

New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Compliance With the Reimbursable Cost Manual

**Mill Neck Manor School
for the Deaf
State Education Department**



Report 2011-S-40

March 2013

Executive Summary

Purpose

To determine whether the costs reported by the Mill Neck Manor School for the Deaf (Mill Neck School) on its Consolidated Fiscal Reports (CFRs) were properly calculated, adequately documented, and allowable pursuant to the State Education Department's Reimbursable Cost Manual (Manual). The audit covers the two fiscal years ended June 30, 2010.

Background

The Mill Neck School, located in Mill Neck, New York, provides special education services to pre-school and school-age children with hearing disabilities. Pursuant to the State Education Law, providers, such as the Mill Neck School, are reimbursed by the State Education Department (SED) based on their annual CFRs detailing program related expenses. To be eligible for reimbursement, the provider's reported expenses must comply with the guidelines contained in the Manual. For the two fiscal years ended June 30, 2010, the Mill Neck School claimed approximately \$16.7 million in reimbursable expenses.

Key Findings

We identified \$282,169 in non-reimbursable costs reported on the Mill Neck School's CFRs. These non-reimbursable costs include \$72,505 in personal service costs, \$198,911 in other-than-personal-service costs (OTPS) and \$10,753 in contracted direct care costs. For example:

- The Mill Neck School's Executive Director, who also oversees the other entities comprising the Mill Neck Family of Organizations, received \$338,361 in compensation for the two fiscal years ended June 30, 2010. Prorating his salary based on operating expenses we determined that just \$214,712 of this amount should have been allocated to the Mill Neck School. We also found that the Mill Neck School billed SED \$7,688 for accrued vacation expenses which are not reimbursable until they are actually paid.
- We identified \$89,500 in inappropriate depreciation expenses, and the loan interest thereon, associated with certain major repairs because Mill Neck School officials did not submit the repair proposals for preapproval by SED as required.
- We also found \$48,063 in costs claimed by the Mill Neck School that were either not related to the program or were unsupported.

Key Recommendations

- SED should review the inappropriate and unsupported expenses identified by our audit and take action to recover such reimbursed expenses as appropriate.
- Mill Neck School should not charge costs to the program that are not in compliance with the Manual. Explain Manual requirements to staff involved in the CFR and cost reimbursement processes.

Other Related Audits/Reports of Interest

[Henry Viscardi School: Compliance with the Reimbursable Cost Manual \(2009-S-70\)](#)

[Special Education Associates: Compliance with the Reimbursable Cost Manual \(2010-S-31\)](#)

**State of New York
Office of the State Comptroller**

Division of State Government Accountability

March 14, 2013

Dr. John B. King Jr.
Commissioner
State Education Department
State Education Building - Room 125
89 Washington Avenue
Albany, NY 12234

Dr. Mark Prowatzke
Executive Director
Mill Neck Manor School for the Deaf
40 Frost Mill Road
Mill Neck, NY 11765

Dear Dr. King and Dr. Prowatzke:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of the State Education Department and Mill Neck Manor School for the Deaf entitled: *Compliance With the Reimbursable Cost Manual*. This audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

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

Respectfully submitted,

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

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This report is also available on our website at: www.osc.state.ny.us

Background

Mill Neck Manor School for the Deaf (Mill Neck School), located in Mill Neck, New York, is one of eleven State supported schools funded pursuant to Section 4201 of the State Education Law. The Mill Neck School provides special educational services to pre-school and school-aged children with hearing disabilities (SED program). About 185 students were served by the Mill Neck School during the 2009-10 school year.

The Mill Neck School is part of the “Mill Neck Family of Organizations” (Mill Neck Organization) which is comprised of six distinct corporate entities: the Mill Neck School; Mill Neck Services, Inc.; Mill Neck Foundation, Inc.; Mill Neck Early Childhood Center; Mill Neck Interpreter Services; and Mill Neck Audiology. The Mill Neck Organization is governed by an interlocking 12-member Board of Trustees. Organizational costs not directly attributable to any particular Mill Neck entity are to be allocated among them based on a fair and reasonable method (e.g., operating costs, square footage, etc.).

The Mill Neck School receives its State aid based upon the expenses it reports to the State Education Department (SED) on its annual consolidated fiscal reports (CFRs). SED issued a “Reimbursable Costs Manual” (Manual) to provide guidance to providers on cost eligibility, cost documentation requirements, and the allocation of non-direct care costs between programs offered by the school. Costs reported on the CFR must fully comply with Manual guidelines to qualify for SED reimbursement. For the two fiscal years ended June 30, 2010, Mill Neck School claimed approximately \$16.7 million in reimbursable costs.

Audit Findings and Recommendations

Personal Service Costs

According to the Manual, personal service costs, which include all taxable salaries and fringe benefits paid or accrued to employees on the agency's payroll, must be reported on its CFR as either direct care costs (e.g., teachers' salaries) or non-direct care costs (e.g., administrators' salaries). Non-direct care costs are to be allocated among all Mill Neck Organizations and school programs based on a fair and reasonable method. The allocation of compensation for any individual who works for more than one entity must be supported by time and effort reports or equivalent documentation. Further, accrued vacation and sick leave expenses are not reimbursable by SED until actually paid. We identified \$72,505 in personal service costs that do not comply with the Manual guidelines.

The School's Executive Director also serves as the Executive Director at the other corporate entities within the Mill Neck Organization. During the two fiscal years ended June 30, 2010, the Executive Director was paid \$338,361. Of that amount, \$289,177 (85 percent) was being charged to the Mill Neck School, and \$251,633 to the school's SED program. We asked Mill Neck School officials for the Executive Director's time records or any other records that would indicate how much of his time was spent on the school versus the other Mill Neck Organizations. Officials advised us that they did not have such records.

