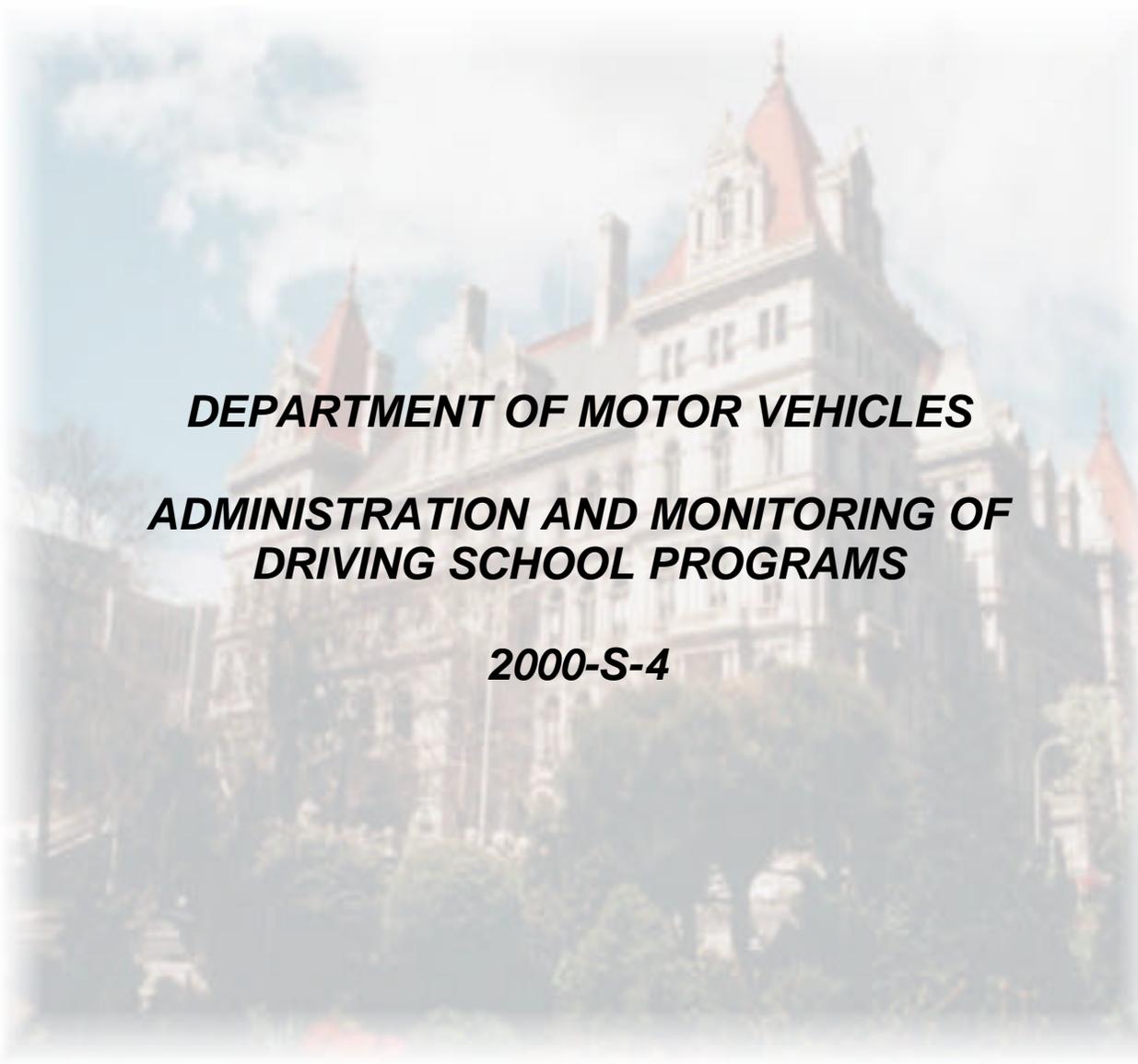


NEW YORK STATE OFFICE OF THE STATE COMPTROLLER

**H. Carl McCall
STATE COMPTROLLER**



***DEPARTMENT OF MOTOR VEHICLES
ADMINISTRATION AND MONITORING OF
DRIVING SCHOOL PROGRAMS***

2000-S-4

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H. Carl McCall
STATE COMPTROLLER

Report 2000-S-4

Mr. Raymond P. Martinez
Commissioner
Department of Motor Vehicles
Swan Street Building, Empire State Plaza
Albany, NY 12228

Dear Mr. Martinez:

The following is our report on the Department of Motor Vehicles' administration and monitoring of driving school programs.

This audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law. Major contributors to the report are listed in Appendix A.

*Office of the State Comptroller
Division of Management Audit
and State Financial Services*

June 20, 2001

Division of Management Audit and State Financial Services

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Executive Summary

Department of Motor Vehicles Administration and Monitoring of Driving School Programs

Scope of Audit

The Department of Motor Vehicles (Department) is responsible for licensing and monitoring privately-owned driving schools that provide services such as a defensive driver training program called the Point Insurance Reduction Program (PIRP); a five-hour class that must be taken by new drivers before they can be licensed to drive (prelicensing program); and on-road driving lessons for commercial and passenger vehicles. According to Department records, there were 682 driving schools as of January 7, 2000.

The Department's Driving School Unit has a staff of five and is responsible for licensing and monitoring the activities of the driving schools. In addition, Motor Vehicle Licensing Examiners (Examiners) assigned to 14 district offices to conduct road tests for those seeking a driver license also make initial on-site visits of driving schools to determine if applicants meet the requirements for initial licensure. They also monitor licensed driving schools for continued compliance with laws and regulations.

Our audit addressed the following questions relating to the Department's administration and monitoring of driving schools for the period January 1, 1998 through June 30, 2000.

- ! Has the Department established an effective system to determine whether applicants for licenses to operate driving schools or provide instruction at such schools meet all licensing requirements?
- ! Does the Department monitor the driving schools that provide the prelicensing courses and PIRP providers to determine whether they continue to comply with all program requirements?

