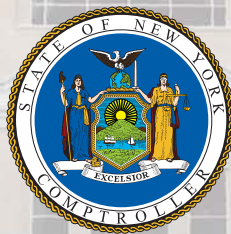




# State Education Department

## Selected Child Nutrition Program Payments

Report 2007-S-74



Thomas P. DiNapoli



# Table of Contents

	Page
Authority Letter .....	5
Executive Summary .....	7
Introduction.....	9
Background .....	9
Audit Scope and Methodology .....	10
Authority.....	11
Reporting Requirements .....	11
Contributors to the Report .....	12
Audit Findings and Recommendations.....	13
Unsupported and Inappropriate Claims .....	13
Recommendation.....	14
Provision 2 Schools .....	14
Recommendation.....	15
Department Oversight .....	15
Recommendations .....	15
Exhibit A .....	17
Agency Comments .....	19
State Comptroller’s Comment.....	23



# State of New York Office of the State Comptroller

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## Division of State Government Accountability

February 11, 2010

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

Dear Commissioner Steiner:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations.

The Comptroller oversees the fiscal affairs of State agencies, public authorities and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *State Education Department: Selected Child Nutrition Program Payments*. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution, and Article II, Section 8 of the State Finance Law.

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

Respectfully submitted,

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





# State of New York Office of the State Comptroller

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## EXECUTIVE SUMMARY

### **Audit Objective**

The objective of our audit was to determine whether Selected Child Nutrition Program payments made by the State Education Department were appropriate and adequately supported.

### **Audit Results - Summary**

The federal Child Nutrition Program (Program) offers cash assistance so schools can provide nutritious meals to children. In New York, the Program is administered by the State Department of Education (Department). In addition, entities known as “Authorities” represent one or more schools (private and public) providing meals under the Program. Under this arrangement, the Department pays Authorities based on their submission of monthly claims for meals served at schools they represent.

We found that Program payments totaling \$124,446 were unsupported or inappropriate. (See Exhibit A.) This includes \$24,408 of reimbursed claims that appear to have been knowingly prepared in error.

Our audit findings were based on examination of \$421,403 of Program claims paid by the Department to three Authorities for nine private schools they represented in New York City. The Authorities were selected because they were among those Authorities which received Program funds from the Department and also received day care grant funds from the Office of Children and Family Services where a prior audit had identified systematic abuse of grant monies.

We recommended that the Department pursue recovery of the \$124,446 and enhance its follow up efforts when it detects problems with Authority practices and procedures for claiming expenses. In addition, we referred matters in this report to the Office of the State Comptroller’s Investigations Unit for review and referral to law enforcement agencies.

Our audit report contains four recommendations. In response to our draft report, Department officials agreed either in full or in part with each of our recommendations.

This report, dated February 11, 2010, is available on our website at: [www.osc.state.ny.us](http://www.osc.state.ny.us).  
Add or update your mailing list address by contacting us at: (518) 474-3271 or  
Office of the State Comptroller  
Division of State Government Accountability  
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## Introduction

### Background

The State Education Department (Department) administers the State's Child Nutrition Program (Program) which is established under the federal National School Lunch Act. The Program provides cash assistance to help schools provide children with nutritious meals including breakfast, lunch and snacks.

The Program uses the term "Authorities" to refer to those entities that represent one or more schools (private and public) participating in the Program. The Authorities and the Department enter into agreements specifying Program requirements and acknowledging each party's rights and responsibilities. The Department pays Authorities based on their submission of monthly claims for meals served at schools they represent. During the fiscal year July 1, 2006 to June 30, 2007, the Department reimbursed 1,256 Authorities almost \$600 million of Program funds for meals reportedly provided by schools.

Our prior audit report (Report 2006-S-33, issued July 2, 2008) found systematic abuse of child care grants awarded by the New York State Office of Children and Family Services (OCFS) to New York City-based centers. Because of the wide spread abuse with child care grants administered by OCFS, we were concerned that centers or other entities affiliated with them, that received a child care grant, may be misusing funds they received from other State agencies.

Our audit focused on the Department's Program funding to three of the nine Authorities who had also received day care grant funds from OCFS for their affiliated schools. The three authorities selected were not part of the prior audit.

