

*A REPORT BY THE NEW YORK STATE
OFFICE OF THE STATE COMPTROLLER*

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COMPTROLLER**



***STATE EDUCATION DEPARTMENT,
NEW YORK CITY
DEPARTMENT OF EDUCATION,
AND ERIE COUNTY***

***ADMINISTRATION OF PAYMENTS FOR
PRESCHOOL RELATED SERVICES AND
SPECIAL EDUCATION ITINERANT TEACHERS***

2003-S-39

DIVISION OF STATE SERVICES

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Report 2003-S-39

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Chancellor
New York City Department of Education
52 Chambers St.
New York, NY 10007

Mr. Joel A. Giambra
County Executive
Erie County
95 Franklin St.
Buffalo, NY 14202

Dear Messrs. Mills, Klein, and Giambra:

The following is our report on the administration of payments for preschool related services and special education itinerant teachers made by the New York City Department of Education and Erie County for the school years ended June 30, 2001 and June 30, 2003.

This audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section I of the State Constitution; Article II, Section 8 of the State Finance Law; and Article III, Section 33 of the General Municipal Law. Major contributors to this report are listed in Appendix A.

Office of the State Comptroller
Division of State Services

May 2, 2005

EXECUTIVE SUMMARY

STATE EDUCATION DEPARTMENT

NEW YORK CITY DEPARTMENT OF EDUCATION AND ERIE COUNTY

ADMINISTRATION OF PAYMENTS FOR PRESCHOOL RELATED SERVICES AND SPECIAL EDUCATION ITINERANT TEACHERS

SCOPE OF AUDIT

The State Education Law requires the State Education Department (SED) to meet the physical and educational needs of children with disabilities. The individualized education programs (IEPs) of many special education children prescribe instruction by special education itinerant teachers (SEITs), as well as related services like speech or occupational therapy, to help them attain their educational goals. Municipalities often contract with private service providers to obtain SEIT and related services, which providers deliver in 30-minute sessions. Municipalities use SED-established rates to pay for SEIT services based on student enrollment in scheduled sessions. Municipalities establish rates for related services, and pay providers based on the number of services actually delivered. SED reimburses municipalities for 59.5 percent of the costs paid to providers and \$75 per student for administrative costs. Municipalities statewide were approved to spend \$106 million for SEIT services and \$149 million for related services in 2002-03. The New York City Department of Education (Department) and Erie County are the two municipalities in the State with the highest expenditures for SEIT and related services.

Our audit addressed the following questions about Department and Erie County payments for SEIT and related services for preschool special education students for the years ended June 30, 2001 (SEIT) and June 30, 2003 (related services):

- Did these municipalities ensure they used correct SED payment rates for SEIT services?
- Did these municipalities verify that the SEIT services they paid for were delivered to enrolled students as prescribed on the students' IEPs?
- Did these municipalities confirm that the related services they paid for were actually delivered in accordance with students' IEP requirements?

AUDIT OBSERVATIONS AND CONCLUSIONS

Our testing disclosed that Erie County used correct SED established rates to pay SEIT providers in 2000-01. In contrast, the Department overpaid providers \$731,000 from the billings we tested – and perhaps significantly more – because it used the wrong payment rates in reconciling 2000-01 payments to SEIT providers. In addition, the Department and Erie County overpaid SEIT providers more than \$358,000 and \$17,000, respectively, in the 2 years we reviewed because the municipalities either did not update enrollment-related data or did not verify that services were actually provided. Municipalities also paid for related services that providers billed, but did not deliver as prescribed, without confirming that students actually received the proper services. SED and municipalities should strengthen controls over SEIT and related services payments to avoid overpaying providers, and to ensure disabled preschool children receive the services they need to achieve their education goals.

Municipalities should use SED-established session rates to pay SEIT providers, and reconcile payments to reflect enrollment changes and changes in rates, as determined and published by SED. However, our review of SEIT payments for the year ended June 30, 2001 (the latest year for which SED had developed final rates) revealed that the Department overpaid 12 providers more than \$763,000, and underpaid 2 providers by \$32,000, because it used incorrect rates. The Department also improperly reconciled \$4 million in payments to another 13 providers before SED had posted final SEIT session rates for 2000-01. The Department used incorrect rates, in part, because Department personnel relied on the providers, rather than SED sources, for rate information. We also found that two New York City providers were overpaid \$358,000 for the 2000-01 and 2002-03 years because the Department did not update automated systems for changes in enrollment-related data. Further, we identified instances in which both municipalities paid for SEIT services when students were absent for long periods (when teachers were on extended leave or unavailable) and when providers delivered fewer or different services than IEPs prescribed. We recommend that SED: direct municipalities to recover overpayments, to the extent possible; instruct the Department to obtain updated SEIT session rates from SED before reconciling final payments; restate SEIT payment guidelines and provider responsibilities; and develop a means of monitoring compliance with these guidelines and requirements. (See pp. 13-23)

We also reviewed the Department's and Erie County's payments for related services in 2002-03 to determine whether related services were actually delivered as prescribed. We found providers billed the Department for 62 sessions for absent students; for 271 individual sessions when they actually delivered group sessions; and 184 sessions where the clinicians provided related services to students at the same time/day, even though the clinicians' records

showed they were at different locations those days. Erie County also paid for related services that were not provided, and for individual sessions that clinicians delivered in a group format. Erie County and the Department paid for related services that were not delivered, or were not delivered as prescribed, because they did not verify that students actually received the services for which payments were made. We recommend that SED give municipalities formal direction about related service providers' billing and service requirements. We also recommend that SED encourage municipalities to verify that services are actually delivered to disabled preschool students relative to the municipalities' payments to providers for sessions rendered. (See pp. 25-30)

Comments of SED, Department and Erie County Officials

SED, Department and Erie County officials generally agree with nearly all of the recommendations directed to them. SED and Department officials also agreed that the SEIT program might be better operated as an attendance based system, versus an enrollment based system as it is presently operated. SED officials responded that they have provided some written guidance regarding related services and SEIT, but lack the authority to enforce specific control mechanisms to be employed by municipalities.

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INTRODUCTION

Background

The State Education Law requires that the State Education Department (SED) meet the physical and educational needs of children with disabilities. The individualized education programs (IEPs) of some special education children prescribe instruction by Special Education Itinerant Teachers (SEITs) and developmental, corrective and other supportive services (related services) to help them attain their educational goals. Related services include specialized services such as speech-language pathology, audiological services and physical therapy. Section 4410 of the State Education Law states that SEIT services feature direct individual and/or group instruction to preschoolers with disabilities by a special education teacher of an approved program at a licensed Pre-K, Head Start program or child care location. Some special education children require and receive SEIT services and/or multiple forms of related services.

Each school district has a Committee for Preschool Special Education (Committee) that oversees the evaluation process used by educational specialists to assess a child's need for special education services. The Committee documents these determinations in the child's IEP, and annually reviews the child's status to determine if the IEP needs to be changed. According to the Law, municipalities that cannot deliver all the services prescribed in a student's IEP must contract with approved private providers to obtain SEIT and related services. These providers contract to deliver SEIT and/or related services, as indicated in students' IEPs. Both SEIT and related services are delivered in 30-minute sessions.

Municipalities use SED-established session rates to pay for SEIT services based on student enrollment for regularly scheduled services. In setting individual session rates for SEIT providers, SED analyzes historical financial statement data from each provider, and determines a payment rate that addresses the provider's eligible direct and indirect costs. SED updates SEIT session rates every year to reflect changes in the provider's costs of delivering services. Municipalities use SED rates to pay SEIT providers and perform reconciliations to adjust providers' payments for enrollment-related changes.

Municipalities establish session rates for related services, and pay claims for related services based on the number of related service sessions actually provided.

SED has developed a Reimbursable Costs Manual (Manual) for various State-funded programs, including SEIT and related services. The Manual states that providers of funded services should maintain documentation that includes records showing dates of admission and discharge. Section 175.6 of the Commissioner's Regulations (Regulations) states that a student's enrollment begins on the first day, and ends on the last day, a pupil is present at (or excused from attending) a program. The Manual also requires the provider to maintain: daily attendance records that must be kept for seven years; individual student files with current information; and documentation of excused and unexcused absences. According to the Department, providers should be paid for only those absences that are both excused and documented.

The New York City Department of Education (Department) authorizes payments for services provided to children in New York City. Throughout the rest of the State, county governments review claims and pay for SEIT and related services. During the 2002-03 year, municipalities statewide were approved to spend about \$106 million for SEIT services, and about \$149 million for related services. The Department and Erie County spent, respectively, over \$68 million and over \$1 million for SEIT services and over \$32 million and about \$9 million for related services in 2002-03. SED reimburses municipalities for 59.5 percent of these service costs and also pays municipalities \$75 per student for administrative costs.

Audit Scope, Objectives and Methodology

We audited the administration of payments made by the Department and Erie County for SEIT and related services provided to preschool special education students for the 2000-01 school year (July 1, 2000 through June 30, 2001 - SEIT) and the 2002-03 school year (July 1, 2002 through June 30, 2003 - related services). We audited Department and Erie County SEIT payments for the 2000-01 year because it was the latest year for which SED had established final SEIT provider payment rates at the time of our audit fieldwork. We audited Department and Erie County SEIT and related services payments made in

2002-03 because it was the most recent year in our scope period, and the year in which the Department implemented new administrative procedures intended to improve the accuracy of payments to providers. The objectives of our performance audit were to determine whether Department and Erie County officials: ensured they used correct SED payment rates for SEIT services in 2000-01; verified that the SEIT services they paid for were delivered to enrolled students as prescribed on the students' IEPs; and confirmed that the related services they paid for were actually delivered by providers as prescribed on the students' IEPs. We selected the Department and Erie County for review because their SEIT and related service expenditures were among the highest statewide.

To accomplish our objectives, we reviewed payments to providers, student attendance records and other supporting documentation. We also interviewed officials at SED, the Department, and the Erie County Department of Health, as well as providers of SEIT and related services. To assess the propriety of the municipalities' payment processes, we tested the accuracy of payments for selected months made to all 65 SEIT providers in New York City and a judgmental sample of nine of the 15 SEIT providers in Erie County for 2000-01. The nine providers were selected because they were among the highest paid providers in Erie County. We also determined whether the Department and Erie County paid for services that were actually delivered by testing enrollment-related information and/or attendance data for judgmental samples of students at selected providers in both municipalities in 2002-03.

