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March 27, 2006

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ED-OIG/A09F0019

Jack T. O'Connell
State Superintendent of Public Instruction
California Department of Education
1430 N Street
Sacramento, California 95814

Dear Superintendent O'Connell:

This **Final Audit Report**, entitled *San Diego City Schools' Compliance With Supplemental Educational Services Provisions*, presents the results of our audit. The purpose of the audit was to determine whether (1) San Diego City Schools' (SDCS) individual student agreements for district-provided supplemental educational services (SES) contained the elements specified in Title 1, Part A, of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001, Section 1116(e)(3) and applicable Federal regulations; (2) SDCS performed the services for which it received funding from the U.S. Department of Education (ED) and that the services were provided in a manner consistent with the agreement terms and Federal requirements; and (3) SDCS collected and maintained the data for students receiving district-provided SES that will be used by the California Department of Education (CDE) to evaluate the quality and effectiveness of the services provided by the SDCS SES program. Our review covered school year 2004-2005.

BACKGROUND

Title I, Part A of the ESEA requires local educational agencies (LEAs) to offer SES to students from low-income families when the students attend a Title I school that is in the second year of school improvement or identified for corrective action or restructuring.¹ SES consists of tutoring, remediation, and other educational interventions that are designed to increase the

¹ Under the No Child Left Behind Act of 2001, Title I schools that fail to make adequate yearly progress (AYP) for two consecutive years are identified for school improvement. Title I schools are identified for corrective action if they do not make AYP for four years, while Title I schools not making AYP for five years are identified for restructuring. The "low-income family" determination is based on the same poverty data that an LEA uses to allocate Title I, Part A funds to its schools under section 1113 of Title I. Those data are usually a student's eligibility for free or reduced price lunch under the National School Lunch Program.

academic achievement of students, and are in addition to instruction provided during the school day. State-approved SES providers, selected by the individual student's parent or guardian, provide the services to eligible students under agreements with LEAs. SES providers must align their instructional programs with state academic achievement standards and tailor their services to the academic needs of individual students. CDE is the state educational agency responsible for administering the ESEA, Title I, Part A program, approving SES providers, and monitoring the quality and effectiveness of services offered by the approved providers.

SDCS is the second largest school district in California. As a State-approved SES provider, SDCS provided SES in school year 2004-2005 to about 2,900 students attending 22 of its 202 schools. SDCS provides English-language arts and mathematics tutoring in group settings with a student-to-teacher ratio of up to ten to one. Teachers from the schools and retired teachers provide the tutoring before and after the regular school day at the school sites. For these services, SDCS used ED, State, and local funds totaling \$744,227 of which \$559,049 were Title I funds and \$41,818 were 21st Century Community Learning Center (CCLC) funds. SDCS also contracts with other providers for the delivery of SES. For school year 2004-2005, SDCS expended about \$1.1 million of Title I funds for SES provided by other providers to about 2,000 students. The Extended Learning Opportunities Department within SDCS' Teacher Preparation and Student Support Division administers the SES program, which encompasses delivering district-provided services and contracting with other SES providers.

AUDIT RESULTS

We found that SDCS' individual student agreements did not include elements required by the applicable ESEA provisions and Federal regulations and SDCS did not have agreements for all students who received SES. For school year 2005-2006, SDCS is implementing a web-based database to manage SES provided by the District and other SES providers, including the preparation of individual student agreements. The database should improve SDCS' internal control for ensuring complete agreements are prepared timely.

Based on our review of attendance sheets and payroll records, we concluded that SDCS performed the services for which the District expended Title I and CCLC funds. We also confirmed that SES was provided before or after the regular school day. We were unable to determine if SDCS provided the services in a manner consistent with student agreements and Federal requirements because SDCS did not develop student agreements for all students and the agreements that were developed did not contain the information to evaluate compliance with the requirements.

