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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

September 22, 2000

Mr. Carl T. Hayden
Chancellor
The University of the State of New York
State Education Building
Albany, New York 12234

Re: Report 2000-F-23

Dear Mr. Hayden:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law, we have reviewed the actions taken by officials of the State Education Department (Department), as of September 7, 2000, to implement the recommendations contained in our audit report: *Tuition Rate Setting Process For Schools Providing Special Education Programs* (Report 98-S-39). Our report, which was issued on April 15, 1999, examined whether the Department's procedures to establish tuition rates ensured that the reported reimbursable costs of center-based special education providers were reasonable, necessary and directly related to the providers' approved special education programs.

Background

Children with special needs (handicapping needs) may be taught in various types of classroom situations. For example, they may be taught in classrooms that also have non-handicapped children (a less restrictive environment) or they may be taught in classrooms that have only handicapped children (a more restrictive setting). Many of the handicapped children placed in a more restrictive environment are taught in separate schools, often referred to as center-based, established specifically to meet the needs of those children.

As prescribed by Title VI of the Education Law, the Commissioner of Education develops annual tuition rates to be used to reimburse providers for the cost of special education programs. Department officials base these rates on the providers' actual, historic costs that meet the Department's eligibility criteria. The Division of the Budget must also approve the tuition reimbursement rates. The counties initially pay the tuition costs for children placed in preschool special education programs. For elementary and secondary school programs, the school districts

in which the students reside initially pay the tuition costs. The Department reimburses the counties for about 60 percent of their tuition payments for special education programs. The Department also reimburses the school districts for a majority of their tuition costs. Thus, the State and local governments share the costs of center-based special education programs.

The districts' Committees on Special Education evaluate students and recommend them for placement in various special education programs. The districts provide each student placed in special education with an individualized education program (IEP). The IEP identifies the child's disabilities, needs, and educational goals, as well as the type and amount of special education programming the child is to receive. To be eligible for State reimbursement, localities must place children in Department-approved programs.

For the 1997-98 year, the Department established daily tuition rates for 763 center-based special education programs operated by 476 preschool and school age special education providers throughout the State. The total cost of the programs operated by these providers was about \$786.3 million for the 1997-98 year.

Summary Conclusions

In our prior audit, we concluded that tuition rates would more likely be reasonable, necessary and directly related to special education programs, if Department officials analyzed the costs claimed by the providers more extensively. We determined that the daily cost per student (tuition rate) varied significantly among multiple providers of a similar type of program. For example, the daily cost for one type of program ranged from \$45 to \$228. We concluded that Department officials might be able to identify opportunities for costs savings without compromising the quality of program services, if Department staff determined why costs for similar programs varied so widely.

In our follow-up review, we found that the Department had made significant progress in implementing our prior audit report recommendations. For example, Department staff have developed processes to help ensure that student-to-teacher and student-to-teacher aide ratios of special education providers are appropriate. In addition, staff have developed new forms that require program providers to report detailed information on the types and amounts of related services required by and actually provided to students. Staff will use this data to evaluate the reasonableness of therapy costs, identify providers whose costs may be excessive, and to follow-up with such providers to identify steps to reduce such costs, if possible.

Summary of Status of Prior Audit Recommendations

Of the six prior audit recommendations, Department officials had implemented two recommendations, partially implemented three recommendations, and not implemented one recommendation.

Follow-up Observations

Recommendation 1

During the tuition rate setting process, compare reported student-to-teacher ratios and student-to-teacher aide ratios to the ratios approved by VESID (Office of Vocational and Educational Services for Individuals with Disabilities). Determine whether ratios that are significantly lower than approved ratios can be justified by the circumstances of the programs. If a ratio cannot be justified, work with the provider to adjust accordingly to avoid excessive staffing costs from being included in the program's reimbursable tuition costs.

Status - Implemented

Agency Action - The Department's Program Services Reimbursement Unit (PSRU) modified the Consolidated Fiscal Report (CFR) that providers submit to the Department annually to include classroom (student-to-teacher and student-to-teacher aide) ratios for the 1998-99 school year. In addition, PSRU staff use a checklist to review the CFRs. The checklist requires the PSRU reviewer to verify that reported classroom ratios are reasonable. If the ratios do not appear reasonable, PRSU staff follow-up with the providers and Department program staff, as necessary, to determine if adjustments should be made to the costs reported on the CFR.

Recommendation 2

Require the providers to report detailed information about the kind and amount of therapy services needed by the students, the kind and amount of therapy services provided to the students, and the cost of these therapy services. Develop guidelines for evaluating the reasonableness of therapy costs (such as guidelines relating to the amount of direct time and non-direct time spent by therapists), and during the tuition rate setting process, assess the reasonableness of the therapy costs reported by the providers. Require provider identification when reported therapy costs are inconsistent with the guidelines. If such costs cannot be justified, work with the provider to decrease the costs and exclude excessive therapy costs from a provider's reimbursable tuition costs.

