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AUG 30 2004

Ms. Sharon Wells
Education Program Specialist
U. S. Department of the Interior
Bureau of Indian Affairs
Office of Indian Education Programs
1849 C St., NW, Room 3512, MIB
Washington, DC 20240

Dear Ms. Wells:

This **Final Audit Report** (ED-OIG/A06-E0001) presents the results of our audit of the Individuals with Disabilities Education Act (IDEA), Part B requirements at Fond du Lac Ojibwe School (Fond du Lac) for the period July 1, 2001, through September 30, 2003. Our objective was to determine whether Fond du Lac administered IDEA, Part B funds in accordance with requirements, laws and regulations, and provided services to eligible children in accordance with the student's Individualized Education Program (IEP).

We provided a draft of this report to the Bureau of Indian Affairs (BIA), Office of Indian Education Programs. In its response to our draft report, BIA officials agreed with our recommendations but did not agree with the specific numbers in the finding. We have summarized BIA's comments in the body of the report and have included the response as an Attachment to this report.

BACKGROUND

The Department of Education (Department) provides funding from major program grants to the BIA, through the Department of the Interior. The BIA allocates these funds to elementary and secondary schools operated or funded by the Secretary of the Interior, including tribally operated schools that are funded by the BIA. These grants support students with disabilities and disadvantaged children. The Department provided \$140 million (22 percent) of BIA's school operating fund in 2002. The program funds from the Department have constituted an increasing share of these schools' operating budgets since fiscal year 1999 (from 18.2 percent to 22 percent in fiscal year 2002). This is due in part to large increases since 1999 in two major Department programs under which BIA receives funds, IDEA, Part B, and the Elementary and Secondary Education Act, Title I (Title I). At BIA funded schools, funds for students with disabilities under IDEA increased by 50 percent, and Title I funds for disadvantaged students increased by 21 percent for fiscal years 1999 through 2002.

IDEA, Part B requires the Department to provide funds to the Secretary of the Interior to assist in providing special education and related services to children with disabilities. From the amount appropriated for any fiscal year, the Department shall reserve 1.226 percent to provide assistance to the Secretary of the Interior, of which 80 percent is allotted for serving children ages 5 through 21 with disabilities enrolled in elementary and secondary schools for Indian children operated or funded by the Secretary of the Interior. As the IDEA, Part B appropriation has increased, IDEA, Part B funds provided to the Secretary of the Interior have been capped in the FY 2002, 2003 and 2004 appropriation language. This cap has been set at the prior year's funding level plus inflation.

BIA funded schools are to use 15 percent of the Indian School Equalization Program (ISEP) formula funds generated by their base instructional administration to fund their special education programs. ISEP funds constitute the largest amount of the Department of the Interior funds used for school-level administration, such as principals' salaries and administrative assistance, in addition to salaries for teachers, teacher aides, and the cost of materials. If the 15 percent is not sufficient to fund the services needed by all eligible ISEP students with disabilities, schools may apply for IDEA, Part B funds. Schools must demonstrate need when applying for these funds.

Fond du Lac is located in Cloquet, Minnesota, and is part of the Fond du Lac Band of the Lake Superior Chippewa. The BIA disbursed \$869,851 of IDEA, Part B funds to Fond du Lac for our two-year audit period as follows—

School Year 2001-2002	\$343,297
School Year 2002-2003	<u>\$526,554</u>
Total	\$869,851

For the 2001-2002 school year, Fond du Lac had an enrollment of 203 students with 103 classified as disabled; and in the 2002-2003 school year, enrollment was 225 students with 93 classified as disabled. The average amount of IDEA, Part B funds per pupil was \$3,333 in the 2001-2002 school year, and \$5,662 in the 2002-2003 school year.

AUDIT RESULTS

Although Fond du Lac developed an IEP for all of the students in our sample and prepared the required progress reports for most of the students, we found that Fond du Lac was unable to demonstrate that it provided special education and related services to 56 percent of the students in our sample in accordance with their IEP.

