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Office of the State Auditor**

**Department of Education
Office of Special Education Programs**

July 1, 2010 to April 30, 2013

**Stephen M. Eells
State Auditor**

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Enclosed is our report on the audit of the Department of Education, Office of Special Education Programs for the period of July 1, 2010 to April 30, 2013. If you would like a personal briefing, please call me at (609) 847-3470.

A handwritten signature in black ink, appearing to read "Stephen M. Eells".

Stephen M. Eells
State Auditor
July 9, 2013

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Scope

We have completed an audit of the Department of Education, Office of Special Education Programs for the period July 1, 2010 to April 30, 2013. Our audit included a review of the department's monitoring of special education programs and services, including the Special Education Medicaid Initiative and private schools for students with disabilities. We also reviewed the department's monitoring of attendance for special education students placed out of district. Our audit did not include a review of any special education aid calculations, as they were within the scope of our State Aid audit dated May 11, 2011.

The primary responsibility of the Office of Special Education Programs is to implement state and federal laws and regulations governing special education to ensure that pupils with disabilities in New Jersey receive full educational opportunities. It also monitors the delivery of special education programs operated under state authority, provides mediation services to parents and school districts, processes hearings with the Office of Administrative Law, and conducts complaint investigations requested by the public.

The Special Education Medicaid Initiative (SEMI) is a school-based federal Medicaid reimbursement program. The purpose of the program is to recover a portion of costs for certain Medicaid-covered services provided to Medicaid-eligible students enrolled in participating districts. Annual revenues of the SEMI program were approximately \$60 million during the audit period, \$21 million of which was reimbursed to the participating districts.

There are approximately 170 in-state and 43 out-of-state approved private schools for students with disabilities serving approximately 9,400 students from over 500 districts. Districts pay over \$560 million annually in tuition, with annual rates ranging from \$32,000 to \$113,000 per student. The out-of-state schools are regulated by their respective states and were excluded from our scope.

Objectives

The objectives of our audit were to determine whether the department's monitoring procedures are adequate to ensure district special education programs and services throughout the state are in compliance with existing laws, and whether districts are maximizing revenues from the Special Education Medicaid Initiative program as required by the administrative code.

This audit was conducted pursuant to the State Auditor's responsibilities as set forth in Article VII, Section I, Paragraph 6 of the State Constitution and Title 52 of the New Jersey Statutes.

Methodology

Our audit was conducted in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States.

In preparation for our testing, we studied legislation, New Jersey Administrative Code 6A:23A and 6A:14, and policies of the agency. Provisions we considered significant were documented and compliance with those requirements was verified by interview, observation, and testing. We also read the budget messages, reviewed funding and student population trends, and interviewed agency and district personnel to obtain an understanding of the programs and the internal controls.

A nonstatistical sampling approach was used. Our samples were designed to provide conclusions about the validity of internal control and compliance attributes. Sample populations were judgmentally selected for testing.

Conclusions

We found that the department's monitoring procedures are adequate to ensure special education programs and services throughout the state are in compliance with existing laws. In making this determination, we noted certain weaknesses in the documentation of related services and monitoring of private schools for students with disabilities that merit management's attention. We also found that the majority of districts are not maximizing revenues from the Special Education Medicaid Initiative program as required by the administrative code. In addition, we observed private schools for students with disabilities' costs could be controlled with changes to the administrative code regarding nepotism and related-party transactions.

Background

In 1993, the New Jersey departments of Education, Human Services, and the Treasury began the Special Education Medicaid Initiative (SEMI). The purpose of the SEMI program is to recover a portion of the costs for certain health-related services considered medically necessary in a student's Individualized Education Program (IEP). These services include: social work, school nurse, and medical services; counseling; and occupational, physical, and speech therapies. A third-party vendor is responsible for submitting claims to Medicaid and administering the program on behalf of the state and the school districts. The federal government reimburses the state 50 percent of the approved Medicaid claim amount. The state retains 65 percent of this amount and reimburses the local district the remaining 35 percent. To be Medicaid eligible, each service encounter must be fully documented, including the service type, duration, frequency, and setting.

Annually, the Department of Education provides each district with a projection of SEMI reimbursement for the forthcoming budget year. This projection is based on the number of SEMI-eligible students in the district, the assumption of twenty services and one IEP meeting per eligible student, and applicable SEMI reimbursement rates. Unless a waiver has been obtained, a district must recognize at least 90 percent of the projection as revenue in its annual budget. Every non-waivered school district is required to maximize its revenue from the SEMI program.

