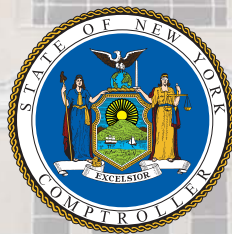




New York State Education Department

Setting Special Education Itinerant Teacher Services Rates

Report 2008-S-146



Thomas P. DiNapoli

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State of New York Office of the State Comptroller

Division of State Government Accountability

February 26, 2010

Mr. David M. Steiner
Commissioner
State Education Department
State Education Building - Rm. 111
89 Washington Avenue
Albany, New York 12234

Dear Commissioner Steiner:

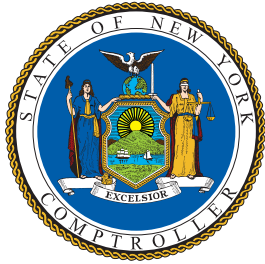
The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit addressing *Setting Special Education Itinerant Teacher Services Rates*. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Office of the State Comptroller
Division of State Government Accountability*



State of New York Office of the State Comptroller

EXECUTIVE SUMMARY

Audit Objective

The objective of our audit were to determine whether Special Education Itinerant Teacher (SEIT) providers were accurately reporting SEIT cost and services data on the consolidated financial report filed with the State Education Department (SED).

Audit Results - Summary

The State Education Law governs services by Special Education Itinerant Teachers (SEITs) for preschool children with disabilities. Each school district assesses the child's need for special educational services. If it is determined that the child should be instructed by a SEIT, county health departments (outside of New York City) and the New York City Department of Education contract with service providers to deliver the SEIT services.

Providers of SEIT services are paid by the localities based on 30 minute session rates established by SED. The session rates are based on providers' total allowable SEIT program costs divided by the aggregate numbers of sessions authorized for the children. For the school year ending June 30, 2007, municipalities spent about \$148 million to provide SEIT services (\$88 million in State funds). This was an increase of \$94 million (about 174 percent) over the amount spent on SEIT for the year ended June 30, 2001.

We reviewed selected parts of the costs reported by the ten largest SEIT providers on the consolidated fiscal reports for the school year ending June 30, 2006. Based on our review, we determined that two of the providers inappropriately reported costs totaling \$1.4 million. One provider reported \$1.3 million in direct care costs that should have been classified as non-direct care costs. The other provider charged \$102,000 in bonuses paid to contractors as direct care costs. However, such costs are ineligible for reimbursement.

In addition, we found that four of the providers we reviewed did not report for rate setting purposes, a total of 22,635 sessions for the year ended June 30, 2006. The amounts in question ranged from 723 sessions for one provider to 14,077 for the provider with the most under-reported sessions. As a result, SED set excessive reimbursement rates for them. As a result of the understated session reporting, we estimate these providers received up to \$985,000 more in annual payments than they were entitled to.

Our audit report contains three recommendations to help strengthen the administration of the SEIT program. In their response to our draft report, SED officials agreed with our recommendations and state they have started to implement them.

This report, dated February 26, 2010, is available on our web site at: <http://www.osc.state.ny.us>.
Add or update your mailing list address by contacting us at: (518) 474-3271 or

Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

Introduction

Background

The State Education Law (Law) requires that the State Education Department (SED) meet the physical and educational needs of children with disabilities. Each school district has a Committee for Preschool Special Education that oversees the evaluation process of children that need special educational services. If it is determined that a child needs special education instruction, these services may be provided by a special education itinerant (SEIT). SEIT services are delivered in 30-minute sessions and can be provided in a number of settings including the child's home, a licensed Pre-K classroom, Head Start program or another child care location. Thus, the SEIT services often go to the location of the child, rather than the child going to a designated SEIT service location. Local municipalities (the New York City Department of Education or the county health department) contract with private providers for SEIT services. The costs of these services are paid jointly by the State (59.5 percent) and the New York City Department of Education or the child's county of residence (40.5 percent).

SEIT providers are required to submit general purpose financial statements and a consolidated fiscal report (CFR) each year to SED. The CFR is designed to account for all of a provider's revenues and expenses by program. The CFR includes the number of authorized SEIT sessions along with the actual costs incurred by the provider. SED uses this information to establish unique reimbursement rates for each SEIT provider. SED updates the providers' session rates every year to reflect changes in the cost to deliver services and the volume of services authorized. The localities apply the SED-established rates to pay the SEIT providers for the authorized sessions.

