds disbursed for these students may not have been properly spent and students may not have received services they were required to receive. In addition, because we found similar issues at all seven schools, we believe the problems identified might be systemic throughout BIA schools.

**Recommendations**

We recommended the Assistant Secretary for Special Education and Rehabilitative Services—

- 1.1 Obtain an assurance from BIA officials that the \$111 million of IDEA, Part B funds was used to deliver educational assistance to the children with disabilities at all of the BIA funded schools and return any funds not used for those purposes to the Department, to the extent authorized by law.
- 1.2 Verify that BIA instructed all BIA funded schools to document all special education and related services provided to each current student with disabilities.

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<sup>2</sup> This figure includes \$27.8 million for 3-5 year olds in IDEA, Part B; \$9.9 million in IDEA, Part C; \$129.5 million in Title I; \$21.8 million in Title II; \$16.2 million in Title IV; and \$12.1 million in various smaller Department programs.

1.3 Ensure the problems identified in our individual school audits are corrected at all BIA funded schools.

**Finding 2: Other Department Funds Administered by the Department of the Interior Might Be at Risk**

In addition to the over \$111 million of IDEA, Part B funds received by Interior during our audit period, Interior also received over \$217 million of additional funding from the Department of Education in other program areas. Because CSI functioned as the SEA for all Department programs and was unable to adequately account for the entire \$111 million of IDEA, Part B funds appropriated during our audit period, and BIA did not use IDEA, Part B funds in accordance with applicable requirements nor in a way that provided the most benefit to the 5-21 year olds for which those funds were appropriated, the additional \$217 million might be at risk.

**Inadequate Accounting of IDEA, Part B Funds**

The data provided by the CSI was often unreliable and unusable. For example, IDEA, Part B funding to schools was incomplete and detailed expense reports were not always provided. The amounts expensed for the CSPD program were available for 2002-2003 only. SEC and administrative costs were available for 2001-2002 and 2002-2003, but detailed expense reports were not available. In addition, the CSI did not have accounting procedures established to adequately account for IDEA, Part B expended funds.

Although BIA could account for some of the IDEA Part B funds disbursed directly to the tribal-operated schools in 2001-2002, BIA could not account for IDEA, Part B funds disbursed to individual BIA-operated schools. They could not account for the funds because those funds were distributed through the line office responsible for the school and accounted for at the line office level. When IDEA, Part B funds were distributed through the line offices, the Federal Distribution Documents (FDD) did not always include the individual funding amounts to the schools. The line offices visited could not always identify the amount of IDEA, Part B funds to the schools. Additionally, the amount of IDEA, Part B funds expensed for CSPD, SEC, and administrative costs could not be determined because of inadequate documentation. Further, in July 2002, CSI had used all of its funds, including IDEA, Part B funds, because it did not have a system established to track expenditures to the budget amount. Consequently, there were not enough funds to cover the fourth quarter salaries that totaled approximately \$500,000 and BIA provided alternate BIA funds to be used to cover the \$500,000 shortfall. When the BIA received the next year's (2002-2003) IDEA, Part B funds, \$500,000 was withheld from CSI's CSPD funds to reimburse BIA.

In 2002-2003, BIA changed the way funds were disbursed to the BIA-operated schools; however, the funding information was still unreliable. Some IDEA, Part B funds were

directly disbursed to BIA-operated and tribal-operated schools. But in other cases, IDEA, Part B funds for the individual schools were disbursed to the line offices.

### **Use of IDEA, Part B Funds**

BIA did not use IDEA, Part B funds in a way that provided the most benefit to the 5-21 year olds for which those funds were appropriated. BIA is allowed to use five percent of IDEA, Part B funds, for 5-21 year olds, for administrative purposes (34 C.F.R. § 300.262(a)). BIA used more than five percent of the funds for training to address identified needs for in-service preparation and for the salaries of SECs at the area line offices. In FY 2002-2003, BIA reserved \$6 million for the CSPD program and over \$2.4 million for SECs' salaries in the line offices. As a result, BIA used about 19 percent of the IDEA, Part B funds for non-direct services in FY 2002-2003. Additionally, BIA used at least 10 percent of the IDEA, Part B funds for non-direct services in 2001-2002. The exact percentage of non-direct services could not be determined for FY 2001-2002 because of the lack of documentation at BIA. Due to BIA's high level of non-direct expenditures, some 5-21 year olds may not have received the most benefit from the IDEA, Part B funds.

