



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF INSPECTOR GENERAL

Audit Services
New York Audit Region

February 2, 2011

Control Number
ED-OIG/A02K0003

Dr. David Milton Steiner
Commissioner of Education
New York State Education Department
89 Washington Avenue
Albany, NY 12234

Dear Dr. Steiner:

This **final audit report**, titled *Kiryas Joel Union Free School District Title I, Part A of the Elementary and Secondary Education Act, as amended and Individuals with Disabilities Education Act Part B Expenditures*, presents the results of our audit. The purpose of the audit was to determine whether the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (ESEA) Title I, Part A (Title I) and Individuals with Disabilities Education Act of 2004 Part B, Grants to States (IDEA), expenditures were allowable and allocable in accordance with applicable laws and regulations. Our review covered the period of September 1, 2008, through August 31, 2009.

BACKGROUND

Kiryas Joel Union Free School District (Kiryas Joel) is located in the Village of Kiryas Joel, within the town of Monroe, New York. It was created in 1990 and is governed by five Board of Education (Board) members. The Board is responsible for the general management and control of Kiryas Joel's financial and educational affairs. The Superintendent of Schools (Superintendent) is the chief executive officer of Kiryas Joel and is responsible, along with other administrative staff, for the day-to-day management of Kiryas Joel under the direction of the Board. Kiryas Joel is responsible for providing public educational services as well as remedial and transportation programs for all eligible students in the community. There is one public school in operation within Kiryas Joel, Kiryas Joel Village School, which serves approximately 123 students, all of whom are special-needs students. Kiryas Joel also provides services for approximately 6,000 students who attend private schools in the Village of Kiryas Joel. For the period of September 1, 2008, through August 31, 2009, Kiryas Joel received \$5,044,791 in Title I funds and \$772,845 in IDEA funds.

AUDIT RESULTS

Generally, we found that Kiryas Joel's Title I and IDEA expenditures were allowable and allocable in accordance with applicable laws and regulations. However, we found that Kiryas Joel used Title I funds to supplant non-Federal funds for lease payments related to its public school building.¹ In addition, Kiryas Joel could not provide adequate documentation to support \$191,124 in Title I payroll charges.

We provided a draft of this report to New York State Education Department (NYSED) for review and comment on November 18, 2010. In NYSED's comments to the draft report, dated December 14, 2010, NYSED generally concurred with our findings and recommendations. The entire narrative of NYSED's comments is included as an Attachment to this report.

FINDING NO. 1 – Kiryas Joel Used \$276,443 of Title I Funds to Supplant Non-Federal Funds

Kiryas Joel used Title I funds to supplant non-Federal funds for lease payments made since May of 2008 related to its public school building. As a result, \$276,443 in lease costs charged to Title I were unallowed and an estimated additional \$5.2 million in potential charges to Title I over the remaining life of the lease could be better used to serve the students of Kiryas Joel. In addition, we noted conflicts of interest related to this lease as well as another lease agreement for which Kiryas Joel made payments using Title I funds. As a result, there is no assurance that the decisions made relating to the two leases were in the best interests of the students of Kiryas Joel.

Title I Used to Supplant Non-Federal Funds

On May 12, 2008, Kiryas Joel entered into an agreement with United Talmudical Academy of Kiryas Joel SC, Inc. (UTA of KJ SC, Inc.) to lease a building for its public school. Although Kiryas Joel provided Title I services under a targeted assistance program,² Kiryas Joel believed that because the public school was eligible to administer a school-wide program, it was able to charge a portion of its lease payments to Title I funds. Kiryas Joel's Superintendent stated there was no space within the building exclusively dedicated for providing Title I program services. Therefore, Kiryas Joel used what it called the "student count" calculation to determine how much of the lease costs would be charged to Title I. Kiryas Joel calculated the portion of the lease it charged to Title I by multiplying the percentage of Title I students enrolled at the public school, 50 percent,³ by the percent of the school day attributed to Title I academic services,

¹ Audit period for Title I funds used for lease payments was extended (May 2008 – August 2010) to include all payments made to date on the lease.