Districts may seek a waiver by demonstrating that the district will have fewer than 41 SEMI-eligible students in the forthcoming school year, or by demonstrating efforts to participate in the SEMI program would not provide a cost benefit to the district. Waiver requests are submitted to, and approved by, the district's Executive County Superintendent.

Special Education Medicaid Initiative

SEMI Revenues

Districts are not maximizing revenues from the Special Education Medicaid Initiative.

The state and the districts could collect over \$10 million annually in additional revenue if all districts were to maximize participation in the Special Education Medicaid Initiative (SEMI) program. The administrative code states that all districts shall strive to achieve maximum participation in the SEMI program. Maximum participation means obtaining a 90 percent return rate of parental consent forms for all SEMI-eligible students. In fiscal year 2012, there were 207 districts with more than 40 SEMI-eligible students participating in the program and 144 of those met the 90 percent criteria. These 144 districts collected a combined 124 percent of their projected SEMI revenues. If the other 63 districts had achieved the 90 percent criteria while collecting revenue at a similar rate, the districts could have generated \$6.5 million in additional SEMI revenues, \$2.3 million for the districts and \$4.2 million for the state. Applying similar criteria to fiscal year 2011, we estimate that participating districts could have generated an additional \$3.2 million, \$1.1 million for the districts and \$ 2.1 million for the state.

There were 29 and 35 districts in fiscal year 2011 and fiscal year 2012, respectively, with more than 40 SEMI-eligible students that did not participate in the SEMI program. We estimate the state could have collected an additional \$2.3 million and \$3.3 million in fiscal years 2011 and 2012, respectively, if these districts had participated in the program and maximized participation. The estimated district share of this additional revenue would have been \$810,000 in fiscal year 2011 and \$1.1 million in fiscal year 2012. Despite having more than 40 SEMI-eligible students, 43 percent of the districts tested had a waiver for fiscal year 2012. We found the waivers were often approved without adequately demonstrating that the district would have fewer than 41 SEMI-eligible students or there would be no cost benefit to the district, as required.

Furthermore, if the approximately 350 non-participating districts with fewer than 41 SEMI-eligible students had participated in the program and maximized SEMI revenues, the state and the districts could have shared increased revenues of \$4.8 million and \$6.2 million in fiscal years 2011 and 2012, respectively. In fiscal year 2012, there were 44 districts with fewer than 41 SEMI-eligible students but still participated in the program and generated \$1.3 million in SEMI revenue for the state and the districts. In fiscal year 2011, 52 such districts generated \$1.3 million in SEMI revenue. Exempting districts simply because they have fewer than 41 SEMI-eligible students may unnecessarily reduce revenues for both the state and the districts.

SEMI Waivers

The state needs to limit the eligibility of waivers for the SEMI program.

The receipt, existence, or validity of waivers is not adequately monitored by the Department of Education, Department of the Treasury (Treasury), or the vendor. These parties rely on the Executive County Superintendents to monitor the status of waivers within their individual counties and are aware of an approved waiver only if it is forwarded to them. Treasury attempts to track waived districts, but we found their records to be unreliable.

We contacted the county superintendent offices for 20 non-participating districts that did not have a waiver in fiscal year 2012 according to Treasury records. Seven of these districts actually did have an approved waiver. The remaining 13 districts did not have waivers for fiscal year 2012, all of which had more than 40 Medicaid-eligible students, including a district with 245 SEMI-eligible students and projected SEMI revenues of \$271,000.

Recommendation

In an effort to maximize revenues, we recommend waiver issuance be based solely upon an adequately documented analysis that shows efforts to participate in the SEMI program would not provide a cost benefit to the district. Waivers should not be granted simply based on the number of SEMI-eligible students in a district. In addition, we recommend waiver issuance be formally confirmed by the department's Office of School Finance as part of the annual budget process and be tracked by the department to enhance monitoring of the program.



Documentation of Related Services

Failure to maintain documentation for related services could result in an inability to validate student mastery of goals and to properly support cost reimbursement.