In 2002-2003, BIA budgeted \$6 million for CSPD of which \$5.3 million was for contracts with colleges and universities (colleges) for various training programs. We reviewed expenditures for four colleges and determined that none of the colleges expended all of their IDEA, Part B funds for 2002-2003. The four colleges had over \$1.7 million remaining in their accounts, before BIA obligated over \$2.2 million in IDEA, Part B funds for the next year. According to a BIA official, this was done to prevent the IDEA, Part B funds from being used for expenses incurred elsewhere within OIEP/CSI. In addition, BIA de-obligated over \$400,000 in FY 2002-2003 IDEA, Part B funds from these four colleges and due to poor accounting records could not identify where the de-obligated funds went.

We determined that these problems occurred because CSI had not established accounting policies and procedures to account for disbursements and expenditures. This resulted in inconsistencies in how IDEA, Part B funds were requested and disbursed. Because BIA was unable to demonstrate that planned special education and related services were provided to 68 percent of the students in our sample and did not properly account for the IDEA, Part B funds, we determined that all Education funds administered by Interior, totaling over \$328 million, might be at risk.

## **Recommendations**

We recommended the Deputy Secretary—

2.1 Coordinate with Interior to require BIA to account for the remaining \$217 million in other Department funds it received during the audit period or return those funds to the Department to the extent authorized by law.

We also recommended the Assistant Secretary for Special Education and Rehabilitative Services instruct the BIA to—

2.2 Establish written accounting policies and procedures to properly account for IDEA, Part B funds and all Department funds.

2.3 Limit the amount of funds reserved for non-direct purposes.

The results of the seven BIA schools audited are located in the following reports:

Fond du Lac: (A06E0001, dated August 30, 2004)

Circle of Nations: (A06E0002, dated December 9, 2004)

Eastern Navajo: (A06E0005, dated December 9, 2004)

Turtle Mountain High School: (A06E0010, dated December 13, 2004)

Turtle Mountain Elementary and Middle Schools: (A06E0011, dated December 13, 2004)



**UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF THE DEPUTY SECRETARY**

September 25, 2006

Mr. John P. Higgins,  
Jr. Inspector General  
Office of the Inspector General  
U.S. Department of Education  
400 Maryland Ave, SW  
Washington, DC 20202

Dear Mr. Higgins:

Thank you for the opportunity to comment on the Office of Inspector General's (OIG) Draft Audit Report, "Department of Education's Oversight of Department of Interior's (Interior) IDEA, Part B Programs," (ED-OIG/A06G0002) dated August 25, 2006. The objective of this review was to determine whether the Department of Education's (Department) oversight of Interior's Individuals with Disabilities Education Act (IDEA), Part B programs was adequate to disclose potential problems. The fieldwork was conducted between November 2003 and June 2004 and audited funds for July 1, 2001 through September 30, 2003.

The draft report summarizes the results of the audit and finds the Office of Special Education Programs (OSEP) did not provide adequate oversight of the Bureau of Indian Affairs' (BIA)<sup>1</sup> IDEA, Part B programs from September 2001 to September 2003. The report contends that OSEP's monitoring of BIA was limited and, as a result, did not uncover problems at BIA and its schools that needed to be identified and corrected. Additionally, since BIA was unable to adequately account for the entire \$111 million in IDEA, Part B funds appropriated during the audit period, the OIG determined the remaining \$217 million in other Department funds provided to BIA during the two-year audit period were at risk.

It is important to provide clarification regarding Department monitoring activities during the audit period since we believe that OSEP's monitoring activities in fact provided the needed oversight and identified the substantive issues identified by the OIG. OSEP has implemented a multi-faceted monitoring process that includes off-site and on-site oversight activities. During the period of the audit OSEP completed desk audits of BIA's general supervision, assessment and data collection systems. In addition, OSEP received and responded to a self-assessment, improvement plan and Annual Performance Report. OSEP also reviewed data reported by the BIA under section 618 of the IDEA to determine areas of poor performance. BIA was required

