
Departmental Actions to Ensure Charter Schools' Access to Title I and IDEA Part B Funds

FINAL AUDIT REPORT



**ED-OIG/A09-E0014
October 2004**

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

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UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF INSPECTOR GENERAL

October 26, 2004

MEMORANDUM

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FROM: Thomas A. Carter /s/
Deputy Inspector General

SUBJECT: Final Audit Report
*Departmental Actions to Ensure Charter Schools' Access to Title I and
IDEA Part B Funds*
Control Number ED-OIG/A09-E0014

Attached is the subject final audit report that covers the results of our review of Departmental actions to ensure charter schools' access to Title I and IDEA Part B funds and references the results of our previous audits of charter schools' access to those funds in Arizona, California, and New York during school year 2001-2002. An electronic copy has been provided to your Audit Liaison Officers. We received your comments concurring with the findings and recommendations in our draft report.

Corrective actions proposed (resolution phase) and implemented (closure phase) by your offices will be monitored and tracked through the Department's Audit Accountability and Resolution Tracking System (AARTS). ED 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.

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.

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We appreciate the cooperation given us during this review. If you have any questions, please call Gloria Pilotti at (916) 930-2399.

Attachment

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EXECUTIVE SUMMARY

Section 5206 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001, requires the Department and states to take measures to ensure that every charter school receives the Federal funds for which it is eligible. Departmental measures included the issuance of regulations and guidance to implement the ESEA § 5206 for new or expanding charter schools,¹ as well as other program-specific regulations and guidance addressing funding distribution formulas and the treatment of charter schools in general. We concluded that these actions help to ensure that state educational agencies (SEAs) and local educational agencies (LEAs) (1) provide new or expanding charter schools with timely and meaningful information about the Federal funds for which they may be eligible to receive under Title I, Part A (Title I) of the ESEA, and Part B of the Individuals with Disabilities Education Act of 1997 (IDEA Part B); and (2) allocate the proportionate amount of Title I and IDEA Part B funds to eligible charter schools, including new or expanding charter schools. However, we found that—

- The Department has not established the program office(s) responsible for oversight of SEA compliance with the ESEA § 5206 provisions.
- The regulations and guidance implementing the ESEA § 5206 do not address the need for SEAs and LEAs to provide charter schools with information on notification requirements for expanding charter schools or the definition of expansion.
- Title I and IDEA Part B monitoring procedures do not address the ESEA § 5206 requirements.
- The regulations and guidance implementing the IDEA Part B do not address the application of the funding formula for charter school LEAs that did not have a student with disabilities enrolled in the first year of operation.

We recommend that the Deputy Secretary identify the Departmental program office(s) responsible for oversight of SEA compliance with the ESEA § 5206 provisions, and direct the appropriate office(s) to provide guidance to SEAs on the need to establish written procedures on notification requirements and the definition of “significant expansion of enrollment.” We further recommend that the Assistant Secretary for Elementary and Secondary Education and the Assistant Secretary for Special Education and Rehabilitative Services modify their monitoring procedures to address SEA and LEA compliance with the ESEA § 5206. We also recommend that the Deputy Secretary ensure that program offices responsible for overseeing other covered Federal programs include the statutory provision in their monitoring procedures, and provide input for the 2005 Office of Management and Budget (OMB) Circular A-133 Compliance Supplement to add compliance requirements for the ESEA § 5206. In his comments on the draft

¹ For purposes of this report, an “expanding” charter school 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.

report, the Deputy Secretary concurred with our recommendations. The Deputy Secretary's comments on the draft report are summarized at the end of each finding and included in their entirety as ATTACHMENT 3.

We further recommend that the Assistant Secretary for Special Education and Rehabilitative Services consider issuing guidance on the application of the IDEA Part B funding formula for charter school LEAs that did not have a student with disabilities enrolled in their first year of operation. The Department concurred with this recommendation. The Assistant Secretary's comments are summarized at the end of Finding No. 4 and included in their entirety as ATTACHMENT 4.²

² This recommendation and the related finding were added to the report after the draft report was provided to the Department for comment. We subsequently provided the Department a draft of the added finding for comment.

BACKGROUND

Charter schools are public schools of choice that operate with freedom from many of the regulations that apply to traditional public schools. The Center for Education Reform reported that 41 states and the District of Columbia had state charter school laws in 2004, and that, as of January 2004, almost 3,000 charter schools were operating in 38 states across the country.³ State charter school laws significantly influence the development of charter schools and vary from state to state. Charter schools also vary in their missions, programs, goals, students served, and ways to measure success.

Section 5206 of the ESEA requires the Department and states to take measures to ensure every charter school receives the Federal funds for which it is eligible no later than five months after the school first opens or expands enrollment.⁴ The statute covers the Department's major formula grant programs, including Title I and IDEA Part B.

The Title I program provides financial assistance through the SEAs to LEAs to improve the teaching and learning of low-achieving children in high-poverty schools. The Student Achievement and School Accountability (SASA) component within the Office of Elementary and Secondary Education (OESE) is responsible for the administration and oversight of this program. Nationwide, the Department allocated about \$11.7 billion in Title I funds to states in fiscal year 2003.

The IDEA Part B § 611 provides grants to states for special education and related services for children with disabilities. The Office of Special Education Programs (OSEP) within the Office of Special Education and Rehabilitative Services (OSERS) administers and oversees this program. In fiscal year 2003, the Department allocated about \$8.9 billion in IDEA Part B funds to states.

