



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

Division of State Government Accountability

Compliance With the Reimbursable Cost Manual

State Education Department United Community Services, Inc.



Report 2015-S-44

December 2015

Executive Summary

Purpose

To determine whether the costs reported by United Community Services, Inc. (United) on its Consolidated Fiscal Reports (CFRs) were properly documented, program-related, and allowable pursuant to the State Education Department's (SED) Reimbursable Cost Manual (Manual). The audit covered expenses claimed on United's CFRs for the three fiscal years ended June 30, 2014.

Background

United is a Brooklyn, New York for-profit organization authorized by SED to operate, among other SED-approved programs, the Special Class in an Integrated Setting (SCIS) program to disabled children between the ages of three and five years. During the 2013-2014 school year, United provided services to 108 students. The New York City Department of Education (DoE) refers students to United based on clinical evaluations and pays for these services using rates established by SED. The rates are based on the financial information that United reports to SED on its annual CFRs. The State reimburses DoE for a portion of its payments to United based on the SED-established rates. For the three fiscal years ended June 30, 2014, United reported approximately \$7.3 million in reimbursable costs for the audited programs. Also, United has a collaboration agreement with Bushwick United Headstart (Bushwick) and provides services to disabled students at four Bushwick locations.

Key Findings

For the three fiscal years ended June 30, 2014, we identified \$207,295 in reported costs that did not comply with the Manual's requirements and recommend such costs be disallowed. These ineligible costs included \$154,991 in personal service costs and \$52,304 in other than personal service costs, as follows:

- \$81,068 in compensation paid to the Assistant Executive Director. This individual is also the full-time Executive Director at Bushwick;
- \$73,923 in pension contributions that did not comply with the Manual's guidelines;
- \$17,931 in undocumented vehicle expenses;
- \$17,347 in miscellaneous expenses, including \$4,695 for staff food, \$4,285 for utilities, \$3,392 in cell phone expenses, \$2,781 for staff gifts, and \$2,194 for office expenses. These expenses were insufficiently documented and/or not program-related; and
- \$17,026 for car services and other travel expenses. These expenses include car services for parents and monthly MetroCards for an office worker.

Key Recommendations

To SED:

- Review the disallowances resulting from our audit and make the appropriate adjustments to the costs reported on United's CFRs and to United's tuition reimbursement rates.
- Work with United officials to help ensure their compliance with the provisions in the Manual.

To United:

- Ensure that costs reported on future CFRs comply with the requirements in the Manual.

Other Related Audits/Reports of Interest

[Whitestone School for Child Development: Compliance With the Reimbursable Cost Manual \(2014-S-38\)](#)

[Institutes of Applied Human Dynamics: Compliance With the Reimbursable Cost Manual \(2014-S-39\)](#)

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

Division of State Government Accountability

December 30, 2015

Ms. MaryEllen Elia
Commissioner
State Education Department
State Education Building – Room 125
89 Washington Avenue
Albany, NY 12234

Ms. Faige Rosenblum
Executive Director
United Community Services, Inc.
476 Malbone Street
Brooklyn, NY 11225

Dear Ms. Elia and Ms. Rosenblum:

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-funded services and 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, entitled *Compliance With the Reimbursable Cost Manual*, of our audit of the expenses submitted by United Community Services, Inc. to the State Education Department for the purposes of establishing preschool special education tuition reimbursement rates. This audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution; Article II, Section 8 of the State Finance Law; and Section 4410-c of the State Education 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

United Community Services (United), based in Brooklyn, New York, is a for-profit organization authorized by the State Education Department (SED) to provide, among other programs, the Special Class in an Integrated Setting (SCIS) program to disabled preschool children ages three through five years. During the 2013-14 school year, United served 108 students. United has a collaboration agreement with Bushwick United Head Start (Bushwick) that covers the four locations where instruction takes place. United provides services to the students it places at Bushwick. In addition, United assigns a Curriculum Coordinator to Bushwick who is responsible for setting the curriculum for United's teachers and students, ensuring lesson plans comply with students' Individualized Education Programs (IEP), observing teachers, and making sure teachers are following lesson plans and schedules. Bushwick is responsible for all facility, general instruction, and other related costs for the accommodation of all children enrolled.

The New York City Department of Education (DoE) refers students to United based on clinical evaluations and pays for United's services using rates established by SED. The rates are based on the financial information United reports to SED on its annual Consolidated Fiscal Reports (CFRs). To qualify for reimbursement, United's expenses must comply with the criteria set forth in SED's Reimbursable Cost Manual (Manual), which provides guidance to special education providers on the eligibility of reimbursable costs, the documentation necessary to support these costs, and cost allocation requirements for expenses relating to multiple programs. Reimbursable costs must be reasonable, program-related, and properly documented. The State reimburses DoE 59.5 percent of the statutory rate it pays to United.

Chapter 545 of the Laws of 2013 mandates the State Comptroller to audit the expenses reported to SED by special education service providers for preschool children with disabilities. For the three fiscal year ended June 30, 2014, United reported approximately \$7.3 million in reimbursable costs for its SCIS programs. Our audit scope focused on the three fiscal years ended June 30, 2014.

Audit Findings and Recommendations

For the three fiscal years ended June 30, 2014, we identified \$207,295 in reported costs that did not comply with the Manual's requirements for reimbursement. The ineligible costs included \$154,991 in personal service costs and \$52,304 in other than personal service (OTPS) costs (see Exhibit on page 13 of this report).

Personal Service Costs

According to the Manual, personal service costs, which include all taxable and non-taxable salaries and fringe benefits paid or accrued to employees on the agency's payroll, must be reported on the provider's CFR as either direct care costs (e.g., teachers' salaries) or non-direct care costs (e.g., administrators' salaries). All claimed costs must comply with the applicable provisions of the Manual. For the three fiscal years ended June 30, 2014, United reported approximately \$6.4 million in personal service costs. We identified \$154,991 in personal service costs that did not comply with the Manual's guidelines for reimbursement.

Assistant Executive Director

According to the Manual, for non-direct care staff under the 500 and 600 position title code series (per Appendix R of the CFR Manual), owners or related parties who work in more than one entity, including organizations that have a less-than-arm's-length relationship with the approved program, cannot exceed a total of 1.0 full-time equivalent (FTE) position across the various related entities. Further, the Manual states that compensation costs must be based on approved and documented payrolls. Payrolls must be supported by employee time records prepared during, not after, the time period for which the employee was paid. Employee timesheets must be signed by the employee and a supervisor and must be completed at least monthly.

