

# AUDIT REPORT



CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
BUREAU OF FINANCIAL AUDIT  
**WILLIAM C. THOMPSON, JR., COMPTROLLER**

## **Audit Report on the Department of Education's Administration of the Pupil Transportation Retainage Fiduciary Account**

*FM06-106A*

**June 16, 2006**



THE CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
1 CENTRE STREET  
NEW YORK, N.Y. 10007-2341

WILLIAM C. THOMPSON, JR.  
COMPTROLLER

**To the Citizens of the City of New York**

Ladies and Gentlemen:

In accordance with the responsibilities of the Comptroller contained in Chapter 5, §93, of the New York City Charter, my office has audited the administration of the Pupil Transportation Retainage fiduciary account by the Department of Education.

The Pupil Transportation Retainage fiduciary account retains funds withheld by the Department from payments to school bus companies to ensure their fulfillment of contract obligations. The retained amounts, plus earned interest, are disbursed to the vendors at the end of the school year. We audit accounts such as this to ensure that public funds held in trust for a particular purpose are accounted for and used as intended.

The results of our audit, which are presented in this report, have been discussed with Department officials, and their comments have been considered in preparing this report. Their complete written response is attached to this report.

I trust that this report contains information that is of interest to you. If you have any questions concerning this report, please e-mail my audit bureau at [audit@Comptroller.nyc.gov](mailto:audit@Comptroller.nyc.gov) or telephone my office at 212-669-3747.

Very truly yours,

A handwritten signature in cursive script that reads "William C. Thompson, Jr.".

William C. Thompson, Jr.

WCT/fh

**Report: FM06-106A**  
**Filed: June 16, 2006**

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*The City of New York  
Office of the Comptroller  
Bureau of Financial Audit*

**Audit Report on the  
Department of Education's Administration of the  
Pupil Transportation Retainage Fiduciary Account**

**FM06-106A**

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**AUDIT REPORT IN BRIEF**

The audit determined whether the Department of Education (Department) accurately accounts for revenues and expenses of the Pupil Transportation Retainage fiduciary account and ensures that all funds are used in accordance with the fiduciary agreement and Comptroller's Directive #27.

Fiduciary accounts are used to record financial resources held and administered in trust by the City of New York. In 1995, the Department established the Pupil Transportation Retainage fiduciary account in connection with its provision of school bus transportation to eligible students. The Department's Office of Pupil Transportation (Pupil Transportation) is responsible for monitoring vendor performance in accordance with school bus contracts and the fiduciary account. At the end of the school year, if the Department determines that a vendor has adequately fulfilled its contract obligations, the retained amount plus interest earned is withdrawn from the fiduciary account and disbursed to the vendor. During Fiscal Year 2005, \$19.4 million was deposited in the account and \$16.2 million was disbursed to vendors. The reported fund balance as of November 18, 2005, was \$21.2 million.

**Audit Findings and Conclusions**

The Department accurately accounted for the Pupil Transportation Retainage fiduciary account revenues and expenses and ensured that funds were used in accordance with the fiduciary agreement. However, the Department failed to properly reconcile the fiduciary account as required by Comptroller's Directive #27, which states that fiduciary accounts "must reconcile to the information maintained within the City of New York's Financial Management Systems (FMS)." As a result, the account contained \$3,071,833 in excess funds on June 30, 2005, that should have been remitted to either the City's general fund or to various vendors. Our review attributed the excess funds to the following:

- \$1,426,018 that was erroneously transferred to the fiduciary account from the City's general fund.
- \$1,292,931 that should have been transferred from the fiduciary account to the City's general fund.
- \$352,884 that should have been disbursed to 24 vendors (which consists of \$10,841 for 13 vendors whose contracts have either been assigned or opted to provide a letter of credit; and \$342,043 for 11 vendors that are possibly out of business).

Further, Comptroller's Directive #27, which became effective August 15, 2003, states, "Fiduciary Accounts should not be used to account for retainage withheld from contractors. Retainage should be accounted for using the retainage functionality of the FMS." Therefore, the Department should reconcile, then terminate the fiduciary account and transfer the remaining balance to the City's general fund.

