
Charter Schools' Access to Title I and IDEA, Part B Funds in the State of Arizona

FINAL AUDIT REPORT



**ED-OIG/A09-D0033
August 2004**

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U.S. Department of Education
Office of Inspector General
Sacramento, California

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August 24, 2004

Tom Horne
Superintendent of Public Instruction
Arizona Department of Education
1535 West Jefferson Street
Phoenix, Arizona 85007

Dear Superintendent Horne:

Enclosed is our final audit report, Control Number ED-OIG/A09-D0033, entitled *Charter Schools' Access to Title I and IDEA, Part B Funds in the State of Arizona*. This report incorporates the comments you provided in response to the draft report. If you have any additional comments or information that you believe may have a bearing on the resolution of this audit, you should send them directly to the following Education Department officials, who will consider them before taking final Departmental action on this audit—

Troy R. Justesen, Ed.D.
Acting Deputy Assistant Secretary
Office of Special Education and Rehabilitative Services

Nina Rees
Deputy Under Secretary
Office of Innovation and Improvement

Raymond J. Simon
Assistant Secretary
Office of Elementary and Secondary Education

Their mailing address is: U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, DC 20202-7100. It is the policy of the U.S. Department of Education to expedite the resolution of audits by initiating timely action on the findings and recommendations contained therein. Therefore, receipt of your comments within 30 days would be appreciated.

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

Sincerely,

/s/

GLORIA PILOTTI
Regional Inspector General for Audit

Enclosure

electronic cc: Vicki Salazar, Associate Superintendent of Finance, ADE
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ADE
Lillie Sly, Associate Superintendent of Educational Services and Resources, ADE

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EXECUTIVE SUMMARY

The Arizona Department of Education (ADE) had systems in place to allocate Elementary and Secondary Education Act of 1965 (ESEA), Title I, Part A (Title I) and Individuals with Disabilities Education Act (IDEA), Part B funds to eligible charter school LEAs, including new or expanding charter school LEAs.¹ However, we found that—

- ADE did not provide sufficient information to charter school LEAs on the requirement to provide written notification of their opening or expansion dates within 120 days and the definition of “significant expansion of enrollment.”
- ADE under allocated IDEA, Part B funds to three new charter school LEAs because ADE improperly applied the statutory funding formula.
- ADE did not have adequate procedures to ensure new or expanding charter school LEAs, including those LEAs that were on nontraditional calendars, had timely access to their Title I and IDEA, Part B funds.

We recommend that the Assistant Secretary for Special Education and Rehabilitative Services (OSERS), in collaboration with the Assistant Secretary for Elementary and Secondary Education (OESE) and the Deputy Under Secretary for Innovation and Improvement (OII), require ADE to provide information to charter school LEAs on the notification requirements for a charter school LEA that is new or has significantly expanded enrollment. We further recommend that OSERS require ADE to determine the amount of IDEA, Part B funds that were under allocated to new charter school LEAs and provide that amount to them; and to correct its procedures to ensure that new charter school LEAs receive their full allocations. We also recommend that OSERS, in collaboration with OESE, require ADE to modify its procedures to ensure new or expanding charter school LEAs receive timely access to their Title I and IDEA, Part B funds.

The OTHERS MATTERS section of the report provides information on ADE’s procedures for allocating IDEA, Part B funds to existing charter school LEAs. We found that ADE’s application of the IDEA funding formula did not include a base payment in the Part B allocations to 136 existing charter schools LEAs. In their first year of operation, these charter school LEAs did not submit data identifying enrolled students with disabilities. OSERS has not issued guidance that specifically addresses how the requirements for allocating Part B funds to LEAs apply to this situation. The OTHER MATTERS section also provides information related to a prior OIG report that concluded ADE violated Federal laws by providing Title I and IDEA, Part B funds directly to private, for-profit charter school LEAs, which received \$1,129,006

¹ For purposes of this report, an “expanding” charter school LEA is one that has significantly expanded enrollment in accordance with the Federal definition at 34 C.F.R. § 76.787, which we describe in the AUDIT RESULTS section of this report. An “LEA” is a local educational agency. The term “charter school LEA” as used in this report means the charter school that holds the charter. The BACKGROUND section of the report provides additional information on the creation and responsibilities of charter school LEAs.

during the period October 1, 2000, through September 30, 2001. We found that ADE allocated \$1,218,892 in Title I and IDEA, Part B funds to private, for-profit charter school LEAs for school year 2001-2002.

In its comments on the draft report, ADE concurred with the findings, but did not fully address the recommendations. ADE's comments on the draft report are summarized at the end of each finding and included in their entirety as ATTACHMENT 1.

BACKGROUND

The ESEA, Title I, Part A provides financial assistance to improve the teaching and learning of low-achieving children in high-poverty schools. The IDEA, Part B § 611 provides grants to states for special education and related services for children with disabilities. Section 5206 of the ESEA, as amended by the No Child Left Behind Act of 2001 (NCLB), requires the Department and states to take measures to ensure every charter school receives the Federal formula funds, including Title I and IDEA, Part B funds, for which it is eligible no later than five months after the school first opens or expands enrollment.²

The Arizona State Legislature enacted the State charter school law in 1994. The State law provides that the Arizona State Board of Education, the Arizona State Board for Charter Schools, or a local school district can authorize a charter school.³ (For purposes of this report, we use “State authorizer” to mean either Board.) Under State statute, a charter school can be structured as a nonprofit or for-profit entity, and can operate one or more charter schools. In addition, the charter school that holds the charter (charter holder) must have a governing board, which is similar to a school district governing board and is statutorily authorized to make policy decisions for the charter school. Under this requirement, a charter holder that operates multiple charter schools would have one governing board.

