New York State Comptroller
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Licensing and Monitoring of Proprietary Schools

State Education Department

Report 2019-S-68 | **January 2021**

Spotlight on Education

Audit Highlights

Objectives

To determine whether the State Education Department's (Department) Bureau of Proprietary School Supervision (Bureau) is verifying that schools have sufficient resources prior to initial licensing; and whether the Bureau is adequately monitoring schools and utilizing its database to look for warning flags of future closings. The audit covers the period January 1, 2016 through July 21, 2020.

About the Program

Non-degree-granting proprietary schools provide training in a broad range of disciplines, such as business, computer/information technology, and English as a second language. The New York State Education Law (Law) requires all non-degree-granting proprietary schools to be licensed by the State, unless they meet certain exemption criteria. Within the Department, the Bureau is responsible for overseeing these proprietary schools, including licensing and monitoring to ensure that their overall educational quality will provide students with the necessary skills to secure meaningful employment and that students' financial interests – that is, tuition investments – are protected. As of January 15, 2020, there were 391 licensed proprietary schools – 357 private career schools (PCSs) and 34 English as a Second Language schools – operating in New York State.

For both initial (two-year) and renewal (four-year) license applications, and annually once licensed, schools are required to submit various financial documentation, which the Bureau reviews to ascertain schools' financial viability. In addition, PCSs are required to submit statistical reports (e.g., student enrollment, completion, and placement) annually, which the Bureau has deemed to be sufficiently constituted by the Occupational Educational Data Survey (OEDS). The OEDS is included in each school's catalog, which is provided to prospective students to guide them in their program enrollment decisions. The Law also requires the Bureau to conduct an inspection of each school, including records they are required to maintain on site, at least once every licensure period. If the Bureau finds a school is not financially viable or is operating in violation of the Law or the Regulations of the Commissioner of Education (Regulations), it has the authority to impose sanctions, such as probation, and penalties.

Key Findings

While the Bureau makes determinations of schools' financial viability based on the documentation schools submit, we found that staff are conducting very little to no analysis of the financial documents schools are required to submit. The Bureau, therefore, failed to notice otherwise readily discernible evidence of schools' weak financial positions. For example:

- 47 of the 103 (46 percent) initial license applications that the Bureau approved between January 1, 2016 and December 31, 2019 had at least one deficiency pertaining to the financial documents submitted that should have precluded their approval.
- Our analyses of 330 schools that submitted 2018 fiscal year financial statements identified an average of 70 schools as having financial viability concerns. Despite the risk such schools pose to students' education goals and tuition investment, the Bureau has not imposed probation or other actions during our scope period from January 1, 2016 through July 21, 2020 to address issues and mitigate risk of unexpected closure.
- Our review of 127 schools that submitted OEDSs with student counts found that, for 92 schools

(72 percent), the OEDSs contained apparent math errors and were not rejected despite Bureau officials stating that they look for math errors. Because students rely on this information to make decisions, OEDSs that contain misinformation could result in vulnerable students selecting substandard schools.This could jeopardize future employment prospects and the ability to repay loans, which would affect taxpayer funds if the loans are government backed. In addition, inaccurate OEDSs compromise the Bureau's ability to evaluate schools' programs and stability.

- For 38 of the 41 inspection reports we reviewed, the Bureau failed to report on at least one document type that required its review – which makes it unclear if they're ensuring the schools are fully complying with the Law and Regulations.

Key Recommendations

- Develop policies and procedures to ensure that pre-licensed schools' financial information and licensed schools' financial statements are in compliance with requirements and that schools' financial viability is determined using more objective measures in accordance with the Law and Regulations.
- Utilize the mechanisms identified in the Law, such as placing a school on probation or requiring the school to secure a performance bond, when financial viability issues are identified.
- Develop policies and procedures to ensure that inspections are fully completed and documented and that determinations rendered are consistent.

Office of the New York State Comptroller
Division of State Government Accountability

January 21, 2021

Dr. Betty A. Rosa
Interim Commissioner
State Education Department
State Education Building
89 Washington Avenue
Albany, NY 12234

Dear Dr. Rosa:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage their resources efficiently and effectively. By so doing, it provides accountability for the 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 entitled *Licensing and Monitoring of Proprietary Schools*. This 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.

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,

Division of State Government Accountability

Contents

Glossary of Terms

Term	Description	Identifier
Bureau	Bureau of Proprietary School Supervision	*Bureau*
CAP	Corrective action plan	*Key Term*
CPA	Certified public accountant	*Key Term*
Department	State Education Department	*Auditee*
DOE	U.S. Department of Education	*Federal Agency*
ESL	English as a Second Language school	*Key Term*
GAAP	Generally Accepted Accounting Principles	*Key Term*
GTI	Gross Tuition Income	*Key Term*
Law	New York State Education Law	*Law*
OEDS	Occupational Educational Data Survey	*Key Term*
PCS	Private career school	*Key Term*
Regulations	Regulations of the Commissioner of Education	*Law*
TRA	Tuition Reimbursement Account	*Key Term*

Background

Non-degree-granting proprietary schools provide training in a broad range of disciplines, such as business, computer/information technology, and English as a second language. The New York State Education Law (Law) requires all non-degree-granting proprietary schools to be licensed by the State, unless they meet certain exemption criteria. Within the State Education Department (Department), the Bureau of Proprietary School Supervision (Bureau) is responsible for overseeing these proprietary schools, including licensing and monitoring to ensure that their overall educational quality will provide students with the necessary skills to secure meaningful employment and that students' financial interests – that is, tuition investments – are protected. As of January 15, 2020, there were 391 licensed proprietary schools – 357 private career schools (PCSs) and 34 English as a Second Language schools (ESLs) – operating in New York State.

