

H. CARL McCALL
STATE COMPTROLLER



A.E. SMITH STATE OFFICE BUILDING
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

July 31, 2000

Mr. Richard Mills
Commissioner
State Education Department
Education Building
Albany, NY 12234

Mr. Peter J. Keitel
President
Higher Education Services Corporation
99 Washington Avenue
Albany, NY 12255

Re: The Betty Owen School, Ltd.
Report 99-T-5

Dear Mr. Mills and Mr. Keitel:

According to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution, Article II, Section 8 of the State Finance Law and a Memorandum of Agreement dated December 1, 1989 involving the State Comptroller, the Commissioner of Education, the President of the Higher Education Services Corporation (HESC), and the Director of the Budget, we audited the records and procedures used in administering the Tuition Assistance Program (TAP) at The Betty Owen School, Ltd. (Betty Owen) for the 1996-97 through 1998-99 academic years.

Summary Conclusions

In accordance with Section 665(3)(b) of the Education Law (Law), we determined that Betty Owen was overpaid \$2,222,943 because school officials incorrectly certified students as eligible for TAP awards. We tested the accuracy of Betty Owen's TAP certifications for the three years ended June 30, 1999 using a statistical sample of 200 randomly selected awards of the 1,477 awards the school certified. From our statistical sample, we disallowed 179 awards totaling \$314,973. A statistical projection of these audit disallowances to the entire population, using a 95 percent single-sided confidence level, resulted in an audit disallowance of \$2,222,943. Therefore, we recommend that HESC recover a total of \$2,222,943 plus applicable interest from Betty Owen.

Background

Betty Owen is a not-for-profit registered business school located in New York City. Founded in 1965, the school offers programs in business-related fields. Betty Owen offers two 1500-hour programs - the Administrative Assistant (AA) and the Automated Office Assistant (AOA) - that are approved by the State Education Department (SED) as TAP-eligible.

TAP is the largest of the various student grant and scholarship programs administered by HESC. It is an entitlement program designed to provide tuition aid to eligible full-time students who are enrolled in a variety of programs.

We provided draft copies of the matters included in this report to SED, HESC and Betty Owen officials for their review and comment. We have considered their comments in preparing this report. SED and HESC officials agreed with the conclusions in this report. However, subsequent to the issuance of our draft report, the Betty Owen school closed. Betty Owen officials did not respond to the draft report. The school officials' comments in this report refer to the response Betty Owen officials offered to the preliminary audit. Further, since the school closed, we are not including our draft audit report recommendation to SED officials to ensure that Betty Owen complies with the various requirements cited in this report and our draft audit report recommendation to HESC officials to ensure that the school posts the students' TAP awards on a timely basis.

In Betty Owen's response to the preliminary audit, officials disagreed with many of our conclusions. In addition they raised concerns that auditors may have unnecessarily communicated with SED officials privately to gain interpretations of various TAP requirements. School officials believe that there is sufficient criteria in print to make further interpretations unnecessary. Further, Betty Owen believes that SED's guidance may be wrong and that auditors may have operated contrary to Section 665(3)(b) of the Law by seeking advice from SED. Additionally, Betty Owen states that by accepting SED's guidance, auditors may have been predisposed about the audit results before the audit began. These concerns are without merit. We communicate with SED on most TAP audits that we do. Further, this type of communication is called for in the Memorandum of Agreement. The section of the Law that Betty Owen cites simply authorizes auditors to audit institutional adherence to the statutes, rules and regulations. Seeking SED guidance on interpreting such criteria does not violate the Law, but is a standard part of our auditing procedures. The concern dealing with a predisposed opinion on the audit is inaccurate. We obtain background information from SED on all audits. This information includes the schools chart of satisfactory academic progress, the listing of SED registered programs, lists of teacher licenses and any site visit reports. What Betty Owen is trying to portray as sinister is only our standard practice for establishing the criteria we use to audit against.

Audit Scope

The objective of our financial and compliance audit was to determine whether Betty Owen management complied with the Law and the Commissioner of Education's Rules and Regulations (Regulations) for certifying students as eligible for TAP awards. The scope of our audit did not include reviewing the records and procedures of HESC as they relate to determining the amount of the awards.