For purposes of the ESEA and IDEA, ADE considers the charter holder to be an LEA (charter school LEA) and allocates Title I and IDEA, Part B funds to the charter school LEA rather than to individual charter school sites.⁴ Like school district LEAs, charter school LEAs are responsible for improving their students’ achievement under Title I, and for providing a free, appropriate public education for their enrolled students with disabilities under the IDEA.

In school year 2003-2004, a total of 362 charter school LEAs were operating a total of 495 charter school sites. Over 90 percent of the charters were authorized by a State authorizer. A total of 43 new charter school LEAs were operating in school year 2001-2002.⁵ For that school year, ADE allocated a total of about \$132 million in Title I funds to 507 LEAs, including about \$6 million to 206 charter school LEAs. ADE also allocated about \$85 million in IDEA, Part B funds to 501 LEAs, including about \$3 million to 266 charter school LEAs.

² The ESEA § 5206 was originally enacted by the Charter School Expansion Act of 1998.

³ The two State Boards merged into the Arizona State Board for Charter Schools in school year 2003-2004.

⁴ For purposes of this report, a “charter school LEA” is the charter school entity that holds the charter, and a “charter school site” is one that is operated by the charter school LEA.

⁵ ADE Title I and special education program administrators told us that no charter school LEAs in Arizona have expanded, which we address in the AUDIT RESULTS section.

AUDIT RESULTS

The purpose of the audit was to examine charter schools' access to Federal funds in the State of Arizona. Specifically, we determined whether ADE (1) provided new or expanding charter school LEAs with timely and meaningful information about the Title I and IDEA, Part B funding for which these LEAs might have been eligible, and (2) had management controls that ensured charter school LEAs, including new or expanding charter school LEAs, were allocated the proportionate amount of Title I and IDEA, Part B funds for which these LEAs were eligible. Our review covered school year 2001-2002.

We concluded that ADE should enhance information provided to charter school LEAs about the ESEA § 5206 requirements for new or expanding charter school LEAs; allocate the proportionate amount of IDEA, Part B funds to new charter school LEAs; and strengthen procedures to ensure that new or expanding charter school LEAs receive timely access to their Title I and IDEA, Part B funds. We concluded that ADE had appropriate procedures for allocating a proportionate share of Title I funds to charter school LEAs, including new or expanding LEAs. However, we were unable to verify the data used in calculating allocation amounts for new charter school LEAs. The OBJECTIVES, SCOPE, AND METHODOLOGY section of the report further explains the limitation on our review.

FINDING NO. 1 – ADE Should Enhance Information Provided to Charter School LEAs About the ESEA § 5206 Requirements for New or Expanding Charter School LEAs

ADE provided information to new and existing charter school LEAs about accessing Title I and IDEA, Part B funds. However, ADE needs to provide additional information to charter school LEAs on (1) the requirement that they provide written notification of their opening and expansion dates, and (2) the definition of “significant expansion of enrollment.” While Federal statute and regulations place the responsibility on charter school LEAs to provide written notice of the date they are scheduled to open or significantly expand enrollment, most of the 21 charter school LEA administrators we interviewed were unaware of ADE’s notification requirements.

New or Expanding Charter School LEAs Must Provide Written Notice to Trigger ESEA § 5206 Requirements

To trigger the ESEA § 5206 requirements, a new or expanding charter school LEA must provide written notification of its opening or expansion date. The implementing regulations at 34 C.F.R. Part 76 address the requirement for written notice, the definition of “significant expansion of enrollment,” and the requirement for the State educational agency (SEA), after receiving a notice, to provide timely and meaningful information about Federal programs. The regulations state—

At least 120 days before the date a charter school LEA is scheduled to open or significantly expand its enrollment, the charter school LEA or its authorized public chartering agency must provide its SEA with written notification of that date.
34 C.F.R. § 76.788(a)

Significant expansion of enrollment means a substantial increase in the number of students attending a charter school due to a significant event that is unlikely to occur on a regular basis, such as the addition of one or more grades or educational programs in major curriculum areas. The term also includes any other expansion of enrollment that the SEA determines to be significant.
34 C.F.R. § 76.787

Upon receiving notice . . . of the date a charter school LEA is scheduled to open or significantly expand its enrollment, an SEA must provide the charter school LEA with timely and meaningful information about each covered program in which the charter school LEA may be eligible to participate
34 C.F.R. § 76.789(a)

The Department provided nonregulatory guidance entitled, *How Does a State or Local Educational Agency Allocate Funds to Charter Schools that Are Opening for the First Time or Significantly Expanding their Enrollment?*, issued December 2000. In that guidance, the Department defined “meaningful information” to include the steps a charter school needs to take to access Federal funds.

A State or LEA provides . . . meaningful information to a charter school when it provides the charter school with the information the charter school reasonably needs to know to make an informed decision about whether to apply to participate in a particular covered program and the steps the charter school needs to take to do so.

While the regulation at 34 C.F.R. § 76.789(a) does not require the SEA to provide information until a new or expanding charter school has provided notice, the nonregulatory guidance above addresses the need for the charter school to be able to make an informed decision about participating in a covered Federal program. We found, however, that a charter school cannot make such a decision without first receiving information on how and when to provide notice of its opening or expansion, and how to recognize that expansion has occurred.

ADE Did Not Provide Sufficient Information to Charter School LEAs

ADE did not provide sufficient information or guidance to charter school LEAs on written notices of their opening or expansion, or on the definition of “significant expansion of enrollment,”⁶ for purposes of allocating Title I and IDEA, Part B funds to charter school LEAs.

⁶ According to ADE Title I and special education program administrators, ADE uses the definition of expansion specified in 34 C.F.R. § 76.787, and has not further defined the term.