Audit Observations and Conclusions

We found weaknesses in the Department's licensing and monitoring of driving school programs. As a result of licensing weaknesses, the Department is less likely to identify applicants who should not be licensed because of repeated driving infractions or other inappropriate activities. As a result of monitoring weaknesses, the Department is less likely to identify instructors who are not qualified, instructional vehicles that lack the required safety equipment, and driving schools that issue certificates of completion to drivers who did not complete the required instruction or did not pass a qualifying test. We also found that instructor licenses had been issued to individuals with repeated driving infractions, and determined that, at some driving schools, blank certificates of course completion had been pre-signed and qualifying tests had

been incorrectly graded. If the services provided by the driving schools are to be effective and as safe as intended, a number of improvements are needed in the Department's licensing and monitoring practices.

Applicants for a license to operate a driving school or provide instruction at such a school are required to self-report any criminal convictions so that the Department can determine if applicants are appropriate for licensure. However, the Department does not have a system in place for verifying if the applicant provided the needed information. We entered into an agreement with the Division of Criminal Justice Services to obtain criminal history information for a sample of driving instructors and noted that some instructors had criminal convictions that may be inconsistent with the intent of the program. This underscores the need for the Department to have the ability to independently determine whether applicants have a criminal background. (See pp. 5-7)

We also obtained current driving histories for a sample of instructors and noted that 9 instructors had their driving privileges suspended at least one time in the 24-month period prior to the approval of their original application or renewal to be driving instructors. Approval of these applicants is contrary to Department regulations, except at the discretion of the Commissioner, and the reason for such exceptions should be documented. However, there was no indication in the file that the Department had identified and considered these infractions. The driving histories also showed that some instructors have a history of repeated driving infractions. (See pp. 7-10)

In addition, there is a general lack of ongoing monitoring of driving school compliance with Department regulations by the district offices. We made site visits to 20 driving schools and found violations of Department regulations, including lack of evidence that tests had been graded and missing student records. In one of our audit tests, we found indications that unlicensed schools may be in operation. The Department also does not have a system in place to effectively monitor whether PIRP is complying with program regulations. It is also missing an opportunity to coordinate with the Workers' Compensation Board in the monitoring of insurance coverage at driving schools. We found the Department does not conduct site visits to observe course delivery, or collect vital information on the program operations to analyze program performance and to identify potential problems requiring follow up. (See pp. 10-17)

Comments of Department Officials

Department officials agree with most of our recommendations and indicate that many of them have already been implemented.

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Introduction

Background

The Department of Motor Vehicles (Department) administers driving school programs that provide a variety of driver training services to the public through privately-owned driving schools located throughout the State. The New York State Vehicle and Traffic Law established requirements for the Department's oversight of the driving schools and the five-hour prelicensing program. The law addresses registration procedures, required records, school vehicles and training facilities, qualifications and certification of instructors, and conditions for suspension, revocation and refusal to renew licenses. The services offered by the driving schools may include a defensive driver training program called the Point Insurance Reduction Program (PIRP), a five-hour motor vehicle prelicensing class for new drivers (prelicensing program), and on-road driving lessons for commercial and passenger vehicles. New drivers are required to successfully complete the five-hour class to qualify for testing to receive a driver license. According to Department records, there were 682 licensed driving schools as of January 7, 2000, 552 of them provided the five-hour prelicensing course.

The Department provides the certificate forms to the driving schools for issuance. When participants successfully complete the five-hour course, they receive a certificate of completion from the driving school. The certificate of completion is given to the examiner at the road test for a driver license. To receive additional certificates, driving schools submit rosters of persons completing the course to the Department.

The Department's Driving School Unit administers the prelicensing program. The Driving School Unit has a staff of five, and is responsible for licensing and monitoring the activities of the driving schools. In fiscal year 1998-99, 127 Motor Vehicle Licensing Examiners (Examiners) were assigned to the Testing and Investigation Units at 14 district offices. According to Department officials, the Examiners' primary responsibility is to conduct road tests for those seeking a driver license. In addition, they conduct on-site visits of driving schools to determine if applicants for school license meet the initial requirements, and monitor licensed driving schools for continued compliance with laws and regulations. Driving schools that wish to offer the five-hour course must be licensed by the Department.

Under PIRP, the Department also offers motor vehicle accident prevention courses to drivers with the goal of improving highway safety in the State. Drivers who successfully complete a qualifying six-hour course are eligible for a reduction of up to four points on their license and a reduction in their automobile insurance premiums. Part 138, Title 15, of the New York Code, Rules and Regulations, which govern Department programs and activities,

give the Department responsibility with cooperation from sponsoring organizations and delivery agencies for monitoring the six-hour PIRP courses.

The course is provided by ten private, sponsoring organizations that own a motor vehicle accident prevention course approved by the Commissioner. For example, sponsoring organizations such as the American Association of Retired Persons, the American Automobile Association, and the National Safety Council, contract with delivery agencies to conduct the approved courses. These agencies employ instructors to teach the courses. The exact number of delivery agencies for the six-hour course is not known, because the Department does not track this information. Generally, the delivery agencies provide rosters of persons completing the course to the sponsoring organization, which then issues a certificate to the participant to send to his/her insurance company for the premium discount.

Audit Scope, Objectives and Methodology

We audited the Department's driving school programs for the period January 1, 1998 through June 30, 2000. One objective of our performance audit was to determine whether the Department established an effective system to verify that applicants for driving school owners and instructors met all requirements for licensing. Another objective was to determine whether the Department monitors driving schools providing prelicensing courses and providers of defensive driving courses for ongoing compliance with all program requirements.