During the three fiscal years ended June 30, 2014, United reported \$85,015 (\$27,435 in 2011-12, \$27,435 in 2012-13, and \$30,145 in 2013-14) in salary and fringe benefits for a part-time (0.34 FTE) Assistant Executive Director (AED). Further, we determined that United's AED was also the full-time (1.0 FTE) Executive Director (ED) at Bushwick, an entity with which United has a collaboration agreement. Consequently, United exceeded the 1.0 maximum FTE limit for this senior official of both United and Bushwick. Bushwick reported salary expenses, excluding fringe benefits, of \$453,074 (\$95,000 in 2011-12, \$196,000 in 2012-13, and \$162,074 in 2013-14) for its ED.

We requested and reviewed United's and Bushwick's timesheets for this individual. United's timesheets showed the AED worked from 9:00 a.m. to 5:00 p.m. although he was claimed as a part-time employee. Similarly, Bushwick's timesheets showed that the same individual started work between 7:00 and 8:00 a.m. and ended at 5:00 p.m. or later, daily. Thus, based on the available records, this senior manager purportedly worked at both United and Bushwick at virtually the same time each day.

We asked United officials how this individual could work for these two entities at the same time. United officials told us that, although the timesheets were attested to and approved by supervisors at United and Bushwick, the two sets of timesheets did not accurately reflect the hours this senior manager worked at either entity. Officials further advised that although the hours recorded on the timesheets showed that the AED regularly worked 11-hour days at Bushwick, he actually worked and was paid for only 35 hours per week. Officials contended that this allowed the employee sufficient time to attend to his duties at United.

Nevertheless, based on the available documentation, it was unclear that the person claimed as the AED actually worked for United. Moreover, salary in excess of 1.0 FTE (1.0 FTE at Bushwick and 0.34 FTE at United) would not be considered reimbursable. Therefore, we recommend SED disallow the \$81,068 (\$74,554 in salary and \$6,514 in fringe benefits) United charged to the SCIS programs over the three fiscal years for its AED because United did not comply with the applicable requirements of the Manual.

Retirement Plan Contributions

The Manual states that benefits, including pensions, for individual employees or officers/directors, must be proportionately similar to those received by other classes or groups of employees. According to informal guidance provided to us by SED, fringe benefits are proportionately similar if the benefits-to-salaries ratio is the same/similar among all employees.

During the 2012-13 fiscal year, United contributed \$175,000 to a profit sharing/retirement plan for 29 employees. We noted that United contributed a total of \$66,000 for 25 of the 29 employees – an amount that represented 7.6 percent of the employees' salaries. Contributions for the remaining four employees ranged from 12 percent to 50 percent of their salaries and totaled \$109,000. Had the four employees received the 7.6 percent contribution, similar to all other employees, they would have received a total of \$31,957 in pension contributions – a difference of \$77,043. We recommend SED disallow \$73,923 in pension contributions, the amount allocated to the SCIS programs for the 2012-13 fiscal year, because the excess contributions did not comply with the guidelines in the Manual.

Other Than Personal Service Costs

According to the Manual, OTPS costs must be reasonable, necessary, program-related, and sufficiently documented. During the three fiscal years ending June 30, 2014, United charged \$883,687 in OTPS expenses to the SCIS programs. We identified \$52,304 of those expenses that did not comply with SED's reimbursement requirements, as follows:

Vehicles

The Manual states that vehicle use must be documented with individual vehicle logs that include, at a minimum, the date, time of travel to and from destinations, mileage between each destination, purpose of travel, and name of the traveler. We identified one employee who was reimbursed

a total of \$18,806 for automobile expenses, which included the cost of leasing a car, insurance, and various other vehicle-related costs during fiscal years 2011-12 and 2012-13. The employee received no reimbursements for vehicle expenses in fiscal year 2013-14. United was unable to provide the required documentary evidence to show that the claimed costs were for the business use of the car. Therefore, we recommend that SED disallow \$17,931 in automobile expenses, the amount allocated to the SCIS programs, because the expenses were not documented, as required.

Travel

According to the Manual, travel expenses of spouses, family members, or any nonemployees are not reimbursable unless the spouse or family member is an employee of the entities and a legitimate business purpose exists for them to travel. Further, expenses of a personal nature, such as the personal use of a car, are not reimbursable. For the three fiscal years ended June 30, 2014, United claimed \$47,467 in travel expenses. We recommend that SED disallow \$17,026 in travel expenses allocated to the SCIS programs because these expenses did not comply with the Manual's requirements, as follows:

- \$13,380 for the use of a car service to transport parents to United's main office. United officials explained that they provided parents with car service because United was having problems with parents cancelling appointments. However, travel expenses for non-employees are not reimbursable.
- \$3,646 in MetroCards. United reimbursed an office-based employee for her Monthly Unlimited Ride MetroCards. United officials were unable to provide evidence this employee used the cards for any purpose other than her personal commuting expenses. Expenses of a personal nature, known as perquisites (or perks), are not reimbursable.

Staff Food

According to the Manual, the costs of food provided to any staff, including lunchroom monitors, are not reimbursable. In 2011, United provided food costing \$4,743 to United and Bushwick employees. We recommend SED disallow \$4,695, which is the cost of staff food allocated to United's SCIS programs, because these costs are not in compliance with the Manual's requirements.

Utilities

The Manual stipulates that costs of utilities, such as electricity and gas, are reimbursable provided such costs have not already been included in costs reported in rental or lease agreements. Moreover, all contractual agreements, including leases, must be in writing. United's Comptroller owns a 2,120 square-foot condo in Brooklyn, New York. United rents the first floor (1,340 square feet or 63.2 percent of the total space) of the condo for use as its main office. A basement studio apartment (780 square feet or 36.8 percent of the total space) is occupied by a separate entity owned by the Comptroller. While there are separate electricity bills for the first floor and the studio, the two spaces share a common gas meter. The Comptroller told us that, in return for using part of the studio apartment for storage, United agreed to pay the studio apartment's utility costs in lieu of rent. However, United was unable to provide a lease or other agreement to support this

arrangement. In addition, United could not demonstrate that part of the studio apartment was used as storage for United property.

For the three fiscal years ended June 30, 2014, United claimed \$18,249 in electricity expenses and \$3,964 in gas expenses. We recommend that SED disallow the \$4,285 (\$2,894 plus \$1,391) in electricity and natural gas expenses allocated to the SCIS programs because these expenses were not documented and/or not program-related, as follows:

- \$2,894 in electricity expenses for the studio apartment was charged to the SCIS programs. However, United could not provide documentation to show that studio apartment space was used by United; and
- \$3,964 in natural gas expenses was charged to the State. We allowed \$2,505 (\$3,964 times 63.2 percent) in gas expenses for the first floor. However, \$1,459 (\$3,964 less \$2,505) in gas expenses for the studio apartment were ineligible for reimbursement. Of that amount, \$1,391 was improperly charged to the SCIS programs, and therefore, should be disallowed.

