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OFFICE OF THE STATE COMPTROLLER

November 10, 2003

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

Re: Report 2003-F-15

Dear Mr. Mills:

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, as of September 23, 2003, to implement the recommendations contained in our audit report, *Oversight of School Districts' Special Education Classification and Placement Processes for School-Age Children* (Report 2000-S-46). Our report, which was issued on June 11, 2002, reviewed the Department's oversight of school districts' special education classification and placement processes for school-age children.

**Background**

The State Education Department's (Department) Office of Vocational and Educational Services for Individuals with Disabilities (VESID) is charged with meeting the needs of people with disabilities from early childhood through adulthood, including overseeing special education services for school-age students in school districts statewide. VESID's mission includes promoting educational equity and excellence for students with disabilities while ensuring they receive the rights and protections to which they are entitled. These rights include the provision of a free appropriate public education in the least restrictive environment, as mandated by the Federal Individuals with Disabilities Education Act and related State laws and regulations. For the 2002-03 school year, there were 404,210 school-age special education students in the State's 724 school districts. According to the Department reports, special education learning disabled and emotionally disturbed students represent about 59.5 percent of the State's school-age special education population.

**Summary Conclusions**

In our prior audit, we concluded that VESID oversight may not be sufficient because it was not targeting formal reviews of special education programs to those districts that pose the highest risk of noncompliance with applicable laws and/or program underperformance. We noted that

VESID conducted formal reviews at districts having a lower risk of non-compliance than other districts which had a higher risk of non-compliance. We recommended that VESID perform a regular data analyses to identify and rank the potential for deficiencies amongst districts' special education programs and use this information to better target reviews. We found that the six districts we visited generally had adequate processes, policies and procedures for classifying and placing special education students, but student files often lacked certain required assessments, evaluations and service plans. In addition, we found that VESID does not use the review process to formally question the propriety of districts' classification and placement decisions, or a student's need for related services.

In our follow-up review, we found that the Department has taken significant action to address the matters identified in our prior report.

### **Summary of Status of Prior Audit Recommendations**

Of the five prior audit recommendations, Department officials have implemented three recommendations and partially implemented two recommendations.

### **Follow-up Observations**

#### **Recommendation 1**

*Annually perform a formal risk assessment, using KPI data analyses and other appropriate factors, to identify the school districts most in need of formal reviews.*

Status - Implemented

Agency Action - The Department has developed a spreadsheet program that uses 14 key performance indicators (KPIs) to identify the school districts most in need of formal reviews. For each of the approximately 700 school districts, the 14 KPIs are rated on a scale of 1 to 5 for poor to good performance. The ratings are added to get a total and average KPI for each district. The spreadsheet program has the ability to sort the data in a number of ways, such as by district, region, total KPI, average KPI, or by individual KPI. The results of these spreadsheet analyses are sent to VESID Special Education Quality Assurance (SEQA) Regional Offices where VESID-SEQA personnel identify the school districts most in need of formal review. Officials pointed out to us that while a low score would typically indicate that a district is at high risk for deficiencies in its special education programs, not all low scores equate to a district in need. For instance, a district with a low score may not have many students with disabilities, therefore the district would not be prioritized as in need of special education assistance.

### **Recommendation 2**

*Target available formal review resources to those districts with the highest risk.*

Status - Implemented

Agency Action - The Department's SEQA unit has established an annual Quality Assurance (QA) scheduling review process to ensure that the type and frequency of reviews are appropriate for each district based on district performance; and that the process itself is perceived as sensible and justified on the basis of district data. The process starts with the collection of the most recent KPI data and a point weighting is applied to reflect district performance on 14 selected KPIs. SEQA uses this data to prepare a list of each district's total points and gives the highest priority to the districts with the lowest point totals. The list is then reviewed by the SEQA Regional Office managers who consider several additional factors, such as number of complaints, number of years since the district's last review and the size of the district. Next, a draft list is developed by region, approved by SEQA coordinators, and shared with regional Special Education Training and Resource Center (SETRC) and Regional School Support Center (RSSC) staff. Efforts are made to correlate districts chosen for QA Focused Reviews with districts targeted by SETRCs and the RSSCs in order to maximize and coordinate interventions in poor performing districts. Finally, mid-year adjustments are made only for exceptional circumstances, such as loss of SEQA staff.

