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STATE COMPTROLLER



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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

August 15, 1997

Mr. Carl T. Hayden
Chancellor
The University of the State of New York
State Education Building
Albany, NY 12234

Re: Unlicensed Business Schools
Report 97-S-36

Dear Mr. Hayden:

According to the State Comptroller's authority as set forth in Section 1, Article V of the State Constitution and Section 8, Article 2 of the State Finance Law, we audited selected practices of the State Education Department's (Department) Bureau of Proprietary School Supervision (Bureau) related to its oversight of unlicensed trade schools and unregistered business schools.

Background

Section 5001 of the New York State Education Law (Law) requires that all business and trade schools should be registered or licensed if they provide courses at a cost of more than \$299 to students who are not already employed in the field of study, and if they do not meet certain other exemption criteria. The Bureau has responsibility for overseeing operations of licensed and registered schools, reviewing and approving their instructional programs, licensing their teachers, investigating students' written complaints and making reimbursements from the Tuition Reimbursement Fund. The goals of Bureau monitoring are to ensure that the schools meet the Department's educational standards for such schools and to protect the financial and educational interests of students who attend them. The Bureau will not automatically close an unlicensed or unregistered school unless its operations are detrimental to the health and welfare of its students. Instead, the Bureau's will encourage such a school to become licensed or registered or to apply for an exemption within a reasonable time period; if this does not occur, it will take punitive action against the school.

In 1990, the financing of Bureau operations changed from a direct State appropriation to funding through assessments paid by licensed and registered schools to the Proprietary School Supervision Account. Since 1990, however, assessment rates have been lowered as a result of a 1993 amendment to the Education Law, and the number of licensed schools has also declined, from about 420 schools in 1990 to about 260 schools in 1997. Meanwhile, the number of unlicensed schools - who do not pay assessments - has increased. With reduced funding, the Bureau reduced the number of staff

devoted to identifying and monitoring unlicensed schools. The Bureau employed 40 staff in 1990, but only 15 in 1997. According to Bureau officials, three staff currently spend between 20 and 30 percent of their time investigating unlicensed schools.

In March 1997, legislation was introduced to amend the Law to give the Bureau both more funding and enhanced enforcement powers. This proposal includes the following provisions:

- the Department could assess civil penalties, fines and settlements for operating an unlicensed school, and have any fines paid to the Proprietary School Supervision Account;
- the maximum fine for unlicensed operations would increase from \$25,000 to \$100,000;
- the Bureau could charge a fee of \$1,000 to a school that requests an exemption from licensing (under existing law there is no fee to become licensed or apply for an exemption);
- the Bureau could increase the application fee for new schools and also charge for accessing student records; and
- the Department would also be required to refer unlicensed schools to the Attorney General to initiate civil action against them.

These proposed changes to the Law would not only increase the revenues that fund the Bureau, but would also help ensure that all trade and business schools are appropriately licensed, registered or exempted.

Bureau staff have reported numerous problems at unlicensed schools in the past. For example, the Bureau found that some schools canceled classes without refunding tuition, offered training programs that did not make students employable in the field, and operated in conditions that violated infection control standards. We also believe there is a risk that unlicensed schools, which do not file financial statements with the Bureau, may not report tuition receipts as income and may pay instructors “under the table” to avoid Federal and State taxes. Providing the Bureau with sufficient resources to identify and license or register schools can help make the Bureau more effective in protecting the interests of students and the educational community. However, at the time this report was processed, the proposed amendment had not been enacted.

Audit Scope, Objective and Methodology

We received a complaint that there are a large number of unlicensed computer training schools in New York City. It was alleged that these schools are targeting Russian immigrants as prospective students and that, in the aggregate, these unlicensed schools could be collecting as much as \$25 million a year in tuition. The objective of our audit was to determine whether such unlicensed schools were improperly operating in New York City. For the purpose of this audit, we limited our examination to computer schools that target Russian immigrants as students.

We did this audit according to generally accepted government auditing standards. To accomplish our audit objective, we reviewed various Russian newspapers for advertisements; we interviewed the proprietor of a licensed business school in New York City and obtained a list of possible unlicensed business schools which may be targeting Russian immigrants; we visited or telephoned selected schools to discuss their operations; we contacted community groups; we interviewed Bureau officials to identify their licensing and investigation processes; and we reviewed Bureau records of licensed and unlicensed schools.