Cell Phones

According to the Manual, cell phone service is reimbursable provided it is used primarily for the operation of the special education program. For the three fiscal years ended June 30, 2014, United claimed \$17,207 in cell phone expenses for its SED-approved programs. Cell phones were issued to several employees, including two office-based employees (the Comptroller and an office worker) whose job responsibilities did not require them to leave the office and who have access to landline phones. In addition, the Comptroller advised us the claimed cell phone expenses included telephone numbers that do not belong to United's employees, which he referred to as "private lines." We recommend that SED disallow \$3,392 in cell phone expenses charged to the SCIS programs because these expenses were not necessary for the operation of the special education programs and/or not program-related.

Gifts

According to the Manual, gifts of any kind are not reimbursable. Further, the Manual states that costs will be considered for reimbursement provided such costs are reasonable, necessary, directly related to the special education program, and sufficiently documented. United claimed \$2,292 in gift expenses under the category "office supplies and postage." We identified \$2,187 of those expenses that were allocated to the SCIS programs. United officials told us the funds were used to purchase gifts for staff members. However, included in the purchased items were gift cards, a coffee pot, blenders, giftware, and an assortment of other small purchases. In addition, United claimed \$594 in car service costs to deliver gifts to various sites. Since the costs of gifts are not reimbursable, the costs to transport gifts are also not reimbursable. Therefore, we recommend that SED disallow \$2,781 (\$2,187 and \$594) because the expenditures did not comply with the guidelines in the Manual.

Office Expenses

According to the Manual, all purchases must be supported with cancelled checks and with invoices that list the items purchased and the dates of purchase and payment. We reviewed a judgmental sample of 43 transactions totaling \$15,382 that were classified as office expenses. United could not provide documentation to show that 11 transactions totaling \$2,299 were program-related. The transactions included purchases made at Lowe's, Bed Bath & Beyond, Marshall's, and Daffy's. We recommend a disallowance of \$2,194, which is the amount allocated to the SCIS programs we audited, because these office expenses were insufficiently documented.

Recommendations

To SED:

1. Review the disallowances resulting from our audit and make appropriate adjustments to the costs reported on United's CFRs and to United's tuition reimbursement rates.
2. Work with United officials to help ensure their compliance with the Manual's provisions.

To United:

3. Ensure that costs reported on future CFRs comply with all requirements in the Manual.

Audit Scope and Methodology

We audited the costs reported on United's CFRs to determine whether they were properly documented, program-related, and allowable pursuant to SED's Manual. The audit included all claimed expenses for fiscal years 2011-12 through 2013-14.

To accomplish our objectives, we reviewed the Manual and the Consolidated Fiscal Reporting and Claiming Manual, United's CFRs, and relevant financial records for the audit period. We also interviewed United officials, staff, and independent auditors to obtain an understanding of their financial and business practices. In addition, we assessed a judgmental sample of reported costs to determine whether they were supported, program-appropriate, and reimbursable. Our sample was based on the relative materiality of the various categories of costs reported and their associated levels of risk. Our samples were not designed to be projected to the entire population of reported costs. Our review of United's internal controls focused on the controls over United's CFR preparation process.

We conducted our performance 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 during our audit 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; Article II, Section 8 of the State Finance Law; and Section 4410-c of the State Education Law.

Reporting Requirements

We provided a draft copy of this report to SED and United officials for their review and comment. We considered their comments in preparing this final report and attached the comments in their entirety to it. In responding to the draft report, SED officials agreed with our recommendations. In their response, United officials accepted some of our conclusions, but disagreed with other proposed disallowances. Our rejoinders to certain United comments are included in the report's 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 if the recommendations were not implemented, the reasons why.

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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

**United Community Services
Summary of Submitted and Disallowed Program Costs
For Fiscal Years 2011-12, 2012-13, and 2013-14**

Program Costs	Amount Per CFR	Amount Disallowed	Amount Remaining	Notes to Exhibit
Personal Services				
Direct	\$5,164,340	\$11,235	\$5,153,105	
Agency Administration	1,279,693	143,756	1,135,937	
Total Personal Services	\$6,444,033	\$154,991	\$6,289,042	B,D,J
Other Than Personal Services				
Direct	\$221,638	\$3,686	\$217,952	
Agency Administration	662,049	48,618	613,431	
Total Other Than Personal Services	\$883,687	\$52,304	\$831,383	A,C, E - I, K - M
Total Program Costs	\$7,327,720	\$207,295	\$7,120,425	

Notes to Exhibit

The following Notes refer to specific sections of SED's Reimbursable Cost Manual used to develop our recommended disallowances. We summarized the applicable sections to explain the basis for each disallowance. We provided the details supporting our recommended disallowances to SED and United officials during the course of our audit.

- A. Section II - Generally, costs will be considered for reimbursement provided such costs are reasonable, necessary, directly related to the education program, and sufficiently documented.
- B. Section II.13.A(4)(d) - Compensation beyond 1.0 FTE for non-direct care staff, owners, or related parties will not be considered reimbursable in the calculation of tuition rates.
- C. Section II.13.A(6) - Expenses of a personal nature, such as a residence or personal use of a car, known as perquisites (or perks), are not reimbursable.
- D. Section II.13.B(2)(c) - Benefits, including pensions, life insurance, and tax-sheltered annuities, for individual employees or officers/directors are proportionately similar to those received by other classes or groups of employees.
- E. Section II.22.C - Costs of food provided to any staff including lunch room monitors are not reimbursable.
- F. Section II.24 - Gifts of any kind are non-reimbursable.
- G. Section II.57.A - Costs incurred for telephone/cell phone service, local and long distance telephone calls, and electronic facsimiles are reimbursable provided that they are used primarily in furtherance of the operation of the special education program. In the case of cell phone data and text messaging charges, providers must demonstrate the business necessity for such additional cell phone features and that the cost of the plan(s) is no greater than necessary to meet the provider's business needs.
- H. Section II.59.F - Travel expenses of spouses, family members, or any nonemployees are not reimbursable unless the spouse or family member is an employee of the entity(ies) and a legitimate business purpose exists for them to travel.
- I. Section II.60 - Costs of electricity, gas, heat, water, fuel, bottled gas, etc. are reimbursable, provided these costs have not already been included in costs reported for rental or lease agreements. Such costs must be directly charged to the applicable programs or allocated on a reasonable basis and will be subject to the limitations of the non-direct care parameter.
- J. Section III.1.A - Compensation costs must be based on approved, documented payrolls. Payroll must be supported by employee time records prepared during, not after, the time period for which the employee was paid. Employee time sheets must be signed by the employee and a supervisor, and must be completed at least monthly.
- K. Section III.1.D - All purchases must be supported with invoices listing items purchased and indicating date of purchase and date of payment, as well as canceled checks. Costs must be charged directly to specific programs whenever possible. The particular program(s) must be identified on invoices or associated documents.
- L. Section III.1.G - All contractual agreements (e.g., leases) must be in writing, signed, and dated.