We conducted our audit in accordance with generally accepted government auditing standards. Such standards require that we plan and perform our audit to adequately assess those SED and municipality operations that are included within our audit scope. Further, these standards require that we understand the internal control structure at SED and the municipalities, and their compliance with those laws, rules and regulations relevant to the operations included in our audit scope. An audit includes examining, on a test basis, evidence-supporting transactions recorded in the accounting and operating records and applying any other auditing procedures we consider necessary in the circumstances. An audit also includes assessing the estimates, judgments and decisions made by management. We believe our audit provides a reasonable basis for our findings, conclusions and recommendations.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State, several of which are performed by the Division of State Services. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of who have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these management functions do not affect our ability to conduct independent audits of program performance.

Response of SED, Department and Erie County Officials to Audit

We provided SED, Department and Erie County officials with draft copies of this report for their review and formal comment. Their comments were considered in preparing this report. SED, Department and Erie County officials generally agree with nearly all of the recommendations directed to them. SED and Department officials also agreed that the SEIT program might be better operated as an attendance based system, versus an enrollment based system as it is presently operated.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of Education shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations to SED contained in this report, and where recommendations were not implemented, the reasons why. We also request the Chancellor of the Department and the Executive of Erie County to provide comments within 90 days advising what steps were taken to implement the recommendations to the Department and Erie County contained in this report, and where recommendations were not implemented, the reasons why.

SEIT PAYMENTS

SEIT providers should be paid for services based on the most current SED session rates, adjusted as necessary to reflect enrollment changes and the corresponding amounts of sessions a municipality should pay for. Our review of SEIT payments for the year ended June 30, 2001 revealed that, while Erie County used correct SED rates to pay its SEIT providers, the Department overpaid certain providers more than \$763,000 and underpaid other providers by \$32,000, because it did not use the correct SED session rates to perform final payment reconciliations. We also found that two New York City providers were overpaid \$358,000 for the 2000-01 and 2002-03 years because the Department did not properly adjust for enrollment-related changes. SEIT providers should also maintain student attendance documentation, as stated in the Manual, and deliver services that meet the programs prescribed in students' IEPs. However, we found numerous instances in which the Department and Erie County paid SEIT providers for services when: students were absent for long periods; teachers were on extended leave or were otherwise unavailable (and substitute teachers were not provided); services had been discontinued; services' start/end dates were incorrectly reported by providers; and fewer than the prescribed number of services were actually delivered. Thus, because Department and Erie County officials did not adequately monitor providers, they overpaid SEIT providers about \$1.1 million during the two years we reviewed, and children with disabilities may not have received the services they needed to achieve their educational goals.

Department Payments to SEIT Providers

We reviewed the Department's SEIT payments for the year ended June 30, 2001 to determine whether the Department used the correct SED rates to pay for the services of the 65 SEIT providers. We reviewed payments for the 2000-01 year because, at the time of our audit fieldwork, it was the most current year for which SED had completed its analyses of providers' financial statements to develop final session rates for individual SEIT providers. Our review determined that the

Department made incorrect or potentially incorrect payments to 27 of these 65 providers, detailed as follows:

The Department overpaid 12 of the 65 SEIT providers more than \$763,000 because it used rates that were higher than the final rates established by SED to perform payment reconciliations for the 2000-01 year. One provider alone was overpaid almost \$365,000. We also determined that two other providers were underpaid by about \$32,000 because the Department used rates that were less than the final rates established by SED. Therefore, for the 2000-01 year, the net overpayment to the providers in question was about \$731,000 (\$763,000 in overpayments less \$32,000 in underpayments).

We also found that the Department had reconciled payments and closed the books on almost \$4 million in payments to 13 providers for the 2000-01 year, although SED had not yet posted final session rates for these providers. Because the Department did its reconciliation without using final SED-approved rates, the Department may have overpaid or underpaid these 13 providers.

Finally, we found the Department overpaid two SEIT providers by more than \$1 million (in total) for services in 2000-01 because it used rates that SED never approved or published. The Department caught the errors in 2003 during its payment reconciliation process for the 2000-01 year, and consequently, was able to recover the overpayments. (However, had the providers in question gone out of business prior to the reconciliation, the Department might have been unable to recover the amounts overpaid.) Moreover, New York City ostensibly made substantial interest-free loans to these providers for a two-year period because the payments in question were initially based on excessive rates. We determined that the Department used incorrect payment rates, because they had not designated a specific employee to check for new SED-approved rates on a regular basis. Instead, Department personnel relied on the providers to report this data, and the providers sometimes did not report it in a timely manner.

In response to our preliminary findings, the Department stated that their payment reconciliation process is ongoing and would have captured the over/under payments we found. However, the Department officials also informed us that they are revising

their payment procedures to minimize some of the areas of concern that we identified. They have hired an outside vendor to assist them in these matters.

We also tested payments to providers to determine if the Department only paid for services that were actually rendered. The Department uses a computer system to facilitate the processing of standard payments to SEIT providers based on a student's program enrollment and the number of sessions prescribed by the student's IEP. The Department automatically issues standard payments to the providers unless the providers advise the Department of matters that effect a student's enrollment or number of sessions received. Prior to 2002-03, the Department required providers to submit monthly attendance reports, called D reports, so that monthly payments could be adjusted to reflect enrollment changes. In 2002-03, the Department negotiated a new contract with SEIT providers, which included a process to enable the Department to update provider payment information more timely and make accurate payments. Under the new process, providers receive a Voucher Detail Correction Report (VDR) with their monthly checks. Providers must complete the VDR every month (noting enrollment changes and discharge dates) and return it to the Department, even if no changes occurred. The contract states that failure to return the VDR within 45 days may result in suspension of payment.

We attempted to review VDRs submitted during the 2002-03 year by four of the major SEIT service providers in New York City. We received VDR data from just three of the four providers because, according to Department officials, the largest provider did not return any VDRs during 2002-03. However, the Department still paid this provider over \$2 million based upon its full roster of students for the entire year. The Department was not informed of, and did not inquire about, enrollment changes that could affect this provider's payment during the period. Thus, this provider may have been overpaid because the Department did not enforce its VDR requirements.

The Department informed us that they rely on various report formats to verify attendance, of which the VDRs are one. Any one form could assist them in enrollment adjustments. However we feel that the other reports, such as the final student register, do not reflect attendance in a timely manner because the reports are submitted at the end of the school year. Moreover,

Department officials stated they will be instituting a new electronic roster system early in the 2004-05 school year, and providers will have to submit rosters electronically in order to be paid. We believe this will help in reducing payment errors, but only if enrollment changes are submitted in a coordinated, timely manner.

We decided to exam the on-site documentation for two of the three providers that had submitted VDRs. At these sites, we examined provider attendance records, student case files, including IEPs, and other provider records and compared this information to the data on the providers' VDRs. This review revealed that the Department did not change providers' payments even when the providers notified the Department of discharges and had discontinued services to a child. As a result, the Department overpaid these two providers about \$174,000 for 4,714 sessions (scheduled for 18 students) that were not provided. Six of these students, whose SEIT service costs totaled almost \$117,000, received no services at all in 2002-03 because the students had been discharged during the 2001-02 year or shortly after July 1, 2002. However, despite providers' regular reporting of these students' discharge status on VDRs, the Department had not used VDR data to update payment information, and consequently the overpayments were made.

Other instances in which the Department overpaid these two providers for SEIT services during both 2000-01 (based on attendance forms) and 2002-03 (based on VDR data) are detailed as follows:

- Students no longer enrolled – Both providers reported on attendance forms that a total of six students were no longer enrolled in the SEIT programs. Nonetheless, the Department paid these two providers almost \$24,000 for 610 SEIT sessions in 2000-01.
- Undocumented/unexcused absences for more than five consecutive days – Both providers reported student absences corresponding to payments of more than \$37,000 (more than 950 sessions for 21 students) in 2000-01, and about \$8,000 (more than 180 sessions for five students) in 2002-03. Although the providers advised the Department that they did not render the sessions in question, the Department paid for the sessions anyway.

- Incorrect enrollment start or end dates - Providers' incorrect reporting of start or end dates for 17 students resulted in excess payments of about \$18,500.
- Fewer services than IEPs required - The Department overpaid both providers a total of nearly \$97,000 for sessions that were prescribed in IEPs, but were not delivered to students. In the majority of these instances, for which payments totaled almost \$59,000, sessions were not delivered because teachers were absent, on leave, or otherwise not available. Make-up sessions were not held.

Department officials acknowledged that such overpayments can happen because payment adjustments may not be made in a timely way to correct providers' monthly payments. According to officials, however, they can identify overpayments and recoup related amounts from providers during the reconciliation process that is usually performed two years after payments are made. However, we question the thoroughness and reliability of the Department's reconciliation process. Our test of several overpayments that occurred in 2000-01 determined that the reconciliation process for that year did not detect, or recover, the overpayments we found. For example, we determined that the reconciliation process did not recover these overpayments made to SEIT providers in 2000-01: \$24,000 paid for services to students who were no longer enrolled in 2000-01; \$37,000 for undocumented/unexcused absences in 2000-01; or \$19,500 for about 500 sessions that were prescribed, but not delivered to one student in 2000-01.

Finally, we noted that SEIT providers often did not keep adequate student attendance records, despite Manual and contract requirements to maintain such documentation. For example, one provider could not locate 40 (57 percent) of 70 students' attendance records for 2000-01. When the Department instituted the VDR system in 2003, it allowed providers to establish their own means of tracking student attendance. This provider devised a system that upon examination appears unreliable. Inadequate attendance records can continue to hinder Department efforts to make sure providers deliver contracted services until the Department requires providers to keep accurate records, and then monitors providers' compliance with this requirement.

Erie County Payments to SEIT Providers

We reviewed the payments Erie County made to nine judgmentally sampled SEIT providers during the 2000-01 year to determine whether county officials had used the correct rates to pay for these services. Our audit found that Erie County had applied the proper rates in paying SEIT providers for this period.

We also tested Erie County's 2002-03 year payments to three SEIT providers to determine whether the providers were paid only for SEIT services rendered in accordance with program guidelines. We also determined if sessions were delivered at the frequency/levels prescribed in students' IEPs. During the 2002-03 school year, 353 Erie County students received SEIT services from 15 SEIT providers. We reviewed pertinent SEIT-related records for a sample of 43 students, selected randomly from among the 171 students enrolled during this period at three SEIT providers. We found that Erie County overpaid these three agencies by a total of about \$12,000 for SEIT services that were not provided, as detailed below.

- Incorrect start or end dates - Providers incorrectly reported starting/ending dates for 113 sessions for 13 students, for which Erie County paid \$3,028. County officials did not detect these errors because they did not verify the reported dates against actual student attendance.

