



REPORT OF
THE
STATE AUDITOR

**Private Occupational Schools
Department of Higher Education**

**Performance Audit
April 2005**

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Members of the Legislative Audit Committee:

This report contains the results of a performance audit of the regulation of private occupational schools by the Department of Higher Education. The audit was conducted pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government. The report presents our findings, conclusions, and recommendations, and the responses of the Private Occupational Schools Board, the Division of Private Occupational Schools, the Department of Higher Education, and the Colorado Community College System.

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Private Occupational Schools Performance Audit, April 2005

Authority, Purpose, and Scope

This performance audit was conducted pursuant to Section 2-3-103, C.R.S., which authorizes the Office of the State Auditor to conduct performance audits of all departments, institutions, and agencies of the state government. The audit work, performed from October 2004 to February 2005, was conducted in accordance with generally accepted government auditing standards.

Our audit focused on the regulatory activities of the Private Occupational Schools Board (Board) and the Division of Private Occupational Schools (Division), located at the Department of Higher Education. We evaluated their methods for ensuring all private occupational schools in the State are licensed and compliant with statutory and regulatory standards. We also assessed the Board's and the Division's administrative effectiveness, including the setting of fees and the collection of fees and data.

We gratefully acknowledge the assistance and cooperation extended by management and staff at the Division of Private Occupational Schools, the Colorado Commission on Higher Education, and the Colorado Community College System and by members of the Private Occupational Schools Board.

Overview

The Private Occupational Education Act of 1981 governs private occupational schools in Colorado. Its purpose is to provide standards for and improve these schools and to protect consumers against fraudulent or substandard schools. Statute gives the main powers and duties for regulating the schools to the Board. The Board has delegated the day-to-day oversight of the schools to the Division, including assessing applications for licensure, monitoring schools, and providing technical assistance. However, the Board must approve all applications for licensure or action involving the school's license.

As of January 2005, there were 310 private occupational schools licensed to operate in Colorado. Nearly half of these have opened since the beginning of 2000. The most popular school types are cosmetology, real estate, massage therapy, and IT/business. According to Division data, an average of about 31,000 students attended these schools each quarter during Calendar Year 2004.

The Division is entirely cash-funded through fees established by the Board and paid by the private occupational schools. The quarterly student assessment fee, based on a school's attendance figures, generates the largest amount of revenue. Other fees charged by the Board include licenses, agent permits, and instructor credentials. The Division collected about \$670,000 in Fiscal Year 2004.

For further information on this report, contact the Office of the State Auditor at 303.869.2800.

Summary of Audit Comments

We examined the methods used by the Board and the Division to ensure that schools meet and maintain compliance with minimum statutory and regulatory guidelines. We also reviewed how the Board and the Division resolve complaints made against the schools. Finally, we evaluated the Board's and the Division's controls over fees, expenditures, cash, and data. We found problems in the following areas:

- **Licensing.** We reviewed files for 23 schools and in each case we found a lack of evidence that schools met statutory and regulatory requirements before being licensed. For example, nearly 40 percent (9 of 23) of the schools lacked evidence demonstrating that surety, or bonding, requirements were met; over 60 percent (14 of 23) lacked documentation indicating that safety and health requirements were met; and about 70 percent (16 of 23) did not have evidence verifying that all instructors possessed a valid occupational credential. We also confirmed that 2 of the 23 schools did not have any credentialed instructors at the time the Division recommended them to the Board for license approval. Despite this lack of evidence, the Division recommended and the Board approved all of these schools for a license. In addition, the Division failed to enforce the Board's regulation that all modeling instructors teaching minors under the age of 16 submit a background check with their credentialing applications.

Our review also found that the Division does not systematically identify, track, or follow up on unlicensed schools operating in Colorado. We found that the Division only contacted 26 of the 68 schools it had identified as potentially operating illegally and that the Board does not use available statutory remedies (e.g., fines and restraining orders) to force unlicensed schools to either comply or cease operation. Currently there appear to be nearly 50 unlicensed private occupational schools operating in the State.

- **Surety protection.** Statute requires each school to furnish and maintain adequate surety protection to cover its unearned, prepaid tuition in the event the school closes or if a school is required to refund tuition and fees to students due to engaging in deceptive trade practices. Board regulations require schools to submit surety proposals annually because surety levels can change as the schools' program offerings and enrollment fluctuate. We examined the files of 50 schools and found that 43 did not submit annual surety proposals for all five years from Fiscal Years 2000 to 2004. We also found that 12 of the 50 schools had insufficient surety protection at some point during this time for periods ranging from two months up to two years. Finally, we noted that surety instruments at 3 of the 50 schools did not indemnify students against the loss of tuition and fees, as required by statute.
- **Complaint process.** Under statute, the Board is responsible for investigating written student complaints. The Division receives and investigates complaints on behalf of the Board. Complaints are a good indicator of school performance, but the Division's complaint process

has many weaknesses. For example, we found that the Division lacks standardized procedures for accepting and investigating complaints, which can lead to inconsistency. We also found that staff investigations of complaints are inadequate and that the Division's complaint database is incomplete and inaccurate, and is not analyzed by staff to identify trends.

- **Fee schedule.** Statute requires the Board to propose a new fee schedule annually that reflects the direct and indirect costs of administering the Private Occupational Education Act. We identified several concerns that suggest the existing fee schedule may not accurately reflect costs. First, the Division's revenues generally outpaced its expenditures from Fiscal Years 2000 to 2004, causing the Private Occupational Schools cash fund to frequently exceed its statutory reserve limit. Second, the Division has not determined how the fees charged are related to the costs of administering the statutory requirements.

In addition, we found that increases in total staff compensation (i.e., salary and bonuses) for Division staff are significantly higher than those for other state employees, an average of about 13 percent per year during Fiscal Years 2003 and 2004 compared with 5 percent per year during the same period for staff at the Colorado Commission on Higher Education. Finally, the Division is undercollecting the quarterly student assessment fee. We found that 12 of 25 schools we reviewed failed to submit a form and applicable fee for at least one quarter in either Fiscal Year 2003 or 2004 and that Division staff do not verify that schools pay the correct quarterly assessment.

- **Data collection.** The Division maintains a database to track activities related to private occupational schools. We found the school data is incomplete and inaccurate and not well-integrated or consistently collected. For example, the Division's database has inaccurate information about schools' payment histories for the quarterly student assessment fee. As noted above, we sampled 25 schools to determine if they submitted their student assessment fees every quarter. We found the database incorrectly listed 13 of the 25 schools (52 percent) as having missed a quarter when they did not.

Further, we found that the Board and the Department of Higher Education need to reassess the framework for the regulation of private occupational schools. For example, about one-fifth of licensed schools are accredited and, therefore, are scrutinized by regional accrediting bodies, which examine a school's curriculum, faculty, and facilities in a manner similar to the Board and the Division. Statute allows schools to demonstrate compliance with most of the minimum statutory standards for state licensing by being accredited. We did not find evidence that the Board and the Division are currently using this provision to reduce their oversight of accredited schools. We also found that Division staff do not have the expertise to effectively evaluate the wide variety of facilities, equipment, and curricula offered by schools. It may be more effective to focus the Board's and the Division's activities on consumer protection activities, such as complaints and adequate surety protection.

SUMMARY

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Overall, the Board must take a more active role to fulfill its statutory responsibility to oversee the regulation of private occupational schools throughout the State. This should include defining the type and frequency of information that the Division should provide to the Board, such as the number of complaints received, budget updates, the schools' surety status, or any other staff concerns about the schools. Additionally, the Board should require that the Division enforce all Board-approved sanctions against schools and report regularly to the Board on the status of enforcement efforts.

Our recommendations and responses from the Board, the Division, the Department of Higher Education, and the Colorado Community College System can be found in the Recommendation Locator on pages 5 through 10 of this report.

RECOMMENDATION LOCATOR

Rec. No.	Page No.	Recommendation Summary	Agency Addressed	Agency Response	Implementation Date
1	25	Improve controls over the licensing process by establishing formal procedures for evaluating applications; developing procedures to ensure course evaluators are independent and experienced; instituting a formal supervisory review; and reevaluating all currently approved schools.	Private Occupational Schools Board	Agree	December 2005
2	27	Improve the instructor credentialing process by working with the Colorado Community College System to develop a current memorandum of understanding detailing the process for issuing credentials; revising the credential application to include a section on the applicant's background; requiring all credentialed modeling instructors who teach minors under the age of 16 to submit a current background check; and considering seeking statutory change to require FBI fingerprint-based background checks.	Private Occupational Schools Board Colorado Community College System	Agree Agree	July 2005 and 2006 Legislative Session July 2005
3	31	Improve oversight of curriculum, facilities, and equipment at schools by developing guidance for staff to use during site visits; ensuring follow-up is conducted on problems identified during site visits; and reevaluating the process used to determine if a school's curriculum, facilities, and equipment meet minimum regulatory and statutory standards.	Private Occupational Schools Board	Agree	December 2005 and Ongoing

RECOMMENDATION LOCATOR

Rec. No.	Page No.	Recommendation Summary	Agency Addressed	Agency Response	Implementation Date
4	33	Improve the process for enforcing licensing requirements on unlicensed private occupational schools.	Private Occupational Schools Board	Agree	September 2005
5	35	Work with the Division of Private Occupational Schools to consider ways to oversee Internet schools.	Private Occupational Schools Board	Agree	Ongoing
6	40	Implement controls to ensure surety requirements are met by developing and implementing policies and procedures for receiving, analyzing, and verifying surety proposals; enacting provisions to take action against schools whose surety protection becomes inadequate; and acting only on certificate of approval applications that meet surety protection requirements.	Private Occupational Schools Board	Agree	September 2005 and 2006 Legislative Session
7	42	Develop procedures for reviewing and following up on the financial statements and placement statistics submitted by schools.	Private Occupational Schools Board	Agree	August 2005
8	45	Improve the complaint process by implementing policies and procedures for documenting and investigating complaints; verifying information provided by schools and students during investigations and determining if complaints represent systemic problems; and using the complaint database to compile and analyze the data on the frequency of complaints.	Private Occupational Schools Board	Agree	October 2005 and Ongoing

RECOMMENDATION LOCATOR

Rec. No.	Page No.	Recommendation Summary	Agency Addressed	Agency Response	Implementation Date
9	47	Improve the collection of records from closed schools by evaluating alternative methods to collect student data.	Private Occupational Schools Board	Agree	November 2005
10	49	Improve the use of penalties against schools for noncompliance by determining its authority to issue administrative fines and revising rules to define criteria for the effective use of statutory penalties and administrative fines.	Private Occupational Schools Board	Agree	October 2005 and 2006 Legislative Session
11	53	Improve fee collection by tracking required submissions, collecting all fees owed, and verifying enrollment figures periodically for the student assessment fee.	Division of Private Occupational Schools	Agree	March 2005
12	54	Seek statutory change allowing the Colorado Community College System to set, collect, and retain the instructor credentialing fee.	Private Occupational Schools Board	Disagree	--
			Colorado Community College System	Agree	July 2006

RECOMMENDATION LOCATOR

Rec. No.	Page No.	Recommendation Summary	Agency Addressed	Agency Response	Implementation Date
13	58	Ensure that fees reflect direct and indirect administrative costs by determining on an ongoing basis the proper fee level for each function performed; adopting criteria for setting bonuses and pay raises and limiting disbursements to expenses necessary for statutory purposes; and establishing a plan that allocates indirect costs accurately and consistently.	Private Occupational Schools Board	Agree	December 2005
			Department of Higher Education	Agree	July 2005
14	61	Improve data collection by developing and implementing a specific plan for improving its database and establishing protocols to ensure that data are entered completely and accurately.	Division of Private Occupational Schools	Agree	September 2005
15	63	Improve controls over cash by performing periodic cash reconciliations and by ensuring that adequate segregation of duties exists in its cash handling processes.	Division of Private Occupational Schools	Agree	May 2005
16	65	Strengthen efforts to ensure staff independence by rotating schools among staff periodically and by requiring staff to sign conflict-of-interest statements.	Division of Private Occupational Schools	Agree	December 2005

RECOMMENDATION LOCATOR

Rec. No.	Page No.	Recommendation Summary	Agency Addressed	Agency Response	Implementation Date
17	69	Improve the effectiveness of regulation by considering reducing the amount of oversight on schools accredited by bodies recognized by the United States Department of Education or the Board.	Private Occupational Schools Board	Agree	December 2005
18	70	Reassess the regulation of private occupational schools by convening a task force of stakeholders to study the issue and make recommendations, including applicable statutory changes, about improvements for regulating these schools.	Department of Higher Education	Partially Agree	July 2005
			Private Occupational Schools Board	Agree	July 2005
19	73	Clarify and strengthen the Board's oversight role by implementing a more active role for it, including receiving reports on the status of corrective actions, and by working with the Division of Private Occupational Schools to ensure that the Division gives priority to those duties associated with regulating the schools.	Private Occupational Schools Board	Agree	December 2005

Overview of the Division of Private Occupational Schools

The Private Occupational Education Act (Act) of 1981 (Section 12-59-101, et seq., C.R.S.) as amended governs private occupational schools in Colorado. Its purpose is:

. . . to provide standards for and to foster and improve private occupational schools and their educational services and to protect the citizens of this state against fraudulent or substandard private occupational schools

According to the Act, this purpose is to be achieved by:

- Prohibiting the use of false or misleading literature.
- Establishing accountability for schools and their agents through the setting of standards relative to the quality of educational services, fiscal responsibility, and ethical business practices.
- Providing for the preservation of essential records.
- Providing certain rights and remedies to the Act's governing body and the public to effectuate the purposes of the Act.
- Providing for the authorization of education credentials.
- Providing train-out for students attending schools that close.

Regulatory Roles

The State began regulating private occupational schools, or vocational schools, in 1966. Initially, the State Board for Community Colleges and Occupational Education governed private occupational schools, with help from an advisory committee comprising industry and public representatives. Citing a need for "statewide administration of private occupational schools," House Bill 90-1058 created the Division of Private Occupational Schools (Division) at the Department of Higher Education to assume primary regulatory responsibility for these schools. House Bill 98-1031 established the Private Occupational Schools Board (Board) and transferred the main powers and duties for regulating private occupational schools from the Division to the Board. The Board consists of seven members from the industry and the public who are appointed by the Governor with the consent of the Senate for four-year terms.