When allocating funds under Title I, IDEA Part B, and other Federal programs, states and LEAs must treat charter schools in a manner consistent with the applicable Federal statutes and regulations, and ensure that charter schools receive the proportionate allocations for which they are eligible under each program. In a state that considers charter schools to be LEAs, the SEA must treat those charter schools like other LEAs in the state when making eligibility determinations and allocating funds under Federal programs. Where a state considers charter schools to be public schools within an LEA, the LEA must treat its charter schools like other public schools within the LEA when determining eligibility and making within-district allocations. A charter school cannot be an LEA and a public school within an LEA under the same Federal definition of LEA. However, if the Federal definition of LEA differs between programs, as it does in the ESEA and the IDEA Part B, a charter school could be treated as an LEA for purposes of one program and a public school within an LEA under the other program.

³ The Center for Education Reform is an educational advocacy organization that reports on state charter laws and publishes a National Charter School Directory.

⁴ The ESEA § 5206 was originally enacted by the Charter School Expansion Act of 1998.

The Office of Innovation and Improvement (OII) oversees Departmental activities that support alternatives in education, including charter schools, and coordinates with other offices on issues that impact charter schools. The OII is responsible for the administration of the Charter Schools Program and the Credit Enhancement for Charter School Facilities program, which are both discretionary grant programs authorized under Title V, Part B, Subparts 1 and 2, of the ESEA, to help charter schools with their start-up and facilities costs.

AUDIT RESULTS

The purpose of the audit was to determine whether the Department has taken sufficient action to ensure that states and LEAs within the states (1) provide new or expanding charter schools with timely and meaningful information about the Title I and IDEA Part B funds for which these schools may be eligible and (2) have management controls that ensure charter schools, including new or expanding charter schools, are allocated the proportionate amount of Title I and IDEA Part B funds for which these schools are eligible. We concluded that the Department has taken appropriate action to ensure that SEAs and LEAs provide new charter schools with timely and meaningful information about Federal funding under the Title I and IDEA Part B programs, and charter schools in general with their equitable share of Federal funds in a manner consistent with the applicable statutes and regulations. However, the Department should take additional steps to better assure that new or expanding charter schools can access those funds in accordance with the ESEA § 5206 statute and regulations. Specifically, we concluded that—

- The Department should designate the cognizant program office(s) responsible for oversight of SEA compliance with the ESEA § 5206 provisions;
- The Department should issue guidance on the need for SEAs and LEAs to provide charter schools with information on notification procedures for expanding charter schools; and
- The Department should enhance Title I and IDEA Part B monitoring procedures to ensure new or expanding charter schools receive proportionate and timely access to Federal funds.
- OSERS should consider issuing guidance on the application of the IDEA Part B funding formula for charter school LEAs that did not have a student with disabilities enrolled in the first year of operation.

The need for the above Departmental actions are based on weaknesses identified in the OIG audits of charter schools' access to Title I and IDEA Part B funds in three States. Our audit reports from the three State audits are listed in ATTACHMENT 1 and the findings are summarized in ATTACHMENT 2.

FINDING NO. 1 – The Department Should Identify the Cognizant Program Office(s) Responsible for Oversight of SEA Compliance with the ESEA § 5206 Provisions

The ESEA § 5206 requires the Department and states to take measures to ensure that every charter school receives the Federal formula funds for which it is eligible within five months of the date the charter school opens for the first time or expands its enrollment. After the statute was enacted in 1998, program offices from across the Department collaborated to develop the implementing regulations at 34 C.F.R. § § 76.785 through 76.799, as well as 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?* OESE issued the regulations in 1999 and the nonregulatory guidance in 2000.⁵

The Department has not established the program office(s) responsible for oversight of SEA compliance with the ESEA § 5206 provisions. The two discretionary grant programs that are targeted specifically to charter schools and overseen by OII are not subject to the statutory provision. The OII program director for the Charter Schools Program told us that OII relied on the respective Departmental program offices to oversee SEA compliance with the ESEA § 5206 when distributing Federal program funds administered by their offices. OESE-SASA and OSERS-OSEP respectively oversee the Title I and IDEA Part B formula grant programs, which are both covered under the ESEA § 5206. We found that neither OESE nor OSERS systematically oversaw SEA implementation of the ESEA § 5206 to ensure that new or expanding charter schools receive the Title I and IDEA Part B funds for which they are eligible.

While we reviewed only the Title I and IDEA Part B programs, the ESEA § 5206 also covers numerous other Federal formula grant programs⁶ that could be adversely affected by the lack of Departmental oversight. Designating oversight responsibilities for the ESEA § 5206 provisions would provide the Department additional assurance that SEAs have taken the appropriate measures to ensure every charter school receives the Federal funds for which it is eligible in accordance with applicable laws and regulations.

Recommendation

- 1.1 The Deputy Secretary should identify the Departmental program office(s) responsible for oversight of SEA compliance with the ESEA § 5206 provisions, such as OII, or one or more other offices. The designated office(s) should ensure that the other offices responsible for the programs covered by the statute are aware of the ESEA § 5206 and incorporate its provisions into their programs, as appropriate.

⁵ At the time, OESE administered the Charter Schools Program, which was authorized within the same title and subpart as the ESEA § 5206 provisions. Later, the responsibility for administering the Charter Schools Program was transferred to OII.

⁶ The 2000 nonregulatory guidance listed 18 Federal programs covered by the ESEA § 5206.