Districts are not adequately documenting related services provided to students who participate in the Special Education Medicaid Initiative (SEMI) program. Documentation must include the specific services provided during each encounter and the student's progress toward specified clinical goals. The Individualized Education Program (IEP) alone is not sufficient documentation to prove a service was provided. Of the seven participating districts we visited, five properly documented the delivery of related services to the 104 SEMI students tested. However, two districts did not. One district did not have documentation for any of the six students we tested, while the second had no documentation for three of eleven tested. Failure to document these related services could result in services not being reimbursed. In addition, it impedes the ability of those in charge of monitoring student progress from being assured that reported student performance outcomes are achieved and the student is progressing towards clinical goals.

For non-SEMI students, districts are not required to document specific services provided during each encounter and the student's progress toward specified clinical goals during those encounters. The administrative code requires only that a student's IEP contain measurable annual goals and that progress towards these goals be evaluated annually. Documenting the specific services provided during each encounter and the student's progress during those encounters would enhance the ability to monitor student progress and provide assurances that reported outcomes are accurate.

Recommendation

The department should reinforce the need for documenting related services for SEMI students. The department should also consider requiring districts to document the specific services provided during each encounter and the student's progress during those encounters for all students.



Monitoring of Private Schools for Students with Disabilities

The department should improve its monitoring of private schools for students with disabilities.

Fiscal Reviews

The department is not performing the number of on-site reviews required by the administrative code. As of March 2013, there were 172 approved in-state private schools for students with disabilities (PSSD), with 140 of them open since at least 2006. The administrative code requires an on-site review be conducted on each PSSD at least once every six years, and 46 of the 140 have not had a fiscal review during the past six years. These reviews help determine whether the PSSDs are in compliance with fiscal requirements, as well as determine whether all required PSSD employees are certified and if new hires have received a criminal history background check. Failure to perform the on-site reviews could result in tuition rates being calculated with disallowable costs, and allow PSSDs to employ staff without proper certification or background checks.

Criminal History Background Checks

The department does not adequately monitor criminal history background checks at private schools for students with disabilities (PSSD). Pursuant to N.J.S.A. 18A:6-7.1, schools shall not hire anyone for positions that come into regular contact with students if the individual has a disqualifying criminal history record. Disqualifying offenses are delineated in the statute, and include offenses of the first or second degree, among others. Prospective employees are required to submit to a fingerprint scan by the state's contracted vendor and a criminal history background check by the Federal Bureau of Investigation and the New Jersey State Police

Bureau of Identification. The department's Criminal History Review Unit (CHRU) is notified of the results and determines if there is an offense in the applicant's criminal history that is disqualifying, and informs the applicant and the school of the approval or disqualification of the applicant.

The department does not verify that employees at PSSDs have gone through the above process and have been approved for work at the school. The Office of Fiscal Accountability and Compliance will determine whether employees have been approved if it performs an on-site review of the school, but only for new hires. We tested 530 employees at 16 schools to determine whether each employee was approved for work at the PSSD. We found 11 employees had not undergone a background check and 14 employees with an approved background check, but for locations different from those at which they work. Approval letters issued by the CHRU are only valid for the school to which the prospective employee is applying, and a new letter is required whenever an applicant changes schools. This requirement is necessary to prevent a subsequently disqualified individual from utilizing a previously issued letter to obtain employment in another district. The CHRU has been notified of all 25 exceptions and corrective action has been initiated.

Employee Certification

The department needs to improve its monitoring of teacher certifications at private schools for students with disabilities (PSSD). Pursuant to N.J.S.A. 18A:26-2, any person employed as a teaching staff member by a PSSD requires a valid and appropriate certificate. We reviewed department records for 16 PSSDs to determine if applicable employees had the proper New Jersey certification for their job title. Of the 373 employees who required certification, we found 19 employees from 9 schools who were not properly certified.

Recommendation

The department should increase the number of on-site reviews performed on PSSDs to ensure each school is reviewed within the required six-year timeframe. These reviews should also verify that all employees have been approved by the Criminal History Review Unit and work only in their approved school. We also recommend the department improve monitoring private schools to ensure applicable employees have complied with statewide criminal history background check and certification requirements.



Observation

The department should consider administrative code changes that could control costs for private schools for students with disabilities.

In order for school districts to receive State Aid and for charter schools to receive Charter school aid, the districts and charter schools must implement a nepotism policy as set forth in the administrative code. The administrative code does not impose the same conditions on private

schools for students with disabilities (PSSD). We reviewed the department's records for 155 PSSDs and found 27, or 17 percent, with instances of nepotism among the administrative staff. For example, one school with two locations and serving 233 students had four related executive directors and directors, with three of them making \$225,734, the maximum salary as established by the department. On average, nepotistic schools had general administrative salaries 44 percent higher than other schools and 18 percent higher per student cost in fiscal year 2012.