According to ADE Title I and special education program administrators, several resources were available for charter school LEAs to obtain information and assistance on ADE notification requirements, the definition of expansion, and other steps for accessing Title I and IDEA, Part B funds for school year 2001-2002. These resources included an ADE charter school liaison (whose position no longer existed at the time of our review); the individual ADE program offices; training provided at ADE-sponsored and charter school association conferences and workshops; and the websites of ADE, charter authorizers, and a charter school association. Our review of the ADE and Arizona State Board for Charter Schools websites found information of only a general nature and no information on ADE notification requirements, the definition of expansion, or the specific steps a new or expanding charter school LEA needed to take to access Title I or IDEA, Part B funding. Our conclusions regarding the information provided by the program offices and training provided at conferences and workshops are presented in the following paragraphs.

The ADE Title I and special education program offices each had their own processes for charter school LEAs to provide notice of their opening or expansion.

- Title I Program Relied on Informal Process. The Title I program relied on an informal process for new charter schools to provide notice of their opening, and for existing charter school LEAs to recognize that they had significantly expanded and provide notice of their expansions. Additionally, the program office did not regularly disseminate information to all charter school LEAs on this process. ADE Title I program administrators described the charter school LEA notification and Title I program information dissemination processes to include the following activities.
 - Once the Title I program received notice from a new or expanding charter school LEA by telephone, electronic mail, or any other written form, the program would send guidance to the charter school LEA on data submission requirements and the information needed to apply for ESEA-related funds, such as Title I.
 - The Title I program disseminated information on how new or expanding charter schools may access Title I funds during sessions on Administration and Finance at the various ADE-sponsored and charter school association conferences. These conference sessions included information on the ESEA § 5206 requirements, including specific program notification procedures and the Federal definition of expansion.
 - The Title I program provided annual funding notices and instructions to all existing LEAs, including charter school LEAs, on the consolidated application process for ESEA-related program funds.

We reviewed the available documents on accessing Title I funds and found no information or written procedures on the ADE requirement for a new or expanding charter school LEA to notify the program office or the definition of expansion. Moreover, attendance at the conferences or sessions on Administration and Finance was not mandatory and the Title I program had no assurance that charter school LEAs received the presented information.

- Special Education Program Had Formal Process. The special education program had a formal method for disseminating information to all charter school LEAs, which provided them the means for providing notice of their opening or expansion. However, we found that the information provided in an annual memorandum to charter school LEAs should be enhanced.

The special education program annually distributed a Charter School Information memorandum to all existing, new, and prospective charter school LEAs to provide information to newly opening and significantly expanding charter school LEAs on data submission requirements and the basis for IDEA funding determinations. A new or existing charter school LEA should provide notice of its opening or expansion by responding to this memorandum and providing the requested data. The memorandum did not include the definition of expansion.

Although not an ADE condition for receipt of IDEA funding, the special education program also required all new and prospective charter school LEAs to attend ADE training on preparing to deliver special education services prior to their opening. This training included information on the ESEA § 5206 requirements. However, not all charter school LEAs attended the training. Representatives from 4 of the 21 charter school LEAs we interviewed told us that no one from their LEAs attended the training for various reasons. One new charter school LEA was unaware of the training; the training was not offered when one charter school LEA opened in 1995; one charter school LEA had no special education students enrolled; and one charter school LEA received program-specific training from its District authorizer. Additionally, one charter school LEA administrator told us that the training focused more on special education reporting and processing requirements than on accessing funding.

Because some charter school LEAs may not have received the ADE program-specific training or had received the training several years earlier, the special education program should include the definition of “significant expansion of enrollment” in its annual Charter School Information memorandum. Such a reminder will help charter school LEAs decide whether an expansion warranted a response to the memorandum.

While the Title I process was less formal than the special education process, neither ADE program office provided annual information to charter school LEAs on the ADE requirements for written notice at least 120 days prior to their opening or expansion, or the definition of expansion.

Charter School LEAs Did Not Adhere to ADE Notification Procedures

ADE administrators from both programs informed us that no charter school LEAs had provided notice of an expansion for school year 2001-2002. We found that charter school LEAs, that appeared to meet the Federal definition of expansion, did not provide appropriate notice to ADE, and, as a result, did not have access to additional Title I or IDEA, Part B funds for which they might have been eligible for school year 2001-2002.

Our interviews with 21 charter school LEAs found that new or expanding charter school LEAs were unfamiliar with the program offices' procedures and did not adhere to them. For school year 2001-2002, representatives from six charter school LEAs told us that their LEAs had met the Federal definition of expansion. None of the six expanding charter school LEAs provided notice of their expansion to the Title I or special education program office. Instead, the six LEAs reported notifying their State charter authorizer, an ADE unit other than the program offices, or both. These charter school LEAs were under the impression that they had provided sufficient notice of their opening or expansion.

Based on our charter school LEA interviews, the following three examples illustrate the variations in charter school LEA expansions, notification methods, and lack of familiarity with the definition of expansion.

- One charter school LEA expanded by adding two grades and increasing enrollment by 81 percent at its existing charter school site. The LEA provided notice through ADE's former charter schools office (a part of ADE's Grants Management Unit), which required the LEA to submit authorizer-approved forms when the charter was amended for the expansion.
- One charter school LEA expanded by adding a grade and increasing enrollment by 57 percent at its existing site. The LEA did not notify ADE of this expansion because the LEA assumed that the State authorizer's approval of the expansion provided sufficient notice to the applicable ADE program offices.
- One charter school LEA expanded one of its two charter school sites by adding a grade and increasing enrollment by 47 percent. The LEA representative told us that notice of the expansion was not required because the expansion was anticipated in the charter.

The ADE Associate Superintendent for Financial Services and an Education Program Specialist at the Arizona State Board for Charter Schools told us that neither the ADE Grants Management unit nor the State authorizer provided notice to the Title I or special education program office when charter school LEAs were new or expanding. From our interviews with nine new charter school LEAs, we found that most of these LEAs also were not aware of the ADE program notification procedures. However, the two program offices somehow received notice because these new charter school LEAs received the program memoranda on data submission requirements and, if data were submitted, the LEAs also received Title I funds, IDEA funds, or both.