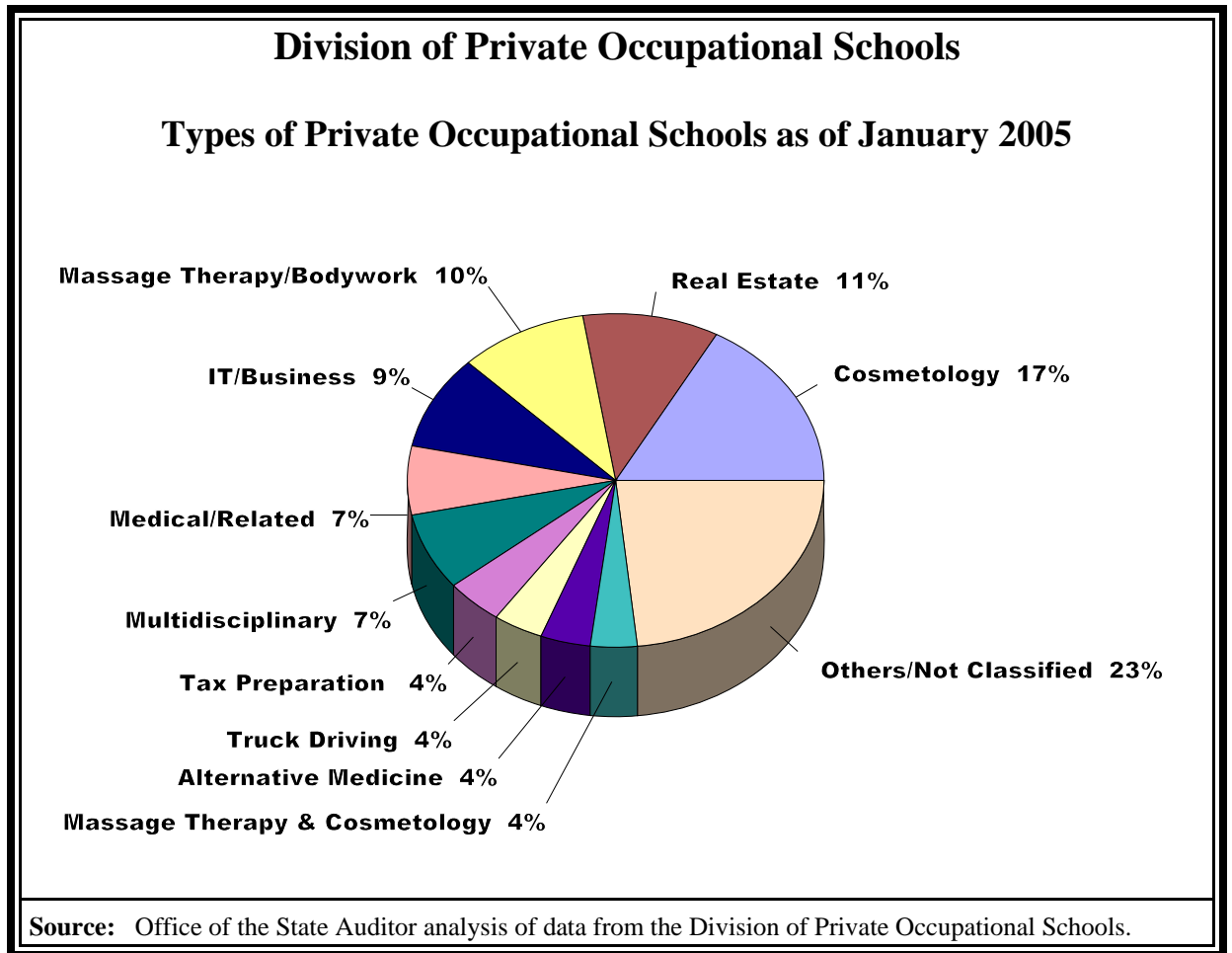
In January 2003 the Board, through a resolution, formally delegated the day-to-day oversight of the schools to the Division. As of Fiscal Year 2005, the Division has six staff members: a director, four program supervisors (one of whom works part-time), and an administrative assistant. All staff except the administrative assistant are exempt from the state classified personnel system. The Division's main functions are to assess applications for licensure, monitor schools, and provide technical assistance to schools on complying with the Act. Section 12-59-107, C.R.S., requires that all private occupational schools offering educational services to students in Colorado obtain a certificate of approval (license). Division staff evaluate applications for school licenses, programs, and course additions and revisions to determine if the schools and their programs meet the minimum educational and financial standards outlined in statute. These standards include having sufficient financial resources to fulfill commitments made to students and having adequate facilities and instructors to provide the educational services offered. After reviewing an application, Division staff recommend to the Board whether to approve the license or program, and the Board votes on the recommendation.

The Division monitors private occupational schools primarily through three means. First, Board regulations require schools to submit financial statements, placement statistics, and surety coverage proposals annually. Division staff review these materials to ensure that the schools remain in compliance with applicable laws and regulations. For example, if a school's enrollment is increasing, staff will review the surety amount to ensure that it has accounted for the higher enrollment figures. Second, staff perform on-site supervisory reviews, which examine a school's compliance with applicable laws and regulations related to the school's educational programs, facilities, enrollment procedures, and student record keeping. Finally, the Division investigates complaints to determine if schools are engaging in deceptive sales and trade practices.

School Demographics

Section 12-59-103, C.R.S., defines private occupational schools as:

. . . any entity or institution for profit or not for profit located within or without this state which offers educational credentials or educational services that constitute occupational education in this state



The section further defines occupational education as classes and programs designed to improve the vocational, technical, and/or occupational skills of persons seeking improved employment opportunities in occupations that do not require a four-year college degree. As of January 2005, 310 private occupational schools were licensed to operate in Colorado, teaching a wide variety of subjects ranging from taxidermy to hypnotherapy. About 5 percent of these are out-of-state schools that are licensed to offer their services in Colorado. The chart above shows the most common types of private occupational schools in Colorado.

Proper regulation of these schools is important for several reasons. Many of them are relatively new businesses. On average, licensed private occupational schools are about nine years old, and nearly half have opened since the beginning of 2000. In addition, a significant number of students attend these schools, and attendance is growing. The table below shows the average number of full-time and continuing education students attending these schools each quarter from Calendar Years 2001

through 2004. Over the four-year period, attendance has increased from about 24,400 to about 31,200, or about 28 percent.

Division of Private Occupational Schools Average Student Attendance per Quarter at Licensed Schools Calendar Years 2001 Through 2004		
Calendar Year	Number of Students	Percentage Change From Previous Year
2001	24,391	-
2002	26,429	8.4%
2003	29,112	10.2%
2004	31,206	7.2%

Source: Office of the State Auditor analysis of data from the Division of Private Occupational Schools.

Finally, costs at some licensed schools can be substantial. For example, at the 14 private occupational schools that participate in Colorado's state-funded student assistance program, the average cost of attendance (which includes tuition, room and board, and living expenses) for Fiscal Year 2004 was about \$21,000. As a result, many students incur loans to complete their education. About 11,000 students at these 14 schools received federal and/or state financial aid during Fiscal Year 2004, with the average student taking out about \$4,800 in federal loans that year to finance his or her studies.

Funding

The Division is entirely cash-funded through fees established by the Board and paid by the private occupational schools. We describe the major fees below and list the share they represent of the Division's Fiscal Year 2004 revenue, which totaled about \$671,500.

- **Quarterly Student Assessment.** This fee generates the largest amount of revenue. Each quarter schools pay \$3 for every full-time student and \$1 for every continuing education student that attend classes at their schools. In Fiscal Year 2004 the Division received about \$298,000 in assessment fees, which represented about 44 percent of total revenue.
- **Provisional/Standard Certificate of Approval.** The certificate of approval is a school's license to operate in Colorado. Schools applying for the first

time pay \$1,500 for a provisional certificate valid for up to two years and \$750 for the three-year renewal (standard) certificate. In Fiscal Year 2004 the Division received about \$108,200 in license fees (16 percent of total revenue).

- **Agent Permit.** Any person acting as an agent (i.e., a person authorized to enroll students in the school) for a school must hold a permit. Three-year agent permits for in-state schools cost \$150 (shorter periods are prorated) while annual permits for out-of-state schools cost \$750. In Fiscal Year 2004 the Division received about \$78,400 in agent permit fees (12 percent of total revenue).
- **Instructor Credential.** Every instructor at a private occupational school must possess an instructor credential that demonstrates the qualifications of the individual to teach a particular subject. Five-year credentials cost \$100. In Fiscal Year 2004 the Division received about \$110,000 in credentialing fees (16 percent of total revenue).
- **New/Revised Programs and Courses.** Schools are required to submit program/course additions and revisions to the Board for approval before offering them to students. The fees to process these applications range from \$150 to \$600, depending on the number of programs and courses being added and/or revised. In Fiscal Year 2004 the Division received about \$32,500 in program/course fees (5 percent of total revenue).

The Board also charges a fee when a school changes location, name, or ownership.

According to statute, these Board-authorized fees are to be used by the Division to cover its direct and indirect costs in administering the Act. The table on the next page lists the Division's revenues, expenditures, fund balance, and appropriated FTE for Fiscal Years 2000 through 2004.

Division of Private Occupational Schools Revenues, Expenditures, Fund Balance, and Appropriated FTE Fiscal Years 2000 Through 2004						
Category	Fiscal Year 2000	Fiscal Year 2001	Fiscal Year 2002	Fiscal Year 2003	Fiscal Year 2004	Percentage Change, Fiscal Years 2000-2004
Revenues	\$547,796	\$538,335	\$538,085	\$628,758	\$671,500	23%
Expenditures	\$431,928	\$503,016	\$650,579	\$624,502	\$632,768	46%
Net Income (Loss)	\$115,868	\$35,319	(\$112,494)	\$4,256	\$38,732	-
Fund Balance (at year-end)	\$155,228 ¹	\$190,547	\$78,053	\$82,309	\$121,041	-22%
Appropriated FTE	6.5	6.5	7.2	7.8	7.8	20%
Source: Colorado Financial Reporting System (COFRS), except for Appropriated FTE, which came from the Session Laws for 2000-2004. ¹ Fund balance at the beginning of Fiscal Year 2000 was \$39,360.						

As the table shows, the Division's revenues have exceeded its expenditures each year except Fiscal Year 2002. Also, its expenditures have increased at twice the rate of its revenues since Fiscal Year 2000; both revenues and expenditures have increased by about 25 percent since Fiscal Year 2001.

State-Funded Student Financial Assistance

The State provides financial aid, such as grants, scholarships, and work-study, to promote access for Colorado residents at the State's postsecondary institutions. In Fiscal Year 2005, 14 private occupational schools participated in the State's financial aid program and were allocated about \$2 million in state aid. To participate in the State's financial aid program, a school applies to the Colorado Commission on Higher Education (Commission), which determines if the school meets eligibility requirements, such as having administered federal financial aid programs for at least two years prior to the application. Statute requires that all schools participating in the state-funded financial aid program submit biennial audits of their financial aid operations to the Commission to ensure they are administering the financial aid properly.

Audit Scope

Our audit focused on the Board's and the Division's oversight of private occupational schools operating in the State. In particular, we evaluated the Division's methods for ensuring that all qualifying schools in the State are licensed and that licensed schools meet minimum educational and financial standards. We also assessed the Board's and the Division's administrative effectiveness, including the setting of fees and fee and data collection. Our evaluation included contacting representatives and reviewing relevant documents (e.g., statutes, regulations, and budget data) from Arizona, Kansas, Nevada, New Mexico, Oklahoma, Oregon, and Washington to compare Colorado's regulation of private occupational schools with other states. We chose these states because of their similarities to Colorado in either population or region.

Finally, we reviewed the Commission's procedures for ensuring that those private occupational schools receiving state-funded student financial assistance administer their state financial aid programs appropriately. The samples tested during our audit did not identify any findings or recommendations in this area.

Licensing

Chapter 1

Introduction

The Private Occupational Education Act (Act; Section 12-59-101, et seq., C.R.S.) provides minimum operating standards to promote educational quality at private occupational schools, or vocational schools; ensure financial stability; and protect consumers from fraudulent schools. Section 12-59-105.3, C.R.S., provides the Private Occupational Schools Board (Board) with the authority to establish rules and regulations to implement the Act. The Board, through a resolution, has delegated the duties of evaluating applicants for compliance with the Act to the Division of Private Occupational Schools (Division), which recommends action on applications to the Board.

The licensing process consists of four elements described below.

- **Certificate of Approval.** By statute, schools must possess a certificate of approval before they can legally operate in Colorado. To obtain this certificate, schools must meet standards such as maintaining adequate surety protection, safe facilities, an approved curriculum, credentialed instructors, and approved agents. New schools apply for a provisional certificate that is valid for no more than two years. Schools may then apply for a standard certificate valid for three years.
- **Agent Permit.** Statute defines an agent as any person who enrolls or attempts to enroll students in a school and requires any person performing the duties of an agent to obtain a permit. Agents must be of good reputation and free from moral turpitude, only represent schools holding a certificate, and never have previously operated an unlicensed school or engaged in deceptive trade or sales practices. Agent permits expire at the same time as the school's certificate.
- **Program and Course Approval.** Statute requires that a school's educational services must achieve the stated objective of the program. The Division evaluates whether the curriculum for each school's programs and courses meets the stated educational objectives. Schools do not have to renew program or course approvals.

- **Occupational Credential.** Statute requires that the education and experience qualifications of instructional staff adequately ensure that students will receive proper educational instruction. Therefore, approved schools must only use instructors possessing a current occupational credential, which is valid for five years. Through a memorandum of understanding, the Division contracts with Career and Technical Education Office at the Colorado Community College System (System) to evaluate applications for occupational credentials and verify that instructors have the necessary educational and work experience to qualify for a credential.

In order for a school to receive an initial provisional certificate, it must obtain the required agent permit(s), program and course approvals, and occupational credentials, as well as meet other financial and facility requirements. Once a school has the certificate, the other credentials must be updated as changes occur or when renewals are required. The Board has delegated the duties of evaluating applicants for compliance with the Act to the Division. Therefore, the Division reviews the applications and recommends action on them to the Board.