In addition, the state recently implemented salary caps for district superintendents that are based on the number of students enrolled in the district.

<u>Student Enrollment</u>	<u>Maximum Salary</u>
0 - 250	\$125,000
251 - 750	\$135,000
751 - 1,500	\$145,000
1,501 - 3,000	\$155,000
3,001 - 6,500	\$165,000
6,501 - 9,999	\$175,000
10,000 or more	May obtain waiver

In comparison, the maximum salary for a PSSD's chief administrator, Executive Director or Director, is \$225,734, regardless of the school's enrollment. Furthermore, there is no cap on the number of chief administrators a school may have. For example, one school with 110 students had two directors making the maximum salary. There were 44 executive directors and/or directors at 32 schools with an average enrollment of 161 students making more than the maximum superintendent salary of \$175,000. Of these, 19 executive directors and/or directors at 13 schools with an average enrollment of 200 students made the maximum salary of \$225,734. The average salary for an executive director or director was \$172,000, with enrollments ranging from 22 to 601 students.

Related-party transactions are permitted under N.J.A.C. 6A:23A. We noted many transactions involved rent or lease payments made to an entity owned and/or operated by the same person(s) that owns the school. For example, one school with 120 students pays more than \$800,000 in annual rent to a company owned by the same family members who own and operate the school. For the 121 PSSDs that reported rent costs, 22 had a related-party transaction involving property. On average, rent costs for schools with this type of related-party transaction were 12 percent higher than other schools and 16 percent higher rent cost per student.

Additionally, an owner of another PSSD, who is also the director of the school, is the sole owner of the company that provides food services to the school. The PSSD paid the food services company more the \$380,000 in fiscal year 2012, nearly \$4,000 per student. The total cost and per student cost for these services was more than five times higher than other PSSDs with similar enrollments.

Finally, the department reviews the tuition rate charged by the PSSD to the districts and will, at times, disallow certain costs. Disallowable costs are delineated in N.J.A.C. 6A:23A. If the PSSD challenges a disallowed cost, any litigation costs incurred by the PSSD are an allowable expense to be used in calculating future tuition rates, regardless of the outcome of the challenge, because these costs are not specifically disallowed in the code. In fiscal year 2011 and fiscal year 2012, litigation costs of \$836,000 and \$554,000, respectively, had been reported by PSSDs.



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Governor

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June 26, 2013

Mr. Stephen M. Eells, State Auditor
Office of Legislative Services
Office of the State Auditor
125 South Warren Street
P.O. Box 067
Trenton, NJ 08625-0067

Dear Mr. Eells:

SUBJECT: Response to OLS Audit Report of the Department of Education, Office of Special Education Programs

The New Jersey Department of Education (DOE) has received and reviewed the Office of Legislative Services (OLS) Audit Report of the Department of Education, Office of Special Education Programs for the period July 1, 2010 to April 30, 2013. The auditors' findings, recommendations, and observation, along with our responses are as follows:

Finding Number 1, Page 3

Special Education Medicaid Initiative (SEMI) Revenues – Districts are not maximizing revenues from the SEMI.

The state and the districts could collect over \$10 million annually in additional revenue if all districts were to maximize participation in the SEMI program. The administrative code states that all districts shall strive to achieve maximum participation in the SIMI program.

SEMI Waivers – The state needs to limit the eligibility of waivers for the SEMI program.

The receipt, existence, or validity of waivers is not adequately monitored by the DOE, Department of Treasury or the vendor. These parties rely on the Executive County Superintendents to monitor the status of waivers within their individual counties and are aware of an approved waiver only if it is forwarded to them.

Recommendation

In an effort to maximize revenues, we recommend waiver issuance be based solely upon an adequately documented analysis that shows efforts to participate in the SEMI program would not provide a cost benefit to the district. Waivers should not be granted simply based on the number of SEMI-eligible students in a district. In addition, we recommend waiver issuance be formally confirmed by the department's Office of School Finance as part of the annual budget process and be tracked by the department to enhance monitoring of the program.

NJDOE Response

The DOE acknowledges the need to maximize revenues for the SEMI program and will consider the recommendation to amend the process for waiver issuance to include the Office of School Finance to allow for better tracking and monitoring of the program.