The California State regulations require SES providers to submit annual end-of-fiscal-year reports to CDE. The first report is due on October 1, 2006 and will cover services provided in school year 2005-2006. The State regulations list the information to be provided, including beginning and ending scores on national, state, district, or other assessments in English language arts and/or mathematics for the individual students served. CDE may remove a provider from its approved list if the provider fails to contribute to the increased academic achievement of a

majority of students it has served, as demonstrated by the assessment scores, for two consecutive years. We concluded that SDCS currently maintains the type of data that will be needed for future annual end-of-fiscal-year reports.

CDE did not explicitly express concurrence with our finding in its comments to the draft report, but it did describe the corrective actions taken or planned to address our recommendation. CDE's comments are summarized at the end of the finding and the full text of the comments is included as an attachment to the report.

FINDING – SDCS' Individual Student Agreements Did Not Contain Required Elements And Were Not Developed for All Students Who Received SES

ESEA § 1116(e)(3) states that the LEA shall enter into an agreement with the provider selected by the parent and lists the elements to be included in the agreement. Because our review was of a district provider, we limited our review to the elements contained in the following two paragraphs of the section. ESEA § 1116(e)(3)(A) requires that the LEA “develop, in consultation with parents (and the provider chosen by the parents), a statement of specific achievement goals for the student, how the student’s progress will be measured, and a timetable for improving achievement that, in the case of a student with disabilities, is consistent with the student’s individualized education program under section 614(d) of the Individuals with Disabilities Education Act.” ESEA § 1116(e)(3)(B) requires a description of how the student's parents and teacher(s) will be regularly informed of the student's progress. The required elements are reiterated in 34 C.F.R. § 200.46(b)(2) and listed in the response to Question G-2 in ED’s Publication titled *Supplemental Educational Services Non-Regulatory Guidance*, dated June 13, 2005.

The *Non-Regulatory Guidance* addresses an LEA’s responsibility with respect to an individual student agreement when the LEA is the approved SES provider. The response to Question G-11 states—

An LEA that is a provider must prepare an agreement that contains the information listed in G-2. Although the LEA is not formally entering into an agreement with itself as the provider, the information is necessary so that parents of a student receiving services from the LEA know, for example, the achievement goals for the student, how progress will be measured, and the timetable for improving the student’s achievement.²

In school year 2004-2005, SDCS used a “Learning Contract” form (learning contract) designed for at-risk students to prepare the individual student agreements for SES.³ SDCS advised principals in a memorandum, dated September 24, 2004, that each student receiving SES must

² The guidance provided in Question G-2 and G-11 is unchanged from that provided in ED’s prior publication, *Supplemental Educational Services Non-Regulatory Guidance*, dated August 22, 2003.

³ SDCS defines at-risk students as students identified as at risk of not meeting grade-level standards, either through district-designated assessments or teacher judgment.

have a learning contract developed and implemented according to the District timeline. SDCS officials advised us that it did not require learning contracts for students with disabilities receiving SES who had individualized education programs (IEPs). The memorandum refers to a forthcoming Administrative Circular for the timeline, which was issued on October 27, 2004. The Administrative Circular states the learning contract is to be developed during a teacher-student-parent/guardian conference within about four weeks following the end of the first grading period or any time during the school year if the student's performance falls below grade-level expectations.

From our review of student files for 21 students who received SES from the District provider during school year 2004-2005, we found that 13 student files did not contain learning contracts and the learning contracts in the other 8 student files did not contain all elements required by the ESEA § 1116(e)(3)(A) and (B).

Students Without Learning Contracts. SDCS' policy covering the preparation of learning contracts did not comply with Federal requirements because the District did not require schools to prepare learning contracts for students with disabilities who had IEPs. One of the sampled student files without a learning contract was for a student with disabilities who had an IEP. Also, contrary to the District policy, schools did not prepare learning contracts for other students receiving SES. For example, we found that the Reading Literacy SES Coordinator at the Marston Middle School provided school staff a memorandum, dated November 29, 2004, that listed only two categories of students with learning contracts: "Students who score below and significantly below grade level on the SDRT [Stanford Diagnostic Reading Test] and who are currently in the literacy block classes" and "E.L. [English Learners] students [who] score Early Intermediate or below on the CELDT [California English Language Development Test]."