Status - Partially Implemented

Agency Action - The PSRU has developed new forms (Schedules RS-1 and RS-2) that require program providers to report detailed information on the types and amounts of related services required by and actually provided to students. The PSRU sent these forms to providers in June 2000 and is requiring providers to complete them for the 2000-01 school year. The PSRU will use the data obtained to help develop guidelines to evaluate the reasonableness of costs. The data will also be used to identify providers whose costs may be excessive, and to follow-up with such providers to identify steps to reduce such costs, if possible.

Recommendation 3

Establish procedures for conducting a comparative analysis of the costs reported by special education program providers. Follow up with the providers to determine whether significant cost variances can be justified. Identify opportunities for improvement and best practices that can be shared with other providers.

Status - Not Implemented

Agency Action - PSRU officials indicated that comparisons of the daily rates charged by the various providers cannot be valid unless the programs in question are sufficiently alike. For example, programs must have children with similar disabilities (in nature and severity) and similar staffing ratios to be comparable. Officials added that data, to be obtained from the modified CFR and the new RS-1 and RS-2 forms, is required to implement this recommendation. Consequently, Department staff currently cannot perform the comparative cost analysis addressed by the recommendation. PSRU officials indicated, however, that they still agree with the recommendation and plan to implement it by November 2001, when the necessary data should be available.

Recommendation 4

Identify the reasons for the high costs incurred by the Infant and Child Learning Center, and determine whether the costs can be reduced without compromising the quality of program services.

Status - Partially Implemented

Agency Action - In June 1999, PSRU staff inquired about the Infant and Child Learning Center (Center). Department program staff advised the PSRU that the Center is a unique program affiliated with the State University of New York (SUNY) Health Science Center at Brooklyn, through a contract with the SUNY Research Foundation. Moreover, the Center has comparatively higher costs (daily rates) because it is a small, hospital-based program for about 18 children who have very serious illnesses. However, records indicate that the PSRU still needs to resolve questions regarding the Center's cost of space, high administrative staffing levels and the amount of direct time spent with students receiving related services (various forms of therapies). PSRU officials also indicated that the Department is looking into the possibility that some of the Center's costs could be funded by Medicaid.

Recommendation 5

Consider alternative provider reimbursement methodologies, including those which include performance-based criteria. If laws need to be changed to accommodate such methodologies,

consider proposing the appropriate changes to the Legislature.

Status - Partially Implemented

Agency Action - PSRU officials indicated that workgroups, composed of Department staff and representatives of special education providers, developed proposals of alternative methodologies that included the use of regional provider reimbursement rates for both preschool and school age special education programs. In the Spring of 2000, SED submitted proposals (including fiscal impact analysis and draft regulations) to the Division of the Budget (DOB) to use regional reimbursement rates to compensate special education providers. One proposal included a plan to phase-in regional rates for the preschool program over a six-year period. Since the proposals were submitted, Department officials have responded to DOB's requests for additional data and analysis. However, as of the time of our follow-up review, the Department and DOB were continuing efforts toward an agreement on the use of regional reimbursement rates. Department officials also indicated that it would be difficult to establish performance-based reimbursement criteria at the State level because the most reliable measure of program performance is the progress of the individual child; and such child-specific performance assessment is performed by local (not State) officials.

Recommendation 6

Be proactive as possible in seeing that the dispute at the Greenburgh Eleven School District is resolved. Determine, from a legal standpoint, whether the Department is correctly handling the costs of the 14 teachers in the tuition rate setting process.

Status - Implemented

Agency Action - PSRU officials indicated that the Department's Legal Affairs office has reviewed this matter and determined that the Greenburgh Eleven School District (District) has handled it appropriately. Consequently, the PSRU has no legal basis to disapprove the payroll costs of the teachers in question and the costs of the legal proceedings associated with the disciplinary actions taken against those teachers. PSRU officials added that the proceedings have followed processes prescribed by the Public Employees Relations Board and began prior to the establishment of time limits for resolving such matters. PSRU officials added that the Department's Legal Affairs office is determining if the Department has the legal authority to establish a date in the future, beyond which the Department will not allow, for rate-setting purposes, the salary costs of the 14 teachers and the costs of the related legal proceedings.

The major contributor to this report was Brian Mason.

We would appreciate your response to this report within 30 days, indicating any actions planned or taken to address any unresolved matters discussed in this report. We also thank Department management and staff for the courtesies and cooperation they extended to us during this review.

Very truly yours,

Jerry Barber
Audit Director

cc: Charles Conaway