To determine how much of the Executive Director's compensation should have been charged to the Mill Neck School, we calculated the School's operating expenses as a percentage of the operating expenses of all Mill Neck Organizations. We determined that only \$214,712 should have been charged to the school. Using the same allocation methodology for all programs within the school, we further determined that only \$186,816 of this amount should have been allocated to Mill Neck's SED program. The difference between what should have been charged to the SED program, and what was actually charged to the SED program, is \$64,817.

We also identified \$7,688 in accrued vacation costs that were reported on the Mill Neck School's CFRs and claimed for reimbursement even though these costs were not paid.

Other-Than-Personal-Service Costs

According to the Manual, reported costs must be reasonable, necessary, program related, and properly documented to be eligible for reimbursement. All purchases of goods and services must be supported by invoices that list the individual item(s) purchased, their date of purchase, and the date of payment.

For the two fiscal years ended June 30, 2010, we reviewed a judgmental sample of 815 transactions totaling about \$1.2 million. The sample was selected from various other-than-personal-service (OTPS) accounts based on dollar amounts and description. We identified \$198,911 in OTPS costs submitted for reimbursement that did not comply with Manual guidelines.

Depreciation and Interest Expense

The Manual allows for the reimbursement of expenses associated with facility alterations or major repairs provided that proposals for these capital projects are submitted to SED officials for their review and comment before the work begins. The Manual also requires that, when applicable, competitive bidding should be used in conformity with School Business Management Handbook Number 5 (Handbook) guidelines. The Handbook stipulates that competitive bidding should be used when purchasing materials, supplies, and equipment costing more than \$10,000 annually (\$20,000 effective June 22, 2010) and public works projects valued at \$20,000 (\$35,000 effective November 12, 2009).

During our audit period, Mill Neck School reported \$106,730 in depreciation expenses. We conclude that \$89,500 of this amount is not reimbursable as follows:

- \$64,360 - for projects that did not solicit competitive bids and were not submitted to SED for prior review and comment, as required;
- \$19,498 - for interest payments relating to loans for the aforementioned projects;
- \$4,286 - for assets that were not listed on the depreciation schedule; and
- \$1,356 - for maintenance equipment expenses inappropriately charged to Mill Neck School.

Vehicle Expenses

The Mill Neck School CFRs reported vehicle expenses relating to nine vehicles during the audit period (2010 Chrysler Town & Country, 2009 Chevy Impala, 2009 Chevy Trailblazer, 2007 Ford Freestar, 2007 Chevy Silverado, 2007 Chevy Pickup, 2007 Chevy Trailblazer, 2006 Dodge Dakota, and 1999 Chevy Dump Truck).

The usage of vehicles charged to SED must be documented by individual vehicle logs that include, at a minimum: the date and time of travel, locations of departure and destination, mileage, business purpose of travel, and the name of the traveler. The costs associated with personal usage of vehicles are not reimbursable. We reviewed \$66,572 in vehicle expenses (e.g., insurance, fuel, maintenance, etc.) for the audit period of which \$62,725 was charged to the SED program. We determined that \$61,348 of the \$62,725 that was charged to the SED program was not reimbursable primarily because Mill Neck School staff generally did not maintain the required vehicle logs. In addition, where logs were maintained, they did not include the required information to evidence business use for any of these vehicles. When discussing this issue with Mill Neck School officials, they advised us that they will establish a policy requiring logs denoting all required information be maintained for all vehicles.

Other Inappropriate and Unsupported OTPS Expenses

The Manual requires that reimbursable costs must be related to the authorized program that is being charged, and each cost must be supported by the appropriate purchasing documentation.

We identified \$48,063 in costs that were not program related or were unsupported yet were charged to SED including:

- \$11,934 in utilities, repairs/maintenance, and landscaping equipment expenses for the Executive Director's (on-campus) residence;
- \$11,314 in various expenses that were not supported by the required purchasing documents, including expenses for staff development, supplies and materials, staff travel, repairs, and late payment fees;
- \$7,909 in lease payments on a copy machine that should have been charged to other Mill Neck organizations;
- \$7,409 in telephone line expenses that should have been charged to other Mill Neck organizations;
- \$2,499 in legal fees related to a Texas property and related oil leases;
- \$1,990 for internet services that should have been charged to other Mill Neck organizations;
- \$1,767 in expenses attributable to other Mill Neck organizations, including \$845 in software licenses and training, and \$718 in water supply costs;
- \$1,704 in expenses that were improperly charged to the SED program instead of allocating them between all school programs; and
- \$1,537 in excess expenses related to the upkeep of the Mill Neck organization's maintenance equipment and properties, such as the maintenance garage.

Contracted Direct Care Costs

Program providers often enlist the assistance of independent consultants to help them provide program services. All payments to such contractors must be supported by itemized invoices indicating the specific services they provided, the contractor's hourly fee, and the total amount charged by the consultant. When direct care services are provided, supporting documents must list the names of the students who were served, the actual dates of service, and the number of hours of service provided to each student. During the audit period, Mill Neck School officials reported \$61,460 in contracted direct care costs on its CFRs for the programs we reviewed.

We identified \$10,753 in contracted care costs where payments were not in compliance with Manual guidelines and should not have been reimbursed.

Service Providers

The Mill Neck School claimed \$61,460 in expenses paid to direct care service providers. We determined that \$10,753 of this amount was inappropriately charged to the program as follows:

- \$6,920 for additional services that were missing most, or all, of the required data: including the specific services actually provided; the names of the students served; the number of hours of service devoted to each child by date; and the contractors' hourly fees;
- \$2,898 for consultant services that were not supported by invoices;
- \$755 for services provided in a prior fiscal year;

- \$140 in transportation costs paid to a psychologist, a former employee, who did not have a contract to provide services for the School; and
- A \$40 payment miscalculation.