### **Audit Recommendations**

To address these issues, we recommend that the Department should:

- Transfer \$1,292,931 to the City's general fund.
- Disburse to the appropriate vendors \$10,841 (consisting of \$3,767 for vendors whose contracts have been assigned to others and \$7,074 for vendors providing letters of credit).
- Attempt to find vendors that may no longer be in business and remit to them \$342,043 in account funds. In the event that these vendors cannot be found, the Department should seek legal opinion to determine whether these funds should be remitted to the City's general fund.
- Reconcile, and then terminate, the fiduciary account. Ensure that retainage funds are accounted for under FMS. If needed, seek assistance from the Comptroller's Bureau of Accountancy for guidance on how to account for retainage using FMS.

## INTRODUCTION

### **Background**

Fiduciary accounts are used to record financial resources held and administered in trust by the City of New York. The principal and income of these accounts are intended to benefit individuals, private organizations, or other non-City government entities. The Comptroller's Office, in conjunction with the City's Office of Management and Budget (OMB), establishes fiduciary accounts at the request of various organizations, including City agencies and public corporations. Organizations must submit an authorizing document (i.e., fiduciary agreement, City Council resolution, or contract) to the Comptroller's Office indicating the specific purpose for opening the account and must ensure that the funds in the account are being used for the specific purpose.

In August 1995, the Department established the Pupil Transportation Retainage fiduciary account in connection with its provision of school bus transportation to eligible students. Transportation for both special and general education students is currently delivered by 53 separate contractors between the Department and various school bus vendors. Pupil Transportation is responsible for monitoring vendor performance in accordance with school bus contracts and the fiduciary account, as well as for ensuring that students receive safe, clean, and reliable transportation to and from school.

To ensure that vendors provide adequate service under their contracts, vendors must either provide the Department a performance bond that is secured by funds withheld ("retainage") by the Department from its payments to those bus companies, or must furnish a letter of credit.<sup>1</sup> Of the 53 vendors, 33 chose to have retainage withheld and maintained in the interest-bearing fiduciary account.<sup>2</sup> At the end of the school year, if the Department determines that a vendor has adequately fulfilled its contract obligations, the retained amount plus interest earned is withdrawn from the fiduciary account and disbursed to the vendor. During Fiscal Year 2005, \$19.4 million was deposited in the account and \$16.2 million was disbursed to vendors. The reported fund balance as of November 18, 2005, was \$21.2 million.<sup>3</sup>

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<sup>1</sup> Vendor contracts state that companies forgoing the withholding of retainage should "provide a confirmed, irrevocable Letter of Credit from an acceptable financial institution equal in value to ten percent of the annual contract value."

<sup>2</sup> Payments to bus vendors are made from the City's general fund, and the amount retained is deposited into the fiduciary account. Retainage is either 5 percent or 10 percent of the contract amount. If the vendor chooses 5 percent, retainage is deposited in the account for the first 10 months; if the vendor chooses 10 percent, retainage is deposited for the first five months.

<sup>3</sup> The \$21.2 million fund balance includes Fiscal Year 2005 retainage that will be disbursed during Fiscal Year 2006.

## **Objectives**

Our audit objectives were to determine whether the Department:

- accurately accounts for revenues and expenses of the Pupil Transportation Retainage fiduciary account; and
- ensures that all funds are used in accordance with the fiduciary agreement and Comptroller's Directive #27.

## **Scope and Methodology**

This audit covered the period July 1, 2004, to June 30, 2005. To achieve our audit objectives, we reviewed the fiduciary agreement and Comptroller's Directive #27, "Fiduciary Accounts Procedures for Requesting, Controlling and Monitoring." To understand the terms with which vendors must comply, we obtained and reviewed the Department's standard bus transportation contract. We also interviewed the following:

- Pupil Transportation officials concerning the purpose of the fiduciary account and to become acquainted with the process for withholding retainage and the internal controls for account fund receipts and disbursements. Our understanding of the internal controls was documented in a flowchart and written narratives;
- Representatives of the Department's Division of Financial Operations (DFO) concerning how funds are deposited in the fiduciary account and how earned interest is allocated; and
- Pupil Transportation Compliance Unit officials, to gain an understanding of the calculation of retainage and the factors used in determining whether the amount retained will be disbursed to the vendors at the end of the school year.