Department Comments

The Office of Deputy Secretary (ODS) agreed to inform the program offices that provide formula grants to states of their responsibilities for ensuring compliance with the ESEA § 5206, and to coordinate with those offices to ensure that they take the appropriate steps. The Deputy Secretary stated that OESE will work closely with ODS and OII to coordinate responsibility for ensuring that SEAs and LEAs provide eligible charter schools the Federal funds for which they are entitled within the prescribed timeframes. Additionally, OSERS will work closely with ODS, OESE, and other offices to ensure compliance with the IDEA and other programs administered by OSERS.

FINDING NO. 2 – The Department Should Issue Guidance on the Need for SEA and LEA Notification Procedures for Expanding Charter Schools

The regulations implementing the ESEA § 5206 address the responsibilities of the charter school, and the SEA or LEA. To trigger the statutory requirements, either a charter school or its charter authorizer must provide written notification of the charter school's opening or expansion date to the SEA or LEA, depending on which is the funding entity. After receiving notice, the SEA or LEA must provide the charter school with timely and meaningful information about each Federal program under which the charter school might be eligible to apply. 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)

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)

In Question 16 of the 2000 nonregulatory guidance, the Department defines “meaningful information” as including the steps the 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.

The regulation at 34 C.F.R. § 76.799 requires LEAs to also follow the above regulations when the LEAs are responsible for allocating Federal funds to charter schools that are public schools within the LEA.

The regulation at 34 C.F.R. § 76.787 provides the Federal definition of expansion and allows the SEA discretion to define the term more broadly.

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.

Based on these regulations and the accompanying guidance, an existing charter school must first recognize that an expansion is covered by the ESEA § 5206 and then provide notice of its expansion date, in order to access additional Federal funds in the year of expansion. In our three State audits, we found that charter schools could not make an informed decision about whether to access additional funds in the year of expansion without first receiving information on the manner in which SEA or LEA notification requirements could be satisfied and the definition of “significant expansion of enrollment.”

SEAs and LEAs Did Not Provide Sufficient Information on Notification Procedures for Expanding Charter Schools

While the three States and most of the LEAs we reviewed provided timely and meaningful information about how to access Title I and IDEA Part B funds, we concluded that charter schools did not receive sufficient information to know how and when to provide notice of their expansion, and how to recognize that expansion has occurred. We found that some SEAs and LEAs had not established or distributed written procedures on their notification procedures and the definition of expansion. The California and Arizona SEAs, as well as some of the LEAs in New York and California, had notification procedures that were not formalized or communicated to charter schools or their charter authorizers. The California and Arizona SEAs also did not communicate the definition of expansion to charter schools and LEAs, which had charter schools that were public schools within the LEA.⁷ Absent SEA guidance on the definition of expansion, we found that a California LEA took it upon itself to define expansion.

Many of the expanding charter schools we interviewed were not aware of SEA or LEA notification requirements and erroneously thought they had provided proper notice. Because these charter schools did not meet SEA or LEA notification requirements, the SEA or LEA did not provide them additional Title I or IDEA Part B funds for the year of expansion. Some of these charter schools did not realize that their expansion met the definition. Two of the LEAs we reviewed in California either did not agree that an expansion that appeared to meet the Federal definition was significant, or incorrectly held that an expansion anticipated in the charter was not covered by the ESEA § 5206. As a result, charter schools that had increased enrollment by over 170 percent while adding a grade, or added a new program and 690 students, did not receive additional Federal funds in the year of expansion.

⁷ The California and New York SEAs had not addressed the definition of expansion. However, in response to our review, the California SEA had elected to further define the Federal definition. The Arizona SEA used the Federal definition specified in 34 C.F.R. § 76.787, and had not further defined the term.

SEAs can use various notification procedures, as we found in the three States. In California, charter schools were expected to notify the SEA's Charter Schools Office. In Arizona, the Title I and special education programs had their own notification procedures and charter schools were to notify each program separately. In New York, the SEA did not require charter schools to provide notice of their expansion because the State Charter Schools Office maintained a copy of every charter, which included school expansion plans.

Regulations and Guidance Do Not Address Dissemination of Information on Notification Procedures or Definition of Expansion

The regulation at 34 C.F.R. § 76.789(a) does not require an SEA or LEA to provide information about accessing Federal funds until a new or expanding charter school has provided notice. However, the 2000 nonregulatory guidance addresses the need for a charter school to also receive information on the steps the charter school needs to take to access those funds. The ESEA § 5206 implementing regulations and accompanying guidance do not address the need for SEAs or LEAs to disseminate information to all charter schools about SEA and LEA notification procedures or the definition of expansion. To be timely and meaningful, this information should be readily accessible, such as in annual funding application or distribution notices, because charter schools may not expand until a later date, and notification procedures or the definition of expansion may change in the future.

The issuance of guidance addressing the need for notification procedures would provide the Department some assurance that SEAs and LEAs have adequate management controls to enable expanding charter schools to provide the necessary notice and eventually access their fair share of Federal funds in the year of expansion. SEAs and LEAs need to establish and distribute written procedures on their notification requirements, so that expanding charter schools have the information they need to be aware of the responsibility placed on the charter school or its charter authorizer to provide notice of their expansion date to the appropriate entity(s). The SEAs also need to establish in writing, and disseminate, the definition of expansion, whether that is the Federal definition or the meaning as further defined by the SEA.

Recommendation

- 2.1 The Deputy Secretary should direct the appropriate program office(s) to provide guidance to SEAs on the need to establish written procedures on SEA or LEA notification requirements and the definition of "significant expansion of enrollment." The guidance should instruct SEAs to annually distribute this information to all charter schools, charter authorizers, and LEAs, to ensure that they are aware of the requirements and their respective responsibilities.