² Although Kiryas Joel qualified to be a school-wide program, the NYSED advised Kiryas Joel to administer a targeted assistance program because the majority of its Title I funds were to be used to provide services to the non-public schools in Kiryas Joel.

³ Kiryas Joel calculated the percentage of Title I students enrolled at the public school by dividing the total number of Title I students, 51, by the total number of full-time students, 101.

30 percent. As a result, Kiryas Joel charged 15 percent of its lease payments for its public school building to Title I.

Because Kiryas Joel needed the public school building to operate its regular school program, the district supplanted non-Federal funds by using Title I funds to pay for a portion of its lease payments for that building. ESEA § 1120A(b)(1) states that, “A State educational agency or local educational agency [(LEA)] shall use Federal funds received under this part only to supplement the funds that would, in the absence of such Federal funds, be made available from non-Federal sources for the education of pupils participating in programs assisted under this part, and not to supplant such funds.” Although the public school building was used to provide Title I services to students, Kiryas Joel did not incur any additional lease costs as a result of providing those services.

In addition, according to the Office of Management and Budget A-133 Compliance Supplement (March 2009), supplanting is presumed when an LEA uses Title I funds to provide services for participating students that the LEA provided with non-Federal funds for non-participating students. Kiryas Joel applied a “student count” calculation to determine the portion of lease costs allocable to Title I for a building that served both Title I and non-Title I students. There was no space within the building exclusively dedicated for providing Title I program services. Therefore, the presumption of supplanting exists because Kiryas Joel used Title I funds to provide services to Title I students that it provided with non-Federal funds for non-Title I students. The \$276,443 in lease costs charged to Title I funds were unallowable, as Kiryas Joel used the Title I funds to supplant, not supplement, non-Federal funds. In addition, we estimated that \$5.2 million in potential charges to Title I funds over the remaining life of the lease could be better used for the students of Kiryas Joel.⁴

Title I Funds Used for Leases Impacted by Conflicts of Interest

Kiryas Joel entered into a 30-year lease agreement with UTA of KJ SC, Inc., for a newly constructed school building for its public school. As mentioned above, Title I funds were used for a portion of the monthly payments for this lease. The 30-year lease agreement, approved by its Board, covered the period of May 12, 2008, through May 31, 2038. An audit report issued by the Office of the New York State Comptroller (State Comptroller) in December 2009 disclosed violations of the New York State conflict of interest law relating to the public school lease agreement between Kiryas Joel and UTA of KJ SC, Inc. The State Comptroller reported that Kiryas Joel’s Board President and Vice President did not properly disclose, in writing, their interest in the lease agreement as officers of the board of directors for UTA of KJ SC, Inc., to the Board or the public, and voted on matters regarding this lease.

During our fieldwork, we also noted that one of the two Board members was connected with another lease between Kiryas Joel and United Talmudical Academy of Kiryas Joel, Inc.

⁴ As stipulated in the lease agreement, beginning the second year of the lease, fixed rent was to be adjusted by the Consumer Price Index (CPI). Therefore, we calculated the \$5.2 million in potential charges to Title I funds by adding future monthly lease payments, adjusted for the CPI, for the period of September 1, 2010, through May 31, 2038, the end of the lease term. Based on the average CPI for the past 4 years according to the U.S. Department of Labor, we used an estimated CPI rate of 3 percent in our calculation.

(UTA of KJ, Inc.),⁵ for space in a non-public school building. The space was used to provide Title I after-school program services to Title I students attending the non-public school. However, we found no evidence that the Board member with the conflict of interest recused himself from voting on matters related to this lease.

