



UNITED STATES DEPARTMENT OF EDUCATION

WASHINGTON, D.C., 20202-____

June 3, 2005

VIA FACSIMILE AND U.S. MAIL

Ms. Mary Ellen Simonson
Lewis and Roca, LLP
40 North Central Avenue
Phoenix, Arizona 95004-4429

Re: U.S. Department of Education Decision Concerning Arizona Department of
Education Audit ED-OIG/A05-D0008, Finding No. 1

Dear Ms. Simonson:

We are writing in further response to your May 10, 2005, letter on behalf of a coalition of for-profit charter schools in Arizona, in which you requested the U.S. Department of Education to reconsider and reverse the Department's program determination of March 18, 2005. The Department's determination, which was issued to the Arizona Department of Education (ADE), concluded that for-profit charter schools are not eligible to receive funds under the Individuals with Disabilities Education Act (IDEA) or Title I, Part A of the Elementary and Secondary Education Act (ESEA). Because the schools you represent are not parties to the determination, we do not consider your letter to constitute a request for reconsideration. Please know, however, that we do appreciate knowing of your concerns. We have reviewed all of your arguments and attachments and are pleased to respond.

As you know, the determination in question resolved an audit by the Department's Office of Inspector General (ED-OIG/A05-D0008). The determination and audit found the ADE to have improperly allocated to for-profit charter schools, during Fiscal Year 2001, \$1,129,006 in funds under Title I, Part A of ESEA and Part B of IDEA. The determination took into account the opinion of the Arizona Attorney General that for-profit charter schools are distinct legal entities, with legal responsibilities independent of their public or private operators, and that "they are public schools that function as local educational agencies under Arizona law." Therefore, we determined that the schools in question are "public schools," irrespective of whether they are non-profit or for-profit. However, based on the definitions of "elementary school" and "secondary school" in both the ESEA and the IDEA, we concluded further that for-profit charter schools are not

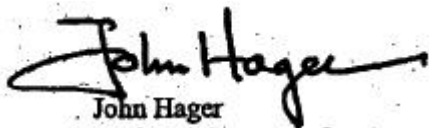
eligible subrecipients as local educational agencies (LEAs) because they do not have direction or control of an elementary or secondary school that meets the federal statutory definition of elementary or secondary school.

Section 9101(18) of the ESEA defines “elementary school” as a “non-profit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.” The IDEA, as amended in 2004, contains the identical definition of “elementary school” as in the ESEA. *See* section 602(6) of the IDEA. The corresponding definition of “secondary school” in the ESEA and IDEA is identical in pertinent respects (section 9101(38) of the ESEA and section 602(27) of the IDEA). In these four provisions, the term “public charter school,” as used in the phrase “including a public. . . charter school,” is a subset of non-profit elementary schools or non-profit secondary schools. Thus, by definition, public charter schools must be non-profit.

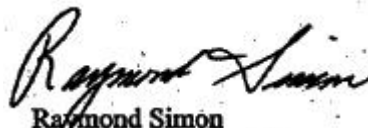
Nothing in these definitions or the legislative history suggests that the specific illustration—“a public charter school”—should be construed in a way that would nullify the general rule that an elementary or secondary school must be non-profit. Additionally, the definitions in the ESEA and IDEA—not state law—govern the eligibility of LEAs and schools for Title I, Part A and IDEA funding.

The Department is and remains a strong supporter of charter schools, and stands ready to provide technical assistance, as appropriate, to help charter schools meet federal eligibility requirements. Thank you again for sharing your views with us.

Sincerely,



John Hager
Assistant Secretary for
Special Education and
Rehabilitative Services



Raymond Simon
Assistant Secretary for
Elementary and Secondary
Education