According to HESC's records, Betty Owen officials certified 1,477 TAP awards totaling \$2,557,319 paid on behalf of 802 students during the three academic years ended June 30, 1999. We reviewed a statistical sample of 200 randomly selected awards totaling \$349,910 paid during that period.

We did our audit according to generally accepted government auditing standards. Such standards require that we plan and do our audit to adequately assess those operations of Betty Owen which are included within our audit scope. These standards also require that we review and report on Betty Owen's internal control system and its compliance with those laws, rules and regulations that are relevant to Betty Owen's operations and are included in our audit scope. An audit includes examining, on a test basis, evidence supporting transactions recorded in the accounting and operating records and applying such other auditing procedures as we consider necessary. An audit also includes assessing the estimates, judgments and decisions made by management. We believe that our audit provides a reasonable basis for our findings, conclusions and recommendations.

In planning and doing our audit of Betty Owen, we reviewed management's internal control system. Our audit was limited to a preliminary review of the internal control system to obtain an understanding of the environment and the flow of transactions through the accounting system and other systems supporting the claims for students' financial aid.

Betty Owen's management is responsible for complying with the Law and the Regulations. In connection with our audit, we performed tests of Betty Owen's compliance with certain provisions of the Law and the Regulations. Our objective in performing these tests was to obtain reasonable assurance that the TAP awards Betty Owen received were for eligible students. Our objective was not to provide an opinion on Betty Owen's overall compliance with the Law and Regulations.

The results of our tests indicate that, with respect to the items tested, Betty Owen was generally not in compliance with the provisions of the Law and Regulations relating to students' TAP eligibility, as noted in the following section of this report.

Audit Disallowances

The following table summarizes the disallowances that resulted from our audit.

<u>Reason for Disallowance</u>	<u>Number of Awards</u>	<u>Amount</u>	<u>Total</u>
<u>Disallowances Relating to Students Who Did Not Graduate</u>			
Students Not Full Time	157	\$279,252	
Students Not Following an Approved Program	95	161,929	
Students Not Matriculated	30	52,171	
TAP Not Posted	5	8,735	
Students Not in Good Academic Standing	4	7,876	
<u>Disallowances Relating to Students Who Graduated</u>			
1,440 Hour Requirement Not Met	61	106,937	
Core Requirement Not Met	<u>61</u>	<u>107,770</u>	
Total Audit Disallowance	413	724,670	
Less: Disallowances for Multiple Reasons	<u>234</u>	<u>409,697</u>	
Net Audit Disallowance	<u>179</u>	<u>\$314,973</u>	
Projected Amount			<u>\$2,222,943</u>

The various types of disallowances are discussed in the following sections of this report. The students' names and related information were provided to Betty Owen officials separately.

Disallowances For Students Who Did Not Graduate

The following disallowances relate to students who have not graduated from Betty Owen. These students are attending or have discontinued their academic careers.

Students Not Full Time

Criteria - Section 661 of the Law requires that a student be in full-time attendance, as defined by the Commissioner, to be eligible for financial aid awards. Section 145-2.1 of the Regulations states that, in non-collegiate programs, which measure study in terms of instructional hours, full-time study requires a minimum of 24 instructional hours a week. SED has advised us that any course hours that are not offered in an educationally sound manner are not counted toward determining a student's full-time status.

There are various sections of the Law, Regulations and guidelines that determine whether hours were offered in an educationally sound manner. For instance:

- ! Section 5002 of the Law requires registered business schools to employ only teachers licensed by SED. Hours taught by unlicensed teachers are not counted toward determining a student's full-time status.

- ! Part 126.4 of the Regulations states that schools should ensure that student enrollment does not exceed the approved student-teacher ratio after the first week of instruction. Hours taught when the class exceeds the approved student-teacher ratio are not counted toward determining a student's full-time status.
- ! SED Informational Policy Memorandum 75, which defines an educationally appropriate individualized instruction program, limits to three the number of different courses a licensed business teacher may teach at one time, in one classroom, in his or her license area. Hours offered when more than three courses in the same classroom are taught by the same teacher at the same time are not counted toward determining a student's full-time status.

