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OFFICE OF THE STATE COMPTROLLER

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

Mr. Joel A. Giambra
County Executive
Erie County
95 Franklin St.
Buffalo, NY 14202

Mr. Joel I. Klein
Chancellor
New York City Department of Education
52 Chambers St.
New York, NY 10007

Re: 2006-F-18

Dear Messrs. Mills, Klein, and Giambra:

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 and Article III, Section 33 of the General Municipal Law, we have followed up on the actions taken by officials of the New York State Education Department, New York City Department of Education and Erie County to implement the 11 recommendations contained in our audit report, *Administration of Payments for Preschool Related Services and Special Education Itinerant Teachers* (Report 2003-S-39).

Background, Scope and Objective

The State Education Law (Law) requires that the State Education Department (SED) meet the physical and educational needs of children with disabilities. The individualized education programs (IEPs) of some special education children prescribe instruction by Special Education Itinerant Teachers (SEITs) and developmental, corrective and other supportive services (related services) to help them attain their educational goals. Related services include specialized services such as speech-language pathology, audiological services and physical therapy. Section 4410 of the Law states that SEIT services feature direct individual and/or group instruction to preschoolers with disabilities by a special education teacher of an approved program at a licensed Pre-K, Head Start program or child care location. Some special education children require and receive SEIT services and/or multiple forms of related services.

Each school district has a Committee for Preschool Special Education (Committee) that oversees the evaluation process used by educational specialists to assess a child's need for special education services. The Committee documents these determinations in the child's IEP and annually reviews the child's status to determine if the service needs prescribed by the IEP should be changed. According to the Law, municipalities that cannot deliver all the services prescribed by a student's

IEP must contract with approved private providers to obtain SEIT and related services. Both SEIT and related services are delivered in 30-minute sessions.

Municipalities use established rates to pay for SEIT and related services. SEIT rates are set individually for each provider based on student enrollment and the historical costs of services. The SEIT rate is a monthly rate and is similar to a tuition charge. Related service rates are established on a per session basis and payment is made on this basis. Municipalities use SED-established rates to pay SEIT providers and perform reconciliations to adjust providers' payments for enrollment-related changes. Municipalities establish session rates for related services and pay claims based on the number of related service sessions actually provided.

In New York City, the Department of Education (Department) authorizes payments for services provided to qualified children. Throughout the rest of the State, county governments review claims and authorize payments for SEIT and related services. During the 2002-03 year, municipalities statewide were approved to spend about \$106 million for SEIT services, and about \$149 million for related services. The Department and Erie County spent, respectively, over \$68 million and over \$1 million for SEIT services and over \$32 million and about \$9 million for related services in 2002-03. SED reimburses municipalities for 59.5 percent of these costs and also pays municipalities a \$75 per student administrative fee.

Our initial audit report, which was issued on May 2, 2005, examined the administration of payments made by the Department and Erie County for services for preschool special education students for the years ended June 30, 2001 (for SEIT) and June 30, 2003 (for related services). Our testing disclosed that Erie County used the correct SED-established rates to pay SEIT providers in 2000-01. In contrast, the Department overpaid providers \$731,000 from the billings we tested (and perhaps more) because it used the wrong rates in reconciling 2000-01 payments to SEIT providers. In addition, the Department and Erie County might have overpaid SEIT providers more than \$358,000 and \$17,000, respectively, in the two years we reviewed because the municipalities either did not update enrollment-related data or did not verify that services were actually provided. Municipalities also paid for related services that providers billed, but did not deliver as prescribed, without confirming that students actually received the proper services.

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 4, 2006) of the 11 recommendations included in our initial report. We addressed recommendations 1 through 7 and recommendation 10 to SED. Recommendations 8, 9, and 11 were addressed to the Department and Erie County.

Summary Conclusions and Status of Audit Recommendations

We found that SED, the Department and Erie County officials have made some progress addressing the recommendations from the initial audit. Of the eight recommendations addressed to SED, two recommendations have been implemented, four recommendations have been partially implemented, and two recommendations have not been implemented. Of the three recommendations addressed to Erie County, all three have been implemented. Of the three recommendations addressed to the Department, one has been partially implemented. The remaining two recommendations were not applicable because the Department had not received directions from SED (as we recommended in the initial report) regarding the actions to be taken to implement them.