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<sup>1</sup> Interior recently reorganized its Office of Indian Education Programs (OIEP) creating a Bureau of Indian Education (BIE). The BIE will be a co-equal bureau with the Bureau of Indian Affairs and will report directly to the Assistant Secretary of Indian Affairs. The Center for School Improvement (CSI) that serves as the State Education Agency (SEA) is now the Division of Compliance, Monitoring and Accountability (DCMA). For purposes of this response, all references will be to the entities as structured during the audit period.

to complete corrective actions related to placement in the least restrictive environment, extended school year services, Statewide assessment, secondary transition, dispute resolution, and failure to correct noncompliance. Given the expense and complexity of on-site monitoring along with the availability of communication technology, OSEP has developed numerous methods for off-site monitoring. These methods allow OSEP to maintain more frequent oversight of State performance rather than waiting for a State to come up in the cycle. Other Offices in the Department are employing similar off-site methods, e.g., desk audits, data review, and annual performance reports, to monitor performance and compliance. In addition, OSEP had several meetings with BIA staff who are located here in DC to discuss BIA's IDEA Eligibility Document and its Improvement Plan, which was developed to address noncompliance.

Related to the issue of BIA schools ensuring the provision of needed special education and related services, OSEP has monitored this issue and required corrective action. Specifically, as a part of OSEP's 1998-99 monitoring visits to BIA-funded schools in three States (New Mexico, North Dakota, South Dakota), OSEP collected extensive data, including parent input, regarding BIA's compliance with IDEA requirements. OSEP reviewed student records and collected interview data from teachers, related services providers and administrators regarding the provision of required special education and related services as specified in children's individualized education programs. OSEP determined that BIA did not ensure that children with disabilities who needed extended school year services received such services. However, no other findings of noncompliance were made with regard to the provision of special education and related services. Because IDEA does not require that schools maintain logs demonstrating that special education and related services were provided, OSEP supplemented its record review with extensive interviews. In no case did the respondents indicate that children with disabilities were not provided needed services.

The Department would like to respond directly to the specific recommendations in this report:

**Recommendation 1.1:**

**Continue with the implementation of the current corrective action plan, but if BIA deviates from the plan, or fails to successfully complete the plan, consider identifying BIA as a high-risk entity.**

The Department concurs with this recommendation. In April 2005, the Undersecretary of the Department met with the Acting Deputy Secretary of Interior and the Acting Assistant Secretary of Indian Affairs to convey that the Department considered its funds at risk and required Interior to submit a corrective action plan. With technical assistance provided by the Department, in August 2005, Interior submitted a cross-cutting comprehensive corrective action plan (CAP) that contains steps to address programmatic and fiduciary compliance including, but not limited to, improving administrative, organizational, and management capability and program and financial accountability. BIA submits quarterly reports to the Department on its progress in implementing the CAP. The Department monitors the implementation of the plan through both the review of the quarterly reports and monthly teleconferences with BIA staff to provide technical assistance. The Department plans on continuing this activity until the successful completion of the plan. If the Department concludes that BIA is not successfully executing its plan, it will consider taking further action that could include identifying BIA as a high-risk entity and imposing special conditions on BIA's receipt of grant funds.

**Recommendation 1.2:**

**Instruct the applicable principal offices to coordinate with Interior to ensure BIA properly accounts for all Education funding.**

The Department concurs with this recommendation and has undertaken several oversight and technical assistance activities to coordinate with Interior to ensure BIA properly accounts for Education funding. For example, on August 17, 2006 Department Program Offices (including offices which administer the Title I, Part A; Title II, Part A; Title IV; and IDEA programs) participated in a teleconference with the Center for School Improvement (CSI) and the BIA education line officers to discuss accountability provisions of both IDEA and the Elementary and Secondary Education Act (ESEA), as amended. The BIA convenes quarterly meetings with its education line officers. The Department has committed to participate in these meetings to provide technical assistance and to coordinate with Interior as it implements program improvement and accountability. Attachment A provides a chronology of additional oversight and technical assistance activities undertaken by the Department in coordination with Interior from March 2005 to the present.

**Recommendation 13:**

**Ensure that monitoring teams include financial personnel, as well as programmatic personnel, to evaluate financial matters and check for compliance with financial requirements.**

The Department generally concurs with this recommendation. Specifically, we agree with the need to check for compliance with financial requirements and OSEP has developed extensive procedures for monitoring financial matters, both on- and off-site. The procedures are being piloted with four States this fall and will be revised, as needed, based on the pilots. Full implementation of the procedures will occur in 2007. In addition, staff will be trained to conduct monitoring of financial matters. We do not agree that it is essential to have financial personnel on every monitoring visit but rather financial personnel could be consulted prior to a visit or requested to participate in visits to States that are at high risk for financial mismanagement.