- M. Section III.1.J(2) - Vehicle use must be documented with individual vehicle logs that include at a minimum: the date, time of travel, to and from destinations, mileage between each, purpose of travel, and name of the traveler.

Agency Comments - State Education Department



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

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December 23, 2015

Mr. Frank Patone
Audit Director
Office of the State Comptroller
Division of State Government Accountability
59 Maiden Lane, 21st Floor
New York, NY 10038

Dear Mr. Patone:

The following is the New York State Education Department's (SED) response to the draft audit report, 2014-S-44, Compliance with the Reimbursable Cost Manual: United Community Services, Inc.

In addition to the actions that will be taken in response to the specific recommendations described below, SED will closely examine the circumstances that led to the findings described in the audit report. This examination will include an assessment of the programmatic oversight and fiscal management employed at United Community Services, Inc. (United) and will be a factor in the consideration of the continued approval of this provider and the corrective action or enforcement actions that may be warranted.

Recommendation 1:

Review the disallowances resulting from our audit and make appropriate adjustments to the costs reported on United's CFRs and to United's tuition reimbursement rates.

We agree with this recommendation. SED will review the recommended disallowances as noted in the report and make adjustments to the reported costs to recover any overpayments, as appropriate, by recalculating tuition rates.

Recommendation 2:

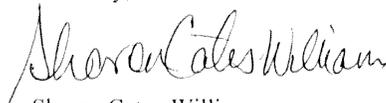
Work with United officials to help ensure their compliance with the Manual's provisions.

We agree with this recommendation. SED will continue to provide technical assistance whenever requested and will strongly recommend the United officials take advantage of our availability to help them better understand the standards for reimbursement as presented in Regulation and the Reimbursable Cost Manual (RCM). Furthermore, Consolidated Fiscal Report (CFR) training is

available both in person, at one of the six locations it is offered across the State, and online on SED's webpage. SED recommends that all individuals signing the CFR certification statements, namely Executive Directors and Certified Public Accountants, complete this training. At the direction of the Board of Regents, the Department intends to require that this training be mandatory and will require individuals to verify that they have completed the training.

If you have any questions regarding this response, please contact Suzanne Bolling, Director of Special Education Fiscal Services at (518) 474-3227.

Sincerely,



Sharon Cates-Williams

c: James P. DeLorenzo
Belinda Johnson
Suzanne Bolling

Agency Comments - United Community Services, Inc.

SHEBITZ BERMAN COHEN & DELFORTE, P.C.

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December 21, 2015

BY EMAIL (SLynch@osc.state.ny.us)
and FEDERAL EXPRESS

Stephen Lynch
 Audit Manager
 New York State Office of the State Comptroller
 59 Maiden Lane, 21st floor
 New York, NY 10038

Re: United Community Services, Inc.
Your Draft Audit Report #2015-S-44

Dear Mr. Lynch:

This letter is in response to the draft audit report of the Office of the State Comptroller (“OSC”) with respect to its audit of our client, United Community Services, Inc. (“United”).

At the outset, we note that United does not agree that OSC has authority to conduct the audit at issue under the New York State Constitution, as interpreted by the New York Court of Appeals in *Blue Cross & Blue Shield of Cent. N.Y. v McCall*, 89 N.Y.2d 160 (1996), *New York Charter Schools v. DiNapoli*, 13 N.Y.3d 120 (2009) and *Handler v. DiNapoli*, 23 N.Y.3d 239 (2014). United’s cooperation with the audit and this response to OSC’s draft report do not waive any of its rights to challenge OSC’s authority to conduct this audit or any decision to act upon it, and United expressly reserves all such rights.

*
 Comment
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We also note at the outset that OSC’s positions on the two largest issues, the proposed disallowances of salary and fringe benefits of the Assistant Executive Director and pension payments, are based upon interpretations of the Reimbursable Cost Manual that are inconsistent with what the New York State Education Department (“SED”) has done in its own annual reviews of United’s financial reports, are inconsistent with universally followed and well understood United States government laws and regulations relating to pensions, and are flat-out wrong for the reasons explained below. By any measure, OSC’s positions are contrived and illogical interpretations of less than clear provisions in the RCM. However, even if OSC’s

*
 Comment
 2

* See State Comptroller’s Comments, Page 30.

SHEBITZ BERMAN COHEN & DELFORTE, P.C.
ATTORNEYS-AT-LAW

Stephen Lynch
December 21, 2015
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interpretations arguably were correct, which they are not, OSC should not recommend disallowances based on RCM provisions that do not give clear guidance to the special education service provider. United relies on the written guidance SED provides in its manuals. It necessarily plans its staffing and expenses, and what it expects to be reimbursed for, based on what the manuals say. United also necessarily relies on SED's own annual reviews of its financial reports, which never disallowed these same practices. This has framed United's expectations as to what will be reimbursed and its decisions to continue implementing practices that have been reviewed and allowed by its regulatory authority.

OSC's recommending retroactive disallowances based upon unclear RCM provisions is patently unjust to United. Such disallowances, if made, would result in tuition rate reductions on account of practices that United has been following for years, justifiably believing that they are correct based on the wording of the RCM, as well as all prior regulatory reviews by SED. Moreover, the financial effect of OSC's proposed disallowances would be greatly magnified, because the disallowances are applied retroactively to audited years long since passed. Under SED's rate setting methodology, the reduced tuition rate resulting from the disallowances becomes a ceiling for future years. Thus, the proposed disallowances would adversely affect United's tuition rates not only for the audited years, but also for every subsequent year. And once a provider has incurred costs, having adhered to regulatory guidance and reasonably believing its costs are properly reimbursable, the money is spent; the provider cannot undo the expense if OSC disallows it years later because of a new and different interpretation of the RCM.

