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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

June 5, 2007

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

Re: Report 2007-F-3

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 New York State Education Department (SED) to implement the recommendations contained in our audit report, *Reimbursement to Nonpublic Schools for State Mandated Services* (Report 2005-S-20).

Background, Scope and Objective

New York State has the duty and authority to evaluate, through a system of uniform testing and reporting procedures, the quality and effectiveness of instruction rendered to its students. The Commissioner of Education (Commissioner) is responsible for gathering and evaluating the appropriate educational data, as well as for reimbursing nonpublic schools for their costs to provide SED with data regarding instructional quality and effectiveness. Pursuant to Chapter 507 of the Laws of New York of 1974, SED is authorized to reimburse nonpublic schools for their actual costs to comply with State mandates for taking attendance, administering standardized tests and evaluation programs, and reporting basic education data to SED.

During the 2004-05 school year, nonpublic schools statewide had a total enrollment of about 469,000 students (about 14.4 percent of grade and high school students statewide). For the 2005-06 year, SED paid \$79.4 million to nonpublic schools for costs incurred to provide mandated services. About 70 percent of these payments were to reimburse the nonpublic schools for the costs to take daily student attendance (through the Pupil Attendance Report or PAR) and to provide such information to SED.

According to Part 176 of the Commissioner's Codes, Rules, and Regulations (Regulations) nonpublic schools that submit applications for reimbursement for mandated services must maintain: (a) a separate set of expenditure accounts showing the amounts claimed and (b) individual salary and time records for each employee involved in providing the mandated service to support their claim. The Regulations allow nonpublic schools to use standards set by the Commissioner to determine the cost of the mandated services provided. SED has established guidelines for nonpublic schools to use in completing applications for reimbursement for the costs of providing mandated services. The guidelines prescribe parameters (or standards) for reimbursement. Generally, reimbursement for the mandated services is computed on the application by multiplying the number of hours allowed per the guidelines by the hourly rate for salaries and benefits determined by the school.

Our initial audit report, which was issued on February 7, 2006, examined SED's administration of payments for nonpublic school mandated services for the period July 1, 2002 through June 30, 2004. The objectives of our performance audit were to determine whether SED properly reimbursed nonpublic schools for the costs incurred to provide State mandated services and whether nonpublic schools maintained sufficient documentation to support their claimed expenses. Our initial audit concluded that SED did not always properly reimburse nonpublic schools for State mandated services, particularly those associated with the Comprehensive Attendance Policy (CAP). In addition, we found that, with some minor exceptions, the nonpublic schools we visited generally maintained sufficient documentation to support their claimed expenses. 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 March 27, 2007, of the five recommendations included in our initial audit report.

Summary Conclusions and Status of Audit Recommendations

SED officials made considerable progress in addressing the matters we identified in our initial report. However, additional actions are needed to completely address several of those matters. Of the five prior audit recommendations, two recommendations have been implemented, two recommendations have been partially implemented, and one recommendation has not been implemented.

Follow-up Observations

Recommendation 1

In accordance with the Law, reimburse nonpublic schools for the costs incurred in providing all State mandated services including CAP.

Status - Not Implemented

Agency Action - SED has not reimbursed the nonpublic schools for the costs they incurred for CAP since it went into effect for the 2003-04 school year. Although SED made administrative provisions for nonpublic schools to claim reimbursement for CAP beginning with the 2005-06 year, the State's education appropriations have not included funding for such reimbursements. Therefore, SED has not reimbursed the nonpublic schools for CAP for the 2005-06 year and thereafter. In addition, SED officials stated that they have been discussing funding for CAP reimbursement with the Division of the Budget. Officials noted, however,

that CAP reimbursements can be made only if sufficient funds are provided through the State's appropriation process.

Recommendation 2

Complete the development and implementation of an automated risk-based edit system to ensure that claims are processed timely and efficiently. Establish a formal time-table for the development and implementation of the new system.

Status - Partially Implemented

Agency Action - At the time of our follow-up, SED was in the process of developing an automated risk-based edit system to ensure that claims are processed timely and efficiently. Specifically, SED hired a consultant to develop the specifications for a new automated system. The specifications will be used by SED computer programmers to develop and implement the automated system. The system will be designed to apply to the entire claims process from information input through analysis, editing and reimbursement (payment). According to SED officials, a prototype of the new system is expected to be available for testing in April 2007, and system implementation is expected during the 2007-08 school year.

Recommendation 3

Instruct nonpublic schools to calculate the hourly rate for salary and benefits based on the actual number of hours worked per day for persons providing the mandated service and maintain documentation of such; alternatively, allow the use of a standard work day defined by SED based on an analysis of the nonpublic schools' actual practices regarding the work day.

Status - Partially Implemented

Agency Action - SED officials have not instructed nonpublic schools to calculate the hourly rate for salary and benefits based on the actual number of hours worked per day for persons providing the mandated service. SED's reimbursement guidelines for the 2005-06 year and worksheets available on the SED website include questions about the hours used to carry out this mandate. SED plans to analyze the data collected from these forms to help develop standards for the length of a school day.

SED officials also indicated that they are continuing efforts to reach an agreement with the nonpublic schools on this matter. According to officials, the nonpublic schools have different needs, and they apply the method that is most advantageous to their particular situations. For example, religious-based schools cannot be reimbursed for the time devoted to religious studies within their school day. Consequently, some religious schools have concluded that it would be appropriate for them to use a standard school day of 5.5 hours. In contrast, some smaller schools prefer to use their actual hours of daily operation (instead of a standard school day).

Recommendation 4

Using a risk-based approach, select a number of schools to submit back-up documentation that supports their reimbursement claims.

Status - Implemented

Agency Action - Using a risk-based approach, SED selected certain nonpublic schools for desk audits and site visits to test the back-up documentation that supported the schools' reimbursement claims. SED selected the schools based on the amounts of their claims and the percentage changes in reimbursement from prior years. SED also diversified its sample of schools based on the type of school and geographic considerations. As a result of this process, one of the nonpublic schools selected and reviewed by SED acknowledged that it claimed and received excessive mandated service payments totaling about \$265,000 over five years. Further, SED has taken actions to recover the overpayments in question from the school.

Recommendation 5

Follow up on the overpayments noted during our site visits and recover as appropriate.

Status - Implemented

Agency Action - SED officials followed up on the overpayments to the four schools identified in our initial report and have recovered \$96,086 in overpayments from one of them. For two other schools, officials have addressed matters pertaining to the schools' documentation of reported expenses and related internal control issues. SED officials continue to evaluate the propriety of these two schools' claims. Officials also advised us that the remaining school has not yet responded to SED's inquiries. Consequently, officials will not process payment of this school's 2005-06 claim until the school has responded properly to SED.

Major contributors to this report were Karen Bogucki and Don Collins.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in the report. We also thank the management and staff of SED 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, State Education Department
Mr. James Conway, State Education Department