Audit Results

Bureau Monitoring Efforts

The Bureau identifies unlicensed schools through various means, such as industry contacts, student complaints and newspaper advertisements. After identifying a potentially unlicensed school, the Bureau notifies the school in writing that it may be required to be licensed pursuant to the Law, and that there is a potential penalty for operating without a license. The notice also states that, if the school believes it is exempt from the licensing requirement, school officials must explain the nature of the exemption and sign a certification attesting to its validity. If school officials do not respond to this official notice, the Bureau may either send an investigator to the school to follow up or send a per diem student operative to the school to pose as a prospective student.

As of July 2, 1997, the Bureau had identified nearly 900 unlicensed schools. Of this number, more than half have been exempted, some have closed and others have submitted information and are awaiting a determination to be either licensed or exempted. The following table shows the number of schools in each grouping:

Summary of Unlicensed Schools on Bureau Records at July 2, 1997	
Exempt	455
Closed	171
To Be Licensed or Exempted	103
Waiting for Additional Information	89
Information to Be Reviewed	31
To Be Investigated	28
Address Unknown	3
Total	880

Most of the unlicensed schools in the Bureau's database are located in New York City. Bureau officials concede that there are probably many more schools operating without valid licenses, and that all schools on the exempt listing may not meet all the criteria for an exemption.

Bureau officials told us that they do not have the resources to verify the reasons all schools give for their exemptions. Instead, they review school certifications and other information to identify and investigate the highest risk schools. Bureau officials added that the investigators, with the help of student operatives, can do only about 75 to 90 field investigations each year. Further, although Bureau identification efforts include checking advertisements in newspapers, Bureau officials told us that they do not review most foreign language newspapers because Bureau staff cannot read these foreign language publications. Therefore, Bureau officials cannot use this information source to identify unlicensed schools that target the Russian immigrant community.

Unlicensed Computer Training Schools in New York City

We attempted to contact a total of 36 computer training schools that serve the Russian community in New York City. Of this number, we were successful in carrying out site visits or telephone interviews at 23 schools, and unsuccessful in contacting the remaining 13 schools. We confirmed that all 23 schools were operating without licenses. Of these 23 schools, 17 were not on the Bureau's database of unlicensed schools, 1 was listed as address unknown, 1 was in the process of providing information to the Bureau, 1 was listed as closed and 3 were listed as exempt. We subsequently found that, for the school listed incorrectly as closed, the Bureau had mailed the notice to the wrong address and concluded that the school had closed when the Postal Service returned it as "undeliverable." Two of the three schools claiming exempt status reported that they taught students who were already employed in the field; the third school claimed that each of its 18 separate courses cost less than \$300. As a result of our interviews, however, we determined that all 23 schools charged between \$1,300 and \$5,000 per program and accepted anyone who applied. Based on our discussions with officials and/or students at these schools we conclude that these 23 schools would probably not qualify for exemptions.

According to the proprietor of a licensed business school in New York City and from our discussions with people in the Russian immigrant community, we learned that many Russians come to the United States with an advanced education, including a background in computer programming. They told us that these immigrants often seek additional training from computer schools so they can be productively employed in the field. We also learned that there is currently a large demand for programming skills in New York City, particularly since companies are devoting a lot of resources to meeting the Year 2000 problem (i.e., readying computer systems and applications to cope with dates after 1999). The annual starting salary for trained computer programmers in New York City is reportedly \$60,000 or more.

Bureau officials have generally not received complaints from the computer training schools in our focused sample. If the Bureau had received a complaint, it would have initiated the licensing/exemption process, but most of the schools in our sample were not on the Bureau's database. Bureau officials suggest that Russian immigrant students may be less inclined to file complaints with the State due to a possible inherent distrust of government and to the language difference. It could also be possible that, if students have problems, they make it known to local community groups.

We conclude that, since the Bureau has limited resources, the Department should continue to seek its proposal for fee increases or also seek supplemental State appropriations. With its current

limited staff, Bureau officials should continue to focus their investigations on schools where there is greater likelihood that student education and finances are in jeopardy. We believe that if they meet the licensing criteria, the unlicensed computer training schools that target Russian immigrants must be licensed. As an initial effort to accomplish this, the Bureau should first work to gain the cooperation of Russian community groups in identifying existing schools. By using contacts within the Russian community, the Bureau may be able identify more unlicensed schools than Bureau investigators could on their own, and also be more successful in inducing such schools to apply for Department licensing. During our brief audit, we did not determine why these schools were unlicensed. However, a possible explanation could be the schools' unwillingness to pay the State assessment fees and the inability to meet the necessary State standards to maintain a school license. Working with community groups, the Bureau may discover certain generic reasons for these schools' avoidance of licensing. If the Bureau can find ways to address administrative or program requirement issues that inhibit the schools' registration with the Department, it may be able to succeed in licensing these operations. When such schools are licensed, the Bureau will be able to ensure they comply with all relevant laws and continue to satisfy the financial and educational interests of the students who attend them.