Contracts Did Not Contain Required Elements. The learning contract form provided space for assessment results, type of academic intervention and support, how student progress would be communicated to parents or guardians (e.g., progress reports, telephone calls, E-mail), and signatures of the student, parent, and teacher(s). However, the contract form did not provide space for, and the contracts for the eight students did not contain, a statement of specific achievement goals for the student, how the students' progress will be measured, a timetable for improving achievement, or how progress would be communicated to the student's teacher.⁴ Also, the contracts for six of the eight students did not record how the students' progress would be communicated to parents or guardians even though the learning contract form provided space to record the information.

Because individual student agreements did not contain the requirements of ESEA §1116(e)(3)(A), did not, in some cases, indicate how SDCS would meet the requirements of §1116(e)(3)(B), and were not developed for all students, there is no assurance that: 1) the SES provided by SDCS (as a district provider) were tailored to the academic needs of each student, and, in the case of a student with disabilities, consistent with the student's IEP and 2) parents and the student's regular teachers are advised of the progress made in meeting the student's academic goals.

⁴ In most cases, the student's regular teacher was not the SES teacher. Only six of the 21 student reviewed received SES tutoring from their regular teacher.

For school year 2005-2006, SDCS is implementing a web-based database to manage SES provided by the District and other SES providers, including the preparation of individual student agreements. The database includes an individual achievement plan to be completed for each student receiving SES that contains areas for the requirements listed in ESEA §1116(e)(3). In a memorandum dated December 6, 2005, SDCS' Extended Learning Opportunities Department notified principals of schools offering SES that individual achievement plans must be completed and signed by a parent/guardian by January 31, 2006.

Recommendation

We recommend that the Assistant Secretary for Elementary and Secondary Education, in conjunction with the Assistant Deputy Secretary for Innovation and Improvement, require CDE to take steps to obtain confirmation from SDCS that individual achievement plans were developed for all students receiving SES in school year 2005-2006 and that the agreements contain the elements required by ESEA § 1116(e)(3).

CDE Comments

In its comments on the draft report, CDE stated that prior to the audit, SDCS recognized some deficiencies with its SES process and began establishing a web-based database to address the issues SDCS identified. CDE stated the web-based database is now fully operational. CDE stated that SDCS implemented student-learning plans in compliance with ESEA section 1116(e)(3) and item G-2 of the SES Non-Regulatory Guidance. CDE also stated that SDCS is following up with providers and schools that have not submitted student-learning plans and will not reimburse providers for SES until it receives a student-learning plan.

CDE stated that by June 30, 2006, CDE would obtain confirmation from SDCS that student-learning plans were developed for all students receiving SES in the school year 2005-2006, and that the student-learning plans contain the elements required by ESEA section 1116(e)(3).

OBJECTIVES, SCOPE, AND METHODOLOGY

The purpose of the audit was to determine whether (1) SDCS' individual student agreements for district-provided SES contained the elements specified in Title 1, Part A, of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001, Section 1116(e)(3) and applicable Federal regulations; (2) SDCS performed the services for which it received funding from ED and that the services were provided in a manner consistent with the agreement terms and Federal requirements; and (3) SDCS collected and maintained the data for students receiving district-provided SES that will be used by CDE to evaluate the quality and effectiveness of the services provided by the SDCS SES program. Our audit covered school year 2004-2005.

To achieve our objectives, we gained an understanding of the ESEA sections, Federal regulations, ED guidance, and California regulations covering SES and interviewed officials and staff at SDCS.

To determine whether individual student agreements were developed for students receiving SES and contained required elements, we gained an understanding of SDCS’ policy and procedures for preparing the agreements. We obtained SDCS’ learning contract form for school year 2004-2005 and its web-based student agreement for school year 2005-2006 and compared the terms on the forms to the elements specified in ESEA § 1116(e)(3)(A) and (B).

