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FINAL MANAGEMENT INFORMATION REPORT

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Office of Elementary and Secondary Education

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Office of Innovation and Improvement

From: Helen Lew /s/
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Subject: Implementation of Supplemental Educational Services in California
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The purpose of this **Final Management Information Report** is to provide the U.S. Department of Education's (Department) Office of Elementary and Secondary Education and Office of Innovation and Improvement with information that may be beneficial in future oversight of the Supplemental Educational Services (SES) provisions of Title I, Part A of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001. Our intent was to provide insight to the Department on selected issues identified during audits of five SES providers serving local educational agencies in California and offer suggestions for enhancing the Department's Supplemental Educational Services Non-Regulatory Guidance published in June 2005. While the suggestions in this report are directed at the Department, the OIG recognizes that the state educational agencies (SEA) also play an important role in ensuring that local educational agencies (LEA) comply with the SES provisions, through SEA monitoring activities. SEAs should also take an active leadership role in guiding LEAs on proper implementation of SES by providing timely and meaningful technical assistance. In its comments to a draft of this report, the Department generally concurred with the information presented in this Final Management Information Report. The Department's response is attached at the end of this report.

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BACKGROUND

Title I, Part A, of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the No Child Left Behind Act of 2001, requires local educational agencies (LEAs) to offer SES to students from low-income families attending a Title I school in its second year of school improvement, or that has been identified for corrective action or restructuring.¹ SES consists of tutoring, remediation, and other educational interventions designed to increase students' academic achievement, and are in addition to instruction provided during the school day.

State-approved SES providers, selected by the individual student's parents, provide SES to eligible students under agreements that the LEAs are required to develop. These agreements, which should be developed in consultation with the parents and the provider, are required to include a statement of specific achievement goals, identify how the student's progress will be measured, and set a timetable for improving the student's achievement. The state educational agency (SEA) is responsible for evaluating potential providers, maintaining a current list of approved providers, and monitoring all providers delivering services in the state.

The OIG has conducted five SES provider audits in California. We selected a variety of provider types (for-profit, non-profit, LEA) and delivery modes (individual, small group, and online) for these audits to identify and understand specific issues associated with each type of provider. All providers audited were approved providers in California serving students attending schools in California. Table 1 identifies the providers and LEAs we reviewed and provides the respective OIG Audit Control Number (ACN) for your reference. The reports are available on the OIG's Webpage at <http://www.ed.gov/about/offices/list/oig/areports.html> under the heading Office of Elementary and Secondary Education.

Table 1: Providers Audited and the LEA Associated with Each Audit		
ACN	Provider	LEA
A09F0009	ARC Associates (ARC)	Oakland Unified School District (OUSD)
A09F0012	Learning Excitement Inc. (LEI)	Stockton Unified School District (SUSD)
A09F0013	Professional Tutors of America (PTA)	Los Angeles Unified School District (LAUSD)
A09F0019	San Diego City Schools (SDCS)	Same as provider
A09F0022	Progressive Learning (PL)	Salinas Union High School District (SUHSD)

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.

Table 2 presents attributes for each provider’s SES program. All providers delivered SES outside of the regular school day—usually after school. Of those providers that delivered SES in a group setting, the maximum number of students served by each tutor ranged from 4 to 1 at the non-profit provider (ARC) to 15 to 1 at the online provider (PL). Except for PTA, the providers had regularly scheduled days for delivering SES and a fixed duration for each tutoring session. For example, ARC’s tutoring sessions were scheduled four days per week at each OUSD school site and lasted for two hours each day. PL provided one-hour sessions twice a week at SUHSD schools. In contrast, PTA offered more flexibility in the tutoring schedule and number of hours of SES available per week. While the actual number of hours a student received SES per week varied because the parents determined the tutoring schedule, PTA indicated that it expected to deliver two to three hours of tutoring per week with sessions lasting one to two hours. PTA was able to offer more flexibility than other providers as it was the only provider we reviewed that delivered individual tutoring in students’ homes.

Provider	Provider Type	Delivery Mode	Student-Teacher Ratio (a)	Delivery Location
ARC	Non-profit	Group	4 to 1	School
LEI	For-profit	Individual or Group	8 to 1	School
PTA	For-profit	Individual	1 to 1	Home
SDCS	District	Group	10 to 1	School
PL	For-profit	Group (online)	15 to 1	School

(a) The student/teacher ratio presented in the table is the maximum ratio the provider would allow.

OBSERVATIONS AND SUGGESTIONS

This Management Information Report provides information relevant to SEA and LEA implementation of the SES provisions of the ESEA and specific information on the SES providers we reviewed. The report contains four sections as follows: (1) LEA Implementation of SES Prioritization, (2) LEA Preparation of Student Learning Plans, (3) Provider Payments for SES, and (4) SES Provider Effectiveness. Each section summarizes information obtained during our audits, identifies OIG observations, and provides suggestions, when appropriate, for the Department to consider for future enhancements to its SES guidance.