To verify the account balance and check the accuracy of account deposits and disbursements, reports obtained from the City's FMS were reviewed as was correspondence between Pupil Transportation and DFO regarding the transfer of funds from the City's general fund to the fiduciary account. This correspondence was used to reconcile each vendor's total monthly retainage with the total amount deposited in the fiduciary account.

To verify that the amount authorized for release to the vendors was indeed the amount paid, we reviewed an Excel spreadsheet obtained from Pupil Transportation and copies of checks made payable to each vendor.

As the audit's focus was on receipts and disbursements from the fiduciary account, we relied on figures generated by the Department's FAMIS accounting system. These figures were essential in calculating the total retainage on the accounts payable worksheets. Therefore, to determine the reliability of the amounts reported on the worksheets and Pupil Transportation

spreadsheets, we selected a random sample of 20 of the 33 vendors that have retainage withheld. (The “Statistical Sampling System” program was used to select the sample.) The retainage amount for each vendor was then calculated using the worksheets and comparing them to Pupil Transportation’s calculation of total deposits. After determining that the documents were reliable, retainage for the remaining vendors was recalculated using the same methodology.

Finally, to assess Pupil Transportation’s stated reasons for not disbursing retained funds to certain vendors, we reviewed supporting documentation to determine whether the vendor or the City was the rightful owner of the withheld funds.

This audit was conducted in accordance with generally accepted government auditing standards (GAGAS) and included tests of records and other auditing procedures considered necessary. This audit was performed in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

### **Discussion of Audit Results**

The matters covered in this report were discussed with Department officials during and at the conclusion of this audit. A preliminary draft report was sent to Department officials and discussed at an exit conference held on May 16, 2006. On May 18, 2006, we submitted a draft report to those officials with a request for comments. A written response was received on June 1, 2006.

In their response, Department officials agreed with the audit’s findings and described the steps that will be taken to address the recommendations. The full text of the response from the Department is included as an addendum to this report.



## **FINDINGS**

The Department accurately accounted for the Pupil Transportation Retainage fiduciary account revenues and expenses and ensured that funds were used in accordance with the fiduciary agreement. However, the Department failed to properly reconcile the fiduciary account, as required by Comptroller's Directive #27. As a result, the account contained \$3,071,833 in excess funds on June 30, 2005, that should have been remitted to either the City's general fund or to bus vendors. Further, since August 15, 2003, when Comptroller's Directive #27 became effective, retainage should no longer be held in a fiduciary account but should be accounted for using the retainage capability of FMS. Therefore, the Department should reconcile, then terminate the fiduciary account and transfer the remaining balance to the City's general fund.

These issues are discussed in the following sections of this report.

### **Fiduciary Account Not Reconciled**

The Department failed to properly reconcile the fiduciary account as required by Comptroller's Directive #27, which states that fiduciary accounts "must reconcile to the information maintained within FMS." As a result, the account contained \$3,071,833 in excess funds on June 30, 2005, that should have been remitted to either the City's general fund or to various vendors. Properly ensuring that monthly account reconciliations are conducted is an important internal control. Our review attributed the excess funds to the following:

- \$1,426,018 that was erroneously transferred to the fiduciary account from the City's general fund.
- \$1,292,931 that should have been transferred from the fiduciary account to the City's general fund.
- \$352,884 that should have been disbursed to 24 vendors.

These matters are discussed in greater detail below.

