



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF INSPECTOR GENERAL
501 I STREET, SUITE 9-200
SACRAMENTO, CALIFORNIA 95814
PHONE (916) 930-2388 · FAX (916) 930-2390



February 27, 2006

Control Number
ED-OIG/A09F0022

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

Dear Superintendent O'Connell:

This **Final Audit Report**, entitled *Progressive Learning and Salinas Union High School District Compliance With ESEA's Supplemental Educational Services Provisions*, presents the results of our audit. The purpose of the audit was to determine whether, for school year 2004-2005, (1) the contract between Progressive Learning and Salinas Union High School District (SUHSD), for providing supplemental educational services, 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) Progressive Learning performed the services for which it received payment under the contract and that the services were provided in a manner consistent with the contract terms and Federal requirements; and (3) Progressive Learning maintains the data that will be used by the California Department of Education (CDE) in evaluating the quality and effectiveness of the services delivered by the provider.

BACKGROUND

Title I, Part A, of the ESEA requires local educational agencies (LEAs) to offer supplemental educational services (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 that has been identified for corrective action or restructuring.¹ SES consists of tutoring, remediation, and other educational

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.

interventions that are designed to increase the 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 SES 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 agency that administers the SES program, approves SES providers, and monitors the quality and effectiveness of services delivered by approved providers.

Established in 1998, Progressive Learning is a privately held, for-profit company based in Santa Monica, California. The provider operated SES programs in California, New York and Illinois during the 2004-2005 school year. Progressive Learning combines on-site instruction with on-line computer-based tutoring and off-site coaching/mentoring.² Progressive Learning provides mathematics and English language arts tutoring after school in school computer labs, with a maximum student-to-instructor ratio of 15 to 1. The provider served 67 SUHSD students in school year 2004-2005.

SUHSD had two schools in school improvement status that were required to offer SES in school year 2004-2005. The District reported that about 970 students at these two schools were eligible for SES last year, while about 560 students actually enrolled. Progressive Learning was one of three SES providers that served the District last year. Of its total Title I allocation of about \$3.6 million in school year 2004-2005, SUHSD budgeted about \$535,000 to its SES program.

AUDIT RESULTS

We found that the SES contract between Progressive Learning and SUHSD included all elements required by the ESEA and Federal regulations. However, SUHSD did not develop individual student learning plans for students served by Progressive Learning in school year 2004-2005, as required by the ESEA Section 1116(e)(3)(A), Federal regulations, and its contract with Progressive Learning. We found that Progressive Learning provided the SES to SUHSD students for which it received payment. We also confirmed that the provider's services were delivered to students after the regular school day, that the provider prepared student progress reports, and that the provider's curriculum was aligned with the State's academic achievement standards.

The California State Board of Education adopted regulations in January 2005 that 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 individual students. 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

² The off-site coaching/mentoring is accomplished via e-mail communications between each student and his/her assigned academic coach.

demonstrated by the student assessment scores, for two consecutive years. We concluded that Progressive Learning was capable of providing the data that will be required by CDE in 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 – SUHSD Did Not Prepare Individual Supplemental Services Agreements

Even though SUHSD's professional services contract with Progressive Learning states that the District is responsible for developing an Individual Supplemental Services Agreement (ISSA) for each student receiving SES, the District did not prepare such agreements for students served by Progressive Learning in school year 2004-2005.³ Section 1116(e)(3) of the ESEA states that the LEA is responsible for entering into an agreement with an approved SES provider selected by the parents of an eligible student, and also specifies certain elements that must be addressed in these agreements. One such element, cited in ESEA Section 1116(e)(3)(A), required SUHSD "to develop, in consultation with the 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." SUHSD's contract with Progressive Learning contained the following specific language to comply with the above ESEA element:

WHEREAS, Section 6316(e)(3) of the No Child Left Behind Act mandates that a school district's contract with a provider must include the following:⁴

Requires the LEA to develop, in consultation with parents (and the provider chosen by parents) a statement of specific achievement goals for the student, how the student's progress will be measured, and a timetable for improving achievement, in the case of a student with disabilities, is consistent with the student's Individualized Education Program;

THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISE CONTAINED HEREIN, it is agreed between the parties as follows:

An Individual Supplementary Services Agreement (ISSA) shall be developed by LEA in consultation with parents/guardians and PROVIDER for each LEA eligible student whose parent/guardian elects to receive supplementary services from PROVIDER.

³ The Individual Supplemental Services Agreement is SUHSD's form of the individual student-learning plan that an LEA shall prepare for each student.