According to 34 C.F.R. § 300.341(a)(1)(2), The [Secretary of the Interior]¹ shall ensure that each public agency develops and implements an IEP for each eligible child with a disability served by that agency. The IEP must contain certain elements according to 34 C.F.R. § 300.347, including:

(a)(3) A statement of the special education and related services and supplementary aids and services to be provided to the child, . . .

(a)(7)(ii)(A) A statement of how the child's parents will be regularly informed (through such means as periodic report cards), at least as often as parents are informed of their nondisabled children's progress of, . . . Their child's progress toward the annual goals.

Further, 34 C.F.R. § 300.350 (a)(1) requires that each public agency must provide special education and related services to a child with a disability in accordance with the child's IEP.

We selected a random sample of 10 of 103 students with disabilities in school year 2001-2002 and 15 of 93 students in school year 2002-03. We reviewed the files for the 25 selected students and found that all the files contained an IEP. However, Fond du Lac did not provide any services to 3 students reviewed; and we could not determine what services, if any, were provided to 11 other students because of a lack of documentation. Additionally, Fond du Lac did not develop the required progress reports informing the parents of their child's progress as specified in the student's IEP for 5 of the 25 students in our sample.

We concluded that these conditions occurred because school officials did not have procedures in place to (1) ensure special education and related services were provided in accordance with the student's IEP, (2) ensure that parents were informed of their child's progress as specified in the student's IEP, and (3) document that special education and related services were provided to all students with disabilities in accordance with their IEP.

As a result of the 56 percent error rate in our sample (14 of 25 files reviewed), Fond du Lac was unable to document that it provided the special education services for the students with disabilities for which it received a total of \$860,851 during our two-year audit period.

The regulations at 34 C.F.R. § 80.12 (a) allow the Department to impose special award conditions when a grantee is considered "high-risk" by the awarding agency because the grantee has a management system that does not meet the management standards set forth in the regulations.

¹ The regulations specifically refer to the SEA (State Educational Agency). However, 34 C.F.R. § 300.267 requires the Secretary of the Interior to comply with specific sections of 34 C.F.R. Part 300, including 34 C.F.R. § 300.341.

RECOMMENDATIONS

We recommend that the Assistant Secretary for Special Education and Rehabilitative Services instruct the Bureau of Indian Affairs to—

1. Obtain assurance from Fond du Lac that it used the \$869,851 of IDEA, Part B funds to deliver the educational assistance proposed in each of the IEPs for the 196 children with disabilities.
2. Instruct Fond du Lac to document all IDEA funded services provided to each current student with disabilities and develop a progress report for each child served.
3. Determine whether Fond du Lac should be designated a high-risk grantee using BIA's criteria and consider placing special conditions for all Department of Education awards to Fond du Lac. If BIA does not have regulations similar to 34 C.F.R. § 80.12 (a), it should consult with the appropriate Department of Education officials to determine the appropriate course of action.

BIA'S COMMENTS TO THE DRAFT REPORT

BIA agreed to implement our recommendations and agreed that due to the lack of documentation it could not confirm that five students received services. However, it disagreed with our finding, based on Fond du Lac's inability to provide supporting documentation, that 14 students did not receive services. BIA stated, "Progress reports are developed on the services provided to the student, to indicate to the parents the progress their child is making toward the goals stated on the IEP. . . . Therefore, the 20 students with progress reports received services."

OIG'S RESPONSE

We reviewed BIA's response to the draft report and have not changed our finding. BIA's response indicated that if a progress report was prepared, then OIG should assume that services were provided. Our audit work did not support this conclusion. Progress reports list the goals as described in the student's IEP and also provide comments related to the student's success or failure in achieving these goals. However, progress reports do not provide documentation indicating the duration and frequency of services necessary to achieve these goals and do not reflect when services were provided. Therefore, we are unable to determine if services were provided.