According to the State Comptroller audit report, Kiryas Joel's Board did not have adequate internal controls over the financial interests between its Board members and Kiryas Joel. The referendum notice for voter approval of the lease agreement did not specify the party from whom Kiryas Joel would lease the school building. Kiryas Joel's Board President and Vice President did not properly disclose, in writing, their interests in the lease agreement as officers of UTA of KJ SC, Inc., to the Board. In addition, there was no evidence that these Board members recused themselves and abstained from voting on matters relating to Kiryas Joel's dealings with UTA of KJ SC, Inc., including the lease agreement. We noted that Kiryas Joel had made strides to improve its internal controls over conflicts of interest since the issuance of the State Comptroller report. Specifically, Kiryas Joel requested that all of its Board members notify the public of potential conflicts of interest in writing at their annual public meetings and recuse themselves from any school board vote involving matters with which they have a conflict.

Because decisions surrounding both lease agreements were influenced by the Board members with evident conflicts of interest, there is no assurance that the decisions made were in the best interest of the students of Kiryas Joel. In addition, in relation to each of the two leases mentioned above, Kiryas Joel did not comply with 34 Code of Federal Regulations, (C.F.R.) § 80.36(b)(3), which required that no employee, officer, or agent of the grantee or subgrantee shall participate in selection, or in the award or administration, of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. The State Comptroller also found that Kiryas Joel was in violation of the State's conflict of interest law as noted above.

Recommendations

We recommend the Assistant Secretary for Elementary and Secondary Education instruct NYSED to require Kiryas Joel to:

- 1.1 Return to the U.S. Department of Education (Department) the \$276,443 in unallowable Title I funds, plus applicable interest, used to supplant non-Federal funds.
- 1.2 Discontinue the use of Title I funds for the UTA of KJ SC, Inc., lease.
- 1.3 Implement and adhere to policies and procedures to ensure compliance with Federal requirements related to conflicts of interest.

⁵ UTA of KJ, Inc. was the lessor of the non-public school receiving Title I services from Kiryas Joel. UTA of KJ SC, Inc., was a subsidiary of UTA of KJ, Inc.

NYSED Comments

NYSED agreed that the use of Title I funds for space needed to operate Kiryas Joel's public school program constituted supplanting. NYSED noted that under New York law, the Kiryas Joel Board members' interest in the public school lease agreement did not constitute a prohibited conflict of interest, because it was an agreement with a non-profit organization. NYSED also agreed with all three recommendations associated with Finding No. 1. NYSED agreed to recoup and return the \$276,443 plus applicable interest from Kiryas Joel, indicated it had already started working with Kiryas Joel to implement corrective actions addressing Recommendation 1.2, and plans to conduct additional follow up to satisfy Recommendation 1.3.

OIG Response

We are pleased that NYSED generally agreed with our findings and recommendations, including implementing policies and procedures for compliance with Federal requirements related to conflicts of interest. Although NYSED noted that under New York law an agreement with a non-profit organization did not constitute a conflict of interest, Federal law prohibits participation in the selection, award, or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, is involved. Therefore, our position remains unchanged that Kiryas Joel did not comply with 34 C.F.R. § 80.36(b)(3).

FINDING NO. 2 – Kiryas Joel Could Not Provide Adequate Support for \$191,124 in Title I Payroll Charges

Kiryas Joel could not provide adequate supporting documentation for \$191,124 in salary expenditures charged to Title I for its after-school program. To test Kiryas Joel's payroll expenditures, we obtained the universe of all Kiryas Joel employee payroll charged to Title I for the period of our review, September 1, 2008, through August 31, 2009. This represented 189 employees or \$3,278,742 in Title I charges. Out of a total universe of 189, we statistically selected nine employees paid a total of \$325,498 in Title I charges for our review. During our examination, we noted that one out of the nine employees initially selected had nearly doubled his salary by earning overtime charged to Title I.⁶ Because of the significant amount of overtime earned by that employee, we expanded our sample specifically to determine whether any other employees earned significant Title I overtime. As a result, we judgmentally selected an additional seven employees that earned Title I overtime greater than 50 percent of their regular gross salary. In total, we identified eight employees⁷ that earned significant Title I overtime (totaling \$191,124).