### **\$1.4 Million in Funds Erroneously Transferred**

The Department erroneously transferred an additional \$1.4 million from the general fund to the fiduciary account. The Comptroller's Office brought this matter to the attention of Department officials in a February 7, 2006 letter, which directed the Department to re-transfer the duplicate funds to the general fund. (See Appendix I for a copy of the letter.) On February 27, 2006, the Department acknowledged the erroneous transfer and stated that "a correcting journal entry is awaiting the Comptroller's approval to reverse the duplicate transaction." (See Appendix II for the Department's response.) The Comptroller's Office approved the adjusting journal entry to reverse the duplicate transfer on March 17, 2006. Additional correspondence

from the Comptroller's Office on March 21, 2006, further addressed the Department's lack of internal controls in this matter. (See Appendix III for a copy of the letter.)

### **\$1.3 Million in Funds Not Transferred to the General Fund**

The Department neglected to transfer \$1,292,931 from the fiduciary account to the general fund. Department records indicated that \$927,896 of this amount was inadvertently maintained in the account because the Department failed to comply with the rules governing the fiduciary account, which require that funds "be withdrawn and returned to the bus companies with the interest earned at the end of the school year." In addition, Directive #27 states that fiduciary accounts "are maintained and controlled by the City agency that requests their establishment. Complete files . . . must reconcile to the information maintained within FMS." Had the Department reconciled the account on a regular basis, it would have found a large outstanding balance that should have been previously remitted to the appropriate vendors or to the general fund.

In addition, \$365,035 of the \$1,292,931 was actually non-retainage funding that should have been transferred to another Departmental fiduciary account that was closed in Fiscal Year 2003, whose balance was supposed to be transferred to the general fund.<sup>4</sup> According to Comptroller's Directive #27, "there is no commingling of unassociated resources in the account."

Accordingly, the Department should immediately transfer a total of \$1,292,931—\$927,896 and \$365,035—to the City's general fund.

### **Vendors Owed \$352,884**

The rules governing the fiduciary account require that retainage plus accrued interest be withdrawn from the account and disbursed to vendors after contract obligations are fulfilled. Department records indicated that 24 vendors whose account balances total \$352,884 are no longer carrying out contract obligations as follows:<sup>5</sup>

- 5 vendors, whose account balance totals \$7,074, have chosen to provide a letter of credit instead of retainage;
- 8 vendors, whose account balances total \$3,767, have assigned their contracts and all moneys due or to become due to other vendors; and

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<sup>4</sup> The Department administered six fiduciary accounts to temporarily deposit funds pending the outcome of a lawsuit between the City and pupil transportation carriers regarding Consumer Price Index (CPI) rates. After the City prevailed in the lawsuit all six accounts were closed and the funds transferred to the general fund's miscellaneous revenue account.

<sup>5</sup> Of the 24 vendors, 6 were included in the list of 53 vendors that currently have contracts with the Department. The contracts for 18 other vendors were terminated prior to the scope period of this audit.

- 11 vendors, whose account balances total \$342,043, have apparently gone out of business.

As far as the vendors that have assigned their contracts to others are concerned, the Department's consent to assignment of a contract states, "It is, therefore, recommended that consent be given to [*name of assignor*] upon due assumption of the obligations of the contract by [*name of assignee*], to assign to [*name of assignee*], as set forth above, the rights, title and interest in and to the aforementioned contract, together with all monies due or to become due thereunder."

Accordingly, the Department should immediately disburse to the appropriate vendors \$10,841. This amount consists of \$3,767 for assignee vendors and \$7,074 for vendors providing letters of credit. For those vendors that are no longer in business, the Department should attempt to find them and remit to them \$342,043. However, if these vendors are in fact not extant, the Department should seek legal opinion to determine whether the associated account funds should be transferred to the City's general fund.

#### **Fiduciary Account Should Be Terminated**

Comptroller's Directive #27, which became effective August 15, 2003, states, "Fiduciary Accounts should not be used to account for retainage withheld from contractors. Retainage should be accounted for using the retainage functionality of the City of New York's Financial Management Systems (FMS)." Therefore, the Department should reconcile, then terminate the fiduciary account and transfer the remaining balance to the City's general fund. Moreover, as noted in Comptroller's Directive #27, retainage funds should be accounted for under FMS.