Recommendations

To SED:

1. Review the inappropriate and unsupported expenses identified in this report, totaling \$282,169, and recover overpayments as appropriate.

To Mill Neck School:

2. Do not charge costs to the program that are not in compliance with the Manual. Explain Manual requirements to staff involved in the CFR and cost reimbursement processes.

Audit Scope and Methodology

We audited the propriety of, and support for, the expenses reported by Mill Neck School on its CFRs for the two fiscal years ended June 30, 2010. The objectives of our audit were to determine whether the costs reported by Mill Neck School were properly calculated, adequately documented and allowable pursuant to SED's Manual.

To accomplish our objectives, we reviewed Mill Neck School's financial records, including audit documentation maintained by Mill Neck School's independent certified public accountants. We interviewed Mill Neck School officials and staff to obtain an understanding of their financial and business practices. In addition, we interviewed SED officials to obtain an understanding of their CFRs as well as the policies and procedures contained in the Manual. We selected a judgmental sample of costs reported by the Mill Neck School and reviewed supporting documentation for all costs submitted for the three programs in our audit scope and assessed their compliance with the Manual.

We conducted our compliance audit in accordance with generally accepted government auditing standards. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational

independence under generally accepted government auditing standards. In our opinion, these management functions do not affect our ability to conduct independent audits of program performance.

Authority

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

Reporting Requirements

We provided a draft copy of this report to SED and Mill Neck School officials for their review and comment. Their comments have been considered when preparing this final report and are attached in their entirety at the end of this report.

SED officials responded that they agree with our findings and recommendations and intend to implement them as appropriate. They have asked us for some additional information to assist them in this endeavor.

Conversely, Mill Neck School officials believe that some of our recommended disallowances are inappropriate and excessive as explained in their detailed response to this report. We address those details in our State Comptroller's Comments.

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

In addition, we request that Mill Neck School officials advise the State Comptroller of the actions they have taken to implement the recommendation addressed to them, and if the recommendation was not implemented, the reasons why.

Contributors to This Report

Frank Patone, Audit Director
Kenrick Sifontes, Audit Manager
Stephen Lynch, Audit Supervisor
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Vision

A team of accountability experts respected for providing information that decision makers value.

Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

Exhibit

State Education Department
Mill Neck School for the Deaf
Schedule of Submitted and Allowed Program Costs
For the Two Fiscal Years Ended June 30, 2010

| Program Costs | Amount Per CFR | Amount Disallowed | Amount Allowed | Notes to Exhibit |
|---|-----------------------|--------------------------|-----------------------|-------------------------|
| Personal Services | | | | |
| Direct Care | \$11,855,158 | \$7,688 | \$11,847,470 | B |
| Agency Administration | \$1,321,838 | \$64,817 | \$1,257,021 | A |
| Total Personal Services | \$13,176,996 | \$72,505 | \$13,104,491 | |
| | | | | |
| Other-Than-Personal-Services | | | | |
| Direct Care | \$2,944,749 | \$191,996 | \$2,752,753 | A,C,E,F |
| Agency Administration | \$481,821 | \$6,915 | \$474,906 | A,C,E,F |
| Total Other-Than-Personal-Services | \$3,426,570 | \$198,911 | \$3,227,659 | |
| | | | | |
| Contracted Direct Care | \$61,460 | \$10,753 | \$50,707 | A,D,E |
| Total Program Costs | \$16,665,026 | \$282,169 | \$16,382,857 | |

Notes to Exhibit

The following Notes refer to the specific sections of the Reimbursable Cost Manual upon which we have based our recommended recoveries.

- A. Section I. Cost Principles - Costs must be reasonable, necessary, program related and sufficiently documented.
- B. Section I 12 B (2)(a) - Accrued vacation and sick leave expenses are not reimbursable until actually paid.
- C. Section I 16 A (3) - Proposals for acquisition, new construction, renovations, alterations or major repairs must be submitted to the Commissioner's designated program for their review and comment.
- D. Section II A (3) - All payments must be supported by itemized invoices which indicate the specific services actually provided; and for each service, the date(s), number of hours provided, the fee per hour, and the total amount charged. In addition, when direct care services are provided, the documentation must indicate the names of the students served, the actual dates of service and the number of hours of service to each child on each date.
- E. Section II A (4) - All purchases must be supported with invoices listing items purchased and indicating date of purchase and date of payment, as well as cancelled checks. Costs must be charged directly to specific programs whenever possible. When applicable, competitive bidding practices should be used in conformance with the School Management Handbook.
- F. Section II A (10) - Vehicle use must be documented with individual vehicle logs that include at a minimum: the date, and time of travel, to and from destinations, mileage between each destination, purpose of travel and name of traveler. If the vehicle was assigned to a specific employee, also list the name of the employee to whom it was assigned.

Agency Comments - State Education Department



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

DEPUTY COMMISSIONER
Office of Performance Improvement and Management Services
O: 518.473-4706
F: 518.474-5392

January 15, 2013

Mr. Frank Patone
Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street – 11th Floor
Albany, NY 12236

Dear Mr. Patone:

The following is the New York State Education Department's (Department) response to the draft audit report (2011-S-40) of the State Education Department Mill Neck Manor School for the Deaf: Compliance with the Reimbursable Cost Manual.

In addition to the actions that will be taken in response to the specific recommendations described below, the Department will closely examine the circumstances that led to the findings described in the audit report and determine whether further corrective action or enforcement actions are warranted relating to the programmatic oversight and fiscal management employed by the school's management.

Recommendation 1: Review the inappropriate and unsupported expenses identified in this report, totaling \$318,953, and recover overpayments as appropriate.