Department Comments

ODS agreed to work closely with OESE, OSERS, OII, and other program offices to determine the need to develop and disseminate additional policy guidance to SEAs and LEAs regarding the definition of "significant expansion of enrollment" and appropriate ways for charter schools, charter authorizers, and LEAs to receive timely notice of the requirements and responsibilities under the ESEA § 5206 and its implementing regulations. ODS also noted that regulations and

the 2000 nonregulatory guidance implementing the Charter School Expansion Act already provide extensive direction in this area.

OIG Response

While the regulations and 2000 nonregulatory guidance implementing the ESEA § 5206 define “significant expansion of enrollment,” they do not address the need for SEAs to inform charter schools, charter authorizers, and LEAs of that definition, or any further SEA definition. The regulations and guidance require the charter school or its charter authorizer to provide the SEA or LEA with written notice of the expansion date, but do not address the need for SEAs and LEAs to provide information on the specific SEA or LEA office(s) to which the notification should be submitted, or whether the notification requirement can be waived. Because our three State audits identified weaknesses regarding SEAs and LEAs providing meaningful information in these areas, we recommend that the Department issue additional guidance to better ensure expanding charter schools’ access to Federal funds covered by the ESEA § 5206.

FINDING NO. 3 – The Department Should Enhance Title I and IDEA Part B Monitoring Procedures to Ensure New or Expanding Charter School LEAs and Charter Schools Receive Proportionate and Timely Access to Federal Funds

Federal regulations implementing the ESEA § 5206 require states and LEAs to ensure that eligible charter school LEAs and charter schools, which open or expand on or before November 1 of an academic year, receive a proportionate amount of Federal funds.⁸

For each 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 is eligible under each covered program.

34 C.F.R. § 76.792(a)

The regulations prescribe the timeframe in which states and LEAs must provide eligible new or expanding charter school LEAs and charter schools with access to Federal funds, provided that SEA or LEA notification requirements were met.

⁸ As described in the BACKGROUND section, generally the SEAs allocate Federal funds to charter schools deemed to be LEAs and, if appropriate, LEAs allocate funds to charter schools deemed to be public schools within an LEA. For purposes of Finding No. 3, we refer to “charter school LEAs” and “charter schools,” respectively, to distinguish between SEA and LEA allocations of Title I and IDEA Part B funds.

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.

34 C.F.R. § 76.793(a)

The regulation at 34 C.F.R. § 76.789(b)(3)(i) relieves the SEA or LEA of the five-month timeframe specified in the regulation above if a charter school, or its charter authorizer, fails to provide proper notice of the school's opening or expansion.⁹ As stated earlier, the regulation at 34 C.F.R. § 76.799 requires LEAs to also follow the above regulations when the LEAs are responsible for allocating Federal formula funds to new or expanding charter schools.

The Title I and IDEA Part B statutes and regulations provide funding distribution formulas for SEAs to allocate Federal funds to LEAs and, when applicable, for LEA sub-allocations to public schools. These formulas may rely on data from a prior year. Under the ESEA § 5206, however, SEAs and LEAs must use actual data. The regulations at 34 C.F.R. § 76.791 preclude the SEA and LEA from relying on prior-year data in determining the eligibility of a new or expanding charter school LEA or charter school. This is true even if eligibility determinations for other LEAs and public schools under the program are based on data from a prior year.

To more readily provide charter school LEAs and charter schools access to their Federal funds within five months of their opening or expansion, the regulations at 34 C.F.R. §§ 76.789(b)(2), 76.796(a), and 76.797(a) permit an SEA or LEA to initially allocate funds based on projected data, such as prior-year data if available, and to later adjust the allocation when actual data become available. Additionally, the preamble to the regulations specifies that, in accordance with existing Federal regulations applicable to the covered programs, the state is directly responsible for ensuring LEAs comply with the ESEA § 5206 statute and regulations.

The accompanying nonregulatory guidance addressing the implementation of the ESEA § 5206 provided Title I and IDEA Part B program-specific guidance on allocation procedures for new or expanding charter school LEAs and charter schools. Additionally, OESE issued guidance on the Title I distribution formula for SEA allocations to new charter school LEAs, and OSERS issued IDEA Part B regulations addressing LEA provision of special education funding and services to charter schools in general.

In the three States we reviewed, we found that the SEAs and LEAs had systems in place to allocate Federal funds in accordance with Title I and IDEA Part B statute and regulations, but had not always incorporated the ESEA § 5206 into those systems. Moreover, some SEA or LEA staff, who were responsible for determining Title I or IDEA Part B allocations, were not aware of the nonregulatory guidance for the ESEA § 5206.

⁹ The regulations at 34 C.F.R. §§ 76.792 and 76.793 also address the provision of Federal funds, and the timeframes in which those funds may be provided, to charter school LEAs and charter schools that open or expand *after* November 1 of an academic year. Our State and Departmental audits examined timely access to Federal funds for only those charter school LEAs and charter schools that opened or expanded *on or before* November 1.

SEAs and LEAs Did Not Provide New or Expanding Charter School LEAs and Charter Schools Proportionate and Timely Access to Title I and IDEA Part B Funds

The SEAs and some of the LEAs in the three States we reviewed did not have adequate procedures to ensure that new or expanding charter school LEAs and charter schools received proportionate and timely access to Title I funds, IDEA Part B funds, or both. Specifically—

- Allocations Were Not Proportionate. The Arizona SEA, and some of the LEAs we reviewed in New York and California, did not use actual enrollment and eligibility data when determining Title I or IDEA Part B allocations for new or expanding charter school LEAs and charter schools. The SEA and LEAs relied on prior-year data to compute allocation amounts, but did not later adjust the amounts to account for actual data.
- Charter Schools' Access to Funds Were Not Timely. The SEAs in all three States, and some of the LEAs in California and New York, did not provide new or expanding charter school LEAs and charter schools access to their Title I funds, IDEA Part B funds, or both, within five months of the schools' opening or expansion.
- SEAs Did Not Monitor LEA Compliance. In the two States we reviewed where charter schools could be public schools within an LEA, neither the California SEA nor the New York SEA monitored LEAs to ensure that they provided new or expanding charter schools proportionate and timely access to Title I or IDEA Part B funds.