We also reviewed 21 selected student files to confirm that students receiving SES had completed agreements. SDCS’ database of students receiving SES showed that 22 schools had students receiving SES from the District provider in school year 2004-2005. From the two middle schools that were in their first year of offering SES to students, we selected the middle school with the largest number of students receiving services from the District provider. From the remaining schools (schools in their second or more year of offering SES), we selected the elementary school and the middle school with the largest number of students receiving SES from the District provider. For each of the three selected schools, we randomly selected seven students who received SES from the District provider in school year 2004-2005.

Judgmental Selection of Schools and Random Selection of Student Sample					
School Type	Number of Schools	Number of Students	Selected Schools (Judgmental Selection)	Number of Students Receiving SES in the Selected School	Number of Student Files in Sample (Random selection)
Elementary School	8	1,074	Balboa Elementary	315	7
Middle Schools	12	1,716	Wilson Middle	324	7
			Marston Middle	167	7
High School	2	115	None		
Total	22	2,905		806	21

To assess whether SDCS performed the services for which it charged ED funds, we gained an understanding of SDCS’ internal control over collection of student attendance data and payment of teachers’ hourly charges. We also reviewed support for charges for SES provided by eight teachers. SDCS’ payroll records showed payments for teachers’ hourly charges for SES, totaling \$488,840, for the school year 2004-2005. We identified the elementary school (Johnson Elementary School) and the middle school (Roosevelt Middle School) that had the highest teachers’ hourly charges for the school year and selected four teachers from each school.⁵ From

⁵ The selection was limited to non-Provision 2 schools. Provision 2 of the National School Lunch Program allows schools that offer student lunches at no charge, regardless of the students’ economic status, to certify students as eligible for free or reduced price lunches. For the purpose of identifying students as eligible for SES, school officials may deem all students in Provision 2 schools as “low income.”

the elementary school, we selected the highest paid mathematics teacher (one), reading teacher (one), and teachers tutoring both subjects (two). From the middle school, we selected the highest paid mathematic teachers (two) and reading teachers (two). For each of the teachers' highest paid month, we compared the tutoring dates and times on the teacher's timesheets to the time and dates on the student attendance reports, confirmed that students were on the District's lists of eligible students, and recalculated the amounts charged to ED funds. For our tests, we relied on reports generated from SDCS' databases for SES students' attendance and the District's payroll. Based on the above assessments and tests, we concluded that the reports were sufficiently reliable to be used in meeting the audit objective.

To determine if SDCS' services were provided in a manner consistent with the student agreements and Federal requirements and to determine if SDCS had data available for CDE to assess services, we gained an understanding of SDCS' procedures for informing parents and teachers of students' progress and collecting student assessment data. We reviewed the provider application packages that SDCS submitted to CDE and available documentation at SDCS related to the reporting of student progress, aligning of services to State content standards, and assessing the quality and effectiveness of services. Our review for determining whether SDCS performed its services consistent with student agreements and Federal requirements was limited to the following areas:

- Developed a statement of specific achievement goals for each student, how the student's progress will be measured, and a timetable for improving achievement.
- Regularly informed student's parents and teacher(s) of the student's progress.⁶
- Provided services that were in addition to the instruction provided during the school day.
- Used instructional materials that were aligned with State student academic achievement standards.⁷

Because SDCS did not develop student agreements that contained the information needed to evaluate compliance with requirements, we were unable to determine, for the 21 students in our sample, that SDCS provided the services in a manner consistent with student agreements and Federal requirements. Also, we were unable to determine whether SDCS complied with Federal requirements for informing parents and teachers of student progress at the three selected schools. Except for copies of reading progress reports provided to parents by one school, SDCS could not provide documentation to show that the student progress information was provided to parents and teachers.