Kiryas Joel could not provide sufficient documentation to support that the actual hours worked by these eight employees that earned significant overtime were attributable to Title I. As a result, we were unable to determine whether these overtime charges were reasonable or allocated correctly. Therefore, the \$191,124 in overtime charged to Title I was not properly supported. Aside from the general procedures covering personnel records, there were no written procedures requiring allocation of time and effort. According to Kiryas Joel's Superintendent, salary rates for Kiryas Joel employees, including the overtime charges, should be documented by an

⁶ There were no significant overtime issues found with the remaining eight employees that were initially selected.

⁷ The individual selected in our original sample that nearly doubled his salary by earning overtime charged to Title I was included among these eight employees.

approved Personnel Change Notice (PCN),⁸ reflected within the Personnel Activity Report (PAR),⁹ and supported by timesheets. The timesheets should document the actual hours dedicated to the particular project. However, we were unable to verify the program to which the employees' work was allocable, because the timesheets included neither the program name nor source code for the program. In addition, the timesheets were not always signed by the employee or the supervisor, and there was no further supporting documentation to confirm that the overtime rates and hours approved were allocable to Title I. Therefore, Kiryas Joel did not comply with the General Education Provisions Act [20 U.S.C. § 1232f(a)] which states—

Each recipient of Federal funds under any applicable program through any grant . . . shall keep records which fully disclose the amount and disposition by the recipient of those funds, the total cost of the activity for which the funds are used, the share of that cost provided from other sources, and such other records as will facilitate an effective financial or programmatic audit. The recipient shall maintain such records for three years after the completion of the activity for which the funds are used.

Recommendations

We recommend the Assistant Secretary for Elementary and Secondary Education instruct NYSED to require Kiryas Joel to:

- 2.1 Provide support for the \$191,124 in Title I salary expenditures, or return the funds, with applicable interest, to the Department.
- 2.2 Establish and implement a comprehensive written time and effort policy, which requires that the allocation of reasonable and necessary overtime hours related to Federal programs be documented.

NYSED Comments

NYSED generally concurred with Finding No. 2. However, NYSED stated that the use of affidavits by Kiryas Joel employees providing Title I services should suffice as supporting documentation in conjunction with the development of an appropriate time and effort system. NYSED has started working with Kiryas Joel to establish and implement corrective actions that address Recommendations 2.1 and 2.2.

OIG Response

We considered NYSED's response to Finding No. 2 and Recommendation 2.1 and our position remains unchanged. We believe the use of affidavits is sufficient if done in conjunction with the development of an appropriate time and effort system. During our review, Kiryas Joel was in the process of converting to a new accounting system software. However, because it was not fully operational at the time of our fieldwork, we were unable to verify its effectiveness to track employees time and effort. Therefore, we concluded that the use of affidavits alone was not sufficient to support the Title I salaries that were identified in Finding No. 2 as unsupported expenditures.

⁸ PCN should indicate the position to be filled, the salary rate, dates of service, and program charged.

⁹ PAR should demonstrate the amount of time charged to the grant and specify the amount of time the individual worked on the project's objective.

OBJECTIVE, SCOPE, AND METHODOLOGY

Our audit objective was to determine whether Kiryas Joel's Title I and IDEA expenditures were allowable and allocable in accordance with applicable laws and regulations. Our initial audit period covered July 1, 2008, through June 30, 2009. We subsequently revised the scope of the audit to cover the period of September 1, 2008, through August 31, 2009, and expanded the scope for lease charges to Title I to cover the period of May 1, 2008, through August 31, 2010.

