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April 26, 2004

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

Mr. Robert King
Chancellor
State University of New York
State University Plaza
Albany, New York 12246

Re: Report 2003-F-47

Dear Mr. Mills and Mr. King:

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 and the State University of New York, as of February 25, 2004, to implement the recommendations contained in our audit report, *Policies and Practices for Reviewing Applications and Monitoring Operations for Charter Schools* (Report 2001-S-22). Our report, which was issued on October 24, 2002, reviewed the policies and practices used by the State Education Department and State University of New York to review applications for charter schools and to monitor charter school operations.

Background

The New York Charter Schools Act of 1998 (Act) authorized the creation of charter schools in the State. Charter schools are intended to provide opportunities for teachers, parents and community members to establish and maintain schools that operate independently of existing schools and school districts. One of the Act's major objectives is to increase learning opportunities for all students, especially those with serious academic deficiencies. The Act authorizes the State Board of Regents (Regents) and the State University of New York (SUNY) Board of Trustees (Trustees) to grant up to 50 charters each. SUNY's Charter Schools Institute (Institute) reviews applications submitted to the SUNY Trustees. The State

Education Department's (Department) Charter Schools Unit reviews applications that are submitted to the Regents. In addition, the Institute and the Charter Schools Unit are responsible for monitoring the operations of the charter schools to ensure compliance with applicable laws, rules, regulations, and provisions of their charter agreements. As of September 2003, the SUNY Trustees had approved applications for 34 charter schools, of which 30 were in operation during the 2003-04 school year. The Regents had granted 16 charters, of which 13 were in operation during the 2003-04 school year.

Summary Conclusions

In our prior audit, we found that, generally, applications addressed the numerous items required by the Act. However, Institute and Charter Schools Unit application review policies and practices needed improvement to adequately assure that two key items of required applicant information were properly addressed. This required information is evidence of adequate community support for and interest in the charter school, sufficient to allow the school to reach its anticipated enrollment and an assessment of the projected programmatic and fiscal impact of the school on other public and nonpublic schools in the area. We also concluded that the Charter Schools Unit and the Institute had taken initiatives, including site visits, to monitor charter school operations. However, to adequately assure that the schools operate in accordance with charter agreements and applicable laws, rules and regulations, improvements in policies and practices for site visits were needed. In addition, monitoring of charter school student enrollment data needed improvement.

In our follow-up review, we found that Department and Institute officials have made significant progress in addressing the matters identified in our prior report.

Summary of Status of Prior Audit Recommendations

Our prior report had nine recommendations, of which five were addressed to both the Department and SUNY, two were addressed to the Department only, and two were addressed to SUNY only. Of the seven prior audit recommendations directed to the Department, officials implemented six recommendations and partially implemented one recommendation. Of the seven prior audit recommendations directed to SUNY, Institute officials implemented four recommendations and partially implemented three recommendations.

Follow-up Observations

Recommendation 1

To the Department and SUNY:

For the Act's requirement for evidence of adequate community support and an assessment of the projected programmatic and fiscal impact of the school on other public and nonpublic schools in the area, establish consistent, formal guidance and criteria for applicants and reviewers to use, respectively, in the charter school application process. Document applicant compliance with this guidance and criteria.

Department Status - Partially Implemented

Agency Action - On its Charter School Technical Assistance website, the Department has placed guidance to applicants regarding adequate community support. The website states that strong evidence of community support should be evidenced by the signatures of parents of children who would be eligible to attend the charter school, affirming that such parents have an interest in sending their children to the proposed charter school, and listing the current grade(s) for each of their children. Although the Department has not established formal criteria for reviewers to use to evaluate applicants' evidence of adequate community support, we noted that reviewers expected applicants to meet the requirements for adequate community support (as demonstrated by Department letters to applicants asking them to provide such evidence) if it was not included originally with their applications.

The Department has not established formal guidance for applicants or criteria for reviewers regarding an assessment of projected programmatic impact. Department officials indicated that charter schools can vary greatly in the types of programs they may offer and the types of students they may attract. Therefore, the officials believe that a one-size-fits-all set of criteria for evaluating potential programmatic impact is not feasible. However, Department officials told us that they require applicants to describe the projected fiscal impact upon the affected districts by comparing the estimated cost of the proposed charter school (based on the anticipated cost per pupil) with the budgets of those districts. In addition, the Department has developed criteria to evaluate fiscal impact. The criteria states that the assessment must be based on data, and calculations must use the anticipated number of students, the average approved operating expense per student, and any anticipated federal aid that may follow students. Department officials have also developed an internal guideline providing that there should be heightened scrutiny of fiscal impact when it would exceed 5 percent of an affected district's budget.

SUNY Status - Partially Implemented

Agency Action - The Institute's revised charter schools application kit contains guidelines for applicants regarding adequate community support and assessment of fiscal impact on the affected school districts. The guidance for community support specifies that signatures on petitions should be targeted towards parents of school-age children that are potentially interested in sending their children to a charter school. The guidance also indicates that public support from community leaders for a charter school constitutes evidence of community support. The guidance for an assessment of fiscal impact specifies that, at a minimum, an assessment should include the amount of funding a proposed charter school anticipates from each district and the corresponding percentage that the funding represents out of each district's budget. The charter schools application kit does not include guidance for programmatic impact. However, officials indicated that they are developing such guidance to be included in the next version of the kit, due in 2005. The Institute has not established criteria for reviewers to use when evaluating applicant responses to these elements of the charter school

application. However, officials told us that they will consider developing criteria to evaluate programmatic impact based on the newly-developed guidance to applicants.