Federal regulations (regulations) require participating schools to maintain Program-related documentation to support Program compliance and for possible audit. Required documentation includes: income eligibility applications, menus, and meal counts. In general, income eligibility applications should be filled out and signed by the participating child's parent or guardian, and submitted to their school annually. The schools review the applications to determine the child's Program eligibility. The children are then classified for Program-reimbursement purposes as free, reduced, or paid based on the stated income and size of their household. Schools are reimbursed the highest reimbursement rate for children classified as free, and the lowest rate for children classified as paid. Schools calculate their reimbursement claims considering the various income categories, the types

of meals served (e.g., breakfast, etc.), and the number of meals served in each category.

The Department offers Authorities an alternative method to calculate reimbursement called Provision 2. Under Provision 2, the Authorities can establish a base rate using the income eligibility applications schools receive during their first Program year, and applying those rates for the next three years. Base rates are then revised every fourth year based on updated income eligibility applications, unless the Department grants a base year extension.

The Office of Temporary Disability Assistance (OTDA) is responsible for assigning identification numbers to families if they receive Temporary Assistance for Needy Families (TANF) benefits or food stamps. Families receiving either of these benefits automatically qualify for the Program and do not need to complete an income eligibility application. Instead, OTDA sends certification letters to qualifying families notifying them that the children in their household are entitled to receive free meals as part of the Program. The family then submits the letter to their school in place of the application.

Department staff is required to periodically review Authority compliance with federal Program regulations. During their reviews, Department staff should examine the Program-related documentation for at least one school for each participating Authority.

## **Audit Scope and Methodology**

We audited the Department's reimbursement of Program claims submitted by three Authorities on behalf of nine selected New York City-based private schools. Our objective was to determine whether the claims were appropriate and adequately supported. Our audit covered the period April 1, 2004 through December 16, 2008.

We judgmentally selected the three Authorities because they operated their Program during the entire school year and not only during the summer; were not included in the schools reported in our audit of the Department of Health's Food Program Payments to Selected Child Care Centers in New York City (2007-S-75 issued May 12, 2009) and based on the amount of money they received from the Program. We examined claims submitted by the three Authorities for nine of their eleven private New York City-based schools. We selected these nine schools because they were not recently audited by the Department or they claimed the highest percent of free meals. The claims examined pertained to breakfast, lunch, and snacks for the three month period September 2007 through November 2007. For one of the nine schools we expanded our claims examination to include snacks

reportedly provided during the period July 2006 through April 2008, as well as breakfast and lunch for the period October 2006 through August 2007.

To accomplish our objectives, we reviewed Program Regulations and Department reviews, and met with appropriate Department and school officials. We also reviewed available Program-related documentation at selected schools such as income eligibility applications, direct certification letters, student attendance records and meal logs. In addition, we met with OTDA officials to verify the validity of the TANF and food stamp identifying numbers noted on the income eligibility applications we sampled.

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 we obtained during our audit provides a reasonable basis for our findings and conclusions based on our audit objectives.

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

**Authority**

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

**Reporting  
Requirements**

We provided a draft copy of this report to Department officials for their review and comment. Their comments were considered in preparing this final report and are attached in their entirety at the end of this report.

In response to our draft report, Department officials stated that they found our recommendations useful, fully agree with three of them, and partially agree with one of them. We address the Department's response to this recommendation in a State Comptroller's Comment.

Within 90 days of the final release of this report, the Commissioner of the New York State Department of Education shall report to the

Governor, State Comptroller, and the leaders of the Legislature and fiscal committees, explaining the actions taken by the Department to implement the recommendations contained herein, and where not implemented, the reasons therefor.

**Contributors  
to the Report**

Major contributors to this report include William Challice, Frank Patone, Donald Geary, Randy Partridge, Jessica Turner, Eric Bell, Carmine Berghela, and Sue Gold.

## Audit Findings and Recommendations

We reviewed \$421,403 of claims reimbursed by the Department for the three sampled Authorities and found that \$124,446 paid to two of the Authorities (Authority A and Authority B) was unsupported or inappropriate. (See Exhibit A.) This includes \$24,408 of claims that appear to have been knowingly prepared in error. We also noted an error that could impact the base rate calculated under Provision 2 for Authority A.

While we found that Department staff complied with federal regulations to perform periodic oversight reviews of Authorities, they did not adequately follow-up with Authorities to determine whether identified deficiencies were corrected.