⁴ Section 6316(e)(3) cited in the SES contract is the United States Code, Title 20 codification of Section 1116(e)(3) of the No Child Left Behind Act.

The ISSA shall include statements of specific achievement goals for the student, how the student's progress will be measured, and a timetable for achievement that, in the case of a student with disabilities, is consistent with the student's individualized education program.

SUHSD developed an ISSA form that was intended to formalize the development of individual student learning plans. The form contained sections that would (1) identify the student for which the ISSA pertains, (2) identify any special services to be aware of, such as English language learner or special education, (3) record the date the consultation meeting was held, (4) address all of the elements required by the ESEA Section 1116(e)(3) and (5) document agreement with the ISSA among the parent(s), SES provider and the District.

SUHSD did not prepare ISSAs for students served by Progressive Learning because the District's SES Coordinators at the two schools required to provide SES were not aware that ISSAs were required. Because SUHSD did not prepare ISSAs, there is no assurance that SES provided to SUHSD students were tailored to the specific academic needs of each student, and in the case of a student with disabilities, were consistent with the student's Individualized Education Program.

On its own initiative, Progressive Learning prepared its own version of the individual student learning plan that included a statement of individual student needs, described how the student's progress would be measured, and specified a timetable for improving achievement. While Progressive Learning did prepare student plans, neither the District nor the parents were involved in the process and there is no assurance that other SES providers serving the District took the initiative to develop student plans for the students they served.

Recommendation

We recommend that the Assistant Secretary for Elementary and Secondary Education, in collaboration with the Assistant Deputy Secretary for Innovation and Improvement, require CDE to instruct SUHSD to prepare individual student learning plans consistent with the requirements specified in Section 1116(e)(3) of the ESEA.

CDE Comments

In its comments on the draft report, CDE stated it would advise the SUHSD in writing of the district's responsibility to develop individual student learning plans in consultation with the state-approved provider and with the parent/guardian of each student receiving SES. Additionally, CDE will continue to provide regional and statewide technical assistance at conferences and workshops on the LEAs' responsibility in developing individual student learning plans. CDE stated that the SUHSD Central office has established procedures to follow up with the school sites to assure full implementation of individual student learning plans in accordance with ESEA Section 1116(e)(3)(A).

OTHER MATTER

During our review, we found that SUHSD did not offer SES to all eligible students in school year 2004-2005. Under 34 C.F.R. § 200.45(b) and (c), students from low-income families attending Title I schools in the second year of improvement, corrective action or restructuring status are eligible for SES. However, the district inappropriately limited access to SES by restricting eligibility to low-achieving students that were classified as low-income. The District's initial parent notification letter stated, "If your student is on the Free/Reduced lunch program and is a low-achiever, your student may qualify for these services." Other materials distributed to SUHSD parents at the beginning of the school year also contained similar eligibility restrictions.

Title 34 C.F.R. § 200.45(d) states that "[i]f the amount of funds available for supplemental educational services is insufficient to provide services to each student whose parents request these services, the LEA must give priority to the lowest-achieving students." SUHSD restricted eligibility for SES based on low-achievement status, without first determining whether the demand for services, as measured by the number of requests for SES from families meeting the income criteria alone, would exceed available funding. As a result, the District's list of eligible students did not include students from low-income families who scored above the basic level and many students were denied access to after-school tutoring even though the District had ample funds available for the services. For the 2004-2005 school year, SUHSD budgeted about \$535,000 for SES but only spent about \$149,000, or 28 percent, on SES during the year.

In its comments on the draft report, CDE stated it will advise SUHSD that ESEA § 1116(c)(12)(A) defines eligible students as all students from low-income families that attend Title I-funded schools in the second or more years of program improvement. CDE stated that one of the two SUHSD schools in program improvement was no longer in program improvement status and that the District had ensured CDE that no student had been denied access to after-school tutoring.

OBJECTIVES, SCOPE, AND METHODOLOGY

The objectives of the audit were to determine whether (1) SUHSD's contract with Progressive Learning for providing SES contained the elements specified in the ESEA Section 1116(e)(3) and applicable Federal regulations; (2) Progressive Learning performed the services for which it received payment under the contract and that the services were provided in a manner consistent with the contract terms and Federal requirements; and (3) Progressive Learning maintains the data that will be used by CDE to evaluate the quality and effectiveness of the services delivered by the provider. Our audit covered school year 2004-2005.