We agree with this recommendation. The Department will review and make adjustments to the CFR as noted in the report and recover any overpayments as appropriate by recalculating Certificates of Approvals/tuition rates. This will entail additional discussion with the Office the State Comptroller's auditors and review of auditor's worksheets to determine the impact of adjustments on each year and each program operated by Mill Neck Manor, since this has not specifically been identified in the report. We will also review and consider additional information Mill Neck Manor may submit in response to this report.

If you have any questions regarding this response, please contact Ann Marsh, Director of the Rate -Setting Unit at (518) 473-2020.

Sincerely,

Sharon Cates-Williams

c: Commissioner King, James Delorenzo, Mary Kogelmann, Ann Marsh, James Conway, Joseph Conroy

Agency Comments - Mill Neck Manor School



MILL NECK

Established in 1947 by
Lutheran Friends of the Deaf

Mark R. Prowatzke, Ph.D.
Executive Director

Mill Neck Manor School for the Deaf
40 Frost Mill Road, P.O. Box 12, Mill Neck, NY 11765
516-922-4100 (Voice) 516-922-4750 (TDD) 516-922-4172 (Fax)
www.millneck.org

January 3, 2013

Via Email & Overnight Mail

Mr. Frank Patone
Audit Director
Office of the State Comptroller
Division of State Government Accountability
123 William Street
New York, New York 10038

Re: Response to Draft Final Report (Report 2011-S-40)

Dear Mr. Patone:

This letter constitutes the response of Mill Neck Manor School for the Deaf (the "School") to the OSC's Draft Final Report 2011-S-40, dated December 4, 2012. We appreciate the State Comptroller's consideration of our prior submissions and the elimination of and substantial adjustments to proposed disallowances already made. We continue to believe that some of the remaining recommended disallowances are inappropriate and excessive, as the School legitimately incurred those expenses to support its educational programs and students.

BACKGROUND INFORMATION

Established in 1951, Mill Neck Manor School for the Deaf helps deaf children unlock their potential through quality education. Our specially-trained staff, carefully structured programs and access to the newest technologies give our students the academic knowledge and confidence they need to be successful both in and out of the classroom. Our care for each child does not end when the school day does. We are also committed to the people who are a regular part of the child's life: the family. We have also been committed to the prudent use of state funds. While we generally rank 5th or 6th in the number of students served among 4201 programs, our budget has been the smallest in total dollars.

Mr. Frank Patone
January 3, 2013
Page 2

The Mill Neck Manor School for the Deaf is part of the Mill Neck Family of Organizations. The Mission of the Mill Neck Family of Organizations is to enhance the quality of life for people who are Deaf, or who have other special communication needs, through excellence in individually designed educational, vocational or spiritual programs and services.

The Mill Neck Family of Organizations includes Mill Neck Manor School for the Deaf, Mill Neck Manor Early Childhood Center, Mill Neck Services for Deaf Adults, Mill Neck Interpreter Services, Mill Neck Foundation for Deaf Ministry, and Mill Neck Audiology. We make great efforts to record all transactions between these separate corporations in the financial records of all corporations. The audited statements therefore clearly and accurately display the true financial position of each organization, and we have received unqualified opinions by each of our external audit firms in every audit report. We document and disclose inter-company transactions in notes to those audited reports.

RESPONSE TO DRAFT FINAL AUDIT REPORT

Executive Director Salary (\$64,817)

Dr. Mark R. Prowatzke has been Executive Director of the School for twenty (20) years and is prominently featured on its website. He is actively involved in the School's administration and activities and in fact signed the Consolidated Fiscal Reports that are the subject of this audit. While Dr. Prowatzke is the titular Executive Director of other entities in the Mill Neck Family of Organizations – Mill Neck Services, Inc., Mill Neck Foundation, Inc., and Lutheran Friends of the Deaf – they each have full-time Directors and administrative staff that run the day-to-day operations. At most, Dr. Prowatzke spends 10% of his time on any activities associated with those other entities, and therefore any allocation based simply on operating budgets for those entities is not appropriate. Importantly, interactions with or activities on behalf of these related entities inure to the benefit of the School and are consistent with his position as Executive Director of the School.

Moreover, expenses associated with work for other entities or non-school programs is already accounted for in the Consolidated Fiscal Reports being audited. As a result of our last OSC audit (in 1978) there was recognition that some areas of our campus were not appropriate for NYS support. Since that time, we have carefully allocated portions of our maintenance and administration staff, as well as non-personal costs, to our related organizations. In 2008-2009, 4201 and 4410 expenses were reduced by \$83,171 in recognition of Agency Administrator work for other than state-supported activities. Additionally, in 2008-2009, we reimbursed the 4201 program \$97,687 in recognition of work done by 4201 administrators and maintenance staff on behalf of the Mill Neck Foundation. (The CFR reflects the reduced F.T.E.s, salaries and benefits.) Similarly, in 2009-2010, 4201 and 4410 expenses were reduced by \$67,954 in recognition of Agency Administrator work for other than state-supported activities. Additionally, in 2009-2010, we reimbursed the 4201 program \$83,723 in recognition of work done by 4201 administrators and maintenance staff on behalf of the Mill Neck Foundation. (The CFR reflects the reduced F.T.E.s, salaries and benefits.)

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| * Comment 1 |
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* See State Comptroller's Comments on page 27.

Mr. Frank Patone
 January 3, 2013
 Page 3

We appreciate that the revised disallowance reflected in the Draft Final Audit Report recognizes the allocations already made on the CFR to reduce the requested reimbursement of the Executive Director's salary by 15.2%. As discussed with you, we continue to believe that this allocation appropriately credits the publicly funded programs for the limited time Dr. Prowatzke spent working on matters involving our related organizations.

We would hope that these substantial allocations demonstrate our sincere efforts to fairly report reimbursable costs on the CFR. In the absence of any suggestion that this long-standing allocation is inaccurate, we request that the remaining disallowance, along with its implied suggestion of impropriety, of which there is no evidence, be eliminated.