In response to our preliminary findings, Erie County officials stated that they will issue a memo to all service providers regarding the correct reporting of starting/ending dates. The providers with errors have provided guidance to their staff regarding this matter.

- Unreported student discharge - Although the contract requires providers to notify the Committee and the County in writing when an eligible child has been absent for 30 days or more, one provider did not notify the County of a student's discharge on February 21, 2003. As a result, Erie County paid this provider through May 31, 2003 for 48 SEIT sessions that were not delivered. The cost of these sessions was \$1,248.

- Undocumented/unexcused absences - Although providers should be paid for only those absences that are both excused and documented, Erie County paid providers for services to students with unexcused absences. Specifically, we identified 314 sessions (costing \$7,852) that corresponded with unexcused absences for 14 students. Thus, payments were made for sessions that were not rendered.

The Manual specifically requires documentation of excused and unexcused absences. We calculated the above \$7,852 overpayment to the three Erie County SEIT providers by identifying students who had unexcused absences of at least five consecutive days. (The Department requires notification from providers when students have unexcused absences that meet or exceed the five-day threshold so that the students' enrollment status can be reviewed in a timely way.) Erie County does not require such notification until 30 consecutive days of unexcused absence. Since we believe this 30-day policy increases the risk of paying for undelivered services, we used the Department's five day standard in determining Erie County's overpayment.

In response to our preliminary findings, Erie County officials state that they will revise future contracts with providers to require notification after five consecutive illegal absences.

In addition to the attendance findings we found the following situation:

- Simultaneous SEIT/Related Services Sessions – Two providers were paid for delivering SEIT and related services simultaneously to seven students, who reportedly received a total of 98 sessions. Since the students' IEPs did not prescribe simultaneous services, providers were inappropriately paid over \$5,200 for delivering SEIT and related services in the same time period. We could not determine whether one provider charged for simultaneous services because this provider did not record session starting and ending times.

In response to our preliminary findings, this provider reported that it has revised its attendance form to capture the times of day previously missing and Erie County will issue a memo clarifying this requirement.

Erie County officials told us they have no reason to verify attendance because SEIT payments are enrollment-based. Officials further noted they do not verify students' attendance at scheduled SEIT sessions, both because they lack the staff to do such monitoring, and because SED does not require them to oversee attendance. Instead, provider agencies track and monitor attendance. Erie County officials also indicated that providers should inform local school districts of student absences, particularly very long absences, because the county is obligated to pay for SEIT services, as prescribed, until notified to do otherwise by the district. Since the intent of the Manual and the Regulations is clearly to obtain verification that children receive the services providers are paid to deliver, we believe it is incumbent on Erie County to obtain this assurance.

In response to our preliminary report of these findings, Erie County officials state that it will develop an audit procedure whereby county staff will randomly audit agency records on a regular basis, cross referencing IEPs, attendance records and billing documentation. Erie County also will notify school districts and inform agencies to specify the provisions of services on the IEPs and notify providers that Erie County will enforce a policy of strict compliance (for payment) with only the specific services as noted on the students' IEPs.

Many of the matters identified in this section of the report were the result of confusion as to how enrollment based services should be paid for. In response to our preliminary findings on these matters, SED officials indicated that it would be advisable to convert this program from an enrollment based program to a fee for service based program, similar to the related services. SED officials stated that legal and regulatory changes would be needed.

Recommendations

To SED:

1. Direct the Department and Erie County to investigate the specific instances of overpayments noted in this report, and if funds should be recovered from providers, take the appropriate steps to recover the funds (including adjustments to future payments).

(SED officials agree with this recommendation, but believe it is redundant with recommendation Number 8 which states that Erie County and the Department should investigate the overpayments.)

Auditors' Comment: We believe that recommendation Number 1 and Number 8 are complementary.

2. Instruct Department staff to check posted SED SEIT payment rates and update the payment system before reconciling payments to providers.

(SED officials state that this recommendation should be addressed to Department officials as it relates to the Department reconciliation process for SEIT payments.)

Auditors' Comment: We believe that this recommendation is consistent with SED's oversight responsibility.

3. Develop formal direction to municipalities that re-states Manual and payment guidelines SEIT providers must follow, and instruct municipalities to share these requirements with their SEIT contractors. These provider guidelines should include, but not be limited to, the following:
 - a. Providers must maintain accurate attendance records for enrolled students, and keep such records for seven years.
 - b. Providers must ensure they maintain records stating the correct starting/ending dates for students, and notify municipalities of any enrollment changes.

Recommendations (Cont'd)

- c. Providers should not be paid for sessions corresponding with absences that are not documented or excused.
- d. Providers should formally notify the municipality when a student is absent for 5 days or more and require the committee to determine if enrollment should be continued or discontinued.

(SED officials agree with parts 3a and 3b of the recommendation. They will publish a technical assistance memorandum to address these matters. SED officials disagree with part 3c of our recommendation because the SEIT program is an enrollment based program and the providers may be entitled to payment. Regarding recommendation part 3d, SED will work with counsel to modify boilerplate contract language. However, they believe that requiring committees to make enrollment decisions could create an unmanageable workload for the committees.)

Auditors' Comment: We continue to believe that the SEIT program needs to establish some reasonable parameters to ensure that providers are not paid for sessions that are not rendered due to extended absences of the students.

- 4. Direct municipalities to develop, to the fullest extent possible, a means of monitoring providers' compliance with Manual requirements and provider billing guidelines, including the requirements stated in Recommendation 1, so municipalities can avoid paying SEIT contractors for services they do not deliver.

(SED officials agree with the spirit of this recommendation, but indicate that they are in no position to "direct" municipalities to comply.)

- 5. Require that municipalities' contracts with services providers state that providers must notify the municipality and the Committee when a student is illegally absent for 5 consecutive days.

Recommendations (Cont'd)

SED officials disagree with the recommendation as it relates to the committees' role in the SEIT process. See response to recommendation part 3d.)

6. Remind municipalities that records of SEIT sessions should include the starting and ending times of the sessions for which payments are made.

(SED officials agree with this recommendation)

7. Formally assess the propriety of paying for SEIT sessions on an enrollment versus attendance-based system. Propose changes to the Education Law and related regulations as appropriate.

(SED officials agree with this recommendation.)

To the Department and Erie County:

8. Investigate the specific instances of overpayments noted in this report, and if funds should be recovered from providers, take the appropriate steps to recover such funds and adjust aid claims submitted to SED, if necessary.

9. Take actions, as appropriate and necessary, to comply with the direction provided by SED pursuant to recommendations No. 1 through No. 7 in this report.

(Department and Erie County officials generally agree with these recommendations.)

RELATED SERVICE PAYMENTS

Provider rates for related services are set by municipalities rather than by SED, and payments are attendance-based rather than enrollment-based. According to Regulations, all related services should be provided according to the recommendations in the students' IEPs. To verify that Department and Erie County payments to related service providers were appropriate, we tested related service claims and provider payments for the 2002-03 year. In New York City, our testing found providers billed for 62 sessions for students who were absent at the times the sessions were purportedly rendered and billed. We also identified 455 instances in which contractors provided group services rather than the prescribed individual services, or billed for clinicians' services delivered to children at different locations at the same time. In Erie County, we determined that officials did not verify students' attendance for related service sessions, and consequently paid for sessions that were not provided. We also determined that clinicians provided group sessions instead of prescribed individual sessions, or delivered fewer than the prescribed number of services. As a result, these municipalities sometimes paid for services that were not delivered (or were not delivered properly), and preschoolers with disabilities may not have received all the services they needed.

Department Payments for Related Services

In New York City, there were 20 entities that provided related services to more than 7,300 students during the 2002-03 school year at a cost of more than \$32 million. The Department sets the providers' billing rates for related service sessions, which ranged from \$30 to \$45 for a half-hour session in 2002-03. Our test of claims and related payments for three months of the 2002-03 school year found that some providers claimed for services when the children were not present, according to day care center attendance records, and that other services were not delivered as prescribed.

To determine whether the Department verifies student attendance before paying for related services, we examined

attendance records for 314 of the 1,110 students who were reportedly served by three related service contractors during November 2002, January 2003 and June 2003. We selected these three contractors for review because they are among the largest related services providers in New York City. We examined the payments made by the Department to these service providers during the three months noted above for the students we selected.

We matched the students' attendance records at day care centers and Head Start agencies to service days on providers' billing statements. This test detected no exceptions in billings from one of the three providers. However, the match did reveal that the two other providers billed for 62 sessions when students were absent. The 62 undelivered sessions represent 12 percent of the approximately 500 sessions the providers billed for the sample period tested. If the proportion of related services billed, but not provided, is consistent for all related services paid, the Department could have made significant payments for undelivered related services.

Department officials disagree with our conclusion that these discrepancies represent billings for services not provided. They stated that all related services do not have to be rendered at a day care setting and the differences we identified could have been due to services that were provided at a child's home or an alternative location. Furthermore, they state that their payment system does require that all billings for related services be verified by the signature of the day care administrator and/or parent. Therefore, officials believe that their system provides adequate assurance that the related services billed by providers were actually rendered.

We disagree with the Department's position on this matter. The billings we tested were all witnessed by a day care administrator yet the day care's attendance records show the child was not in attendance on the date of service recorded on the bill. If the services had been rendered at for example, a child's home, the related service should have been witnessed by a parent and not the day care administrator.

We also found that related service contractors sometimes provided group services when the Department paid for the delivery of individual services, as prescribed on students' IEPs. According to SED, the Committee prescribes individual services

for a student when one-on-one service delivery is important for acquiring a new skill or for a variety of other reasons that contribute to the child's learning progress. To determine the extent to which the three providers conformed to students' IEP requirements for individual sessions, we examined student IEPs, clinician records and provider service billings for the 314 students in our sample for the three months we tested. Again, we found no exceptions at the first provider, since that contractor delivered one-on-one services, as prescribed in students' IEPs. However, we found that the two other providers provided 271 group sessions for 172 students that were billed at the more expensive individual session rate. The two providers also billed clinicians' services for another 184 sessions when clinicians were reportedly providing services to two students at the same time at different locations. Thus, for the period we reviewed, these two providers billed and were paid about \$20,500 for 455 sessions that were improperly delivered or not provided at all.

One provider attributed most of the apparent excessive billings to lax recordkeeping by their clinicians. Specifically, officials told us that clinicians recorded the wrong times for sessions and created the appearance of conflicts in session times by rounding session starting and/or ending times. The other provider officials did not explain the reasons for their potentially incorrect billings.

