



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

**TO:** P-12 & Audits/Budget and Finance Committees

**FROM:** Valerie Grey *Valerie Grey*  
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**SUBJECT:** Special Education Fiscal Oversight

**DATE:** November 5, 2012

**AUTHORIZATION(S):** *J. B. J. G.*  
**SUMMARY**

**Issue for Decision**

Summary of the findings and recommendations regarding specific requirements to strengthen the fiscal oversight and accountability measures of special education providers.

**Reason(s) for Consideration**

Review, discussion and approval.

**Proposed Handling**

These findings and recommendations will come before the P-12 & Audits/Budget and Finance Committees at the November 2012 meeting.

**Background Information**

At the September 6, 2012 meeting of the Audit/Budget and Finance Committee, the Committee directed SED to take the following actions:

- Further evaluate and recommend specific requirements that could be applied to special education providers using the fiscal oversight and accountability provisions in the 2005 School District Oversight legislation (board fiscal training, internal audit, external audit, audit committees, claims auditor, OSC audits of every district) as a potential model and report back to the Board within the next two months;

- Review and identify changes that strengthen the current approval and renewal process for special education providers;
- Review and evaluate the certification that is signed by the Executive Director and CPA when CFRs are submitted by special education providers and consider strengthening it;
- Review, evaluate and recommend additional training requirements (including fraud prevention and detection) and resources for special education providers including supplemental information like “frequently asked questions” on rate setting and the reimbursable cost manual;
- Identify opportunities to publicly report relevant data and information on special education provider information and evaluate the costs and benefits of an annual report;
- Research and review existing processes for accepting allegations of inappropriate provider actions, including volume, follow-up actions and agency capacity in addition to appropriate protections for the individual making the allegation.

The review and analysis for the above items was coordinated by the Executive Deputy’s Office and consisted of comprehensive research conducted jointly between the Office of Special Education, the Rate Setting Unit, the Office of Audit Services, and the Executive Deputy’s Office and included, but was not limited to: review of the current fiscal oversight and accountability provisions applicable to special education (SE) providers and to education providers in comparable sectors (such as charter schools, institutions of higher education, and proprietary schools); evaluation of the approval, renewal and revocation processes for SE providers, for providers in comparable sectors and for providers of early intervention services; review of the current SE provider training, oversight, and disclosure requirements in relation to other comparable sectors and to the vendor responsibility disclosure requirements of the state Comptroller; comparison between the certification language accompanying the consolidated fiscal report (CFR) used by SED, OMH, OPWDD and OASAS and the Statewide Standards of Payment (SSOP) used by OCFS; examination of the current training and resource materials available to SE providers as well as for comparable sectors; evaluation of the relevant data and information made available to the public relating to SE providers as well as for the comparable sectors; and review of the Department’s process for accepting allegations of inappropriate provider actions and the protections that may exist for an individual making an allegation.

### **Recommendation**

It is recommended that the Committee accept and approve the summary of recommendations outlined in the attached document and direct staff to develop corresponding Department oversight processes, revised regulations and legislation, as appropriate.

### **Timetable for Implementation**

SED will continue implementation of fiscal oversight actions currently underway (as described at the September 2012 meeting of Audit/Budget and Finance Committee), develop a legislative proposal to enact the recommendations that require statutory change, and begin to revise the administrative oversight processes as described in the attached document.