## RECOMMENDATIONS

The Department of Education should:

1. Transfer \$1,292,931 to the City's general fund.

**Department Response:** "The Department of Education (DOE) agrees that the funds not attributable to a particular contractor and funds held as collateral should be transferred to the general fund. The amount to be transferred will be finalized at the upcoming DOE/Comptroller meeting expected in June 2006."

2. Disburse to the appropriate vendors \$10,841 (consisting of \$3,767 for vendors whose contracts have been assigned to others and \$7,074 for vendors providing letters of credit).

**Department Response:** "The DOE will ensure that disbursements to the affected vendors (13) will be made if no other amounts are due."

3. Attempt to find vendors that may no longer be in business and remit to them \$342,043 in account funds. In the event that these vendors cannot be found, the Department should seek legal opinion to determine whether these funds should be remitted to the City's general fund.

**Department Response:** "The DOE will ensure that disbursements to the affected vendors will be made if no other amounts are due."

4. Reconcile, and then terminate, the fiduciary account. Ensure that retainage funds are accounted for under FMS. If needed, seek assistance from the Comptroller's Bureau of Accountancy for guidance on how to account for retainage using FMS.

**Department Response:** "The Office of Pupil Transportation has reconciled the differences within the Trust and Agency account and should be able to close out the balances in this account by the end of the first quarter of Fiscal Year 2007. However, closing the fiduciary account is contingent on the following factors: a) the posting of interest by the NYC Comptroller's Office; b) DOE verification of vendor compliance to all parts of the contracts; c) resolution of final payments either to vendors who may no longer be in business or the City's general fund (per Recommendation #3); and d) Comptroller assistance in determining how to utilize the general fund in FMS to accrue interest for retainage accounts."

"As stated in Recommendation #1 we expect to meet with Comptroller representatives in June 2006, at which time we will review fiduciary account transaction details and develop a procedure to implement this audit recommendation."



Greg Brooks  
DEPUTY COMPTROLLER  
POLICY, AUDITS, ACCOUNTANCY & CONTRACTS

THE CITY OF NEW YORK  
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February 7, 2006

The Honorable Joel Klein, Chancellor  
Office of the Chancellor  
Department of Education  
52 Chambers Street, Room 320, B4  
New York, NY 10007

Dear Chancellor Klein:

As you are aware, on November 29, 2005, my office began an audit of the Pupil Transportation Retainage fiduciary account. This account was established to retain a percentage of funds (retainage) from payments owed to bus companies under contract with the Department of Education (Department). These deposits are made on a monthly basis to ensure performance. At the end of the school-year, once it has been determined that these bus companies have performed as required, the funds with interest should be paid to the bus companies. As of February 3, 2006, the fiduciary account had a balance of approximately \$5.9 million.

Although the audit is not complete, I want to bring a matter to your attention so that you may take appropriate action now rather than waiting for the completion of the audit. Specifically, our reconciliation of Department records and the City's Financial Management System (FMS) indicates that transfer of \$1,426,018 has been authorized twice by your Department, which resulted in a duplicate transfer of funds from the General Fund to the fiduciary account. According to FMS, the Department authorized two transfers of \$1,426,018 on March 15, 2005, and March 29, 2005.

I recommend that \$1,426,018 be transferred back to the City's General Fund. Please advise Ms. Faige Hornung, Director of Financial Audit, of the actions you plan to take with regard to this matter. Should additional matters arise during the course of this audit that warrant your prompt attention, I will advise you accordingly.