Section 1: LEA Implementation of SES Prioritization

This section discusses our findings related to LEA prioritization of SES and offers a suggestion for enhancing the Department’s guidance.

The regulations at 34 C.F.R. § 200.45(b) and (c) provide that students from low-income families attending Title I schools in the second year of improvement, corrective action, or restructuring status are eligible for SES. The regulation at 34 C.F.R. § 200.45(d) states that “if 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.”

Three of five LEAs prioritized SES during the period covered by our audits. However, we found that none of the three LEAs implemented prioritization properly. In each case, the LEA did not offer SES to all eligible students and the LEA had significant amounts of unexpended SES funding remaining at the end of the school year, which could have been used to provide SES to additional students.

- OUSD inappropriately prioritized by first applying academic criteria to determine eligibility for SES and then applying income criteria to make a final eligibility determination. OUSD's list of eligible students did not include students from low-income families who scored above the basic level.²
- SUSD determined a student's eligibility for SES based solely on a student's performance on California's standardized tests. The District did not identify SES-eligible, low-income students that performed at the proficient level or above on standardized tests and identified low-achieving students that were not low-income as eligible for SES.
- SUHSD inappropriately limited access to SES by restricting eligibility to low-achieving students that were classified as low-income 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. SUHSD's list of eligible students did not include students from low-income families who scored above the basic level.

Similar problems have been noted in other OIG reviews of SES implementation. Specifically, two of six School Choice/SES audits performed recently noted instances where LEAs misinterpreted the SES eligibility provisions.³

- Washoe County School District in Nevada did not consider all eligible students when it requested approval from the Nevada Department of Education to reduce its Title I SES set-aside for school year 2004-2005. The District only included the "lowest-achieving" Free and Reduced Price Lunch (FRPL) eligible students when estimating the funds needed to provide SES at the two schools. Ultimately, the two schools made adequate yearly progress (AYP)⁴ and were not required to offer SES in school year 2004-2005, but had the schools been required to provide SES, the amount of funding set-aside would not have been sufficient to provide SES to all eligible students.

² California has five classifications for student achievement—advanced, proficient, basic, below basic, and far below basic. Students scoring at basic or below on California standardized tests are identified as not meeting state academic content standards.

³ The OIG also performed audits of SEA and LEA implementation of ESEA's School Choice and SES provisions in the states of Illinois (ACN A07F0003), Michigan (ACN A05F0007), Indiana (ACN A05E0014), Delaware (ACN A03F0002), New Jersey (ACN A02F0006) and Nevada (ACN A09F0002). These reports are also available at the Department's OIG Webpage, under the heading Office of Elementary and Secondary Education.

⁴ LEAs must annually review the progress of each Title I school to determine whether the school is making AYP. AYP is the measure of the extent to which students in a school, taken as a whole and in certain groups within the school, demonstrate proficiency in at least reading/language arts and mathematics. It also measures the progress of schools under other academic indicators, such as the graduation or school attendance rate. Each State has developed its own definition of AYP, and these definitions have been approved by the U.S. Department of Education.

- Several LEAs in Michigan also denied access to eligible students. For example, one LEA denied SES to low-income students because other schools provided SES to low-achieving students who were not low-income or were enrolled at a school that was not required to offer SES. Another LEA denied SES to low-income students who were at or above a certain academic achievement level so it would have SES funds available for low-achieving students who applied for SES later in the school year. LEAs should not deny SES to eligible students in anticipation of future requests from lower-achieving students.

The Department first issued SES guidance in August 2003 and issued revised guidance in June 2005. Question A-5 of the Department's guidance reiterated the applicable ESEA provision and regulatory language on prioritization and instructed LEAs to use objective criteria to identify the lowest achieving students if prioritization was necessary.⁵ Question F-3 of the revised Department guidance contains the following additional instructions:

An LEA should not assume, before it contacts parents, that it will have limited resources for supplemental educational services. Rather, the LEA should notify all eligible families of their children's eligibility. Only if more families request supplemental educational services than there are funds available to serve should the LEA set priorities or criteria to determine which eligible students can get services. The LEA should review the information available about the performance of eligible students and apply those priorities or criteria in a manner that is careful, fair, and objective.

The revised Department guidance in Question F-3 makes it clear that LEAs should determine the actual demand for SES before determining whether prioritization is necessary.

OIG Suggestions for Enhancing the Department's Guidance on SES Prioritization

The audit work performed by OIG indicates that there has been confusion at the LEA level surrounding the SES prioritization provisions. The Department should continue to monitor implementation of the prioritization provisions of the ESEA and be prepared to enhance its guidance further if LEAs continue to misinterpret the applicable requirements. If further enhancements are warranted, we suggest that the Department's guidance include a step-by-step process that LEAs can follow to ensure consistent determinations on whether an LEA should prioritize. Illustrative examples that show different scenarios in which LEAs either should or should not prioritize SES might also help guide LEAs through this important process.

