

ALAN G. HEVESI  
COMPTROLLER



110 STATE STREET  
ALBANY, NEW YORK 12236

STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

September 30, 2003

Mr. Richard P. Mills  
Commissioner  
State Education Department  
Education Building  
Albany, New York 12234

Mr. Pierre L. Alric  
Acting President  
Higher Education Services Corporation  
99 Washington Avenue  
Albany, New York 12255

Re: The Art Institute of New York City  
Report 2002-T-5

Dear Mr. Mills and Mr. Alric:

According to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution, Article II, Section 8 of the State Finance Law, and a Memorandum of Agreement dated December 1, 1989, involving the State Comptroller, the Commissioner of Education, the President of the Higher Education Services Corporation (HESC), and the Director of the Budget, we audited the records and procedures used in administering the Tuition Assistance Program (TAP) at the Art Institute of New York City (Institute) for the 1998-99 through 2000-01 academic years.

**Summary Conclusions**

In accordance with Section 665(3)(b) of the New York State Education Law (Law), we determined that the Institute was overpaid \$133,418 because school officials incorrectly certified some students as eligible for TAP awards. We tested the accuracy of the 2,396 TAP certifications the Institute awarded for the three-year period that ended on June 30, 2001, by reviewing a statistical sample of 200 randomly-selected awards. From our statistical sample, we disallowed 17 awards totaling \$17,966. A statistical projection of these disallowances to the entire population, using a 95 percent single-sided confidence level, results in an audit disallowance of \$127,824. We also disallowed seven awards totaling \$5,594 based on our review of other awards from outside the statistical sample period. Therefore, we recommend that HESC recover a total of \$133,418, plus applicable interest from the Institute.

## **Background**

The Institute, formerly the New York Restaurant School, is a private two-year degree-granting college located in New York City. The Institute is a wholly-owned subsidiary of Education Management Corporation, headquartered in Pittsburgh, Pennsylvania. It offers one, two-year Associate of Occupational Studies (AOS) degree in Culinary Arts and Restaurant Management and four certificate programs in other areas related to the restaurant field. All programs, except for the Culinary Skills certificate program, are eligible for TAP awards.

TAP is the largest of the various student grant and scholarship programs administered by HESC. It is an entitlement program designed to provide tuition aid to eligible full-time students who are enrolled in a variety of eligible programs.

We provided draft copies of this report to SED, HESC, and Institute officials for their review and comments. We have considered their comments in preparing this audit report.

## **Audit Scope, Objective, and Methodology**

The objective of our financial and compliance audit was to determine whether the Institute's management complied with the Law and the Commissioner of Education's Rules and Regulations (Regulations) for certifying students as eligible for TAP awards. The scope of our audit did not include reviews of the process HESC follows in determining the amount of such awards.

According to HESC records, Institute officials certified 2,396 TAP awards totaling \$2,865,346 that were paid on behalf of 1,048 students during the three academic years that ended on June 30, 2001. We reviewed a statistical sample of 200 randomly selected TAP awards totaling \$246,526 that were made to 179 students during that period. We also reviewed other awards that came to our attention during the audit.

We conducted our audit according to generally accepted government auditing standards. Such standards require us to plan and perform our audit to adequately assess those operations of the Institute that are included within our audit scope. These standards also require that we review and report on the Institute's internal control system and its compliance with those laws, rules, and regulations that are relevant to the Institute's operations and are 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 such other auditing procedures as we consider necessary. An audit also includes assessing the estimates, judgments, and decisions made by management. We believe that our audit provides a reasonable basis for our findings, conclusions, and recommendations.

In planning and performing our audit of the Institute, we reviewed management's internal control system. Our audit was limited to a preliminary review of this system to obtain an understanding of the environment and the flow of transactions through the accounting system and other systems that would support claims for student financial aid.

The Institute’s management is responsible for complying with the Law and the Regulations. In connection with our audit, we performed tests of the Institute’s compliance with certain provisions of the Law and Regulations. Our objective in performing these tests was to obtain reasonable assurance that the students who received TAP awards were eligible for them. Our objective was not to provide an opinion on the Institute’s overall compliance with such provisions.

Our audit showed that, for the transactions and records tested, the Institute was generally in compliance with these provisions, except as noted in the following sections of this report.