Yours truly,

  
Greg Brooks

cc: Brian Fleischer, Auditor General, Department of Education  
Nader Francis, Director, External Audit Services, Department of Education  
Susan Kupferman, Director, Mayor's Office of Operations  
George Davis, Mayor's Office of Operations  
Faige Hornung, Director of Financial Audit, NYC Comptroller's Office



## THE NEW YORK CITY DEPARTMENT OF EDUCATION

JOEL I. KLEIN, *Chancellor*

Kathleen Grimm, Deputy Chancellor for Finance and Administration

February 27, 2006

Honorable Greg Brooks  
Deputy Comptroller for  
Policy, Audits, Accountancy & Contracts  
NYC Office of the Comptroller  
One Centre Street  
New York, NY 10007-2341

Dear Mr. Brooks:

Thank you for your recent letter which brought to our attention the interim audit finding involving a duplicate transfer to the City's fiduciary account of pupil transportation funds held in retainage pursuant to the Department's contracts with our bus companies. Our own investigation confirms there was a duplicate journal entry which transferred \$1.4 million from the City's general fund to its fiduciary fund.

As your auditors may know, this transfer was approved by the Comptroller's Office on March 29, 2005 in spite of edits in the City's FMS system which are designed to prevent such duplicate transactions in the event the same document number is used. However, in this case one document number for the transaction excluded an underscore symbol (" \_ ") while another document number, with the same amount and numbering, included it.

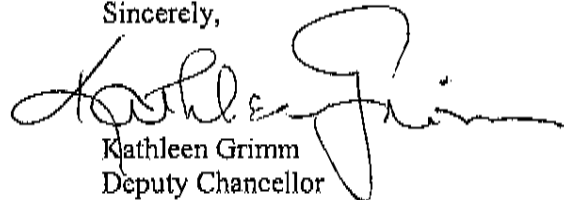
Apparently, staff overlooked the underscore and the approving Comptroller staff relied on the FMS edits for preventing duplicated transactions which led the approver to believe the second transaction was, indeed, a separate one.

Presently, a correcting journal entry is awaiting Comptroller approval to reverse the duplicate transaction approved on March 29<sup>th</sup>.

To preclude this error from recurring, we are standardizing our numbering schema for all journal vouchers in FMS. Furthermore, because of your prompt reporting we are immediately investigating any potential interest overpayments which could have been made to eligible bus companies from the duplicate transfer.

If you require additional assistance during the course of your audit please contact Brian Fleischer, Auditor General, at 718-935-4928.

Sincerely,



Kathleen Grimm  
Deputy Chancellor

c: Joel I. Klein  
Bruce Feig  
Marty Ostreicher  
Brian Fleischer

Nader Francis  
Susan Kupferman, Mayor's Office of Operations  
George Davis, Mayor's Office of Operations  
Faige Hornung, NYC Comptroller's Office



John Graham  
DEPUTY COMPTROLLER  
AUDITS, ACCOUNTANCY & CONTRACTS

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March 21, 2006

Ms. Kathleen Grimm  
Deputy Chancellor for Finance and Administration  
Department of Education  
52 Chambers Street  
New York, NY 10007

Dear Deputy Chancellor Grimm:

Thank you for promptly responding to Deputy Comptroller Greg Brooks's February 7, 2006 letter and acknowledging that a duplicate journal entry by the Department of Education (Department) resulted in the transfer of \$1.4 million from the City's general fund to the Pupil Transportation retainage fiduciary account. I am pleased that the Department will be implementing measures to preclude the recurrence of that error and will investigate any potential interest overpayments that may have resulted from the duplicate transfer.

Nevertheless, I am concerned by certain statements in your February 27, 2006 response. Specifically, the response states that the transfer "was approved by the Comptroller's Office." While the Comptroller's Office processes agency requests for fund transfers, a June 17, 2002 Financial Management System Bulletin clearly states that "approval does not imply that the entry is correct as far as accuracy of codes or purpose of entry." The bulletin also states, "It is the responsibility of the agency to have the appropriate documentation to support all JV/EA (i.e., journal voucher/expense adjustment) entries."

In addition, your response incorrectly infers that the transfer should have been avoided because of "edits in the City's FMS system which are designed to prevent such duplicate transactions." Indeed, FMS will not accept duplicate transactions; however, FMS will accept entries with unique document identifiers. The entry that Department staff submitted excluded an underscore symbol that was part of the correct document identifier, thus presenting FMS with a new, unrecognized document and enabling the transfer.