The findings from the three State reviews are also summarized in ATTACHMENT 2.

OESE and OSERS Monitoring Procedures Do Not Address the ESEA § 5206 Requirements

The OESE-SASA and OSERS-OSEP monitor the distribution of Title I and IDEA Part B funds using different approaches. However, these approaches do not incorporate the ESEA § 5206 requirements for distributing Federal funds to new or expanding charter school LEAs and charter schools.

- Title I Monitoring Addresses Fiscal Issues. OESE-SASA conducts Title I monitoring to assess the extent to which states provide leadership and guidance for LEAs and schools in implementing policies and procedures that comply with the provisions of the Title I statute and regulations. Beginning in fiscal year 2004, its monitoring procedures include monitoring indicators to address the critical components of accountability and provide a performance standard against which state policies and procedures can be measured. Title I fiduciary monitoring entails assessing compliance with fiscal requirements, including SEA compliance with Title I allocation provisions, LEA compliance with rank order procedures for eligible school attendance areas, and SEA monitoring of subgrantee compliance with Title I program requirements.

Individual Title I monitoring team members have, on their own initiative during State monitoring visits, inquired about charter schools' access to Title I funds. However, the

fiduciary monitoring indicators described above do not specifically address the proportionate and timely allocation of Title I funds to new or expanding charter school LEAs and charter schools. To ensure consistency across the different monitoring teams as well as monitoring across states, the Title I monitoring procedures could be enhanced by incorporating references to the ESEA § 5206 requirements in the monitoring guide.

- IDEA Part B Monitoring Focuses on Service Delivery. OSERS-OSEP program monitoring efforts focus on ensuring students with disabilities are provided a free appropriate public education, and rely on single audits to monitor SEA distribution of IDEA Part B funds and compliance with the funding distribution formula. We found that the OMB Circular A-133 Compliance Supplement does not include compliance requirements that address the timely allocation of a proportionate share of Federal education program funds to new or expanding charter school LEAs and charter schools in accordance with the ESEA § 5206 statute or regulations. To ensure appropriate monitoring coverage, OSERS-OSEP should either add SEA compliance with the ESEA § 5206 requirements in its monitoring procedures, or ensure that the Compliance Supplement adequately addresses the necessary compliance requirements.

Monitoring procedures that incorporate the ESEA § 5206 requirements would provide OESE and OSERS increased assurance that SEAs and LEAs are providing a proportionate share of Title I and IDEA Part B funds to new or expanding charter school LEAs and charter schools in a timely manner. Based on the weaknesses identified in our three State audits, and to ensure the equitable and timely distribution of Title I and IDEA Part B funds to new or expanding charter school LEAs and charter schools, OESE-SASA and OSERS-OSEP should ensure that their monitoring procedures adequately address the ESEA § 5206 requirements.

Because the ESEA § 5206 covers other Federal programs in addition to Title I and IDEA Part B, the Department should ensure that the other program offices have monitoring procedures that address the statutory provision. The addition of compliance requirements in the OMB Circular A-133 Compliance Supplement would provide further assurance of SEA and LEA adherence to the ESEA § 5206 across the covered Federal programs.

Recommendations

- 3.1 The Assistant Secretary for Elementary and Secondary Education and the Assistant Secretary for Special Education and Rehabilitative Services should modify their monitoring procedures, as needed, to address SEA and LEA compliance with the ESEA § 5206 to ensure that eligible new or expanding charter school LEAs and charter schools receive a proportionate share of Title I and IDEA Part B funds in a timely manner. The procedures should ensure that (1) SEAs and LEAs use actual enrollment and eligibility data to determine or adjust Title I and IDEA Part B allocations, where appropriate; and (2) eligible charter school LEAs and charter schools have access to Title I and IDEA Part B funds within five months of their opening or expansion when that date occurs before November 1, provided they meet SEA or LEA notification requirements. Where new or expanding charter schools are public schools of the LEA for purposes of Title I, IDEA, or both, the monitoring procedures should also address SEA monitoring of LEAs to ensure that they allocate IDEA Part B funds to eligible charter schools correctly, and include charter schools in the rank order and LEA Title I allocation procedures, including

the use of actual enrollment and eligibility data in determining or adjusting Title I allocations where appropriate. Moreover, the monitoring procedures for both Title I and IDEA should ensure that charter schools gain access to those funds within the required timeframes, provided the charter schools meet LEA notification requirements.

The Deputy Secretary should—

- 3.2 Ensure that program offices responsible for overseeing other Federal programs covered by the ESEA § 5206 have included that section in their monitoring procedures.
- 3.3 Provide input, as needed, for the 2005 OMB Circular A-133 Compliance Supplement by adding cross-cutting compliance requirements to ensure SEAs and LEAs provide new or expanding charter school LEAs and charter schools their proportionate share of Federal funds under the covered programs in a timely manner, in accordance with the ESEA § 5206.

