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
Therapy and Learning Center, Inc.

Report 2016-S-44 July 2017

Executive Summary

Purpose

To determine whether the costs reported by Therapy and Learning Center, Inc. (TLC) on its Consolidated Fiscal Reports (CFRs) were reasonable, necessary, directly related to the special education program, and sufficiently documented pursuant to the State Education Department's (SED) Reimbursable Cost Manual and Consolidated Fiscal Reporting and Claiming Manual. The audit included expenses claimed on TLC's CFR for the fiscal year ended June 30, 2014, and certain expenses claimed on TLC's CFRs for the two fiscal years ended June 30, 2013.

Background

TLC is a Brooklyn-based not-for-profit organization authorized by SED to provide full-day Special Class and full-day Special Class in an Integrated Setting preschool special education services to children with disabilities who are between the ages of three and five years. For purposes of this report, these programs are collectively referred to as the SED cost-based programs. During the 2013-14 school year, TLC served about 138 students. In addition to the cost-based programs, TLC operated two other SED programs: Evaluations and 1:1 Aides. However, payments for services for these other programs are based on fixed fees, as opposed to the cost-based rates established through CFR-reported financial information. TLC also operated an Early Intervention program which was discontinued at the end of the 2013-14 fiscal year.

The New York City Department of Education (DoE) refers students to TLC based on clinical evaluations and pays for TLC's services using rates established by SED. The rates are based on the financial information TLC reports to SED on its annual CFRs. SED reimburses the DoE for a portion of its payments to TLC based on statutory rates. Reimbursable costs must be reasonable, necessary, directly related to the special education program, and sufficiently documented. For the three fiscal years ended June 30, 2014, TLC reported approximately $12.9 million in reimbursable costs for the SED cost-based programs.

Key Findings

For the three fiscal years ended June 30, 2014, we identified $276,453 in reported costs that did not comply with SED requirements and recommend such costs be disallowed. These ineligible costs included $143,974 in personal service costs and $132,479 in other than personal service costs, as follows:

- $51,707 in costs applicable to the fixed-fee 1:1 Aides program. TLC incorrectly allocated these costs to its cost-based programs rather than to the fixed-fee 1:1 Aides program;
- $51,733 in over-allocated fringe benefit expenses. TLC applied an incorrect allocation rate for fringe benefits;
- $20,342 in excess executive compensation;
- $20,192 in ineligible and/or unsupported sick leave accruals and bonuses;
- $87,178 in insufficiently documented consultant costs; and
- $45,301 in ineligible and/or unsupported expenses. Examples include purchases for software, equipment, and technology support services.

Key Recommendations

To SED:

- Review the recommended disallowances resulting from our audit and make the appropriate adjustments to TLC's CFRs and reimbursement rates.
- Work with TLC officials to ensure their compliance with SED's reimbursement requirements.

To TLC:

- Ensure that costs reported on future CFRs comply with SED's reimbursement requirements.

Other Related Audits/Reports of Interest

Susan E. Wagner Preschool: Compliance With the Reimbursable Cost Manual (2015-S-100)
Books and Rattles, Inc.: Compliance With the Reimbursable Cost Manual (2016-S-25)

State of New York
Office of the State Comptroller

Division of State Government Accountability

July 18, 2017

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

Mr. Timothy Behr
Executive Director
Therapy and Learning Center, Inc.
1723 8th Avenue
Brooklyn, NY 11215

Dear Ms. Elia and Mr. Behr:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently 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 Therapy and Learning Center, Inc. to the State Education Department for the purposes of establishing their tuition reimbursement rates. 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.

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

Table of Contents

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Background

Therapy and Learning Center Inc. (TLC), is a Brooklyn-based not-for-profit organization authorized by the State Education Department (SED) to provide full-day Special Class (SC) and full-day Special Class in an Integrated Setting (SCIS) preschool special education services to children with disabilities who are between the ages of three and five years. For purposes of this report, these programs are collectively referred to as the SED cost-based programs.

During the 2013-14 school year, TLC served about 138 students. In addition to the SC and SCIS cost-based programs, TLC operates two other SED-approved programs: Evaluations and 1:1 Aides. However, payments for services provided by these other programs are based on fixed fees, rather than the cost-based rates established through financial information reported on Consolidated Fiscal Reports (CFRs). TLC also operated an Early Intervention program which was discontinued at the end of the 2013-14 fiscal year.

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

Section 4410-c of the Education Law requires the State Comptroller to audit the expenses reported to SED by special education service providers for preschool children with disabilities. For the three fiscal years ended June 30, 2014, TLC reported approximately $12.9 million in reimbursable costs for its SED cost-based programs. Our audit included expenses claimed on TLC's CFRs for those three years.