Finally, the duplicate transfers were uncovered by auditors from the Comptroller's Office almost one year after the entries were incorrectly made by Department staff. This oversight leads me to question whether the Department has adequate internal controls to ensure that it conducts monthly reconciliations of fiduciary accounts, as required by the Comptroller's Accounting Directives.

Accordingly, I request that you instruct Department staff to adhere to proper accounting procedures as outlined in FMS Bulletins and Comptroller's Directives to ensure that fiduciary accounts are properly reviewed and reconciled.

Thank you for your attention to these matters.

Yours truly,



John Graham

cc: Brian Fleischer, Auditor General, Department of Education  
Nader Francis, Director, External Audit Services, Department of Education  
Susan Kupferman, Director, Mayor's Office of Operations  
George Davis, Mayor's Office of Operations  
Faige Hornung, Director of Financial Audit, New York City Comptroller's Office





# THE NEW YORK CITY DEPARTMENT OF EDUCATION

JOEL I. KLEIN, *Chancellor*

OFFICE OF THE DEPUTY CHANCELLOR

Kathleen Grimm, Deputy Chancellor for Finance and Administration  
52 Chambers Street, Room 320 - New York, New York 10007  
(212) 374-0209 (Voice) (212) 374-5588 (Facsimile)

June 1, 2006

John Graham  
Deputy Comptroller for Audits, Accountancy & Contracts  
NYC Office of the Comptroller  
1 Centre Street  
New York, NY 10007-2341

Re: Draft Audit Report on the Department  
of Education's Administration of the Pupil  
Transportation Retainage Fiduciary Account  
(FM06-106A)

Dear Mr. Graham:

This letter, together with the attached Audit Implementation Plan (AIP) Forms, represents the New York City Department of Education's response to the findings and recommendations made in the aforementioned New York City Comptroller's Draft Audit Report.

As the report positively concludes, the Department accurately accounted for the pupil transportation fiduciary account revenues and expenditures for retainage contractually withheld from school bus providers and had ensured those funds were used in accordance with the fiduciary agreement. However, we recognize the recordkeeping deficiencies that were not in compliance with the Comptroller's Directive 27 for controlling and monitoring fiduciary accounts.

As a result of our prior correspondence, I have initiated procedural changes within the Department to improve internal controls over the review and reconciliation of our existing fiduciary accounts. Further, as noted in the attached AIP forms, our offices are working together to close out these accounts pursuant to Directive 27's requirement to discontinue utilizing the City's Fiduciary Fund to withhold retainage and instead use the City's General Fund via retainage functionality in FMS. You will note the termination of the transportation fiduciary account is contingent primarily upon the finalization of payments either to transportation vendors who may no longer be in business or to the City's General Fund, as well as resolution from your staff on how to account for accrued interest in FMS through the General Fund.

Thank you for this opportunity to respond. If you have any questions regarding this audit please contact Marty Oestreicher, CEO of the Office of School Support Services at (718) 707-4300 or Vincent Giordano, Executive Director of the Division of Financial Operations at (718) 935-3521.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen Grimm", written over a horizontal line.

Kathleen Grimm

Attachments

C: Joel Klein  
Kristen Kane  
Michael Best  
Jeff Shear  
Marty Oestreicher  
Susan Olds

Vincent Giordano  
Brian Fleischer  
Mary Coffey  
Nader Francis  
Lawrence Weintraub  
Candido Magnaye

Nadine Brown  
Peggy Wu  
John Wall  
Maria Conklin  
Patrick Toner

Audit Implementation Plan Form C

NEW YORK CITY DEPARTMENT OF EDUCATION  
OFFICE OF AUDITOR GENERAL  
External Audit Services

PAGE 1 OF 4

RESPONSE DATE: May 23, 2006

AUDIT TITLE: Audit Report on the Department of Education's Administration of the Pupil  
Transportation Retainage Fiduciary Account

AUDITING AGENCY: NYC Office of the Comptroller

DIVISION: Financial Operations / Pupil Transportation

DRAFT REPORT DATE: May 17, 2006

AUDIT NUMBER: FM06-108A

**C. RECOMMENDATION WHICH THE AGENCY  
AGREES WITH BUT IS PENDING IMPLEMENTATION**

1. Transfer \$1,292,931 to the City's general fund.

**RESPONSE TO RECOMMENDATION**

The Department of Education (DOE) agrees that the funds not attributable to a particular contractor and funds held as collateral should be transferred to the general fund. The amount to be transferred will be finalized at the upcoming DOE/Comptroller meeting expected in June 2006.