When initially granted, a proprietary school's license is valid for two years. Thereafter, license renewals are granted for a period of four years. In order to be approved for the two-year license, schools are required to submit certain financial documentation as evidence of their viability, including a signed balance sheet, certificate of incorporation, bank statements, and a 12-month projected operating statement. Once licensed, the Bureau requires schools to submit financial statements as well as statistical reports (e.g., student enrollment, completion, and placement) annually, according to its established deadlines. The documentation, which schools submit through a portal on the Department's website, is maintained in the Bureau's automated management information system. The Bureau reviews the documentation and has the authority to impose financial penalties for schools that fail to comply with documentation requirements and submission deadlines.

Pursuant to the Law, schools are also required to maintain adequate and accurate records on site for a period of not less than seven years, and the Bureau is required to conduct inspections at each school at least once every licensure period to monitor compliance with records requirements and other provisions of the Law and Regulations of the Commissioner of Education (Regulations).

Schools found to be operating in violation of the Law or Regulations may be placed on probation, have their license suspended or revoked, be charged financial penalties, and be subject to corrective action plans (CAPs). The Regulations exempt ESLs that do not receive public funding from certain parts of the Law, including placing the school on probation if financial viability concerns are identified.

The Bureau administers the Department's Tuition Reimbursement Account (TRA), which offers financial protection to proprietary school students by providing tuition refunds under certain circumstances, such as when a school closes or violates aspects of the Law or Regulations. The TRA is funded through annual assessments on such schools based upon each school's Gross Tuition Income (GTI). According to SED officials, $219,397 was paid out in 2019.

Audit Findings and Recommendations

We found that, for the period January 1, 2016 through July 21, 2020, the Bureau generally did not perform due diligence in reviewing schools' fiscal documents to ensure that schools had sufficient resources prior to their initial licensing. Furthermore, once schools had been licensed, the Bureau did not adequately monitor them or utilize its database to identify warning flags of future closures.

While the Bureau requires schools to submit documentation of their financial viability, we found it conducted little to no analysis of the information throughout the initial and renewal application processes – and therefore failed to notice otherwise readily discernible evidence of a school's weak financial position, including certified public accountants' (CPAs) "going concern" clause in the financial statements, which is used when there is doubt that an entity will be able to remain in operation beyond a year. In addition, we found instances where the Bureau: approved licenses despite schools not having submitted the required financial statements and statistical reports; approved licenses without having reviewed submitted financial statements and statistical reports; and did not conduct renewal inspections in accordance with Bureau policy.

Findings from this audit mirror those of a 2013 audit (Report 2011-S-51), where we similarly concluded that the Bureau was not providing adequate oversight of proprietary schools. At the time, Bureau officials attributed deficiencies to a lack of sufficient staff resources. With its current staff of 24, we recognize that the Bureau's resources are stretched. However, given its goals – to ensure that program curricula provide students with the skills needed to secure meaningful employment while protecting students' tuition investments – it is imperative that officials devise strategies that will enable them to utilize resources most efficiently in order to maximize their ability to effectively oversee proprietary schools throughout the State. For example, we note that the Bureau's system could be upgraded to eliminate the need for manual data entry to track license renewal inspections and to automatically generate reports for monitoring purposes.

Deficiencies in Initial License Application Process

In accordance with the Regulations, an initial license application must include a signed balance sheet, a certificate of incorporation, bank statements, and a 12-month projected operating statement. Pursuant to Article 101 of the Law, applications not accompanied by the required documentation shall not be considered for approval. In addition, according to Bureau officials, pre-licensed schools are expected to have startup savings of at least $5,000 – and more for certain schools that require expensive equipment, such as culinary arts training.

Our review of all 103 initial license applications approved between January 1, 2016 and December 31, 2019 identified 47 schools (46 percent) with at least one deficiency pertaining to the financial documents submitted that should have precluded their approval. Among other issues, applications were submitted with an inaccurate balance sheet that did not reconcile, with missing bank statements or ones that did not substantiate the minimum $5,000 in available funds, or with projected operating statements that covered less than the 12-month period required.

Bureau officials stated that the review of financial documentation is primarily based on the reviewer's personal judgment. We note, however, that the Bureau only provides staff on-the-job training for financial reviews and does not have any standardized policies and procedures for staff to follow. A reliance on the personal judgment of poorly trained staff creates the risk that schools that do not meet requirements are being approved, that schools may ultimately be unable to provide enrolled students with the education they paid for, and that tuition refund claims will deplete the TRA.

Deficiencies in Annual Financial Statement Analysis

Once licensed, PCSs and ESLs must submit annual documentation attesting to their financial viability. In accordance with the Law, PCSs with a GTI of $500,000 or more must submit audited financial statements prepared in accordance with Generally Accepted Accounting Principles (GAAP) every year. PCSs with a GTI of less than $500,000 and less than $100,000 in financial aid must submit audited financial statements every other year, and may submit reviewed financial statements in the alternating year. Unlike an audited statement, which is the highest level of assurance on the fair presentation of an entity's financial statements, reviewed statements offer a more limited assurance that financial statements appear to be in line with GAAP. Pursuant to the Regulations, in lieu of financial statements, ESLs are allowed to submit a statement of tuition revenue or tuition income. The Bureau established a July 1 deadline for all such submissions, and is authorized to impose fines against schools that do not comply.

While the financial statements are intended to serve as the basis for assessing schools' financial viability, we found the Bureau performs little to no analysis. According to Bureau officials, the process used during our scope period involved verifying whether the GTI reported online via the Bureau's portal agrees with the GTI shown in the financial statements and whether the financial statements had been audited or reviewed but, for the latter, not whether they were alternating-year appropriate. One individual is responsible for completing a review of financial statements and, for each school, writing a summary of financial viability based on their findings. However, as we illustrate in the following discussion, this review is sufficiently superficial to allow documents that do not meet financial statement submission requirements – and that may otherwise indicate viability problems – to be overlooked and approved, either explicitly or implicitly by virtue of not being disapproved, for licensing. Undetected, fiscally unsound schools continue to operate and increase the risks to both students and the TRA.

