



DEPUTY COMMISSIONER
Office of Performance Improvement and Management Services
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March 18, 2013

The Honorable Thomas P. DiNapoli
Comptroller
Office of the State Comptroller
110 State Street, 11th Floor
Albany, NY 12236-0001

Dear Comptroller DiNapoli:

In accordance with the provisions of Section 170 of the Executive Law, the following are actions that the State Education Department (Department) has taken, or will be taking, to implement the recommendations contained in the Office of the State Comptroller's (OSC) Final Audit Report (2012-S-103) entitled "Fiscal and Program Oversight of Special Education Providers."

Following a comprehensive examination of the special education programs, services and costs associated with the providers at its September 2012 meetings, the Board of Regents adopted a number of proposals at its November 2012 meeting to enhance the fiscal oversight and accountability of private special education providers. Many of the Board of Regents' proposals have intentions in common with the recommendations that were contained in the subsequent OSC audit and the Department has begun to take actions with respect to implementation of these proposals.

Recommendation #1: Develop and implement a strategy, including necessary resources, for providing adequate onsite fiscal and program monitoring of special education providers.

The Department has already begun implementing several aspects of the Board of Regents' proposals with respect to enhancing the monitoring activities of the special education private providers and will continue to pursue improvements in fiscal and programmatic oversight of special education providers.

The Department believes that an effective way to provide on site fiscal monitoring of all providers is to strengthen the existing requirement that private special education providers undergo an annual external audit and certification of the Consolidated Fiscal Report (CFR). The Department is in the process of drafting a Request for Qualifications (RFQ) to identify the certified public accountants (CPAs) that may be selected by a private special education provider for the purposes of certifying its Consolidated Fiscal Report (CFR) or financial statements. The New York State Consolidated Fiscal Reporting and Claiming Manual (CFR manual) includes audit guidelines that are required to be used by the CPA when performing an audit of general purpose financial statements and expressing an opinion on a provider's CFR. Due to the substantial reliance that is placed on the provider's financial reports used by the Department for the establishment of tuition rates, it is envisioned that a

CPA will be disqualified from the RFQ for failing to adhere to the procedures contained within the CFR manual audit guidelines.

As directed by the Board of Regents, the Department has increased the number of onsite programmatic reviews it plans to conduct for the 2012-13 school year. It is anticipated that a total of 50 reviews will be performed, with 35 having already been completed or currently underway. These onsite reviews are being conducted using a new protocol that was developed by the Department in order to evaluate service delivery structures and models, efficient use of staff, resources and instructional effectiveness, as well as regulatory compliance. In order to expand this effort and undertake a more cyclical review of the preschool special education providers, the Department has requested approval to hire additional staff for the Office of Special Education. The additional staff would work in the Department's regional offices and, as part of their duties, would administer a rigorous program reapproval review process for preschool special education providers.

The Department is currently designing a new program approval application process that will consider the qualifications of the provider's governing body with respect to overseeing both programmatic quality and fiscal integrity. A review of an entity's governance and management functions will be incorporated into this new application and a provider will be required to have the appropriate oversight structure in place to ensure sound fiscal practices. The Department has instituted a moratorium on approving new program approvals and expansions until the new program application process is adopted and implemented. It is anticipated that the new program application will go into effect for providers seeking approval during the 2013-14 school year and thereafter.

The Board of Regents supports the current OSC audit initiative of individual special education providers and is also supportive of additional resources being allocated in the state budget in order to provide for further onsite audits of these providers, including both random audits and audits targeted to providers with specific risk-factors associated with fraud. The 2013-14 Executive budget proposal to allow municipalities to retain 100 percent of any audit recoveries is furthermore aligned with the Board of Regents' proposals to incentivize municipalities to conduct more audits of the preschool special education providers. Continuing an audit presence in this area will better ensure that funding for preschool children with disabilities is protected and being used appropriately.

The Department remains committed to implementing the Board of Regents' proposals for enhanced oversight of special education private providers. We believe that these efforts target the appropriate areas for improved fiscal and program monitoring activities and address OSC's recommendation.

Recommendation #2: Establish a formal process for identifying and reporting CPAs who appear negligent in their certification of CFRs to the Office of the Professions.

The Department has taken steps to enhance internal processes for referring CPAs to the Office of Professions for professional misconduct based on substantial errors that are contained in a provider's cost report that has been certified by a CPA and in cases where an audit of a provider contains findings of fraudulent spending or other intentional misuse of public funds. This includes adopting a process for coordinating communications between the Department's Office of Audit Services, Office of Special Education, and Rate Setting Unit when circumstances arise that may indicate improper

financial reporting and establishing a centralized point of review and referral cataloguing within the Rate Setting Unit.

Also, following the completion of the RFQ of CPAs that may be selected by a private special education provider to certify its CFR or financial reports, the Rate Setting Unit will refer any CPA that is disqualified from the RFQ for failing to adhere to the CFR manual audit guidelines to the Office of Professions.

Recommendation #3: Coordinate with other State agencies to develop a system to ensure that CPAs certifying provider CFRs demonstrate appropriate training, competence and performance.

