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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

November 2, 2004

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

Re: Report 2004-F-30

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 followed up on the actions taken by officials of the State Education Department (Department) to implement the recommendations contained in our audit report, *Implementation of the RESCUE Program* (Report 2002-S-51).

Background, Scope and Objective

There are approximately 697 school districts in the State outside New York City, which own or operate more than 3,900 instructional buildings with an estimated replacement cost of more than \$50 billion. Districts must preserve this significant investment in capital assets to reduce future replacement costs and to provide a safe and healthy environment for students and district staff. For more than 30 years, the Department has required that districts develop and document plans for maintaining district properties. The Rebuild Schools to Uphold Education (RESCUE) Program, enacted in 1998, continues to require districts to carry out preservation-related tasks, and it also requires districts to submit a survey of district properties every five years, an Annual Visual Inspection (AVI) report, a Five-year Capital Facilities Plan (Plan) and an annual School Facility Report Card (Report Card) to inform the Department and district residents about building conditions. Districts outside New York City spent about \$1.7 billion annually to pay for capital improvements during the 2002-03 fiscal year.

Our initial audit report, which was issued on September 19, 2003, examined the Department's efforts to promote districts' preservation of their school buildings and the appropriate use of State Building Aid. We found the Department's control system does not ensure that all districts have developed adequate long-range facility preservation plans or building condition Report Cards – two of the RESCUE Program's intended goals. We also found that, because of limited monitoring, districts have inappropriately claimed maintenance costs and other items when

requesting State Building Aid. We concluded that because of these weaknesses, the benefits of the RESCUE Program were limited and there was risk that districts' incorporated ineligible costs into capital projects funded with State Building Aid. The objective of our follow-up, which was conducted in accordance with Generally Accepted Government Auditing Standards, was to assess the extent of implementation as of October 1, 2004 of the six recommendations included in our initial report.

Summary Conclusions and Status of Audit Recommendations

We found that Department officials have made significant progress in implementing the recommendations. Of the six initial audit recommendations, five recommendations have been implemented and one recommendation has been partially implemented.

Follow-up Observations

Recommendation 1

Provide districts with the finalized format for the Plan and Report Card so districts can fulfill the RESCUE Program requirements.

Status - Implemented

Agency Action - The final format for the Plan was issued in September 2003 while the format for the Report Card was issued in April 2004. The Department posted both documents to its Facilities Planning web site.

Recommendation 2

Enhance existing procedures for monitoring district compliance with the RESCUE Program in the areas related to the Plan, the Report Card and the AVI. These procedures should include:

- *Asking districts to post programmatic compliance information on their websites;*
- *Visiting or otherwise verifying districts' compliance, particularly at districts where the risk of noncompliance is greatest; and*
- *Formally tracking the submission of required reports to identify noncompliant districts.*

Status - Implemented

Agency Action - The Department enhanced its procedures for monitoring district compliance with the RESCUE Program by making compliance site visits and participating in facilities peer reviews carried out by the NYS Association for School Superintendents of Building and Grounds. During both activities, Department officials documented their discussions concerning the need to comply with RESCUE Program requirements with district staff. The Department, in the September 2004 Office of Facilities Planning newsletter, instructed districts to post programmatic information on their web sites. The Department now formally tracks the submission of required forms from districts and provided us with a listing of the district dunning letters issued during February 2004.

Recommendation 3

Modify State Building Aid guidelines to clarify what constitutes acceptable State Building Aid expenses; give examples of expenditures that districts should not incorporate into capital projects.

Status - Implemented

Agency Action - The Department updated the State Building Aid guideline to address expenditures that are both eligible and ineligible to receive building aid in a capital construction project.

Recommendation 4

Improve the processes used to assess the propriety of change orders and incidental expenses that districts incorporate into capital projects by, among other things:

- *doing a detailed examination of such items to ensure project applicability; and*
- *requiring districts to provide detail adequate to justify an item's relevance to a capital project and eligibility for State Building Aid.*

Status - Implemented

Agency Action - The Department has taken several steps to improve the processes used to assess the propriety of capital project change orders and incidental expenses. The Department has strengthened internal procedures by requiring all change orders to be reviewed by multiple staff allowing identification of a greater percentage of those expenses inappropriate to capital projects. We observed evidence of this for change orders reviewed from the Central Islip Senior High School and West Irondequoit High School. In numerous Office of Facilities Planning newsletters, the Department reminded district staff of the need to provide adequate back-up information for all change orders. Officials have expanded the information on change orders contained in the building aid guidelines and added requirements to the change order submission process.

Recommendation 5

Develop processes to identify districts that incorporate ineligible costs in capital projects receiving State Building Aid. These processes may include sampling techniques to better focus on those districts with the highest risk for submitting ineligible costs for reimbursement.

Status - Partially Implemented

Agency Action - The Department plans to use data collected as part of its revised change order review process to identify those districts incorporating ineligible costs into capital projects. However, due to staff shortages, this data not yet been used to specifically identify districts with the highest risk. Instead, officials are focusing their review on the larger school districts and those that have already experienced problems.

Recommendation 6

Reject items inappropriately charged to capital projects on district claims for State Building Aid.

Status - Implemented

Agency Action - The Department has taken steps such as requiring reviews by multiple staff of all change orders to ensure items inappropriately charged to capital projects on district claims for State Building Aid are rejected. Officials provided us with evidence that they had rejected inappropriate charged State Building Aid for items on three change orders.

Major contributors to this report were Brian Mason, Bill Clynes and David Pleeter.

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

Very truly yours,

Steven E. Sossei
Audit Director

cc: Robert Barnes, Division of the Budget