Audit Determination - Betty Owen certified 157 TAP awards for 143 students who did not meet full-time attendance requirements. We determined that:

- ! 130 students were taught by teachers who were not licensed for these courses;
- ! 32 students were enrolled in classes that were taught by teachers who were teaching more than three courses simultaneously;
- ! 12 students were in classes where the student-teacher ratios had exceeded the SED-approved ratios; and
- ! three students were not enrolled for any classes during the sample term.

Some students were counted twice because their awards were disallowed for multiple reasons.

School Officials' Position - School officials contended that, since every Betty Owen student is required to attend 24 hours per week, every student meets SED's definition of a full-time student.

Auditors' Comment - Regardless of how many hours students are required to attend, we found that Betty Owen did not offer students 24 hours of instruction per week in a manner that met the above referenced criteria. SED has informed us that hours not taught in an educationally sound manner are not counted toward a student's full-time requirement.

Students Not Following an Approved Program

Criteria - Section 661 of the Law requires that only students matriculated in an approved program are eligible for student financial assistance.

Audit Determination - Betty Owen certified 95 TAP awards for 84 students who were enrolled in programs that were not approved by SED and were, therefore, not eligible for TAP. The two TAP-eligible programs were originally approved, but the approvals lapsed effective April 21,

1997. On March 3, 1999 SED approved the AOA program effective February 23, 1998. On February 23, 1999 SED approved the AA program effective February 23, 1998.

School Officials' Position - Betty Owen officials responded that they were never notified by SED that their curricula were not approved. School officials submitted a chronology consisting of numerous pieces of documentation to show the curricula were approved. Also, school officials stated SED visited the school numerous times and corresponded with school officials on many issues during the time when the curricula were not approved, and did not comment about their teaching an unapproved curricula. Betty Owen officials state that SED provided evidence that the curricula were approved, and that an SED employee also provided verbal acknowledgment that the programs were approved. Further, school officials stated that, if the programs were not approved, SED should have stepped in to offer students a procedure to use to complete their programs. Further, Betty Owen officials responded that retroactive approval of the curricula is a violation of the Regulations unless the approval is made retroactive to the date the approval was lost. Lastly, school officials stated that HESC receives a listing from SED of registered programs and since HESC awarded TAP to students at Betty Owen, the programs must have been approved.

Auditors' Comments - SED provided us a copy of the letter dated May 19, 1997 that it sent to Betty Owen which notified the school that, since certain issues had not been resolved by April 21, the curricula were not approved effective April 21, 1997. SED approved the new curricula effective February 23, 1998 when, in SED's opinion, the school had met these requirements. While the documentation provided by Betty Owen included many approvals, such as approval of the school quarters, approval of the school's eligibility for veteran benefits for its students (if the programs were approved by SED) and others, none addressed curricula approval. Regarding SED's alleged failure to notify Betty Owen officials that the curricula were not approved during site visits, school officials knew that SED staff were on site expressly to resolve areas of noncompliance which would allow SED to approve Betty Owen programs. Extensive technical and substantive problems at the school required SED staff to visit the school a number of times to work with Betty Owen officials. Among the problems was the unapproved curricula. Section 5002(4) of the Law requires that the Commissioner approve curriculum for registered business schools. While the Law and Regulations are silent on the authority of the Commissioner to grant retroactive approval, the Law and Regulations does not prohibit it either. SED has indicated that it has authority to grant retroactive approval to a date that SED determines the school to be in substantive compliance.

HESC does not receive information from the institutions about which curricula a student a student enrolls in as part of the TAP application. Rather, HESC relies on the school to certify for TAP eligibility only those students who are enrolled in an approved program, as specified in the participation agreement between HESC and the school.