Bureau officials stated that, as of January 9, 2020, they are in the process of changing their procedures for the review and analysis of the financial statements. The new procedures are undergoing Department review and approval, and have not yet been implemented. Changes include making the review more objective, using Department and U.S. Department of Education (DOE) ratios to check financial viability, and implementing steps for a thorough review of financial statements.

Issues With Financial Statements

We reviewed the financial statements and associated documents submitted by all 381 schools that were required to submit their respective 2018 fiscal year financial statements by the Bureau's imposed deadline of July 1, 2019. Of the 381 schools, we found that 59 did not meet financial statement requirements:

- 31 did not submit financial statements as required (i.e., either submitted no financial statements or submitted inappropriate documentation, such as income tax returns); and
- 28 submitted insufficient financial statements, with 2 having more than one issue, such as:
  - A statement of tuition revenue from a PCS when audited financial statements were required. Per the Regulations, statements of tuition revenue are acceptable for ESLs only.
  - Reviewed financial statements when audited statements were instead required for the given year. Of the 12 instances, 5 had been approved by the Bureau.
  - Financial statements that were insufficient due to CPA firm-related issues (17 instances), including expired CPA licenses (15 instances). While Bureau officials stated that their system automatically checks the CPA firm number against the data maintained by the Department's Office of the Professions to identify such issues, we note that 5 of these statements had still been incorrectly approved.

Potential Red Flags Missed

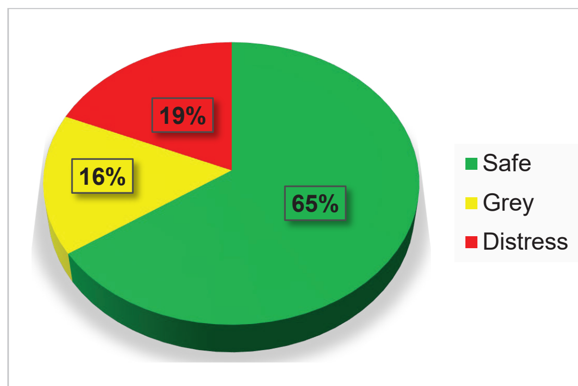
We also identified red flags in the financial statements that the Bureau did not properly recognize and address. For example, for ten schools, their audited financial statement included a "going concern" clause by the CPA firm questioning the school's financial viability. (A going concern clause is intended as an alert that the entity is in serious financial trouble and may not have the ability to meet its financial obligations within the next 12 months.) One such ESL that closed in April 2019 submitted its audit report and financial statements to the Bureau in July 2018. Although the Bureau may not have been able to officially place the school on probation due to the ESL exemption, had the Bureau reviewed the auditor's report more thoroughly, it could have reached out to the school regarding the going concern – and at the very least would have had nine months to prepare and reduce the impact of the closure on the students and the TRA. Bureau officials stated that about 700 of the school's 1,800 students were seeking refunds, and estimated that about $400,000 would be paid out of the TRA.

We also identified nine schools whose audited financial statements contained a qualified opinion, meaning the CPA found a matter relating to the entity's financial statements that required the CPA to modify their opinion regarding financial statements being fairly presented in accordance with GAAP. However, Bureau officials stated that they never look at the auditor's opinion while reviewing the financial statements. As such, there was no analysis or follow-up with the schools to determine whether these qualified opinions were indicative of greater problems. One of the nine schools has since closed. In addition, we determined that 20 schools had other major issues, including one with a letter stating that the school's accrediting agency lost its recognition by the DOE, and as a result, the school was losing 95 percent of its income.

OSC's Financial Viability Analyses

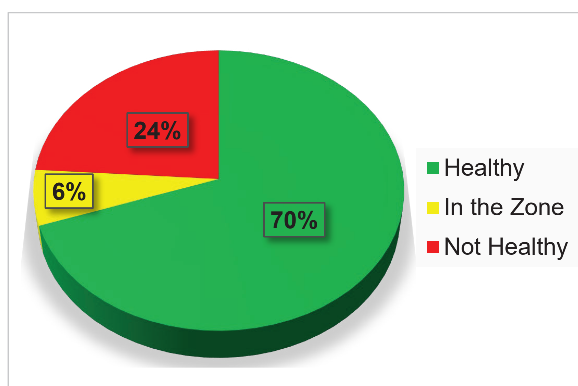
To identify whether there are any schools that appear to have financial viability concerns, we calculated the Altman Z-score and Composite Score for the 330 schools that submitted financial statements. The Altman Z-score is a formula that utilizes five financial ratios to help determine an entity's financial health and predicts the likelihood of bankruptcy within two years. Based on their cumulative scores, entities are assigned a level of risk: "safe" (low risk), "grey" (moderate risk), or "distress" (high risk). The Composite Score is used by the DOE to measure an educational institution's financial condition in order to participate in Title IV financial assistance programs. The Composite Score utilizes three ratios to measure financial health, and identifies schools as either "healthy," "in the zone," or "not healthy." It is worth noting that 106 of the 330 schools already had their Composite Score identified by the independent CPA firm that audited their financial statements. Despite the Bureau having access to these schools' Composite Score, it did not incorporate this number into its fiscal reviews.

Figure 1 – Altman Z-Score
All Schools – 330



Overall, the Bureau approved 183 of the 330 financial statements, with the remaining still pending approval or denial as of January 15, 2020. While the Bureau did not explicitly deem any schools to have financial viability concerns, our analyses of all 330 schools using the Altman Z-score and Composite Score models produced an average of 70 schools in fiscal distress. Further, our review using just the Altman Z-score (see Figure 1) found that 61 (19 percent) were in the "distress" zone, with 28 of these approved by the Bureau. Similarly, our review using the Composite Score (see Figure 2) found that 79 (24 percent) were in the "not healthy" zone, with 34 of these approved.