Section 2: LEA Preparation of Student Learning Plans

This section discusses our findings related to the preparation of Student Learning Plans (SLP) and offers a suggestion for enhancing the Department's guidance.

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

⁵ Question A-5 of the guidance was not modified when the revised guidance was issued in June 2005.

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 are also described in the response to Question G-2 in the revised Department guidance.

Our reviews of four LEAs' contracts with SES providers and one LEA's delivery of SES found that four of the five LEAs either did not develop SLPs or omitted some of the elements required by ESEA § 1116(e)(3)(A) and (B). Officials from two of the LEAs indicated that they lacked the time and resources to develop a statement of goals, description of how progress will be measured, and a timetable for improvement for each student.⁶

- Our review of OUSD's contracts with ARC for the 2003-2004 and 2004-2005 school years found that the contracts did not include most of the elements required by the applicable ESEA provisions and Federal regulations. As a result, SLPs were not developed for any students that received SES from ARC. OUSD officials acknowledged that they did not prepare SLPs because of resource constraints.
- While the contracts between LEI and SUSD provided for the development of individual SLPs, they were not prepared for most students. SUSD developed a SLP template that contained areas to record the information required by the contract and ESEA § 1116(e)(3) and an area for LEI staff and parent signatures. For school year 2003-2004, the District SES Coordinator intended to use the template to prepare plans for every student receiving SES but did not have enough time to meet with all parents and providers to complete the SLPs. For school year 2004-2005, the SES Coordinator stated that the District decided not to develop individual student plans due to the increasing demand for SES and the limited availability of District staff to prepare the plans. Instead, SUSD specified in the contract that LEI and SUSD would be jointly responsible for development of SLPs. However, no SLPs were prepared for SUSD students receiving SES that year.

LAUSD was the only LEA whose SLPs met all the requirements of the ESEA. LAUSD required providers serving the District to prepare the SLPs with the student's parents, who also signed the SLPs. The District's standard contract for SES providers incorporated individual SLPs containing a statement of specific achievement goals for each student, how the student's progress will be measured, and a timetable for improving achievement. The contract also incorporated an individual service agreement that described how PTA would deliver the services. LAUSD reviewed the individual SLPs and either accepted each as submitted or required PTA to provide additional information. LAUSD did not pay PTA for SES unless a SLP was completed and approved. LAUSD's SES Program Specialist informed us that the District delegated the preparation of SLPs to SES providers due to District resource constraints.

⁶ The other two providers cited other reasons for why the SLP requirements were not met. SUHSD did not prepare student agreements for students at the schools that were reviewed because the SES Coordinators were unaware that the agreements were required. SDCS' policy did not require schools to prepare SLPs for students with disabilities receiving SES who already had individualized education programs, and some schools failed to prepare student agreements for other students receiving SES.

Beginning with school year 2005-2006, SDCS has also decided to have SES providers prepare SLPs because of resource constraints. The District is implementing a web-based system to manage SES provided by the District and other SES providers, including the preparation of SLPs conforming to the Federal requirements. The system includes an individual SLP to be completed for each student receiving SES that contains the elements identified in ESEA § 1116(e)(3)(A) and (B). SDCS will review all SLPs prior to paying non-district providers or allowing Federal funds to pay for District-provided SES.

OIG Suggestion for Enhancing the Department's Guidance Related to SLPs

The Department should consider enhancing its guidance to specify that LEAs have the option of contracting with SES providers to prepare individual SLPs, in consultation with the LEA and the student's parents, while continuing to hold the LEA responsible for ensuring that the SLPs include all of the elements contained in ESEA § 1116(e)(3)(A) and (B). Contracting for SLP preparation would alleviate some constraints on LEAs' time and resources and still ensure that 1) SES were tailored to the academic needs of each student, and in the case of a student with disabilities, consistent with the students individualized education program, and 2) parents and the student's regular teachers are advised of the progress made in meeting the student's academic goals.

Section 3: Provider Payments for SES

This section discusses our observations on LEA payments to SES providers and provides suggestions for enhancing the Department's guidance.