Students Not Matriculated

Criteria - Section 5002 of the Law requires that, to be admitted to a registered business school, students must possess a high school diploma or its equivalent or demonstrate the ability to benefit (ATB) from instruction. In the case where a student does not possess a high school diploma or its equivalent, certification of the student's ability to benefit from instruction must be provided to the Commissioner of SED. Also, Section 5004 of the Law requires that no one may enroll any student for instruction unless he or she is a salaried employee of the school and has secured a private school agent's certificate from SED. Section 126.7 of the Regulations requires that the enrollment agreement indicate the name and certificate number of the enrollment agent responsible for procuring, soliciting or enrolling the student. Further, it states that the student confirms the name of the agent by signing the agreement.

Additionally, Section 145-2.4 of Regulations states: "A student shall be considered in matriculated status if:

1. The student has filed a written application for enrollment at the institution for the purpose of earning a degree, diploma or certificate; and
2. In accepting the student's application for enrollment, the institution has taken into account the capacity of the student to undertake a course of study and its own capacity to provide instructional and other support the student needs to complete the program."

Section 52.2 of the Regulations requires that the admission of students should be determined through an orderly process using published criteria which shall be uniformly applied. Betty Owen's published entrance requirements for its AA program state that an applicant must possess either a high school diploma or its equivalent or pass an ATB test. The requirements for its AOA program state that an applicant must possess either a high school diploma or its equivalent.

Audit Determination - Betty Owen certified 30 TAP payments for 24 students who were not properly matriculated.

- ! Eighteen had failed the required entrance exams. In these cases, we found that some incorrect answers had been changed by the grader to correct answers and the score had been changed from a non-passing score to a passing score.
- ! Four students were not enrolled by a licensed agent. In two instances, there was no agent listed on the enrollment agreement; in the other two instances, the agent listed was not licensed.
- ! One student did not meet published admission criteria for the AOA program in that she did not have the required high school diploma or general equivalency diploma.

! Betty Owen was not able to locate one student's file.

School Officials' Position - Regarding the 18 students who failed the entrance exam, school officials responded that the auditors do not have the authority to question the validity of the examination. They criticized the action of disallowing TAP payments for students whose examination sheets reveal erasure marks. Also, school officials noted that, "Approximately 70 percent of the students that take the ATB examination fail. This percentage is consistent with or lower than other similar schools administering similar examinations." Lastly, they responded that every Betty Owen officer will provide an affidavit specifying that no Betty Owen employee was involved in altering the test scores in any way.

For the four students who were enrolled without the use of a licensed enrollment agent, school officials responded that there is no law or regulation requiring that an admission's representative sign the enrollment agreement. They further responded that these representatives occasionally are assigned after the student has signed the enrollment agreement. The school officials stated that in both instances where we noted that the agent was not licensed that the agents had been assigned after the execution of the documents. In a third instance where there was no agent listed, school officials responded that the enrollment agreement was signed by the authorized signatory, the former school director.

School officials did not respond to our finding regarding the student whose files did not have the required high school diploma or GED.

Auditors' Comments - We are not questioning the validity of the entrance exam the 18 students took, but the veracity of the exam scoring. The testing service changed certain answers for these 18 from incorrect to correct and changed the final score to show a passing score. While students will make mistakes and change answers on an exam, we found that it was not only wrong answers that had been erased. Failing scores had also been erased and changed to passing scores. The school director signed certifications attached to the students' answer sheets and should have seen these alterations. Our position is not that Betty Owen officials themselves altered the exams, but that they admitted students to the school and certified them for TAP on the basis of the altered exams that changed a failing grade to a passing grade.

Regarding the four students whose enrollment agreements were either not signed by an enrolled agent or were signed by an unlicensed agent, the Regulations require that the enrollment agreement be completed, dated and signed by both an authorized agent of the school and the student prior to the time instruction begins.

TAP Not Posted

Criteria - Section 2205.3(e) of the Regulations requires that each student's account be credited with his or her TAP award within seven days from the date a full tuition liability has been incurred for the semester, quarter or term of attendance.

Audit Determination - Betty Owen certified five awards which were paid to the school on behalf of five students. However, these awards were not credited to the students' accounts.