The table on the next page shows the number of certificates of approval, agent permits, and occupational credentials issued for Fiscal Years 2001 through 2004. (Data for the number of program approvals were unavailable from the Division.) Over the period, the volume of certificates has increased by 18 percent, although there has been a decrease of 9 percent since Fiscal Year 2002. The number of agent permit approvals has increased by 30 percent, while occupational credentials issued by the System have increased by 37 percent over the past four years. Based on our review of Division records, the Board has not denied any applications for a certificate or an agent permit during this period.

Division of Private Occupational Schools Certificates of Approval, Agent Permits, and Occupational Credentials Issued Fiscal Years 2001 Through 2004					
	Fiscal Year 2001	Fiscal Year 2002	Fiscal Year 2003	Fiscal Year 2004	Percentage Change, Fiscal Year 2001-2004
Certificate of Approval¹					
Provisional	27	38	29	38	41%
Standard	70	87	89	76	9%
<i>Total Certificates</i>	<i>97</i>	<i>125</i>	<i>118</i>	<i>114</i>	<i>18%</i>
Agent Permits	446	426	455	578	30%
Occupational Credentials	755	731	815	1036	37%
<p>Source: Credentialing data from the Career and Technical Education Office within the Colorado Community College System, and agent permit and certificate of approval data from the Division of Private Occupational Schools.</p> <p>¹A school's first certificate is provisional and is valid for up to two years. When schools renew their licenses, they receive standard certificates valid for three years.</p>					

To determine if the Board and the Division are fulfilling the purposes of the Act, improving schools and their educational services and protecting consumers, we reviewed license files from 23 approved schools and accompanied staff on site visits at six schools applying for a provisional or standard certificate. Our review focused on whether the Division's licensing process provides assurance that applicants meet all minimum standards before the Division recommends them to the Board for approval. We also evaluated the Division's actions regarding schools operating in the State that meet the statutory definition of a private occupational school but are not licensed and Internet schools that offer educational services to Colorado residents. Overall, we identified weaknesses in the Board's and the Division's licensing activities which raise concerns whether private occupational schools, agents, instructors, and educational programs meet the minimum standards of the Act and regulations.

Certificate of Approval

Schools apply for a certificate of approval by submitting an application and packet of information including course catalogs and enrollment agreements between the school and its students. Division staff evaluate applications by reviewing written materials and conducting on-site reviews of school facilities. When schools

successfully complete the application process, the Division recommends the school for Board approval. During our review of the approval process from Fiscal Years 2001 through 2004, we found one instance in which the Board rejected a Division recommendation.

In each of the files reviewed, we found a lack of evidence that the Division obtained assurance that the school met all minimum statutory and regulatory requirements at the time the school was recommended for a certificate. The results from our review of the 23 school files are summarized below.

- **Nearly 40 percent of schools (9 of 23) lacked evidence demonstrating that they met surety requirements prior to being recommended for a certificate of approval by staff.** Statute requires that schools post a surety instrument “equal to a reasonable estimate of the maximum prepaid, unearned tuition and fees of the school” before they are eligible to receive a certificate. In other words, the surety ensures students will receive refunds for educational services they have paid for but not yet received should a school close. For all nine schools, either the Division did not sufficiently evaluate surety proposals submitted by the schools (surety proposals provide an estimate of the prepaid tuition a school plans to collect) or it recommended a school it knew did not have adequate surety protection. For example, the Division accepted one school’s surety proposal of \$5,000 based on a \$450 per student deposit required by the school. However, the school’s catalog offered students a discount if they paid the tuition up-front (\$7,700 after discount), meaning that the school would not have adequate surety protection if even one student chose this option.
- **Over 60 percent of schools (14 of 23) did not have documentation indicating that they met statutory and regulatory requirements for health and safety prior to being recommended for a certificate of approval by staff.** Statute and regulations require schools be maintained and operated in compliance with all local, state, and federal health and safety laws. The application for a certificate requests current fire safety inspections to demonstrate compliance with these standards. In 14 cases, we found either no fire safety inspections in the file, or inspections with citations, such as inadequate sprinkler system coverage, and no notes about how these issues were resolved. For some schools, the Division indicated that local fire department restrictions and homeland security concerns prevented it from obtaining the fire safety inspections. However, we contacted the fire departments and the Colorado Department of Public Safety and found there were no provisions that would prevent the Division from obtaining the inspections. Without copies of current inspections, the Division cannot

ensure that schools meet applicable safety requirements when recommending them for certificates.

- **For about 70 percent of schools (16 of 23), the Division did not appear to verify all instructors possessed a valid occupational credential prior to recommending the school for a certificate of approval.** Statute requires that schools have adequate instructional staff to provide educational services, that the education and experience of instructional staff be such that the educational objectives of the school can be met, and that instructors be of good reputation and free from moral turpitude. To meet these standards, the Board's rules and regulations require instructors to possess a current occupational credential in their teaching area. For these 16 schools, we found no evidence the Division verified that the schools' instructors had valid credentials. The Division explained staff verify instructor credentialing by obtaining a list of the school's credentialed instructors from the System, which the staff check against a current faculty list during site visits. However, staff did not perform this check during any of the six site visits we attended. By comparing System records with the Division's files and by calling some of the schools, we confirmed the Division recommended that the Board approve certificates for at least three schools in our sample (13 percent) that were using noncredentialed instructors. This included one truck driving and one locksmithing school that lacked any credentialed instructors.

Statute also requires that owners and agents at schools be "of good reputation and free from moral turpitude." In its application process, the Division requires owners and agents to attest to their backgrounds to meet this requirement but does not include similar requirements for instructors. We also found the occupational credential application used by the System does not require instructors to attest to their backgrounds.

- **For almost 60 percent of schools (13 of 23), the Division did not ensure all educational programs and courses adequately address the educational needs of the private occupational student.** Statute requires "the educational services are such as will adequately achieve the stated objectives for which the educational services are offered." Regulations state "schools shall only offer educational services that have been approved by the Board." Because the Board and Division do not possess expertise in all occupational fields, the Board requires schools applying for program and course approvals or revisions to submit independent evaluations or minutes from the school's program advisory committee meetings to confirm that the programs and courses have educational value.

In 13 cases, there was no evidence that the Division, prior to recommending programs and courses for Board approval, received an outside evaluation, or we found the Division had recommended approval even when it had received an evaluation that called into question the validity of portions of the program or course. We also found the Division does not have adequate procedures in place to ensure persons evaluating programs have appropriate experience and are independent from the school being evaluated. We observed Division staff informing a school representative that friends or prospective students may be used to evaluate a proposed program. This practice could impair the school's ability to ensure that the educational services will meet stated objectives.

- **For about 30 percent of schools (7 of 23), the Division granted agent permits without receiving proper or complete applications.** Statute requires that neither the school nor its agents may have operated an unlicensed school or engaged in deceptive trade practices, that agents "are of good reputation and free from moral turpitude," and that agents only represent schools meeting all minimum standards. Prospective agents file an application with the Division, attesting to their backgrounds and acknowledging they have read the statutory requirements of the Act. Of the seven schools identified, the Division granted permits to agents at one school without having any application on file. For the other six schools, the agent's permit applications were either not filled out completely or contained false information, such as phone numbers with fictitious 555 prefixes.

Finally, the Division does not enforce regulatory requirements that modeling instructors teaching minors under age 16 submit a background check with their application for an occupational credential. By regulation, these instructors must not have been convicted, pled nolo contendere, or received a deferred sentence or a deferred prosecution for any crime against a minor. We found no evidence that the Division enforced this provision since its inception in 2002. Specifically, the memorandum of understanding (MOU) with the System does not require the System to ensure these modeling instructors submit background checks. The main reason for this discrepancy is that the Division has not updated its MOU with the System since 2000 to reflect the background check requirement. Currently about 120 modeling instructors hold an instructor credential without having submitted a background check. The Board should require all current modeling instructors working with minors to submit a background check within a specified time frame.

As of February 2005, the Division has begun to require current and future modeling instructors to submit a fingerprint-based background check conducted by the Colorado Bureau of Investigation (CBI). This type of background check will provide information about Colorado arrests only. Nationwide arrest information could be

provided by having the Federal Bureau of Investigation (FBI) perform fingerprint-based background checks. However, under current law, the FBI will not perform fingerprint checks for state agencies unless that state has enacted laws specifically requiring the checks for a defined population. Therefore, the Board should consider seeking statutory change to require FBI fingerprint checks for all instructors teaching minors under age 16.

The primary reason for the deficiencies we identified is that the Division lacks standardized procedures for ensuring that certificate applications meet all statutory and regulatory requirements. The Division does not have formal, standardized methods for evaluating applicants consistently and completely. As a result, Division staff utilize varying approaches and often ascribe different meanings and purposes to identical Division procedures. For instance, some staff verify that all instructors have current occupational credentials, while others do not. We also found there is no supervisory review of staff work. Lack of supervisory review weakens internal controls by allowing incomplete applications to go to the Board. Overall, the large number of deficiencies we identified and the fact that every file we examined had at least one deficiency indicate a systemic problem. Consequently, in addition to establishing adequate controls over the licensing process, the Board should work with the Division to reevaluate all currently approved schools for compliance with minimum standards.

The importance of an effective licensing system cannot be overstated. As noted earlier, a significant number of Colorado residents pay substantial amounts of money and receive state-funded student financial assistance to attend private occupational schools in the State. In addition, the primary purpose of the Private Occupational Education Act is to provide standards for and improve the schools while also protecting Colorado citizens from substandard and fraudulent schools. If the Board's and the Division's licensing processes do not provide assurance that schools are meeting minimum statutory and regulatory standards, there is an increased risk of errors and irregularities at the schools which may prevent students from receiving training that will help improve their employment opportunities.

Recommendation No. 1:

The Private Occupational Schools Board should improve controls over the licensing process by:

- a. Establishing formal procedures for evaluating applications that ensure schools meet all standards for a certificate of approval before being presented by the Division of Private Occupational Schools for Board approval and acting only on complete applications. This includes ensuring that all

instructors are credentialed, programs and courses are approved, agents have permits, surety instruments are adequate, and all other requirements are met, such as financial, health, and safety requirements.

- b. Developing procedures to ensure program and course evaluators are independent and have the experience necessary to properly evaluate programs and courses.
- c. Instituting a formal supervisory review of all applications to verify and certify in writing all minimum statutory and regulatory standards are met prior to recommending them for approval.
- d. Reevaluating all currently approved schools for compliance with minimum standards. Schools not meeting all requirements should be put on probation and given a time frame within which compliance must be demonstrated.

Private Occupational Schools Board Response:

- a. Agree. Implementation Date: May 1, 2005.

Procedures are in place providing for documentation to ensure schools meet ALL statutory and regulatory requirements prior to Board submission and consideration.

- b. Agree. Implementation Date: Implemented March 1, 2005.

Procedures were implemented that ensure program and course evaluators are independent and possess necessary experience to properly evaluate programs and courses. In addition, documentation is required, prior to Board consideration, addressing evaluator issues/concerns.

- c. Agree. Implementation Date: May 1, 2005.

Procedures are in place instituting a formal supervisory review of all applications to verify and certify in writing all statutory and regulatory standards are met prior to recommendation from the Division to the Board for consideration.

- d. Agree. Implementation Date: December 31, 2005.

Section 12-59-109, C.R.S., Issuance of Certificate of Approval requires the following: “(2) The term for which a certificate of approval is issued shall be for three years commencing on July 1 and expiring on June 30

of the third year thereafter or upon cessation of operation of the school.” One-third of the approved schools will be reviewed between January 2005 and June 2005 for the renewal period. The remaining two-thirds of schools will undergo reevaluation between July 2005 and December 2005. Any statutory or regulatory standard deficiencies of a school will be reported to the Board, recommended for probation and given a time frame, as determined by the Board, for compliance.

Recommendation No. 2:

The Private Occupational Schools Board should improve the instructor credentialing process by:

- a. Working with the Career and Technical Education Office within the Colorado Community College System to develop a current memorandum of understanding (MOU) that details the process the System will use to ensure that all applicants meet minimum standards prior to being issued an occupational credential. This new MOU should ensure that all applicable background checks are submitted before granting a credential.
- b. Revising the current occupational credential application to clarify the background check requirement instructors must meet and adding a section where an applicant’s background can be disclosed, attested to, and reviewed for compliance with minimum standards.
- c. Requiring that all modeling instructors working with minors under the age of 16 submit a background check within a specified time period and thereafter whenever renewing their credentials.
- d. Considering seeking statutory change to require that instructors teaching minors under age 16 submit FBI fingerprint-based background checks.

Private Occupational Schools Board Response:

- a. Agree. Implementation Date: July 1, 2005.

Discussions are ongoing with the Career and Technical Education Office within the Colorado Community College System to update and enhance the current memorandum of understanding (MOU). Discussions will include the detailed process the System will use to ensure that all applicants meet minimum standards prior to the issuance of an occupational credential, including all applicable background checks.

- b. Agree. Implementation Date: July 1, 2005.

Revision of the current occupational credential application has commenced in order to capture sufficient identifying information for background check submittal. Cooperation has been received from the Colorado Bureau of Investigation as well as the Office of the Attorney General in establishing the procedures for proper background checks. Revision of the application will also include disclosure notifications, attestation, and review for adherence for compliance with minimum standards.

- c. Agree. Implementation Date: Implemented March 1, 2005.

- d. Agree. Implementation Date: 2006 Legislative Session.

The Private Occupational Schools Board will investigate seeking statutory change during the 2006 Legislative Session to require instructors teaching minors under age 16 to submit to FBI fingerprint-based background checks.

Colorado Community College System Response:

Agree. Implementation Date: July 2005.

- a. The System agrees to develop a memorandum of understanding (MOU) with the Division ensuring that all applicants meet minimum standards prior to being issued an occupational credential and applicable background checks are submitted before granting a credential.
 - b. The System agrees to revise the credentialing application to add a section where an applicant's background can be disclosed, attested to, and reviewed for compliance with minimum standards.
 - c. The System agrees to require that all modeling instructors working with minors under the age of 16 submit background checks within a specified time period and thereafter whenever renewing their credentials.
-

Site Visits

The Division conducts site visits as part of its process for determining whether private occupational schools meet statutory and regulatory requirements. Division staff tour schools seeking provisional or standard certificates to determine compliance with minimum statutory and regulatory standards, specifically those concerning the school's facilities, equipment, curriculum, and student records. Therefore, Division staff should conduct a site inspection prior to initial licensure at every school and then at least once every three years as part of the certificate renewal process. We found that the Division generally meets this schedule. However, as noted below, the quality of the oversight is poor.