There are no statements in ESEA or Federal regulations governing fiscal matters related to SES providers such as how the provider bills for services, the amount a provider can charge for its services, or whether a provider can be paid when a student does not attend tutoring sessions. ESEA § 1116(e)(3)(D) only requires that the LEA/provider agreements "contain provisions with respect to the making of payments to the provider by the local educational agency." However, the Department's guidance allows SEAs to specify, at their discretion, certain program design parameters including establishing acceptable ranges for providers' billing rates and student-teacher ratios. Question B-3 of the guidance states:

[A]s part of its process to approve providers and ensure that supplemental educational services are of the highest quality, an SEA may establish certain program design criteria for providers to meet. An SEA could, for example, set a range for acceptable student/tutor ratios. If establishing criteria for student/tutor ratios, an SEA should define acceptable ranges (e.g. 1-10:1 ratio) as opposed to absolute values (e.g. 6:1) in order to not unduly restrict providers' service delivery options.

Question B-4 includes the following guidance:

An SEA may, if it so chooses, define acceptable ranges for program design parameters that influence the hourly rates providers charge throughout the State, in order to prohibit grossly exorbitant charges or unrealistically low rates. An SEA should avoid arbitrarily setting uniform pricing or hourly rates and, if defining acceptable program design parameters for providers, should consider the following factors:

- The pupil/tutor ratio;
- The variation in per-pupil allocations among LEAs in the State;
- The number of instructional hours;
- The qualifications (and therefore cost) of the tutoring staff;
- The cost of instructional materials and equipment (books, computers, manipulatives, etc.);
- The amount of rent charged by the LEA and other landlords (including variations throughout a State);
- The LEAs' payment policies regarding attendance; and
- The variation in the cost of doing business among LEAs in the State.

An SEA should avoid setting uniform rates within the State, because this could ultimately limit parents' choices of providers or reduce services provided to students. Uniform hourly rates do not accommodate local variations in charges and payment schedules, and may result in rates that underpay providers in more expensive markets and overpay them in less expensive ones. In the case of underpayment, this may lead to providers being unable or unwilling to service the market, which will then limit parental choice.

The Department's guidance also states that an LEA may impose reasonable administrative and operational requirements through its agreements with SES providers. Question G-4 of the guidance states:

[A]n LEA may include, in its contracts with providers, administrative provisions dealing with issues such as the fees charged to providers for the use of school facilities, the frequency of payments to providers, and the issue of whether payments will be based in part on student attendance.

Observations on LEA Payment Policies

All five of the LEAs associated with the provider audits only paid providers for students that actually attended tutoring sessions. However, an "actual attendance" payment policy increases the business risk of SES providers because they hire and pay tutors based on anticipated demand that may ultimately be significantly lower than expected because of low student attendance.

Low student attendance was a significant issue for PL in serving SUHSD in 2004-2005. Of the 88 students that enrolled with the provider, 20 students (23 percent) never attended a tutoring session and 24 other students (27 percent) attended five or fewer sessions. Thus, half of the students that PL expected to serve either never attended or had very low attendance. On average,

SUHSD students enrolled with PL only attended 11 out of 37 (30 percent) of the sessions offered in 2004-2005. Only 2 of 88 students attended all 37 sessions even though the provider offered an incentive for regular attendance.⁷ Poor attendance partially explains the comparatively low revenue generated by PL, as shown in Table 3.

The increased business risk of SES providers inherent in an “actual attendance” payment policy could cause a reduction in the number of providers willing to serve a particular LEA because the number of students enrolled with the provider, coupled with the provider’s expectations on student attendance (and thus revenue), may not justify serving an LEA. Even though an LEA could choose to pay a provider based in whole or in part on enrollment (as opposed to actual attendance) under the Department’s guidance, none of the reviews we conducted involved a LEA/provider arrangement in which enrollment, rather than attendance, was the basis for payment.

Observations on Provider Revenue

Four of the five providers we reviewed charged for their services on a per-hour and per-student basis. These providers billed LEAs for each tutoring session at a specified hourly rate for each student attending a session. For example, if PL taught a one-hour session with 15 students in attendance, it would have billed the LEA for \$450 for that session. This amount is the result of multiplying the provider’s hourly rate per student of \$30 by 15 students in attendance.

Multiple factors affected provider revenue/LEA costs. The revenue generated by SES providers we reviewed (and thus the cost incurred by the LEAs) ranged from about \$28,000 to over \$1.1 million in school year 2004-2005. Factors such as the hourly rate, a provider’s individual billing method, the number of sessions provided, and student attendance affected the providers’ ultimate 2004-2005 revenue. Table 3 provides the school year 2004-2005 revenue received by each provider from the respective LEA.

Rates varied by type of entity. As shown in Table 3, the for-profit entities we reviewed charged the highest rates for tutoring services, ranging from \$30 per hour to \$43 per hour, per student in 2004-2005. In contrast, the non-profit provider only charged \$16.50 per hour, per student. However, ARC also charged OUSD an additional 45 minutes of setup time per session, per student, which effectively increased its direct rate to about \$23 per hour, and billed separately for what ARC characterized as start-up costs. (Unique aspects of ARC billings that increased OUSD costs beyond the actual hourly rates charged are discussed in more detail on page 11.) The LEA provider was the lowest cost SES provider by a wide margin. Rather than charging for SES tutoring per hour and per student, SDCS only charged for those hours its teachers served as SES tutors at the teachers’ normal hourly rate of pay. Thus, the charge to Federal funds was a teacher’s hourly rate of pay for the number of hours of tutoring provided, regardless of how many students attended the session.