### Unsupported and Inappropriate Claims

The following are examples of unsupported or inappropriate claims identified during our audit of claims reimbursed for Authority A and Authority B:

- Authority A listed 102 students on its reimbursement claims even though there were no income eligibility applications filed for these students. Although these students were on their schools' attendance records and rosters, there is no support for their Program eligibility or the associated reimbursement rates;
- Authority A listed 13 students, and Authority B listed 2 students, on reimbursement claims even though the students were not on the associated schools' attendance records. Further, the Authorities could not provide us with income eligibility applications for these students;
- The food stamp or TANF identifying numbers assigned to recipients of public assistance were invalid on 46 of the 48 income eligibility applications we reviewed for Authority A, according to OTDA's records; and
- Using white-out, 10 income eligibility applications for Authority A were altered to an effective date of seven months earlier in order to inappropriately claim reimbursements for a prior period.

In addition, while visiting School 1 in March 2008, we observed the Principal completing income eligibility applications which had yet to be signed by a parent or legal guardian. The applications were needed to support our sampled claims for Authority A.

Based on these findings, we expanded our review of claims for School 1 to include the period October 2006 through August 2007. Authority A was reimbursed \$68,720 during this period for breakfast and lunch meals

reportedly served at School 1 to 119 students. We requested that school officials provide us with income eligibility applications for these students. However, even though participating schools are required to maintain Program-related documentation for three years past the year for which reimbursements are received, we were only provided with 19 applications, none of which were fully compliant with Program requirements. For example, four were from different school years and none showed they were either approved or denied. Since these applications were not complete, the school did not have adequate documentation to support any of its claims for this expanded review period. As a result we disallowed \$59,565 of these claims. We did not disallow the remaining \$9,155 because Program regulations would allow for reimbursement at the “paid” rate.

In addition, an employee at School 1 told us that School 1 did not provide children with snacks, however, Authority A’s claims for our audit period included reimbursement for snacks. On December 16, 2008 we visited School 1 along with a Department representative and found the school did not have any snack foods on hand. The school’s principal told us that the School had run out of snack foods and had sent a school employee to purchase bread, peanut butter and jelly. We asked officials to provide us with documentation to support prior School 1 claims for snacks (receipts, invoices, etc.) - but they did not do so. It appears that School 1 officials had been submitting claim forms requesting reimbursement for snacks when they knowingly did not provide snacks to their participating students. Based on our joint visit to Authority A, the Department concluded the Authority could not support its snack claims and disallowed all snack claims submitted for our review period totaling \$24,408.

Department officials agreed with our findings and said they would recover the payments relating to inappropriate or unsupported claims as deemed appropriate and in compliance with federal guidelines. Officials also placed claims for Authority A on hold until they had a chance to review the 2008-2009 income eligibility applications. In addition, the Department is requiring the Authority’s employees who are responsible for the application approval, meal counting and claim processes to attend relevant Program training.

**Recommendation** 1. Recover the \$124,446 paid to Authorities A and B based on the unsupported and inappropriate claims identified in this report.

**Provision 2  
Schools** Authority C used the Provision 2 method to calculate its reimbursement claims. We reviewed the claims submitted by Authority C for two schools, for the three month period September through November 2007. The claims totaled \$247,240. We found the Provision 2 rates used by these schools for the review period were accurate based on the base year applications. We

also found the sampled claims were supported by the number and types of meals provided to students.

However, 121 of the income eligibility applications supporting the sampled claims contained hand written TANF or food stamp numbers instead of direct certification letters to support Program eligibility. Follow up with OTDA found that 42 of the hand written numbers were invalid. For the three month period we reviewed, the Authority received \$12,459 more than it should have if, in fact, the associated students were not Program-eligible.

- Recommendation**
2. Assure claims paid to Authority C are supported by valid income eligibility applications or direct certification letters.

**Department Oversight**

The Department is required to review Authority compliance with Program regulations at least once every five years, or no more than six years after an Authority's prior review. During these reviews, Department staff is to examine Program related documentation for at least one of the Program-participating schools represented by the Authority.