From ADE's perspective, no charter school LEA had expanded in school year 2001-2002, since the two program offices had not received any notices of expansion in accordance with their individual program procedures. Thus, ADE appropriately did not allocate additional Title I and IDEA, Part B funds to expanding charter school LEAs that did not provide proper notice to the respective program offices. However, from our charter school LEA interviews, we found that charter school LEAs were not aware of the notification procedures and, thus, could not comply with them. They had mistakenly assumed that a central State contact, such as the Grants Management unit or State authorizer, coordinated notification to each program office. Additionally, new charter school LEAs were also unaware of the notification procedures, although ADE somehow became aware of these LEAs.

To better ensure that new or expanding charter schools are provided access to the Title I and IDEA, Part B funds for which they are eligible, ADE needs to provide more meaningful information to all charter school LEAs. A new or expanding charter school LEA needs sufficient information to know to what entity(s) and by what method(s) notice should be provided, as well as when its expansion is considered significant.

Recommendation

- 1.1 The Assistant Secretary for Special Education and Rehabilitative Services, in collaboration with the Assistant Secretary for Elementary and Secondary Education and the Deputy Under Secretary for Innovation and Improvement, should require ADE to establish or modify its written procedures for notifying ADE that a charter school LEA is new or has significantly expanded enrollment. The procedures should include annual guidance to all charter school LEAs on the manner in which notification requirements will be satisfied and the definition of “significant expansion of enrollment.”

ADE Comments

ADE concurred with the finding and stated that it has complied with the recommendation. ADE stated that a new agency publication has been developed to provide guidance on the NCLB and the Charter School Expansion Act. The publication is being provided to all charter holders in Arizona and will be provided to all new charter holders as they come into existence. The guidance will include reference to IDEA, Part B funding for charter schools. ADE stated that the definition of “significant expansion of enrollment” will be provided in the Exceptional Student Services (the unit responsible for administering the special education program) section’s annual memorandum.

OIG Response

While providing the new publication to all existing and new charter school LEAs is a good start, ADE needs to ensure the guidance also informs charter school LEAs about the manner in which notification requirements are to be satisfied for the Title I, IDEA, or other Federal programs covered by the ESEA § 5206. Additionally, charter school LEAs should receive written guidance on the ADE notification requirements, as well as the definition of expansion, on an annual basis. A reference to the new publication could suffice in the programs’ annual funding notices, such as the Title I program’s notice and instructions to existing LEAs, including charter school LEAs, on the consolidated application process, and the Exceptional Student Services section’s annual memorandum to charter school LEAs.

FINDING NO. 2 – ADE Needs to Allocate the Proportionate Amount of IDEA, Part B Funds to New Charter School LEAs

Under the formula provided in the IDEA for distribution of Part B funding, the State allocation to each eligible LEA, including charter school LEAs, is the total of three amounts—the base payment,⁷ the population payment, and the poverty payment. The implementing regulations at 34 C.F.R. § 300.712(b) state—

For each fiscal year for which funds are allocated to States . . . each State shall allocate funds under § 300.711 [Subgrants to LEAs] as follows:

(1) *Base payments.* The State first shall award each agency . . . the amount that agency would have received . . . for the base year . . . if the State had distributed 75 percent of its grant for that year . . .

(2) *Base payment adjustments.* For any fiscal year after the base year fiscal year—

(i) If a new LEA is created, the State shall divide the base allocation . . . for the LEAs that would have been responsible for serving children with disabilities now being served by the new LEA, among the new LEA and affected LEAs based on the relative numbers of children with disabilities . . .

(3) *Allocation of remaining funds.* The State then shall—

(i) Allocate 85 percent of any remaining funds to those agencies on the basis of the relative numbers of children enrolled in public and private elementary and secondary schools within each agency’s jurisdiction; and

(ii) Allocate 15 percent of those remaining funds to those agencies in accordance with their relative numbers of children living in poverty, as determined by the SEA.

We found that ADE had a system in place to apply the Part B funding formula. However, ADE did not apply the formula correctly for the three new charter school LEAs that received IDEA, Part B funds for school year 2001-2002.

ADE Did Not Allocate Population and Poverty Payments to New Charter School LEAs That Received IDEA, Part B Funds

Federal regulations implementing § 5206 of the ESEA require states to ensure that eligible new or expanding charter school LEAs that open or expand on or before November 1 of an academic year receive a proportionate amount of Federal funds, including Part B of the IDEA. A State must base a new or expanding charter school LEA’s allocation on actual data. A State cannot

⁷ Each LEA receives a base allocation consisting of the amount of IDEA, Part B funds that the LEA would have received in fiscal year 1999 had the SEA distributed 75 percent of its funds to LEAs. This amount is based on the numbers of children with disabilities receiving special education and related services as of December 1, 1998, or, at the State’s discretion, the last Friday in October 1998.

deny funding to a new charter school LEA due to the lack of prior-year data. The regulations state—

For each eligible charter school LEA that opens or significantly expands its enrollment on or before November 1 of an academic year, the SEA must implement procedures that ensure that the charter school LEA receives the proportionate amount of funds for which the charter school LEA is eligible under each covered program.

34 C.F.R. § 76.792(a)

. . . [A]n SEA must determine whether a charter school LEA is eligible to receive funds under a covered program based on actual enrollment or other eligibility data for the charter school LEA on or after the date the charter school LEA opens or significantly expands its enrollment.

For the year the charter school LEA opens or significantly expands its enrollment, the eligibility determination may not be based on enrollment or eligibility data from a prior year, even if the SEA makes eligibility determinations for other LEAs under the program based on enrollment or eligibility data from a prior year.

34 C.F.R § 76.791(a) and (b)

For school year 2001-2002, ADE allocations of IDEA, Part B funds to three new charter school LEAs were comprised of only the base payment.⁸ The charter school LEAs did not receive the population and poverty portions of the funding formula.