To accomplish our objectives, we reviewed applicable laws, rules and regulations and interviewed Department officials to identify and understand the procedures performed to license and monitor the driving schools providing the prelicensing and PIRP programs. We reviewed a random sample of Driving School Unit case files – 50 of the 682 driving schools – for evidence that licensing and monitoring procedures were followed. We also reviewed the driving abstracts (history of driving infractions) for 257 instructors from the 50 sampled driving schools to determine whether their driving records met Department requirements. To identify and review the procedures used by district offices to monitor the driving schools, we reviewed a judgmental sample of 4 of the 14 district offices (Albany, Queens, Brooklyn and Long Island) that have monitoring responsibilities. Our sample was based on the number of driving schools that the districts were responsible for and the geographic location. At the four district offices visited, we selected a sample of 120 driving school files (30 from each of the four districts visited) to determine when the last review had been performed by an Examiner. To

determine if driving schools are operating in accordance with the Department's regulations, we selected a sample of 20 driving schools from the 120 selected at the districts – five from each of the four district offices – for site visits. We made our visits along with Department Examiners from the respective district offices. We also reviewed the case files on 39 administrative hearing cases. To determine if unlicensed schools could be operating in the State, we obtained a listing of driving schools advertised in the yellow pages for New York County and compared it to a Department list of licensed driving schools for that borough and reconciled some of the differences.

We also reviewed a judgmental sample of three of the ten sponsoring organizations to determine whether they have procedures for monitoring the delivery agencies, instructors, and course delivery under their auspices.

Comments of Department Officials to Audit

A draft copy of this report was provided to Department officials for their review and comment. Their comments were considered in preparing this final report and are included as Appendix B. Appendix C contains State Comptroller's Notes, which address matters contained in the Department's response.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Department of Motor Vehicles shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

Administration and Monitoring of Driving Schools and the Prelicensing Program

We found that the Driving School Unit files are often missing documentation of the initial application review process and of the site visit reviews by the district office Examiners on which the licensure is based. We also found weaknesses in the application review process. For example, applicants are required to self report any criminal convictions so that the Department can determine if applicants are appropriate for licensure. However, DMV does not have an agreement with the Division of Criminal Justice Services (DCJS) to allow the Driving School Unit to check the validity of the applicant's response. Additionally, until December 1999, there was no procedure to check the driving records of driving school owners and instructors on a periodic basis after their initial licensing. We also note that there is a general lack of ongoing monitoring of driving school compliance with Department regulations by the Driving School Unit and district offices. Therefore, the Department has little assurance that driving schools are in compliance with applicable laws and regulations, that participants are provided a qualified program and safe environment to obtain driving instruction, and that only licensed schools are providing services to the public.

Driving School Unit Licensing and Monitoring

A comprehensive monitoring system is necessary to ensure that driving schools initially meet and continue to comply with applicable laws and regulations. Such monitoring can help confirm that instructors are qualified, that vehicles provided for instruction are insured and have required safety equipment, and that only participants who attend the five-hour class and pass the test receive the certificate.

Part 76 of the Department's regulations and Department policy number 4848 specify the requirements for initial licensing, renewals and monitoring. First, an applicant must receive approval of a school name, and submit an application and other required documentation, such as evidence of workers' compensation insurance. After the application and all supporting documents are received and reviewed, an initial site visit to the driving school must be done by an Examiner from the appropriate district office Testing and Investigation Unit. The purpose of the site visit is to determine if: the approved school name is used; lease agreements allow use of the premises for a driving school; that required signs, such as services available and fees, are posted; and if required records are on hand. The Examiners should also check the classroom for the required size and cleanliness. Site visit reviews are to be performed for original applicants and when a driving school business plans to relocate. The Examiner prepares an investigation report

which is used by the Driving School Unit to approve or deny the application. Applicants that do not initially meet all requirements have an opportunity to correct any deficiencies and be reinspected.

We reviewed Driving School Unit files for 50 of the 682 active schools for documentation supporting the review steps that must be completed during the initial investigation for new applications, renewals and ongoing monitoring. When schools renew their licenses and when changes occur, the case files should contain evidence of current vehicle and workers' compensation insurance and updated driving histories for each instructor and owner.

Our review found that Driving School Unit files did not always contain required documentation of the application review and licensing procedures. The following documentation was missing from the driving school files:

Driving School Case File Review		
Type of Documentation	Missing	
	Number	Percent
Original Application	19	38
Initial Site Visit Report by Examiner	18	36
Log of Current Vehicles	21	42
Proof of Current Registration and Insurance	27	54
Proof of Proper Student Records	7	14
Evidence of Vehicle Inspection for Safety Requirements	8	16

A Driving School Unit official told us that some driving school records were purged to reduce the size of the files as a result of a storage problem. However, they did not know whether the missing records were purged or missing for another reason, such as lost, misfiled or never received. While we understand the need to consolidate files and eliminate unnecessary documentation, care should be taken to ensure that critical forms such as original school applications and original investigation reports are not purged. In addition, there is no procedure to track if current insurance information is submitted by the schools. After we notified the Driving School Unit of the missing documentation, Unit staff contacted the State Workers' Compensation Board (Board) to determine if workers' compensation policies were in effect for four of the schools missing this documentation. Unit staff told us the policies were not in effect and were referred to the Board's Enforcement

Unit for appropriate action. Department officials told us that reviews to determine if driving schools continue to comply with workers' compensation insurance requirements is the responsibility of other agencies.

We agree that the responsibility for monitoring the status of driving schools workers' compensation insurance rests with other agencies. However, we believe there is an opportunity for the Department to cooperate with the Board to periodically determine whether driving schools are in compliance with insurance requirements. The use of data sharing among agencies is consistent with technology policy 96-19, issued by the Governor's Office of Technology. The use of computers to check whether licensed driving schools have current workers' compensation insurance policies could save time and resources by both the Board and the Department. The Board maintains computerized records of workers' compensation insurance. By periodically running a computer match of driving school information against Board insurance files, the Department could assist the Board to determine whether driving schools are in compliance with this important requirement.

Driving and Criminal Records of Driving School Owners and Instructors

Department regulations state that an applicant whose driver license or driving privileges have been suspended or revoked in any state within the 24-month period prior to the date of application will not be issued an instructor's certificate or license renewal, except at the discretion of the Commissioner. The Department can also refuse to issue a license for other reasons such as an owner or instructor convicted of a felony or certain other crimes, as well as where the licensee has made a material false statement or concealed a material fact in connection with his application for a license or a renewal. Applicants for new and renewed instructor licenses are required to self-report any driving convictions, and both owners and instructors must self-report criminal convictions.

