THOMAS P. DiNAPOLI
COMPTROLLER

110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

November 17, 2016

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

Ms. Lynn Lubecki
Executive Director
Rochester Childfirst Network
941 South Avenue
Rochester, NY 14620

Re: Compliance With the Reimbursable Cost Manual
Report 2016-S-15

Dear Ms. Elia and Ms. Lubecki:

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, we conducted an audit of the expenses submitted by the Rochester Childfirst Network (RCN) to the State Education Department (SED) for purposes of establishing the preschool special education tuition reimbursement rates used to bill public funding sources that are supported by State aid payments.

Background

RCN, a not-for-profit organization located in Rochester, New York, is an SED-approved provider of preschool special education services. Accordingly, RCN offers special education services to children with disabilities between the ages of six weeks and five years. For the fiscal year ended June 30, 2014, RCN offered two SED-funded rate-based preschool special education programs: the Preschool Special Education Itinerant Teacher (SEIT) Services and the Preschool Integrated Special Class – 2.5 hours per day (collectively referred to as the Programs). During the 2013-14 school year, RCN provided these services to 56 children with learning disabilities from 10 school districts in Monroe County.

Monroe County pays tuition to RCN for its preschool special education services using reimbursement rates set by SED. The State then reimburses the county 59.5 percent of the preschool special education tuition it pays. SED sets the preschool special education tuition rates based on financial information, including costs, reported by RCN on its annual Consolidated Fiscal Reports (CFRs) that it submits to SED. Costs reported on the CFR must comply fully with the guidelines in SED's Reimbursable Cost Manual (Manual) regarding the eligibility of costs and documentation requirements, and must meet the reporting requirements prescribed in the Consolidated Fiscal Reporting and Claiming Manual (CFR Manual). For the year ended June 30, 2014, RCN reported $752,438 in reimbursable costs on its CFR for the Programs.

Results of Audit

According to the Manual, costs reported on the CFR are eligible for reimbursement if they are reasonable, necessary, directly related to the special education program, and adequately documented. For the fiscal year ended June 30, 2014, we identified $13,201 in costs that RCN reported on its CFR that did not comply with the Manual's requirements for reimbursement. The ineligible costs included $7,042 in other than personal service (OTPS) costs and $6,159 in personal service costs.

Other Than Personal Service Costs

According to the Manual, any expenditures that cannot be charged directly to a specific program must be allocated across all programs benefited by the expenditure. The Manual also states that if assets are shared by more than one program, the share of depreciation expenses that are allocated to programs shall be based on documented and reasonable criteria. We identified $2,507 in costs that were not in compliance with these guidelines. Specifically, RCN allocated $1,704 in depreciation expenses to the Programs for assets that were not used to benefit the Programs. Additionally, RCN charged $803 in depreciation expenses for shared assets directly to the Programs rather than distributing those expenses across all programs as required.

According to the Manual, the allocation of property costs to the SEIT program should be based on square footage. Thus, using methodologies based on teacher salaries to allocate property costs is not appropriate for SEIT. As a result, we identified $1,794 in non-reimbursable property costs that were allocated to the SEIT program.

According to the Manual, costs for gifts, food, and organized fundraising are not reimbursable. Also, costs are reimbursable provided they are reasonable, necessary, directly related to the special education program, and adequately documented. We identified $2,741 in various non-reimbursable costs that RCN reported on the CFR that were not in compliance with the Manual's requirements. Specifically, these costs included:

- $1,122 for gifts for students, employees, and board members;
- $658 for inadequately documented expenses;
- $353 for food for staff;
- $316 for non-Program-related visiting nurse services;

- $267 for late fees resulting from late credit card payments; and
- $25 for fundraising costs.

(Note: Prior to the audit, SED adjusted $728 of the OTPS costs we identified.)

Personal Service Costs

According to the Manual, the allocation of non-direct care compensation among various direct care job titles is not allowable. Staff should be reported in the job code title that is supported by their respective job description and salary agreement. For example, an individual who fills the position of Executive Director should be reported 100 percent as Executive Director. None of the Executive Director's compensation should be reported on the CFR as a direct care cost. However, RCN improperly allocated a portion of its compensation costs for certain non-direct care staff to the Programs using various direct care job titles. As a result, we identified non-reimbursable compensation costs totaling $3,955 ($3,384 in salaries and $571 in associated fringe benefits).

Also, according to the Manual, reimbursement for the compensation of the Executive Director position is limited to one full-time equivalent (FTE), even if the entity employs Co-Executive Directors. However, RCN reported compensation expenses exceeding one FTE for its Executive Director position. We determined the non-reimbursable portion of the excess personal service costs totaled $2,204 ($1,874 in salary and $330 in associated fringe benefits).