Department Comments

ODS suggested language to clarify Recommendation 3.1, which included removing reference to the use of actual data to determine Title I and IDEA Part B allocations for new or expanding charter schools. ODS agreed to provide guidance reminding all covered Federal programs to implement the addressed statutory provisions in their monitoring procedures. In particular, ODS will direct OESE to ensure monitoring procedures cover the timely allocation of Title I funds to new or significantly expanding charter schools. ODS will also direct OSERS and other program offices to identify appropriate measures. ODS stated that it will work with OMB to determine whether sections of the OMB Circular A-133 Compliance Supplement concerning the “allocation” of Title I, Part A and IDEA Part B funds should be revised in the fiscal year 2005 edition.

OIG Response

Our State audits found that an SEA and some of the LEAs used prior-year data to determine allocations, but did not later adjust the allocations when actual data became available, as specified in the regulations. We clarified the finding and Recommendation 3.1 accordingly and incorporated ODS’ suggested language, where appropriate. Based on these revisions, ODS should also ensure that OESE includes monitoring procedures on the use of actual data to determine or adjust Title I allocations for new or expanding charter schools, where appropriate.

FINDING NO. 4 – OSERS Should Consider Issuing Guidance on the Application of the IDEA Part B Funding Formula for Charter School LEAs that Did Not Have a Student with Disabilities Enrolled in the First Year of Operation

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,¹⁰ 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.

SEA Did Not Provide Base Payments to All Existing Charter School LEAs That Received IDEA Part B Allocations

In our Arizona audit, we found that the SEA’s IDEA Part B allocations to 136 existing charter school LEAs, which were neither new nor expanding in school year 2001-2002, were comprised of only the population and poverty payments, and did not include a base payment. In the first year in which the charter school LEAs had 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

¹⁰ 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.

charter school LEAs may have either failed to provide the requested data or had no students with disabilities enrolled at that time and, as a result, did not receive IDEA Part B allocations in their first year of operation. In subsequent years, the Arizona SEA became aware that students with disabilities were enrolled at the charter school LEAs when they reported special education student data, as well as enrollment and poverty data, to the SEA through other reporting mechanisms. The SEA used these data to calculate the IDEA, Part B allocations, which were based only on the population and poverty portions of the funding formula.

Regulations and Guidance Do Not Address Application of the IDEA Part B Funding Formula for Certain Charter School LEAs

The regulations and Department guidance do not address whether a State is required to make an IDEA Part B subgrant to a charter school LEA in its first year of operation that has no student with disabilities enrolled at the time the subgrant is made, or whether such an LEA is entitled to a base payment in subsequent years if it does enroll a student with disabilities. The Department advised us that the issue had not been previously identified and, thus, OSERS had not provided guidance on how sections 611(g)(1) and (2) of the IDEA and its implementing regulations at 34 C.F.R. § § 300.711 and 300.712 apply to the situation described in the Other Matters section of our Arizona report (ED-OIG/A09-D0033). Additionally, the regulations and nonregulatory guidance implementing the ESEA § 5206 do not address this issue.

The OII director for the Charter Schools Program advised us that other states, in addition to Arizona, have charter school LEAs for purposes of the IDEA.¹¹ To better ensure that charter school LEAs will be allocated the appropriate amount of IDEA Part B funds for which they are eligible, OSERS should issue guidance addressing the application of the IDEA Part B funding formula in situations where a charter school LEA has no students with disabilities enrolled in its first year of operation, and begins to enroll at least one such student in subsequent years.

Recommendation

- 4.1 The Assistant Secretary for Special Education and Rehabilitative Services should consider issuing guidance on (1) whether an SEA is required to provide an IDEA Part B allocation to a charter school LEA in its first year of operation when no student with disabilities is enrolled at the charter school LEA and (2) whether such a charter school LEA is entitled to a base payment in subsequent years if it does enroll a student with disabilities.

Department Comments

OSERS agreed with the finding and recommendation, but suggested that the report language be modified to allow OSERS the flexibility to consider whether guidance will be needed after the reauthorization of the IDEA and, if needed, the content of the guidance. OSERS also suggested minor edits in the finding.

¹¹ Of the three States we reviewed, only the Arizona SEA was responsible for allocating IDEA Part B funds directly to charter school LEAs.

OIG Response

We modified the finding and recommendation to provide the requested flexibility and incorporated OSERS' suggested edits, where appropriate.

OBJECTIVES, SCOPE, AND METHODOLOGY

The objective of the audit was to determine whether the Department has taken sufficient action to ensure that states and LEAs within those states (1) provide new or expanding charter schools with timely and meaningful information about the Title I and IDEA Part B funds for which these schools may be eligible and (2) have management controls that ensure charter schools, including new or expanding charter schools, are allocated the proportionate amount of Title I and IDEA Part B funds for which these schools are eligible.

To address this objective, we compared findings from the OIG audit reports on charter schools' access to Title I and IDEA Part B funds for school year 2001-2002 in three States—Arizona, California, and New York. The objectives of the State audits were to determine whether the SEA and selected LEAs within the State (1) provided new or expanding charter schools with timely and meaningful information about the Title I and IDEA Part B funds for which these schools may be eligible and (2) had management controls that ensured charter schools, including new or expanding charter schools, were allocated the proportionate amount of Title I and IDEA Part B funds for which these schools were eligible. The audit reports are identified in ATTACHMENT 1.