Driving School Unit procedures require verification of the applicant's reported driving history to Department records to ensure that the applicant accurately reported their driving history and to determine whether their driving history is in compliance with the required qualifications. Part 76 of the Department's regulations states that instructor certificates will only be issued to persons whose driving records qualify them as instructors in the operation of motor vehicles as determined by the Commissioner. Although the regulations allow the Department some discretion as to whether a license may be granted, it does not provide specific guidance. We found that the Driving School Unit did not have a standardized, written methodology for making decisions on whether to approve or deny a license to an applicant with driving convictions, based on the number, age and seriousness of the infractions or when an applicant falsely indicates that they have not been

convicted of a driving infraction. As a result, the Driving School Unit staff use their judgment as to whether an applicant with convictions should be licensed or not. Without a standard procedure to guide the Driving School Unit staff on these decisions, there is less assurance that they treat applicants with driving convictions fairly and consistently.

We examined 50 driving school files for driving instructor applications to determine if the Department had investigated any irregularities and to determine how the Department decided whether an applicant with driving convictions should be licensed or not. We found that the supporting documentation such as a copy of a driving history was often not in the case files. The Driving School Unit does not require that a copy of driving histories that it checks be placed in the files, and as a result, staff follow different practices. For example, one staff member puts a copy of the driving history in the files, while another staff marks the application to indicate that the driving history was checked. We therefore could not determine whether all driving histories had been checked.

We obtained driving histories for the 257 instructors from our sampled driving schools. We found that 9 instructors had their driving privileges suspended at least one time in the 24-month period prior to the approval of their original application or renewal to be driving instructors. Such approval is contrary to Department regulations, except at the discretion of the Commissioner. The reason for such exceptions should always be documented. However, there was no evidence in the file that the Department had identified and considered these infractions.

The driving histories also showed that some instructors have a history of repeated driving infractions that appear to be inconsistent with the intent of the driving program. We found that 14 of the 257 certified instructors had their driving privileges suspended or revoked five or more times since obtaining a driver license. Additionally, six instructors had ten or more suspensions or revocations, and one instructor had 30 suspensions or revocations. We question whether these patterns of repeated driving infractions are consistent with the goal to instruct new drivers in the safe operation of a motor vehicle. We found no indications that the Driving School Unit staff noted and considered these patterns of infractions in the license or renewal process.

In December 1999, the Department implemented a procedure, called License Event Notification Service (LENS), to continuously check instructors' and owners' driver licenses for infractions. All licensed instructors and owners were added to this process. We did not test the effectiveness of this system

because it was new. However, during a review of the process, we noted there was no procedure in place for adding owners or instructors licensed after LENS was started. We brought this to the attention of Department officials who subsequently informed us that they are taking steps to address this issue.

Applicants are also required to report criminal convictions on their application. Criminal history information is maintained by the Division of Criminal Justice Services (DCJS). However, the Department does not have access to DCJS's information to check the accuracy of the information on the application, or to determine if an applicant has a criminal history that is inconsistent with receiving a license to instruct classes or own a driving school. Department officials told us they cannot arrange for access to obtain criminal history information from DCJS because it is not allowed under the law.

To determine whether any of the sampled instructors may have committed crimes, we arranged to obtain information for the 257 instructors for our review. We found that 46 of the 257 instructors were identified by name and/or social security number on the DCJS criminal history file. Of the 46 cases, 14 had convictions at the time of our review, as follows:

- ! two had violent felonies;
- ! one had a violent felony plus three drug felonies, one "other" felony, and two drug misdemeanors;
- ! one had an "other" felony;
- ! one had a drug misdemeanor; and
- ! nine had other misdemeanors.

The remaining 32 had no dispositions entered at the time that our test was conducted. Since the results we obtained are not based on a fingerprint match, they cannot be considered positive matches. However, these results mean that there is an increased risk that some instructors licensed by the Department do not possess the qualities desirable under the intent of the program and could pose a safety risk to the citizens that patronize them. We believe that these results provide sufficient evidence to warrant the Department to work with DCJS to seek legislative authorization or other administrative mechanisms to establish a procedure or to check the criminal

backgrounds of persons applying for a license as a driving school owner or instructor.

District Office Monitoring of Driving Schools

Monitoring of licensed driving schools provides reasonable assurance that they are continuously complying with the regulations regarding areas such as instructor qualifications, classroom size and cleanliness and current insurance policies. This monitoring should include periodic visits to the driving schools to determine that course certificates are only issued for classes held and unused ones are not pre-signed, and that rosters are signed by instructors on the date the class was held to attest that the applicants completed the class. The review should also check whether records are kept for each student showing specific services and dates of services provided, that a ledger book (a record of driving school transactions such as receipts taken in and payments made, and certificates issued) is kept and is up-to-date, and that tests are accurately graded, that the answer key is correct, and blank copies of tests are not marked to designate correct answers.

We visited four district offices (Albany, Queens, Brooklyn, and Long Island) to review their procedures for monitoring driving schools. These offices were selected based on the number of driving schools under their jurisdiction and their geographic location. We selected a sample of 120 driving school files (30 from each of the four districts) to determine when the last review was done by an examiner. We found that for all the schools in our sample, the most recent reviews were done between December 1996 and March 1997.

The lack of more timely and ongoing reviews appears to be due to several factors. First, the Department does not have a policy for how often site visit reviews should be done after the school is initially licensed. Department officials told us that reviews other than the original review are only performed if there is a complaint, a change of address or ownership, the school is adding a branch, or when a school is suspected of being noncompliant. Second, officials at two district offices told us the Examiners' primary duty is to give road tests and they do not have sufficient resources to visit the driving schools. Department officials told us that the examiners spend about 70 percent of their time on road tests. Monitoring driving schools must be done during the remaining 30 percent of their time, along with other responsibilities including bus carrier investigations, private service bureau investigations, and problem driver re-examinations.