In light of this, rather than recommending retroactive disallowances, based on unclear RCM provisions, that would reduce United's tuition rates for years long past, after United cannot do anything to adjust its practices to avoid the OSC-interpreted disallowances, OSC should recommend instead that SED amend the RCM to make it clear, so that service providers will know what standards they have to meet. In fairness, any such amended RCM provisions should be applied only prospectively, not retroactively. The fact that OSC or SED now disagrees with the United's interpretation of unclear provisions does not mean that the United's interpretations of the RCM are not reasonable. United and other responsible special education service providers take great pains to follow the rules. However, to follow the rules, the rules need to be clear. The RCM does not come close to providing that kind of clarity and certainty for special education service providers. OSC also is wrong to rely on verbal advice from SED as to what the RCM intends to support recommended disallowances, as OSC has claimed that it sometimes does. Service providers necessarily rely on what the published regulations and manuals say when they make their operating decisions, not on unpublished, private statements that SED purportedly makes to OSC years after the expenses have been incurred and reported.

We will now proceed to discuss OSC's proposed disallowances.

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I. Assistant Executive Director

United disagrees with OSC's recommended disallowance of the salary and fringe benefits paid to its Assistant Executive Director, who also was the Executive Director of the Bushwick United Head Start program ("Bushwick"). Bushwick operated the four Head Start sites at which United provided special education services, pursuant to an arms-length collaboration agreement between United and Head Start. The recommended disallowances are wrong, and they should not be included in the final report.

This employee is lawfully allowed to hold more than one job and had dual employment. He was employed both by Bushwick to run their program and by United to oversee its provision of preschool special education services under Education Law §4410 specifically at four school sites. There is no common ownership, there are no common directors or officers, and there is no other corporate relationship, between United and Bushwick. They are completely and unequivocally independent of one another.

During the audit, OSC's auditors took the position that the collaboration agreement between Bushwick and United somehow made them "related parties". OSC appears to have abandoned that position, and if so, it is for good reason. The collaboration agreement between United and Bushwick was an arms-length agreement between two completely independent parties. Under the terms of United's contract with the New York City Department of Education ("NYCDOE"), that agreement had to be, and was, submitted to and approved by NYCDOE. The NYCDOE contract expressly requires the collaboration agreement to include, among other things, "the duties and obligations of each party under the collaboration agreement," which the Bushwick/United collaboration did. In establishing this employee position, United was cognizant of, and followed, the special education regulations of both Education Law §4410 and Head Start. Indeed, the four sites where United provided special education services were approved by SED as §4410 school sites.

The Assistant Executive Director's Job Description, which was provided to the auditors, outlines the activities that this employee performed for United. It clearly specifies the requirements of the position, which do not overlap with his job responsibilities for Bushwick. All responsibilities for United were tasks that would not be required of him if he were not employed by United. United also provided a certification signed both by the employee and by United's Executive Director confirming that his work time for United was not also Bushwick work time and that his job responsibilities for United were not part of his job responsibilities for Bushwick or any other program. Additionally, during the audit OSC conducted extensive interviews with United staff and this employee. Those interviews confirmed that there was no overlap between the work this employee did for his two separate employers. Yet, there is no mention of these in-depth interviews in OSC's report, apparently because they disprove what OSC wanted to find.

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OSC’s interpretation of Section II. 13A(4)(d) of the RCM, limiting compensation of staff who work in more than one entity to 1.0 FTE in total, is incorrect. That section is applicable only when the two or more entities for which the employee works are related, such that they are required to report FTEs for that employee on the same CFR. It cannot reasonably be construed to apply to a dual employment situation, like this one, where the two entities employing the same person are completely independent of one another. Indeed, in this situation, and in any situation of dual employment by independent entities, the two employers do not necessarily even know how many FTEs the other employer is reporting for the employee (or if it reports FTEs at all). All that the employer reasonably can do, and should be required to do, is to report accurately the FTEs the employee worked for it. United reported that accurately in accordance with the regulatory requirements.

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Interpreting the RCM section the way it is cited in OSC’s draft report would preclude reimbursement of salary and benefits in any dual employment situation where the employee works a total of more than a full business day for two employers combined. For example, it would preclude agencies from being reimbursed for salary and benefits if they both hired a highly competent administrator who works full time for one agency during the day and part-time for the other on nights and/or weekends. Just as in this case, there is no conceivable reason to do that, and the RCM cannot reasonably be construed to do that, as OSC’s interpretation does.

OSC’s stretched interpretation of the RCM not only is incorrect; it also is in direct contradiction to New York State’s policy favoring the full support and encouragement of agency collaboration in all sectors throughout the state. This arrangement was highly beneficial to United and to the State, both in terms of quality of services and fiscal efficiency. This employee had a unique knowledge of the preschool students receiving services from United at the four Head Start sites and their families. That knowledge, which was used in his oversight for United at the sites, was highly beneficial to United in smoothly delivering its services there. Moreover, the oversight he provided did not require full-time, 8 hours a day of work. Hiring a highly qualified site director who already was at the site for another employer enabled United to use a part-time employee (0.34 FTE). Hiring another staff person to provide oversight would have required engaging a full-time employee to get an employee with the appropriate experience and knowledge to provide the required oversight. This arrangement clearly was the most cost-effective and reasonable strategy both for United and the State.

The fact that this employee worked for both United and Bushwick is allowable, reasonable and appropriate and does not reflect that one employment was inconsistent with the other. OSC mischaracterizes this employee’s timesheets to falsely make it appear that they are in conflict. They are not. OSC’s statement that United officials told the auditors that “the two sets of timesheets did not accurately reflect the hours this senior manager worked at either entity” is false. What United told the auditors was that they were misinterpreting the timesheets. The timesheets were not intended to delineate exactly which hours he worked for United or for

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Bushwick; they simply were reporting the hours during which he was at work for each entity and within which performed his duties for the respective entities.

His Bushwick timesheets reflected that he regularly worked approximately 11 hours daily, starting at around 7:15 a.m. and often not leaving until 6:15 and 6:30 p.m. or later. Yet, each Bushwick timesheet was marked at the bottom “35 hours”. We assume that is because Bushwick was paying him for a 35-hour work week and that is what it expected of him. We know with certainty that Bushwick’s management and Board were well aware that this employee was working for United as well during the hours reported on his Bushwick timesheets. The hours reflected in the Bushwick timesheets left ample time for the 0.34 FTE of United work, consistent with a 35-hour work week for Bushwick as well, during the reported hours.

His United timesheets reported time from 9:00 a.m. to 5:00 p.m. each day, because those were the hours within which he performed his duties for United each day. They were not intended to reflect that he worked all of that time for United, just as the Bushwick timesheets did not reflect that he worked all of that time for Bushwick. United did not require him to break out exactly which time during that period he was performing United work each day. It would have been impracticable to do so, as he was a senior manager and travelling between four sites at which he was overseeing activities for both entities each day. Moreover, it would serve no purpose. United did not pay him by the hour. Moreover, United did not compute his FTEs based upon his timesheets. Rather, United determined his .034 FTEs based upon its assessment of how much time the responsibilities reflected on his written Job Description, which duties he unquestionably performed, required. All United relied upon from the timesheets was verification that he was performing his duties for United within the hours reported; it was of no concern to United at exactly which times during those hours he was performing the United work, or precisely how much time he spent on United work each day. His compensation did not depend on that in any way. The RCM does not require anything more.