The Division developed a checklist staff use during these visits. Questions on the checklist include:

- Is the classroom instruction consistent with the course/program objectives?
- Is there an adequate number of instructors?
- Are tools and equipment adequate and in good working order?
- Are student enrollment agreements proper and complete?
- Are proper attendance records and transcripts maintained?

We accompanied staff on site visits to six schools and reviewed the files maintained by the Division for 20 open schools and 25 closed schools. We identified numerous concerns regarding whether the site visits adequately determine compliance with statutory and regulatory requirements. We found that Division staff rely on self-reported information from the schools to answer questions on the checklist, sometimes note answers to questions without asking them, do not always clearly communicate statutory requirements, and conduct a limited and inconsistent on-site file review. For example, during one site visit a staff person marked "yes" to the question regarding adequate equipment and facilities before inspecting them. During another visit, staff asked if the school would like to license an individual acting as an agent rather than telling the school that all agents must have a permit. Staff also answered questions about classroom instruction being consistent with the course objectives as "yes" without observing classes or interviewing students. Finally, the on-site file reviews were not sufficient to determine if a school had adequate educational, financial, and student records, because the file samples were small, schools selected the files, and staff used different criteria when reviewing the files. For example, some staff review files for graduated students, current students, and students who have received refunds, while others reviewed only some of these types of files. In addition, we observed staff reviewing as few as two files during the site visits we attended.

We also noted that the Division did not always take corrective action when it identified a problem during a site visit. For example, when a school closed in October 2001, the Division could not determine if 22 of 67 students (33 percent) were entitled to a full refund because the school had not maintained sufficient educational records. As a result, these students received partial refunds when they may have been entitled to full refunds or no refund at all. According to site visits conducted in March 2001, the Division was aware that the school had insufficient educational records. We did not find evidence the Division took action to correct the school's record keeping as a result of the March 2001 visits. When the school closed in October 2001, it still had insufficient records.

The Division uses site visits to support its recommendations to the Board for a certificate of approval. Therefore, the Board and the Division should ensure that the visits are an effective tool for determining statutory and regulatory compliance. We identified three areas for improvement. First, the Division has not established adequate systematic procedures for conducting the site visits, including criteria for answering questions on the checklist and performing the file review. For example, to answer the question of whether classroom instruction is consistent with course objectives, the Division should create specific steps for staff to follow when making this determination, such as attending a class, interviewing instructors and students, and reviewing course syllabi. The Division can also compare the instructional information obtained during the site visit with the program information submitted as part of the certificate application to ensure consistency.

Second, the Division does not have follow-up procedures to ensure problems identified during the site visits are resolved. During our review of school files, we found little evidence the Division took action to ensure that problems identified during the site visits were actually corrected. Finally, the Board should reevaluate how it determines that the curriculum, facilities, and equipment meet minimum standards at the wide variety of private occupational schools overseen by the Board. We are concerned that staff lack the necessary skills and expertise to evaluate the broad range of subjects taught by the schools, which include massage therapy, information technology, income tax preparation, truck driving, broadcasting, and many other fields. The Board should identify alternative methods for determining whether schools meet minimum standards for curriculum, facilities, or equipment, such as contracting with experts in the various fields to conduct those portions of the site visit, working with other state agencies that may also have regulatory responsibility for some career fields taught at private occupational schools, or seeking pro bono assistance from state boards that oversee particular schools.

Recommendation No. 3:

The Private Occupational Schools Board should improve its oversight of the curriculum, facilities, and equipment at schools by:

- a. Developing guidance for staff to use during site visits to ensure the consistency and completeness of the reviews. This guidance should include procedures for answering questions on the checklist and for conducting file reviews at the schools. At a minimum, the file review guidance should address selecting appropriate sample sizes and ensuring schools are maintaining all required records, including those that would allow the Division to determine applicable refunds if the school were to close.
- b. Ensuring that timely follow-up is conducted on problems identified during the site visits and that all problems are resolved.
- c. Reevaluating the process used for determining that the curriculum, facilities, and equipment meet minimum regulatory and statutory standards. Consideration should be given to contracting with experts in the field or working with other state agencies and boards to conduct portions of the site visits with the exception of reviewing student files.

Private Occupational Schools Board Response:

- a. Agree. Implementation Date: August 1, 2005.

Specific guidelines for site visits will be introduced and required to ensure consistent and complete visits. Such guidelines will reference all statutory and regulatory requirements.

- b. Agree. Implementation Date: August 1, 2005.

Documentation will be maintained in school files regarding the timely resolution of problems identified during site visits. Follow-up site visits will be required as schools will be given a specified time period for compliance.

- c. Agree. Implementation Date: December 31, 2005, and ongoing.

Cooperation already exists with the Department of Regulatory Agencies in the areas of Office of Barber and Cosmetology Licensure, Division of

Real Estate, Board of Medical Examiners, and the State Board of Nursing for curriculum review. In addition, discussions are in process with the Division of Motor Vehicles for similar reviews. Implementation of this recommendation will include requests to the appropriate state agencies to accompany the Division on site visits.

Unlicensed Schools

Statute requires that all private occupational schools be approved by the Board to operate in Colorado. At the beginning of the audit, Division staff reported that there are a significant number of unlicensed schools operating in the State. We reviewed the Division's processes for identifying unlicensed schools and requiring they comply with statute. We found:

- **The Division does not systematically identify, track, and follow up on unlicensed schools.** The Division maintains information (dating back to 1999) on suspected unlicensed schools in unsorted piles on staff members' desks rather than tracking these schools through its database or a spreadsheet. Our review of the documentation determined the Division had identified 68 unlicensed schools as potentially being subject to its regulation. We found the Division attempted to contact only 26 of the 68 schools (38 percent).

We also found the Division does not have systematic procedures to identify private occupational schools that are operating without a certificate of approval. Division staff indicated that they find unlicensed schools by relying on tips from licensed schools, driving around, monitoring newspaper and television ads, and searching local phone books. However, there are other sources the Division could use to identify unlicensed schools. For example, we searched the Secretary of State's Web site for registered vocational and trade schools and found another seven schools that appear to meet the definition of a private occupational school but are not licensed by the Division.

- **The Board has not taken action to ensure noncompliant schools become licensed or to prevent them from operating.** We reviewed the 68 potentially unlicensed schools mentioned above and determined that 42 appear to meet the definition of a private occupational school. We found only 3 of the 42 schools (7 percent) had received a certificate of approval as of the end of the audit. Statute provides punitive measures the Board may exercise when pursuing unlicensed schools including civil and criminal actions that can result in fines and jail time for owners and operators of

noncompliant schools. The Board can also obtain a temporary restraining order or injunction to prevent unlicensed schools from continuing to operate. The Division reports that these tools have not been used because it does not believe these methods would be cost-effective. Other states we contacted reported they were able to use fines and cease-and-desist orders against unlicensed schools successfully.

One of the primary purposes of the Private Occupational Education Act is to protect Colorado citizens from substandard and fraudulent schools. Currently there appear to be nearly 50 unlicensed schools (the 39 identified by the Division and the 7 identified by our audit) operating in the State, which equals about 15 percent of the 310 currently licensed schools. It is important that the Board and the Division take systematic action to bring unlicensed schools into compliance. For example, these schools could be providing educational services that do not sufficiently prepare students to enter their chosen occupation, or they may not maintain sufficient financial resources to reimburse students for prepaid, unearned tuition if the school closes. Additionally, unlicensed schools may gain an unfair market advantage, since they are not subject to the Board's fees or the costs of meeting minimum statutory and regulatory requirements.

Recommendation No. 4:

The Private Occupational Schools Board should improve its processes for enforcing licensing requirements on unlicensed schools by:

- a. Developing standardized methods for discovering, tracking, and pursuing unlicensed schools.
- b. Using available sanctions (e.g., civil/criminal penalties and injunctions) against private occupational schools that are operating illegally.

Private Occupational Schools Board Response:

Agree. Implementation Date: September 1, 2005.

While sources for discovery of illegal schools continue to expand, the Division will implement a standard method for discovering, tracking, and pursuing unlicensed schools. A monthly timetable will be established for the routine checking of sources, documentation, and subsequent enforcement. In conjunction with the Office of the Attorney General, available sanctions will be utilized. The Division will work with the Department of Higher

Education to request additional resources should it be necessary for heightened enforcement.

Internet Schools

Statute requires all private occupational schools offering educational services to Coloradans, even those physically located outside of Colorado, to be licensed and regulated by the Board. Internet schools, which offer online education but have no physical classrooms, are a relatively new type of institution that appears to meet the definition of a private occupational school because their services are available to Colorado residents. The Division reported it has struggled with how it will regulate these schools. Proper regulation of Internet schools is important because the Division reported receiving a few student complaints regarding these schools each year, although we did not find evidence that the Division documented these complaints. We reviewed the Board's regulations regarding these schools and found that they do not specifically address Internet schools. For example, the Board's regulations do not define Internet schools, and there is a lack of policies and procedures specifically related to licensing and monitoring those schools offering Internet education.

It is not clear how practical it would be to expect the Board and the Division to license and monitor every Internet school throughout the country that offers services to Coloradans. When we contacted other states, we found that they generally do not try to license Internet schools unless the school has a physical presence in their state or advertises in the local media. Even so, the Board and the Division should take what steps they can to protect students in Colorado. One option is for the Board and the Division to work with counterpart agencies in other states through interstate reciprocity agreements. Section 12-59-105, C.R.S., authorizes the Division to enter into interstate reciprocity agreements with similar agencies in other states when such agreements would assist in the enforcement of statutory requirements. The Division could use this authority to establish a formal arrangement whereby complaints from Colorado students against an out-of-state Internet school would be investigated by the agency in the state where the school is located. Another option is to track complaints from Colorado residents about Internet schools and to forward them to the Colorado Office of the Attorney General for investigation. Under this option, the Board would need to work with the Attorney General to establish protocols for when the Division could submit complaints.

Recommendation No. 5:

The Private Occupational Schools Board should work with the Division to consider ways to oversee Internet schools, such as instituting formal interstate reciprocity agreements with its counterpart agencies in other states and tracking complaints to be forwarded to the Colorado Office of the Attorney General.

Private Occupational Schools Board Response:

Agree. Implementation Date: Ongoing.

The Board recognizes the proliferation of Internet schools and understands the difficulties in regulating these educational offerings. Cooperation already exists between states in the investigation of schools domiciled in Colorado. Should cooperation cease, formal interstate reciprocity agreements with other states will be pursued. The National Association of State Administrators and Supervisors of Private Schools (NASASPS) and its Web site provide valuable information and offers a streamlined approach to interstate cooperation. The Board will direct the Division to strengthen its ties with the NASASPS so as to avail itself of avenues of interstate cooperation on regulation of Internet Schools.

A process will be instituted for the tracking and disposition of complaints received from Internet-based schools/educational offerings.

Monitoring and Enforcement

Chapter 2

Introduction

In addition to the licensing functions discussed in Chapter 1, the Private Occupational Schools Board (Board) and the Division of Private Occupational Schools (Division) oversee schools through monitoring activities. Monitoring includes investigations of complaints and the review of surety, financial, and placement data filed by schools annually. The purpose of monitoring is to ensure that schools licensed by the State continue to meet the minimum standards in statute and regulations and do not engage in deceptive trade practices.

We reviewed the monitoring efforts undertaken by both the Board and the Division and found weaknesses in the existing controls for ensuring ongoing compliance with the minimum requirements. As a result, the Board's and the Division's ability to fulfill their statutory purposes to improve private occupational schools and their educational services and to protect citizens from fraudulent and substandard schools is diminished. This chapter discusses ways the Board and the Division can increase the effectiveness of their oversight and promote compliance by schools.

Annual Filings

Statute requires that schools maintain sufficient financial resources to make refunds of tuition and fees and meet their fiscal obligations, sufficient surety protection to cover unearned, prepaid tuition if the school closes, and adequate educational services to achieve their stated program objectives. To ensure schools are meeting these requirements, the Board's regulations require schools to file surety proposals, financial statements, and placement statistics annually. The annual filings are intended to provide the Division with information to determine the schools' financial stability, the adequacy of the schools' sureties, and the schools' success in helping students find employment. We found that the Division does not maintain accurate data on whether schools are complying with these regulations. We reviewed the Division's records for a random sample of schools to determine if the schools had submitted the required annual information during Fiscal Years 2000 through 2004 and examined how this annual information was used by the Division. We found that a significant number of schools fail to maintain an adequate amount of surety to

protect students and that the Division is not recommending the Board take action against those schools not meeting statutorily required financial requirements.

Surety Protection

One of the ways that the Board and the Division protect consumers is by monitoring the surety protection maintained by the schools. Section 12-59-115, C.R.S., requires each private occupational school to furnish and maintain sufficient surety protection to cover its unearned, prepaid tuition in the event the school closes or needs to refund tuition and fees to students due to engaging in deceptive trade practices. It also states that this surety must be included as part of the school's certificate of approval application and it must be recalculated annually. The Division, on behalf of the Board, determines the amount of surety protection required for each school through the school's annual surety proposal in which the school is required to calculate and report its maximum prepaid, unearned tuition and fees for the applicable period of educational services (i.e., the maximum number of students expected to attend the school during the period times the tuition amount collected up-front). The surety protection must be in the form of a bond, a savings account, an irrevocable letter of credit, or a certificate of deposit covering the school and its agents, and it must be at least \$5,000.

We selected a sample of 50 schools to determine if the Division ensures that schools submit the required surety information and if surety levels are adequate. We noted three main problems. First, 43 of the 50 schools (86 percent) did not consistently submit annual surety proposals over the five-year period. They typically only provided them when renewing their certificates of approval. A school's required surety level can change as its number of programs and classes fluctuates from year-to-year. Without the annual submittals, neither the Board nor the Division can ensure that students will be protected financially if a school closes.