School Officials' Position - With regard to three students whose TAP awards were earned but not applied timely, school officials responded the three students were terminated after incurring tuition liability but having never completed financial aid applications. The students later enrolled at other schools and filled out the required forms thus generating the HESC approval for TAP payments to Betty Owen. By the time the school received the TAP awards for these students the students' files were in storage. Officials retrieved the files from storage and posted the payments. Betty Owen officials agreed with our findings for two students whose TAP awards were not posted.

Auditors' Comments - At the time of our audit, the TAP awards were not posted to the students' accounts.

Students Not In Good Academic Standing

Criteria - Section 126.4 of the Regulations states that any student who has been absent for more than 20 percent of the total number of instructional hours offered during the first half of the student's program has not maintained satisfactory academic standing.

Audit Determination - Betty Owen certified four TAP payments for four students who did not maintain good academic standing because they had been absent for more than 20 percent of the time

School Officials' Position - School officials responded since one of the four students graduated on time with a cumulative average of 89 percent, they question our conclusion that these four did not meet good academic standing.

Auditors' Comment - School officials did not dispute our conclusion, but rather emphasized that the students graduated and maintained a high academic average. Students who complete the program on time do not necessarily meet good academic standing in each term. These four students had more than 20 percent absences. This is defined in the Regulations as not meeting good academic standing.

Disallowances Relating to Students Who Graduated

General Requirements

Registered business schools must follow requirements established in Law, Regulations and SED guidelines to ensure that their course hours are taught in an educationally sound manner. The criteria for educationally sound is included in the full-time section above. Course hours which are not taught in compliance with these requirements do not count toward total hours offered the student when calculating a student's full-time status for TAP eligibility. To determine our TAP

disallowance for each student, we reviewed the school's attendance registers to calculate the number of hours students were not taught in an educationally sound manner. For the students who graduated, we determined whether the school offered a program which met the minimum 1,440 hour requirement established in Section 145-2.3 of the Regulations and whether the core courses were taught in an educationally sound manner. We disallowed the TAP awards of students who graduated without being offered the 1,440 hours or without being taught core course requirements in an educationally sound manner.

1,440 Hour Requirement Not Met

Criteria - Section 601.4 of the Law requires that students attending a registered business school be enrolled in an approved two-year program to be eligible for a TAP award. Section 145-2.3 of the Regulations defines an approved program as one that provides at least 1,440 instructional hours and is approved under Section 126 of the Regulations. A program's TAP eligibility is lost if the total number of instructional hours offered is less than 1,440. SED has established criteria to determine whether deviations from the approved program are serious enough to disqualify hours and cause the program to lose its approval status for TAP.

Audit Determination - Betty Owen certified 61 TAP awards to 51 students who had graduated but were not offered programs of study that provided at least 1,440 approved instructional hours as required under the Regulations. For 26 students, the total number of hours offered were less than the 1,440 hour requirement. For the other 25 students, course hours that were not taught in an educationally sound manner were counted toward the students' 1,440 hour requirement.

School Officials' Position - School officials responded that there is no Law, Regulation or SED requirement that a student attend a school for 1,440 hours. They further responded that every student who enrolls in an SED TAP-approved program has, by definition, enrolled in a 1,440-hour program and has satisfied the HESC requirement.

Auditor's Comments - Section 145-2.3 of the Regulations states that a program's approval depends upon whether 1,440 hours of instruction are offered. The Regulations further state that a program's TAP eligibility is lost if the total number of instructional hours offered is less than 1,440. Course hours not taught in an educationally sound manner do not count toward the 1,440 hour requirement.

Core Requirement Not Met

Criteria - The Commissioner states that a program must be at least 1,440 instructional hours to be approved as a TAP-eligible program. A component of the approved program is a core requirement which is established by SED.

A core course is one which SED has determined provides the most essential skills or competencies needed for students to meet the occupational objectives of the program. SED has

established criteria to determine whether any deviations from the approved program's core requirements are serious enough to cause the program to lose its approved status for TAP purposes.

Audit Determination - We identified 61 TAP awards paid on behalf of 51 students who did not meet curriculum core requirements. In determining whether core requirements were met, we excluded course hours offered in a manner that was not educationally sound as follows:

- ! Awards for 60 students were disallowed due to the use of unlicensed teachers.
- ! Awards for four students were disallowed where the maximum student-teacher ratios approved by SED were exceeded.