Figure 2 – Composite Score
All Schools – 330



Where schools are deemed to have financial viability concerns that threaten their ability to educate students and/or students' tuition funds, the Law authorizes the Bureau to take preemptive action to address the issue and mitigate risk, such as: imposing probation for up to a one-year period; requiring the school to secure a performance bond or limiting their collection of tuition funds; or “other means acceptable to the [C]ommissioner [of Education].” However, the Bureau rarely imposes these means of discipline or other sanctions. Bureau officials stated that they are leery of placing a school on probation because the Law doesn’t give any specific guidance. We note that the Law offers examples of probationary activities, such as imposing additional monitoring and inspections and limitations on enrollment, but leaves the logistics of implementation up to the Department. Despite this latitude, the Bureau has not developed any such policies or procedures.

Deficiencies in License Renewal Process

In accordance with the Law and Bureau policy, each renewal application for a PCS shall include annual financial statements as well as statistical reports certified by the owner or operator of the school. Per Bureau policy, the statistical reports are sufficiently constituted by the Occupational Educational Data Survey (OEDS) and include such information as enrollment, completion, and placement data. (ESLs are not required to submit statistical reports.) As established in Article 101 of the Law, applications not accompanied by the audits and reports shall not be considered for approval. The Bureau has set April 15 as the annual deadline for PCSs to file their OEDS, while July 1 is the annual deadline by which all schools must submit their respective financial statements.

In order to evaluate schools applying for license renewal, the Bureau designed an online school renewal application that staff access through the Bureau’s portal. However, while the renewal evaluation does have financial statements and the OEDS as criteria, it only requires staff to enter the date they verified that a school’s financial statements and OEDS had been submitted. As such, there is no guarantee that the financial statements and OEDS that have been submitted are up to date or approved. The Bureau cannot adequately evaluate a school’s financial viability, or the quality of its programs and courses, without properly and thoroughly reviewing the required financial statements and the OEDS.

Financial Statements

To determine whether financial statements had been submitted and approved before a license renewal is granted, as required, we reviewed all 50 schools with missing financial statements as of January 15, 2020, of the 455 schools that were required to submit them for fiscal years 2016 through 2018. Of these 50 schools, 3 were due for license renewal, and all 3 were granted a license renewal despite the missing documents and lack of approval.

We also reviewed the 132 schools that filed financial statements for the three fiscal years 2016 to 2018 after the annual July 1 due date. Of these, 53 were due for license renewal after the due date. For 26 schools, the Bureau renewed their license without approving their submitted financial statements. An additional 2 schools were approved for license renewal before they had submitted their financial statements.

Occupational Educational Data Surveys

Submission

A school's OEDS is a key resource not only for the Bureau, in its evaluation of a school's sustainability, but also for students. The OEDS is included in each school's catalog, which is provided to prospective students to guide them in their program enrollment decisions. An OEDS that contains misinformation is misleading to these prospective students and compromises the Bureau's ability to evaluate the school's programs and stability.

To determine whether the Bureau properly granted license renewals based on an OEDS that had been submitted and approved, as required, we judgmentally selected a sample of schools that appeared riskier because they either did not submit their financial statements or submitted them late at least once during the 2016–2018 fiscal years. After removing ESLs, which are not required to submit an OEDS, our sample consisted of 46 PCSs that did not submit financial statements and 116 that submitted their financial statements late.

Of the subsample of 46 PCSs, only 3 were due for a license renewal after the OEDS due date. For these 3 schools, the Bureau did not grant license renewals before the schools submitted the OEDS, but did renew them without having approved the OEDS.

Of the subsample of 116 schools, 59 were due for a license renewal after the OEDS due date. Of these, 13 schools had submitted an OEDS that was formally reviewed and approved by the Bureau. For the remaining 46 schools, their license was renewed despite the school not having submitted an OEDS (16) or the Bureau not having approved it (30).

Monitoring

In accordance with the Law, the statistical reports shall include, at a minimum, enrollment, completion, and placement data as well as percentages for student dropout and student placement in instruction-related occupations and other employment. The Bureau should use this data for determining license renewals.

According to Department officials, Bureau field associates are responsible for monitoring their assigned schools' OEDS, which primarily only entails a cursory check for accuracy of numbers and rejecting those that contain errors. There is no formal process for ensuring that schools have submitted the required report: because the Bureau's automated system does not have alert or exception report capabilities, field associates generally only become aware that an OEDS is late after the school submits a license renewal application or through a manual search of the database.

The current OEDS form has three sections: Section 1 – curriculum admissions, enrollment, and graduates for each course over 100 hours; Section 2 – course enrollment, graduates, and non-completers for courses with less than 100 hours;

and Section 3 – financial assistance. Using the same sample of schools as above (schools that did not submit their financial statements or submitted them late during the 2016–2018 fiscal years, excluding ESLs and duplicate schools that fell under both categories), we analyzed OEDSs from 146 schools to assess accuracy of the data reported and identify potential red flag trends. We primarily reviewed the information in Section 1 and analyzed the data in Section 2 for schools that didn't report any information in Section 1.

Of the 146 schools, 127 submitted OEDSs with student counts. Of these, we found that the OEDSs for 92 schools (72 percent) contained apparent math errors and were not rejected despite Bureau officials stating that they look for math errors. For example, we found instances where the addends for "enrollment" and "applications" did not equal their totals.

We reviewed the OEDSs these schools submitted for reporting years 2017, 2018, and 2019, and identified 438 potential instances in which OEDS Section 1 data could show a decrease in each of the three demographic areas from the previous year (i.e., from 2016, 2017, and 2018, respectively):

- 119 OEDSs (27 percent) showed a decrease in the total number of students,
- 118 (27 percent) had a decrease in total graduates, and
- 103 (24 percent) showed a decrease in graduate employment numbers.