We found that Department staff performed the compliance reviews as required, one of which included School 1 where we identified inappropriate reimbursement claims and altered applications. In its 2003 review of this school, Department officials found similar deficiencies. Yet, these deficiencies continued to occur through our audit scope period. Therefore, it appears that the Department did not take steps to ensure that the deficiencies noted in its review were corrected by School 1, and inappropriate claim payments were allowed to continue.

Considering our audit findings, we believe the Department should audit the remaining six Authorities that also received grant funds from OCFS and which we did not audit to confirm their Program payments are appropriate and supported.

- Recommendations**
3. Follow-up on Authorities where Department reviews have identified Program deficiencies to ensure that corrective action is taken.
  4. Audit the remaining six Authorities that also received grant funds from OCFS and which we did not audit to confirm their Program payments are appropriate and supported.





**Exhibit A**

<b>Summary of Audit Exceptions</b>			
<b>Authority/ School</b>	<b>Claim Period</b>	<b>Value of Reviewed Claims</b>	<b>Value of Audit Exceptions</b>
<b>Authority A</b>			
<b>School 1*</b>	Oct 2006 - Aug 2007	\$68,720	\$59,565
	Sept 2007 - Nov 2007	21,737	18,705
<b>School 2*</b>	Sept 2007 - Nov 2007	32,476	12,786
<b>School 3*</b>	Sept 2007 - Nov 2007	2,904	2,328
<b>School 4*</b>	Sept 2007 - Nov 2007	9,370	5,458
<b>Authority A Snacks</b>	July 2006 – April 2008	24,408	24,408
<b>Sub Total</b>		\$159,615	\$123,250
<b>Authority B</b>			
<b>School 5</b>	Sept 2007 - Nov 2007	\$9,639	\$482
<b>School 6</b>	Sept 2007 - Nov 2007	1,827	516
<b>School 7</b>	Sept 2007 - Nov 2007	3,082	198
<b>Sub Total</b>		\$14,548	\$1,196
<b>Authority C</b>			
<b>School 8</b>	Sept 2007 - Nov 2007	\$190,624	-
<b>School 9</b>	Sept 2007 - Nov 2007	56,616	-
<b>Sub Total</b>		\$247,240	-
<b>Total</b>		\$421,403	\$124,446

\* Breakfast and Lunch Claims



## Agency Comments



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

DEPUTY COMMISSIONER FOR OPERATIONS  
AND MANAGEMENT SERVICES  
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December 21, 2009

Mr. Frank Patone  
Audit Director  
Office of the State Comptroller  
Division of State Government Accountability  
123 William St.-21<sup>st</sup> Floor  
New York, NY 10038

Dear Mr. Patone:

The following is the New York State Education Department's (Department) response to the Office of the State Comptroller's draft audit report (2007-S-74) of the State Education Department: Selected Child Nutrition Program Payments. The recommendations are helpful and will provide guidance and direction on procedures that can be used when problems are detected with local education agency practices and procedures for claiming reimbursement.

Below you will find our responses to the recommendations in the draft audit report.

**Recommendation 1:** Recover the \$124,446 paid to Authorities A and B based on the unsupported and inappropriate claims identified in this report.

We agree in part with this recommendation. We have recovered \$24,408 from Authority A for reimbursement paid for snacks when there were no records to validate the service of such snacks to children in the 2006-07 and 2007-08 school years.

The balance of the reclaim was based on the Comptroller's office having the Office of Temporary Disability Assistance verify the Food Stamp and Temporary Assistance to Needy Families (TANF) numbers on applications to ensure their validity. Federal regulations require school reviewing officials to accept a complete application at face value. That means if all the required elements are present, the applications must be approved for free or reduced priced meals. Authority A did nothing wrong if it approved those applications that contained invalid Food Stamp or TANF numbers and should not be penalized for parental errors. Also, as the State Administrative Agency, we have no authority to validate the Food Stamp or TANF numbers. Enclosed is an email from John Magnarelli, Child Nutrition Director, of USDA's Northeast Regional Office located in Boston that reiterates this position.

\*  
Comment  
1

For clarification, incorrectly approved applications do not by themselves generate reimbursement. We calculate reclaims based on the number of complete meals each child received. If an application is invalid, the child brought meals from home, or was absent, there would be no

\* See State Comptroller's Comment, page 23.

reclaim. We do not have the names of children whose applications were determined to be invalid by the Comptroller's office to calculate a potential reclaim. Without this information, we cannot proceed. We are also required to notify the school of the details of the reclaim and give them an opportunity to appeal the decision before we process the reclaim.