Also, driving schools that are found to be in violation of the regulations can appeal the violation by asking for an administrative hearing. Department officials told us that the hearing process often results in the Department's

cases being thrown out because it is difficult for them to gather sufficient evidence to win the case, due to a lack of staff. In addition, the examiners that do the investigation are expected to present their own case in the hearing, but they are inexperienced when it comes to presenting a case in a court setting.

Department officials also told us that even when the Department wins the case, the penalties imposed are not an effective deterrent. The schools or instructors know that even the severest penalties of license suspension or revocations are not a deterrent because the Department does not actively monitor to ensure that the school does not continue to operate. Additionally, instructors from the suspended school can continue teaching at another school without detection.

To determine whether the driving schools are operating in accordance with the Department's regulations, we selected 20 of the 120 sampled at the districts (five from at each of the four district offices). We visited the 20 driving schools accompanied by a Department Examiner to determine if schools were complying with the following requirements:

- ! grading of tests;
- ! security over unused course completion certificates;
- ! class rosters were properly signed and dated for each class;
- ! student records cards were kept;
- ! receipt books were properly maintained and up to date; and
- ! required signs, driving school license and hours of operation were properly posted.

During our site visits we identified a number of exceptions, for which the examiners issued violation notices. Details regarding the exceptions are shown in Exhibit A.

The most serious violations we noted are pre-signed blank certificates of course completion, incorrectly graded tests, and lack of evidence that tests had been graded at all. Pre-signed certificates could be used by individuals that did not actually complete the course and are susceptible to unauthorized use, theft or being sold. We found problems with the grading of exams at five schools. At one school, we found no evidence that tests had been graded; at another school the score was not indicated on the tests; and at three schools, blank tests had markings that identified the correct answers. This suggests that the participant may not have completed the course or did not successfully complete it and was assisted in passing the test by the course instructor. These types of problems could result in people receiving credit for successfully completing the course when they actually have not. We

believe these problems are at least partially due to the lack of ongoing monitoring by the Department's examiners.

During our visits to the district offices, we also reviewed security over certificates. We found that the Albany district office did not maintain an inventory over books nor require a roster be turned in before an additional book was requested and issued by a driving school. By not maintaining adequate controls over books on hand and used, the books are subject to loss and unauthorized use without the Department's knowledge.

Unlicensed Schools

All driving schools in the State are required to be licensed. However, the Department does not have a specific procedure to routinely check for unlicensed schools and to take enforcement actions against them. To determine if unlicensed schools could be operating, we obtained a listing of driving schools advertised in the May 2000 yellow pages for New York County and compared it to a Department list of licensed driving schools for that borough. We compared the two records and identified 11 schools that may not have been licensed. When we checked the license status with the Driving School Unit, we found that none of the 11 schools had an active license nor were they listed as applying for one. One of the schools had previously been licensed, but the license was revoked. We then attempted to locate and visit 5 of the 11 schools in May 2000. At three locations we found indications of an operating driving school, such as signs and advertisements. However, no one at these three businesses would speak to us concerning a driving school. We could not find the two remaining schools.

Department officials agreed that there are indications of unlicensed schools operating and have been frustrated in their efforts to address them. However, they stated that to prove that a person is operating illegally, the Examiners have to take steps to gather sufficient evidence such as posing as potential students, paying for a class and taking it, or attempt to purchase a certificate and actually receiving a certificate from the suspect school. They told us that this takes considerable time, that they have insufficient staff resources to follow up on each reported case and that these tasks are not within the scope of Examiner duties or training. Until recently the penalties imposed for unlicensed operation had a maximum of \$100, which Department officials claim is too low to be a deterrent. They further told us that even though current regulations increase the maximum penalties to \$1,000, the enforcement of these penalties will continue to be very difficult. Enforcing payment is very difficult because the Department does not have the threat of license revocation as leverage against the operators. Department officials also told us that even when cases are investigated, they have found that District Attorneys are reluctant to devote their limited staff resources to

prosecute unlicensed driving schools rather than more severe crimes. Despite these difficulties, the Department should, at a minimum, retain records of potentially unlicensed driving schools that are reported to them or that they otherwise become aware of, and of any investigative efforts that are taken and of referrals to law enforcement agencies.

Recommendations

1. Implement procedures to require documentation of driving school licensure and monitoring to be retained.
2. Develop computerized methods such as automatic notification or computer matches to monitor driving school insurance policies for workers' compensation.
3. Develop and implement written, standardized methodologies to provide guidance for consistent decisions on initial licensing and renewal based on owners' and instructors' driving histories. Also, evaluate the need to establish a threshold for the number of suspensions or revocations at which time a license will no longer be granted.

Recommendations (Cont'd)

4. Implement a procedure to add new owners and instructors to LENS and to remove those who do not renew their licenses.
5. Seek the appropriate authority and work with DCJS to develop a process that will allow the Department to check criminal backgrounds of applicants for owner and instructor licenses. Include criteria for license approval and denial to promote consistent decisions.
6. Develop and implement a policy for ongoing monitoring of driving schools including the frequency and content of required site visits.
7. Determine whether sufficient resources have been allocated to monitoring driving schools based on the workload demands. Develop a tracking system of violations and other problems noted at the driving school and use this information to determine the extent of monitoring devoted to each driving school.
8. Improve the effectiveness of the hearing and enforcement process. At a minimum, provide training to Examiners in areas such as evidence gathering, sufficiency of evidence, and the preparation of hearing cases. Provide assistance of legal staff in hearing case preparation and presentation of cases at the hearings. Review current enforcement tools to determine if they are a deterrent against noncompliance.
9. Review district office security and record keeping over certificates and take action to correct any deficiencies noted.
10. Develop and implement specific procedures to help Examiners to identify and detect unlicensed schools and to refer them to appropriate authorities for enforcement actions. For example, implement a procedure to follow up on all complaints from licensed schools about unlicensed schools.