**Audit Disallowances**

The following table summarizes the disallowances that resulted from our audit.

<b><u>Reason for Disallowance</u></b>	<b><u>Number of Awards</u></b>	<b><u>Amount</u></b>	<b><u>Total</u></b>
<b>Disallowances from the Statistical Sample:</b>			
Students Not Meeting Residency Requirements	8	\$ 9,881	
Students Not in Full-Time Attendance	4	5,341	
Students Not in Good Academic Standing	4	3,320	
Students Receiving Excess TAP Awards	<u>2</u>	<u>569</u>	
Total Disallowances from the Statistical Sample	18	19,111	
Less: Disallowance for More Than One Reason	<u>1</u>	<u>1,145</u>	
Net Disallowances from the Statistical Sample	<u>17</u>	<u>\$17,966</u>	
Projected Amount			\$127,824
<b>Disallowances from Outside the Statistical Sample Period:</b>			
Students Not in Full-Time Attendance	4	\$ 4,449	
Students Receiving Excess TAP Awards	<u>3</u>	<u>1,145</u>	
Total Disallowances from Outside the Sample	<u>7</u>		<u>5,594</u>
Total Audit Disallowance			<u>\$133,418</u>

The reasons for the disallowances are discussed on the following pages. Students’ names and related information were provided separately to Institute officials.

**Students Not Meeting Residency Requirements**

*Criteria* - Section 661 of the Law requires that an applicant for a TAP award at the undergraduate level be a legal resident of New York State (State) for at least one year immediately preceding the beginning of the semester for which the award is made, or has been a legal resident of the State during the last two semesters of high school. Furthermore, according to the HESC Manual of Programs and Procedures (Manual), “the student must show having established a domicile or permanent place of abode in New York State. Living in New York State solely to attend college or another post-secondary institution does not in itself, establish

legal residence.” The Manual also stipulates that institutions should not certify eligibility for State awards for any student whose State residency is suspect.

*Audit Determination* - We disallowed eight sample term awards that had been paid on behalf of six students who did not meet the residency requirements. These students had not graduated from high schools in New York State and school officials did not provide documentation to show that these students had met the residency requirements. Residency Affidavits, used when residency is suspect, were not submitted to HESC for any of these students.

*School Officials' Position* - School officials disagree with three disallowances for two students. They contend that the parents of one student, who graduated from a New Jersey high school in 1992, and whose spring 1999 and winter 2000 term awards were disallowed, were separated. They contend that while the student's father was a New Jersey resident, the student was residing in New York State with his mother. School officials also disagree with the fall 2000 term disallowance for another student who was born in and received his high school diploma in North Carolina in 1990. School officials contend that the student had been a New York State resident since 1996, but had spent six months during the 1999 and 2000 time period visiting his family in Alabama. They provided copies of two payroll statements that indicated the student was employed in New York for a short period prior to November 13, 1998 and another week in January 1999. School officials did not respond to the remaining five disallowances.

*Auditors' Comments* - While the first student indicated on his admission application that he lived in New York, documents in the student's file indicate that the student was living in New Jersey in the year prior to the terms for which his TAP awards were disallowed. For example, a letter dated January 5, 1999, from the New Jersey Office of the Social Security Administration, addressed to the student at a New Jersey address, confirmed the student had applied on that date for a Social Security card. In addition, the student, on a Direct Loan Deferment Request Form that had been sent to him at the same New Jersey address, corrected his address on May 9, 1999, to reflect the New York address he had listed on his application to the Institute. The student also indicated on the Institute's Institutional Student Information Record that he was independent.

The second student started at the Institute in spring 2000 and received his first TAP award for the summer 2000 term. Institute files indicate that the student had obtained an Alabama non-drivers identification card on October 1, 1999, and filed a 1999 federal tax return that showed an Alabama address.

### **Students Not in Full-Time Attendance**

*Criteria* - Section 661 of the Law requires that students be in full-time attendance to be eligible for their TAP awards. Section 145-2.1 of the Regulations states, in part, that full-time study for a semester-based program at a degree-granting school is defined as enrollment for at least 12 credits a semester. SED's Chief Executive Officers Memorandum No. 86-17 states, “basic to the payment of State student aid is the requirement that courses that make up a student's minimum course load be creditable toward the degree, diploma or certificate program in which the student is enrolled.”