⁷ Students received points for attendance and completion of tutoring modules. Students attending at least 30 hours of tutoring were rewarded with a retail store gift card not to exceed \$25, depending on the number of points earned.

Provider	Type	2004-2005 Hourly Rate per Student	Amount Paid
ARC	Non-profit	\$16.50	\$598,958
LEI	For-profit	39.00	\$253,370
PTA	For-profit	\$43.00	\$1,150,132
SDCS	District	Variable (a)	\$744,227
PL	For-profit	\$30.00	\$28,410

(a) SDCS's hourly rate was based on the teacher's rate of pay and was not charged per student. The billing rate varied from the base teacher salary of \$34.76 per hour to a maximum of \$45.73 per hour at the schools included in our audit.

Provider rates affected hours provided. The rates charged by SES providers directly affected the maximum number of hours of tutoring each student could have received in 2004-2005. As shown in Table 4, the maximum tutoring hours available to students served by for-profit providers were comparable. In contrast, students served by ARC could have received significantly more hours of tutoring than those served by the for-profit providers, even after adjusting ARC's hourly rate to reflect the non-instructional time added to its billings.⁸ Because SDCS did not charge per-hour and per-student for SES, in effect, the maximum number of hours of tutoring an individual student could have received was only constrained by the number of sessions and hours the provider offered during the school year.

Provider	Hourly Rate	Billing Method	2004-2005 SES Per Pupil Allocation	Maximum Per Student Hours of Tutoring
ARC	\$22.69	Hourly per student (a)	\$1,624.59	71
LEI	\$39.00	Hourly per student	\$1,379.96	35
PTA	\$43.00	Hourly per student	\$1,580.63	36
SDCS	Variable	Hourly per tutor (b)	\$1,462.74	(c)
PL	\$30.00	Hourly per student	\$1,237.04	41

(a) ARC's maximum per student tutoring hours reflects the cost of the 45 minutes the provider billed to OUSD for each student served in each session. The rate shown above does not include amounts ARC charged for start-up costs that are itemized in Table 6.

(b) Unlike the other providers we audited, the SDCS provider charged for SES based on the salary expense (including fringe benefits) for each individual District teacher serving as an SES tutor. Thus, this district provider billed the same amount for each tutoring session regardless if the tutor served one student or 10 students in a particular session.

(c) SDCS' maximum per student tutoring hours cannot be calculated because the provider does not charge on a per-hour, per-student basis.

For-profit group providers' revenue was significantly higher. The cost of one hour of tutoring, as well as the amount a "typical" tutoring session would cost an LEA varied significantly because of (1) differences in the rates charged, (2) the maximum student/teacher ratio, and (3) how providers bill for services. Comparison of the data in Table 5 shows that the two

⁸ The higher number of hours available to ARC students is also due in part to the higher per pupil allocation in OUSD.

for-profit providers (LEI and PL) that offered their services in a group setting were able to produce a much greater amount of revenue per tutoring hour than the for-profit provider offering individual tutoring or the non-profit and LEA providers that charged much lower rates for SES. Likewise, these same two for-profit providers could generate much greater revenue per tutoring session than the other providers.

Table 5: Providers' Maximum Hourly and Tutoring Session Revenue

Provider	Hourly Rate	Maximum Students per Teacher	Maximum Session Duration (hours)	Maximum Hourly Revenue	Maximum Session Revenue
ARC	\$22.69	4	2.0	\$90.76	\$181.52
LEI	\$39.00	8	1.5	\$312.00	\$468.00
PTA	\$43.00	1	2.0	\$43.00	\$86.00
SDCS	Variable	10	1.5	\$45.73	\$68.60
PL	\$30.00	15	1.0	\$450.00	\$450.00

Substantial differences in the revenue providers can generate per hour, based on whether they provide SES on an individual or group basis, may call into question the appropriateness of group providers' rates when the student/teacher ratio exceeds a certain level. All providers incur similar types of costs to provide SES including wages and benefits, instructional materials, tutor training, and overhead items such as background checks.⁹ However, the direct labor costs (specific payroll costs attributed to each tutor) for an individual tutoring session remain fairly constant whether tutoring is provided to an individual or a group. As Table 5 shows, PL could generate \$450 per hour in a group session, which is more than 10 times the hourly revenue PTA could generate for one tutor hour of expenses incurred. In other words, both providers incur a similar cost to provide one hour of tutoring, yet the group provider's revenue is greater in relation to its costs.