Second, we found that 12 of the 50 schools (24 percent) had insufficient surety protection at some point during the period Fiscal Years 2000 through 2004. Our review indicates that the schools lacked the necessary surety protection for periods ranging from two months up to two years. For example:

- One school collected prepaid tuition and fees in excess of its surety amount repeatedly over a nine-month period from November 2002 to August 2003. Specifically, the school had surety protection in the amount of \$400,000 but had collected prepaid tuition in excess of this amount, ranging from \$441,000 to \$695,000, during seven months in the period. According to the statute, the surety amount should have been for the highest amount of the unearned, prepaid tuition and fees, or at least \$695,000 in this case. The Division repeatedly notified the school that it lacked adequate surety protection but did not take any action to suspend the school's certificate. In addition, the

Division recommended that the Board renew the school's certificate during this period. There is no indication that staff informed the Board about the inadequate surety protection. Division records indicate the school obtained enough surety protection in September 2003.

- A second school collected \$74,000 in prepaid, unearned tuition and fees during December 2001. The school only maintained surety protection in the amount of \$23,000. It did not increase its surety until September 2002. As a result, the school lacked the statutorily mandated amount of surety protection for 10 months. We did not find evidence in the school's file that the Division recommended any action against the school.

Finally, we found in 3 of 50 files that the surety instruments did not indemnify enrolled students against a loss of tuition or fees, as required by Section 12-59-115, C.R.S. For example, one school's surety bond indemnified the city of Denver, not the students. We notified the Division of this problem, and the Division requested that the school make the necessary changes. Prior to the end of the audit, the school submitted a bond indemnifying the students.

We identified two reasons for the problems we found. First, the Board and the Division lack clear and consistent policies and procedures for ensuring that schools submit their annual surety proposals, that the proposals are accurate and sufficient, and that the surety instruments indemnify enrolled students against a loss of prepaid, unearned tuition or fees. As a result, staff have not correctly identified schools as having insufficient surety protection. In addition, we found evidence that staff reviewed the surety proposals in only 4 of the 50 files (8 percent) in our sample. To protect all consumers from financial harm, the Division should define and implement policies and procedures that require staff to analyze and verify the surety proposals and instruments to ensure the surety is sufficient and indemnifies students. The policies and procedures should also provide for supervisory review to ensure surety calculations are accurate and complete.

Second, the Division does not adequately enforce surety requirements. Although the Division notified some of the 12 schools cited above that they lacked adequate surety coverage, it did not enforce deadlines for obtaining sufficient surety protection or initiate sanctions. In addition, as noted, the Division recommended that the Board issue a certificate to a school that the Division was aware lacked sufficient surety protection. Statute requires the Board to deny a certificate to schools with insufficient surety protection and to give a school 45-day written notice that it will suspend the school's certificate of approval when the school is no longer covered by surety protection. However, it is silent on how the Board should treat schools with an active certificate whose surety protection becomes insufficient. The Board should enact regulations and seek statutory change to ensure that schools with active

certificates maintain sufficient surety protection. The Division should also comply with statute and not recommend that the Board renew certificates for schools lacking the statutorily mandated amount of surety protection.

Recommendation No. 6:

The Private Occupational Schools Board should implement controls to ensure surety requirements are met by:

- a. Developing and implementing policies and procedures for the receipt, analysis, and verification of surety proposals and instruments to ensure the surety is sufficient and the surety indemnifies the schools' students. Supervisory review should be required to ensure surety calculations are accurate and complete.
- b. Enacting provisions for licensed schools whose surety protection becomes inadequate, including proposing statutory or regulatory change, if necessary, to ensure schools regain adequate surety protection within a specified period.
- c. Acting only on those certificate of approval applications that meet statutory requirements regarding surety protection.

Private Occupational Schools Board Response:

- a. Agree. Implementation Date: September 1, 2005.

Policies and procedures will be evaluated, modified, and reinforced for the receipt, analysis, and verification of surety proposals and instruments to ensure surety sufficiency and indemnification. Supervisor analysis and review will also be instituted.

- b. Agree. Implementation Date: September 1, 2005 and 2006 Legislative Session.

Difficulty exists in establishing surety inadequacy between annual bond submittals. Each school establishes its own method of collecting tuition, such as up-front, installment payments, or in arrears.

The Division will review each school's quarterly assessment for increased student enrollment, and compare this figure with the annual bond proposal for trend analysis. Should this comparison warrant an

increase in surety protection, a timeline will be enforced for compliance. The Board will recommend regulatory modifications to impose timely compliance.

- c. Agree. Implementation Date: Implemented April 1, 2005.

Financial Statements and Placement Statistics

As noted above, statute requires that schools maintain sufficient financial resources to meet their financial obligations and adequate educational services to achieve stated program objectives. To enforce these provisions, the Board's rules and regulations state that schools must annually submit to the Division financial statements and placement statistics. We found the Division does not maintain accurate data on when it receives the annual filings and, therefore, could not tell us which schools have submitted the information. We selected a sample of 20 schools to determine if schools complied with the annual filing requirements each year during the period Fiscal Years 2000 to 2004. We identified several problems:

- **Most schools do not submit annual filings.** We found that very few schools comply with these annual filing requirements. For example, 15 of the 20 schools (75 percent) in our sample did not consistently submit annual financial statements. In the 15 cases, schools did not submit 56 percent of required statements. Also, none of the five schools that provided or advertised placement assistance submitted any annual placement statistics during the five-year period. The Division only requires placement statistics for schools that offer or advertise placement assistance.
- **No evidence exists of a review of most of the annual filings received by the Division.** Even when the Division received the annual filings, there was little evidence, such as initials and dates, to indicate staff reviewed them. For example, staff appeared to review only 1 of the 20 schools' financial statements. As a result, it does not appear the Division uses the annual filings to ensure schools are meeting requirements for maintaining adequate financial resources and educational services.
- **The value of the financial and placement information provided is questionable.** We found some schools' financial statements did not comply with the Board's rules and regulations. For example, we noted that some schools' financial statements were not prepared in accordance with generally accepted accounting principles by an independent accountant. Financial information can be useful for determining the solvency of a school. School

closures can disrupt students' progress toward completing their programs, degrees, and certificates. Therefore, the Division should ensure it receives required financial statements from schools annually to monitor the schools' financial health. We question the value of the placement statistics, since the Division has not determined a method for analyzing these statistics or how it intends to use this information.

Finally, we did not find evidence the Division took action to enforce the annual filing requirements, such as following up with the school, informing the Board, imposing fines, or suspending a school's certificate, unless the school was renewing its certificate, which occurs every three years. From our review of statute and regulations, it is not clear the Board and Division have penalties to use against schools that fail to submit these documents. The Board should develop criteria for reviewing the financial statements and placement statistics provided by schools and implement procedures for action when problems are identified or filings are not received. The Board should also determine if the annual filings of placement statistics are of value for regulatory purposes and eliminate them if not.

Recommendation No. 7:

The Private Occupational Schools Board should develop procedures for reviewing the financial statements and placement statistics it receives, following up on any identified problems, and taking corrective action against schools that fail to submit them. It should also determine if the annual filings of placement statistics are needed for regulatory purposes and eliminate them if not.

Private Occupational Schools Board Response:

Agree. Implementation Date: August 1, 2005.

Financial Statements: Discussions have already begun to install formal procedures for the review of financial statements. Guidelines and ratios being considered are those used by the United States Department of Education for financial aid viability and continuance, national accrediting agencies, as well as alternate surety organizations. Should deficiencies exist, corrective measures will be recommended and monitored, as prescribed in statute. While the existing database would fulfill the basic reporting needs, a fully integrated database would offer much needed assistance for the tracking of financial statement receipt and analysis. Delinquent schools will be reported to the Board and recommended for corrective action.

Placement Statistics: The Board feels placement statistics indicate a significant measure of success in the training of students and are required for accredited schools. Rules and Regulations Concerning the Private Occupational School Education Act of 1981, as amended, V. Annual Filings;(c) Placement Statistics;(1) Each school which offers or advertises placement assistance for any course or instruction shall file with the Division its placement statistics for each program for the preceding year. While the current database would fulfill the basic reporting needs, a fully integrated database would offer much needed assistance for the tracking of placement statistics receipt and analysis. The Division will work with the Department of Higher Education to request additional spending authority from the Legislature.

Complaint Process

Under statute, the Board is responsible for investigating student complaints. Section 12-59-118, C.R.S., outlines procedures the Board should follow when it receives complaints regarding deceptive trade or sales practices. Statute defines these practices broadly, including such activities as instances in which a school falsely represents itself as an employment agency, enrolls students who obviously will not be able to complete the program of study, or makes inaccurate or misleading statements regarding its educational services. If a student believes a school is engaging in a deceptive trade or sales practice, the student must file a written complaint with the Board and the Board must investigate the complaint. On the basis of the Board's investigation, statute allows the Board to consider the complaint at a hearing, order the school to cease and desist from the deceptive practice, and/or award restitution to the complainants.

The Division receives and investigates complaints on behalf of the Board. Typical complaints against schools include allegations of inadequate instruction, facilities, or equipment, and problems with obtaining refunds. Division staff believe that complaints are an important indicator of a school's performance and help protect consumers against fraudulent or substandard schools. The Division maintains a database of complaints received from students regarding all private occupational schools. We reviewed the information in the Division's complaint database as well as in the files for a sample of 20 written complaints submitted during Fiscal Years 2003 and 2004. We also interviewed Division staff to determine how they investigate student complaints. We found several weaknesses with the Division's complaint process:

- **Inconsistent procedures for handling complaints.** The Division has not implemented standardized policies and procedures for accepting and investigating student complaints, which has resulted in inconsistencies. For example, some staff send a complaint form to every student who complains, while other staff seek to resolve any complaints verbally. We have concerns regarding resolving complaints verbally, since this does not provide the Division with documentation to demonstrate how the complaint was investigated and resolved. Lack of documentation means the Division cannot provide accurate information regarding the total number of complaints that it receives, how complaints are handled and resolved, and the length of time it takes for resolution. In addition, the lack of policies and procedures for accepting and resolving complaints means that the Division cannot ensure students and schools are treated fairly, consistently, and according to statute.
- **Staff investigations are cursory.** We found that Division staff rely chiefly on self-reported information obtained from the private occupational schools when investigating complaints without verifying whether the information provided is accurate. In addition, Division files contain little information indicating that staff analyzed the schools' responses to complaints. Instead, it appeared that staff usually accepted the schools' response that the complaint was not valid. For example, the Division received a complaint from a student regarding a refund from a school. According to handwritten notes added by a school employee to the student's enrollment agreement, the student was entitled to a "no questions asked full refund" if leaving the program within 60 days of the agreement, which the student appeared to do. After the student filed a complaint with the Division, the school agreed to provide the student with a partial refund but kept approximately \$3,300, the cost of a license for software that the student stated had been returned to the school. The school's enrollment agreement contained confusing language regarding whether the cost of the software license is refundable within the first 60 days of enrollment. The complaint file maintained by the Division lacked any evidence that staff called the school to clarify the meaning of the handwritten refund offer with the employee or the school's director, both of whom have since left the school. Instead, the Division simply agreed with the school's refund calculation and allowed the school to retain the \$3,300 for the software license without further investigation and resolution. Finally, it does not appear that staff use their investigations to determine if the complaint indicates that there are systemic problems at the schools. As a result, the Division's investigations are not adequate to protect the interests of complainants or prevent the same complaints from recurring.
- **Complaint database is incomplete and inaccurate, and is not analyzed by the Division to identify trends.** According to staff, complainants who are sent a complaint form are logged into the Division's complaint database,

which includes fields for the date the complaint form was sent and returned, the date the complaint was resolved, and a description of the complaint. However, we found that the Division lacks procedures for ensuring that all complaints are in fact entered into the database. For example, the database contained three complaints regarding one school, but the Division's paper files had 36 complaints related to that school. Therefore, the database is incomplete not only because not all complainants are issued forms, but also because not all forms are recorded in the database. We also found that Division staff fail to enter all required complaint information from the forms into the database. For example, only 14 percent of the complaints in the database listed a resolution date.

We also found the Division does not conduct any analysis regarding complaints to determine the number of complaints received, how long it takes to resolve complaints, the outcome of complaints, or the number and types of complaints received for each school. Therefore, the Division cannot ensure that all complaints are investigated or that they are resolved in a timely manner. For example, from 1999 until April 2003, the Division received 23 complaints regarding one school, most of which were not in the database. The Division did not conduct a detailed investigation or take corrective action until it received 10 complaints during April and May 2003 concerning the deceptive trade practice of using financial aid as an inducement to recruit students, even though there had been complaints regarding this issue dating back to July 2001. Had the Division tracked these earlier complaints, investigated them fully, and taken action sooner, it might have prevented the school from continuing to engage in deceptive trade practices and protected later students from financial harm.

The Board and the Division should develop an effective complaint process that addresses the tracking, handling, and resolution of complaints. This information should be used to ensure students' issues are addressed appropriately and timely.

Recommendation No. 8:

The Private Occupational Schools Board should improve its complaint process by ensuring that the Division of Private Occupational Schools:

- a. Implements formal policies and procedures for documenting and investigating complaints to ensure they are handled consistently and in a timely manner, and for entering all complaints received into the complaint database.

- b. Verifies information provided by schools and students during complaint investigations and determines if the complaints represent systemic problems. If such problems are identified, corrective action should be taken.
- c. Uses its complaint database to compile and analyze data on the frequency of complaints and the timeliness of their resolution.

Private Occupational Schools Board Response:

- a. Agree. Implementation Date: October 1, 2005.

The Division will reassess the current complaint system and adopt written policies and procedures for the evaluation of the written complaints to ensure timely investigation and disposition.

- b. Agree. Implementation Date: October 1, 2005.

Documentation relating to the complaint from both complainant and school is required for full and in-depth analysis. Such documentation helps separate fact from circumstantial rhetoric. Supervisory review of complaint investigations will be instituted to ensure that appropriate steps are taken to verify information and to determine systemic problems. The Division will work to improve this process.

- c. Agree. Implementation Date: Ongoing.

The Division agrees to improve its utilization of its complaint database to compile and analyze data, including the frequency of complaints received, the nature of the complaints (to establish a pattern and practice) and the timeliness of their resolution. The establishment of an integrated database would significantly enhance the tracking and reporting capabilities of the Division.