Audit Determination - We disallowed eight awards (four awards from our statistical sample period and four from outside the period) that had been paid on behalf of five students who did not meet the full-time requirement. Three of these students were enrolled for fewer than 12 credits applicable to their program. The fourth student had completed the graduation requirements for his program, but was certified for an award in the subsequent semester although he was not enrolled in any classes. The fifth student was not in attendance during one TAP term and was enrolled for fewer than 12 credits during two other terms.

School Officials' Position - School officials did not respond to these disallowances.

### **Students Not in Good Academic Standing**

Criteria - Section 665 of the Law requires students to be in good academic standing to be eligible for TAP awards. To maintain such standing, a student is required by Section 145-2.2 of the Regulations to maintain satisfactory academic progress toward completion of a program and to pursue the program of study in which he or she is enrolled. To maintain satisfactory academic progress, a student must accrue a certain minimum number of credits and earn a specified minimum cumulative grade point average, as required on the chart of satisfactory academic progress published by the school and approved by SED. A student is pursuing the approved program of study if, during each term of study for which an award is received, the student receives a passing or failing grade in a predetermined percentage of the minimum full-time course load required to qualify for the appropriate level of TAP payment.

A student who fails to maintain good academic standing loses TAP eligibility. However, good academic standing can be regained if the deficiencies are made up at the student's own expense, a TAP waiver is obtained, or the student remains out of school for at least one calendar year or transfers to another institution.

SED's Memorandum to Chief Executive Officers No. 81-12 states that the requirements for good academic standing may be waived for "exceptional or extraordinary cases" beyond a student's control. Moreover, it requires that, "a complete case record should be maintained for students who receive the waiver. Failure on the part of an institution to...maintain necessary documentation may result in an audit disallowance."

Audit Determination - We disallowed four awards from our statistical sample period that had been paid on behalf of four students who did not maintain good academic standing. One student was not in attendance during the prior TAP term, therefore, this student did not earn passing or failing grades in enough courses to meet the pursuit of program requirements. Three other students did not earn enough cumulative credits and/or earn the cumulative grade point average required on the school's chart of satisfactory academic progress to maintain TAP eligibility. All four students did not receive TAP waivers, did not make up the deficiencies at their own expense, or did not remain out of school for one year. Therefore, they were not eligible to receive TAP awards for one calendar year.

School Officials' Position - School officials did not respond to these disallowances.

## **Students Receiving Excess TAP Awards**

Criteria - Section 665 of the Law states that the annual award to each recipient shall be paid in separate installments on a prorated basis, for each semester, quarter, or other term of attendance during the academic year. Moreover, Section 2205.3 of the Regulations requires institutions to accurately report their term structure to HESC. Term payments are based on the institution's academic calendar. Section 5.05 of the Manual states that students accrue six points each term at a semester-based institution, or four points each term at a trimester-based institution. During our audit scope period, the Institute changed from a six-point semester-based term to two different SED approved four-point terms.

Audit Determination - We partially disallowed five awards (two awards from our statistical sample period and three from outside the period) that had been paid on behalf of three students. These students received TAP awards based on the higher six-point terms rather than on the four-point terms under which they were enrolled. We disallowed the difference between the award amounts for the two terms.

School Officials' Position - School officials did not respond to these disallowances.

### **Recommendations to the Higher Education Services Corporation**

1. *Recover the \$133,418, plus applicable interest, from the Art Institute of New York City for its incorrect TAP certifications.*
2. *Ensure that the Art Institute of New York City complies with the Higher Education Services Corporation requirements relating to New York State residency and certification of awards.*

### **Recommendation to the State Education Department**

*Ensure that the Art Institute of New York City complies with State Education Department requirements relating to good academic standing and full-time attendance.*

Major contributors to this report were Cindi Frieder, Kenrick Sifontes, Harold Maher, Yelena Feldman, and Mostafa Kamal.

We wish to express our appreciation to the management and staff of the Art Institute of New York City for the courtesies and cooperation extended to our auditors during this audit.

Very truly yours,

Frank J. Houston  
Audit Director

cc: Michael Iannacone, President  
Deirdre A. Taylor, DOB