**Recommendation 1.4:**

**Limit the amount of funds BIA reserves for non-direct purposes.**

We cannot concur with the recommendation that OSERS instruct the BIA to limit the amount of funds reserved for non-direct purposes. The Department does not have the legal authority to instruct the BIA to limit the amount of IDEA funds spent on non-direct services because there is no requirement in IDEA that States or the BIA limit the amount of funds reserved for non-direct services. During the audit period, it was permissible for the BIA to use Part B funds not set-aside for administration for training to address identified needs for in-service personnel preparation and to pay the salaries of Special Education Coordinators to the extent they were carrying out activities on behalf of the schools. (20 U.S.C. §§1412(a)14 and 1413(a)(2)(A) and 34 CFR §§300.230(a), 300.260, 300.267 and 300.380)<sup>2</sup> Furthermore, without any knowledge of the amount other States spend on non-direct services, there is no basis for concluding that the amount the BIA spent on non-direct services during the audit period was too high.

<sup>2</sup> These citations are to provisions of IDEA and regulations in effect during the audit period. The IDEA Improvement Act of 2004, enacted on December 3, 2004, reauthorized and made significant changes to IDEA. On August 14, 2006, final regulations implementing the IDEA Improvement Act of 2004 were published.

More importantly, changes made by IDEA 2004 now require the BIA to allocate all Part B funds for the education of children with disabilities aged 5 through 21, except for the 5% set-aside for administration, to BIA-funded[ schools. See 20 U.S.C. §1411(h)(1)(A). Therefore, BIA no longer has the discretion to use IDEA funds for non-direct services.

We hope that this response will further your efforts to support the Department goals of improving the management of Federal resources and strengthening overall accountability.

Sincerely,

/s/

Raymond Simon

Enclosure

**Chronology**  
**Department of Education (ED)**  
**Oversight and Technical Assistance Activities with the**  
**Department of Interior's Bureau of Indian Affairs'**  
**Office of Indian Education Programs (DOI/BIA/OIEP)**

**3/16/05**—As a result of the Operating Effectiveness meetings initiated by Undersecretary Edward R. McPherson, an initial internal planning meeting is convened to develop a plan to address, in a department-wide fashion, Program Office issues/concerns with DOI/BIA/OIEP's administration of Education funds.

**4/21/05**—Undersecretary McPherson convenes a meeting with Lynn Scarlett, Acting Deputy Secretary of DOI to present ED's concerns regarding DOI/BIA/OIEP's administration of ED funds and outlines ED's plans to work with DOI/BIA/OIEP to improve educational outcomes for Indian children. Undersecretary McPherson conveys to Deputy Secretary Scarlett that ED considers federal ED dollars at risk. At this meeting Deputy Secretary Scarlett reports Jim Cason, Associate Deputy Secretary, DOI, has assumed the responsibilities of the Assistant Secretary of Indian Affairs and will be addressing management issues at the BIA.

**5/3/05**—Meeting between Undersecretary McPherson and Associate Deputy Secretary Cason to discuss plan of action to address DOI/BIA/OIEP's administration of ED funds. Mr. McPherson conveys that ED considers BIA to be in a high-risk situation and he requires DOI to submit a corrective action plan (CAP) to ED within 30 days. Mr. Cason requests assistance in developing the CAP.

**5/20/05**—In response to Mr. Cason's request for assistance in developing DOI's CAP, a half-day session is held with ED staff and DOI/BIA/OIEP staff to provide technical assistance in the development of the CAP.

**5/27/05**—ED provides additional technical assistance to DOI/BIA/OIEP via email as follow-up to the 5/20/05 meeting.

**6/03/05**—DOI submits its first draft of a corrective action plan to ED. The initial draft of the CAP needs revision and ED Program offices are tasked by Undersecretary McPherson to provide feedback to DOI/BIA/OIEP.

**6/17/05**—ED internal discussion regarding whether to impose special conditions on receipt of ED funds. Undersecretary McPherson tasks the Program offices with drafting special conditions to share with the Office of General Counsel (OGC).