Recommendations

To SED:

1. Review the disallowances identified by our audit and, if warranted, make the necessary adjustments to the costs reported on RCN's CFR and to RCN's tuition reimbursement rates.

2. Remind RCN officials of the pertinent SED guidelines that relate to the deficiencies we identified.

To RCN:

3. Ensure that costs reported on annual CFRs fully comply with SED's requirements, and communicate with SED to obtain clarification as needed.

Audit Scope, Objective, and Methodology

We audited the costs submitted by RCN on its CFR for the fiscal year ended June 30, 2014. The objective of our audit was to determine whether the costs submitted by RCN on its CFR were properly calculated, adequately documented, and allowable under SED's guidelines, including the Manual.

To accomplish our objective and assess internal controls related to our objective, we reviewed the Manual as well as the CFR Manual and related appendices. We interviewed SED officials to obtain an understanding of the CFR, as well as the policies and procedures contained in the Manual and the CFR Manual. We became familiar with RCN's internal controls as they related to the costs RCN reported on the CFR. We also interviewed RCN personnel to obtain an understanding of their financial practices for reporting costs on the CFR. To complete our audit work, we reviewed RCN's CFR and relevant financial records for the audit period and obtained accounting records and supporting information to review a judgmental sample of personal service and OTPS costs of higher risk and reimbursable in limited circumstances, such as for food and vehicles.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those 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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

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 functions do not affect our ability to conduct independent audits of program performance.

Reporting Requirements

We provided a draft copy of this report to SED and RCN officials for their review and formal comment. We considered their comments in preparing this report and have included them in their entirety at the end of it. In their response, SED officials agreed with the audit recommendations and indicated the actions they will take to address them. RCN officials agreed with the audit findings related to OTPS costs, but challenged certain aspects of the findings related to personal service costs. Our rejoinders to those 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 where recommendations were not implemented, the reasons why.

Major contributors to this report were David Fleming, Dan Towle, Laurie Burns, Karen Ellis, and Dylan Spring.

We would like to thank SED and RCN management and staff for the courtesies and

cooperation extended to our auditors during this review.

Sincerely,

Andrea Inman
Audit Director

cc: Allis Marion, Interim Director of Finance, RCN
Suzanne Bolling, Director of Special Education Fiscal Services, SED
Thalia Melendez, Director of Audit Services, SED

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

October 31, 2016

Ms. Andrea Inman
Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street – 11th Floor
Albany, NY 12236

Dear Ms. Inman:

The following is the New York State Education Department's (Department) response to the draft audit report, 2016-S-15, Compliance with the Reimbursable Cost Manual: Rochester Childfirst Network (RCN).

Recommendation 1: Review the disallowances identified by our audit and, if warranted, make the necessary adjustments to the costs reported on RCN's CFR and to RCN's tuition reimbursement rates.

We agree with this recommendation. The Department 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: Remind RCN officials of the pertinent SED guidelines that relate to the deficiencies we identified.

We agree with this recommendation. The Department will continue to provide technical assistance whenever requested and will strongly recommend that the RCN officials take advantage of our availability to help them better understand the standards for reimbursement as presented in Regulation and the Reimbursable Cost Manual. In addition, Consolidated Fiscal Report (CFR) training is available at six locations across the State and online on the Department's webpage. The training is recommended for all individuals signing CFR certification statements, namely Executive Directors and Certified Public Accountants, and is required for preschool special education providers upon approval and reapproval. Furthermore, the Department intends to require that the training be mandatory for all providers.

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

Sharon Cates-Williams

c: Christopher Suriano
Suzanne Bolling

GreenbergTraurig

Pamela A. Madeiros
518-689-1412
madeirosp@gtlaw.com

October 14, 2016

VIA ELECTRONIC MAIL

Andrea Inman, Audit Director
Office of the State Comptroller
110 State Street, 11th Floor
Albany, New York 12236-0001

Re: Rochester Childfirst Network
Compliance With the Reimbursable Cost Manual
Audit #2016-S-15
Draft Report

Dear Ms. Inman:

We have reviewed the above-referenced Draft Report concerning the expenses reported by Rochester Childfirst Network (RCN) on the Consolidated Fiscal Report (CFR) for the school year ending June 30, 2014 and provide the following comments and challenges to certain costs and expenses identified in the findings.

Other Than Personal Services (OTPS)

Depreciation Allocation

RCN has refined its allocation methodology to assure that costs of depreciation are shared appropriately across all cost centers/programs, and does not challenge the auditors' proposed finding that $2,507 in such costs were inappropriately charged to the 9165 program exclusively.