Depreciation Expense and Capital Loan Interest (\$89,500)

Capital Loans were used for repairs and maintenance to educational facilities. The OSC states that SED approval is necessary for such maintenance and repairs, but this is not the case. The RCM requires SED approval for "acquisition, new construction, renovations, alterations or *major* repairs." RCM, I.16.A(3) (emphasis supplied). There is also a reference to Appendix D "for guidelines on the development of capital projects" and RCM Appendix D contains a reference to the SED website. The SED website contains a definition of "Capital Construction Projects," which does not require SED approval for repairs that are "occasional work of a recurring nature and which are intended to restore to a satisfactory condition that which has decayed, deteriorated, weathered or become broken, torn or otherwise inoperable." Similarly, SED approval is not required for maintenance, which is defined as "recurring work which is intended to promote the upkeep of a property in properly operating condition." The disallowed interest for Capital Loans relates to repairs and maintenance of the type for which SED approval is not necessary.

Additionally, we have consistently maintained that we were instructed by SED that we did not need SED's approval for each capital item purchased and depreciated if the depreciation expense, and the related loan interest expense, did not cause us to go over our approved Certificate of Approval, and if those expenses did not cause us to exceed the 70/30 cost screen. At the closing conference, you asked us to provide documentation substantiating this information. Accordingly, we attached a letter from Thomas Hamel, Chief, of the Program Services Reimbursement Unit, wherein he confirms this understanding, and a subsequent letter wherein we obtained further confirmation from SED. Copies of these letters are attached hereto. We have relied upon this understanding when completing CFR's and undertaking capital projects ever since. Our understanding is that the same is true for the other 4201/4410 Schools as well, with only major construction or alteration projects (e.g., new buildings, additions) needing approval. To treat Mill Neck Manor School for the Deaf differently in this regard would be arbitrary and capricious. Based on this reliance and understanding, the disallowances based on the lack of SED approval must be eliminated.

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| * Comment 2 |
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* See State Comptroller's Comments on page 27.

Mr. Frank Patone
January 3, 2013
Page 4

Vehicle Expenses (\$62,725)

The School's campus encompasses 86 acres with multiple buildings. To maintain this property, the School's maintenance and grounds personnel utilize three pickup trucks and a dump truck, as well as a tractor and some utility vehicles. Such vehicles are used principally on campus, although from time to time they are driven off campus to pick up supplies. Thus, no employee operates these vehicles for personal use. Additionally, the Reimbursable Cost Manual ("RCM") does require vehicle logs, but the details of that requirement – e.g., requiring log of destination, mileage, and purpose of travel – clearly indicates that such logs were contemplated for vehicles used to go off-site on School business and/or vehicles used partially for personal business. There is little sense in keeping such a log for vehicles used almost exclusively on campus and only for School business, and one can fairly read the RCM as not requiring logs for such vehicles. Moreover, Sections II.A.5 and II.A.10 of the RCM do not require that gasoline bills be itemized by vehicle.

*
Comment
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Notwithstanding the lack of personal use of these vehicles, we are establishing a policy requiring vehicle logs to be maintained. However, the blanket disallowance of all vehicle expenses, including lease expenses, gasoline expenses and vehicle repair costs is excessively punitive and arbitrary and capricious. The OSC does not and cannot contend that these vehicles are not primarily used for School purposes. Thus, the complete disallowance of all vehicle costs, including those related to vehicles that rarely leave the campus, is arbitrary and capricious. We would hope that the OSC recognizes that the vehicles, especially those used for facility and grounds maintenance, snow plowing, and student-related trips, were (and remain) essential to our operations. Therefore, we request that this proposed disallowance be adjusted or eliminated accordingly.

Executive Director's On-Campus Residence

The Draft Final Audit Report (at p. 7) references \$11,934 of expenses for the "Executive Director's residence." We respectfully request you change the wording to the "Executive Director's On-Campus Residence."

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Comment
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Nextel Cell Phones (\$5,314)

The Draft Final Audit Report proposes disallowance for all cell phone expenses, except for the Executive Director's cell phone. Presumably, the approval of the Executive Director's cell phone expense is based on his 24/7 responsibility for the operations of the School. However, the same rationale applies to the other cell phones provided to the Business Manager, Maintenance Foreman and Assistant Foreman, Groundskeeper, Nurse and IT Director. The job duties of these people require them to be available at all hours and/or they travel throughout the campus in the performance of their duties. The latter reason also supports the provision of a

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Comment
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* See State Comptroller's Comments on page 27.

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single cell phone shared amongst security personnel on various shifts, as they patrol the campus. We respectfully request that this disallowance be eliminated.

Interpreter Services (\$30,093)

The Draft Final Audit Report disallows \$30,093 in interpreting services that were obtained from Mill Neck Interpreter Services. Trained sign language interpreters, used in the school setting, are essential to make sure that information is received by our constituents in a form they can understand. Contrary to the Draft Final Audit Report (at p. 8), the School does not employ "several workers" who were "capable of providing the contracted services." Contrary to the assertion on page 8 of the Draft Final Audit Report, the School does not employ two certified sign language interpreters whose function is to act as interpreters. Rather, the School employs only one half-time interpreter, relying upon the use of outside interpreting services for most of its interpreting needs. Interpreting done in the evenings or off-campus is done for back-to-school night, parent meetings, workshops or CSE meetings in local districts for deaf parents. While it is true that we employ many staff who use sign language, the role of an interpreter is very specialized and, in most cases, the participant in a discussion or other interaction cannot also act as an interpreter. Additionally, depending on the timing, content and/or length of a meeting, multiple interpreters are often needed because they switch off every 20 minutes and the single, half-time on-staff interpreter at the School could not fulfill all of the School's interpreting needs.