For the school year ending June 30, 2007, municipalities spent about \$148 million to provide SEIT services Statewide. State funding accounted for about \$88 million of this amount. The \$148 million spent for SEIT services during the 2006-07 year represented an increase of \$94 million over the amount spent on SEIT for the 2000-01 year (about \$54 million). Thus, the cost of the SEIT program Statewide increased nearly 174 percent from the 2000-01 year to the 2006-07 year.

Audit Scope and Methodology

We audited to determine if SEIT service providers were accurately reporting SEIT revenues, costs and services data on the CFR's filed with SED. To accomplish our objectives, we interviewed SED officials and reviewed relevant laws, regulations and SED procedures. We judgmentally selected ten SEIT providers for further audit work. We chose the ten largest SEIT service providers. These providers all reported more than \$1 million in

annual costs for SEIT services to SED for the 2005-06 year. In total, these ten providers reported \$22.6 million in contracted SEIT costs. The ten providers were: Bilingual SEIT, Inc., Marion K. Salomon Associates, Inc., Special Education Associates, Inc., Mid-Island Therapy Associates, Inc., Little L.A.M.B. Preschool, Omni Childhood Center, Inc., Integrated Treatment Services, New York Therapy Placement Services, Inc., Bilinguals, Inc., and Island Child Development Center. Our audit work focused on the CFR reports filed by the ten providers for the period July 1, 2005 through June 30, 2006, because at the time of our audit, SED had not yet completed its review of the 2006-07 CFR reports. Certain other information related to the 2006-07 year was reported for background purposes only in our report. In reviewing the CFR information, we applied the appropriate SED guidance for the 2005-06 year. Our audit fieldwork was conducted between August 20, 2008 and March 12, 2009.

From each provider we obtained documentation supporting the number of SEIT sessions and associated costs reported on their CFRs. We visited four providers to test the information. We also contacted officials from the four local governments (Nassau, Suffolk and Westchester counties and the New York City Department of Education) served by the ten large providers to determine their processes for paying SEIT providers and to identify the number of SEIT sessions reimbursed for the 2005-06 year. We then compared this information to the numbers of sessions the SEIT providers reported on their CFRs.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Authority The audit was performed 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.

Reporting Requirements We provided a draft copy of this report to SED officials for their review and formal comment. We have considered their comments in preparing this report and have included them in their entirety at the end of the report.

Our audit report contained three recommendations to help strengthen the administration of the SEIT program. SED officials agreed with the three recommendations, and stated that they have requested the SEIT providers, discussed in our report to provide documentation to support the classification and appropriateness of costs on the CFR. SED officials will also begin to reconcile the number of SEIT sessions reported on the CFRs to the number of SEIT services authorized. SED officials also state that they will clarify and strengthen guidelines and regulations to ensure accurate and consistent reporting by providers.

Within 90 days of the 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 why.

Contributors to this Report Major contributors to this report include Brian Mason, William Clynes, Kathleen Hotaling, Kelly Evers Engel, Rebecca Vaughn and Sue Gold.

Audit Findings and Recommendations

Problems with Reported SEIT Costs and Sessions

SED establishes a unique 30-minute reimbursement rate for each SEIT provider based upon the providers' costs and number of sessions provided to children. According to SED's Reimbursable Cost Manual (Manual) costs reported as direct program costs on the CFR should only be for specific SEIT provider services (e.g., teachers, supervising teachers, contracted teachers, curriculum coordinators, etc.). Non-direct costs, those not included as direct costs, must be allocated across all programs the SEIT provider operates. SED generally limits the amount of non-direct costs allowable for rate determination purposes. Furthermore, the Manual also places limits and prohibitions on certain other costs such as bonuses, meals, etc.