We also interviewed officials and staff in OESE-SASA, OSERS-OSEP, and OII-Charter Schools, responsible for implementing the Title I, IDEA Part B, and Charter Schools programs. To determine whether Departmental measures taken to date to implement the ESEA § 5206 sufficiently addressed the weaknesses identified in the three State audits, we evaluated the applicable statutes, regulations, and guidance, monitoring procedures, and State monitoring reports related to the Title I and IDEA Part B programs and charter schools' access to those funds. Additionally, we examined the 2004 OMB Circular A-133 Compliance Supplement to determine the extent that the Compliance Supplement included compliance requirements addressing the ESEA § 5206.

We performed our fieldwork at the Department's headquarters in Washington, D.C., and in our own offices, from March to June 2004. We held an exit briefing with OESE, OSERS, and OII officials on June 30, 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 OESE's and OSERS' processes for monitoring and overseeing SEA compliance with their respective programmatic requirements and the ESEA § 5206 requirements for allocating Title I and IDEA Part B funds to charter schools. We performed our assessment to determine whether the processes used by OESE and OSERS provided a reasonable level of assurance that charter schools received needed information and were allocated the proportionate amount of Title I and IDEA Part B funds for which these schools were eligible.

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

- Regulations and guidance
- Monitoring procedures

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 Departmental management control weaknesses that could adversely affect charter schools' receipt of information and Federal funds. Departmental weaknesses included the need to (1) identify the cognizant program office(s) responsible for overseeing SEA compliance with the ESEA § 5206, (2) issue guidance on the need for notification procedures for expanding charter schools, (3) incorporate the ESEA § 5206 requirements in Title I and IDEA Part B monitoring procedures, and (4) issue guidance on the application of the IDEA Part B funding formula for certain charter school LEAs. These weaknesses and their effects are fully addressed in the AUDIT RESULTS section of this report.

ATTACHMENT 1

List of OIG Audit Reports for Three States

OIG AUDIT REPORTS FOR THREE STATES ^a			
			Report Date
A09-D0014	New York State Education Department and three LEAs in New York	<i>Charter Schools Access to Title I Funds in the State of New York</i>	7/28/03
A09-C0025		<i>Charter Schools Access to IDEA, Part B Funds in the State of New York</i>	11/19/03
A09-D0018	California Department of Education and four LEAs in California	<i>Charter Schools' Access to Title I and IDEA, Part B Funds in the State of California</i>	3/29/04
A09-D0033	Arizona Department of Education	<i>Charter Schools' Access to Title I and IDEA, Part B Funds in the State of Arizona</i>	8/24/04
^a The audit reports can be viewed or downloaded from the OIG website at http://www.ed.gov/about/offices/list/oig/areports.html under the following program office designations— Office of Elementary and Secondary Education (A09-D0014) Office of Special Education and Rehabilitative Services (A09-C0025 and A09-D0033) Office of Innovation and Improvement (A09-D0018)			

ATTACHMENT 2

Summary of OIG Findings for Three States

PROGRAMS AFFECTED BY SEA AND LEA FINDINGS ^a					
					Arizona
					SEA
Need for information on notification procedures and the definition of expansion	---	IDEA	Title I IDEA	Title I	Title I IDEA
Need to use actual data for allocations to new or expanding charter schools	---	IDEA	---	Title I	IDEA
Need for procedures to ensure charter schools can access Federal funds within five months of opening or expansion	Title I	Title I ^b IDEA	Title I	Title I	Title I IDEA
Need for the SEA to ensure LEAs comply with the ESEA §5206, when sub-allocating Federal funds to charter schools that are public schools of the LEA	IDEA		Title I		
^a The LEA findings relate to one or more LEAs within the State. ^b LEAs were responsible for sub-allocating Title I funds prior to school year 2001-2002.					

ATTACHMENT 3

Department Comments on the Draft Report

OIG NOTE: The attached memorandum does not address Finding No. 4 and Recommendation 4.1, which were added to the report after the draft report was provided to the Department for comment. The Department's comments on Finding No. 4 appear in ATTACHMENT 4.



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE DEPUTY SECRETARY

MEMORANDUM

To: Gloria Pilotti
Regional Inspector General for Audit

From: Eugene W. Hickok /s/

Subject: Draft Audit Report, Control Number ED-OIG/A09-E0014

Date: September 9, 2004

Thank you for sending the draft audit report entitled, "*Departmental Actions to Ensure Charter Schools' Access to Title I and IDEA Part B Funds.*" I have reviewed the report and provide you with the following comments regarding your recommendations.

Recommendation 1.1 – The Deputy Secretary should identify the Departmental program office(s) responsible for ensuring SEA compliance with the ESEA section 5206, such as OII, or one or more other offices. The designated office(s) should ensure that the other offices responsible for the programs covered by the statute are aware of the ESEA section 5206 and incorporate its provisions into their programs, as appropriate.

The Office of the Deputy Secretary (ODS) will remind each program office of its statutory responsibility for ensuring SEA compliance with the ESEA section 5206.

OESE and its Student Achievement and School Accountability office (SASA), which administers the Title I, Part A, program, will work closely with ODS and the Office of Innovation and Improvement (OII) to coordinate responsibility for ensuring that SEAs and local educational agencies (LEAs) comply with the requirement in section 5206 that eligible charter schools receive the Federal funds for which they are entitled within the timeframes prescribed. As part of its monitoring process, SASA currently reviews SEA procedures to ensure that Title I, Part A, funds are allocated properly to all LEAs, including charter schools that are currently in place or have been newly created or have undergone significant expansion.

OSERS will also work closely with ODS, OESE, and other offices to ensure compliance with section 5206 and its implementing regulations with regard to the Individuals with Disabilities Education Act (IDEA) and other programs administered by OSERS. In addition, ODS will inform other program offices (e.g., OSFDS and OVAE) that provide formula grants to states of their responsibilities for ensuring compliance with section 5206 and will coordinate with those offices to ensure that they take appropriate steps to ensure that compliance.