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More specifically, sign language interpreters typically perform the following functions:

1. **Classroom Interpreting.** A sign language interpreter is responsible to utilize the primary language of the student, which is American Sign Language (ASL), translating either into English or into ASL. The classroom teacher uses signed English as the instructional language of the classroom. Mill Neck Manor School utilizes outside interpreters during the school day and after school only when necessary, e.g., when teachers are not qualified to translate information from English to ASL.
2. **Student testing.** Our students' Individualized Education Plans (IEP's) typically require that tests be read to student and also that the language be simplified. Therefore, the teacher reads the test and the interpreter translates the test into ASL (specifically during English Regents, RCT's, ACT's and SAT's). One cannot read the test AND sign ASL simultaneously, thus creating the need for an interpreter.
3. **CSE Meetings.** Staff must participate in Committee on Special Education (CSE) meetings and cannot interpret for the student if they are an active participant. The staff takes in all of the information, processes it, and responds to members of the team; the interpreter is required to only "translate" the information to the student. Additionally, the School has deaf staff that need information interpreted for them to participate fully in the process.

* See State Comptroller's Comments on page 27.

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4. **Specialty classes.** Interpreters are used in driver's education to assist the student in understanding the lessons of the teacher, who does not sign. Clearly, it is necessary to have the students understand the material in order to take the actual driving test.
5. **Emergency situations.** If the child is involved with Child Protective Services (CPS), the police or other authorities, it is required that a certified interpreter be present to interpret all information to insure that the student understands all that is being asked and the person questioning the student gets the most accurate responses.
6. **Training.** Mill Neck Services interpreters are used mainly for training events. Staff who are being trained in these meetings cannot learn while doing the work of interpreter, and multiple interpreters are necessary in any event.

With respect to the documentation of the services provided, we note that your disallowances appear to assume that interpreter services are always performed directly for particular students, as opposed to groups of staff and/or students and parents. As you can see from the above, that is not the case and therefore to expect that all documentation will contain the "names of students" is unrealistic and inaccurate. Also, there does not appear to be any portion of the Manual requiring service location to be documented.

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| * Comment 6 |
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Many of the disallowed interpreting services were for staff training; group events such as graduations, luncheons, panel discussions, career fairs, etc.; or testing. Thus, it is not appropriate to disallow such invoices because no student name was listed. The use of outside interpreters is necessary for such activities. Based upon our initial review of the OSC's detailed spreadsheets, the amount disallowed attributable to this type of interpreting activity was \$12,112 in 2008-2009 and \$7,110 in 2009-2010. At a minimum, these amounts should be allowed.

Additionally, you disallowed several invoices -- \$1,030 in 2008-2009 and \$1,080 in 2009-2010 -- for interpreting services for our gym teacher and Athletic Director, Larry Manning. Mr. Manning is the Head Coach of several of our sports teams, who play against mostly hearing teams. Mr. Manning is deaf and often needs to communicate with other coaches and with referees as part of his duties, which is why we engage the services of an interpreter. This is an entirely necessary, appropriate and reasonable expense, and one which enables our students to compete athletically with hearing students.

Finally, we note that Mill Neck Interpreter Services regularly charges \$70 to \$80 per hour for interpreter services in the community. Thus, the Mill Neck Manor School for the Deaf receives a substantial percentage discount at the rate of \$60 per hour for the same services. Given that the ½ time interpreter on staff costs the School over \$37,000 per year for compensation and benefits, it is clearly more economical to engage additional interpreters on an as needed basis at a discounted rate than to hire additional staff interpreters.

* See State Comptroller's Comments on page 27.

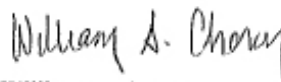
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In addition to the foregoing, we refer you back to our various responses to the preliminary audit findings, including the detailed exhibits attached thereto. Those proposed disallowances are unwarranted and inappropriate for the reasons stated therein, and we request that you revisit those disallowances prior to issuing a final audit report.

We extend our appreciation to the audit team for their thoroughness and for the suggestions offered to improve our procedures. We commit ourselves to the careful and appropriate use of public funds and assure you that we have re-doubled our efforts to assure accurate reporting and compliance with the RCM.

Thank you for your consideration of these items. If you have any questions or require additional information, please contact me at any time.

Very truly yours,



William S. Charon
Chief Financial Officer

THE UNIVERSITY OF THE STATE OF NEW YORK
 THE STATE EDUCATION DEPARTMENT
 THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, N.Y. 12234
 DEPUTY COMMISSIONER FOR ADMINISTRATION



Date: April 9, 1995

To: Oscar Cohen, David Billet, and Members and selected staff of the 4201 Schools Association
From: Richard J. Sauer
Subject: Minutes of the March 28, 1995 Meeting with the 4201 Schools Association and SED staff.

Meeting: Tuesday, March 28, 1995.

Time: 10:00 a.m. to 1:00 p.m.

Regarding: SED scheduled payments to the 4201 Schools and the Medicaid Reimbursement Process.

In Attendance: Oscar Cohen; David Billet; Members of the 4201 Association; Selected staff from the 4201 Schools; Richard J. Sauer; Christine Dascher; Thomas Hamel; and Robert Scalise.

The following issues were discussed at the meeting.

- Delay in scheduled SED payments to the 4201 Schools.
- Current Payment due each of the 4201 Schools.
- Communication between SED and the 4201 Schools regarding changes in SED policies.
- Concerns regarding SED's projections for medicaid reimbursement.
- Clarification regarding the delivery of Speech Services.
- What new services are billable under medicaid?
- Can Auditory Training be billed under medicaid?
- Transportation Services: What services can be billed?
- May the 4201 Schools bill for eligible services provided in the Deaf Infant Program?
- Data Entry concerns regarding the Data Entry Assistant (DEA-software).
- May the 4201 Schools bill for eligible services provided during the summer?