Follow-up Observations

Recommendation 1

Direct the Department and Erie County to investigate the specific instances of overpayments noted in this report, and if funds should be recovered from providers, take the appropriate steps to recover the funds (including adjustments to future payments).

Status - Implemented

Agency Action - On August 28, 2006, SED officials issued a memorandum directing the Department and Erie County officials to investigate the overpayments identified in our initial audit report. In this memorandum, SED officials also requested documentation of the steps taken by the Department and Erie County to recover the overpayments.

Recommendation 2

Instruct Department staff to check posted SED SEIT payment rates and update the payment system before reconciling payments to providers.

Status - Implemented

Agency Action - On August 28, 2006, SED officials issued a memorandum to the Department requesting documentation of specific instructions the Department provided to staff to routinely check SEIT payment rates and update the Department's payment system before reconciling payments to providers.

Recommendation 3

Develop formal direction to municipalities that re-states Manual and payment guidelines SEIT providers must follow, and instruct municipalities to share these requirements with their SEIT contractors. These provider guidelines should include, but not be limited to, the following:

- a. Providers must maintain accurate attendance records for enrolled students, and keep such records for seven years.*
- b. Providers must ensure they maintain records stating the correct starting/ending dates for students, and notify municipalities of any enrollment changes.*
- c. Providers should not be paid for sessions corresponding with absences that are not documented or excused.*
- d. Providers should formally notify the municipality when a student is absent for 5 days or more and require the committee to determine if enrollment should be continued or discontinued.*

Status - Partially Implemented

Agency Action - SED officials had drafted (but not issued) a technical assistance memorandum concerning SEIT services. The memorandum directs municipalities to:

- prepare attendance records and progress reports for enrolled students and maintain such records for seven years;
- ensure that records contain the correct starting and ending dates of programs and services provided to students; and
- instruct providers to notify municipal officials when students are absent for extended periods and to assess whether enrollment should be continued.

Recommendation 4

Direct municipalities to develop, to the fullest extent possible, a means of monitoring providers' compliance with Manual requirements and provider billing guidelines, including the requirements stated in Recommendation 1, so municipalities can avoid paying SEIT contractors for services they do not deliver.

Status - Partially Implemented

Agency Action - SED officials had drafted (but not issued) a technical assistance memorandum concerning SEIT services. The draft memorandum instructs municipalities to establish and maintain adequate internal controls over programs and services. It further directs municipalities to develop and publicize policies and procedures regarding records and documentation to be maintained by preschool special education programs and related service providers that contract with municipalities. The specific items addressed by the memorandum include, but are not limited to:

- attendance and billings records;
- information to be provided to the municipality at certain times or under certain circumstances, or upon the request of the municipality; and
- information to be available for review or audit by the municipality.

Recommendation 5

Require that municipalities' contracts with services providers state that providers must notify the municipality and the Committee when a student is illegally absent for 5 consecutive days.

Status - Not Implemented

Agency Action - SED officials had not taken steps to address this recommendation.

Recommendation 6

Remind municipalities that records of SEIT sessions should include the starting and ending times of the sessions for which payments are made.

Status - Partially Implemented

Agency Action - SED officials had drafted (but not issued) a technical assistance memorandum addressing SEIT services. Specifically, the draft memorandum reminds municipalities to ensure providers include the correct starting and ending times for SEIT sessions.

Recommendation 7

Formally assess the propriety of paying for SEIT sessions on an enrollment versus attendance-based system. Propose changes to the Education Law and related regulations as appropriate.

Status - Not Implemented

Agency Action - SED officials had not taken steps to address this recommendation.

Recommendation 8

Investigate the specific instances of overpayments noted in this report, and if funds should be recovered from providers, take the appropriate steps to recover such funds and adjust aid claims submitted to SED, if necessary.

With regard to the Department:

Status - Partially Implemented

Agency Action - Department officials initiated efforts to review the instances of overpayments noted in our initial audit report. However, they had not completed reviews of specific overpayments to specific providers identified by the initial report. Department officials added that delays in recouping funds from providers resulted from efforts to resolve payment reconciliation issues from years prior to our audit.

With regard to Erie County:

Status - Implemented

Agency Action - Erie County officials investigated the specific instances of overpayments identified in our initial audit report, and they deducted overpayments from recent payments to providers, as appropriate. As of August 2006, Erie County had recovered \$10,880 of SEIT overpayments.