According to an ADE special education program director, ADE did not collect or use actual enrollment and poverty data from new charter school LEAs because it used prior-year data to determine the IDEA, Part B allocations for all other LEAs, including existing charter school LEAs. Under ADE's procedures, the new charter school LEAs would not begin to receive the population payment and poverty payment portions of the allocation until the second year of operation when prior-year data became available.

ADE's denial of population and poverty payments to the three new charter school LEAs in their first year of operation because of the lack of prior-year data is contrary to the regulations at 34 C.F.R. § § 76.791 and 76.792(a). By providing only the base payments, ADE had under allocated the IDEA, Part B allocations to the three new charter school LEAs.⁹

⁸ To establish the base payments, ADE asked the new charter school LEAs to submit actual data identifying the enrolled students with disabilities and, for purposes of making base payment adjustments, their school district, charter school, or state of origin. ADE appropriately used these data to determine the base payments.

⁹ We could not determine the amount of additional IDEA, Part B funds the three charter school LEAs should have received for their population and poverty payments because the ADE special education program office had not collected the necessary enrollment and poverty data.

Recommendations

The Assistant Secretary for Special Education and Rehabilitative Services should require ADE to—

- 2.1 Determine the population and poverty portions of the IDEA, Part B funding formula that the three new charter school LEAs should have received for school year 2001-2002, and make those funds available to them.¹⁰ ADE should also ensure that new charter school LEAs that were similarly affected in subsequent years receive their population and poverty payments, as appropriate.
- 2.2 Correct its procedures to ensure that new charter school LEAs that receive IDEA, Part B funds are provided their full allocations, including population and poverty payments based on actual data.

ADE Comments

ADE agreed to ask charter schools for the actual population and poverty data that should be used in calculating portions of new charter school LEAs' IDEA, Part B allocations.

OIG Response

ADE's comments did not address Recommendation 2.1. ADE needs to provide population and poverty payments to the three new charter school LEAs that were adversely affected for school year 2001-2002, and any similarly affected charter school LEAs that were new in school years 2002-2003, 2003-2004, and, if applicable, later school years.

In the draft report, we had included a section in the finding disclosing that ADE did not allocate base payments to the majority of existing charter school LEAs that received IDEA, Part B funds in school year 2001-2002. Based on comments received on the draft report, we removed the section from the finding and reported the information related to this condition in the OTHER MATTERS section of the report.

¹⁰ One of the three new charter school LEAs was a private, for-profit entity. The OTHER MATTERS section of the report presents information from a previous OIG report concerning the appropriateness of providing Title I and IDEA, Part B funds directly to private, for-profit entities.

FINDING NO. 3 – ADE Needs to Strengthen Procedures to Ensure That Charter School LEAs Receive Timely Access to Title I and IDEA, Part B Funds

For school year 2001-2002, ADE awarded Title I funds to 29 new charter school LEAs and IDEA, Part B funds to 3 new charter school LEAs. As we noted in Finding No. 1, ADE's program offices did not identify any expanding charter school LEAs in that school year.

Federal regulations implementing § 5206 of the ESEA prescribe the timeframe in which states must provide eligible new or expanding charter school LEAs with access to Federal funds. The regulations at 34 C.F.R. § 76.793(a) state—

For each eligible charter school LEA that opens or significantly expands its enrollment on or before November 1 of an academic year, the SEA must allocate funds to the charter school LEA within five months of the date the charter school LEA opens or significantly expands its enrollment . . .

In the preamble to the 1999 final regulations, which implemented the regulations at 34 C.F.R. §§ 76.792(a) and 76.793(a), the Secretary responded to a comment on the five-month timeframe, stating—

[W]hen awarding subgrants under the covered programs, SEAs . . . are generally required only to ensure that the appropriate amount of grant funds are made available for draw down by the subgrant recipient—in this case, the charter school [LEA]. The subgrant recipient, in turn, draws down funds on an as needed basis.
64 FR 71970

ADE Did Not Have Adequate Procedures to Ensure New or Expanding Charter School LEAs Had Timely Access to Title I and IDEA, Part B Funds

ADE had procedures for allocating Title I and IDEA, Part B funds to new or expanding charter school LEAs. However, these procedures did not ensure that such charter school LEAs received timely access to the funds. For both the Title I and IDEA, Part B programs, ADE used actual data to compute new charter school LEAs' allocations for school year 2001-2002. ADE Title I and special education program administrators told us that, under their respective program procedures, a new charter school LEA that submitted the requested data and completed its application in a timely manner should have had access to their Title I and IDEA, Part B funds by February 2002. As designed for a traditional year, funds disbursed in February would have provided charter school LEAs access within five months of a September 2001 opening. According to the program administrators, the allocation procedures would have been the same for expanding charter school LEAs. We found that these procedures did not provide new or expanding charter school LEAs with access to the funds in February, as illustrated in the table below.

ADE also did not modify its procedures to accommodate charter school LEAs that opened or expanded before September. The ADE program administrators told us that most public schools, including charter school sites, began the school year in September. However, 11 of the 15 new or expanding charter school LEAs we interviewed reported July or August opening or expansion dates. To receive Title I or IDEA, Part B funds within five months of their opening or expansion, the 11 charter school LEAs should have had access to their funds in December 2001 and January 2002, respectively.

The following table outlines the dates for the two allocation processes for school year 2001-2002.

Allocation Process Procedure	Title I Funds	IDEA, Part B Funds
A. ADE sent data request to new charter school LEAs	October 2001	September 2001
B. Data were due from new charter school LEAs	30 days after 40 th day of school	Any time before end of school year ^a
C. ADE informed new charter school LEAs of allocation amounts	January to June 2002	February 2002 ^b
D. Applications were due from new charter school LEAs	March to May 2002	Any time before end of school year ^a
E. New charter school LEAs submitted applications	February to May 2002	December 2001 to February 2002
F. ADE approved applications and disbursements	February to June 2002	February 2002 ^b
G. New charter school LEAs had access to funds	April to June 2002	March 2002
^a IDEA, Part B data and application submissions from charter school LEAs were due at the same time. ^b ADE approved the applications and informed charter school LEAs of their IDEA, Part B allocation amounts at about the same time.		