Allocation of Property Costs to SEIT

RCN does not challenge the proposed disallowance of $1,794 in administrative costs associated with rent, repairs, maintenance and utilities related to the SEIT program as having been allocated by a payroll related methodology rather than by square footage and percentage of time used by the program, as directed by the RCM. Adjustments to RCN's allocation methodology have been made to assure the appropriate measure is applied.

Manual Requirements

Late Charges

RCN does not challenge the disallowance of $267 associated with late fees which had resulted from late credit card payments. While RCN endeavors to make timely card payments, the unpredictability of cash flow occasionally requires extraordinary management of accounts payable. RCN has strengthened its internal control protocols to assure that such sometimes unavoidable late charges be reported on the CFR as non-allowable.

Food

RCN does not challenge the disallowance of $353 in costs associated with food provided during staff development sessions, and, consistent with strengthened fiscal review, will assure such costs are reported on the CFR as non-allowable.

Insufficient Documentation

RCN does not challenge the disallowance of $658 in costs for which RCN was unable to provide sufficient supporting documentations such as receipts and invoices. Strengthened review controls will assure such substantiating documentation is maintained.

Staff and Board Appreciation and Student Gifts

RCN does not challenge the disallowance of $1,122 associated with non-reimbursable costs such as staff appreciation awards and gifts for students. Tightened review controls will assure such costs are appropriately reported as non-allowable on the CFR.

Visiting Nurse Services

RCN does not challenge the disallowance of $316 associated with visiting nurse service costs while noting that NYSED had previously reclassified certain costs associated with the visiting nurse during the rate calculation process.

RCN appreciates the auditors' acknowledgement that NYSED had previously disallowed additional costs during the rate calculation process, prompting RCN to strengthen its internal controls as indicated above.

Personnel Service Costs

While RCN acknowledges the RCM standard for the allocation of costs associated with certain title positions which directs compensation be reported under either direct or non-direct care codes exclusively, we would argue that the RCM standard does not contemplate, nor apply, where, as here, the size of the RCN agency makes exceptional demands on the program to contain costs by maximizing the use of trained personnel across both direct and non-direct care positions. NYSED recognizes that strict adherence to the rule may negatively impact the fiscal viability of small programs such as RCN and, on a case by case basis, permits deviation where, as here, the unreasonable alternative would be to engage additional personnel to perform the "other" position's duties which would result in additional costs to both the program and to the state. Accordingly, RCN requests reconsideration of the finding in light of NYSED's own, acknowledgement that on occasion, reporting staff in a single job code title would be less cost

* Comment 1

*See State Comptroller's Comments, page 10.

effective than allocating a portion of compensation costs for certain non-direct care staff to direct care job titles.

Additionally, while RCN acknowledges that the reimbursable Cost Manual (RCM) sets a 1 FTE standard for the Executive Director title position, we must challenge the auditors' proposed disallowance of $2,204 as excess compensation. The RCM standard does not contemplate mitigating factors such as a transition between Executive Directors as experienced by RCN in the audited year. The period of "overlap" between Executive Directors was a matter of weeks -- abbreviated and necessary to assure the smooth transfer of executive responsibilities. Accordingly, the slight excess over 1 FTE was both reasonable and necessary -- the two over arching requirements of the RCM. Moreover, NYSED recognized the need for the slight excess when assessing the legitimacy of reported expenses which was clearly reported on the CFR as greater than 1 FTE and accepted the cost in developing the reimbursement rate for the audited year.

* Comment 2

Disallowance of these extremely well-managed salary costs would visit a hardship on any program during transition periods and would work to discourage the sound programmatic and fiscal strategy of monitoring transitioning Executive Directors.

• • • • • •

We at RCN appreciate the opportunity to provide comment on this Draft Report.

Very truly yours,

GREENBERG TRAURIG, LLP

Pamela A. Madeiros

PAM/ldff
ALB 1965050v1

cc: Laurie Burns, OSC
Thalia Melendez, NYSED
Suzanne Bolling, NYSED
Lynn Lubecki, RCN
Allis Marion, RCN

State Comptroller's Comments

1. The Manual does not allow allocation of non-direct care compensation among various direct care job titles. As RCN acknowledged in its response, RCN allocated a portion of its compensation costs for certain non-direct care staff to the Programs using various direct care job titles. Special education providers (including RCN) must comply with the provisions of the Manual for claimed costs to be eligible for reimbursement. Therefore, we maintain that the costs in question were not eligible for reimbursement.
2. The Manual limits compensation for the Executive Director to one full-time equivalent (FTE) position. As RCN acknowledged in its response, RCN claimed compensation exceeding one FTE for its Executive Director position. Special education providers (including RCN) must comply with the provisions of the Manual for claimed costs to be eligible for reimbursement. Therefore, we maintain that the costs in question were not eligible for reimbursement.