An analysis of Section 2 data had similar results, with the OEDS for 14 of 60 (23 percent) showing a decrease in the total number of students enrolled and 17 (28 percent) reporting a decrease in the number of students graduating. While these decreases could require additional explanation from the schools, there are currently no benchmarks or a framework established within the Law or Bureau policy in regard to analyzing potential negative trends within the OEDS. Without such a framework, it is impossible for the Bureau to make any useful assessment of quality that could inform its licensure determinations.

As mentioned, Sections 1 and 2 of the OEDS each have a different reporting focus. However, we found that schools don't always report data in the proper section, which results in a miscount. Schools also often submit multiple copies of an OEDS for a given year but with discrepant numbers. Because the Bureau did not review and approve every school's OEDS, it is difficult to know which version is correct. We also found that two schools were "candidate schools," which allows them to legally operate unlicensed for 12 months during the license application process, and were subsequently approved for licenses without having previously submitted an OEDS, even though the Law requires candidate schools to do so.

As of January 15, 2020, the Bureau is in the process of revising the OEDS form. Bureau officials are also planning to include more in-depth reviews as part of the new procedures for the revised forms, such as checking whether completion rates are lower than previous years and identifying other trends. However, the new forms and procedures are still in draft and awaiting approvals.

Related Issues

Fines for Late Statements

Of the 381 schools that were required to submit their 2018 fiscal year financial statements by July 1, 2019, 81 schools either did not submit any financial statements or other documentation as of January 15, 2020 (25) or submitted financial statements late (56). Of the 81 schools, 23 (28 percent) were not fined by the Bureau. Failure to consistently impose fines diminishes their value as a deterrent to schools' non-compliance. Furthermore, the Bureau did not follow up with these schools to determine why financial statements were not submitted or submitted late.

Timeliness of Document Reviews

Because there are no written procedures for reviewing schools' required documents, there is no specific time frame for reviewing and approving them. We found the Bureau is not reviewing all required documentation in a timely manner, which allows potentially at-risk schools to continue operating. While in some instances delays may have been caused by errors or issues with the documents themselves or inefficiency stemming from the inability of the Bureau's system to produce an exception report of currently missing documents, we found instances of documents with no problems that were still pending review.

Of the 330 (of 381) schools that submitted financial statements for fiscal year 2018 (excluding schools that did not submit anything or only submitted the tuition revenue statement), we identified 86 (26 percent) that were submitted during June, July, and August 2019 with no issues but were still not approved as of January 15, 2020 – up to seven months later.

In addition, within our subsample of 116 PCSs that submitted financial statements late (discussed on p. 13), 99 submitted OEDS. For 80 of these 99 schools (81 percent) that had submitted an OEDS for the reporting years 2017 through 2019, the OEDS was still pending Bureau review as of April 30, 2020 – a delay ranging from 1 to 3 years, and far too late for the Bureau to identify schools at risk and take appropriate action to protect students.

Inspection Report Issues

In accordance with the Law, the Bureau is required to conduct an inspection of each school, including documentation maintained on file, at least once every licensure period. Inspections are conducted by the Bureau's seven field associates. The Bureau tracks completed inspections using spreadsheets that are updated manually. As mentioned previously, the Bureau's online system lacks the capability to generate alerts or produce exception reports, which would help staff identify upcoming or overdue inspections more efficiently and effectively.

Per the Bureau's renewal invitation letter to schools, there are 13 types of documents to be reviewed and assessed during the license renewal inspection visit, among them: personnel documents, administrative forms, student records, backup documentation for the OEDS, and, for certain schools, equipment/supplies, internship, and scholarship documentation as well as employer training forms.

Bureau policy states that, after all reviews are completed, the Bureau will determine the extent to which a school has met the requirements for renewal of its license, either:

- The school meets all requirements and is eligible for renewal for the full four-year period;
- The school has significant and serious violations of the Law, Regulations, or other applicable statutes and regulations and will not be renewed; or
- The school has minor or less serious violations of the Law or Regulations and accepts a Bureau-monitored CAP to address those violations.

For our review purposes, we requested documents pertaining to the license renewal inspection for a random sample of 50 schools. Bureau officials were not able to provide inspection reports for nine of these schools, but did provide documentation that showed the inspections were at least conducted. Without the completed inspection reports, however, we could not fully evaluate whether the renewal inspections covered all documents required under Bureau policy. The lack of a paper trail also makes it difficult for the Bureau to ensure that any necessary follow-up is actually performed.

For the 41 inspection reports that were completed, we analyzed how many of the required documents were reported on during the visits. Overall, of the 41 inspection reports, 38 did not report on at least one document type requiring review, including one that did not report on eight documents. According to Bureau officials, any documentation not reported on in an inspection report is assumed to have been found compliant. While it is possible that the field associates responsible for conducting the inspection visits did review some or all of the documents not cited in the reports, without this being explicitly stated for each such document, it is impossible to be certain that they were, in fact, reviewed.

We also found that schools with similar violations/findings did not appear to be classified consistently across the three different categories identified in the Bureau's policy. Additionally, some were grouped into two other categories not defined in the policy: one requiring that a second visit be conducted to check progress and complete renewal visit activities; and the other allowing license renewal for a two-year period, even though the Law and Bureau policy both state that renewals are for four years.

For example, we found 15 schools with violations related to "student records." For some of these schools, the decision was made to grant a license renewal for four years; for others, renewal was denied; for still others, the decision fell somewhere in between these two extremes, such as a four-year license renewal requiring a CAP and a two-year license renewal. While the discrepancies may have been due to some schools having multiple violations while others did not, we also found inconsistencies related to the violations when considered as a whole. For example, School 14 (see Exhibit A), which had only one violation (attendance records), needed a CAP before license renewal. In contrast, School 36, which had an attendance record violation plus four others, received a four-year license renewal without needing a CAP. As shown in Exhibit B, for many violation types, the Bureau's decision to require a CAP seemingly varied widely.