To accomplish our audit objective, we—

- Reviewed Kiryas Joel's approved consolidated applications and related budgets;
- Reviewed applicable laws, regulations, policies, and procedures;
- Reviewed prior audit reports issued by the Office of the New York State Comptroller and U.S. Department of Education Office of Inspector General related to Kiryas Joel;
- Reviewed Kiryas Joel Board of Trustee conflict of interest forms;
- Reviewed the single audits for fiscal years 2007 and 2008;
- Interviewed Kiryas Joel's Superintendent, Deputy Superintendent, Treasurer, Director of Payroll, and an accounts payable representative;
- Reviewed and analyzed the Final Expenditure Report for a Federal or State Project (FS-10F Reports)¹⁰ that Kiryas Joel submitted to NYSED for salary and non-salary expenditures charged to Title I and IDEA during the audit period;
- Reviewed journal entries and adjustments for Title I and IDEA relevant to the period of our review;
- Reviewed purchase card transactions relevant to our audit objective;
- Reviewed Kiryas Joel's written policy manual for purchasing, time and effort, and payroll to gain an understanding of these processes; and
- Reviewed Kiryas Joel's lease agreements for the public school building and space in the non-public school building.

To determine whether Kiryas Joel's computer-processed data related to Title I and IDEA charges were reliable, we extracted from Kiryas Joel's accounting system all Title I and IDEA expenditures for the period July 1, 2007, through December 31, 2009. We reconciled these data to populations of Title I and IDEA salary and non-salary expenditures that we constructed based on FS-10F Reports and Kiryas Joel's accounting system. We tested sampled expenditures to arrive at our findings, as described above. Based on these tests, we concluded that the data were sufficiently reliable to support the findings, conclusions, and recommendations, and that using the data would not lead to an incorrect or inaccurate conclusion.

¹⁰ NYSED requires an FS-10F Report from each LEA to report all reimbursable expenditures made by the LEA for an approved grant.

Title I Statistical Sample

We stratified Title I and IDEA expenditures for payroll and non-payroll transactions into three strata based on dollar amount. Initially, we statistically selected 3 employees from each of the 3 strata identified for Title I payroll (for a total of 9 of 189 Title I employees). During the course of our audit work we noted that one sampled employee earned a salary that was increased from the prior year by an amount higher than the yearly increase received by all sampled employees. As a result, we expanded our sample and selected an additional 25 employees to determine whether this was a pervasive issue. In total, we statistically sampled 34 Title I employees charging \$1,365,676 to Title I. (See Table 1)

Kiryas Joel charged a total of \$191,669 in non-payroll expenditures to Title I during our audit period. We stratified Title I payment information into three strata. For the 3 strata in total, we statistically selected 25 of 543 payment transactions for our Title I non-payroll sample. The 25 payments totaled \$50,152 in charges to Title I. (See Table 1).

Table 1: Title I Statistical Sample				
Program	Total Amount Charged to Title I	Total Employees / Transactions	Sampled Title I Charges	Sample Transactions/ Employees
Title I Payroll				
Stratum 1 - (\$0 - \$20,000)	\$ 1,028,000	138	\$ 76,681	11
Stratum 2 - (\$20,000 - \$50,000)	\$ 1,252,879	38	\$ 343,963	11
Stratum 3 - (\$50,000 - \$150,000)	\$ 997,863	13	\$ 945,032	12
Title I Payroll Total	\$ 3,278,742	189	\$ 1,365,676	34
Title I Non-Payroll				
Stratum 1 - (\$0 - \$1,000)	\$ 102,053	505	\$ 1,780	10
Stratum 2 - (\$1,000 - \$5,000)	\$ 63,538	34	\$ 22,294	11
Stratum 3 - (\$5,000 - \$10,000)	\$ 26,078	4	\$ 26,078	4
Title I Non-Payroll Total	\$ 191,669	543	\$ 50,152	25

Title I Judgmental Sample

We also noted that one of the nine Title I employees initially selected had nearly doubled his salary by earning overtime charged to Title I. As a result, we judgmentally selected an additional seven employees that earned Title I overtime (totaling \$191,124) increasing their regular gross salary by 50 percent or more. In addition, because of concerns with a lease agreement related to Title I, we judgmentally selected all 40 related payments totaling \$431,190.