Administration and Monitoring of the Point Insurance Reduction Program

The Insurance Law (Section 2336) establishes the Point Insurance Reduction Program (PIRP) and charges the Department with responsibility for monitoring the accident prevention courses. Additionally, the Department established regulations which require the sponsoring organizations and delivery agencies to cooperate with the Department in monitoring adherence to the course requirements contained in the regulations. The regulations state that the monitoring will encompass the following:

- ! the classroom facility - to insure the safety and comfort of the participants;
- ! program delivery - to ensure adherence to approved curriculum and that participants receive a complete, well-run course; and
- ! professional assessment of the instructor's presentation - to insure the highest quality of instruction and as a means of achieving its purpose of reducing highway fatalities, injuries and property damage.

The Department has the ultimate responsibility for ensuring that only drivers who complete an approved course conducted by an approved instructor can receive point and insurance reduction credit.

We found that the Department does not effectively monitor PIRP activities and compliance with program regulations. The Department does not have a system to directly monitor the activities of the sponsoring organizations, delivery agencies or instructors in the classroom. For example, the Department does not:

- ! conduct site visits to review activities of the sponsoring organizations or delivery agencies or to observe course delivery; or
- ! have a procedure to collect vital information on the program operations to analyze program performance and to identify potential problems requiring follow up. For example, the Department does not capture the number of delivery agencies, delivery agents instructors, participants for each sponsoring organization or information on delivery agencies or instructors suspended or terminated by the sponsoring organizations. At the time of our review, the only instructor-related information on file with PIRP was an instructor listing for 1998.

The main reason for the lack of monitoring since 1995, is the Department's decision to act on proposed program monitoring changes. At that time, the Department issued a memorandum to the sponsoring organizations stating that it would no longer approve PIRP delivery agencies, instructors and classroom facilities. The sponsoring organizations were informed that the Department was transferring this responsibility to them. The current PIRP supervisor told us that prior to 1996, the program had 13 field investigative staff who monitored compliance with program objectives. However, the field staff were reassigned to other functions leaving him as the only program staff, which is insufficient staff to perform in-depth monitoring of the sponsoring organizations, instructors and classroom facilities.

The Department also proposed changes to its regulations for the program designed to make them more consistent with the policy changes to shift more of the responsibility for monitoring the program from the Department to the sponsoring organizations. For example, the proposed regulations call for all delivery agency applications and instructor applications to be reviewed and approved by a sponsoring organization, not by the Department. Under the current regulations, sponsoring organizations must submit applications for all delivery agencies and instructors to the Department.

On May 31, 2000, the proposed regulations were finalized. However, prior to the regulations being finalized the Department did not continue to monitor the program even though it was still responsible for monitoring the program according to the existing regulations. Furthermore, after delegating responsibility for program monitoring to the sponsoring organizations, the Department has not conducted oversight activities to determine if the sponsoring organizations have monitored the delivery agencies, instructors and classroom facilities as required by the Department's 1995 policy memorandum.

To determine if the sponsoring organizations have procedures to monitor the delivery agencies, instructors and course delivery under their auspices, we reviewed a judgmental sample of three of the ten sponsoring organizations. They were selected based on the number of participants served. We could not determine the extent of oversight and monitoring by one sponsoring organization because it refused to cooperate with us or answer our questions.

At the two other sponsoring organizations we found both had procedures for monitoring their delivery agents and instructors, including site visits to training classes. However, they did not perform ongoing monitoring of instructor course delivery beyond the second review. Officials from both sponsoring organizations told us they believe the Department should not have stopped monitoring of course delivery. The lack of monitoring by the sponsoring organizations and the Department, presents a risk that courses may not comply with the regulations and it will not be detected.

The absence of a monitoring system, could result in a Department that is not aware of how the accident prevention courses are operating, who the instructors are, or the extent of course oversight activities by the sponsoring organizations. Therefore, the Department has little assurance that the courses are being delivered in compliance with the regulations by qualified instructors. The absence of a comprehensive monitoring system increases the risk that people who do not take the class or complete a qualifying class could receive insurance premium discounts or point reductions they are not eligible for.

Recommendations

11. Reassess the resources allocated to PIRP and determine remedies for developing a comprehensive monitoring system. Work with sponsoring organizations to establish a monitoring system based on a shared responsibility and identify the monitoring procedures to be performed by the Department and the sponsoring organizations.
12. Develop procedures and systems to capture important program information to enable effective monitoring of program operations.

VIOLATIONS FOR SAMPLED DRIVING SCHOOLS VISITED					
Description of violations	District Office				
	Albany	Brooklyn	Hauppague	Queens	Total
Completion certificates presigned	1	1	0	0	2
Student records missing or out of date	1	2	1	0	4
Ledger not maintained or out of date	1	1	2	1	5
Receipts not issued properly	1	1	0	1	3
Test answer key not available	0	1	0	2	3
Tests not graded or graded incorrectly	1	3	0	1	5
Signs	1	1	1	0	3
License not visible	0	1	0	0	1
Office hours not posted	3	1	3	0	7
Total Violations	9	12	7	5	33

Exhibit A

Major Contributors to This Report

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STATE OF NEW YORK
DEPARTMENT OF MOTOR VEHICLES
EMPIRE STATE PLAZA
ALBANY, NY 12228

RAYMOND P. MARTINEZ
Commissioner

GREGORY J. KLINE
Deputy Commissioner For Administration

March 21, 2001

Ms. Carmen Maldonado
Audit Director
Office of the State Comptroller
Division of Management Audit & State Financial Services
123 Williams Street – 21st Floor
New York, NY 10038

Dear Ms. Maldonado:

We have received and carefully reviewed the draft audit on the Administration and Monitoring of Driving School Programs (2000-S-4). We find that this audit supplements our understanding of critical monitoring system control points and addresses improvement opportunities that we had already been working on in a number of program areas we are responsible for regulating. Many of the recommendations made have been put in place already and will be strengthened by design this year as we build the new Driver Program Regulation database to connect and cross-check all our regulated providers, including Driving Schools and Instructors, Prelicensing Course Instructors, and Motor Vehicle Accident Prevention (PIRP) Program Sponsors, Delivery Agents and instructors.