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(see Page 4)

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The responses to the issues above are in the order outlined.

The delay in the scheduled SED payments to the 4201 Schools were due to SED's efforts to reconcile payments due the schools with Medicaid reimbursements paid and owed each of the schools. Mr. Sauer explained that the reason for the delays this year were due to SED and DSS unresolved negotiations regarding the medicaid payments due each school which resulted in the ultimate holding of the medicaid checks by DSS. SED became aware of this situation only recently and has resolved the problem for the 4201 Schools by releasing sufficient state funds to each of the schools assuring that their 1994-95 State fiscal year payments will be brought up to the full 65% level that they expected to receive. The schools should realize these checks within two weeks after this meeting. Mr. Sauer indicated that prospectively, SED will issue a certificate that will be based on the total budget of the respective school. SED will deduct from the quarterly payments to the 4201 schools only those medicaid payments which have actually been received by the schools.

Mr. Sauer assured the membership that, as far as SED is concerned, this will not happen again and that the payments due each of the schools will be timely. He further addressed the concern regarding timely communication with the schools regarding such changes or delays in SED's policies by assuring that this communication would occur in the future.

Robert Scalise discussed efforts in December with each of the 4201 schools to maximize medicaid claiming. These efforts identified certain inadequacies with the software for data entry and certain misconceptions held by the Department regarding the amount of services delivered. However these efforts proved to be beneficial since the amount of the total claims from the 4201 schools more than doubled. Mr. Scalise also thanked the staff from the 4201 schools for all their cooperation.

The projections developed and used by SED to determine the amount of medicaid revenue that should be generated by the 4201 schools proved to be faulty. The number of eligible students identified, although accurate, did not truly reflect the number of eligible students in each of the billing periods back to April 1, 1990. Mr. Scalise indicated he would visit each of the schools by the end of May 1995 to more accurately determine projections that can be used for the 1995-96 school year. He asked that the school begin to review the number of eligible students they now have and the students IEP to determine the number of services and which services are delivered weekly. This will be helpful when Mr. Scalise visits each of the schools.

Mr. Scalise also addressed the concerns regarding the delivery of Speech Services. He reiterated the Department's position regarding the highest standard that only a Certified Teacher of the Speech and Hearing Handicap may deliver such services according to the Part 200 of the Regulations of the Commissioner. In order to claim medicaid reimbursement for such services they must be delivered by or under the direction of a licensed Speech Pathologist. He also confirmed that the DSS/SED policy regarding providing under the direction of is still appropriate. The Speech Pathologist does not have to sign the documentation regarding the delivery of Speech Services only the Service Provider must sign the document. The attestation on the bottom of the sample documentation form provided each of the schools should be removed, it is not accurate.

EXHIBIT A

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The documentation form only attests to the actual delivery of the service.

The following new services should be approved for claiming medicaid very shortly. SED will issue a new directive affirming these services for billing by the end of May or sooner.

Psychological Counseling Services
 Comprehensive Psychological Evaluation (includes a Social History)
 Basic Psychological Evaluation
 Audiology Evaluations
 Skilled Nursing Services
 Medical Examination/Evaluations

Currently Psychological Counseling Services may only be provided by a Certified School Psychologist; a Certified School Social Worker or a Licensed Psychologist. However by the time the SED directive is distributed we expect to include School Counselor. These services and evaluations may be billed back to September 1, 1993. If it is determined by DSS Counsel that these services may be claimed prior to this date we will advise you in the SED directive.

Auditory training is not a claimable service and may not be claimed unless its an integral part of the Audiology Evaluation.

4210 Schools may only claim Transportation for students preschool students (ages 3 & 4 Years of age) who are Commissioner's Appointments. If you operate an SED approved preschool program pursuant to Section 4410 of the Education Law you may not claim any services for medicaid reimbursement. School districts are the only providers who may claim transportation for school age students (5 - 21 years of age).

The 4201 Schools may not claim for services provided deaf infants in your deaf infant program. However, the Department of Social Services is now reviewing the deaf infant program operated by the 4201 schools in order to make the argument that these infants should also be eligible to generate medicaid reimbursement through the school supportive health services program. Bob Scalise will keep you informed of the progress in this area.

The Data Entry Software (DEA) has been revised and will be distributed to you by the Regional Information Center within the next week. This revised version has an void and adjustment capability which will allow you to void any claims you submitted and were paid for inappropriately as well as adjusting any claims you submitted in error. You may use this process to void and adjust any claims submitted for the extended supplemental billing period (retroactive period-prior to September 1, 1993) as well as for the prospective billing period (claims after September 1, 1993). You may use this process to void or adjust any transportation claims you may have billed in error.

Services provided in your program during July and August may also be claimed for medicaid reimbursement.

EXHIBIT A

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Thomas Hamel provided the following responses to questions regarding program operations and expectations:

- Do schools need to receive State approval for asset purchases?

No. Schools are free to use asset purchase funds as they deem necessary for the provision of services required on student I.E.P.'s.

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NOTE →

- Do schools need to receive State approval for staffing changes that they wish to make within their approved budget certificate and thus do not require any additional funds?

Yes. For at least the 1994-95 school year all staffing changes should be approved by SED. As part of this approval process the State will perform a complete staffing analysis (all positions). This review will establish a base approvable staffing. After that point schools will have the flexibility to make staffing changes which they feel appropriate, within the level of funding provided in the budget certificate.