Our audit work disclosed that Fond du Lac did not provide any services to 3 of 14 students reviewed. Of the three students who did not receive services, we noted that two students were not listed in their assigned teachers' attendance books and one student was not receiving services as described in their IEP. Further, we could not determine what services, if any, were provided to the remaining 11 students because teacher attendance records were insufficient, inadequate, or unavailable. For example, when teachers' attendance books were available, they did not always reflect the required instructional hours or the entire time period students were to receive services as described in the student's IEP. As a result, we did not make any changes to the audit results section of the report.

OBJECTIVE, SCOPE, AND METHODOLOGY

Our objective was to determine whether Fond du Lac administered IDEA, Part B funds in accordance with requirements, laws and regulations², and provided services to eligible children in accordance with the student's IEP.

To accomplish our objective, we—

- Reviewed the financial statement and compliance report for the year ended September 30, 2002;
- Reviewed Fond du Lac's Special Education application and budget;
- Reviewed detailed expense reports and payroll information regarding IDEA, Part B expenditures. We compared the information to budget information and performed reasonableness tests on the information provided.
- Reviewed the Student Roster – Final Certification Listing for Central Office for the 2001-2002 and 2002-2003 School years;
- Reviewed the Special Education Program Monitoring Review 2002-2003;
- Reviewed the Annual Report Card for school years 2001-2002 and 2002-2003;
- Reviewed the 2001 Annual Narrative Grant Report for Fond du Lac;
- Reviewed Fond du Lac's Education – Organization Chart and Special Education Staff roster;
- Randomly selected and reviewed files for 25 disabled students, 10 students in school year 2001-2002, and 15 students in school year 2002-2003. We reviewed the files for IEPs, progress reports, and a list of services to be provided. We then compared the list of services to supporting documentation (i.e. teacher attendance books, special education providers attendance books, and other relevant documentation); and
- Interviewed various Fond du Lac employees and Department of the Interior/BIA officials in Albuquerque, New Mexico, and Minneapolis, Minnesota.

We relied upon the computerized student roster lists provided by Fond du Lac officials for selecting our sample. We tested the student roster lists for accuracy and completeness by

² Code of Federal Regulations 34 Part 300 to 399 Revised as of July 1, 2002.

comparing selected source records to the roster list. Based on this test, we concluded the student roster list was sufficiently reliable to be used for the sample population.

We conducted our fieldwork at Fond du Lac in Cloquet, Minnesota, on November 5 - 7, 2003. We discussed the results of our audit with Fond du Lac officials on November 7, 2003. An exit conference was held with BIA officials on April 27, 2004.

Our audit was performed in accordance with generally accepted government auditing standards appropriate to the scope of audit described above.

STATEMENT ON MANAGEMENT CONTROLS

We did not assess the management control structure of Fond du Lac applicable to IDEA, Part B because this step was not necessary to achieve our audit objective. Instead, we relied on testing 25 of 196 disabled student's files to determine if Fond du Lac was complying with the requirements of IDEA, Part. B. Our testing disclosed a 56 percent error rate (14 of 25 instances) of noncompliance with Federal regulations described in the Audit Results section.

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 officials, who will consider them before taking final Departmental action on the audit:

Troy Justesen, Ed.D.
Acting Assistant Secretary
Office of Special Education and Rehabilitative Services
U.S. Department of Education
Federal Building No. 6, Room 3W315
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 Freedom of Information Act (5 U.S.C §552), reports issued by the Office of Inspector General are available, if requested, to members of the press and general public to the extent information contained therein is not subject to exemptions in the Act.

Sincerely,

/Signed/
Sherri L. Demmel
Regional Inspector General
for Audit

Attachment



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Washington, D.C. 20240

IN REPLY REFER TO:

JUL -9 2004

Sherri L. Demmel
Regional Inspector General for Audit
U.S. Department of Education
Office of Inspector General
1999 Bryan Street, Suite 2630
Dallas, Texas 75201-6817

Dear Ms. Demmel:

This letter is written in response to the results of the Office of Inspector General audit of the Individuals with Disabilities Education Act (IDEA), Part B requirements at Fond du Lac Ojibwe School (Fond du Lac) for the period July 1, 2001, through September 30, 2003. As stated in your letter, the objective was to determine whether Fond du Lac administered IDEA, Part B funds in accordance with requirements, laws and regulations, and whether they provided services to eligible children in accordance with the student's Individualized Education Program (IEP).