To achieve our objectives, we gained an understanding of the ESEA provisions, Federal regulations, ED guidance, and California regulations relevant to SES. We also interviewed officials and staff at Progressive Learning and SUHSD.

To determine whether the subject SES contract included all necessary elements, we obtained a copy of SUHSD's contract with Progressive Learning for school year 2004-2005 and compared the contract's terms to the elements specified in ESEA Section 1116(e)(3), Federal regulations at 34 C.F.R. § 200.46(b)(2) and 34 C.F.R. § 200.46(b)(3), and ED's Supplemental Educational Services Non-Regulatory Guidance, dated August 22, 2003.

To determine whether Progressive Learning performed the services for which it received payment, we gained an understanding of the provider's internal control over collecting student attendance data used to prepare invoices and the provider's invoicing process. Progressive Learning's records showed that six invoices, totaling \$28,410, were submitted for school year 2004-2005. For each invoice, we reviewed student attendance data, determined if students served by the provider were SES eligible, and recalculated the invoice amounts.

To determine if Progressive Learning's services were provided in a manner consistent with the contract terms and Federal requirements, we gained an understanding of the provider's procedures for informing parents and teachers of students' progress. We then compared student attendance data to actual progress reports prepared and delivered by the provider to determine if students received the appropriate progress reports. We also confirmed that Progressive Learning provided SES after the school day had ended. Finally, we reviewed the provider application packages (school years 2004-2005 and 2005-2006) that Progressive Learning submitted to CDE and available documentation related to the alignment of its tutoring curriculum with State academic achievement standards.⁵ Our review of consistency with contract terms and federal requirements was limited to those areas discussed above.

To determine if Progressive Learning maintains the data that will be needed by CDE to evaluate the quality and effectiveness of its services, we gained an understanding of the types of data it collects. We also reviewed documentation published by the provider's tutoring software vendor to determine if the software application has adequate reporting capabilities.

Our review of SUHSD's internal control was limited to the procedures used to contract for SES, determine SES eligibility, prepare individual student learning plans, and process provider invoices.

We performed our fieldwork at Progressive Learning's corporate office in Santa Monica, California and the SUHSD's administrative offices in Salinas, California. An exit conference was held with Progressive Learning's management team on November 28, 2005. An exit conference was held with SUHSD officials on November 29, 2005. We performed our audit in accordance with generally accepted government auditing standards appropriate to the scope of the review described above.

⁵ ESEA Section 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 Progressive Learning's instructional materials were aligned with State student academic achievement 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
DEPARTMENT OF
EDUCATION

1430 N STREET
SACRAMENTO, CA
95814-5901

JACK O'CONNELL

State Superintendent of
Public Instruction

PHONE: (916) 319-0800

February 3, 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, "*Progressive Learning and Salinas Union High School District's Compliance With Elementary and Secondary Education Act of 1965's Supplemental Educational Services Provisions.*" This response incorporates information from the CDE, Salinas Union High School District (SUHSD), and Progressive Learning. State Superintendent of Public Instruction Jack O'Connell has asked me to respond on his behalf.

Finding No. 1 – SUHSD Did Not Prepare Individual Supplemental Services Agreements

Recommendation 1:

Require CDE to instruct SUHSD to prepare individual student learning plans consistent with the requirements specified in Section 1116(e)(3) of the Elementary and Secondary Education Act of 1965 (ESEA).

Corrective Action Plan:

The CDE will provide written communication to the district advising it of its responsibility to develop individual student learning plans in consultation with the state approved provider and with the parent/guardian of each student receiving supplement educational services (SES).

Additionally, the CDE will continue to provide regional and statewide technical assistance via conferences and workshops in 2006 as was done in September and November 2005 regarding the local educational agency's (LEA) responsibility in developing individual student plans.

The SUHSD Central office developed the individual student learning plans and the individual supplementary services agreement for students; however, it was not fully implemented at the sites. The SUHSD Central office established procedures to follow up with the sites to assure full implementation according to ESEA Section 1116(e)(3)(A).

Other Matters:

1. SUHSD did not offer SES to all eligible students in the school year 2004-05.

Corrective Action Plan:

To ensure district practices comply with the law, the CDE will advise the district that No Child Left Behind section 1116(c)(12)(A) defines eligible students as all students from low income families that attend Title I funded schools in the second year or beyond of Program Improvement.

The SUHSD only had two schools in program improvement with one of the two just exiting, and ensures no student was denied access to after school tutoring.

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 .

Sincerely,

/s/

GAVIN PAYNE
Chief Deputy Superintendent of Public Instruction

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