NOTE: For the 1995-96 School Year no additional monies have been provided for new staffing or inflationary increases in the Governor's budget. The 1995-96 4201 appropriation funds 35% of the 1994-95 school year budgets and 65% of the 1995-96 school year budgets; 100% of the BOCES costs, and 100% of the retirement system costs as well as other costs that are being held "flat" or have not increased significantly between the 1993-94, 1994-95 and 1995-96 school years. The increase in the 1994-95 school year 4201 budgets impacts the level of the 35% payment made from the 1995-96 State Fiscal Year appropriation. In addition, there is a significant increase in the retirement amount to be paid this year due to changes in the Retirement System's method of calculation. These account for the increase in the appropriation (\$ +1.37 million over 1994-95).

Mr. Sauer closed the meeting by again assuring the group that their SED payments in the future will be timely and that the association will be kept informed of any changes in SED's policy in sufficient time to prepare and react.



EXHIBIT A

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MILL NECK MANOR

School for Deaf Children
 Frost Mill Road, Box 12 • Mill Neck, NY 11765 • 516.922.4100 (Voice, TDD) • 516.922.4172 (Fax)

MARK R. PROWATZKE, Ph.D.
 Executive Director

June 8, 1996

Mr. Thomas Hamel, Chief
 Program Services Reimbursement Unit
 New York State Education Department
 Albany, New York 12234

Verbal approval
 received from
 Nicolette AVERY, PSRU
 6/19/96

Dear Mr. Hamel:

We are aware that the system used to fund Capital Expenditures has changed over the past two years to a depreciation-based system.

According to our understanding of this system, we are to obtain financing to fund the capital project, obtain reimbursement for the project through the depreciation schedule as printed in the CFR, and that interest costs for the financing are also reimbursable expenses. We understand that the rules for reimbursement in 4201 are now identical to those in 4410, and that prior approval for any capital project does not need to be obtained from the Regional Associate, or the PSRU staff, providing that the costs of the project are within the approved certificate amount in 4201, and do not cause us to violate the 65/35 rule in 4410. Is that a correct understanding of the rules, assuming the project is appropriate to the health, safety and education of the children and consistent with the needs of the program?

It would be very helpful to me if you would review the following list of planned Capital projects for the 1996/997 year, to determine if they qualify under the general guidelines you have established.

4201 Program

Planned projects for 1996/97:

| | <u>Project</u> | <u>Cost</u> | <u>Depreciation Period</u> |
|----|---|----------------|--------------------------------|
| 1. | Re roof Gymnasium | \$50,000 | 10 |
| 2. | Replace 30 year old dehumidification/ventilation unit | 42,000 | 10 |
| 3. | Air condition remaining H.S. areas/ 7 ton | 30,000 | 10 |
| 4. | Air condition Dining Room/7 ton | 27,000 | 10 |
| 5. | Provide 2nd exit from H.S. second floor | <u>30,000</u> | 10 |
| | Total | <u>179,000</u> | |

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Overhead By The New York State Board of Regents

Page 2

4410 Program

Planned projects for 1996/97:

| | <u>Project</u> | <u>Cost</u> | <u>Depreciation Period</u> |
|----|---|----------------|--------------------------------|
| 1. | Air condition Secretary & Therapy areas | \$ 9,000 | 5 |
| 2. | Install Security doors in hallway | 2,500 | 10 |
| 3. | Hallway ventilation/sun protection | 12,000 | 10 |
| 4. | Re roof Building | <u>200,000</u> | 10 |
| | Total | 223,500 | |

Similarly, we understand that we are allowed to expense routine maintenance repairs, even if the cost exceeds \$1,000.00. Examples for 1996/97 are:

4201 (These costs will be expensed in 1996/97)

| | |
|---|----------|
| Repair valley flashing on Elementary Classroom Building | \$ 4,000 |
| Replace pool pump motor | 2,200 |

4410

| | |
|------------------------------|----------|
| Paint building exterior trim | \$ 5,200 |
| Repair fencing | 2,700 |

As we are desirous of understanding this new system fully before actually arranging financing, we will greatly appreciate any help you can provide. Thank you for your assistance to our program, and the children it serves.

Sincerely,

WILLIAM S. CHARON
Business Manager

WSC: bmr
cc: M. Prowatzke, Ph.D.

EXHIBIT A

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State Comptroller's Comments

1. As noted in our report, no records of any kind have been submitted to support the Executive Director's salary allocation to the Mill Neck School. As such, we used a reasonable method to allocate his salary as described in SED's Cost Reimbursement Manual.
2. The expenses in question include new roofing, a new air conditioning system and new ceilings. These items constitute capital expenses in accordance with the Manual. Accordingly, prior approval of SED is required as is competitive procurement. The response from Mill Neck School does not include letters from SED confirming SED approval to proceed with such transactions in the manner that the school proposes. One letter from SED is dated April 9, 1995 and contains no information relevant to the items we examined in this audit. The other letter was written to SED on June 8, 1996 and does not support a change to the audit findings. Further, SED officials could not find, nor did they recall, giving the Mill Neck School dispensation from complying with SED's prior approval requirements as noted in Mill Neck's response.
3. We limited our disallowances to passenger-type vehicles (i.e., sedans, vans and sport utility vehicles) reportedly used on and off campus. We did not include utility vehicles such as dump trucks or tractors in our disallowances. In addition, on-campus usage of vehicles service all Mill Neck affiliated organizations - not just the School. Thus, even on-campus usage must be tracked for proper cost allocation between programs.
4. Report page 7 has been revised to reflect the Director's residence in question is "on-campus."
5. We have deleted this disallowance from our report. We recommend Mill Neck officials monitor cell phone usage going forward and make periodic adjustments to the number of phones as appropriate.
6. Based on Mill Neck officials' response to the draft audit report, we have deleted the findings on interpreter services and the related disallowances from our final report. In this regard, we conclude that SED should review Mill Neck's use of interpreter services from a program perspective and from the perspective of compliance with the Manual to determine the extent that costs for interpreter services are proper and reimbursable.