Recommendation 2.1 – The Deputy Secretary should direct the appropriate program office(s) to provide guidance to SEAs on the need to establish written procedures on SEA or LEA notification requirements and the definition of “significant expansion of enrollment.” The guidance should clarify whether LEAs are allowed to further define expansion for charter schools that are public schools within the LEA. The guidance should also instruct SEAs to annually distribute this information to all charter schools, charter authorizers, and LEAs, to ensure that they are aware of the requirements and their respective responsibilities.

ODS will work closely with OESE, OSERS, OII, and other program offices to determine the need to develop and disseminate additional policy guidance to SEAs and LEAs regarding the definition of “significant expansion of enrollment” and appropriate ways for charter schools, charter authorizers, and LEAs to receive timely notice of the requirements and responsibilities under section 5206 and its implementing regulations.

We note, however, that the regulations implementing the Charter Schools Expansion Act and the charter school guidance issued in 2000 already provide extensive direction in this area. The guidance can be found at <www.uscharterschools.org/pdf/fr/sea_guidance_main.pdf> on the <uscharterschools.org> website.

Recommendation 3.1 – The Assistant Secretary for Elementary and Secondary Education and the Assistant Secretary for Special Education and Rehabilitative Services should modify their monitoring procedures, as needed, to address SEA and LEA compliance with the ESEA section 5206 to ensure that new or expanding charter school LEAs and charter schools receive a proportionate share of Title I and IDEA Part B funds in a timely manner.

Recommendation 3.2 – The Deputy Secretary should ensure that program offices responsible for overseeing other Federal programs covered by the ESEA section 5206 have included that section in their monitoring procedures.

Recommendation 3.3 – The Deputy Secretary should provide input, as needed, for the 2005 OMB Circular A-133 Compliance Supplement by adding cross-cutting compliance requirements to ensure SEAs and LEAs provide new or expanding charter school LEAs and charter schools their proportionate share of Federal funds under the covered programs in a timely manner, in accordance with the ESEA section 5206.

ODS recommends clarifying recommendation 3.1 so that it reads as follows:

- 3.1 The Assistant Secretary for Elementary and Secondary Education and the Assistant Secretary for Special Education and Rehabilitative Services should modify their monitoring procedures, as needed, to address SEA and LEA compliance with the ESEA section 5206 to ensure that new or expanding charter school LEAs and charter schools receive a proportionate share of Title I and IDEA Part B funds in a timely manner. The procedures should ensure that eligible charter school LEAs and charter schools have access to the Title I and IDEA Part B funds to which they are entitled within five months of their opening or expansion when that date occurs before November 1, provided they

meet SEA or LEA notification requirements. Where new or expanding charter schools are public schools within an LEA, the monitoring procedures should also address SEA monitoring of LEAs to ensure that they allocate IDEA Part B funds to eligible charter schools correctly and include charter schools in the rank order and allocation procedures LEAs must use to determine Title I allocations so that in both cases they have access to those funds within five months of their opening or expansion.

ODS will provide guidance by a Department memorandum to remind all covered Federal programs to implement the statutory provisions addressed in their monitoring procedures. This will include directing OESE to modify SASA's monitoring procedures for SEA fiduciary responsibilities to ensure that charter school issues with regard to timely allocation of Title I funds to new or significantly expanding charter schools are among the areas examined. It will also include directing OSERS and other program offices to identify appropriate measures. We will also work with OMB to determine whether revisions to sections of the OMB Circular A-133 Compliance Supplement concerning the "allocation" of Title I, Part A and IDEA, Part B funds should be revised in the fiscal year 2005 edition.

ATTACHMENT 4

Department Comments on the Draft Finding No. 4



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

THE ASSISTANT SECRETARY

/d/ October 18, 2004

MEMORANDUM

TO: Dr. Eugene W. Hickok
Deputy Secretary

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

SUBJECT: Comments re ED-OIG/A09-E0014 (*Draft Audit Report - Departmental Actions to Ensure Charter Schools' Access to Title I and IDEA Part B Funds*)

The Office of Special Education and Rehabilitative Services (OSERS) would like the following comments incorporated into the response provided by your office to the above referenced audit.

We suggest that the language of the finding and recommendation be changed to read, "OSERS should consider issuing guidance..." This modification is consistent with comments the Office of General Counsel (OGC) and OSERS provided to the previous audit report, "Arizona Charter Schools Access to Federal Funds" (ACN A09-D0033). In addition, OSERS should not be held accountable for immediately issuing guidance due to the pending reauthorization of the Individuals with Disabilities Education Act (IDEA). The reauthorization may result in changes to requirements and could impact the need for and the content of the guidance we would provide. The change to the language of the finding and recommendation provides flexibility for OSERS to determine what, if any, guidance is needed.

We also suggest edits throughout the finding related to the use of the term "students with disabilities." We suggest the use of the term "a student with disabilities." The suggested edits are shown in the marked-up attachment to this memo.

The corrective action that OSERS proposes in response to the finding and recommendation is as follows:

- OSERS will consider issuing guidance on (1) whether an SEA is required to provide an IDEA Part B allocation to a charter school LEA in its first year of

operation when there is no student with disabilities enrolled at the charter school LEA and (2) whether such a charter school LEA is entitled to a base payment in subsequent years if it does not enroll a student with disabilities.

cc: Rich Rasa, Director of State and Local Advisory Assistance Team (OIG)