The Office of Indian Education Programs (OIEP) agrees that due to the lack of documentation, it could not be confirmed that 5 students (20% of the sample) received services. However, we disagree with the finding that 14 students (56 percent) did not receive services for the following reason. Progress reports are developed on the services provided to the student, to indicate to the parents the progress their child is making toward the goals stated on the IEP. According to the audit findings Fond du Lac developed an IEP for all 25 students (sample) and prepared the required progress reports for 20 of the 25 students. Therefore, the 20 students with progress reports received services.

The audit report suggests that the school officials did not have procedures in place to demonstrate services were being provided to children with IEPs. However, according to OIEP's monitoring of Fond du Lac on February 2-3, 2003, Fond du Lac had Special Education Policies and Procedures. Those Special Education Policies and Procedures were reviewed by OIEP and returned to the school with recommended revisions.

Generally, there is agreement with the proposed recommendations of your letter. Specifically, our response is outlined below:

Attachment

1. **Draft Audit Report Recommendation:** Obtain assurance from Fond du Lac that the \$869,851 of IDEA, Part B funds were used to deliver the educational assistance proposed in each of the IEPs for the 196 children with disabilities.

Response: A written assurance from Fond du Lac will be obtained through the Grant Officer/ Education Line Officer, indicating that IDEA funds were used to provide services to the 196 students with disabilities during SY 01-02 and SY 02-03 in accordance to each student's IEP. In addition, the school will be required to provide compensatory education for those students whose services are in question. Monitoring of compensatory education will be accomplished through a monthly on-site review conducted by the Midwest Region Education Line Office as appropriate. A summary report of the monthly reviews and technical assistance provided will be documented and a copy will be forwarded to CSI and the Deputy Director for OIEP.

2. **Draft Audit Report Recommendation:** Instruct Fond du Lac to document all IDEA-funded services provided to each current student with disabilities and develop a program report for each child served.

Response: The Grant Officer will enter into an agreement with Fond du Lac that will outline the following plan. Fond du Lac, will document all IDEA funded services for each current student with disabilities and develop a program report for each student. The Midwest Region Education Line Office will also develop a process to monitor the school and assure that services are being provided to students. On a monthly basis Fond du Lac will submit to the Midwest Region Education Line Office logs and/or documentation to demonstrate a Free Appropriate Public Education is provided to all students eligible to receive special education services (including Compensatory education that is being provided). The Midwest Region Education Line Office will also conduct monthly on-site reviews and provide technical assistance as appropriate. A summary report of the monthly reviews and technical assistance provided will be written and a copy forwarded to the CSI and the Deputy Director for OIEP.

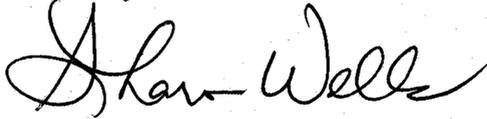
3. **Draft Audit Report Recommendation:** Determine whether Fond du Lac should be designated a high-risk grantee using BIA's criteria and consider placing special conditions for all Department of Education awards to Fond du Lac. If BIA does not have regulations similar to 34 C.F.R. § 80.12(a), it should consult with the appropriate Department of Education officials to determine the appropriate course of action.

Response: The Grant Officer will make this determination based on the criteria for high risk status found in OMB Circular A-102 and 43 CFR-Part 12, Section 12.52 Special grant or subgrant conditions for "high-risk" grantees.

Also, we would like to inform you that CSI is scheduled to conduct a Continuous Improvement Monitoring Process (CIMP) validation visit on October 7-8, 2004. The school will submit an updated Self-Assessment to the CSI thirty (30) days prior to the on-site validation.

Thank you for allowing this office the opportunity to respond to the audit. If you should have questions please contact Gloria Yepa at 505-248-7541.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward Parisian". The signature is fluid and cursive, with a large initial "E" and "P".

 Edward Parisian
Director, Office of Indian Education Programs