



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

MAY 27 2004

Ms. Sylvia Hensley
Deputy State Auditor
California Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, California 95814

Dear Ms. Hensley:

OMB Circular A-133, *Audits of States, Local Governments and Non-Profit Organizations*, contains implementing provisions under the Single Audit Act Amendments of 1996. Paragraph 520 of OMB Circular A-133 covers the determination of major Federal programs in Single Audits. Among the provisions of that paragraph, is the following portion of subparagraph (h):

...Federal agencies and pass-through entities may provide auditors guidance about the risk of a particular Federal program and the auditor shall consider this guidance in determining major programs in audits not yet completed.

Paragraph 525 of OMB Circular A-133 sets forth criteria for Federal program risk. It includes the following with respect to internal controls:

Weaknesses in internal control over Federal programs would indicate higher risk. Consideration should be given to the control environment over Federal programs and such factors as the expectation of management's adherence to applicable laws and the provisions of ...grant agreements.
[Paragraph 525(b)(1)]

Pursuant to these provisions, I am writing to you as independent auditor of the California Department of Education (CDE), on behalf of the U.S. Department of Education, a Federal agency that provides funds to the State of California. The information concerns matters affecting the Special Education – Grants to State Program, Catalog of Federal Domestic Assistance No. 84.027 administered by CDE. In light of serious allegations in letters that the Office of Special Education Programs (OSEP) has received and CDE's failure, to date, to resolve those allegations as we have requested, compliance with Part B of the Individual with Disabilities Education Act's (Part B of IDEA) requirements regarding State-level maintenance of effort and non-supplanting of funds may be high-risk areas for the State.

Page 2 – Ms. Sylvia Hensley

The IDEA requires, at 20 U.S.C. 1412(a)(19), that any State receiving assistance under Part B of the Act must "...not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year." The Part B regulations further specify, at 34 CFR §300.154(a), that "The State must have on file with the Secretary information to demonstrate, on either a total or per-capita basis, that the State will not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year." However, in meeting the "total or per-capita" requirement, a State is not required to maintain funding for any specific program or particular cost to ensure compliance with the Act.

Part B also prohibits supplanting at the State level. At 20 U.S.C. 1412(a)(18), the Act provides that, "except as provided in [20 U.S.C. 1413], funds paid to a State under [Part B] will be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of State or local educational agencies) expended for special education and related services provided to children with disabilities under [Part B] and in no case to supplant such Federal, State, and local funds, except that, where the State provides clear and convincing evidence that all children with disabilities have available to them a free appropriate public education, the Secretary may waive, in whole or in part, the requirements of this subparagraph if the Secretary concurs with the evidence provided by the State."

OSEP has received a number of letters from school district officials, parents and others in California, questioning the State's compliance with these maintenance of effort requirements and non-supplanting requirements. Because OSEP has no independent knowledge of the facts necessary to address the allegations in these letters, OSEP referred the letters to the CDE on August 29, 2003. In OSEP's letter to the State, OSEP requested that the CDE resolve them as State complaints, pursuant to 34 CFR §§300.660-662. In CDE's letters to OSEP of October 2, 2003 and December 3, 2003, CDE indicated its inability to resolve the allegations as complaints, raising concerns about internal controls and the expectation of management's adherence to applicable laws and the provisions of grant agreements. To date, CDE has not sent any documentation to OSEP that it has taken any action to address these issues. Copies of the signed letters regarding these issues are enclosed.

In light of the information described above, OSEP is recommending that, as part of the next audit of the State of California performed under the Single Audit Act you cover the Special Education – Grants to State Program, CFDA No. 84.027, as a major Federal program, and closely review the State's compliance with Part

Page 3 – Ms. Sylvia Hensley

B of IDEA's requirements regarding State-level maintenance of effort and non-supplanting of funds.

Consideration of this critical area as part of your next single audit of the State of California would be greatly appreciated. If you have any questions regarding this letter or need additional information, please contact Ruth E. Ryder, Director of OSEP's Division of Monitoring and State Improvement Planning (MSIP) or Lawrence Ringer, MSIP Associate Director. Their telephone numbers are (202) 205-5547 and (202) 205-9079, respectively. We would ask that you notify us as soon as possible of whether the single audit will include this issue.

Sincerely,

A handwritten signature in black ink that reads "Stephanie Lee". The signature is written in a cursive style with a large initial 'S' and 'L'.

Stephanie Smith Lee
Director
Office of Special Education
Programs

Enclosures

cc: Jack O'Connell
California Superintendent of Public Instruction

Alice Parker, Ed.D., Assistant Superintendent
California Department of Education

Rich Rasa, Director of State and Local Advisory
and Assistance Services
Office of the Inspector General

Honorable Arnold Schwarzenegger
Governor of California