As noted earlier, both the Manual and the Department's contract require providers to keep attendance records. Attendance records serve as evidence that services were delivered and document the student's treatment history. Because the Department is responsible for ensuring that special education preschool children receive prescribed related services, Department officials should enforce providers' compliance with recordkeeping requirements, and verify day care to attendance records, on a sample basis, that billed services were actually provided.

Erie County Payments for Related Services

During the 2002-03 year, Erie County spent about \$9 million for services from 23 providers to more than 2,000 students. Erie County's billing rates for related service providers ranged from \$20 to \$45 per session in 2002-03. We determined whether Erie County verified that related services were actually

delivered as prescribed by matching agency attendance records to provider bills and by reviewing students' IEPs.

To test students' attendance, we requested attendance verification data from 19 of the 48 day care centers and Head Start agencies affiliated with three Erie County providers. These three providers billed Erie County for services rendered to a total of 124 students during three months (November 2002, January 2003 and June 2003) of the 2002-03 year. Thirteen of the 19 agencies responded to our attendance data request. During our sample period, each of the 13 responding agencies had only one student enrolled in the program. The 13 students received a total of 780 sessions during the three months we reviewed.

Our tests matched agency attendance records to the service days on the providers' billing statements. We did not find any exceptions in the bills submitted by one provider. However, the other two providers billed for 60 sessions for the 13 students who were absent at various times during the 3 months we tested. An official at one agency told us that one student, for whom 40 sessions were billed (and paid), never attended that agency. Consequently, it is unlikely that the 40 sessions were provided. Erie County officials said they did not verify that students received billed services because they relied on providers to confirm students' attendance. However, the providers said they do not maintain the required attendance records; instead, they rely solely on their clinicians' service summaries as evidence of billable sessions.

In response to our preliminary findings, Erie County officials informed us that they will begin randomly auditing related service claims against attendance data (similar to new efforts to verify SEIT claims and payments).

We also tested to determine whether these three providers delivered the services prescribed on students' IEPs, as required by Regulations. To do this, we compared IEPs, clinician records and provider bills for all 124 students served by these providers in 2002-03. We found these three providers did not always deliver related services as prescribed on students IEPs. As a result, the providers were paid for services they delivered improperly, or did not deliver at all. We list details of these exceptions, as follows:

- Group rather than individual sessions - In 47 instances, one of the providers was paid to deliver individual sessions, but clinicians delivered group sessions instead. This provider also reported providing services to two students in two different locations at the same time. Officials claimed that services were delivered as prescribed, and that the group sessions and time conflicts shown in attendance records were attributable to clinicians' recordkeeping errors. We attempted to perform the same review at the second provider, but its supporting documentation was inadequate for verifying when and how services were delivered.
- Fewer services than prescribed - The Regulations state that students who need speech therapy should receive a minimum of two 30-minute sessions each week. However, clinicians from the two providers with errors consistently provided 76 full-time students with less than two 30-minute sessions per week of speech therapy. There was no make-up sessions held to compensate for missed time.

Erie County officials did not know that the clinicians at these two providers had provided fewer services than prescribed because they do not review clinician-supporting documentation for service delivery, or request such records from providers. Erie County officials stated it was the responsibility of the school districts to insure that the students receive the prescribed number of sessions as noted in the students' IEPs and as long as the providers did not bill for services not rendered they have no regulatory requirement to address the missed sessions. We acknowledge that Erie County has limited responsibility in this matter. We encourage them to pass these observations onto the appropriate school districts to help insure there is programmatic compliance with IEPs.

Recommendations

To SED:

10. Provide formal direction to municipalities to ensure that related service providers are paid for only the services they actually provide, as prescribed on students' IEPs.

Recommendations (Cont'd)

This direction for municipalities should include the following:

- a. Establish procedures that include (but are not limited to) verifying service billings to attendance records, at least on a test basis, to ensure that students were present on the days that related services were claimed to have been provided.
- b. Enforce the requirement that related service providers maintain the attendance and service documentation required by the Manual.
- c. Include the starting and ending times for service sessions on claims.
- d. Monitor service providers' performance to ensure they provide the types of sessions prescribed on students' IEPs, and at the frequency provided for in the IEPs and/or the Regulations.
- e. Providers are not to deliver SEIT and related services simultaneously, unless specifically prescribed by students' IEPs.
- f. Instruct service providers that clinicians must record their related service sessions promptly and accurately to document service delivery.

(SED officials agree with this recommendation.)

To the Department and Erie County:

11. Take actions, as appropriate and necessary, to comply with the direction provided by SED pursuant to recommendation No. 10 in this report.

(Department and Erie County officials agree with this recommendation.)

MAJOR CONTRIBUTORS TO THIS REPORT

Brian Mason
Tony Carbonelli
Stephen Lynch
Orin Ninvalle
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Jason Kearney
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THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

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December 15, 2004

Mr. Steven E. Sossei
 Audit Director
 Office of the State Comptroller
 Bureau of State Audit
 110 State Street – 11th Floor
 Albany, NY 12230

Dear Mr. Sossei:

The following is the New York State Education Department’s (SED) response to the draft audit report (2003-S-39 of the State Education Department, New York City Department of Education and Erie County: Administration of Payments for Preschool Related Services and Special Education Itinerant Teachers).

Most of the observations go beyond SED oversight responsibility and deal with internal control weakness within the municipalities’ processes for procuring and paying for SEIT and related services. However, we are responding to the draft audit as written. The report should acknowledge that SED has provided some written guidance regarding related services and SEIT, but lacks the authority to make and enforce specific control mechanisms to be employed by municipalities.

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Note
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The report uses individual education programs for IEP. However, the actual term should be individualized education program. Also, the report uses Department to mean the New York City Department of Education. To avoid any confusion as to whether the Department refers to the State Education Department or the New York City Department of Education, in our response we will refer to the New York City Department of Education as the NYCDOE.

*
Note
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Recommendation 1: **Direct the Department and Erie County to investigate the specific instances of overpayments noted in this report, and if funds should be recovered from providers, take the appropriate steps to recover the funds (including adjustments to future payments).**

We agree with this recommendation. However, the recommendation is redundant in that you direct the NYCDOE and Erie County to investigate the specific instances of overpayment noted in the report. (See Recommendation 8).

Recommendation 2:

Instruct Department staff to check posted SED SEIT payment rates and update the payment system before reconciling payments to providers.

We believe this should be addressed to the NYCDOE as the recommendation addresses the NYCDOE's reconciliation process.

Recommendation 3:

Develop formal direction to municipalities that re-states Manual and payment guidelines SEIT providers must follow, and instruct municipalities to share these requirements with their SEIT contractors. These provider guidelines should include, but not be limited to, the following:

- a. Providers must maintain accurate attendance records for enrolled students, and keep such records for seven years.**
- b. Providers must ensure they maintain records stating the correct starting/ending dates for students, and notify municipalities of any enrollment changes.**
- c. Providers should not be paid for sessions corresponding with absences that are not documented or excused.**
- d. Providers should formally notify the municipality when a student is absent for 5 days or more and require the Committee to determine if enrollment should be continued or discontinued.**

We agree with recommendations 3 (a) and (b) and will publish a technical assistance memorandum for the municipalities that will address these issues once the audit becomes final. We disagree with parts of 3 (c) and 3 (d) of the recommendation. Regarding recommendation 3 (c), student absences should be documented, but the SEIT program is an enrollment based reimbursement system as specified in law and the provider may be entitled to payment based on indirect service time, i.e., consultation with the student's regular education program teacher. Regarding recommendation 3 (d), we will work with SED's Counsel to modify SED's boilerplate contract that municipalities use with approved service providers to require the service provider to notify the municipality and the CPSE when a child is absent for an extended period of time and to determine if any regulatory change would be required. However, depending on the circumstances, it may not be appropriate or necessary for the Committee to determine if enrollment should be continued. This could create an unmanageable workload for the Committee. It should be

noted that the 5-day parameter only applies to the NYCDOE, as it is a requirement of their contract.

Recommendation 4: **Direct the municipalities to develop, to the fullest extent possible, a means of monitoring providers' compliance with Manual requirements and provider billing guidelines, including the requirements stated in Recommendation 1, so municipalities can avoid paying SEIT contractors for services they do not deliver.**

While we agree with the spirit of this recommendation, and we will include a recommendation to establish a monitoring process in the SED technical assistance memorandum, we are in no position to "direct" the municipalities to comply with the recommendation.

Recommendation 5: **Require the municipalities' contracts with services providers state that providers must notify the municipality and the Committee when a student is illegally absent for 5 consecutive days.**

We disagree with the part of the recommendation requiring notification of the Committee. See recommendation 3 (d) and the corresponding response.

Recommendation 6: **Remind municipalities that records of SEIT sessions should include the starting and ending times of the sessions for which payments are made.**

We agree with this recommendation and will include this in the technical assistance memorandum. We recommend this be renumbered as Recommendation 3 (e).

Recommendation 7: **Formally assess the propriety of paying for SEIT sessions on an enrollment versus attendance-based system. Propose changes to the Educations Law and regulations as appropriate.**

We agree with the recommendation and will pursue this with SED Counsel.

Recommendation 8: **Investigate the specific instances of overpayments noted in this report, and if funds are should be recovered from providers, take the appropriate steps to recover such funds and adjust aid claims submitted to SED, if necessary.**

SED is not responding as the recommendation is addressed to the NYCDOE and Erie County.

Recommendation 9:

Take actions, as appropriate and necessary, to comply with the direction provided by SED pursuant to recommendations No. 1 through No. 7 in this report.

SED is not responding as the recommendation is addressed to the NYCDOE and Erie County.

Recommendation 10:

Provide formal direction to municipalities to ensure that related service providers are paid for only the services they actually provide, as prescribed on students' IEP's. This direction for municipalities should include the following:

- a. **Establish procedures that include (but are not limited to) verifying service billings to attendance records, at least on a test basis, to ensure that students were present on the days that related services were claimed to have been provided.**
- b. **Enforce the requirement that related service providers maintain the attendance and service documentation required by the Manual.**
- c. **Include the starting and ending times for service sessions on claims.**
- d. **Monitor service providers' performance to ensure they provide the types of sessions prescribed on student IEPs, and at the frequency provided for in the IEPs and/or the Regulations.**
- e. **Providers are not to deliver SEIT and related services simultaneously, unless specifically prescribed by students' IEPs.**
- f. **Instruct related service providers that clinicians must record their related service sessions promptly and accurately to document service delivery.**

We agree with this recommendation and will include these points as appropriate in our technical assistance memorandum.