**Recommendation 2: Assure claims paid to Authority C are supported by valid income eligibility applications or direct certification letters.**

We agree. We continue to enhance our internal control policies and procedures by enhancing our edit checks that are built into our data system and by requiring more specificity in our compliance letters from the schools.

**Recommendation 3: Follow-up on Authorities where Department reviews have identified Program deficiencies to ensure that corrective action was taken.**

We agree. We have already conducted additional reviews in Authorities A, B, and C since the Comptroller's visits. We are concerned that you observed a principal at school 1 in Authority A inappropriately completing income eligibility applications. The Department supports your referral of matters to the Comptroller's Investigation's Unit for review and referral to law enforcement agencies and looks forward to learning the results of their investigation. The Department addressed the issues and ensured all appropriate corrective actions were taken. We conduct follow-up reviews on 25 percent of those authorities that had critical findings. Authorities selected for the site review follow-ups are those with the most egregious financial findings.

**Recommendation 4: Audit the remaining six Authorities that also received grant funds from OCFS and which we did not audit to confirm their Program payments are appropriate and supported.**

We agree, and will conduct more extensive required monitoring reviews of the remaining six authorities when they are scheduled for their next required Coordinated Review Effort (CRE). The Child Nutrition team does not have certified auditors on staff. The Department relies on CRE reviews, reports of fraud, waste, and abuse, as well as edits on our system to identify areas that warrant more attention.

If you have any questions regarding this response, please contact Frances O'Donnell, Coordinator Child Nutrition Program Administration at (518) 474-3921.

Sincerely,



Theresa E. Savo

Enclosure

c: John B. King  
Frances O'Donnell  
James Conway

**From:** Dechelle Johnson  
**To:** Frances O'Donnell; James Conway  
**Date:** 11/30/2009 3:35 PM  
**Subject:** Draft Response-Comptroller's Audit  
**Attachments:** Response to State Comptroller Audit 11-24-09.doc

Attached is Fran's response to the audit conducted by the comptroller's office.

Thank you!

Please see the email below to Fran from John Magnarelli, Child Nutrition Director of USDA's Boston office.

On 7/28/2008 John Magnarelli wrote:

Fran: This is in response to your July 15, 2008 question concerning applications verified by New York State (NYS) Comptroller auditors. The Richard B. Russell National School Lunch Act (NSLA), in section 9(b)(3)(d)(iii), limits the number of applications that can be verified to the percentages specified for each of the sample size alternatives. For example, the standard sample size is 3%/3,000 sample there is no authority to increase the verification sample size beyond the statutory limits. Therefore, additional verification conducted by the comptroller's auditors is not authorized under the NSLA. Because there is no authority to increase the verification sample size beyond the statutory limits, the NYS Comptroller's office cannot require the NYSED or any LEA to conduct additional verification.

If there was suspected fraud then additional review techniques can be under taken after approval is granted by our office.

Based on the information provided to us, we cannot determine if there is application fraud. In order for us to determine if there is the possibility of fraud, we would have to examine the documentation that led the auditors to pull the Food Stamp (FS) applications for verification, the methodology used to select the applications and the process used to verify the applications. Once the examination of these records is complete, we can determine what further actions can be taken.

JM



## State Comptroller's Comment

1. In response to our draft report, Department officials state that they cannot recoup the majority of our recommended recovery as it relates to invalid Food Stamp or TANF numbers. They assert that they do not have the authority to validate those numbers, and incorrectly approved applications do not by themselves generate reimbursement. Department officials cite an e-mail from a United States Department of Agriculture (USDA) representative as support for their position. In addition, they note that they do not have the specific names of the children necessary to follow up on our recommendation.

We conclude that Department officials have incorrectly interpreted our report findings and support for our recommended recovery. Our recommended recovery considers many factors including incomplete or missing eligibility applications, no evidence of meals provided, and/or reimbursement to schools at unsupported rates. We initially provided the specifics for our findings to Department officials during our field work. As courtesy, based on the Department's response, we have supplied them with an additional copy of those specifics. In addition, we note that the e-mail supplied to us by Department officials representing the comments of the cited USDA representative addresses allowable sample sizes for audit purposes.