## Special Education Fiscal Oversight

September Board Direction	Proposed Actions/Recommendations
<b>Fiscal Oversight and Accountability Provisions of the 2005 School District Oversight Legislation</b>	
<p>The 2005 School District Oversight Legislation provides for a five point plan to improve school district financial oversight and establish systems and processes that provide transparency and accountability. The main components of the five point plan include:</p> <ul style="list-style-type: none"> <li>• Financial oversight training;</li> <li>• Risk assessment of internal financial controls;</li> <li>• More rigorous external audit standards;</li> <li>• Creation of an audit committee;</li> <li>• Strengthening internal claims monitoring and reporting.</li> </ul> <p>Further Evaluate and Recommend Specific Requirements that Could Be Applied to Special Education Providers Using the Fiscal Oversight and Accountability Provisions in the 2005 School District Oversight Legislation (Chapters 263 and 267 of the Laws of 2005) as a Potential Model.</p>	<p>For SE providers currently not subject to the 2005 School District Oversight Legislation:</p> <ul style="list-style-type: none"> <li>• Require SE providers to undergo annual fiscal training. SED currently offers formalized training relating to Consolidated Fiscal Reports (CFRs) and this training would be mandatory for any individual that prepares or certifies a CFR of the SE provider.</li> <li>• Require SE providers to establish and maintain a system of internal controls and a program of internal control review. SED would create a model template to identify the specific measures that must be taken by each provider including a review of its financial policies and procedures, a test and evaluation of internal controls (including preventive controls used in addressing fraud) and a review to assure that operations are in compliance.</li> <li>• Require SE providers to select a CPA from a SED approved list for the purposes of certifying its CFR or financial statements. SED would develop a Request for Qualifications (RFQ) to approve CPAs that may certify the CFRs or financial statements. A CPA may be disqualified if found to have certified a CFR or financial statement without following the SED required procedures.</li> <li>• Develop guidance that identifies the creation and function of an audit committee as a fiscal management “best practice” for SE providers with governing boards.</li> <li>• Require SE providers to designate an individual charged with ensuring proper documentation and itemization of each claim that appears on the CFR. This person would be required to report to the governing board or owners responsible for overseeing the entity (in a sole proprietorship this person would be separate from the owner).</li> <li>• Increase audits of SE providers through the following actions:             <ul style="list-style-type: none"> <li>○ Continue SED support for OSC audits and perform additional OAS audits.</li> <li>○ Support additional resources for further audits, including both random audits and audits targeted to providers with specific risk-factors associated with fraud;</li> <li>○ Increase the share in overpayments that may be recovered by a municipality conducting an audit of an SE provider (the state’s share would be reduced proportionally);</li> <li>○ Remove a disincentive for municipalities to audit preschool special education providers by ending the state’s recoupment of all of the disallowed funds from the municipality if the provider ceases operation and, after diligent efforts, the municipality is unable to recover the funds.</li> </ul> </li> </ul>

## Special Education Fiscal Oversight

September Board Direction	Proposed Actions/Recommendations
<b>Approval, Review, Renewal and Revocation Process for Special Education Providers</b>	
<p>Direct SED to review and identify changes that strengthen the current approval and renewal process for special education providers. Staff analysis will include a comparison of the approval/renewal requirements for providers for other state agencies (DOH, OCFS, OPWDD, OMH, OASAS), the requirements used for SED programs like charter schools, higher education institutions, proprietary schools, and others; and, requirements used by NYS OSC and NYC Comptroller’s office for vendor responsibility determinations. Consider implementing a short-term moratorium on approval of new providers while the enhanced process is adopted and implemented unless there is a compelling case that students would be unable to obtain necessary services from existing providers.</p>	<ul style="list-style-type: none"> <li>• Revise the SED SE provider approval application to include an in-depth review of:               <ul style="list-style-type: none"> <li>○ Services, staffing and methodologies necessary to ensure provision of high-quality programs;</li> <li>○ Program environment to ensure the health and safety of students with disabilities;</li> <li>○ Appropriate agency background and qualifications to provide sound fiscal practices;</li> <li>○ Governance qualifications that will provide effective fiscal and program oversight.</li> </ul> </li> <li>• Impose a short-term moratorium on approval of new providers and program expansions while the enhanced approval process is adopted and implemented. The moratorium would be waived on a case by case basis if there is a compelling case that students would be unable to obtain necessary services from existing providers and programs.</li> <li>• Require new SE providers to be not-for-profit only (existing for-profit providers would be authorized to continue under their corporate structure).</li> <li>• Require Commissioner approval prior to the transfer of any ownership interest in a for-profit SE provider entity. Require new program approval upon the transfer of an interest totaling 25% or more.</li> <li>• Create a monitoring plan for SED to review approved providers based on protocol that focuses on service delivery structures and models, and instructional effectiveness, as well as regulatory compliance.</li> <li>• Request additional resources to support new staff dedicated to developing and implementing a rigorous program renewal process incorporating new measures of oversight and accountability.               <ul style="list-style-type: none"> <li>○ A cycle for implementation would be developed to begin with SE providers that exhibit specific risk-factors of concern with those providers also receiving a greater level of scrutiny upon review for renewal.</li> </ul> </li> <li>• Refine the criteria for revocation of program approval for reasons related to inadequate or inappropriate fiscal management including noncompliance with new fiscal accountability and oversight provisions.</li> </ul>