Unique Billing Strategies at ARC

Four of the five providers we reviewed factored all costs into the hourly rate billed for SES. The other provider, ARC, billed separately for what it characterized as start-up costs. Table 6 provides specific details on the amounts ARC billed OUSD for start-up costs in the first three years it provided SES and shows the amount OUSD had paid at the time of our review.

⁹ SES providers may also incur costs for tutoring facilities, such as rent paid to an LEA to use its classrooms, although none of the four non-LEA providers we reviewed that used LEA facilities were required to pay for space.

Description	2002-2003		2003-2004		2004-2005	
	Billed	Paid	Billed	Paid	Billed	Paid
Program Planning (managers' salaries)	\$13,500	\$13,500	\$17,463	\$17,463	\$13,900	None (a)
Curriculum & Related Materials	\$9,099	\$9,099	\$40,320	\$40,320	\$38,017	
Fingerprinting & Background	\$608	\$608	\$3,589	\$3,589	\$1,680	
Training	---	---	\$8,265	\$8,265	\$11,798	
Indirect Costs	\$1,857	\$1,857	---	---	---	
Total	\$25,065	\$25,065	\$69,636	\$69,636	\$65,395	

(a) At the time of our review, OUSD had declined to pay any startup costs claimed by ARC for 2004-2005.

We also discovered that ARC was billing OUSD for what we describe as “non-instructional” time, without the knowledge of OUSD personnel. ARC management indicated this time was for tutor setup/cleanup before and after a tutoring session. The non-instructional time was billed per-session and per-student, at the same hourly rate that ARC billed for direct tutoring hours. In 2003-2004, ARC billed OUSD for 30 minutes of non-instructional time for each student served during a session. If ARC served students at its maximum student/teacher ratio of 4:1 during a session lasting two hours, it billed OUSD for two hours of non-instructional time for every eight hours of direct tutoring. This represented a 25 percent surcharge on top of the tutoring hours provided and accounted for more than \$118,000 (20 percent) of the \$592,000 of tutoring revenue (excluding startup costs) that ARC received from OUSD. In 2004-2005, ARC increased the non-instructional billing time to 45 minutes per student, per session. This increased its non-instructional hours billed per session from two to three hours when four students attended a two-hour session. This resulted in the surcharge increasing to 38 percent of the direct hours billed per session and increased ARC’s non-instructional revenue to 27 percent of the amount received from OUSD.¹⁰

OIG Suggestions for Enhancing Guidance on SES Provider Payments

Questions B-3 and B-4 of the Department’s guidance define the authority SEAs have in establishing guidelines on specific program design parameters such as the rates providers charge and student/teacher ratios. Question G-4 of the guidance informed LEAs that they may impose reasonable administrative and operational requirements through their agreements with SES providers. We believe the Department could provide more specific instruction to SEAs and LEAs on issues related to provider payments by considering the following actions and suggested enhancements to its guidance:

¹⁰ We only reviewed two months of billings in 2004-2005 because our audit of ARC was initiated in April 2005 and ARC’s 2004-2005 SES program had only been operating since the end of January 2005. During this period, ARC was paid more than \$51,000 for non-instructional time out of total payments from OUSD of about \$187,000.

- Assess the impact that provider payments based solely on “actual attendance” have had on the number of SES providers willing to serve an LEA. If the impact is significant, the Department should consider providing additional guidance regarding LEA discretion over payment methods that could reduce a provider’s business risk due to low student attendance and still provide for the effective use of Federal funds. Informing LEAs of flexibility that is available to retain and/or attract more providers would help to meet an important program goal—increasing the provider options available to parents. It is also possible that providers would be willing to operate with lower student/teacher ratios, which could be beneficial to students, if payments were not based entirely on actual student attendance.
- Clarify that SEAs are also authorized to establish separate hourly rate ranges for providers depending on whether they serve students individually or in a group. This clarification would help SEAs to prevent charges for SES that would be considered unreasonable.
- Identify “promising practices” related to contractual relationships between LEAs and SES providers. The Department’s guidance should encourage LEAs to develop provider agreements that fully disclose how providers bill for services, including identifying specific payment provisions such as the provider’s hourly rate, the length of each session, and any additional charges that would be included in billings.
- Clarify that a reasonable amount of non-instructional time could be afforded to SES providers and stress that LEAs should identify in their contracts with SES providers the amount of setup/cleanup time each provider will be compensated for, if not already built into its hourly rate for direct tutoring services. It is reasonable for an SES provider to be compensated for all hours spent serving SES eligible students, including a reasonable amount of time for setup/cleanup each time a session is held. Thus, charging an LEA for 30 to 45 minutes of setup/cleanup time each day that a tutoring session is held seems reasonable. However, we believe it is inappropriate for a provider to bill for this non-instructional time in the same manner it bills for direct tutoring hours, i.e. 45 minutes of non-instructional time for each student, each session.