As shown in the table (Procedure G), the earliest that any of the new charter school LEAs could access their Title I funds was April 2002. Ten of the 29 charter school LEAs could not access their Title I funds until June 2002. The IDEA, Part B funds were available in March 2002. We found that delays in providing charter school LEAs access to the Title I and IDEA, Part B funds were partly due to some LEAs' untimely data submissions and applications. However, we also found that the program procedures did not provide adequate assurance that new or expanding charter school LEAs could gain access to the funds within five months of their opening or expansion.

- Title I Procedures Did Not Allow Timely Access. Under the Title I allocation procedures, ADE instructed new charter school LEAs to submit their application by March 2002 at the earliest (Procedure D in the table). The March due date was already more than five months after any opening date between July and September 2001. Since the procedures required the use of actual enrollment and poverty data to compute the allocations, for a charter school LEA that opened or expanded in September 2001, that data would become available in late October and due to ADE in November. As a result, according to Title I program administrators, the earliest that ADE could inform the new charter school LEAs of their allocations was in January 2002 (Procedure C in the table). Additionally, once the Title I program approved a disbursement in February, the charter school LEA did not have access to those funds until April (Procedures F and G in the table).

The Title I program did not collect or maintain data on charter school LEAs' opening or expansion dates. Thus, ADE could not, and did not, monitor its compliance with the regulatory requirement to provide new or expanding charter schools access to Title I funds within five months of their opening or expansion.

- Special Education Procedures Could Have Allowed Timely Access. Under the IDEA, Part B allocation procedures, ADE did not require new or expanding charter school LEAs to submit required data or applications within a specified timeframe (Procedures B and D in the table) to ensure that the LEAs could access their funds within five months of their opening or expansion. Special education program administrators told us that charter school LEAs could complete their submissions any time during the school year and the LEAs would still receive the funds. Once the disbursements were approved in February, the new charter school LEAs received access to the funds in the following month (Procedures F and G in the table).

The special education program annually requested new or expanding charter school LEAs to report their opening or expansion dates. However, ADE did not use this information to monitor its compliance with the requirement to provide new or expanding charter schools timely access to their IDEA, Part B funds.

In conclusion, ADE needs to ensure that new or expanding charter school LEAs have timely access to the Title I and IDEA, Part B funds. The allocation procedures should enable ADE to be aware of charter school LEA opening and expansion dates, and to accommodate those new or expanding charter school LEAs that are on non-traditional calendars. In establishing procedural timeframes, the Title I and special education programs should also factor in the time needed for other ADE units to process and disburse the funds.

If ADE cannot sufficiently condense its current timeframes, it could use an alternative approach provided by the regulations implementing § 5206 of the ESEA. Instead of basing the Title I or IDEA, Part B allocations solely on actual data, the regulations at 34 C.F.R. § § 76.796(a) and 76.797(a) permit a state to initially allocate funds based on projected data and to later adjust the allocation when actual data become available. This approach could enable a state to more readily provide new or expanding charter schools with timely access to the funds.

Recommendation

- 3.1 The Assistant Secretary for Special Education and Rehabilitative Services, in collaboration with the Assistant Secretary for Elementary and Secondary Education, should require ADE to modify its procedures, as needed, to make certain that eligible new or expanding charter school LEAs receive access to their Title I and IDEA, Part B funds within five months of their opening or expansion dates, provided that the charter school LEAs have met ADE's requirements for written notice at least 120 days prior to their opening or expansion. The procedures should also ensure that eligible new or expanding charter school LEAs, which are not on a traditional calendar, receive timely access to the Title I and IDEA, Part B funds for which they are eligible.

ADE Comments

ADE concurred with this finding. ADE stated that it has had a standard operating procedure for allocations, called the "Cycle II" process, for notifying new charter schools of their ability to submit information used to generate allocations and for developing funding information for charter schools that might indicate a significant expansion. ADE advised that its Academic Achievement Division (the unit responsible for administering the Title I program) will revise the procedure to provide immediate funding to new charter schools and charter schools that have been determined to have significant expansion.

OIG Response

The corrective action described addresses the recommendation regarding the Title I program. ADE did not comment on procedures to ensure that new or expanding charter school LEAs receive timely access to IDEA, Part B funds. During the exit briefing, ADE commented that charter school LEAs bear the responsibility for submitting their applications timely in order to receive funds timely. We agree that the charter school LEA bears this responsibility. However, ADE should ensure that it informs new or expanding charter school LEAs of the dates by which the necessary data and applications must be submitted in order to receive funds within five months of their opening or expansion.

OTHER MATTERS

IDEA, Part B Allocations to Existing Charter School LEAs. Of the 263 existing charter school LEAs that were allocated IDEA, Part B funds for school year 2001-2002, we found that ADE did not include a base payment for 136 existing charter school LEAs. Instead, these charter school LEAs received allocations comprised of only population and poverty payments.¹¹ An ADE special education program director told us that, in the first year the charter school LEAs opened, they did not submit data identifying the students with disabilities enrolled at the charter school LEAs or, for purposes of making base payment adjustments, data identifying the students' school district, charter school, or state of origin. These charter school LEAs may have either failed to provide the requested data or had no students with disabilities enrolled at that time. The 136 charter school LEAs did not receive any IDEA, Part B allocations in their first year of operation. In subsequent years, the ADE special education program office became aware that students with disabilities were enrolled at the 136 charter school LEAs when they reported special education student data, as well as enrollment and poverty data, to ADE through other reporting mechanisms. ADE used these data to calculate the IDEA, Part B allocations, which were based only on the population and poverty portions of the funding formula. In its comments, ADE stated its position that the IDEA, Part B allocations for the 136 charter school LEAs were calculated correctly.