Some awards were disallowed for more than one reason.

School Officials' Position - School officials responded that:

- ! "OSC has created a term 'educationally sound manner' which has no meaning or definition in the statute, regulations or directives. OSC has then created a penalty - the discounting of an entire core course - even though there is no statutory or regulatory basis for such actions."
- ! The Education Law requires schools to maintain certain files which include only five items including "the name and address of its faculty, together with a record of the educational qualifications of each." It also requires SED to conduct periodic inspections at the schools. SED visited Betty Owen three times during the period in question. If any violations of any rules and regulations were discovered, SED would have taken action.
- ! Since school directors are responsible for activities of the school, SED would have imposed sanctions on the director if violations had occurred. Not only has SED not imposed any sanctions on Betty Owen's director, SED has re-licensed Betty Owen's former director to be a director of another school.
- ! Nowhere in its eligibility criteria for TAP as published in its Programs, Policies and Procedure Guide does HESC describe a core curriculum requirement or define educationally sound manner.

Auditors' Comments - In the curriculum approval process, schools applying for TAP eligibility must complete an additional form which, along with Core Competency Guideline Charts, show that the curriculum meets certain requirements. These core requirements represent the minimum number of instructional hours that the student must obtain in order to be considered to have mastered the basic competency of the subject. SED worked in conjunction with several business schools to formulate these requirements in 1995.

SED has provided guidance to us that course hours not taught in an educationally sound manner do not count toward hours needed to meet the core curriculum requirement.

The issue of SED sanctions is between SED and the school. We are not aware of the work that SED does during the site visits. The fact that SED did not elect to initiate formal disciplinary action under its authority at this time does not negate the violations we found. SED's discretionary strategy on this matter does not mitigate, excuse or affect the serious nature of the disallowances that were found in this audit.

Finally, SED's program approval lists the core curriculum requirement and not HESC's manual. Further, the Law, Regulations and SED Guidelines are the bases for determining what is an educationally sound manner.

Other Matters

Tuition Waived

Criteria - Each educational institution in New York State determines its tuition rates. The institution's tuition charge is a major component in calculating the amount of TAP awards students receive. Students generally receive more TAP money if the school's tuition is high.

Audit Determination - We found that, in all cases, any tuition charges not paid by TAP were waived by the school and that all 177 sampled students had some part of their tuition waived. The dollar value of these waivers ranged from \$56 to \$ 6,580. During the three years included in our audit, Betty Owen charged these 177 students a total of \$1,081,153 in tuition of which \$314,251 (29 percent) was waived.

School Officials' Position - School officials did not formally respond to this finding.

ATB Examination

Criteria - Section 52.2 of the Regulations requires that the admission of students be determined through an orderly process using published criteria which is uniformly applied. Betty Owen's published entrance requirements for its Administrative Assistant (AA) Program state that an applicant not possessing either a high school diploma or its equivalent must pass an ATB test.

Audit Determination - We examined actual test sheets of students who had successfully passed the ATB exam in order to be admitted to the AA Program. We noted that eighteen students had failed the required entrance exams. However, we found that some of the incorrect answers had been changed by the grader to correct answers in order to allow the students to pass. Further, the students' failing grades on the entrance exam were changed to show a passing score that corresponded to the changes made to the altered answer sheet.

School Officials' Position - School officials responded to this issue in the response to the matriculated section.

Auditors' Comments - Auditors' comments to this issue are included in the matriculated section.

Recommendation to the Higher Education Services Corporation

Recover the \$2,222,943 plus applicable interest from The Betty Owen School, Ltd. for its incorrect TAP certifications.

Major contributors to this report were Kenneth I. Shulman, Peter Chin, Yelena Feldman and Erica Mezich.

We wish to express our appreciation to the management and staff of The Betty Owen School, Ltd. for the courtesies and cooperation extended to our auditors during this audit.

Yours truly,

Jerry Barber
Audit Director

cc: Anthony Buffalano
Charles Conaway