Finding Number 2, Page 4

Documentation of Related Services – Failure to maintain documentation for related services could result in an inability to validate student mastery of goals and to properly support cost reimbursement.

Two of the seven districts tested are not adequately documenting related services provided to students who participate in the SEMI program. Documentation must include the specific services provided during each encounter and the student's progress toward specified clinical goals.

Recommendation

The department should reinforce the need for documenting related services for SEMI students. The department should also consider requiring districts to document the specific services provided during each encounter and the student's progress during those encounters for all students.

NJDOE Response

Initially, it must be noted that N.J.A.C. 6A:14-1.1(h) requires that all public and private agencies that provide educational services to students with disabilities maintain documentation demonstrating compliance with state special education regulations. Thus, all districts should be documenting related services provided to all students, not just SEMI students. This documentation is reviewed as part of the state's consolidated monitoring process. The DOE will reinforce this requirement through the consolidated monitoring and technical assistance provided to school districts.

Finding Number 3, Page 5

Monitoring of Private Schools for Students with Disabilities (PSSD) – The department should improve its monitoring of private schools for students with disabilities.

Fiscal Reviews

The department is not performing the number of on-site reviews required by the administrative code. The code requires an on-site review be conducted on each PSSD at least once every six years and 46 of the 140 schools have not had a fiscal review during the past six years.

Criminal History Background Checks

N.J.S.A. 18A:6-7.1 states that all schools shall not hire anyone for positions that come into regular contact with students if the individual has a disqualifying criminal history record. The department does not verify that employees at PSSDs have gone through the criminal history background check process and have been approved for work at the school. The auditors tested 530 employees at 16 schools and found that 11 employees had not undergone a background check and 14 employees had an approved background check, but for a location different from those at which they work.

Employee Certification

The auditors reviewed department records for 16 PSSDs to determine if applicable employees had the proper New Jersey certification for their job title. Of the 373 employees who required certification, they found 19 employees from 9 schools who were not properly certified.

Recommendation

The department should increase the number of on-site reviews performed on PSSDs to ensure each school is reviewed within the required six-year timeframe. These reviews should also verify that all employees have been approved by the Criminal History Review Unit and work only in their approved school. We also recommend the department improve monitoring private schools to ensure applicable employees have complied with statewide criminal history background check and certification requirements.

NJDOE Response

The DOE acknowledges the need for consistent and reliable on-site reviews of PSSDs. The Office of Special Education Programs is responsible for programmatic monitoring of PSSDs and in a manner similar to the consolidated monitoring process, is conducting on-sites visits as part of a cycle of monitoring all PSSDs. The department acknowledges the need to increase the number of on-site reviews conducted by the Office of School Finance to verify that all employees have been approved by the Criminal History Review Unit and work only in their approved school.

Over the years, the Office of Fiscal Accountability and Compliance has submitted a number of requests for additional staffing in order to satisfy a myriad of federal and state requirements concerning the monitoring of several hundred school districts, charter schools and private schools for students with disabilities. The OFAC will continue its efforts in this area, in part, to ensure each PSSD is monitored within the requisite timeframe. In regards to statewide criminal history background check and certification requirements, the OFAC performs testing to ensure all PSSD staff members possess the necessary certifications, licenses and/or degrees for the positions held and all newly hired employees underwent background checks during on-site fiscal monitorings. The OFAC will initiate dialogue with other departmental offices to determine the feasibility of enhancing PSSD data collection to include elements for comparison with TCIS certification data.

The Criminal History Review Unit (CHRU) is responsible for conducting the criminal history record checks on all new applicants or employees changing school districts. The CHRU has entered into a Memorandum of Understanding with the Department of Labor, Wage Reporting Database to conduct reconciliations of all educational facilities under the supervision of the Department of Education (DOE). The unit has completed the reconciliation of approximately 600 public school educational facilities, 86 Charter Schools and is in the process of reconciling approximately 400 school bus contractors. The next group scheduled for the reconciliation will be the Private Schools for Students with Disabilities.

Observation

The department should consider administrative code changes that could control costs for PSSDs.

NJDOE Response

The department will consider the recommendations set forth in this report when proposing amendments to the administrative code.

We trust that our responses satisfy the concerns raised in the audit report. Should you have any questions or need further information, please contact Peggy McDonald, director, Office of Special Education Programs at 633-6833.

Sincerely,



Susan Martz, Acting Assistant Commissioner
Division of Student and Field Services

SM/PM/CP/JW/ke

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