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OSC’s ultimate conclusion that “based on available documentation, it was unclear that the person claimed as AED actually worked for United” not only is wrong; it is outrageous and defamatory. There is no factual basis at all for that statement, and it should be taken out of the report. There is ample documentation reflecting that this employee in fact worked for United including: his Job Description signed by him each year, his times sheets, payroll records reflecting that he was paid by United, which it would have no reason to do so if he was not performing work for United, the submission of his Job Description to NYCDOE as part of the approval process for the collaboration agreement, and the certification described above that both he and United’s Executive Director signed. In addition, we assume that the OSC auditors took notes of interviews during the audit. As noted above, the auditors also extensively interviewed United’s Executive Director, Program Director, Education Director and Comptroller, all of whom told them that this individual worked as Assistant Executive Director for United. This employee also was interviewed by the auditors, and he also told them that he worked as United’s

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Assistant Executive Director. We assume that the auditors' interview notes reflect this; if not, they should. Additionally, if the auditors had chosen to talk to other Bushwick managers or its Board members, they too would have confirmed that he worked for United, as well as Bushwick, during portions of the hours reported on the Bushwick timesheets. In short there is not a shred of evidence supporting OSC's false and irresponsible statement, and ample evidence contradicting it. In fact, during the audit, OSC never questioned that this employee in fact worked for United.

We also note that the statement in the draft report that "Bushwick reported" certain salary expenses of its Executive Director is misleading and irrelevant and should not be included in the report. Bushwick was not required to, and did not, "report" anything on a CFR, and it was not required to, and did not, "report" anything to SED or the auditors regarding the amounts paid to its Executive Director for the audited years. During the audit, one auditor mentioned that he had looked up this employee's Bushwick salary on the internet, and we assume that he found a Federal Form 990 or other document online that reflected this employee's Bushwick salary. The auditor also said that he had looked this up out of curiosity but that it was not relevant to OSC's report. That is true as well; his Bushwick salary and fringe benefits are irrelevant and should not be included in the report.

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Finally, as we advised OSC previously in response to its preliminary report, even if the RCM required that the total FTE for this employee between United and Bushwick be limited to 1.0 FTE as OSC's draft report contends, which the RCM does not, it would be unreasonable to disallow all of United's FTE, rather than apportioning the "excess" FTE proportionately between the two programs. This employee worked 75% of his total FTE for Bushwick and 25% of his total FTE for United. Therefore, if his total FTE across both agencies had to be reduced to 1.0 FTE as OSC incorrectly contends, the appropriate allocation would be 0.75 FTE to Bushwick and 0.25 FTE to United. Accordingly, even if some disallowance were appropriate, which it is not, the appropriate disallowance would be to reduce this employee's United FTE to 0.25, not to disallow his salary and fringe benefits entirely. The draft report does not address this point and does not articulate any rational reason to instead allocate all of the disallowed FTE to United, and there is no rational reason to do that.

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II. Retirement Plan Contributions

United disagrees with OSC's recommended disallowances of certain retirement plan contributions. The recommended disallowances are incorrect for several reasons, and they should not be included in the report.

First, OSC is applying the wrong section of the 2012-13 RCM. The section OSC refers to, requiring the benefits to be "proportionately similar," is directed to fringe benefits generally. There is another section of the RCM, Section II.13.C directed specifically to pensions. It provides that: "Costs of employer funded pension plans which are approved by the Internal

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Revenue Service and accounted for under generally accepted accounting principles (GAAP) are reimbursable,” subject to various listed specific exceptions and limitations that are not applicable to United’s situation. United’s plan indisputably was approved by the IRS and accounted for under GAAP. Therefore, contributions under the plan were reimbursable pursuant to Section II.13.C. A copy of the IRS approval letter was provided to the auditors. The IRS does not require contributions to be “proportionately similar”. It does have anti-discrimination provisions to assure that the plan does not discriminate in favor of certain classes or employees, and United’s plan also indisputably met the IRS anti-discrimination test. A copy of the plan administrator’s calculation showing that the IRS anti-discrimination test was met also was provided to the auditors. Read in the context of RCM Section II.13.C, which defines the reimbursement rules for pension expenses, the language in RCM Section 13.B.2 that OSC relies on clearly applies to all fringe benefits as a group, not to pension benefits alone. In other words, fringe benefits as a whole must be “proportionately similar,” not each individual fringe benefit. Otherwise, the “proportionately similar” requirement would be included in the list of exceptions to the rule governing reimbursable pension expenses quoted above, contained in RCM Section II.13.C, because it would be an exception to the stated rule that costs of employer funded plans “approved by the Internal Revenue Service...are reimbursable,” unless one of the stated exceptions applies. That pension benefits purportedly must be “proportionately similar” for all employees is not listed as such an exception.

Second, even if the “proportionately similar” language that the draft report cites applied to pension payments alone, as opposed to fringe benefits as a group, which is not the case, OSC’s position that United’s contributions were not “proportionately similar” is incorrect. By implication OSC is interpreting “proportionally similar” to mean “equal to,” as the recommended disallowances assume that every employee must receive the same percentage contribution. However, nowhere does the RCM define “proportionately similar” to mean “the same as.” Indeed, it does not define at all what “proportionately similar” means, and “proportionately similar” is a vague term. Absent any specific definition of “proportionately similar” within the RCM, we are left to the discrimination test under Internal Revenue Service rules, which serves the same purpose as the “proportionately similar” language. The Internal Revenue Service rules are widely known and understood by employers, and absent any specific guidance in the RCM to the contrary, the most reasonable interpretation of what “proportionately similar” means as applied to a pension plan must be that the plan contributions must meet the IRS discrimination test. Indeed, the language of RCM Section II.13.C expressly reinforces that conclusion. We have no doubt that most agencies do exactly what United did, that is, they rely on pension consultants to tell them what the appropriate contributions are under the applicable rules. The rules consultants look to for guidance are the well-defined and universally applied IRS rules. Even assuming, for sake of argument, that the supremacy clause of the Constitution would allow SED to impose a more stringent anti-discrimination test than the Federal test, which we question, if SED intended the RCM to impose a different and more stringent anti-discrimination test for

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pensions, it was incumbent on SED to state much more clearly in the RCM that that was its intent, and exactly what test it intends to impose.