IDEA Statistical Sample

Initially, we statistically selected 1 employee from each of the 3 strata identified for IDEA payroll (for a total of 3 of 14 IDEA employees). During the course of our audit work, we noted that one sampled employee earned a salary that was increased from the prior year by an amount

higher than the yearly increase received by all sampled employees. As a result, we expanded our sample and selected an additional 11 employees to determine whether this was a pervasive issue.¹¹ In total, we sampled 14 IDEA employees charging \$366,995 to IDEA. (See Table 2)

Kiryas Joel charged a total of \$196,178 in non-payroll expenditures to IDEA during our audit period. We stratified IDEA payment information into three strata. For the 3 strata, we statistically selected 25 of 247 payment transactions for our IDEA non-payroll sample. (See Table 2)

Table 2: IDEA Statistical Sample				
Program	Total Amount Charged to IDEA	Total Transactions/ Employees	Sampled IDEA Charges	Sample Transactions/ Employees
IDEA Payroll				
Stratum 1 - (\$0 - \$20,000)	\$ 73,285	6	\$ 73,285	6
Stratum 2 - (\$20,000 - \$50,000)	\$ 229,544	7	\$ 229,544	7
Stratum 3 - (\$50,000 - \$150,000)	\$ 64,166	1	\$ 64,166	1
IDEA Payroll Total	\$ 366,995	14	\$ 366,995	14
IDEA Non-Payroll				
Stratum 1 - (\$0 - \$1,000)	\$ 46,301	197	\$ 2,681	11
Stratum 2 - (\$1,000 - \$5,000)	\$ 115,965	47	\$ 27,717	11
Stratum 3 - (\$5,000 - \$16,000)	\$ 33,912	3	\$ 33,912	3
IDEA Non-Payroll Total	\$ 196,178	247	\$ 64,310	25

We performed our fieldwork at Kiryas Joel’s business office located at 48 Bakertown Road, Monroe, New York 10950 between February 2, 2010, and October 5, 2010. In addition, we conducted a visit to Kiryas Joel’s only public school and its facilities located in the Village of Kiryas Joel. Finally, to review Kiryas Joel financial statements, we conducted a site visit with the Independent Public Accountant at their office in Port Jefferson Station, New York.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

¹¹ By expanding our sample, we reviewed 100 percent of payroll charges to IDEA for our audit period.

ADMINISTRATIVE MATTERS

Statements that managerial practices need improvements, as well as other conclusions and recommendations in this report, represent the opinions of the Office of Inspector General. Determinations of corrective action to be taken, including the recovery of funds, will be made by the appropriate Department of Education officials in accordance with the General Education Provisions Act.

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 Department of Education official, who will consider them before taking final Departmental action on this audit:

Thelma Meléndez de Santa Ana, Ph.D
Office of Elementary and Secondary Education
U.S. Department of Education
400 Maryland Ave S.W.
LBJ, 3W315
Washington, DC 20202

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/
Daniel P. Schultz
Regional Inspector General
for Audit

Attachment

Acronyms and Abbreviations Used in This Report

Board	Board of Education
C.F.R.	Code of Federal Regulations
CPI	Consumer Price Index
Department	U.S. Department of Education
ESEA	Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001
FS-10F	Final Expenditure Report for a Federal or State Project
IDEA	Individuals with Disabilities Education Act of 2004 Part B, Grants to States
Kiryas Joel	Kiryas Joel Union Free School District
LEA	Local Educational Agency
NYSED	New York State Education Department
PCN	Personnel Change Notice
PAR	Personnel Activity Report
State Comptroller	Office of the New York State Comptroller
Superintendent	Superintendent of Schools
Title I	Title I, Part A
UTA of KJ, Inc.	United Talmudical Academy of Kiryas Joel, Inc.
UTA of KJ SC, Inc.	United Talmudical Academy of Kiryas Joel SC, Inc.

Attachment



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK | ALBANY, NY 12234

CHIEF OPERATING OFFICER
610 473-8381
E-mail: vgrity@emsr.ny.sed.gov

December 14, 2010

Mr. Daniel P. Schultz
Regional Inspector General for Audit
U.S. Department of Education
Office of the Inspector General
32 Old Slip, 26th Floor
New York, NY 10005

Dear Mr. Schultz:

The following is the New York State Education Department's (NYSED) response to the findings and recommendations contained in the draft audit report, Control Number ED-OIG/A02K0003 entitled *Kiryas Joel Union Free School District Title I, Part A of the Elementary and Secondary Education Act as amended and Individuals with Disabilities Education Act Part B Expenditures*.