Prior audits by the Office of the State Comptroller have identified inflated costs and sessions reported by SEIT providers on their CFR's. For example, our audit report of Home Therapy Associates of New York, Inc. (HTA) identified that HTA overstated their costs by over \$1 million, nearly 20 percent. To further identify the extent to which costs and sessions are misreported, we have conducted a limited on-site audit of the costs reported by ten of the largest SEIT providers for the school year ending June 30, 2006. We selected various accounts and costs that we considered to be of high risk and tested the amounts reported to the supporting documentation. At eight of the ten providers our limited testing found no significant errors. However, the remaining two providers inappropriately reported costs totaling \$1.4 million.

Specifically, Bilingual SEIT, Inc. reported \$1.3 million in direct care costs that should have been classified as non-direct care costs. Based on our review of payroll and other program-related records, we determined that about \$1.2 million of these costs were for support personnel (who were not directly involved in the provision of SEIT services). These non-direct care costs should have been allocated to all of the provider's programs. Bilingual SEIT also charged \$112,000 paid to the Executive Director under the category of contracted service as a direct care cost. If allowable at all, it should have been reported as a non-direct care cost. In addition, Bilingual SEIT claimed \$8,900 in bonuses paid to contractors. However, such costs are ineligible for rate reimbursement. The other SEIT provider, Marion K. Salomon and Associates, Inc., also charged \$102,000 in bonuses paid to contractors as direct care costs. Again, such costs are ineligible for reimbursement and inflate the SEIT per session rates.

The total eligible costs reported by providers on their CFR are divided by the total number of sessions reported on their CFR to arrive at their SEIT

reimbursement rates. According to SED's Manual, the number of sessions to be reported on the CFR is the number of authorized sessions contained in the service plans of children. In addition, according to SED, the actual billing by providers and reimbursement by localities is to be based on the authorized number of sessions regardless of the actual number of sessions that were rendered. An argument can be made that billing should be based on actual sessions rendered and that the current requirements result in excess costs whenever actual sessions are less than the authorized number of sessions. However, SED has already examined this issue and reaffirmed that the current requirements are sufficient and that reimbursement for actual sessions presents a variety of recordkeeping and management problems.

For our sample of ten providers, we compared the number of sessions reported on the CFR to the number of sessions reimbursed. We found that four of the ten providers understated the number of sessions on their CFRs by a combined total of 22,635. For example, the CFRs of Omni Childhood Center, Inc., Island Child Development Center, Inc., Little L.A.M. PreSchool, and Special Education Associates, Inc., respectively failed to identify 14,077, 6,611, 1,224, and 723 authorized sessions. This understatement resulted in an excessive reimbursement rate per session. We recalculated the provider rates using the correct authorized number of sessions and estimated that these providers were reimbursed about \$985,000 more than they were entitled to.

Further, we determined that certain providers did not comply with SED's requirements for reporting SEIT sessions. Although some providers reported the number of SEIT sessions that were authorized, others reported some combination of authorized and actual sessions. One provider reported how many sessions were actually rendered. The non-compliance with the reporting requirements could have contributed to the errant session reporting, as previously detailed. Moreover, we conclude that there is, at a minimum, misunderstanding by providers and localities on the SED expectations for reporting and reimbursement of SEIT sessions. We recommend that SED clarify its expectations and follow up on the situations we have identified where practices are not conforming with requirements.

Review of CFR's

Many SEIT providers operate more than just the SEIT program and the CFR report requires the SEIT provider to allocate their total income and expenses amongst its various programs. The CFR report also requests that the provider to record the units of service for the various programs. To help insure the CFR's accuracy, SED requires that the CPA performing the annual audit of the provider's general purpose financial statement to also attest to the accuracy of the CFR information.

Our review of the filings for the ten providers identified a problem with the filings submitted for the Island Child Development Center (Island). The CPA firm which audited Island's general purpose financial statements for the fiscal year ending June 30, 2006 issued a disclaimer of opinion on Island's financial statements. The auditor's report stated that he was unable to provide an opinion because Island did not maintain the necessary accounting records. Yet, the CPA did certify the accuracy of the CFR (which included SEIT costs of \$1.1 million).