### **Recommendation 3**

*During on-site district reviews, assess the propriety of special education classifications and placements, particularly if they are not adequately supported by available documentation. Formally advise district officials of any questionable classifications and placements identified during review and request explanations to clarify these classifications.*

Status - Partially Implemented

Agency Action - Department officials noted that special education classification and placement determinations are made by a multidisciplinary team and formalized at a meeting of the full Committee on Special Education (CSE), including the parents. VESID staff do not take part in the individual evaluation process, do not participate in CSE or other meetings related to a student and therefore are not privy to preferences expressed by the parents. These are important factors in the process that results in a formal recommendation, and no written record is an adequate substitute for this kind of direct involvement. Therefore, even though VESID Quality Assurance staff regularly review the relationship between individual evaluations and Individualized Education Plan (IEP) recommendations, noncompliance can be identified only when the program or placement recommendation for a particular student is egregiously divergent from results of that student's evaluation, or when district summary data appear to indicate systemic noncompliance. However, regulatory violations that are directly related to missing evaluations or failure to consider less restrictive placement recommendations are identified and cited by VESID. These violations are addressed in a Compliance Assurance Plan, which contains corrective action(s) to be taken by the district to

resolve the issue(s). In addition, other concerns with various aspects of the evaluation/recommendation process are frequently discussed with district officials, even though they cannot be characterized as compliance issues.

#### **Recommendation 4**

*Formally remind school districts to:*

- a. Prepare functional behavioral assessments for any student whose behavior impedes his or her learning or that of others;*
- b. Maintain sufficiently current psychological evaluations for all special education students;*
- c. Prepare related service evaluations, when appropriate, for students for whom speech/language, occupational and/or physical therapies are considered;*
- d. Develop and update transitional service plans for all special education students 14 years old and older; and*
- e. Ensure that a regular education teacher, familiar with a student's regular education experience, attends the CSE meeting for each special education student.*

Status - Partially Implemented

Agency Action - In December 2002, the Department issued a guidebook entitled "Sample Individualized Education Program and Guidance Document." The guidebook and a video entitled "Tools for Schools" were distributed to all district superintendents, SEQA offices, and VESID district offices. Another 50 to 100 copies were sent to regional and local SETRC offices to be available upon district request. The guidebook advises that a functional behavioral assessment must be conducted as part of an individual evaluation for each student with a disability who has behaviors that impede his or her learning or that of others, or when disciplinary actions have resulted in the suspension or removal of the student from his or her current program for more than 10 days in a school year. The guidebook also addresses transitional service plans, including the definition of transition services, the information that a committee should use to determine a student's needed transition services, and a description of the purpose of transition planning, programs and services. In addition, the Department has rolled out a video and related guidance book designed to assist school districts to develop comprehensive transition service plans. Finally, the guidebook states that a regular education teacher, familiar with the student's regular education experience, must attend the Committee on Special Education (CSE) meeting for each special education student whenever the student is or may be participating in the regular education setting. Regarding parts b and c of recommendation number 4, Department officials contend that school districts are not required to perform psychological evaluations for all students with disabilities nor are recent related service evaluations required for every students receiving such services. The officials state that a school psychologist makes the determination whether or not to conduct a psychological evaluation following their assessment of a student.

**Recommendation 5**

*Follow up with districts we visited to ensure they address the deficiencies detailed in this section of the audit report.*

Status - Implemented

Agency Action - The Department has conducted various follow-up activities with all of the districts we visited to ensure that they have addressed the deficiencies noted in our report. For example, during the 2001-2002 school year, a SEQA Performance Review was conducted in the Buffalo City Public Schools. During the course of this review, the team identified a continuing problem with the issues identified during our audit. Corrective Action Plans to address these and other areas of noncompliance were developed as a result of this review. In addition, Department staff have provided the districts with various training and technical assistance through the SETRC, and RSSC staff, and the VESID-SEQA Regional Associates.

Major contributors to this report were Brian Mason, Karen Bogucki and Jeffrey Dormond.

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

Very truly yours,

Steven E. Sossei  
Audit Director

cc: Ms. Deirdre A. Taylor  
Mr. Richard H. Cate  
Mr. Thomas E. Sheldon  
Mr. Michael Abbott