We performed our fieldwork at SDCS district offices and the five district schools, which were all located in San Diego, California. An exit conference was held with officials from SDCS on January 23, 2006. We performed our audit in accordance with generally accepted government auditing standards appropriate to the scope of the audit of the review described above.

⁶ ESEA § 1116(e)(5)(A) requires that a provider must provide parents and LEAs with information on the progress of the student in increasing achievement.

⁷ ESEA § 1116(e)(5)(B) states that a provider must ensure that instruction provided and content used by the provider are consistent with the instruction provided and content used by the LEA and State, and are aligned with State student academic achievement standards. Our review was limited to confirming that SDCS had credible documentation showing that instructional materials' content was aligned with State standards.

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 will be made by the appropriate Department of Education officials.

If you have any additional comments or information that you believe may have a bearing on the resolution of this audit, you should send them directly to the following Education Department official, who will consider them before taking final Departmental action on this audit:

Henry Johnson
Assistant Secretary
Office of Elementary and Secondary Education
U.S. Department of Education
FB6, Room 3W315
400 Maryland Avenue, SW
Washington, DC 20202

Christopher Doherty
Acting Assistant Deputy Secretary
Office of Innovation and Improvement
U.S. Department of Education
FB6, Room 4W317
400 Maryland Avenue, SW
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/

Gloria Pilotti
Regional Inspector General for Audit

Attachment: CDE's Comments on the Draft Report



CALIFORNIA
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JACK O'CONNELL

State Superintendent of
Public Instruction

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March 14, 2006

Gloria Pilotti, Regional Inspector General for Audit
United States Department of Education
Office of Inspector General
501 I Street, Suite 9-200
Sacramento, CA 95814

Dear Ms. Pilotti:

This is the California Department of Education's (CDE) response to the United States Department of Education (ED) Office of Inspector General's (OIG) draft audit report entitled, "*San Diego City Schools' Compliance With Supplemental Educational Services Provisions.*" This response incorporates information from the CDE and the San Diego City Schools (SDCS). State Superintendent of Public Instruction Jack O'Connell has asked me to respond on his behalf.

SDCS is committed to implementing the supplemental educational services (SES) provision of the No Child Left Behind Act in a manner consistent with the intent of the law. Therefore, SDCS appreciates that OIG identified that SDCS performed the services for which the District expended Title I and 21st Century Community Learning Center funds, and provided SES before and after the regular school day. Additionally, OIG acknowledged that SDCS currently maintains the type of data that will be needed for future annual end-of-fiscal-year reports.

Finding No. 1 – SDCS' Individual Student Agreements Did Not Contain Required Elements And Were Not Developed for All Students Who Received Supplemental Educational Services

Recommendation 1:

Require the CDE to take steps to obtain confirmation from SDCS that individual achievement plans were developed for all students receiving SES in school year 2005-06 by January 31, 2006, and that the agreements contain the elements required by the Elementary and Secondary Education Act of 1965 (ESEA) section 1116(e)(3).

Corrective Action Plan:

Prior to the audit, SDCS recognized some deficiencies with their SES process and began establishing a web-based database to address the issues SDCS identified. The web-based database is now fully operational. SDCS implemented student learning plans in compliance with ESEA section 1116(e)(3) and item G-2 of the Supplemental Educational Services Non-Regulatory Guidance. Additionally, SDCS is following up with providers and schools that have not submitted student learning plans. In some cases, student learning plans have not been submitted because the provider is still attempting to meet with the parents. SDCS will not reimburse providers for SES services until it receives a student learning plan.

By June 30, 2006, the CDE will obtain confirmation from SDCS that student learning plans were developed for all students receiving SES services in the school year 2005-06, and that the student learning plans contain the elements required by ESEA section 1116(e)(3).

If you have any questions regarding CDE's response, please contact Kim Sakata, Audit Response Coordinator, Audits and Investigations Division, at (916) 323-2560 or by e-mail at ksakata@cde.ca.gov.

Sincerely,

/s/

GAVIN PAYNE
Chief Deputy Superintendent of Public Instruction

GP:ks