The disclaimer of an opinion should have been a red flag for SED and caused them to question the CFR. Because the CPA initially concluded that information on Island's general purpose financial statements lacked adequate supporting documentation, SED staff should have questioned the reliability of information on Island's CFR for rate setting purposes. We questioned the CPA about this matter, and he advised us that supporting records were found subsequent to his original opinion on Island's financial statements and the submission of the CFR provided to SED. The CPA further indicated that he might officially restate his opinion on the financial statements for the 2005-06 year, and issue an unqualified opinion on them. After we advised SED officials of this matter, they indicated that they would follow up on it. We have also referred this matter to the New York State Board of Accountancy for further review.

Recommendations

1. Adjust the CFR information and corresponding session rates for the two providers who errantly reported direct costs totaling \$1.4 million and the four SEIT providers who underreported 22,635 SEIT sessions.
2. Review the formal guidance relating to SEIT session reporting for the CFRs and for billing and payment purposes to insure it is consistent and clear. Follow-up with providers and localities that do not comply with the requirements for session reporting, billing, and payment, as appropriate.
3. Promptly follow up with a SEIT provider and, if necessary, it's CPA whenever the CPA issues anything other than an unqualified opinion on the provider's general purpose financial statements. Determine the cause of the opinion and take actions, as appropriate.

Agency Comments



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

DEPUTY COMMISSIONER FOR OPERATIONS
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December 30, 2009

Mr. Brian E. Mason
Audit Manager
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

Dear Mr. Mason:

The following is the New York State Education Department's (SED's) response to the three recommendations contained in the Office of the State Comptroller's (2008-S-146) draft audit report on the Setting Special Education Itinerant Teacher (SEIT) Service Rates.

Recommendation 1: Adjust the CFR information and corresponding session rates for the two providers who errantly reported direct costs totaling \$1.4 million and the four SEIT providers who underreported 22,635 SEIT sessions.

Direct Costs

Because OSC will soon audit Marion K. Salomon, SED's Rate Setting Unit (RSU) will wait for the results of that audit before it adjusts Salomon's CFR data and session rate in case the new audit finds that other data on the CFR is misreported and recommends that it be adjusted.

In response to this audit finding, RSU has begun requiring Bilingual SEIT, Inc. to submit detailed documentation of its costs to ensure the proper allocation between direct and non-direct care costs.

SEIT Sessions

Beginning with the 2007-08 school year, RSU reconciles the number of SEIT sessions that New York City area providers (including Omni, Island, Little L.A.M. and Special Education Associates) report on their CFRs to the number of authorized sessions the school districts report to the New York City Board of Education. RSU adjusts the number of sessions reported on the CFR as necessary.

Recommendation 2: Review the formal guidance relating to SEIT session reporting for the CFRs and for billing and payment purposes to insure it is consistent and clear. Follow-up with providers and localities that do not comply with the requirements for session reporting, billing, and payment, as appropriate.

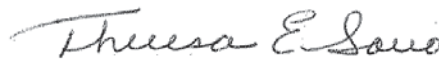
We agree with this recommendation. SED is reviewing the guidance it provides in the CFR Manual, Reimbursable Cost Manual and Commissioner's regulations on SEIT session reporting for the CFR and for billing and payment purposes. SED will clarify and strengthen its guidelines and regulations to ensure accurate and consistent reporting by providers and will follow-up with those providers and localities that do not comply with requirements for session reporting, billing and payment.

Recommendation 3: Promptly follow up with a SEIT provider and, if necessary, its CPA whenever the CPA issues anything other than an unqualified opinion on the provider's general purpose financial statements. Determine the cause of the opinion and take actions, as appropriate.

We agree with this recommendation. On March 13, 2009, RSU asked SED's Office of Professional Conduct to investigate the CPA firm that issued a disclaimer of opinion on Island Child Development Center's (Island's) financial statements, but certified the accuracy of Island's CFR. The actions taken by the Office of Professional Conduct in response to this investigation are confidential. RSU is revising its internal guidelines to include procedures for RSU staff to follow when a CPA issues anything other than an unqualified opinion on the provider's general purpose financial statements. These procedures will include contacting the SEIT provider to determine the cause of the opinion and the effect of the opinion on the reliability of the CFR data.

If you have any questions regarding this response, please contact April Wojtkiewicz, Chief of the Rate Setting Unit, at (518) 474-3227.

Sincerely,



Theresa E. Savo

c: April Wojtkiewicz
James Conway