We also found inconsistencies regarding the Bureau's communication of its license renewal decisions. Eight of the 41 inspection reports failed to specifically identify the Bureau's determination regarding license renewal. Lacking a firm conclusion, it is unclear if the final decision that was made – that is, whether a school's license was approved for renewal, approved with a CAP, or denied – was appropriate and made in compliance with the Law and policy. In addition, 8 of the 41 inspection reports stated that the school license renewal had been approved, but didn't specify the length of the license renewal period. While it is likely that these schools were approved for a four-year renewal period, this cannot be simply assumed, because we found other reports suggesting a two-year renewal period – an option that is not explicitly documented in the Bureau's written policy.

While Bureau policy specifies the categories that schools can fall into after an inspection, there are no definitive criteria – that is, type of finding and/or degree of severity – that allow an objective, consistent determination. The lack of standardized inspection report templates or checklists also makes it difficult for field associates to ensure that every document that requires review was covered in the inspection. As such, their subjective decision making results in inconsistent, indiscriminate application of enforcement – and could give the appearance of preferential treatment of some schools over others. Furthermore, there is no assurance that schools in situations that warrant a CAP are, in fact, required to submit one, thereby allowing them to continue operating without taking the necessary corrective action.

ESL-Related Regulatory Issues

In our discussions with Bureau officials, we questioned the value of tuition revenue statements as an attestation of ESLs' financial viability; they agreed that a school's financial viability cannot be reasonably assessed without full financial statements and stated that they will likely pursue regulatory change to fully comply with the Law. Officials also stated that the Regulations exempt ESLs from certain parts of the Law, including placing the school on probation if financial viability concerns are identified, which would also need regulatory change to institute.

In addition, while ESLs are not required to submit OEDSs, we did find one ESL in our sample that submitted an OEDS each year, indicating that ESLs might have the capability and information necessary to submit this report. Such information would better enable the Bureau to assess ESLs' quality and stability, especially because they primarily serve vulnerable students, such as immigrants. The Bureau agreed with our assessment, but stated that regulatory change would be needed to require ESLs to submit OEDS.

Recommendations

1. Develop policies and procedures to:

   a. Ensure pre-licensed schools' financial information and licensed schools' financial statements are in compliance with requirements.

   b. Ensure schools' financial viability is determined using more objective measures in accordance with the Law and Regulations.

   c. Require every school's OEDS be analyzed for potential problems or negative trends with appropriate benchmarks.

   d. Ensure that inspections are fully completed and documented and that determinations rendered are consistent.

2. Train staff on policies and procedures enhancing their understanding and interpretation of financial information.

3. Utilize the mechanisms identified in the Law, such as probation or performance bond requirements, when a school is identified with financial viability issues.

4. Develop a process to identify and follow up with schools that have not submitted the required documentation and to identify unapproved financial statements and OEDSs so reviews are completed timely.

5. Institute controls that require financial statements and OEDSs to be submitted and approved before a school's license can be renewed, in accordance with the Law.

6. In light of limited resources, consider upgrades to the database to automate processes that are currently performed manually.

Audit Scope, Objectives, and Methodology

The objectives of our audit were to determine whether the Bureau is verifying that schools have sufficient resources prior to initial licensing and is adequately monitoring schools and utilizing its database to look for warning flags of future closings. The audit covered the period from January 1, 2016 through July 21, 2020.

To accomplish our objectives and assess related internal controls, we reviewed applicable sections of the Law, the Regulations, and the Bureau's relevant policies and procedures. We interviewed Bureau personnel to obtain an understanding of the processes for reviewing licensing documentation, financial statements, and OEDS documents; conducting school inspections; and fining schools for violating the Law. To assess whether schools approved for licenses should have been granted them, we obtained and analyzed documents submitted for all 103 schools that were granted an initial license between January 1, 2016 and December 31, 2019. To assess whether the Bureau was evaluating schools for financial viability as required, we obtained and analyzed the financial statements submitted for all 381 schools that were required to submit financial statements for the 2018 school fiscal year. To assess whether the Bureau was approving schools for a license renewal without the financial statements and statistical reports required under the Law, we analyzed all 50 schools with missing financial statements and all 132 schools with late financial statements during the 2016–2018 school fiscal years by comparing the due dates or late submission dates against license renewal dates. We judgmentally selected these same schools to review for license renewals without statistical reports because these schools appeared riskier due to missing or late financial statements, but removed the respective 4 and 16 ESLs because they are not required to submit statistical reports, resulting in subsamples of 46 and 116 schools, respectively. To assess whether the schools were submitting statistical reports and whether the Bureau was reviewing the statistical reports as required, we judgmentally selected the same 50 schools with missing financial statements and 132 schools with late financial statements, while noting which ones were ESLs, because these schools appeared riskier. To assess whether renewal inspections were being conducted as required, we selected a random sample of 50 schools from the 353 currently licensed schools that have been open for longer than the two-year length of the initial license as of April 9, 2020 and reviewed the respective inspection reports. Based on our sample design for each of our tests, we cannot project our results to the population as a whole.

Statutory Requirements

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.

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. 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.

Reporting Requirements

A draft copy of the report was provided to Department officials for their review and comment. Their comments were considered in preparing this final report and are attached in their entirety to the end of it. Department officials agreed with the report's recommendations and indicated actions they will take to implement them.