Recommendation 11: **Take actions, as appropriate and necessary, to comply with the direction provided by SED pursuant to recommendation No. 10 in this report.**

SED is not responding as the recommendation is addressed to the NYCDOE and Erie County.

If you have any questions regarding this response, please contact Thomas Hamel, Chief of the Special Education Program Services and Reimbursement Bureau at (518) 486-2991.

Sincerely,

A handwritten signature in cursive script that reads "Theresa E. Savo".

Theresa E. Savo

c: Thomas Hamel



THE NEW YORK CITY DEPARTMENT OF EDUCATION

JOEL I. KLEIN, *Chancellor*

OFFICE OF THE DEPUTY CHANCELLOR

Kathleen Grimm, *Deputy Chancellor for Finance and Administration*

52 Chambers Street, Room 320 • New York, New York 10007

(212) 374-0209 (Voice) (212) 374-5588 (Facsimile)

January 25, 2005

Steven E. Sossei
Office of the State Comptroller
123 William Street 21st floor
New York, NY 10038-3804

Re: Audit Report Number 2003-S-39

Dear Mr. Sossei:

This is to address the New York State Office of the State Comptroller's ("Comptroller") Draft Report ("Report") of the of its findings upon audit of the "Administration of Payments for Preschool Related Services and Special Education Itinerant Teachers" ("SEIT").¹ The scope of audit included SEIT payments made in Fiscal Year 2001 and 2003 and Related Service payments for Fiscal Year 2003, by the New York City Department of Education ("Department")² and Erie County.

Throughout the preliminary audit phase, Comptroller staff extended the Department the courtesy of forwarding written preliminary findings and inviting responses. By letter dated August 31, 2004 ("Letter") and signed by Richard Carlo, an Administrator of the Department's Division of Financial Operations, the Department submitted a written response to the preliminary findings pertaining to the SEIT component of the audit.³ Inasmuch as the Letter's observations about the methodology used to conduct the audit, the SED's and Department's roles in the SEIT tuition rate-setting and payment processes, and the specific preliminary findings adequately address the issues raised in this Report, the Letter is adopted and incorporated into the Department's official response to the SEIT portion of this Report. What follows are additional general comments and the Department's response to the related services component of the Report.

¹ The Department had responded in writing to preliminary SEIT services findings and notes that, while certain points that were raised are referred to in the Report, the substance of our comments appears not to have been incorporated. This response incorporates the earlier one.

² During each of the periods of audit, July 1, 2000 through June 30, 2001, and July 2002 through June 30, 2003, the Department served an average of 11,000 preschool-age students with IEPs, almost exclusively through private vendors of SEIT and related services.

General Observations

- The Comptroller reports that upon SED’s review of the preliminary findings, the SED offered that the current methodology for paying SEIT providers resulted in some of the confusion reported by the Comptroller and opined further that it “would be advisable to convert this program from an enrollment based program to a fee for service based program, similar to the related services” (Report p. 17). The Department has consistently questioned the application of a tuition-based methodology to services that are more akin to a related service than to a program in a school setting, and urged the Comptroller to recommend legislative and regulatory corrective action. We are pleased that the Comptroller has joined in recommending that action and strongly urge that it be considered by the SED. (Report p. 19).
- The Department, through its authorized representative, Richard Carlo, maintained throughout the preliminary audit phase, in its written response to preliminary findings, and by submission of this response, that neither the law nor the Department’s contract with providers allows the Department to “close the books” until final SEIT tuition rates are set by SED. Nonetheless, the Report cites Department “staff,” unidentified by name or title, as the source for a statement that “no additional work would have been performed” on the Department’s payment adjustments to reflect tuition rate changes by SED. (Report pp. 11 – 12). A statement that implies that the Department is avoiding legal and contractual obligations cannot rest on a reference to information provided by an unidentified staff person, particularly since a responsible administrator had already stated this agency’s position. In the interest of fairness, we are requesting that the Comptroller strike the statement.
- Rather than refer to SEIT tuition rates paid by the Department as “prospective,” “reconciled” and “certified” which are the tuition rate terms defined in the Regulations of the Commissioner of Education and used by the SED and Department, the Report substitutes the terms “excessive,” “wrong” and “incorrect” to describe the rates. The Department submits that these subjective and over-broad references raise inappropriate inferences and create confusion. We therefore request that they be conformed to the terms of art used to reference tuition rates by the public agencies.
- In certain instances, where the Report identifies a discrepancy between service records certified and submitted by SEIT and Related Services providers to the Department and uncertified records maintained by third parties that have no contractual relationship with the Department (*e.g.*, student attendance records of a day care or Headstart center), the Report credits the uncertified documents. We question that approach and respectfully suggest that the auditors consider that other agencies base official action on representations made in certified submissions, including the SED, which routinely sets tuition rates on the sole basis of representations certified and submitted to it by special education program/service providers without examining the underlying records.

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* See State Comptroller's Notes, page 63

- Although the Letter addresses the Department's efforts that had begun well before the results of the preliminary audit were shared to eliminate the paper-driven payment process and substitute therefore an electronic system, it is worth reiterating that the Report focuses only on the older paper processes. Beginning school year 2004/2005 all tuition-based program providers, including SEIT providers, have been required to submit enrollment information electronically so that adjustments can be made on an on-going basis, thereby enhancing the Department's ability to adjust enrollment information in a timely fashion and allowing resources to be deployed to monitoring SED tuition rates and to develop an electronic interface with SED's on-line database.

Related Service Payments

During the period covered by the audit, the Department had issued more than twenty contracts to related service provider agencies through an RFP process and more than 700 Related Service Agreements with independent related service providers. Unlike SEIT services, for which tuition payments are set by the SED and made by the Department's Bureau of Contract Aid ("BCA") on the basis of students' enrollment, related service fees are set by the Department and paid by BCA on an actual encounter basis at a flat fee between \$30.00 and \$45.00/half-hour. The rates paid to related service providers serving New York City preschool-age students are among the lowest in the State.

The Comptroller's stated audit objective was to determine whether the Department monitors related service student attendance before making payments to related service providers. Related service providers are required to bill the Department on a standardized invoice that provides for the signature of the parent/principal or designee on each date of service verifying that the service has actually been provided at the times indicated. Additionally, the provider must sign the invoice certifying that the services were provided as indicated. The Department does not pay unless the appropriate signatures are affixed. The Department will not pay for services that are billed in excess of the approved amount entered into the Department's database by the Committee on Preschool Special Education. The Department relies on the veracity of the certified information in much the same way as do other governmental agencies, for example, the Internal Revenue Service in remitting tax refunds or, closer to home, the SED in relying upon Certified Financial Reports of revenue and expenditures in computing tuition rates for Special Education providers.

* Note 4

In one test of the Department's payments the auditors reviewed invoices and then checked with the students' daycare providers to determine whether the students were actually present at the daycare location on the day for which the service was billed. They found, in certain cases, that students were not marked present at their daycare centers on dates for which related services were billed and suggest, therefore, that the Department is exposed to paying large sums of money for services that were not provided.

The recommendation flowing from this finding is that the SED instruct municipalities to "verify" students' attendance for related service claims for reimbursement, at least on a test basis. In response, the Department submits that, generally, testing on a sample basis may surface false representations, but that such testing requires reliable records or information against which to

compare questioned documents, such as invoices. In the case of student attendance records maintained by third parties, the reliability standard may not necessarily be met. Per the Commissioner's Regulations, related services are provided at an approved or licensed prekindergarten or head start program; the work site of the provider; the student's home; a hospital; a state facility; or a child care location as defined in section 4410 of the Education Law. A significant number of preschool-age students receive their related services where attendance is not regularly taken. Adults witnessing the provision of a related service do not necessarily have the authority to allow disclosure of those records to the Department if attendance was maintained and, in many cases, have no contractual obligation with the Department requiring maintenance of accurate attendance records. As a case in point, in several instances after the preliminary findings were reported, Comptroller staff had to revise their findings because the daycare providers located attendance records that had not been available during the site visit or admitted to an error when initially reporting absences.

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Notes
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In another audit test, the auditors examined invoices to determine whether services were provided and billed for in the IEP-recommended group size (number of students served together in a single session). The auditors found instances where services were provided in a group size greater than 1, but the IEP recommended services in a group of 1 and services were billed as if the recommendation had been followed. Additional tests uncovered instances where it appeared that a clinician working for one of the sampled provider agencies was serving two students at the same time on the same date, but in different locations. Immediately upon receiving this information from the auditors the Department called in the clinician's agency to explain the findings.

In a written response tendered to the Department and Comptroller, the agency provider offered that the few related service clinicians who made the errors had failed to make contemporaneous records of services and that this failure resulted in errors in reporting services on the invoices. Nonetheless, the agency represented that in response to the situation that was brought to their attention, their clinicians were instructed that they must record actual time of service and complete paperwork as soon as the session is provided.

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Note
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The agency further admitted that it had billed in error for services that had actually been provided in a group size greater than 1 and would be making repayment.

The recommendation that follows these findings is that municipalities should heed a direction from SED to ensure that related services providers are providing services in accordance with students' IEP group size and frequency mandates. The Department agrees; the Department's Office of Auditor General has already begun to implement that recommendation and has incorporated tests similar to those conducted by the Comptroller into its audit plan.⁴

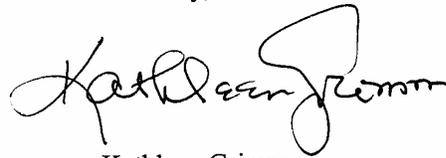
⁴ As a follow-up to the above findings, the Department conducted its own review of June 2004 related service invoices submitted by the above-referenced agency provider and found similar issues in those invoices (% of the service encounters). As of this date, Department staff have met with the provider and have taken steps to recoup the over-billing. The provider has agreed to review 100% of its billings before submission to BCA to avoid repetition of the errors. The provider will be among those who will be required to file invoices electronically in the pilot phase of BCA's new data system.

* See State Comptroller's Notes, page 63

Additionally, OAG is consulting with BCA on the design of an electronic invoice system that will include, among other controls, edits for services that appear to be delivered in group sizes larger than recommended or to two different students by the same clinician on the same day and time at different locations.

Our differences in approach to the complex issues within the areas of tuition payment methodology and internal controls notwithstanding, we recognize and appreciate that throughout this project the Comptroller has provided this agency many opportunities to state its position and respond to findings.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen Grimm". The signature is fluid and cursive, with a large loop at the end of the last name.