Section 4: SES Provider Effectiveness

This section discusses our observations on a number of issues related to provider effectiveness determinations and offers suggestions for enhancing the Department’s guidance.

ESEA Section 1116(e)(4)(D) requires SEAs to “develop, implement, and publicly report on standards and techniques for monitoring the quality and effectiveness of the services offered by approved providers under this subsection, and for withdrawing approval from providers that fail, for 2 consecutive years, to contribute to increasing the academic proficiency of students served”

In Question D-2, the Department's guidance states:

[E]ach SEA should develop a system for gathering information about the effectiveness of providers on an annual or periodic basis. Below are some examples of information that an SEA might want to collect; however, each SEA should tailor its system to its own needs:

- Academic gains made by students who participated in and completed a provider's program;
- The fidelity with which a provider's program, as enacted, reflects its program design, as proposed in its application to the SEA;
- Student enrollment (including enrollment of students with disabilities and English language learners) and daily attendance in a provider's program;
- Parents' and students' satisfaction with a provider; and
- How often a provider reports students' progress to teachers and parents.

The Department's guidance also states in Question D-3:

Student performance can be measured in a number of ways. For example, providers might use their own assessments, or could use standardized assessments given by the State or LEA. The best practice would be to specify, in the contract between the LEA and the provider, the assessment or assessments that will be used.

CDE Evaluations of Provider Effectiveness

California issued final state regulations in May 2005 that require SES providers to submit annual end-of-fiscal-year reports to the California Department of Education (CDE). Section 13075.3 of Title 5 of the California Code of Regulations lists 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. Section 13075.3 also requires that the assessments used by providers "must be developed in accordance with the standards for validity and reliability as set forth in the Standards for Educational and Psychological Testing (1999)."¹¹ CDE will use the assessment data submitted by SES providers in the end-of-fiscal-year reports to evaluate each provider's effectiveness in increasing student achievement.

The first SES provider report is due on October 1, 2006 and will cover services provided in school year 2005-2006.¹² CDE advised us that the submitted information on student achievement on the provider assessments will be compared with the students' results on the California Standards Tests (CST) for each student served by the provider. CDE also advised us that it is in the process of developing a formal mechanism to obtain user feedback on SES providers.

¹¹ The standards are jointly published by the American Educational Research Association, the American Psychological Association, and the National Council for Measurement in Education and were last revised in 1999.

¹² CDE advised us that a contractor conducted year-end electronic consumer satisfaction surveys in school years 2002-2003 and 2003-2004 and that the survey information received from school districts was used by CDE when providers re-applied to continue as approved providers.

Provider Assessments Used and Ability to Meet CDE Requirements

We determined that the five providers we audited were capable of providing the types of information that CDE would require for provider monitoring. Table 7 shows the type of data each provider had available during the audit period that would have been used to demonstrate effectiveness if CDE had requested assessment data from the providers. Four providers were using diagnostic assessments to evaluate student progress by comparing student test scores at the beginning and end of the provider’s program (pre and post test scores). SDCS had access to individual student scores on the CST and would have compared the scores from the prior school year to the school year just completed to gauge student progress.

Table 7: Provider Effectiveness Data Available During Audit Period	
Provider	Effectiveness Data Available
ARC	Scores from pre and post test diagnostics
LEI	Scores from pre and post test diagnostics
PTA	Scores from pre and post test diagnostics
SDCS	CST scores
PL	Scores from pre and post test diagnostics

CDE now requires prospective providers to identify the assessment data they plan to use to demonstrate effectiveness as part of the SES provider application for state approval. However, CDE does not maintain a list of assessments that meet the Standards for Educational and Psychological Testing cited in its SES regulations for use in determining whether the assessment data is acceptable.

One provider that was planning to use assessments contained in a new software program it purchased to demonstrate effectiveness in school year 2005-2006 had to abandon this approach because it learned through our audit that the assessments had not been evaluated against the standards in California’s SES regulations. This situation occurred even though the software vendor itself was an approved provider in California for school year 2005-2006. Neither the provider nor the vendor was aware of this problem until we alerted them to it. A software vendor representative indicated that its assessments would be evaluated against the standards in California’s SES regulations. However, it is likely that the evaluation will not be completed before the provider is required to submit effectiveness data to the State. As a result, the provider indicated that it will only be able to serve LEAs in California that are willing to provide individual students’ CST scores, until the evaluation of the assessments is completed.

Availability of Standardized Test Results

In cases where a provider intends to use standardized test scores to demonstrate effectiveness, it may have difficulty meeting CDE’s reporting requirements if an LEA is not willing to provide such data. The SES Coordinator at one LEA did not share individual student academic achievement data with SES providers in school years 2003-2004 and 2004-2005 because the Coordinator was not aware that student information could legally be shared with providers with written authorization from parents. Title 5, Section 49075 of the California Education Code allows a LEA to share student academic information with an SES provider, as long as the LEA obtains the parent’s consent. Officials at another LEA were reluctant to provide any student information to providers beyond the student’s name and identification number. SES providers

that choose to demonstrate effectiveness using standardized test scores must have access to this information.