DMV began development of revisions to regulations governing the PIRP industry (CR Part 138) in 1994. These regulations have been formally promulgated and are now in effect (effective date May 31, 2000). During the review process, we had staff preparing plans for effective implementation of the new CR Part 138 requirements, which have now been actualized. We have conducted 67 seminars throughout New York State to ensure that all PIRP Sponsors, Delivery Agents (which may include Driving Schools) and Instructors understand the new regulations and how to comply. This seminar series was the groundwork for implementation of our systematic deterrence program of covert monitoring of PIRP instructors in the classroom, documentation of deficiencies, and issuance of sanctions. This is operational now. All Driving School Instructors are now enrolled in DMV's "LENS" (License Event Notification System), which notifies us when

any suspension, revocation, accident or other disqualifying event is added to the driver license record so we can take immediate and appropriate action. Since receiving Executive approval in August 2000 to reorganize by function instead of by regulated business, the Office of Driver Program Regulation has been focusing on development of better monitoring tools and systems, which includes the comprehensive database we are building now to better track compliance. The "Driving School Unit", with a staff of five, is being functionally redesigned in the reorganization of the Office of Driver Program Regulation.

There are a number of inconsistencies and factual misconceptions in the body of the report. For purposes of correcting these, we will address them page by page before responding to the recommendations.

It appears that the audit focuses on driving schools that provide "prelicensing and PIRP" although permission to teach these courses is separate from driving school licenses and independent from one another. Therefore, violations of regulations in the performance of instruction in the Motor Vehicle Accident Prevention course (PIRP) only have an impact on driving school licensing if the violations can be extended to the provision of Section 394 of the Vehicle and Traffic Law that covers the licensing of driving schools.

Under the section labeled "Audit Observations" it would appear that the audit failed to distinguish temporary suspensions from determinant suspensions for disqualifying driving school instructors. Failure to answer a summons, for instance, might result in a suspension of a driver license within a 24-month period before the renewal of a driving school license, however, this would not preclude renewing the license under the law if the suspension had been satisfied. Therefore, it may not be a disqualifying event.

*
Note
1

The audit correctly points out that there was not a system in place to monitor the New York State Accident Prevention Program although OSC audit staff was aware that such a system was being put in place and is now operational.

In the section labeled, "Introduction" under background, there is an overstatement that implies that state insurance law requires oversight of the driving schools and five hour prelicensing program. We are unaware of such a section of Insurance Law.

There appears to be an inappropriate link made between the Accident Prevention Program and driving school's responsibilities. It is therefore, difficult to respond to some of the audit observations because it is unclear in the report which of the comments relate to driving schools.

*
Note
2

Under the section labeled "Administration and Monitoring," there is reference to missing documents from the initial application review process and from the site reviews. In the early 1980's the regulation of driving schools was centralized into a single unit in Albany. Prior to that date, this activity was conducted at numerous issuing office locations across the state for a period of more than twenty years. In some cases record

*See State Comptroller's Notes, Appendix C

keeping procedures at these offices differed, or files were purged after a reasonable number of years from the original approval of the driving school. Schools changed ownership, numerous individuals were employed as instructors and some of the information was found to be dated inaccurately. When the files were consolidated, a standard system for retention of important documents was put into place. Files developed subsequently were retained and added to as necessary. Some documents were missing altogether. However, the shortcomings addressed by the audit cannot be corrected. Much of this information is irretrievable. We agree that care should be taken to ensure that critical forms are not purged. Such a system is now in place.

On page 6 there is mention of the Driving School Unit contacting State Worker's Compensation Board to determine if compensation policies are in effect. The report goes on to state that the unit "took action to cancel the driving school licenses." We are aware of no such action by the Department. To the best of our knowledge no driving school license has ever been "cancelled" or suspended for failure to maintain Worker's Compensation Insurance. Violations of this provision are the responsibility of the Worker's Compensation Board as is true with any other business. Our records are always open to the Worker's Compensation Board if they request our assistance in line with their regulatory responsibility. We hope to be in a better position to allow the board to make these comparisons electronically when our new database is finally developed by the end of this year.

*
Note
2

In the section labeled "Driving and Criminal Records of Driving School Owners and Instructors," pages 6 and 7, we agree that there should be a standard procedure used to give guidance to staff who are making discretionary decisions about the granting of approvals for driving schools and instructors. Such a procedure is actively being developed in line with our reorganization effort. We do not, however, agree that copies of driving records should be retained in paper format in files. Driving records are accessible from computers on each computer of the staff in the Driving School Unit. An indication that a record has been reviewed and the initials of the reviewer are retained in the file, are completely adequate. While the auditors did not share the specific examples, we contend that the 9 out of 257 instructors that were discovered who had their license privilege suspended, did so because of a temporary condition, as mentioned above. We are not aware of any driving school instructors who are approved with disqualifying suspensions when license records are reviewed upon application or renewal. As a matter of fact, an automated system to flag suspensions and revocations of driving school instructors within days of the suspension being added to the driver license record is now in place ("LENS" System). A notice precipitates a review that will result in the removal of driver instructor approval.

*
Note
3

*
Note
1

In the section labeled "District Office Monitoring of Driving Schools", paragraph one, it states that district office monitoring includes "areas such as instructor qualifications ... and current insurance policies". District offices do not monitor instructor qualifications other than checking for a valid instructor's card issued by the Driving School Unit. District Offices do not check for current insurance policies on driving school vehicles. Insurance is monitored by programs managed by the Department's Insurance Services Bureau. Both instructor qualifications and proof of

*See State Comptroller's Notes, Appendix C

insurance are submitted by the driving school to the Driving School unit for review and approval.