Kathleen Grimm

Deputy Chancellor for Finance and
Operations

C:	Bruce Feig	Richard Carlo
	Michael Best	John Cahalin
	Vincent Giordano	Lisa Secular
	Linda Wernikoff	Marlene Malamy
	Ava Mopper	Nader Frances
	Elliot Golden	Winnie Ng
	Sally McKay	Robert Sosa



THE NEW YORK CITY DEPARTMENT OF EDUCATION

JOEL I. KLEIN, Chancellor

Division of Financial Operations

August 31, 2004

Anthony Carbonelli
Office of the State Comptroller
123 William Street 21st floor
New York, NY 10038-3804

Re: Audit Report Number 2003-S-39

Dear Mr. Carbonelli:

The State of New York Office of the State Comptroller ("Comptroller"), in letters dated January 16, February 10, and June 10, 2004 to the New York City Department of Education ("DoE"), reported preliminary findings made in the course of an audit of the practices used by the DoE to verify the propriety of private contractors' claims for Related Services and Special Education Itinerant Teacher ("SEIT") services to preschool-aged special education students.

This response addresses the SEIT services component of the audit and, to give the findings a context, outlines the relationship between the DoE and the New York State Education Department ("SED"); the application of the methodology that the SED's Rate Setting Unit established for payment of SEIT tuition; and the payment procedures used by the DoE. To the extent that specific preliminary findings are based on an interpretation of payment methodology different from the DoE's and tie "overpayments" to numbers of actual sessions within an enrollment period, we disagree with those findings in general since we cannot determine how much of the questioned transactions, if any, are affected by the auditors' methodology. Those findings to which we can respond specifically are addressed after the more general discussion that follows.

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Note
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As an initial matter, we posit that the auditors have misplaced reliance on an interpretation of a SEIT payment methodology that they believe is supported by the SED. The auditors' theory appears to be that if a student who has established an enrollment period is absent from SEIT sessions, and the reason for the absences do not fall within the ambit of "legal" excuses as defined by the SED Commissioner's Regulations, the DoE should be adjusting its payments to the provider to reflect those absences. The same would apply, according to the auditors, if one of the provider's SEIT teachers missed a number of sessions, because, for example, the teacher went on a honeymoon for two

1 During each of the periods of audit, July 1, 2000 through June 30, 2001, and July 2002 through June 30, 2003, SEIT services were provided to approximately 3600 special education preschool-aged students through private agencies under contract with the DoE. In school year 2000/2001 62 agencies held SEIT service contracts; 51 agencies were under contract for those services in school year 2002/2003.

2 This response incorporates information provided by the DoE's Central Based Support Team about the programmatic elements of the SEIT program.

weeks during a service period. While we take the position that providers are charged with statutory and contractual obligations of complying with a student's Individualized Education Plan, and that providers that allow teachers to take substantial time off without hiring substitutes or making up sessions are not complying with mandates, unless and until the New York State Legislature changes the payment methodology for SEIT providers, or the DoE is given clear direction from SED that we can adjust students' and teachers' absences within enrollment periods without interfering with the SED's rate setting process,³ the DoE considers those absences to be programmatic, not payment, issues.

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Note
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Additionally, the Report does not take into account that the DoE pays its SEIT providers "prospectively" with the acknowledgement by all parties that the payments will be adjusted after the school year to reflect: 1) actual enrollment periods for each student and 2) SED-set tuition rates. The following explains this process.

SEIT Payment Methodology

SEIT services are paid on an *enrollment*, not a fee-for-service basis as are, for example, related services. Before school year 2000/2001, the DoE had paid SEIT providers for each session actually provided. However, that practice ended when the SED, the agency that sets tuition rates and oversees Special Education programs, clarified its position that SEIT services are enrollment-based services, similar to those provided in a school setting, and must be paid for on that basis. That means that once a student establishes a first date of attendance with a provider, the DoE will make tuition payments to the provider until the end of the enrollment period, *i.e.*, the last attend date without regard to the number of SEIT sessions held within that period. A first attend date is established either by an actual initial service encounter or by a "legally excused absence" as that term is defined by the Commissioner's Regulations §175.6⁴; a last attend date is defined by the last actual date of service or by a legally excused absence.

SED's SEIT Tuition Rate Setting Process

By law, the DoE has no authority in setting the tuition rates at which SEIT providers are paid. Rather, it is the SED that computes the "certified reconciliation tuition rate" ("reconciliation rate") for any particular SEIT provider based on information submitted by the provider to the SED's Rate Setting Unit in the form of a Consolidated

³The DoE is currently seeking clarification from the SED with respect to whether other than "scattered" SEIT provider absences would permit the DoE to adjust its payments without upsetting the SED's rate setting process. As of this date, we have been advised that it is SED's position that the providers should not bill if they schedule SEIT sessions knowing that a provider will be unavailable and substitutes are not called in to provide the services. Whether that translates into a direction to DoE that it should affirmatively seek provider attendance information and make appropriate adjustments is a question that we have asked SED. We are awaiting that response. (See, also, DoE Response to the June 10, 2004 letter, page 7, below).

⁴ The Comptroller incorrectly interprets SED Commissioner's Regulation §175.6 as supporting the notion that the DoE should not be paying for absences that are not legally excused is misplaced. That Regulation addresses the definition of a legally excused absence for tuition-based programs such as SEIT and the calculation of enrollment periods. It does not state, as suggested by the Comptroller, that "in order to receive payment for absences, the absence must be legal and documented." Attached is a copy of the Regulation for reference.

*
Note
9

Fiscal Report (“CFR”).⁵ In simplest terms, the SED’s SEIT tuition rate computation is based on the program’s actual income and expenditures and the greater of 66% percent of the SEIT teachers’ employment hours or the reported billable sessions on an enrollment basis. If missed SEIT sessions are going to be dealt with on an operational level at all, they are dealt with by the SED’s Rate Setting Unit which has confirmed that the tuition rate setting process could take into account those SEIT sessions missed because of absences that are not “legal”.⁶

CFRs are submitted to SED many months after the end of the school year for which income and expenditure and sessions information is disclosed. Thereafter, reconciliation rates are set at different times by SED, and in fact, may be finalized many years after a CFR was submitted.⁷

DoE’s SEIT Provider Payment Process

The DoE’s Bureau of Contract Aid (“BCA”) generates tuition payments automatically at regular intervals throughout a school year to SEIT providers. For each student recommended for SEIT services, the number of SEIT sessions (in one-half hour intervals) and group size recommended on the student’s IEP are uploaded from the special education student tracking system to the corresponding payment system. Once a student is approved for service with a particular provider, the payment for that student is automatically calculated by the payment system using the latest SEIT tuition rates for that provider that had been manually keyed into BCA’s payment database.⁸

Generally, after the end of the school year, and before SED establishes a provider’s reconciled tuition rate, BCA “adjusts” its records and makes payment corrections based on actual enrollment periods for each provider’s students. That adjustment is made because students may have begun or been discharged from services at different times during the school year and payments may not have reflected those occurrences.

Because the DoE is compelled by law to pay the tuition rate set by the SED, any payment adjustments made by BCA before a reconciliation rate is established for a provider are not actually “final” despite that BCA may use that terminology to close its

⁵ Even certified rates are subject to change if a post-certification audit results in an “audit rate” different from the certified rate.

⁶ Having been asked by the auditors whether “students’ reported attendance” could “affect” the rate for SEIT, the SED responded that “if the ‘billable sessions’ is affected by extended periods of ‘illegal’ absence, it could impact the rate.”

⁷ Although the SED is required to notify the school districts of its intention to finalize tuition rates, the SED has not done that uniformly despite the DoE’s efforts to seek compliance. Rather, the DoE has been advised by SED to make frequent inspection of the SED website to determine whether the SED has posted a certified rate for each provider.

⁸ The database used by ECA reflects tuition rates regardless whether SED has established a prospective rate. BCA will use the most recent rate in its system for any given year. Of course, since reconciliation rates will not be set until well after the school year ends, the prospective payments made to providers are subject to a rate adjustment at a much later time when the reconciliation rate is set by SED.

school year accounts. Therefore, in instances where the SED had not posted a reconciliation rate by the time BCA started the initial student enrollment adjustment process, BCA has to further adjust tuition payments when a reconciliation rate is established. These additional tuition payment adjustments are generally made well after the close of the school year, on a rolling basis, as SED sets the final tuition rates and BCA is made aware of them.

In May 2001, when it became clear that compliance with SED's directions to cease paying SEIT providers only for actual sessions provided and to conform payments to the enrollment period methodology, would create a more labor-intensive adjustment process, BCA outsourced most aspects of that process to the audit firm KPMG. KPMG was charged with responsibility, first for completing adjustments for preschool special education special class programs, and then SEIT services.⁹ KPMG did not begin its review of SEIT services for school year 2000/2001 until June 2003.

Currently, the adjustment backlog largely has been cleared, and some student register and resulting SEIT payment adjustments are being made during the course of the school year. As a result, the post-year SEIT enrollment-based payment adjustment process is completed more timely. It remains, however, that BCA must re-adjust provider payments for any school year for which reconciliation rates for that provider are established by SED after adjustments were begun.

For an agency that serves as many students in as many special education programs as does the DoE, it makes little sense to begin adjustments only after SED establishes a reconciliation rate. To do so would create administrative havoc and thwart timely adjustment of payments to reflect actual student enrollment periods. The difficulty BCA would have trying to time payment adjustments to the moving target of SED's rate setting activities is well illustrated by the Comptroller's finding that there are currently no school year 2000/2001 SED certified rates for several SEIT providers.

RESPONSE TO SPECIFIC SEIT FINDINGS

January 16, 2004 Letter

Findings:

- Eleven SEIT providers were paid a "final rate" higher than that established by SED.
- Two SEIT providers were paid a "final rate" lower than that established by the SED.
- The DoE completed the final reconciliation on 12 providers even though the SED has not yet established a final reconciliation rate for these providers.

⁹ KPMG has been checking the SED website only at the beginning of the enrollment period adjustment process and using the tuition rate that is posted for the provider whether or not it is a certified rate. That methodology will be amended so that the site will be checked again upon completion of the adjustments.

DoE Response: BCA has reviewed its records with respect to the 13 providers referred to in the first two bullets and has determined that the adjustments for those providers were initiated before the SED established a certified rate. As outlined above, BCA would have adjusted the payments in the ordinary course to reflect the new rates, though the timing of that adjustment may not have been immediately upon the SED's posting of the rate. The third bullet addresses the timeliness of the SED tuition rate certification process. The DoE's only comment in that regard is that the lack of timeliness has contributed to our inability to use reconciliation rates to pay providers. Any other comments pertaining to that process should be sought from the SED.