**TARGET IMPLEMENTATION DATE**

July 7, 2006

**RESPONSIBILITY CENTER**

Division of Financial Operations  
Office of Pupil Transportation

Signature: Vincent A. Giordano

Print Name: Vincent A. Giordano

5/23/06  
Date

Audit Implementation Plan Form C

NEW YORK CITY DEPARTMENT OF EDUCATION  
OFFICE OF AUDITOR GENERAL  
External Audit Services

PAGE 2 OF 4

RESPONSE DATE: May 23, 2006

AUDIT TITLE: Audit Report on the Department of Education's Administration of the Pupil  
Transportation Retainage Fiduciary Account

AUDITING AGENCY: NYC Office of the Comptroller

DIVISION: Financial Operations / Pupil Transportation

DRAFT REPORT DATE: May 17, 2006

AUDIT NUMBER: FM06-106A

**C. RECOMMENDATION WHICH THE AGENCY  
AGREES WITH BUT IS PENDING IMPLEMENTATION**

2. Disburse to the appropriate vendors \$10,841 (consisting of \$3,767 for vendors whose contracts have been assigned to others and \$7,074 for vendors providing letters of credit).

**RESPONSE TO RECOMMENDATION**

The DOE will ensure that disbursements to the affected vendors (13) will be made if no other amounts are due.

**TARGET IMPLEMENTATION DATE**

July 7, 2006

**RESPONSIBILITY CENTER**

Office of Pupil Transportation

Signature: 

Print Name: Martin Oestreicher

5/31/06  
Date

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**C. RECOMMENDATION WHICH THE AGENCY  
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3. Attempt to find vendors that may no longer be in business and remit to them \$342,043 in account funds. In the event that these vendors cannot be found, the Department should seek legal opinion to determine whether these funds should be remitted to the City's general fund.

**RESPONSE TO RECOMMENDATION**

The DOE will ensure that disbursements to the affected vendors will be made if no other amounts are due.

**TARGET IMPLEMENTATION DATE**

October 2, 2006

**RESPONSIBILITY CENTER**

Office of Pupil Transportation  
Division of Financial Operations  
Office of Legal Services

Signature

Print Name:

*Martin Oestreicher*

*5/31/06*  
Date

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**C. RECOMMENDATION WHICH THE AGENCY  
AGREES WITH BUT IS PENDING IMPLEMENTATION**

4. Reconcile, and then terminate, the fiduciary account. Ensure that retainage funds are accounted for under FMS. If needed, seek the assistance from the Comptroller's Bureau of Accountancy for guidance on how to account for retainage using FMS.

**RESPONSE TO RECOMMENDATION**

The Office of Pupil Transportation has reconciled the differences within the Trust and Agency account and should be able to close out the balances in this account by the end of the first quarter of Fiscal Year 2007. However, closing this fiduciary account is contingent on the following factors: a) the posting of interest by the NYC Comptroller's Office; b) DOE verification of vendor compliance to all parts of the contracts; c) resolution of final payments either to vendors who may no longer be in business or the City's general fund (per Recommendation #3); and d) Comptroller assistance in determining how to utilize the general fund in FMS to accrue interest for retainage accounts.

As stated in Recommendation #1 we expect to meet with Comptroller representatives in June 2006, at which time we will review fiduciary account transaction details and develop a procedure to implement this audit recommendation.

**TARGET IMPLEMENTATION DATE**

October 2, 2006

**RESPONSIBILITY CENTER**

Division of Financial Operations

Signature: Vincent A. Gordanis  
Print Name: Vincent A. Gordanis

5/31/06  
Date