Closed Schools

Statute as well as Board regulations require private occupational schools with a certificate of approval to maintain adequate educational, financial, and other records and to send these records to the Division within 60 days after the school closes. In addition, statute allows the Board to seize the records and pursue civil and criminal penalties against schools that fail to submit records as required. These educational and financial records allow the Board and the Division to determine if students

deserve refunds and give students access to their educational records when needed to verify their credentials.

During Fiscal Years 2003 and 2004, a total of 48 schools closed. (The Division did not have complete data prior to Fiscal Year 2003.) We reviewed files of 25 closed schools to determine if they submitted the required records. We identified six schools (24 percent) that failed to send their records to the Division, typically because the school destroyed them. If schools do not submit their records, students may not receive the refunds they are due in a timely manner. For example, 14 students made refund claims totaling about \$2,000 against a school that closed in March 2004. Students were not issued refunds until March 2005 in part because the school did not submit required records to the Division.

We found the actions the Division and Board have undertaken, such as sending letters to school owners to obtain records, are not always effective. The Division and Board have not pursued legal or other action because they do not believe it would be effective due to the cost and time involved. For example, in the one case in which legal action was taken in 2000, it took 18 months to get a judgment. The Board was subsequently unable to collect because the school owner was in jail on unrelated charges.

The Board should work with the Division to develop additional methods to encourage schools that are closing to submit their educational and financial records. One possibility the Division is considering would be to require all schools to submit student-specific educational and financial information to the Department of Higher Education annually, similar to what public institutions are required to do. This would provide the Division the necessary information to determine applicable refunds and provide educational records to students, even if a school closes and does not submit its records. The Board and the Division should examine the feasibility of this and other options to collect student information routinely from the schools. Routinely collecting student information could be used in concert with the Board's existing statutory authority to seize records and impose civil and criminal penalties to ensure that students are protected when a school closes.

Recommendation No. 9:

The Private Occupational Schools Board should work with the Division of Private Occupational Schools to improve the collection of records from closed schools by evaluating other methods to collect student data. This should include examining the feasibility of requiring all schools to submit student records to the Board and Division on a periodic (e.g., annual) basis. If this is feasible, the Board should

develop rules, regulations, and procedures to collect this information from the schools.

Private Occupational Schools Board Response:

Agree. Implementation Date: November 1, 2005.

The Board and Division will investigate the feasibility of mirroring the efforts performed by the United States Department of Education in acquiring student-specific educational and financial information for postsecondary institutions, similar to the Integrated Postsecondary Education Data System, or the Department of Higher Education's Student Unit Records Data System. This would include requiring schools to submit student records to the Board and Division on a periodic basis.

Penalties and Fines for Noncompliance

Under existing statute, the minimum penalties available for a violation of the statute are usually an automatic suspension or revocation of the school's certificate of approval. We found the Board does not impose these penalties when violations, such as insufficient surety protection or deceptive trade practices, occur. The Division, which advises the Board on corrective action, has been reluctant to recommend the suspension or revocation of a school's certificate because it prefers an educational, rather than punitive, approach to promote compliance by schools and believes that the current statutory penalties are not cost-effective. The Division has not recommended that the Board suspend or revoke a certificate since at least Fiscal Year 2000.

As a less severe alternative for penalizing noncompliance, the Board and the Division have expressed an interest in having the authority to issue administrative fines. The Division and the Board believe that this would be a more effective way of encouraging school compliance. Other regulatory entities, such as the Office of Barber and Cosmetology Licensure at the Department of Regulatory Agencies, have fining authority. Without an effective way to sanction noncompliant schools, the Division and the Board have difficulty in promoting better compliance and protecting consumers. Also, noncompliant schools may have a competitive advantage over more compliant schools because they are not spending the resources necessary to comply with the State's laws and regulations.

Administrative fines may be a useful tool for the Board to penalize schools, particularly for offenses like failing to submit surety proposals or paying fees late.

Many of the states we contacted did not have administrative fining authority, but Nevada reported success using fines. The Board should determine if it has the ability to issue fines through its rule-making authority or, if necessary, seek statutory change for sanctioning noncompliant schools with fines. The fines collected should be transferred to the General Fund to prevent any appearance of a conflict of interest. The Board should also revise its rules and regulations to better define criteria for how administrative fines and stronger sanctions should be used.

Recommendation No. 10:

The Private Occupational Schools Board should improve its use of penalties against schools for noncompliance by:

- a. Determining its authority to issue fines through its rule-making authority or, if necessary, seeking statutory change for sanctioning noncompliant schools with fines. The fines collected should be transferred to the General Fund.
- b. Revising its rules and regulations to define criteria for how to determine if statutory penalties, such as suspending or revoking a school's certificate, or administrative fines should be used, and taking action as appropriate.

Private Occupational Schools Board Response:

- a. Agree. Implementation Date: September 1, 2005, and 2006 Legislative Session.

The Board and Division will consult with the Office of the Attorney General to determine the Division's authority to issue fines through its rule-making or, if necessary, seek statutory change for sanctioning noncompliant schools with fines.

The Board and Division would welcome legislation authorizing fining privileges, and the Board, upon implementation of the proposed statutory authority, would develop additional rules related to this requirement for adoption.

The Board and Division will survey other jurisdictions to ascertain a level of monetary fine. The Board and Division, in conjunction with legal counsel, will develop criteria and guidelines for use in determining fining sanctions to be imposed against the schools.

- b. Agree. Implementation Date: October 1, 2005.

The Board and Division will begin a review with efforts toward revising rules and regulations to define criteria for how to determine if statutory penalties, such as suspending or revoking a school's certificate or administrative fines, should be used and taking action as appropriate.

Administration

Chapter 3

Introduction

In addition to the oversight issues we highlighted in the previous chapters, our audit found the Private Occupational Schools Board (Board) and the Division of Private Occupational Schools (Division) could improve the way they administer the Private Occupational Education Act (Act). Specifically, we identified concerns with both the Board's fee schedule and the Division's fee collection, as well as the Division's database, cash handling controls, and methods for ensuring staff independence.

Fees

The Division is cash-funded through the various fees it collects as part of the regulatory process. Section 12-59-116, C.R.S., directs the Board to "establish fees for the direct and indirect costs of the administration of [the Private Occupational Education Act]" We reviewed the existing fee schedule as well as the Division's revenues, expenditures, and cash fund reserves to determine if the fees are reasonable and appropriate. We found that the current fees may exceed costs as revenues have generally outpaced expenditures since Fiscal Year 2000. Further, we found the Private Occupational Schools' cash fund frequently exceeds its statutory reserve limit. In general, Section 24-75-402, C.R.S., limits the amount of a cash fund's uncommitted reserves to 16.5 percent of the amount expended from the fund during the fiscal year after certain exclusions. We found the Private Occupational Schools Fund's uncommitted reserves exceeded its statutory target reserve in three of the last five fiscal years, as shown in the table on the next page. Statute requires agencies to reduce fees when they exceed statutory cash fund reserve limits. The Private Occupational Schools Fund was not subject to this provision until Fiscal Year 2003.

Private Occupational Schools Fund Uncommitted Cash Reserves Versus Target Reserve Fiscal Years 2000 Through 2004¹					
	Fiscal Year 2000	Fiscal Year 2001	Fiscal Year 2002	Fiscal Year 2003	Fiscal Year 2004
Uncommitted Reserves	\$155,228	\$189,900	\$77,367	\$81,581	\$116,561
Target Reserve	\$71,268	\$82,997	\$107,346	\$103,043	\$104,407
Amount Over/(Under) Target Reserve	\$83,960	\$106,903	(\$29,979)	(\$21,462)	\$12,154
Source: <i>Cash Funds Uncommitted Reserves Report</i> prepared by the State Controller's Office for Fiscal Years 2000 through 2004.					
¹ Amounts are fiscal year-end figures.					

In reviewing the fee schedule, revenues, and expenditures, we found problems related to fee collection, the instructor credentialing fee, the basis of the fees, and questionable expenditures. Overall, these problems suggest that the Board should reevaluate its fee schedule and ensure all expenditures are reasonable and necessary.

Fee Collection

The Board and the Division have a fiduciary responsibility to collect all fees that are owed by the schools. We reviewed the processes used by the Division to collect established fees and discovered problems with the collection of the quarterly student assessment fee, the largest revenue-generator (44 percent of revenues in Fiscal Year 2004). Schools pay a quarterly assessment fee based on the number of full-time and continuing education students that attend the schools during the quarter. Every quarter, the Division requires each approved school to submit a form listing the number (even if it is zero) of its full-time and continuing education students and include the amount owed based on the rate of \$3 per full-time student and \$1 per continuing education student.

We found that the Division is undercollecting the quarterly student assessment. First, the Division does not ensure that every school submits the required assessment form and fee (if applicable) each quarter. Specifically, close to 50 percent of the schools (12 of 25) in our sample failed to submit a form and the fee for at least one quarter in either Fiscal Year 2003 or 2004. Due to limitations with the Division's database and the possibility that the 12 schools did not have students enrolled during the missing quarters, it is difficult to quantify how much revenue might have been

lost. Second, Division staff do not verify that schools pay the correct quarterly assessment. At the time of the audit, staff had identified an error in the method used by some schools to calculate the amount owed. Specifically, some schools were incorrectly identifying full-time students as continuing education students on their forms and paying the lower fee. As a result, the Division has lost revenue, although we were not able to quantify the amount. The Division did contact the schools that were incorrectly calculating their quarterly assessment fee to obtain reimbursement.

In the past, staff have not consistently reviewed the submitted assessment forms and the database to ensure that all schools have submitted the required forms and paid the correct fees. Also, Division staff report that they do not verify the enrollment figures listed on the assessment forms, although the form says that the figures are subject to audit. Verification could have detected the problem with misclassifying students. The Division risks that schools are not paying the proper amount of fees because schools have an incentive to underreport enrollment figures to pay lower amounts of fees.

The Division should establish and maintain procedures to ensure that all schools submit their quarterly forms and fees and that the amount paid is correct, including periodically auditing schools' enrollment figures. In addition, the Division should consider reducing how often it collects the assessment fee. By collecting the fee less often (e.g., semiannually instead of quarterly), the Division would reduce the processing costs for collecting it. Finally, although we did not specifically test the collection of other fees, the Division should ensure that it tracks and collects all other fees from licensed schools.

Recommendation No. 11:

The Division of Private Occupational Schools should improve its fee collection processes by ensuring that it tracks required submissions and collects all fees, including the quarterly student assessment fee, from all schools. It should also verify enrollment figures from the student assessment forms through periodic audits.

Division of Private Occupational Schools Response:

Agree. Implementation Date: Implemented March 1, 2005.

Steps have already been made to improve the fee collection processes by the Division. These steps include the revision of forms required for submission by the school, as well as verification by the Division of information submitted. Potential use of the Department of Higher Education's Student Unit Records Data System would also aid in the verification of

enrollment/collection numbers. The establishment of an integrated database will significantly enhance and improve fee collection processes.

Instructor Credentialing

Statute states that instructional staff must have proper educational and work experience qualifications to ensure students receive educational services that meet program objectives. Additionally, the Board's rules and regulations require that all instructors possess or have applied for a current occupational credential in the program area they will teach. Further, Section 12-59-116, C.R.S., gives the Board the authority to establish and receive fees for reviewing the qualifications of and for issuing appropriate credentials to instructors. As noted previously, the Division has an informal arrangement in which the Career and Technical Education Office at the Colorado Community College System (System) receives, reviews, and approves applications for required occupational credentials from instructors working at private occupational schools. For this service, the Division pays the System \$15,000 annually.

We found that neither the Board nor the Division has any role in the credentialing process other than to collect the credentialing fees, which totaled about \$110,000 in Fiscal Year 2004. As a result, these entities are collecting money for a service they do not perform. To ensure that credentialing fees are related to the costs of providing the service, the Board and the Division should be removed from this process. Instructors at private occupational schools would apply for the required credential and pay the fee directly to the System. Under this arrangement, the System would still be responsible for determining if individuals meet the qualifications for receiving an occupational credential. The Board and Division would remain responsible for ensuring, as part of the certificate of approval process, that private occupational schools only employ credentialed instructors. This change would require modifying statute, since the Board is specifically authorized to establish and collect fees related to the review of instructor qualifications and issuance of credentials.

Recommendation No. 12:

The Private Occupational Schools Board should work with the Colorado Community College System to propose necessary statutory and regulatory changes allowing the System's Career and Technical Education Office to set, collect, and retain the instructor credentialing fee necessary to verify the credentials of instructors working at private occupational schools.

Private Occupational Schools Board Response:

Disagree.

The Board does not agree with the recommendation. The Board feels the credentialing function is an essential element of the approval process and wants to maintain ultimate responsibility for and control of this process. The Board feels strongly that any modification to the credentialing process can best be accomplished through internal review of the fee structure and modification of the memorandum of understanding with the Colorado Community College System.

Colorado Community College System Response:

Agree. Implementation Date: July 2006.

The Colorado Community College System agrees to work with the Private Occupational Schools Board to propose statutory and regulatory changes to allow the System's Career and Technical Education Office to set, collect and retain instructor and administrator credentialing fees necessary to verify the credentials of instructors and administrators working at private occupational schools.

Basis for Fees

In addition to the statutory requirement that fees cover the direct and indirect costs of administering the Private Occupational Education Act, statute also requires the Board to propose a new fee schedule annually. The current fee schedule went into effect at the beginning of Fiscal Year 2003. We asked Division staff to provide the basis for the current fees and found the Division was unable to document how these fees relate to the costs of administering the statutory requirements. We identified two fees, instructor credentialing and certificate approval, that do not appear to be related to the cost of providing those services. First, as noted earlier, the Division collected about \$110,000 in Fiscal Year 2004 from instructor credentialing fees but only incurred costs of \$15,000, the amount it paid to the System to actually perform this service. Second, for the certificate approvals, we noted that the Board charges new schools \$1,500 for a provisional certificate and renewing schools \$750 for a standard certificate. Based on our review of the approval process, discussed in Chapter 1, it does not appear that the provisional approval process takes double the time of a renewal. The Division could not provide evidence, such as a workload

analysis, to document that provisional applications are more time-consuming than renewals.

Our analysis shows that fees have been largely unchanged since at least Fiscal Year 1999. Without any documentation to show the basis for the fees, the Board may be overcharging the schools, as suggested by the fact that revenues are usually higher than expenditures. As required by statute, the Board should work with the Division annually to determine the actual costs of different regulatory services and then adjust the fees accordingly.