*
Note
10

February 10, 2004 Letter

Findings:

- One SEIT provider was paid a rate of \$63/session in school year 2000/2001 when the rate in effect was \$37/session. The total overpayment of \$453,416 was identified by DoE, and the overpayment recouped, as a result of an adjustment made in 2003.
- Another SEIT provider was paid a rate of \$50/session in school year 2000/2001 when the rate in effect was \$36/session. The total overpayment of \$569,940 was identified by DoE, and the overpayment recouped, as a result of a reconciliation conducted in 2003.

DoE Response: BCA has reviewed its records and can find no explanation other than that the discrepancies were occasioned by data input errors. We do want to underscore that the overpayments have been recouped. Since adjustments are now made timelier, it is unlikely that errors such as those reported would take as long to identify. Further efforts to minimize the opportunity for errors are outlined below.

*
Note
11

June 10, 2004 Letter

Findings (pp. 2-3): One of the providers sampled did not submit Voucher Detail Reports ("VDR") during the school year, but BCA continued to make payments nonetheless. The Comptroller concludes that, as a result, the DoE would not be able to "update its payment system accordingly."

DoE Response: School Year 2002/2003 marked the first school year that VDRs were requested from providers. At the beginning of the school year, each SEIT provider was sent a Turnaround Document ("TAD") that listed the students approved for SEIT enrollment with that provider. The providers were to confirm enrollment and indicate the dates the students started receiving services to set the beginning of the enrollment period. The TADs were to be submitted to BCA. Thereafter, a VDR – a roster of students for whom payment was being made - was attached to each provider's payment. Providers were to make corrections, if necessary, to indicate new enrollments and discharges; the VDR was to be returned to BCA.

5

*See State Comptroller's Notes, page 64

When the DoE created the TAD/VDR process, it was envisioned that the process would permit BCA to make “rolling” adjustments to reflect current enrollment (not attendance) status, thereby reducing the volume of post-school year adjustments that BCA had to deal with. It was not the intention of the DoE to use VDRs as the sole source of information for enrollment adjustments. BCA would also use the final student register that was submitted after the end of the school year.

As the 2002/2003 school year unfolded, it became apparent that the new TAD/VDR process was still too paper-intensive. For that reason, beginning in school year 2003/2004, BCA and other DoE offices initiated discussions with the preschool special education provider coalitions to develop an electronic data solution for obtaining current enrollment information. As a result, beginning early school year 2004/2005, a new electronic roster system will be rolled out and preschool special education SEIT and center-based program providers will have to submit rosters electronically in order to be paid.

That being said, it still remains that the conclusion drawn by the Comptroller that missing VDRs would prevent adjustments, is incorrect. Adjustments for both enrollment and tuition (when the SED sets the rates) will be made for all providers.

*
Note
12

Findings (p. 5):

- One provider “did not always keep attendance records in a manner supplied or approved by the NYC DOE” as required by contract, and could not locate any “white” attendance cards for school year 2003, the school year that the DoE relieved providers from maintaining “white” cards as long as they used a comparable record.
- The form the provider substituted for the white card did not clearly indicate absences.
- Sometimes, regular sessions were held on Sundays.

DoE Response:

- While it is correct that providers do not have to use the white attendance cards to record daily attendance for SEIT services, providers are responsible to ensure that their alternative meets all the criteria of that card. The fact that the provider identified by the auditors could not locate white cards has no bearing on DoE policy.
- If the form adopted by the provider was vague, as suggested by the auditors, that issue does not bear on the decision to replace the white card with a different form. Upon being made aware of the issue, the provider agreed to amend the form.
- The DoE is not aware of any written policy limiting SEIT services from being provided on weekends.

*
Note
13

Findings (p. 6): In some instances, sampled providers did not correctly report the start and end dates of service and the DoE did not verify the reported dates against actual student attendance.

DoE Response: The contract requires providers to maintain records of student attendance. At the end of the school year, each provider is notified by BCA that it must review the student register attached to the notification and verify that BCA's register conforms to students' actual enrollment information. In addition, providers are contractually obligated to provide to the DoE the aggregate full time equivalency number and breakdown of New York City students reported to the SED's Rate Setting Unit on its CFR. If we uncover on audit that providers do not correctly report actual start and end dates, we have the right to terminate the contract or take other action as deemed appropriate.

Findings (pp. 7-8):

- Instances were found where students were not receiving the level of services recommended in their IEPs. The reasons for the service variance were
 - SEIT teachers were absent
 - SEIT teachers left the employ of the provider agency
- There were instances of fewer sessions provided than were required by the IEP, "even though both the teacher and student appeared to be available."
- In certain instances, SEIT was recommended for as many as 5 hours/week, when the SOPM-recommended number of hours is 2/week. In some cases, providers had a difficult time finding SEIT teachers to meet the 5 hour mandate, but billed as if it had been met.

DoE Response:

- The DoE has studied a written communication between the auditors and high-level staff of the SED's Rate Setting Unit ("RSU") and has sought clarification of that writing from RSU because the auditors' interpretation of the RSU's position regarding SEIT payment methodology is different from ours. As of this writing, we have received a communications from RSU stating, among other things: "SED would . . . maintain that a provider that knowingly schedules SEIT services for days when teachers will not be available to deliver services and substitutes are not utilized and no makeup sessions are delivered, then the provider should not bill for those sessions, even though SEIT is on an enrollment basis. OSC did not disagree and clearly understands that enrollment is not typically affected by scattered absences." SED further indicates that Regulations of the Commissioner §§200.9 and 175.6 govern SEIT payments. The DoE has sought clarification of SED's position and will be pursuing resolution of that issue with SED insofar as we are unable to reconcile the language of the cited Regulations with a methodology that has the DoE discounting payments for teacher absences. Any such payment adjustment would also require from SED a clear definition

of the length and type of provider absences that would enable the DoE to adjust payments and exactly how we would demonstrate that the provider “knowingly” scheduled sessions for times the provider was absent. It has been our understanding that SED is wholly responsible for rate setting and that the DoE is to do nothing that interferes with the process or contradicts the Regulations. It is further our understanding that lengthy provider absences are addressed in the CFR, first, because under Regulations of the Commissioner §200.9, “billable sessions” (*i.e.*, the time a teacher spends with a student or the student’s classroom teacher) within a student’s enrollment period are a component of the tuition rate calculation; second, because the Reimbursable Cost Manual requires providers to report in their CFRs only reasonable and necessary expenses. As to the latter, extended teacher absences are neither reasonable nor necessary; and third, Regulations of the Commissioner §200.9 direct that: “Special education itinerant service rates shall be paid on the basis of enrollment as defined in section 175.6(a)(1) and (2) . . . for the period of enrollment as defined by the student’s IEP.” (See Regulations of the Commissioner §§200.9 and 175.6 attached in relevant part.). As a final point, if the DoE determines that a student’s IEP recommendation is not being met, the DoE will take appropriate actions to remedy that situation. Such actions include referring the student back to the Committees on Preschool Special Education (“CPSE”), placing the student in another school, reporting the problem to the appropriate oversight agencies, including SED, and assessing our legal option, such as termination of the school’s contract.

- We cannot respond to the finding in the second bullet, above, since it is unclear how the auditors drew the conclusion that teachers and students were available when they also found that the documentation was inadequate. As to paying for missed sessions, we have already responded elsewhere in this document.
- Recommendations for the type of services and frequency of provision are made by CPSE which are charged with evaluating each student on a case-by-case basis and recommending services that will best support the child’s educational plan. There is no set number of services that will suit every child. When a child is placed with a provider, the provider is required to determine whether it has appropriate and sufficient resources to serve that child and to certify in a Preschool SEIT Acceptance Letter (“PSAL”) submitted to the CPSE that it can serve the child as mandated. If not, the provider is obligated to decline placement or indicate just how much service can be provided so that the CPSE can locate another provider or split the services between two providers. The DoE relies on the veracity of the information provided in the PSAL. Compliance is tested upon audit.

<p>* Note 14</p>

RESPONSE TO RECOMMENDATIONS

The DoE is cognizant of certain of the problems inherent in its payment processes and has been addressing them as limited resources have permitted. In addition to outsourcing

*See State Comptroller’s Notes, page 64

its adjustment processes, making payment adjustments during the school year through electronic roster submissions, and directing KPMG to check the SED website at the end of the adjustment process to determine whether reconciliation rates have been established during the adjustment period, BCA is adding an edit to its current payment database to prevent manual entry of rates that exceed a fixed number of dollars over the average tuition rate. That upgrade should eliminate the type of error reported in the February 10, 2004 letter.

As for a longer-term approach, BCA is taking steps to update its electronic database to create an interface with SED electronic tuition rate data. Upon implementation, as the reconciliation rate is posted by SED, BCA's tuition rate information will conform and payments will be adjusted far more timely than is practical under the manual system currently in place. Further, such a system should eliminate manual keypunch errors by BCA staff.

The Comptroller recommends that the DoE determine why SED has not yet established certified rates for 12 of the providers within its sample. Our review of this matter was limited to reviewing the SED mainframe to which we have access and determining whether the identified providers had submitted CFRs to the SED pursuant to their statutory and contractual obligations to do so. Based on our most recent review of the SED mainframe, we have determined that

- In every case but one, the providers have submitted CFRs.¹⁰
- Reconciled rates have been set for nine of the remaining 11 providers, one as recently as July 15, 2004. That provider's CFR was received by SED January 28, 2002.
- The calculation of reconciliation rates appear to be in process for the remaining two providers.

It is respectfully submitted that the DoE has suffered significant cutbacks in staff and that the resources that remain are more usefully deployed to tasks that facilitate prompt payment and adjustments rather than to policing the SED Rate Setting Unit. Our contribution to the tuition rate setting process most recently has focused on the providers and their contractual obligation to submit CFRs so that the rate setting process can begin. This agency does not have the resources or the authority to oversee SED's post-CFR filing processes.

The DoE will follow up and make appropriate adjustments, as recommended, with respect to the payment discrepancies reported by the Comptroller.

¹⁰ Magalie's Group Family Day Care ("Magalie's"), the one provider that still has no certified rate and has not submitted a CFR, is no longer a DoE provider. The DoE had terminated Magalie's contract for provision of Special Education services in December 2001 in that it had failed to comply with its contractual fiscal and programmatic responsibilities.

As a final point, the Comptroller's findings suggest that, in addition to the DoE's need to implement additional controls over payment to Special Education service providers, which it is doing, there is a further need for a review on the State level whether it is practical to continue paying SEIT providers on the same basis as center-based programs.