The Department's Office of Special Education and Rehabilitative Services has not issued guidance on whether a state is required to make a Part B subgrant to a charter school LEA in its first year of operation that has no students with disabilities enrolled at the time the subgrant is made, or whether such an LEA is entitled to a base payment in the subsequent years if it does enroll students with disabilities. Additionally, neither § 611(g)(1) and (2) of the IDEA and its implementing regulations at 34 C.F.R. § § 300.711 and 300.712, nor the regulations and nonregulatory guidance implementing the ESEA § 5206, address this situation.

Allocation of Title I and IDEA, Part B Funds to Private, For-Profit Charter School LEAs.

The OIG audit report issued November 6, 2003, entitled *Audit of 20 Arizona Charter Schools' Uses of U.S. Department of Education Funds for the Period October 1, 2000, through September 30, 2001* (Control Number ED-OIG/A05-D0008), reported that ADE violated Federal laws when it provided \$1,129,006 in Title I and IDEA, Part B funds directly to private, for-profit charter school LEAs during the period October 1, 2000, to September 30, 2001. Under Arizona State law, charter school LEAs may be private or public entities. However, under applicable Federal laws and regulations, only public entities may receive Title I and IDEA funds. ADE's response, in which it disagreed with the audit conclusion, was included in the report.

¹¹ The IDEA funding formula for distributing Part B funds requires states to allocate to each eligible LEA, including charter school LEAs, the total of three amounts—a base payment, a population payment, and a poverty payment—as described in the AUDIT RESULTS section of the report.

In the prior report, the OIG recommended that the Assistant Secretary for Elementary and Secondary Education and the Assistant Secretary for Special Education and Rehabilitative Services instruct ADE to determine the total amount of Title I and IDEA funds that it provided to private, for-profit charter school LEAs during the period October 1, 2001, through June 30, 2003, and refund that amount to the U.S. Department of Education. Our audit found that ADE had allocated the following amounts to private, for-profit charter school LEAs for school year 2001-2002, which would have been available for disbursement during the period October 1, 2001, through September 30, 2002.

Title I	\$ 789,695	22
IDEA, Part B	429,197	34
Total	\$1,218,892	

We encourage the Assistant Secretaries and ADE to consider these amounts when resolving the recommendations in the prior audit report.

OBJECTIVES, SCOPE, AND METHODOLOGY

Our audit objectives were to determine whether ADE (1) provided new or expanding charter school LEAs with timely and meaningful information about the ESEA Title I program and IDEA, Part B funding for which these LEAs might have been eligible and (2) had management controls that ensured charter school LEAs, including new or expanding LEAs, were allocated the proportionate amount of Title I and IDEA, Part B funds for which these LEAs were eligible. Our review covered the Title I and IDEA, Part B allocations for school year 2001-2002.

To address these objectives, we interviewed ADE officials and staff responsible for implementing the Title I and IDEA, Part B programs in Arizona. We also interviewed ADE officials from the Grants Management Unit and staff from the Arizona State Board for Charter Schools. We evaluated the information that ADE provided to charter school LEAs about accessing Title I and IDEA, Part B funds to determine whether the information was timely and meaningful. In addition, we assessed ADE's procedures to determine whether management controls ensured that charter school LEAs received the proportionate amount of Title I and IDEA, Part B funds for which these LEAs were eligible.

We interviewed administrators from a total of 21 charter school LEAs about their experiences in accessing Title I and IDEA, Part B funds, including the timeliness and meaningfulness of provided information. From the universe of 214 non-profit charter school LEAs, we judgmentally selected 21 charter school LEAs that met the criteria shown in the following table.

Charter School LEA Sample Selection		
State-Authorized and Operating a Single Charter School Site (153)		
New LEA – Received both Title I and IDEA, Part B funds	2	2
New LEA – Received a Title I allocation, but not an IDEA, Part B allocation	15	2 ^b
New LEA – Did not receive a Title I or IDEA, Part B allocation	14	2 ^b
Expanding LEA – Increased grade span and enrollment by at least 30 percent	7	2 ^b
State-Authorized and Operating Multiple Charter School Sites (41)		
New LEA – Opened more than one charter school site	2	2
Expanding LEA – Added at least one new charter school site	5	5
Expanding LEA – Increased grade span and enrollment by at least 30 percent	2	2
District-Authorized (20)		
Did not receive a Title I allocation, IDEA, Part B allocation, or both	4	4
Total (214)	51	21
^a The number of charter school LEAs that met each selection criteria was based on available ADE data. During the interviews with charter school LEA representatives, we determined the LEAs' actual status. ^b We randomly selected the two charter school LEAs.		

We assessed the reliability of computer-generated data at ADE and concluded that the data were sufficiently reliable to use in meeting our audit objective. Specifically, for school year 2001-2002 allocations—

- **Title I.** We assessed the two databases that ADE used to determine eligibility and allocations for existing LEAs and newly created LEAs, respectively, both of which included charter school LEAs. We reviewed the formulas used in both databases. For the database that ADE used for newly created LEAs, we also verified the reporting and payment of allocations to new charter school LEAs. However, we were unable to verify that all data were entered in the database accurately because ADE staff had misplaced the source documents. For two new charter school LEAs, ADE staff had previously provided us with copies of source documents and we verified that the data were accurately entered in the database for the two LEAs. However, due to our limited testing,

we have no assurance that the data for other new charter school LEAs were accurately entered in the database.

- IDEA, Part B. We assessed the database that ADE used to compute IDEA, Part B allocations for existing LEAs, including charter school LEAs, by reviewing the formulas. For new charter school LEAs, we assessed the reasonableness of the allocation amounts and verified the reporting and payment of the allocations to the charter school LEAs.