**6/20/05**—ED revises the OIEP corrective action plan for transmittal to DOI.

**6/28/05**—In consultation with General Counsel, Undersecretary McPherson decides not to put DOI/BIA/OIEP on high risk and impose special conditions at this time. Rather, a decision is made to allow DOI/BIA/OIEP to submit its corrective action plan in final form and for ED to document compliance issues via the joint department-wide monitoring visit planned for 9/05. As a result of this determination, Mr. McPherson sends a letter to Mr. Cason outlining ED's

expectations, including that the final corrective action plan is due to ED, that we will be requiring quarterly progress reports and if ED concludes that BIA is not successfully executing its plan, that we will consider taking further action that could include the establishment of special conditions on BIA's receipt of grant funds.

**7/28/05**—ED meets with DOI/BIA/OIEP staff to discuss/explain the revisions ED made to DOI's corrective action plan.

**8/08/05**—Lynn Scarlett, Deputy Secretary, DOI submits DOI's final corrective action plan to ED (referred to as a "Program Improvement and Accountability Plan" (PIAP)).

**8/29/05-8/31/05**—ED participates in DOI/BIA/OIEP's tribal consultation meetings concerning OESE's Transfer of funds Memorandum of Agreement with OIEP.

**7/05-9/05**—ED plans and executes a joint monitoring visit of BIA/OIEP federal ED programs as part of ED's overall action plan to document compliance/non-compliance with ED programs. Three ED offices (Office of Elementary and Secondary Education (OESE), Office of Special Education and Rehabilitative Services (OSERS), Office of the Chief Financial Officer (OCFO)) and several ED programs (Title I, Part A; Title II, Part A; Homeless Education; and IDEA, Part B) participate in the review and issue monitoring reports.

**10/31/05**—First Quarterly Progress Report of the Corrective Action Plan is submitted to ED.

**11/05--** As a result of the monitoring visit and the corrective action plan objectives regarding improved communication, monthly teleconferences are established with BIA/OIEP and Department of Education staff in order to provide timely technical assistance and oversight.

**12/12/05**—ED meets with DOI staff (Abe Haspel, Assistant Deputy Secretary, DOI) to discuss implementation of the corrective action plan and the status of BIA's restructuring efforts.

**1/06--** Informal monthly meetings are initiated between ED and DOI legal staff to discuss and work through some of the more difficult issues presented by the conflicts between DOI and ED statutes.

**1/14/06**—Second Quarterly Progress Report of the Corrective Action Plan is submitted to ED.

**2/06-4/06--** Planning is initiated for a major technical assistance conference to be jointly sponsored by BIA/OIEP and ED. It is anticipated that approximately 1000 participants, including BIA/OIEP staff, tribally controlled school staff, parents, and board members will attend. The conference was scheduled for August 1, 2, and 3, but was postponed due to the restructuring of OIEP and the arrival of new leadership. It is now anticipated that the TA conference will occur after October 1 once the restructuring at BIA is complete and new staff members are on-board. This Department-wide crosscutting effort will include participation from OESE, Office of English Language Acquisition (OELA), OSERS, Office of Safe and Drug-Free Schools (OSDFS), and OCFO.

**5/18/06--** Third Quarterly Progress Report of the Corrective Action Plan is submitted to ED.

**6/11/06**—DOI hires a permanent Director for its newly established Bureau of Indian Education. The OIEP has been elevated to a bureau called the Bureau of Indian Education (BIE) that is co-equal to the Bureau of Indian Affairs and reports directly to the Assistant Secretary of Indian

Affairs. BIE is in the process of hiring several new SES level executive staff to increase accountability. The new structure and new staff should be fully in place by Oct. 1.

**6/27/06**—Several senior level ED staff members meet with the new director of the BIE, Mr. Thomas Dowd. He discusses the corrective action plan and affirms his commitment to its implementation.

**8/11/06**—Final Quarterly Report of the Corrective Action Plan for 2005-2006 is submitted to **ED**.

**8/17/06**--Department Program Offices (including offices which administer the Title I, Part A; Title II, Part A; Title IV; and IDEA programs) participate in a teleconference with OIEP and the education line officers to discuss accountability provisions of both IDEA and the Elementary and Secondary Education Act (ESEA), as amended, to assist BIA/OIEP as it implements program improvement and accountability.