Questionable Expenditures

In addition to ensuring that fees are reasonable in relation to costs, the Board and Division need to ensure that all expenditures are reasonable and necessary, as required under State Fiscal Rules. We reviewed the Division's expenditures from Fiscal Years 2002 to 2004 to determine if they appeared to be appropriate. We identified two areas in which the Division's expenditures lacked adequate support or appeared questionable.

- **Increases in total staff compensation are significantly higher than those for other state employees without appropriate justification.** Total staff compensation (i.e., salary and bonuses) accounts for a majority of the Division's expenditures (65 percent in Fiscal Year 2004). We analyzed the increases in compensation the Division has given to staff to determine their reasonableness. We found that staff compensation increased an average of about 13 percent per year during Fiscal Years 2003 and 2004 through a mixture of salary raises and bonuses given to its six employees. By comparison, staff at the Colorado Commission on Higher Education (Commission staff, like Division staff, are generally exempt from the state personnel system) received increases of about 5 percent per year during Fiscal Years 2003 and 2004. At the time of our audit, the Division's exempt staff (all but one employee) had not received raises or bonuses during Fiscal Year 2005.

While we recognize the need for adjustments in compensation based on performance, job duties, or market conditions, we are concerned about the Division's increases in compensation because of the lack of supporting documentation. The Division indicated that raises were based on performance but could not provide any performance indicators that were used to support the pay increases. Specifically, while the Division provided staff performance evaluations for Fiscal Year 2003, we noted that all exempt staff received similar ratings but different raises and bonuses. Further, for Fiscal Years 2002 and 2004, the Division only provided self-evaluations completed

by staff. The Division gave out bonuses averaging \$3,100 per person to most employees each year during the period Fiscal Years 2002 through 2004. All exempt Division staff also received salary increases each of these years. For Fiscal Year 2002 and Fiscal Year 2003, the Division could not provide documentation to show how bonuses were tied to performance or job duties. The Division provided a June 2004 memorandum which detailed the justification for the Fiscal Year 2004 bonuses. The memorandum described one employee's performance and work ethic as "subpar," strongly suggesting staff bonuses were not tied to performance or job duties.

- **Rent costs allocated to the Division are too high.** The Division shares office space with the Commission. As part of this arrangement, the Division pays rent to the Commission and shares salary costs for some of the Commission's administrative staff, such as its controller and receptionist. We reviewed the costs allocated to the Division by the Commission and found the rent costs are disproportionately high. Commission staff reported that the Commission bases the Division's share of the rent costs on a percentage calculated by taking the number of Division staff and dividing it by the total of Division plus Commission staff. Using this formula, the Commission allocates 23 percent of its rent costs to the Division. We question the logic of using staff size to determine the Division's portion of the rent. It would be more appropriate to use the actual square footage occupied by the Division as the basis. We measured the Division's offices and found it currently occupies significantly less than 23 percent of the space shared by it and the Commission.

In addition, the Commission does not have a formal agreement, as required by State Fiscal Rules, on how it allocates costs to the Division, nor does it review these figures periodically for appropriateness. For example, the 23 percent figure used to calculate the rent dates back to Fiscal Year 2001. Without a formal agreement, the Division's portion of the rent has fluctuated. For example, the Commission did not pass along a rent abatement to the Division that it received in Fiscal Year 2003 from its landlord (the Commission did pass along the abatement in Fiscal Year 2004). This is a concern because the Division's portion of the rent increased from 23 percent to about 26 percent for Fiscal Year 2003, or from about \$62,000 for the year to about \$69,000. Also, the Commission and, consequently, the Division are paying higher rent in Fiscal Years 2005 and 2006 than provided for in the original lease to reimburse the landlord for the abated rent amounts plus interest. This means the Division is being charged a portion of the costs of the rent abatement from Fiscal Year 2003 without having received its benefits.

As a result of the lack of adequate processes for collecting fees and the lack of analysis of the costs associated with the various functions it performs, the Board may be missing an opportunity to reduce school fees. As noted previously, the Private Occupational Schools Fund has exceeded the statutory reserve limits established under Section 24-75-402, C.R.S., in three of the last five years. Although statute did not make the Private Occupational Schools Fund subject to reserve limits until Fiscal Year 2003, the limits established by Section 24-75-402, C.R.S., are a good benchmark for the Board and the Division to use to ensure fees are appropriate. If an agency has excess reserves, statute requires it to reduce fees; however, statute also allows agencies to take into account “increases in expenditures” when developing a plan to reduce excess reserves. It appears from the compensation information above that the Division has chosen to increase expenditures instead of reducing fees when the reserve limit is exceeded. For example, the June 2004 Division memorandum justifying staff bonuses says that the money for bonuses was available “as a result of remaining funds for (Fiscal Year 2004).” Given the concerns we have about these expenditures, the Board should ensure all expenditures are reasonable and necessary and strive to reduce fees when the Private Occupational Schools Fund’s reserves exceed statutory limits.

Reevaluating the Fee Schedule

The Board and the Division should analyze, on an annual basis, how much it costs to perform the statutorily required administrative functions related to private occupational schools and determine if the current fees are appropriate. If the fees are not appropriate, then the Board should revise them. In addition, the Board and the Division should ensure that all expenditures from the Private Occupational Schools Fund are reasonable and necessary. Scrutinizing expenditures may also allow for the reduction of fees, thereby benefitting the schools without sacrificing consumer protection.

Recommendation No. 13:

The Private Occupational Schools Board should ensure that fees for the regulation of private occupational schools reflect the direct and indirect costs of administering the Private Occupational Education Act by:

- a. Analyzing the costs associated with the functions performed to administer the Private Occupational Education Act, determining the proper fee level for each function, and adjusting the fees accordingly. This process should continue on an ongoing, periodic (e.g., annual) basis.
- b. Ensuring that expenditures are reasonable by adopting criteria for setting bonuses and pay raises and by limiting disbursements to those expenses that are reasonable and necessary for the statutory purpose of the Act.
- c. Working with the Department of Higher Education to establish a plan that allocates costs to the Division for shared expenses. The plan should accurately and consistently reflect the benefits received by the Division. The Board and the Department should review the plan annually to determine if the allocated costs are still appropriate.

Private Occupational Schools Board Response:

- a. Agree. Implementation Date: December 1, 2005.

The Board will work with the Division to undertake a workload analysis for the justification of fees. This analysis will be ongoing and analyzed on a quarterly basis.

- b. Agree. Implementation Date: June 1, 2005.

The Division will work to ensure that pay increases are justifiable and reasonable. The Division recognizes the need for appropriate documentation and, with guidance from the Department of Higher Education, has already adopted specific criteria for setting pay raises and bonuses.

In addition, the Board will evaluate staff on a quarterly basis based on Board presentation and preparedness/knowledge of submissions.

- c. Agree. Implementation Date: July 1, 2005.

The Board will work with the Division and the Department to establish an updated memorandum of understanding (MOU) and will reassess expenses allotted to the Division, including rent, to ensure appropriateness.

Department of Higher Education Response:

Agree. Implementation Date: July 1, 2005.

The Department will work with the Division to establish an updated MOU and will reassess expenses allotted to the Division, including rent, to ensure appropriateness.

Data Collection

The Division maintains a database to track activities related to the private occupational schools regulated under the Act. The database consists of a series of Microsoft Access tables that contain information about the schools such as their certificate of approval status, complaints filed against them, and their fee payment history. Accurate and complete data collection is important for providing information the Division can use to track and improve school compliance. During our audit we noted a number of deficiencies in the database and the way the Division uses it.

- **School data are not well integrated.** We found that the Division has not designed its database to incorporate the different types of data it collects about schools into a single profile for each school. For example, the Division cannot enter the name of a school into the database and automatically pull up all information about the school, such as the number of complaints filed, the timeliness of fee payments, or the status of its surety instrument. Integrating this information is important so that the Division can easily examine a school's compliance history, which the Division could then use to make decisions about renewing the school's license or taking corrective action. Access has this capability, but the Division has not set up the database to perform this function due mainly to a lack of expertise.
- **Data are incomplete, inaccurate, or not collected in the database.** As we noted elsewhere in the report, the Division does not consistently enter information about schools into its database. For example, Chapter 1 discussed that the Division does not systematically track information about unlicensed schools and Chapter 2 noted that the Division's complaint tracking is incomplete. In addition to these examples, we found that the Division's database has inaccurate information about schools' payment histories for the quarterly student assessment fee. As mentioned previously, we sampled 25 schools to determine if they submitted their student assessment fees every quarter. We found the database incorrectly listed 13

of the 25 schools (52 percent) as having missed a quarter when they did not. Without accurate and complete data, the Division's ability to effectively regulate these schools diminishes because missing or inaccurate data prevent it from correctly identifying noncompliance at the schools.

Division staff are aware of the need to upgrade the database. The Division created a budget proposal for Fiscal Year 2005 to develop a better database. We reviewed the proposal, which has not been approved, and found that it contained few details on how the Division would use the funds to improve its database. The Division should develop a more specific plan for improving its database that outlines its specifications for increased functionality and then request proposals, including cost estimates, for completing the job. As a first option, the Division could consider contracting with the Commission, which already provides database assistance. Alternatively, the Division could request proposals from third-party vendors and select the one that is most cost-effective and fits into the Division's budget constraints. In either case, the Division should ensure that it complies with state procurement rules when upgrading its database.

Once the Division upgrades its database capabilities, it must develop protocols for recording data accurately and completely as well as providing for a periodic review of the data to verify accuracy and completeness. The Division should investigate whether its upgraded database can perform some of these checks automatically.

Recommendation No. 14:

The Division of Private Occupational Schools should improve the data collected on private occupational schools by:

- a. Developing and implementing a specific plan for improving the database. The plan should outline specifications for increasing the database's functionality, including the possible use of automatic edit checks.
- b. Establishing protocols for entering data about schools into the database and providing for a periodic review of the data to verify accuracy and completeness.

Division of Private Occupational Schools Response:

- a. Agree. Implementation Date: September 1, 2005.

The Division has held cursory discussions with the Department of Higher Education's Research and Information Management Division for the establishment of a fully integrated database. More detailed discussions involving specific database functionality will continue.

The Division, with the Department, will develop a Request for Proposal for a Records Management System that will fully support the business needs of the Division as it relates to operations and management. This system will be proposed to include internal and external user functionality, interface of data transfer, tracking and monitoring, analysis reports, controls and accountability. The Division anticipates that a new Records Management System would dramatically improve effectiveness and efficiency by eliminating the Division's stand-alone tracking systems, many of which are paper-based.

Other state agencies, as well as other states, have referred the Division to specific vendors for demonstration of such systems.

The Division will continue to seek assistance from the Department of Higher Education to integrate its many stand-alone manual and electronic tracking systems and logs into a centralized database.

- b. Agree. Implementation Date: Implemented April 1, 2005.

The Division has established protocols for the entering of data and has established supervisory review for accuracy and completeness.

Controls Over Cash

The Division receives payments from private occupational schools on a regular basis. We tested a sample of cash receipt transactions and reviewed the Division's controls over cash processing. We identified three problems:

- **The Division does not reconcile cash receipts to the number of certificate of approvals issued.** For Fiscal Year 2004 the Division reported receiving about \$59,900 in revenue for the standard certificate of approval fee, even though, based on the number of certificates issued, it should have received

\$57,750. Commission staff researched the issue and reported that the overage resulted from the incorrect coding of checks. Failure to reconcile the number of certificates issued with related revenue on a routine basis can lead to errors and irregularities.

- **The Division does not reconcile its cash receipts to actual amounts deposited.** When the Division receives a payment (almost always in the form of a check), a staff person makes two copies of the check. The Division gives the check and one copy to the Commission's controller, who is responsible for depositing the check with the State Treasury, and the other copy is kept by the Division. The Division does not compile a log of checks received that can be used to reconcile with payment records or deposit amounts. The Commission's controller provides the Division with a monthly report detailing the amount of money deposited on behalf of the Division. Division staff report that they do not perform a reconciliation to verify that the deposited amount equals the amount of checks received by the Division for the period.
- **The Division does not have adequate segregation of duties related to cash.** At the time of our audit, the same staff person processed the checks received and recorded the payments in the Division's accounts receivable system. Having the same person perform both functions weakens internal controls over cash because it provides an opportunity for errors and omissions to go undetected.

Reconciliations and segregation of duties are important controls for preventing loss of cash, errors or irregularities, misclassification of fee revenue, and inaccurate calculations. The Division should periodically ensure that its cash receipts for each of the fees it receives (certificate of approvals, agent permits, program/course approvals, etc.) reconcile to the number of approvals or permits issued.

Recommendation No. 15:

The Division of Private Occupational Schools should improve its cash controls by:

- a. Performing a periodic reconciliation of its cash receipts by comparing cash received with amounts deposited as reported by the Colorado Commission on Higher Education. The Division should also periodically reconcile cash receipts for its various fees (e.g, certificates of approval, agent permits, and program/course approvals) to the number of approvals issued and follow up on any discrepancies. It should ensure that the person performing the reconciliation is not otherwise responsible for handling cash.

- b. Ensuring that adequate segregation of duties exists within its cash handling processes by separating cash receipt and recording functions.

Division of Private Occupational Schools Response:

- a. Agree. Implementation Date: May 1, 2005.

The Division will undertake review of cash receipts with the Department of Higher Education on a quarterly basis.

The Division has instituted a weekly reconciliation of cash receipts for fees received.

- b. Agree. Implementation Date: May 1, 2005.

The Division has separated the cash handling and data entry functions.

Staff Independence

As a regulatory entity, the Division should ensure that its employees are free both in fact and in appearance from any impairments to their independence related to providing oversight. Independence is important so that the opinions, conclusions, judgments, and recommendations of oversight agencies will be impartial and will be viewed as impartial by third parties.

We reviewed the steps taken by the Division to ensure the independence of its staff and found that it could strengthen efforts in some areas. First, the Division should rotate schools among its staff. Currently the Division assigns primary oversight of each school to one of four program supervisors but does not periodically rotate these assignments. Rotating schools would ensure that Division staff do not become too familiar with their schools and that they remain objective. We found that other state agencies with oversight responsibilities rotate these duties among their staff. For example, the Division of Financial Services, which monitors state-chartered credit unions, does not typically allow its staff to examine the same credit union more than two times in a row.