We are generally in agreement with the findings contained in the report and with the recommendations. We have already received additional documents from the Kiryas Joel (KJ) UFSD and have communicated with, and in some cases initiated corrective actions. For example, SED will require the submission of a board approved corrective action plan from KJ 90 days after the date of the final report. The SED responses to the recommendations are found below:

FINDING NO. 1 – Kiryas Joel Used \$276,443 of Title I Funds to Supplant Non-Federal Funds:

Recommendations

We recommend the Assistant Secretary for Elementary and Secondary Education instruct the New York State Education Department to require Kiryas Joel to:

- 1.1 Return to the U.S. Department of Education (Department) the \$276,443 in unallowable Title I funds, plus applicable interest, used to supplant non-Federal funds.

We agree that the use of Title I funds for a portion of its lease payments for space needed to operate the district's public school program constituted impermissible supplanting, and will recoup the \$276,443 plus applicable interest from KJ. The funds will be returned to the Department. We note that under New York law, specifically General Municipal Law §802(1)(b)(f), the KJ board members did not have a prohibited conflict of interest in the lease agreement, since it was a contract with a non-profit organization.

Accordingly, we believe that the concerns about a perceived conflict of interest are appropriately addressed in Recommendation 1.3.

1.2 Discontinue the use of Title I funds for the UTA of KJSC, Inc., lease

We agree with this recommendation and have already worked with KJ to implement this recommendation. NYSED has required a revised budget for the July 1, 2010 to September 30, 2011 period which eliminates the charge of a percentage of the lease costs to the Title I grant. The revised budget allows for lease costs associated with space specifically used to serve Title I students from non-public schools.

1.3 Implement and adhere to policies and procedures to ensure compliance with Federal requirements related to conflict of interest.

We agree with this recommendation and will follow up with KJ to ensure the policies and procedures are in place.

FINDING No. 2 – Kiryas Joel Could Not Provide Adequate Support for \$191,124 in Title I Payroll Charges

Recommendations

We recommend the Assistant Secretary for Elementary and Secondary Education instruct the New York State Education Department to require Kiryas Joel to:

2.1 Provide supporting documentation for the \$191,124 in Title I salary expenditures, or return the funds with applicable interest to the Department.

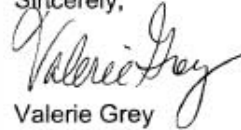
We agree with this recommendation. The District has provided us with the affidavits supporting the appropriateness of the salary expenditures that were provided to the auditors in response to the preliminary findings. We have begun to review the supporting documentation and will request additional information and documents as needed to satisfy us that the expenditures were appropriate. We do not agree that the approach taken by the district, which involves the use of affidavits by employees whose sole responsibilities involve delivery of Title I services, is an unacceptable means of documenting time and effort and we believe the district should be able to supply the needed documentation. While not the ideal evidence of the provision of Title I services, affidavits have been used in support of other audit findings and we believe in conjunction with the development of an appropriate time and effort system should suffice as supporting documentation.

2.2 Establish and implement a comprehensive time and effort reporting policy, which requires that the allocation of reasonable and necessary overtime hours related to Federal programs be documented.

We agree with this recommendation, and will require the district to provide a copy of the policy within 60 days of the final audit determination. We will review the policy for effectiveness and implementation.

if you have any further questions regarding this response, please contact Roberto Reyes, State Director, Title I School and Community Services via email at rreyes@mail.nysed.gov or telephone at (518) 473-0205.

Sincerely,



Valerie Grey

c: Commissioner Stelner
J. King
J. Conway
J. Delaney
D. Juron
E. O'Grady-Parent
R. Reyes
I. Schwartz
R. Trautwein