Third, we note that during the audit, the auditors indicated that they would accept a plan that created groupings based on age and seniority. We note that if United in fact did that and made the same amount of total pension contributions, three of the four employees at issue would receive the same or larger contributions than the ones OSC disallowed. This, in and of itself, shows the illogical and arbitrary nature of OSC's recommendation.

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In sum, the documented facts clearly refute OSC's proposed disallowances. The pension costs are allowable and reasonable under the RCM guidelines for charging costs, and the proposed disallowances are not appropriate for inclusion in OSC's final report.

III. Vehicles

United does not dispute this disallowance, as United did not maintain vehicle logs for this car. However, we note that, as was explained to the auditors in interviews, despite the absence of logs, the vehicle in fact was used predominantly for allowable agency business purposes.

IV. Travel

United disagrees with OSC's proposed disallowance of travel costs for parents and caregivers. The RCM does not specifically address travel costs associated with parents and caregivers of children that are receiving services. The RCM standard for allowable reimbursements, in the absence of specific language addressing a particular cost, is that the expense must be reasonable. United made a legitimate and completely reasonable, cost-effective decision to reimburse parents for travel costs in specific circumstances. The decision was made as an effect by United to save significant amounts lost because of missed or "no-show" sessions.

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In response to the issue of parent-canceled appointments or "no-shows", United engaged its parent community to understand what issues led to the parent/guardian missing an appointment and found that a major reason for such canceled appointments was travel-related issues. Specifically, one of the main reasons cited was excessive time lost at parent's workplace due to the lengthy public transportation time to and from United's office, located 51/2 miles from the four school sites.

After identifying the issue, United undertook a Transportation Cost Study to determine whether it would be more cost effective if United would reimburse parents for travel via car service versus the costs to the program of whenever there was a last-minute cancellation. United found that in an average year, one United professional loses 3 hours/week from parent cancellations due to transportation issues x 40 weeks/year, at a rate of \$50/hour, which results in

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a loss of \$6,000/year. On the other hand, when a car service is arranged and provided by United to parents, the “show-rate” of families rises from 20% to 98%, as documented in United’s thorough logs, which were examined by the OSC auditors. United found that the savings by this increased “show-rate” for appointments was greater than the cost of the car service.

Therefore, United made the reasonable and prudent business decision to undertake reimbursing such parent travel costs. Those payments clearly were reasonable, and they clearly were business-related expenses to promote attendance at United’s program, not personal expenses. Accordingly, they are reimbursable.

With respect to the Metrocard, United does not dispute the disallowance, but it does not agree that the employee used the Metrocard solely for personal travel. United does not have logs, but this employee did use the card primarily for travel to and from program sites, not solely for personal use.

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V. Staff Food

United does not dispute the disallowance for food costs. However, OSC’s report should note that it was justifiable and prudent for United to conduct the program that United’s employees attended and at which food was served. United held a team building event designed to promote team bonding by allowing various team members within the United organization and its collaborative partner Bushwick to meet, speak, and interface in a free and relaxed atmosphere. It was designed to create a spirit of camaraderie and unity in order to continue fostering the philosophy of the 4410 special class in an integrated setting. The event was also designed to promote a feeling of value for the employees and providers, and recognize achievement and worth in active and integral members of the two collaborative teams. While United understands that the RCM does not allow for reimbursement of food at such events, OSC’s report should reflect that the event itself was a reasonable and appropriate program-related event.

VI. Utilities

United disagrees with OSC’s proposed disallowance of utility expenses. It is based on inaccurate facts and is incorrect, and it should not be included in OSC’s final report.

First, we note that the condominium containing the space in question was owned by the Comptroller, not by “the Executive Director and its Controller.” Second, and more importantly, as the draft report notes, United paid the basement studio’s utility costs in lieu of rent for storage space it used in the downstairs studio unit. The statement that “United could not demonstrate that part of the studio apartment was used as storage for United property” is untrue. United used during the audited years, and continues to use, three closets (a total of 37.4 square feet) and half of the 8 by 11 foot studio room (approximately 44 square feet), totaling 81.4 square feet, for

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storage. OSC personnel were taken to the basement unit and physically shown this space, and United's use of it for storage, on two separate occasions. The draft report improperly omits these facts.

RCM Section II.60 (2013-14) provides:

"Costs of electricity, gas, heat, water, fuel, bottled gas, etc. are reimbursable, provided these costs have not already been included in costs reported for rental or lease agreements. Such costs must be directly charged to applicable programs or allocated on a reasonable basis and will be subject to the limitations of the non-direct care cost parameter."

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The utility costs as described above fit within the parameters of the RCM, are not otherwise included in rental or lease agreements, and are being allocated to the program on a reasonable basis, highly beneficial to United. Accordingly, these costs should not be disallowed.

While no disallowance is appropriate, even if it were not reasonable to allocate the entire utility cost to United (which it is, given that United paid no rent for its use of the basement studio), there is no conceivable argument that would justify disallowing the portion of such utility costs proportionate to United's actual proportionate square footage use of the studio space, amounting to \$2,571.00, over the three-year period.

VII. Cell Phones

United disagrees with OSC's proposed disallowance of cell phone expenses. Again the disallowances are based on inaccurate facts and should not be included in the report. Again, OSC has offered no reasons as to why it has ignored the facts presented by United during the audit.

As was explained to the auditors previously, the statement in the draft report that these employees did not need to leave the office and therefore had access to landline phones at all times is inaccurate. These employees were on-call after business hours, such as evenings, weekends, and during school vacations, to deal with emergencies, such as snowstorms, seriously inclement weather, school bus transportation changes, and unforeseen maintenance issues at the office or at the United school sites, all of which affect United's personnel and children. Incidents have included office sewer flooding, staff absentee emergencies, and child after-school drop off issues, to name several of the unforeseeable circumstances that arise outside of business hours.

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These employees did not always remain in the office with access to the "office landline" during lunch, travel to school sites or after business hours. Due to the small size of United's administrative staff, these individuals needed to be available to deal with all of the above issues no matter when they arose. It is disingenuous and unrealistic to characterize these employees'

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roles as “not requiring them to leave the office,” since these individuals essentially were on-call 24 hours a day, and needed to be available remotely whenever the need arose.

The statement in the draft report that United “was unable to provide documentation to support the business use of the cell phones” of these employees also is inaccurate. United provided the auditors copies of the cell phone bills for these phones. At the exit conference, OSC asked for itemized lists of the specific calls made on each line. United could not provide that, because the bills it receives do not provide that detail. That does not make the documentation “inadequate”. In fact, the documentation provided for these employees was the same documentation that United provided for the cell phones of other employees that OSC accepted as adequate.