OIG Suggestions to Enhance the Department's Guidance Related to SES Provider Effectiveness

We suggest that the Department take the following actions to enhance its guidance:

- Encourage SEAs to ensure that all providers are informed as to how they will be evaluated.
- In cases where SEAs will require providers to submit effectiveness data, encourage SEAs to require prospective providers to identify the specific assessments that would be used to demonstrate effectiveness in the provider applications. The guidance should also encourage SEAs to determine whether the assessment data providers plan to use will be accepted as evidence of provider effectiveness during the provider approval process, rather than waiting until the provider evaluation occurs and then possibly rejecting the effectiveness data.
- Encourage LEAs to provide individual students' scores on standardized tests to providers, if needed to demonstrate effectiveness, provided that parents have authorized the release of such information.

PURPOSE AND METHODOLOGY

The purpose of this project was to provide information to the Office of Elementary and Secondary Education and Office of Innovation and Improvement on specific issues that were identified during the individual SES audits and offer suggestions for enhancing the Department's Supplemental Educational Services Non-Regulatory Guidance. To achieve our purpose, we gained an understanding of the ESEA sections, Federal regulations, Department guidance, external publications, and California State Regulations covering SES. We reviewed the audit reports and associated audit documentation from the five SES provider audits. We also reviewed the final OIG audit reports on SEA and LEA implementation of School Choice and SES provisions in the states of Illinois, Michigan, Indiana, New Jersey, Delaware, and Nevada. We provided a copy of the Draft Management Information Report to Department officials and requested comments. The Department's response is attached below.

We briefed Department officials on the information that would be presented in this Management Information Report on May 19, 2006.

Attachment


Attachment: Department Comments to Management Information Report

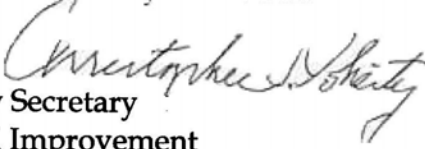
UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

TO: Gloria Pilotti
Regional Inspector General for Audit Services
Office of Inspector General

JUL 25 2006

FROM: Henry L. Johnson 
Assistant Secretary
Office of Elementary and Secondary Education

Christopher Doherty 
Acting Assistant Deputy Secretary
Office of Innovation and Improvement

CC: Richard Rasa
A&A Director
Office of Inspector General

SUBJECT: Implementation of Supplemental Educational Services
(SES) in California
Control Number ED-OIG/X09G0007

Thank you for giving us the opportunity to review the draft Management Information Report (MIR), Implementation of Supplemental Educational Services in California, prepared by the Office of Inspector General (OIG). The report provides a summary of the five SES provider audits conducted by the OIG in five local educational agencies (LEAs) in California. The auditors selected a variety of provider types (for-profit, non-profit, LEA) and delivery modes and reviewed a wide range of issues, including LEA implementation of SES prioritization, LEA preparation of student learning plans, provider payments for SES (including methods of calculating costs of services, rates charged for services, billing and general payments), and provider effectiveness. In each of these areas, the OIG presents suggestions for enhancing the Department's SES non-regulatory guidance.

The Office of Elementary and Secondary Education and the Office of Innovation and Improvement appreciate the OIG's recommendations and concur with many of them. Although we do not anticipate revising the current SES non-regulatory guidance prior to the reauthorization of the Elementary and Secondary Education Act (ESEA) scheduled to begin next year, there are several other

mechanisms that the Department will consider using to share additional SES guidance with States and LEAs, including:

- Sending “letters to the field” to clarify or amplify Department policy and guidance;
- Providing information at national conferences and meetings of education administrators and practitioners; and
- Providing ongoing technical assistance to State educational agencies (SEAs) and LEAs as they implement SES.

We will also use the information and recommendations the OIG has provided to inform discussions (both internally and externally) about the reauthorization of the ESEA and expand and improve the Department’s monitoring of SEAs in the implementation of SES. Finally, we recommend that the OIG indicate in its report that, although these recommendations are directed toward the Department, SEAs have an important role to play in monitoring their districts for compliance with the SES provisions of the No Child Left Behind Act of 2001 and the Department’s Title I regulations and providing them with the necessary technical assistance. Although there is clearly a significant role for the Department to play in these matters, the SEAs also must take responsibility and leadership to ensure that their LEAs are fully compliant with the statute and regulations governing SES.

Again, we appreciate the information provided by the OIG and also for the opportunity to provide comment on the draft MIR.