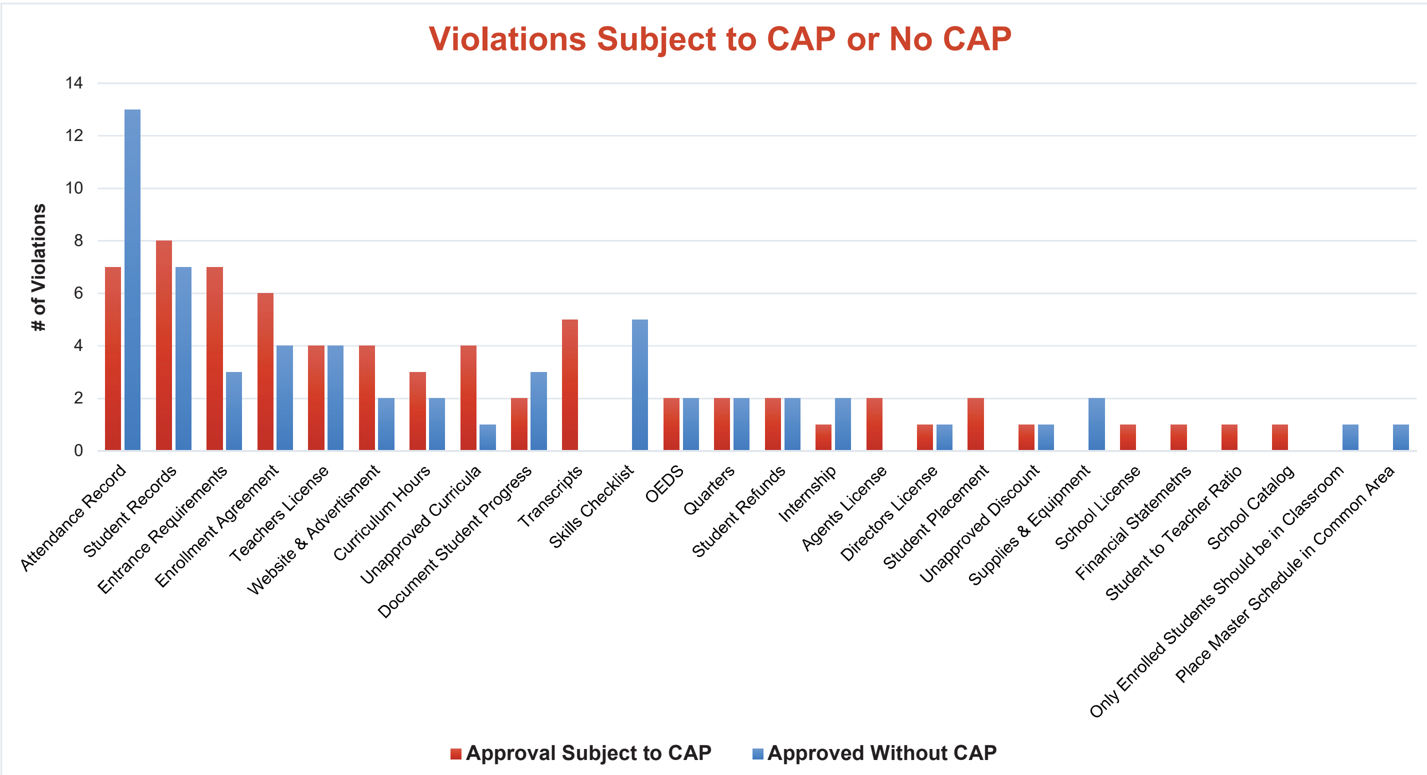
Within 180 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the State Education Department shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

Exhibit A

Education Law Violations Referenced in Inspection Report - 41 Schools

School #	Inspection Results	Attendance Record	Student Records	Entrance Requirements	Enrollment Agreement	Teachers License	Website & Advertisment	Curriculum Hours	Unapproved Curricula	Document Student Progress	Transcripts	Skills Checklist	OEDS	Quarters	Student Refunds	Internship	Agents License	Directors License	Student Placement	Unapproved Discount	Supplies & Equipment	School License	Financial Statements	Student to Teacher Ratio	School Catalog	Only Enrolled Students Should be in Classroom	Place Master Schedule in Common Area	Total Violations
1	License Denied		X			X		X		X																		4
2	Needs 2nd Inspec.		X		X						X		X				X					X						6
3	License Determination Pending CAP				X																							1
4									X		X																	2
5		X	X	X	X	X	X		X					X		X							X					10
6				X			X	X	X									X		X								6
7		X	X			X		X																				4
8		X	X		X		X			X	X				X										X			8
9		X	X	X		X	X		X		X		X	X			X											10
10	4 Year Renewal with CAP	X		X																								2
11			X	X															X					X				4
12		X		X	X																							3
13			X	X							X								X									4
14		X																										1
15					X										X													2
16	2 Year Renewal Approved	X	X	X	X	X			X						X						X					X		9
17		X	X			X	X						X	X				X		X								8
18	Nothing Regarding Approval or Denial Stated in Report	X	X									X																3
19														X														1
20		X																										1
21		X			X							X																3
22		X	X		X							X																4
23			X																									1
24		X	X							X		X																4
25		X										X				X												3
26	Renewal Approved; Period Not Specified																											0
27						X																						1
28																												0
29		X																										1
30										X																		1
31		X																										1
32		X			X		X						X															4
33																												0
34	4 Year Renewal Approved																											0
35																												0
36		X						X		X											X						X	5
37																												0
38								X																				1
39				X		X																						2
40				X																								1
41		X	X												X	X												4
Totals		20	15	10	10	8	6	5	5	5	5	5	4	4	4	3	2	2	2	2	2	1	1	1	1	1	1	125

Exhibit B


Violations Subject to CAP or No CAP
# of Violations
14
12
10
8
6
4
2
0
Attendance Record
Student Records
Entrance Requirements
Enrollment Agreement
Teachers License
Website & Advertisment
Curriculum Hours
Unapproved Curricula
Document Student Progress
Transcripts
Skills Checklist
OEDS
Quarters
Student Refunds
Internship
Agents License
Directors License
Student Placement
Unapproved Discount
Supplies & Equipment
School License
Financial Statemetns
Student to Teacher Ratio
School Catalog
Only Enrolled Students Should be in Classroom
Place Master Schedule in Common Area
Approval Subject to CAP
Approved Without CAP

Agency Comments

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

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November 24, 2020

Andrew Philpott
Examiner in Charge
Division of State Government Accountability
Office of the State Comptroller
110 State Street, 11th Floor
Albany, NY 12236

Re: Draft Audit Report - 2019-S-68, Issued 11/03/2020

Dear Mr. Philpott:

The New York State Education Department (Department) offers the following response to the Office of the State Comptroller's (OSC) draft audit report (2019-S-68) *Licensing and Monitoring of Proprietary Schools.*

Throughout the period covered by the audit, key leadership positions within the Bureau of Proprietary School Supervision (the Bureau) were vacant for extended periods. These extended periods of leadership vacancy, along with other key professional vacancies, contributed to the conditions illustrated within the draft audit report.