## Special Education Fiscal Oversight

September Board Direction	Proposed Actions/Recommendations
<b>Consolidated Fiscal Report Certification</b>	
<p>Review and evaluate the certification that is signed by the Executive Director and CPA when CFRs are submitted by special education providers and consider strengthening it.</p>	<ul style="list-style-type: none"> <li>• Require SE providers to select a CPA from a SED approved list for the purposes of certifying its CFR or financial statements. SED would develop a Request for Qualifications (RFQ) to approve CPAs that may certify the CFRs or financial statements. A CPA may be disqualified if found to have certified a CFR or financial statement without following the SED required procedures.</li> <li>• In addition to the current CFR certification statement, require a new attestation statement for board members and owners to file annually with the CFR. This filing would:               <ul style="list-style-type: none"> <li>○ Outline the role and responsibilities of board members and owners and include an acknowledgment that he or she understands his or her role and fiduciary responsibilities;</li> <li>○ Include an attestation of compliance with the fiscal oversight requirements of SE providers (such as training requirements, internal controls, claims management, and board/owner policies);</li> <li>○ Increase board/owner disclosure requirements, such as those relating to conflicts of interest or negative actions taken against the provider or individual (in addition to the current corporate practice and moral character review form).</li> </ul> </li> </ul>
<b>Training and Resources for Special Education Providers</b>	
<p>Review, evaluate and recommend additional training requirements (including fraud prevention and detection) and resources for special education providers including supplemental information like “frequently asked questions” on rate setting and the reimbursable cost manual.</p>	<ul style="list-style-type: none"> <li>• Require board members and owners of SE providers to complete training regarding their legal, fiduciary, and ethical responsibilities. Similar to the training provided to public school district board members, SED would approve curriculum and providers.</li> <li>• Centralize the training, guidance and resource materials available on the Department’s webpage to increase the accessibility of current information and provide an avenue for the Department to more effectively distribute new information to the SE providers and the public (including information such as “frequently asked questions” on rate setting and the reimbursable cost manual).</li> </ul>

## Special Education Fiscal Oversight

September Board Direction	Proposed Actions/Recommendations
<b>Reporting Relevant Data and Information</b>	
<p>Identify opportunities to publicly report relevant data and information on special education provider information and evaluate the costs and benefits of an annual report.</p>	<ul style="list-style-type: none"> <li>• Develop an annual report to the Governor and Legislature regarding the implementation of new fiscal accountability and oversight provisions relating to the SE providers and the identification of best practices utilized.</li> </ul>
<b>Allegations of Fraud, Waste and Abuse</b>	
<p>Research and review existing processes for accepting allegations of inappropriate provider actions, including volume, follow-up actions and agency capacity in addition to appropriate protections for the individual making the allegation.</p>	<ul style="list-style-type: none"> <li>• Require each SE provider to develop a whistleblower policy protecting employees from retaliation for disclosing information concerning acts of wrongdoing, misconduct, malfeasance or other inappropriate behavior.</li> </ul>
<b>Additional Recommendations Relating to Special Education Providers</b>	
<p>Increasing the Timeliness and Independence of Preschool Evaluations (a 2012 Legislative proposal adopted by the Board of Regents in November of 2011).</p>	<ul style="list-style-type: none"> <li>• Remove the statutory requirement that the parent selects the preschool evaluator and replace it with the following:                             <ul style="list-style-type: none"> <li>○ Each board shall, within time limits established by the Commissioner, be responsible for providing the parent of a preschool child suspected of having a disability with a list of approved evaluators in the geographic area;</li> <li>○ The school district must, after providing the parent with a list of approved preschool evaluators and obtaining parent consent to evaluate, arrange for an evaluation by the service provider selected by the district who can provide the evaluation of the student within the timeline required by the State;</li> <li>○ In selecting the evaluator, the district must consider the parent’s expressed preference, if any, for the evaluator.</li> </ul> </li> <li>• Establish that all school districts are automatically approved evaluators of preschool students suspected of having a disability without the need to submit an application to the Department.</li> </ul>

**Special Education Fiscal Oversight**

September Board Direction	Proposed Actions/Recommendations
<p align="center"><b>Consideration of Actions Underway to Encourage the Efficient Spending of Resources through Rate Setting Reform</b></p>	
<p>Continuation and expansion of the Department’s internal work regarding the rate setting methodology and recommendations for improvement.</p>	<ul style="list-style-type: none"> <li>• Create a Special Education Financial Advisory workgroup to allow all interested stakeholders to provide input on the current tuition rate-setting structure for SE providers and discuss recommendations to maximize the efficient and effective use of state and local resources. Recommendations include:               <ul style="list-style-type: none"> <li>○ Tuition rates to be established within the context of the New York State Budget, consistent with other similar state programs;</li> <li>○ Rate flexibility with respect to minor fluctuations in enrollment or minor year end adjustments;</li> <li>○ Creating efficiency incentives.</li> </ul> </li>   <li>• Explore longer-term reforms such as regional rates adjusted for the intensity of the service needs of children.</li> </ul>