Recommendation 2

To the Department and SUNY:

Establish formal guidelines to ensure school district and community reaction to a proposed charter school is properly considered during the application review and approval process, including in the final decisions by the Regents and SUNY Trustees.

Department Status - Implemented

Agency Action - Department officials provided us with formal guidelines that ensure school district and community reaction to a proposed charter school is properly considered during the application review and approval process. The guidelines require that such information should be included when charter school applications are submitted to the Board of Regents. The guidelines also state that if such information is not received, it should be solicited, and the solicitation should be incorporated into the report to the Regents.

SUNY Status - Partially Implemented

Agency Action - Institute officials provided us with guidelines that require all correspondence from school districts to be provided to the Board of Trustees prior to making a final decision on a charter school application. However, the guidelines do not address community reaction to a proposed charter school. The guidelines state that other correspondence may be (but is not required to be) provided to the Board of Trustees.

Recommendation 3

To SUNY:

In accordance with current Institute requirements, document site visit results within 30 days of each visit.

Status - Implemented

Agency Action - Institute officials provided us with documentation for two site visits, which indicated that site visit results were documented within 30 days of each visit. For example, the Institute conducted a site visit on August 21, 2003, and documented and provided the charter school with the site visit results on August 29, 2003.

Recommendation 4

To SUNY:

Provide site visit results to the Charter Schools Unit.

Status - Implemented

Agency Action - Institute officials told us that charter school site visit results are now routinely posted on-line to a website that can be accessed by the Charter Schools Unit. We reviewed the information on the SUNY website and found that the Institute does post the site visit results on-line. In addition, Institute officials indicated that they also send an e-mail to Charter Schools Unit officials to inform them when the postings occur.

Recommendation 5

To the Department:

Require charter schools to report student enrollment on time as specified by the Regulations of the Commissioner of Education.

Status - Implemented

Agency Action - Department officials indicated that they routinely contact charter schools that have not provided student enrollment in a timely manner, and request that such data be provided. Department officials further stated that when school districts report that the charter schools have not submitted student enrollment data in a timely manner, they contact the charter school and require them to submit the information. Department officials provided us with a letter dated August 13, 2003 from the Department notifying a charter school that it had not yet submitted its final 2002-2003 enrollment statistics which were due on July 31, and had not yet submitted its estimated enrollment statistics for 2003-2004, which were due on June 1.

Recommendation 6

To the Department:

Review charter school student enrollment data and require that errors be corrected.

Status - Implemented

Agency Action - Department officials advised that they routinely review charter school enrollment data and request charter schools to correct the data when errors are identified. Department officials provided us with a letter dated October 30, 2003 from the Department advising a charter school that there was confusion about the way the

school was reporting its student enrollment. The school was asked to provide a separate count of students for each school district and explain discrepancies in enrollment data between a cover sheet and its related breakdown sheet.

Recommendation 7

To the Department and SUNY:

Promptly provide charter schools with written notification of deficiencies found during site visits and require and obtain timely written charter school responses about corrective actions taken to address such deficiencies.

Department Status - Implemented

Agency Action - Department officials provided us with examples of prompt written notifications of deficiencies found during site visits and written charter school responses indicating corrective actions taken to address the deficiencies. In one instance, the Department sent a letter to a charter school about one month after a site visit, and requested and received a response within approximately one month after the date of the letter.

SUNY Status - Partially Implemented

Agency Action - Institute officials provided us with an example of prompt notification by telephone to a charter school indicating concerns noted during a site visit, and a follow-up letter from the charter school supplying additional information to address the concerns. The Institute also provides schools with extensive reports that detail a school's strengths and weaknesses, especially in regards to the school's academic program. However, not all visits result in the Institute generating such reports; although, where material violations of the law or charter are identified, the Institute notifies the school of such violations and seeks corrective action. Institute officials say that they have a tracking system for monitoring whether schools timely take corrective action to correct identified violations of the law or charter.

Recommendation 8

To the Department and SUNY:

Take steps that will require the Charter Schools Unit and the Institute to coordinate their respective site visit schedules.

Department Status - Implemented

Agency Action - Department officials indicated that they provide the Institute with their charter school site visit schedule and noted that the results of site visits are shared with each other. We were provided with and reviewed e-mail documentation which indicated that the Institute and the Department coordinate their site visit schedules.

SUNY Status - Implemented

Agency Action - Institute officials indicated that they e-mail site visit schedules to the Charter Schools Unit in order to coordinate their site visits to the charter schools. Officials provided us with one e-mail with an attached site visit schedule for the fall of 2002.

Recommendation 9

To the Department and SUNY:

Provide written approvals for student enrollment that varies from charter agreement thresholds.

Department Status - Implemented

Agency Action - Department officials indicated that they review charter school enrollment data to determine whether actual enrollment varies from charter agreement thresholds. When such instances are identified, the Department sends a letter to the charter school, informing them of the requirement to obtain prior written approval to operate at the new enrollment level. Department officials provided us with a letter issued to a charter school advising them of the requirement to obtain prior written approval to operate at a reduced student enrollment level.

SUNY Status - Implemented

Agency Action - Institute officials indicated that when they review enrollment data, they note if the total enrollment varies from what was expected enrollment in the charter. Institute officials provided us with a letter to one charter school advising them that an additional drop in their enrollment, resulting in a total enrollment of less than 85 percent of that projected in the charter, would require the express written permission of the Institute and potentially a revision to the charter.

Major contributors to this report were Jason Kearney, Karen Bogucki and Brian Mason.

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 and SUNY for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Steven E. Sossei
Audit Director

CC: Mr. Robert Barnes
Mr. James Merriman IV
Mr. Kevin O'Donoghue
Ms. Theresa Savo
Mr. Thomas Sheldon