The Board of Regents has directed the Department to require that financial training be mandatory for any individual that prepares or certifies a provider's CFR, which includes the certifying CPA. Currently, training on the CFR is offered by the CFR Interagency Committee, comprised of representatives from the Department, the NYS Office of Mental Health, the NYS Office of Alcoholism and Substance Abuse Services, the NYS Office for People with Developmental Disabilities, and the NYS Department of Health. The CFR Interagency training materials have been posted on the Department's webpage and the Department intends to develop online webinar training to supplement the existing CFR training and ensure that this training is available and easily accessible to all providers and CPAs. The Department expects that the online training will be made available in 2013 and that completion of CFR training will be a condition that must be met prior to the Department accepting the submission of a provider's CFR.

As described previously, the Department is currently drafting an RFQ to identify the CPAs that may be selected for the purposes of certifying a provider's CFR or financial statements. CPAs that do not demonstrate competence or performance with respect to adhering to the audit guidelines contained within the CFR manual will be disqualified from the RFQ. The Department anticipates sharing a draft RFQ with the CRF Interagency Committee.

Recommendation #4: Review the CFR and rate-setting processes to identify opportunities for streamlining operations, updating technology and reducing complexity and the occurrence of errors.

The Department has approval to hire staff in order to enhance the Department's current review of the provider's financial reports. As part of their functions, this staff would undertake a comprehensive examination of the information that is submitted by the private special education providers and the Department's existing data collection and review functions. The Department is committed to identifying opportunities to enhance our financial review functions and achieve other efficiencies that may result from an internal examination.

Recommendation #5: Assess the feasibility of meaningful monetary penalties for providers failing to provide an accurate and timely CFR.

The Department had reviewed its existing practices with respect to penalizing special education providers for improper CFR filing. Inaccurate CFR information results in rates being reconciled so that only allowable costs are reimbursed. Pursuant to provisions contained within the Department's Rate Setting Manual, reimbursement may also be reduced on a prorated basis if a provider's

financial information is not submitted within 90 days of its due date. Additionally, the Department will not issue an interim rate for a provider if their CFR for the prior year has not been submitted. These actions have a monetary impact to the providers and serve as a financial deterrent for not filing an accurate and timely CFR. The Department will continue to evaluate the feasibility of additional monetary penalties that may be imposed.

The Department has also developed guidelines to clarify when failing to provide an accurate or timely CFR may result in termination of program approval. For example, the guidelines provide that the Department may initiate revocation action against a provider that fails to submit a complete CFR within nine months of its original due date or is repeatedly or chronically late with its CFR filings. Also, the guidelines outline specific indicators of misuse of public funds, such as using public funds for personal expenditures and reporting these expenditures as a program expense or purposefully misrepresenting data with the intent to deceive or defraud. While the Department's regulations authorize termination of program approval for financial deficiencies as well as violations of law or regulations, they do not provide specific guidance on the types of financial deficiencies or abuses that may lead to termination. The guidelines will serve that function and provide additional notice to special education providers of the consequences of fiscal neglect or abuse. .

Recommendation #6: Formalize policy and procedures for sharing identified provider problems with other State agencies that are also funding the provider.

The contents of the OSC audit and this specific recommendation were discussed at the January 29, 2013 meeting of the CFR Interagency Committee. Following this discussion, the CFR Interagency Committee adopted a policy of sharing information among the agencies, including identifying and sharing those items which would be important among two or more agencies.

The OSC audit findings were also discussed with representatives from the Office of Children and Family Services and situations where collaboration and information sharing would be beneficial to each agency's oversight were identified.

Recommendation #7: Reevaluate and enhance provider training requirements, including frequency, content and requirements for attendance.

As mentioned previously, the Board of Regents has directed the Department to require that financial training be mandatory for any individual that prepares or certifies a provider's CFR. The CFR training that is currently conducted by the CFR Interagency Committee is offered twice a year at five locations. In accordance with the new program application process being developed by the Department, it is intended that attendance at the CRF Interagency Committee CFR training would be mandatory for any provider seeking program approval by the Department. The Department also plans to develop and publish online training that may be utilized by existing providers to satisfy a new requirement that any individual who prepares or certifies a provider's CFR would receive CFR training prior to the CFR being accepted by the Department.

In addition to financial training, the Board of Regents also directed the Department to require the board members and owners of private special education providers to complete training regarding their legal, fiduciary, and ethical responsibilities. Existing trainings, such as the Office of the State

Comptroller's Fraud Detection and Prevention training, and the board member training and recommended governance practices issued by the New York State Authorities Budget Office may serve as a basis for what may be incorporated into the Department's governance and oversight training for private special education providers.

The Department has requested approval to hire one additional person exclusively for the purpose of overseeing the development and implementation of the special education provider CFR training, and governance and oversight training recommendations.

If you have any questions regarding this response, please contact James Conway at (518) 473-4516.

Sincerely,

A handwritten signature in black ink that reads "Sharon Cates-Williams". The signature is written in a cursive, flowing style.

Sharon Cates-Williams

c: Commissioner King
Elizabeth Berlin
James Delorenzo
Joseph Conroy
Mary Kogelmann
Ann Marsh
James Conway