Recommendations

1. Continue to lobby for the passage of the legislation which was introduced to amend the Education Law, and/or seek an appropriation to supplement existing funding sources.
2. Work with SUNY, CUNY or other institutions, or identify in-house resources that can interpret school advertisements in foreign language newspapers as an aid in identifying unlicensed schools.
3. Update Bureau records for the schools we identified that appear to require State licensure.
4. Investigate the schools which had filed exemptions but which our audit suggests may not qualify for such exemptions.
5. Work with community groups to identify unlicensed schools; find out why these schools have not applied for licenses and work to resolve administrative or program-related impediments to licensing.

Draft copies of this report were provided to Department officials for their review and comment. They agreed with our recommendations and a complete copy of their response is included as Attachment A to this report.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of Education shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

Major contributors to this report were David R. Hancox, Carmen Maldonado, Robert Lindholm, Roger Mazula, and Kenrick Sifontes.

We appreciate the cooperation and courtesies extended to our auditors during the examination.

Very truly yours,

William P. Challice
Audit Director

cc: Patricia A. Woodworth
Commissioner Mills



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August 8, 1997

Mr. David R. Hancox
Director of State and NYC Audits
Office of the State Comptroller
Alfred E. Smith State Office Building
Albany, New York 12236

Dear Mr. Hancox:

The New York State Education Department (NYSED) has received and reviewed your draft audit report (No. 97-S-36) regarding selected practices of the Bureau of Proprietary School Supervision (BPSS) related to its oversight of unlicensed trade schools and unregistered business schools.

As the audit report clearly acknowledges, the biggest factor that has hampered NYSED's efforts in utilizing its jurisdiction to oversee unlicensed private schools is the serious lack of staff and resources. While the proprietary school laws of 1990 greatly enhanced the Commissioner's authority to properly deal with fraud and abuse within the proprietary school industry, it deleted BPSS from the State budget making its existence dependent upon an assessment on each licensed school's annual gross tuition. While BPSS has met the mandates of the Legislature by virtually eliminating cases of widespread fraud that was rampant in the 1980's and early 1990's, it has also reduced its operating budget through the decline in the number of private schools from approximately 420 in 1990 to 260 today. In addition, in 1993, the Legislature further reduced the percentage of the assessment that licensed schools pay to maintain the Bureau even as BPSS was properly closing bad and poorly run institutions.

In 1996, NYSED and the Proprietary School Advisory Council proposed legislation that would enhance the Commissioner's authority over unlicensed and illegally operating schools that has evolved since the laws of 1990. This bill would generate revenue from the unlicensed schools to fund the Bureau's oversight of this sector while maintaining the current assessment for licensed institutions. Unfortunately, this bill was not acted upon prior to the conclusion of the legislative session. While NYSED will continue to make procedural and policy adjustments to address the issue of unlicensed schools, all relevant parties agree that the problem cannot be fully resolved until the appropriate statutory changes are committed to by the Legislature.

In response to each of the recommendations set forth in the audit report, NYSED replies as follows:

1. Continue to lobby for the passage of the legislation which was introduced to amend the Education Law, and/or seek an appropriation to supplement existing funding sources.

We agree with the recommendation. Even though the legislation was not passed this session, NYSED will continue to propose statutory changes as the most appropriate and effective way to address and resolve the problem of unlicensed and illegally operating schools.

2. Work with SUNY, CUNY or other institutions, or identify in-house resources that can interpret school advertisements in foreign language newspapers as an aid in identifying unlicensed schools.

We agree with the recommendation. BPSS staff has and will continue to contact local SUNY and CUNY institutions seeking assistance from students in translating foreign language advertisements as well as working with the Bureau as student operatives.

3. Update Bureau records for the schools we identified that appear to require State licensure.

We agree with the recommendation. BPSS will update all unlicensed records and files as staff resources permit.

4. Investigate the schools which had filed exemptions but which our audit suggests may not qualify for such exemptions.

We agree with the recommendation. BPSS will conduct follow-up investigations against those schools that have filed false exemption certifications as long as staff and resources are available to conduct such reviews.

5. Work with community groups to identify unlicensed schools; find out why these schools have not applied for licenses and work to resolve administrative or program-related impediments to licensing.

We agree with the recommendation. If staff resources permit, BPSS will certainly attempt to contact local community groups to request assistance in identifying unlicensed schools and promote the licensing process.

Please let me know if you have any further questions or concerns on this matter.

Sincerely,



Richard H. Cate

cc: Jeanine I. Grinago
Joseph P. Frey
Howard Goldsmith