Sincerely,

Richard Carlo
Administrator

C: Louis Benevento
Vincent Giordano
Michael Best
Rick Stewart
Linda Wernikoff
Marlene Malamy
John Cahalin
Elliot Golden
Sally McKay
Lisa Secular
Nader Francis
Robert Sosa



County of Erie

JOEL A. GIAMBRA
COUNTY EXECUTIVE

DEPARTMENT OF HEALTH

ANTHONY J. BILLITTIER IV, M.D., FACEP
COMMISSIONER OF HEALTH

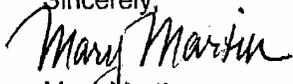
January 19, 2005

Steven E. Sossei
Audit Director
New York State Education Dept.
State Education Building
Albany, New York 12234

Dear Mr. Sossei:

The enclosed is Erie County's response the draft audit report (2003-S-39) on the administration of payments for preschool related services and special education itinerant teachers made by your office for the school years ended June 30, 2001 and June 30, 2003.

If there are any questions in regard to the response, please contact me at (716) 858-6360.

Sincerely,

Mary Martin
Preschool Coordinator
Erie County Health Dept.
Special Needs Division

cc: Pat Ruffino, Deputy Commissioner
Ed Kumrow, Financial Consultant
Maria Gambino, Director
Mike Gould, Business Manager
Barb Trunzo, SED Regional Representative

ERIE COUNTY PAYMENTS TO SEIT PROVIDERS

- **Incorrect start or end dates**

Erie County is in agreement with the finding regarding providers incorrectly reporting starting/ending dates for 113 sessions. Incorrect start dates were reported by providers to be the result of misunderstanding of tuition payments on the part of clerical staff entering data. All providers involved in the audit have trained staff accordingly. End dates are a mixed concern. Some misreporting was due to provider error and providers have assured Erie County that training has occurred to prevent this from occurring in the future. Some incorrect end dates are due to the tuition rate system in that children may have appeared to have "ended" services due to the fact that they failed to attend program at the end of a school year, however, the school district was not made aware of the fact nor did the district officially end services by amending an IEP or a STAC. As such, Erie County is responsible to pay all open STACs, and did so. **Attached is a memo (Appendix A) to all providers and school districts in regard to start and end dates issued by our office in an effort to combat confusion and misreporting.**

- **Unreported student discharge:**

Erie County is in agreement with this finding. **The memo attached as Appendix A also addresses the concern with correct reporting of discharge and the memo attached as Appendix B further assists in insuring that lengthy absences without review do not occur.**

- **Undocumented/ unexcused absences:**

Although Erie County does not contend the number of undocumented/ unexcused absences, we have discussed and documented a concern with the auditors applying the five-day threshold to Erie County providers when our current contract includes a 30 day threshold. **Nonetheless, we have issued the attached memo listed as Appendix B in regard to absences and the intention of Erie County to change to policy in the contract renewal process which will occur in July 2005.**

- **Simultaneous SEIT / Related Services Sessions:**

Erie County is in agreement with this finding and is in agreement with the SED auditors in regard to the statement that much confusion surrounds the tuition based SEIT payment system on the part of the County, the Districts and the Providers. **Erie has issued the attached memo listed as Appendix C in regard to enforcing the payment of ONLY those services prescribed on the IEP. Erie has discussed the issue with our local SED Regional Representative as well in reference to the lack of specific provision of services documented on IEPs by districts. Districts will receive the memo so that Chairpersons are aware of the need on the part of Providers to have specific provisions of services listed to insure payment. To combat the confusion involved in absences and tuition based payments the memo attached as Appendix B includes a separate section addressing SEIT. Erie has been assured by our SED Regional Representative that we may request copies of documentation proving excused absences as part of our payment procedure. The memo addresses the fact that we plan to include that policy in our contract renewal process.**

RECCOMENDATIONS TO ERIE COUNTY:

- Erie County will investigate the specific instances of overpayments noted in this report, and if funds should be recovered from providers, will take the appropriate steps to recover such and adjust aid claims submitted to SED if necessary.
- As outlined above Erie County will take actions as appropriate and necessary to comply with the direction provided by SED provided to us in the draft audit report.

ERIE COUNTY PAYMENTS FOR RELATED SERVICES

- **Attendance at nursery schools and day care centers did not consistently match bills for provision of service:**

Erie County does not contend the finding but offers that many such instances are the result of the lack of specificity in prescribing services in IEP's on the part of districts. As mentioned, **Erie has made the local SED Regional Representative aware of the**

concern and the issue is addressed in the memo listed as Appendix C which outlines Erie's plans to enforce our right to pay ONLY for services as specifically prescribed in IEP's.

▪ **Group rather than individual sessions:**

When queried providers offered inaccurate reporting on the part of clinicians as the reason sessions appeared to occur as group rather than individual. **All providers involved have taken measures to inform staff of the need to accurate recordkeeping.** As the auditors attempted to perform this review at one provider, it was discovered that the supporting documentation was inadequate for verifying when services were delivered as the particular provider did not require clinicians to document start and end times of sessions. **They immediately revised their progress note and billing forms to include such information.**

▪ **Fewer services than prescribed :**

Although the SED auditors did acknowledge the limited responsibility on the part of Erie County in insuring that services occur as prescribed on IEP's, Erie has shared the concern with the SED Regional Representative. In the instances where fewer services than prescribed were delivered, providers did not bill for such and therefore Erie did not issue payment.

RECOMMENDATIONS TO ERIE COUNTY:

- As outlined above Erie County has taken actions, as appropriate and necessary to comply with the direction provided by SED pursuant to the draft audit report.

APPENDIX A

Children with
Special Needs Division

Erie County Department of
Health

Memo

To: All Preschool Providers
From: Mary Martin, Preschool Services Coordinator
Date: January 19, 2005
Re: Reporting of start and end dates

In response to an audit performed by the State Education Department Comptrollers Office the following is being issued to combat any confusion that may surround tuition based services (classroom and SEIT):

Services for a student do not begin until the child actually attends program, receives services OR is legally absent. Erie County plans to include a policy in our new contract whereby providers will need to include documentation of legal absences with invoices when requesting payment for days absent.

End dates for services provided to students need to be reported accurately. If a program is aware that a child will no longer be receiving services it is the responsibility of the provider to notify the appropriate school district immediately to insure timely discharge (amending of IEP, ending of a STAC). This language will be included in the contract as well.

APPENDIX B

Children with
Special Needs Division

Erie County Department of
Health

Memo

To: All Preschool Providers and District Chairs
From: Mary Martin, Preschool Services Coordinator
Date: January 19, 2005
Re: Absences

In response to an audit performed by the State Education Department Comptrollers Office the following is being issued to notify all involved regarding an impending change in our tuition based services absence policy. Please note that Barb Trunzo was consulted in reference to the concerns voiced by the Comptroller's Office and Erie County's policy change :

Erie County will require via the contract renewal process that all unexcused/ illegal absences of five days or more be reported immediately to the appropriate school district with a request for a CPSE meeting to be scheduled to discuss the need to change the student's IEP.

For bills for services rendered in February 2005 and forward : Erie County will require that providers billing for legal absences provide documentation of such legal absences with invoices.

* Please note that SEIT services are treated as tuition based services and all requirements for notification and documentation listed above apply to those services as well.

Appendix C

Children with
Special Needs Division

Erie County Department of
Health

Memo

To: All Preschool Providers and District Chairs
From: Mary Martin, Preschool Services Coordinator
Date: January 19, 2005
Re: Payment for Services per IEPs

In response to an audit performed by the State Education Department Comptrollers Office the following is being issued to notify all involved regarding a change in the review and payment process at Erie County:

Effective immediately Erie County will issue payments only for those services rendered per the provisions of service outlined in the IEP. Per the Comptrollers office Erie County is responsible for payment of services as prescribed on a student's IEP. Therefore, if services are rendered in a location or manner NOT specifically prescribed on an IEP Erie County will exercise the right to deny payment.

State Comptroller's Notes

1. We revised the report to reflect responses received.
2. We did not recommend Legislative and regulatory corrective action. We recommended that SED assess the issue and propose changes as appropriate.
3. We recognize that neither Law nor contracts preclude a post reconciliation of payments. However, based on our observations, we question whether further review would have taken place.
4. We understand that on an ongoing basis the Department relies on certified billings and that there is no requirement that these be supported by attendance records. However, to promote fiscal integrity, we recommend that verification of billings to attendance records be done on a test basis. When attendance records do not agree with billings, the propriety of the related payment is in question.
5. We recognize that attendance records may not be required in all instances. However, where required, such records should be used to test payments.
6. We are pleased to learn that discrepancies found through testing payments to attendance and other records resulted in recoveries when errors were determined to exist.
7. We explained our findings and supported their documentation throughout the audit.
8. As noted subsequently in the Department's letter, SED officials advised the Department that "... providers should not bill if they schedule SEIT sessions knowing that a provider will be unavailable and substitutes are not called in to provide the services." Consequently, we conclude that matters regarding SEIT sessions that were paid for, but were not provided, are both payment and programmatic issues that need to be addressed by the Department.
9. We corrected the language in the report with respect to Commissioner's Regulation 175.6. Moreover, we acknowledge that providers should be paid for sporadic student absences when SEITs are available to provide scheduled sessions. For the purposes of our audit, we did not question sessions that were not provided because of student absence, unless the absence exceeded five consecutive school days. According to the Department's contract with SEIT providers, the providers were required to notify the Department if a student was absent for more than five consecutive days. We noted instances in which providers notified the Department of such absences and that the corresponding sessions, therefore, were not provided. However, the Department continued to

pay for sessions for such students although the absences in question exceeded the five day limit.

10. Our report now notes that twelve (not eleven) providers were paid at rates higher than those established by SED. Furthermore, based on the results of our review, we question whether the payments in question would have been adjusted in the ordinary course to reflect new rates.
11. We question whether the discrepancies in question were simply the result of data input errors. As noted in the report, the Department had not designated a specific employee to check for new SED-approved rates on a regular basis. Instead, the Department relied on the providers to report correct rates, which the providers sometimes did not do timely.
12. Our report does not conclude that missing VDRs would prevent the Department from making adjustments to payments. Rather, the report notes that one provider may have been overpaid because it did not submit the required VDRs.
13. We did not question the billing of any session solely because it was provided on a Sunday. Rather, we only questioned the provision of a particular session if the available documentation indicated that it might not have been provided.
14. The Department's comment relates to details that we deleted from the draft and final audit reports.