We performed our fieldwork at ADE offices in Phoenix, Arizona, from September 2003 to May 2004. We held an exit briefing with ADE officials on May 11, 2004. Our audit was performed in accordance with generally accepted government auditing standards appropriate to the scope of the review described.

STATEMENT ON MANAGEMENT CONTROLS

We assessed the system of management controls, policies, procedures, and practices applicable to ADE's processes for allocating Title I and IDEA, Part B funds to charter school LEAs. We performed our assessment to determine whether the processes used by ADE provided a reasonable level of assurance that charter school LEAs received needed information and were allocated the proportionate amount of Title I and IDEA, Part B funds for which these LEAs were eligible.

For the purpose of this report, we assessed and classified significant controls into the following categories—

- Dissemination of information
- Allocation of Title I and IDEA, Part B funds

Because of inherent limitations, a study and evaluation made for the limited purpose described above would not necessarily disclose all material weaknesses in the management controls. However, we identified ADE management control weaknesses that adversely affected charter school LEAs' receipt of information and Federal funds. ADE's weaknesses included the lack of information on the definition of "significant expansion of enrollment" and written notice requirements; incorrect procedures for allocating IDEA, Part B funds to new charter school LEAs; and inadequate procedures to ensure timely access to Title I and IDEA, Part B funds. These weaknesses and their effects are fully discussed in the AUDIT RESULTS section of this report.

ATTACHMENT 1

ADE COMMENTS ON THE DRAFT REPORT



State of Arizona
Department of Education

Tom Horne
Superintendent of
Public Instruction

July 6, 2004

Gloria Pilotti
Regional Inspector General for Audit
U.S. Department of Education
Office of the Inspector General
501 I Street, Suite 9-200
Sacramento, California 95814

Dear Inspector Pilotti:

This letter is in response to your draft audit report, Control Number ED-OIG/A09-D0033, requesting comments to your recent audit of charter schools' access to Title I and IDEA, Part B funds in the State of Arizona.

**FINDING NO. 1 - ADE Should Enhance Information
Provided to Charter School LEAs About the ESEA § 5206
Requirements for New or Expanding Charter School LEAs**

The Arizona Department of Education concurs with this finding.

The Arizona Department of Education has developed a new publication called Federal No Child Left Behind Act Information for Arizona Charter Schools.

This publication, which provides specific guidance to Charter Schools about the Charter School Expansion Act as Amended by the No Child Left Behind Act of 2001, is being provided to all charter holders in Arizona and will be provided to all new charter holders as they come into existence. In addition to providing information about the Charter School Expansion Act, the publication provides a phone number for charter schools to call if they have questions concerning applicability.

In addition to providing a definition of "significant expansion of enrollment" in the ESS annual memorandum, reference to IDEA, Part B funding for Charter Schools will be added to the ADE's new publication, Federal No child Left Behind Act Information for Arizona Charter Schools.

By providing the publication noted above the ADE has complied with recommendation 1.1 of the audit report.

FINDING NO. 2 - ADE Needs to Allocate the Proportionate Amount of IDEA, Part B Funds to Charter School LEAs

[ED-OIG Note: The first three paragraphs of this section relate to a condition that was moved to the OTHER MATTERS section of the report.]

The Arizona Department of Education/Exceptional Student Service section (ADE/ESS) disagrees with this finding based upon a review of the “final regulations”, the Nonregulatory Guidance, 34 CFR Part 76, Subpart H, How does a State or local education agency allocate funds to Charter Schools that are opening for the first time or significantly expanding their enrollment and 34 CFR 300.712. The ADE/ESS section was unable to find any requirement that would lead us to believe that we incorrectly calculated the IDEA, Part B allocation amounts for 136 Charter School LEA’s by omitting the base payment.

In accordance with the Nonregulatory Guidance document, question number 5, “the final regulations apply only to eligible Charter Schools that open for the first time or significantly expand their enrollment during the academic year for which funds are allocated. During years in which an eligible Charter School is neither opening for the first time nor significantly expanding its enrollment, the SEA is under no obligation to follow the final regulations when allocating funds and should provide funds to the Charter School on the same basis as it provides funds to other eligible LEA’s, 34CFR 76.786(c). Questions 74 through 85 also provides information supporting our position.

The final regulations give States “unfettered” discretion to determine expansion of enrollment in a Charter School to be “significant” within the meaning of the final regulations. This authority does not extend to LEA’s. The expansion of a Charter School’s special education enrollment does not, by itself, justify a significant expansion of enrollment.

Charter Schools will be asked for actual enrollment and poverty (low income) numbers. The poverty numbers are based on family information not just student information.

FINDING NO. 3 - ADE Needs to Strengthen Procedures to Ensure That Charter School LEAs Receive Timely Access to Title I and IDEA, Part B Funds

The Arizona Department of Education concurs with this finding.

The ADE has had in place as part of its standard operating procedure for allocations a process for notifying new charter schools of their ability to submit information used to generate allocations. Additionally, this process called “Cycle II” was used to develop funding information for Charter schools that might indicate a significant expansion.

Recognizing that the audit finding is asking for a more aggressive approach to funding “new charter” schools and the “significant expansion” of existing schools, the ADE, Academic Achievement Division is developing a revised procedure that calls for immediate funding of new charter schools and charter schools that have been determined to have significant expansion.

Once the procedure has been finalized it will be forwarded to the GAO for review and comment.

If you have any questions, please call Vicki Salazar, Associate Superintendent of Finance at (602) 364-0132.

Sincerely,

/s/

Tom Horne
Superintendent of Public Instruction
Arizona Department of Education
1535 West Jefferson Street
Phoenix, Arizona 85007

c: Vicki Salazar
Margaret Garcia-Dugan
Lillie Sly