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Accordingly, these expenses were reasonable and were used primarily in furtherance of the operation of United’s special education program, and the disallowance should not be included in OSC’s report.

United previously advised OSC that the expenses relating to the “private lines” were reported as program expenses in error, and United does not dispute that portion of the proposed disallowance. However, OSC’s report should mention that the amount of those charges was all of \$248.18, which is *de minimus*.

VIII. Gifts

United does not dispute the proposed disallowance for the token gifts that United provided to its employees in recognition of their dedication and hard work with preschool children with special needs and their families. However, United strongly objects to the sentence stating: “However, included in the purchased items were gift cards, a coffee pot, blenders, giftware, and an assortment of other small purchases.” That sentence should be deleted from the report. OSC’s wording implies that the nature of those items somehow contradicts what United told OSC as described in the preceding sentence, that is, that these funds were used to purchase small gifts for staff. OSC’s language suggests that the items listed in the draft report mentions were for the personal use of United’s owners. They were not. Each of the items the draft report mentions was a gift given to staff; OSC has not cited a shred of evidence to the contrary, and there is no such evidence. OSC should be aware that its reports can greatly damage an agency’s reputation, however inaccurate they may be, and as a responsible government agency, OSC should be more careful with its words.

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United also disputes the proposed disallowance of travel costs for delivery of gifts. Those “gifts” were in fact toys donated by sponsors, given to the children at an annual holiday party. As a safety precaution, United had the children’s toys delivered to their respective school sites,

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instead of having the children carry their presents home on public transportation. Doing this for safety reasons was a reasonable program-rated expense.

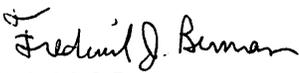
IX. Office Expenses

United does not dispute these recommended disallowances, as United did not have detailed documentation for these particular relatively small office expenses incurred years earlier. However, United notes that all such costs were legitimate program expenses. As United told the auditors at the exit conference, these expenses all were for children's toys, therapy furniture and similar items needed for the §4410 school program.

Conclusion

We trust that OSC will carefully consider this response and will remove the incorrect proposed disallowances and the inaccurate and misleading statements before publishing a final report.

Very truly yours,


Frederick J. Berman

FJB:jp

State Comptroller's Comments

1. The State Comptroller's legal authority to audit the costs submitted by United on the CFRs to the State Education Department is expressly cited on pages 3 and 11 of the report.
2. Our findings are based on the criteria in the Reimbursable Cost Manual. In certain instances, we contacted SED to obtain technical assistance to ensure our application of the Manual was correct. We urge United officials to seek similar guidance when questions about the Manual's provisions arise.
3. We disagree. The interviews did not "disprove what OSC wanted to find." In fact, we obtained conflicting information during our interviews with these employees.
4. Our interpretation of the Manual is correct. The Manual indicates that non-direct care staff, owners, or related parties who work in more than one entity (including organizations that have a less-than-arm's-length relationship with the approved program) are limited to 1 FTE employee in total for all of the entities for whom the person is employed. It is unreasonable to assert that this limitation pertains only to CFR-reporting entities. In total, the Assistant Education Director comprised 1.34 FTE, which was inconsistent with the Manual. Further, timesheets for this employee indicated that he often worked as many as 11 hours a day for another employer (Bushwick), as noted in the report. Consequently, we maintain that the costs in question claimed by United should be disallowed.
5. We did not mischaracterize the Assistant Executive Director's timesheets. We reported the hours this individual noted on his timesheets for each employer served, which United corroborates in their response.
6. United's explanation that timesheets were not intended to delineate exactly which hours the Assistant Executive Director worked for United is contrary to the requirements of the Manual. Also see Comment no. 7.
7. The Manual requires that timesheets reflect the actual activity of each employee and account for the total activity for which each employee is compensated.
8. We disagree and maintain that there is sufficient factual basis for our statement. United was unable to provide any documentation for the total activity for which this employee was compensated. Further, they admitted that the timesheets were not intended to delineate the hours that he worked for United.
9. Our report's presentation of the compensation of this employee was not misleading, and we did not review the matter out of "curiosity." This information was relevant to our audit and report as it directly related to the compensation this employee received from Bushwick.
10. According to the Manual, the allocation of compensation must be supported by timesheets or equivalent documentation which account for the total activity for which each employee is compensated. Although there were timesheets for the Assistant Executive Director, for work at both United and Bushwick, the timesheets indicated that this employee often worked for both entities at the same time, as noted in the report. Further, United officials told us that the timesheets did not reflect the actual hours the employee worked. Consequently, the timesheets were insufficiently reliable to support claims for this employee's salary and fringe benefits, as otherwise required by the Manual.
11. While section II.13.C of the Manual addresses requirements for pensions in detail, it does

not obviate United from following the requirements of section II.13.B (2) of the Manual. Pursuant to this provision (noted on page 7 of our report), benefits, including pensions for individual employees or officers/directors, must be proportionately similar to those received by other classes or groups of employees. Moreover, section II.13. B (2) does not refer to fringe benefits “generally” or “as a group,” as United contends.

12. United’s pension contributions are not proportionately similar when all but four employees received contributions of 7.6 percent of their salaries, while the remaining four employees received contributions ranging from 12 percent to 50 percent of their salaries. Furthermore, the reference to compliance with IRS requirements is irrelevant with respect to compliance with the Manual. The fact remains that the pension contributions in question were ineligible for reimbursement pursuant to the Manual’s applicable provisions.
13. OSC did not state that it would accept a plan that created groupings based on age and seniority. In fact, it was explained that a pension plan would be acceptable if there were groupings based on years of service and salary, which is exactly how United structured their plans for the two years after the period in question,
14. As stated on page 8 of our report, travel expenses of non-employees are not reimbursable.
15. As stated on page 8 of our report, United could not provide any evidence that the employee used the MetroCard for any purpose other than personal commuting expenses, which are not allowable.
16. We revised our report to note that the condominium was owned only by the Comptroller.
17. As stated on pages 8 and 9 of the report, United could not provide us with any formal leases or agreements to support the payments in question, as otherwise required by the Manual.
18. The provision addresses circumstances when utilities have not been included as part of a lease or rental agreement. Further, as noted in Comment no. 17, United did not have a formal lease or agreement for the studio basement apartment.
19. We reviewed and allowed the cell phone expenses of other employees, including the Executive Director, Program Director, and the Curriculum Coordinator. The two employees for whom we recommended the disallowance of cell phone expenses included the part-time Comptroller and a secretary, both of whom were not on-call after business hours.
20. We deleted the sentence that United was unable to provide adequate documentation from the report.
21. We revised our report to state that United told us that the gifts were for staff members.