In the section labeled “District Office Monitoring of Driving Schools”, paragraph three - While it is true that there is no written policy on the required frequency of driving school visits by DMV, it is unlikely, given the comparative importance to public safety, that it would be more stringent than our visits of Article 19A bus carriers, which by law is once in a three year period. Since the OSC audit was conducted in early 2000, the driving school visits cited in 1996 and 1997 were done approximately 3 years ago. It is easy enough to set a standard for periodic visits to driving schools. However, compliance would be difficult to accomplish at current staffing levels if more frequent visits were required, given the volumes of Article 19A carrier investigations we are required to perform every three years and the volume of road tests conducted (2,574 19A bus carriers with a total of 76,616 files to be reviewed and 554,141 road tests conducted for FY 98-99 by Testing and Investigations).

In the section labeled “District Office Monitoring of Driving Schools”, paragraph four - It is unknown who is responsible for the statement that monitoring schools is not a priority because it does not result in improved compliance, but it may have stemmed from the opinion of MVLE(s) in the field. It is misleading to for the report to indicate that “DMV officials feel monitoring is not a priority... because it does not result in improved compliance”, and it is not the reason for the level of priority given to driving school monitoring. Current staffing levels preclude additional monitoring at this time by MVLEs. Cases for hearings are usually presented with the assistance of Driving School Unit personnel, not just the MVLE.

*
Note
2

In the section labeled “District Office Monitoring of Driving Schools”, paragraph one - As we have informed OSC audit staff, the only legal proof under Vehicle & Traffic Law that a school is operating illegally, is the giving of instruction for hire. Advertising, signs, etc. is not sufficient evidence of an illegally operating driving school.

*
Note
2

In the section labeled “District Office Monitoring of Driving Schools”, paragraph two - Gathering the type of evidence needed through covert investigations, surveillance, and “buys” of lessons and certificates are not within the scope of MVLE duties or training. This requires peace officers with powers of arrest and a criminal justice background.

*
Note
2

The statement on page 15 of the report that proposed regulations were not finalized in June of 2000 is an error. The regulations became effective on May 31, 2000 and, therefore, were no longer proposed.

*
Note
2

Response to Recommendations

The following are responses to the recommendations contained in the audit report. For purposes of clarity, we will address them as they are numbered in the report.

*See State Comptroller’s Notes, Appendix C

1. We agree that driving school owner and instructor information and reports of monitoring visits should be retained and entries should be made on a database indicating that the activity occurred. We currently retain this information in a paper file and are working to develop a database that will address this issue for driving schools and other businesses that we regulate.
2. We continue to maintain that other than requiring proof of Worker's Compensation insurance at the time of licensing a driving school, and upon renewal, continued monitoring for this insurance would be redundant with the responsibilities of the Worker's Compensation Board. Upon the completion of our electronic database we will provide the Worker's Compensation Board with a description of the information available and offer assistance in providing them with whatever information they need to carry out their responsibilities.
3. We agree that there should be standard procedure developed to provide guidance for licensing and renewal decision making by staff. We have begun this task by building upon the existing procedures that need to be clarified. The threshold for suspensions and revocations that serve as a disqualifier for issuance of a driving school license is already set in law.
4. Procedures to add new driving school instructors to the LENS program are in place and the program is performing satisfactorily.
5. We continue to maintain that the self-reporting of criminal activities has served the Department and the regulation of driving schools well. While we have had instances where action had to be taken against a driving school instructor for filing a false application (improperly stating that there were no prior criminal convictions), this has been rare. We do not deny that there may be individual driving school instructors with criminal records that have not come to our attention. We think this is rare. We were unable to review the auditor's information. It is likely that many of the report "findings" of the auditors include crimes that were too old to warrant removal of a license. We calculated the cost of doing criminal reviews to exceed \$75,000 annually, including finger printing, collection of criminal record information and retention of these records in the file. It would also delay issuance of approval of a driving school instructor's application for as much as three months. However, the public safety issues that a criminal background check would address are important, and we will conduct a closer analysis and evaluation of the costs and benefits of this proposal.
6. We are in the throes of reorganization development for an Office of Driver Program Regulation. One of the outcomes of this reorganization will be a set of expectations for monitoring all of the businesses we regulate. Strategies for this monitoring will also be developed. Initially, we have concentrated this effort on the New York State Accident Prevention Program (PIRP) and our monitoring efforts are already showing excellent results.

* Note 4

*See State Comptroller's Notes, Appendix C

7. We will meet with representatives from District Office Operations to try and identify specific time of MVLE's that can be made available for monitoring purposes. We have already requested additional MVLE staff in Operations to enhance this monitoring effort. We will continue to prioritize complaints against driving schools or instructors and conduct investigations. If necessary, we will contact and work with Police Agencies to prosecute criminal offenders.
8. We agree that preparation of charges against driving schools, presentation of these charges at hearings, and the enforcement of penalties for the driving school businesses needs to be improved. As part of our reorganization effort we have formed an office of Special Counsel within the office of DPR that will be responsible for training non-attorney staff to present at hearings, assist in the preparation of charges and cases for administrative hearing and, when necessary, provide assistance in the prosecution of more complex or critical cases before the Administrative Law Judges. Classification of an Associate Attorney item has been requested from the Department of Civil Service and two other attorneys will be assigned to perform this work for the Department.
9. There was one office that was found deficient in record keeping over prelicensing certificates (Albany), and we will address that situation.
10. As previously noted, we are in the process of developing a database that will network information on all of the businesses we regulate. A Context Diagram has been developed, program requirements have been specified, and the database is being designed, with new system implementation now scheduled for December 15, 2001.

If you have any questions or concerns relative to this reply, you may contact Marcel E. Chevalier, Director of Internal Audit and Quality Control @ (518) 474-0881.

Sincerely,



Gregory J. Kline

State Comptroller's Notes

1. Our point is that there is no documentation that the Department determined the type of suspension and whether or not it was a disqualifying event.
2. Certain matters addressed in the draft report were revised or deleted from the final report. Therefore, some agency comments included in Appendix B may relate to matters no longer contained in this report.
3. We agree that paper copies of the driving records do not need to be retained to document the reviews. However, our review of the driving records and the results determined the reviews are not always documented.
4. We believe that the age of a crime is not the only relevant factor. The number and severity of the crimes should be considered by the Department in its licensing determinations.