Fortunately, in April and December of 2019, the Department was able to appoint, respectively, an experienced Bureau Director and Supervisor of Education Programs. With these key leadership positions in place, the Department was then able to assess the systems, structures, and resources within the Bureau. These planning and assessment efforts were underway when OSC began its audit. The issues identified by OSC in its draft audit report serve to reinforce the Department's analyses and provide a guide for the Department's current system improvement efforts, many of which were in their nascent stages when the audit began.

The Department agrees with the areas OSC has found are most in need of improvement and corrective action: 1) analyzing the financial viability of schools; 2) collecting, analyzing, and utilizing school and program-level data; and 3) inspection reports that consistently illustrate the depth and breadth of the Bureau's actual oversight.

Prior to the audit, the Department had identified the need for systemic changes to address challenges related to the absence of sufficient staff in the Bureau with the expertise to perform complex financial analyses, and the absence of a comprehensive statewide system of postsecondary education data collection.

With a full consideration of the findings identified in OSCs draft audit report and their underlying causes, the Department is committed to fully implementing OSC's recommendations and any additional actions that may be required to improve the Bureau's licensing and monitoring of proprietary schools. The Department's responses to the recommendations in OSCs draft audit report are as follows:

OSC Recommendation 1.a.: Develop policies and procedures to ensure pre-licensed schools' financial information and licensed schools' financial statements are in compliance with requirements.

SED Response: The Department agrees with this recommendation. In response to preliminary audit feedback provided by OSC, the Bureau has established a core team to review and revise its office procedures and related tools (e.g., checklists, forms, etc.) to ensure that required financial documents are received and reviewed in compliance with law, regulation, and Bureau policies.

OSC Recommendation 1.b.: Develop policies and procedures to ensure schools' financial viability is determined using more objective measures in accordance with the Law and Regulations.

SED Response: The Department agrees with this recommendation. In response to preliminary feedback provided by OSC, the Bureau has been reviewing potential financial viability measures, such as those illustrated in the draft audit report, and has plans to revise regulations to establish a clear and objective framework for evaluating financial viability.

OSC Recommendation 1.c.: Develop policies and procedures to require every school's occupational and educational data survey (OEDS) be analyzed for potential problems or negative trends with appropriate benchmarks.

SED Response: The Department agrees with this recommendation. In 2020, the Bureau created and implemented a new form for OEDS submission that auto-sums reported data to reduce or eliminate errors or omissions, and that facilitates data transfer to statistical analysis software (which was not previously available). In addition, the Department has plans to revise regulations to create standardized data definitions (e.g., job-placement rate; completion rate) and articulate a clear framework for using these data to make decisions about licensure and inform consumers.

OSC Recommendation 1.d.: Develop policies and procedures to ensure that inspections are fully completed and documented and that determinations rendered are consistent.

SED Response: The Department agrees with this recommendation. In response to preliminary feedback provided by OSC, the Bureau established a team to review and revise procedures for documenting the full scope of inspections and for better aligning inspection reports to objective criteria for licensure determinations.

OSC Recommendation 2.: Train staff on policies and procedures enhancing their understanding and interpretation of financial information.

SED Response: The Department agrees with this recommendation. Training existing Bureau staff members is necessary but not sufficient to fully meet the Bureau's financial review obligations under the law, which requires dedicated fiscal expertise. Thus, in addition to developing training for existing staff, the Department will continue to advance efforts to fill vacant positions within the Bureau.

OSC Recommendation 3.: Utilize the mechanisms identified in the Law, such as probation or performance bond requirements, when a school is identified with financial viability issues.

SED Response: The Department agrees with the recommendation. The Department plans to revise regulations to establish a clear and objective framework for evaluating financial viability, which will include establishing requirements for utilizing the mechanisms in Law such as probation and bond requirements for schools identified with financial viability issues.

OSC Recommendation 4.: Develop a process to identify and follow up with schools that have not submitted the required documentation and to identify unapproved financial statements and OEDSs so reviews are completed timely.

SED Response: The Department agrees with this recommendation. The Bureau is currently piloting new processes for identifying and following up with schools that have not submitted OEDS or annual financial statements that were due to the Department on September 30, 2020. The Bureau will take lessons learned from this pilot process to establish more permanent procedures, which will ideally be complemented by the modifications to the Bureau's information management system referenced in recommendation number 6.

OSC Recommendation 5.: Institute controls that require financial statements and OEDSs to be submitted and approved before a school's license can be renewed, in accordance with the Law.

SED Response: The Department agrees with this recommendation. The Bureau has established a core team to review and revise the office procedures (referenced in the Department's response to 1.a.), which will include the establishment of internal controls to ensure that financial statements and OEDSs are submitted and approved before a school's license can be renewed, in accordance with the Law.

OSC Recommendation 6.: In light of limited resources, consider upgrades to the database to automate processes that are currently performed manually.

SED Response: The Department agrees with this recommendation. The current system does not function in a manner that fully supports the performance management or fiscal management of schools, and Bureau staff members must create several manual workarounds which are time consuming and inefficient. The Bureau will assemble an inter-office team to evaluate the current system and determine whether: a) the system can be upgraded to meet current operational needs; b) a new in-house system should be built from the ground up; or c) contracting for such services could provide a more cost-efficient and functional solution.

The Department appreciates this opportunity to provide a response to the draft audit report. If you have any additional questions or need additional clarification, please contact Owen Donovan at owen.donovan@nysed.gov.

Yours truly,

Sharon Cates-Williams

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