Recommendation 9

Take actions, as appropriate and necessary, to comply with the direction provided by SED pursuant to recommendations No. 1 through No. 7 in this report.

With regard to the Department:

Status - Not Applicable

Agency Action - The Department received no formal direction from SED and, therefore, did not have any documentation of actions taken to implement the recommendations.

With regard to Erie County:

Status - Implemented

Agency Action - Although they had not received formal guidance from SED regarding the recommendations, Erie County officials took several steps to comply with them. Specifically, Erie County has investigated the instances of overpayments identified in our initial report and taken steps to make recoveries. In addition, officials now use special software to download approved SEIT rates on a biweekly basis and to help ensure that SEIT payments are proper. Also, in January, 2005, officials sent a memorandum to all preschool providers notifying them that:

- services for a student do not begin until the child actually attends the program, receives services or is legally absent;
- end dates for services provided to students need to be reported accurately. If a program is aware that a child will no longer be receiving services, it is the responsibility of the provider to notify the appropriate school district immediately to ensure timely discharge; and
- documentation of legal absences (for which sessions are billable) must be submitted with invoices effective February 2005.

Officials also advised us that they will require providers, upon contract renewal, to notify Erie County and the appropriate school district when a student is illegally absent for 5 consecutive days. Further, Erie County has developed audit procedures to monitor the starting and ending dates of the sessions for which payments are made.

Recommendation 10

Provide formal direction to municipalities to ensure that related service providers are paid for only the service they actually provide, as prescribed on students' IEPs. This direction for municipalities should include the following:

- a. Establish procedures that include (but are not limited to) verifying service billings to attendance record, at least on a test basis, to ensure that students were present on the day that related services were claimed to have been provided.*
- b. Enforce the requirements that related service providers maintain the attendance and service documentation required by the Manual.*
- c. Include the starting and ending times for service sessions on claims.*
- d. Monitor service providers' performance to ensure they provide the types of sessions prescribed on students' IEPs and at the frequency provided for in the IEPs and/or the Regulations.*

- e. *Providers are not to deliver SEIT and related services simultaneously, unless specifically prescribed by students' IEPs.*
- f. *Instruct related service providers that clinicians must record their related service session promptly and accurately to document service.*

Status - Partially Implemented

Agency Action - SED officials have drafted (but not issued) a technical assistance memorandum concerning related services. The draft memorandum directs municipalities to:

- verify service billings to attendance records at least on a test basis to ensure that students were present on the days that the related services claimed were provided;
- require related service providers to maintain attendance and billing records and for information to be available for review or audit by the municipality;
- require related service providers to maintain attendance and service documentation, including starting and ending times for sessions recorded on claim documents;
- monitor provider's claims to ensure that the identified programs and services are provided consistent with the frequency and duration prescribed in the student's IEP;
- inform providers that unless otherwise specified, related services are provided on an individual basis. Therefore, the IEP must indicate whether the student will receive related services in a group setting; and
- instruct providers to maintain records requested by municipalities and Committees to support all billings for programs and services.

Recommendation 11

Take actions, as appropriate and necessary, to comply with the directions provided by SED pursuant to recommendation No. 10 in this report.

With regard to the Department:

Status - Not Applicable

Agency Action - The Department received no formal direction from SED and, therefore, did not provide any documentation of actions taken to implement the recommendation.

With regard to Erie County:

Status - Implemented

Agency Action - Although Erie County officials stated they have not received any guidance from SED regarding this recommendation, officials have taken appropriate steps to implement this recommendation. Officials have added the following language to their preschool program audit procedures requiring staff to:

- verify that billings accurately correspond to progress notes. Any service billed should have a corresponding progress note;
- verify date, time and location of service, parent or caregiver signature;
- ensure progress notes include session start and end times; and
- ensure all services were rendered exactly as prescribed in the IEP.

Major contributors to this report were William Clynes, Cynthia Herubin, and Anthony Calabrese.

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

Very truly yours,

Brian E. Mason
Audit Manager

cc: Ms. Lisa Ng, Division of the Budget
Ms. Theresa Savo, SED
Mr. James Conway, SED
Mr. Brian Fleischer, NYC DoE OAG
Dr. Anthony Billittier, Erie County Department of Health