The second area in which the Division can strengthen staff independence involves conflict-of-interest statements. Currently the Division does not require staff to sign any type of statement that discloses potential conflicts of interest with the schools they regulate. We found no evidence Division staff currently have conflicts of interest with the schools they are overseeing. However, it is good business practice

to ensure staff are independent from the entities they regulate. The Division should require that personnel directly involved in providing oversight, such as the director and program supervisors, periodically certify that they have no conflicts of interest. Strengthening its conflict-of-interest requirements as well as rotating schools among staff members are proactive ways for the Division to continue to ensure its independence from the schools it regulates.

Recommendation No. 16:

The Division of Private Occupational Schools should strengthen efforts to ensure staff independence by rotating school assignments among staff periodically and by requiring staff to sign conflict-of-interest statements on a regular basis.

Division of Private Occupational Schools Response:

Agree. Implementation Date: December 1, 2005.

The Division will rotate school assignments on a periodic basis, beginning with 2006 renewal schools.

The Division will require staff to sign conflict-of-interest statements on an annual basis.

Regulatory Framework

Chapter 4

Introduction

As detailed throughout the audit report, numerous problems with the current oversight of private occupational schools raise concerns about whether the Private Occupational Schools Board (Board) and the Division of Private Occupational Schools (Division) can provide reasonable assurance that licensed private occupational schools meet minimum educational and financial standards required in statute and regulations. We also found that duplicate regulatory efforts appear to exist and that some required regulatory functions may not be effective. In this chapter, we specify methods for improving the administration of the Private Occupational Education Act (Act). Specifically, we recommend that the regulatory system for Colorado's private occupational schools be reevaluated to increase the effectiveness of Board and Division oversight.

Regulatory Scope

Our audit identified ways in which Colorado's current framework for regulating private occupational schools can be made more efficient. As discussed below, options exist that could leverage the State's regulatory efforts and focus these efforts on the areas that the Board and the Division can regulate more effectively.

- **Reduce the duplication of regulatory efforts.** We found that a significant number of private occupational schools are subject to oversight from multiple regulatory agencies. For example, about one-fifth of licensed schools are accredited. This means they are scrutinized by regional accrediting bodies, which examine a school's curriculum, faculty, and facilities in a manner similar to the Board and the Division. We believe that schools subject to oversight by accrediting agencies may require less stringent supervision from the Board and the Division. The Board and Division should consider reducing their regulatory efforts toward schools that fall under the jurisdiction of other regulatory bodies. Statute already makes some provisions for this. For example, Section 12-59-106, C.R.S., allows schools to demonstrate compliance with most of the minimum statutory standards required for a certificate of approval when accredited by a body recognized by the United States Department of Education or the Board. We did not find

evidence that the Board and the Division are currently using this provision to adjust their regulatory oversight.

We also found that some schools receive oversight from other state agencies. About one-third are cosmetology and real estate schools subject to some regulation by the Office of Barber and Cosmetology Licensure (OBC) and the Division of Real Estate, respectively, at the Department of Regulatory Agencies. For example, the Division of Real Estate must approve the curriculum at real estate schools in Colorado. As part of the general reassessment of regulating private occupational schools discussed below, the Board and the Division should determine if they are duplicating the work of other state agencies and eliminate the duplication, as appropriate.

- **Reduce the functions performed by the Board and the Division.** The two main purposes of the Act are setting and maintaining standards for schools and protecting consumers. However, as we illustrated in Chapter 1, Division staff do not have the expertise to effectively evaluate the wide variety of facilities, equipment, and curricula offered by private occupational schools to ensure compliance with minimum standards. Therefore, it may be more effective to focus the Board's and the Division's efforts on consumer protection activities, such as handling complaints and ensuring schools have adequate surety instruments in place, rather than on issuing certificates of approval that require review of courses, programs, instructors, and equipment. This way the Board's and the Division's workload could be reduced while still protecting students from financial losses due to school closures and deceptive trade or sales practices.

We contacted and reviewed documentation (e.g., statutes, regulations, budget data) from seven states in the region to compare the scope of their regulation of private occupational schools with Colorado's. We found that four states (Arizona, Nevada, New Mexico, and Oregon) were similar to Colorado in that they have provisions that allow them to limit their oversight if a school is accredited. Unlike Colorado, though, these states reported they do not ask accredited schools to complete their normal licensing process. We also found the other states exempted types of private occupational schools from licensing that Colorado does not. For example, three states (New Mexico, Oregon, and Washington) do not license schools offering continuing education to licensed professionals, such as massage therapists. In addition, three states (Kansas, Oklahoma, and Washington) do not license cosmetology schools that are regulated under other state laws. Cosmetology schools represent approximately 17 percent of the private occupational schools operating in Colorado and are also regulated by the OBC. Finally, Washington does not require licenses for schools teaching workshops or seminars lasting three days or less. The

Board and the Division should consider if these and other exemptions are appropriate for Colorado and, if so, seek statutory change to put them into effect.

Our survey also found that the agencies responsible for overseeing private occupational schools in the seven states we surveyed generally have significantly smaller budgets and staffs than the Division has. (Agencies in two states do not have a separate budget.) For example, the combined annual budgets for the agencies regulating private occupational schools in three states (Arizona, Kansas, and Nevada) are roughly equal to the Division's expenditures in Fiscal Year 2004. Each state we contacted regulates fewer schools than does the Division. However, most of the states license schools on an annual basis (compared with the Division's two- or three-year cycles). Consequently, based on our survey data, it appears that agencies in these other states annually process substantially more licenses per FTE than the Division. Although we recognize the limited nature of our survey, our results suggest that greater efficiencies exist for regulating private occupational schools. Therefore, a more detailed analysis of data from other states should be included in any reevaluation of Colorado's regulation of these schools.

The Department of Higher Education (Department), where the Division resides, should lead the effort to reassess the regulation of private occupational schools in Colorado to determine if the current model is appropriate. Specifically, the Department should convene a task force of stakeholders (e.g., representatives from the Board and the Division, schools, and industry) to study the issue, including identifying best practices from other states, and make recommendations about the best way to regulate these schools.

Recommendation No. 17:

The Private Occupational Schools Board should improve the effectiveness of its regulation by considering reducing the amount of oversight it provides to schools that are accredited by bodies recognized by the United States Department of Education or the Board.

Private Occupational Schools Board Response:

Agree. Implementation Date: December 1, 2005.

The Board will consider and carefully analyze the level of regulatory jurisdiction it maintains and provides to schools that are accredited by bodies recognized by the United States Department of Education. Careful balance and synchronization must be maintained with these accrediting agencies.

Recommendation No. 18:

The Department of Higher Education should work with the Private Occupational Schools Board to reassess the regulation of private occupational schools in Colorado by convening a task force of stakeholders to study the issue and make recommendations, including applicable statutory changes, about improvements for regulating these schools. This assessment should include consideration of potentially duplicative regulatory processes, including those of other state agencies, and how to target resources most effectively.

Department of Higher Education Response:

Partially Agree. Implementation Date: July 1, 2005.

The Department of Higher Education agrees that reassessing the regulation of private occupational schools is appropriate and warranted given the evidence outlined in the Office of the State Auditor report. However, the Department disagrees that a task force of stakeholders—presumably Board members, Division staff, Department staff, and private occupational school professionals—is the most prudent approach.

The Department recommends that the Department of Regulatory Agencies (DORA) conduct a “sunset” review of the Division of Private Occupational Schools. DORA has the staff expertise to effectively evaluate regulatory programs and would provide an impartial, independent evaluation of the Division’s regulation and regulatory processes.

By July 1, 2005, the Department will submit a formal request to conduct a “sunset” review of the Division to DORA. If DORA is unable to carry out this request, the Department will seek legislation in 2006 to formally subject the Division to sunset, thereby initiating the sunset review process.

Private Occupational Schools Board Response:

Agree. Implementation Date: July 1, 2005.

The Board welcomes the opportunity to work with a Task Force of stakeholders to study the issue of the regulation of private occupational schools in Colorado for the purpose of making recommendations, including applicable statutory changes.

Board and Division Roles

Statute gives the Board the power to approve and monitor private occupational schools, investigate complaints, and impose corrective action. As mentioned previously, the Board passed a resolution in January 2003 delegating all administrative and ministerial powers to the Division. According to the Board, the intent of the resolution was to allow the Division to take action on minor issues without the need to wait for Board approval. Under statute, however, the Board remains ultimately responsible for the regulation of schools. We reviewed the Board's regulatory role and its relationship to the Division and identified two problems that weaken the Board's oversight of the Division.

- **The Board does not have procedures in place to ensure that it receives regular and adequate information to fulfill its statutory responsibility to oversee private occupational schools.** We reviewed Board minutes since the beginning of Fiscal Year 2004. The Board does not routinely review any information regarding complaints received or whether schools submit all required documentation such as the annual filings regarding financial status and surety coverage. We also found that the Division does not prepare regular reports for the Board that provide information about the Division's activities, such as budget-to-actual reports; the number of applications processed by staff for certificates, agent permits, program/course approvals, or instructor credentials; or summaries of complaint data.

In particular, we are concerned that as noted in Chapter 2, the Division does not inform the Board about schools that do not comply with the annual filing requirements or those that lack adequate surety protection. We also found the Division informed the Board that a school's surety was adequate when the Division was aware it was not. In addition, Division staff informed us that they do not typically inform the Board of complaints unless there is possible legal action, which occurred only once between Fiscal Years 2000 through 2005.

Statute gives the Board a fiduciary responsibility to hold schools accountable to minimum standards, and therefore, it should routinely receive information necessary to fulfill this duty.

- **The Division has not followed through on the Board's enforcement action.** Since the beginning of Fiscal Year 2000, the Board has used its statutory authority to take corrective action against only one school. The Board found that this school was engaging in the deceptive trade practice of promising federal financial aid, which the school was ineligible to provide,

to recruit students. We reviewed this case and found the Division's enforcement efforts against the school were lacking both prior to and after the Board's action. For example, the Division received 11 complaints about the school regarding the promise of federal financial aid. The Division encouraged the school to resolve the complaints itself rather than launching an investigation and informing the Board. When the school refused to settle the complaints, the Division informed the Board and began a formal hearing process. The Board took stringent action against the school in May 2004, including executing a probationary agreement. Under the agreement, the school is required to demonstrate compliance with statute, regulations, and the probationary agreement through monthly and quarterly filings of information or face disciplinary action up to and including revocation of the school's certificate of approval. For example, the school is required to submit affidavits from new students in which the students acknowledge they are aware the school is ineligible to provide federal financial aid.

We found the Division is not enforcing this probation agreement. The school submitted information as required for the first two months. After those two initial submittals, in June and July 2004, the Division allowed the school to discontinue providing this information with a promise that it be maintained at the school. Currently the Division reports that it relies on monthly calls to the school to make sure the school is collecting the required information in violation of the Board's directive. The Division did not seek the Board's approval or inform the Board when it allowed the school to discontinue the formal information submittals called for by the probationary agreement.

In December 2004, we requested that the school provide us with the information required to be maintained and submitted under the probationary agreement. The school gave us the requested information in April 2005 and we found that the documentation submitted failed to comply with provisions of the agreement. To address recurrent complaints, the agreement requires that students certify that they were notified in advance that the school is ineligible to offer federal financial aid, that students attest that they have completed 360 hours of instruction prior to performing services on the salon floor, and that students initial and date a form detailing that they received their supplies and books timely. For the 22 students who have enrolled since the probation agreement was signed, the school failed to provide at least one of these three documents for 15 students (68 percent). The school also failed to submit required quarterly anonymous student satisfaction surveys.

To meet its statutory responsibilities, the Board must take a more active role in the oversight of private occupational schools. This should include defining the type and frequency of information that should be provided to the Board, such as concerns the

Division has about a school, the number of formal complaints received, status of annual filings from schools including surety problems, the number of applications processed, budget updates, and the status of fee collection. Additionally, the Board should require that the Division enforce all Board-approved sanctions against schools and report regularly to the Board on the status of enforcement efforts and the Board should require additional regulatory action as necessary.

The Board also needs to ensure that the Division adheres to the legislative intent of the Act. The Division has focused its efforts to foster and improve schools on providing technical assistance and customer service to schools, such as by helping schools complete the various required applications for a certificate of approval or by alerting the schools informally of verbal complaints it has received. While customer service is important, the lack of regulatory oversight is evident. The Board should work with the Division to reexamine all the duties, functions, and services performed by the Division to ensure that it concentrates its efforts on those that fulfill the legislative intent of the Act, which is to regulate private occupational schools.

Recommendation No. 19:

The Private Occupational Schools Board should clarify and strengthen its oversight role by:

- a. Working with the Division of Private Occupational Schools to develop and implement a more active oversight role for the Board. This should include defining the type of information that should be provided to the Board, such as concerns the Division has about a school, the number of formal complaints received, status of annual filings from schools including surety problems, the number of applications processed, budget updates, and the status of fee collection.
- b. Ensuring that the Division enforces the corrective action issued by the Board in May 2004 and that the Division informs the Board about the school's compliance with the terms of the corrective action on a regular basis. This follow-up and reporting process should be used in all future corrective actions.
- c. Working with the Division to reexamine all the duties, functions, and services necessary to comply with statutory requirements; determining which are specifically related to regulating private occupational schools; and ensuring that the Division gives priority to those duties associated with ensuring standards are met and citizens are protected.

Private Occupational Schools Board Response:

- a. Agree. Implementation Date: September 1, 2005.

The Board will work with the Division to develop and implement a more active oversight role. The Board will establish the frequency and type of information that should be provided to it. Such information will include, but not be limited to, number of formal complaints received, status of annual filings from schools, surety proposals and adequacy issues, budget updates, and status of fee collections.

- b. Agree. Implementation Date: July 1, 2005.

The Board will make a requirement of the Division that it informs the Board regarding the status of corrective measures being taken against any school for compliance-related issues. For the specific case mentioned, a full report will be submitted to the Board.

- c. Agree. Implementation Date: December 1, 2005.

The Board will work with the Division to reexamine all the duties, functions, and services necessary to comply with statutory requirements, determining those that are specifically related to regulating private occupational schools, and ensuring the Division gives priority to those duties associated with ensuring standards are met and that citizens are protected.

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