Audit Findings and Recommendations

For the three fiscal years ended June 30, 2014, we identified $276,453 in reported costs that did not comply with the Manual's requirements for reimbursement. These ineligible costs included $143,974 in personal service costs and $132,479 in other than personal service costs (see Exhibit at the end of the report). We note that prior to our audit, SED rate-setting staff had disallowed a portion of the ineligible personal service costs we identified.

Personal Service Costs

According to the Manual, personal service costs, which include salaries and fringe benefits paid or accrued to employees on the provider's payroll, must be reported on the CFR as either direct care costs (e.g., teachers' salaries) or non-direct care costs (e.g., administrators' salaries). The Manual also states costs will be considered for reimbursement provided such costs are reasonable, necessary, directly related to the education program, and sufficiently documented. In addition, all claimed costs must comply with all other applicable provisions of the Manual and CFR Manual. We identified $143,974 in personal service costs that do not comply with SED requirements, as follows:

1:1 Aides

According to the Manual and the CFR Manual, all costs (salaries, fringe benefits, and allocated direct and indirect costs) for 1:1 aides should be reported on the provider's CFRs in a separate fixed-fee cost center. For the fiscal year ended June 30, 2014, TLC charged $51,707 in compensation to its cost-based programs for three employees who were categorized on the CFR as teacher assistants. We reviewed the employees' personnel files as well as TLC's class rosters and found that the three employees worked for TLC's fixed-fee 1:1 Aides program. TLC officials agreed with our disallowances for one of the three employees. However, officials provided time records for the other two employees who they claimed worked part of the year in the fixed-fee 1:1 Aides program and part of the year as teacher assistants in the cost-based programs. We reviewed the information that was provided and determined that it was insufficient to show that the two employees worked for the cost-based programs. TLC should have reported the compensation for all three employees under the fixed-fee 1:1 Aides program, as required by the Manual. Consequently, we recommend that SED disallow the $51,707 in compensation TLC claimed for the three employees.

Overstated Fringe Benefits

On its CFRs for the 2011-12 and 2012-13 fiscal years, TLC claimed approximately $1.6 million in fringe benefit expenses for its cost-based programs. We reviewed the support for the fringe benefit expenses and determined that TLC had overstated these expenses claimed on its CFRs for the 2011-12 and 2012-13 fiscal years by $51,733. Therefore, we recommend that SED disallow the $51,733 in overstated fringe benefit expenses.

Excessive Executive Compensation

The Manual states that compensation (i.e., salaries plus fringe benefits) paid to a provider's Executive Director should not exceed the regional median compensation paid to comparable personnel in public schools for similar work and hours of employment. For the fiscal year ended June 30, 2012, TLC reported $292,018 in compensation for its Executive Director. The New York City regional median compensation for an Executive Director for that period was $267,596 – a difference of $24,422. We recommend that SED disallow $20,342 in excess executive compensation – the amount of the difference that was allocated to TLC's two cost-based programs. TLC officials agreed with this disallowance.

Ineligible Sick Leave Accruals

The Manual states that certain accrued fringe benefits, such as sick leave, are not reimbursable until actually paid. We identified $14,920 in accrued sick leave expenses that TLC inappropriately claimed on its 2013-14 CFR for 36 employees. Because this sick leave was not paid during fiscal year 2013-14, these costs are not eligible for reimbursement. We recommend that SED disallow the $14,920 in sick leave expenses for the 2013-14 fiscal year as the claimed expenses did not comply with the requirements in the Manual. TLC officials agreed with this disallowance.

Employee Bonuses

According to the Manual, bonus compensation may be reimbursed if based on merit, as measured and supported by employee performance evaluations. Beginning with the 2013-14 fiscal year, the Manual required providers to adopt a written employee performance evaluation policy and a form that sufficiently detailed the criteria and methods used to determine each employee's final evaluation rating. According to the Manual, the written policy must describe how the final evaluation rating correlates to the amount of the merit award. In addition, reimbursement for bonus payments is restricted to direct care titles/employees.

We identified $5,272 in ineligible bonus payments claimed on the 2013-14 CFR for three employees, as follows:

- $1,214 for an employee who worked in an indirect care position. Bonuses paid to indirect care employees are not reimbursable.
- TLC officials could not provide a performance evaluation for the second employee who received a $985 bonus. Therefore, there is no assurance that the bonus was based on merit, as required by the Manual.
- TLC officials provided an interoffice memorandum to support a $3,073 bonus paid to a custodian. This memorandum is not a sufficient substitute for a performance evaluation. Moreover, the document did not indicate how the final evaluation rating correlated to the amount of the merit award.

TLC officials agreed with the $5,272 in bonus disallowances.

Other Than Personal Service Costs

According to the Manual, costs must be reasonable, necessary, directly related to the special education program, and sufficiently documented to be eligible for reimbursement. For the three fiscal years ended June 30, 2014, TLC reported approximately $2.4 million in other than personal service expenses for its SED cost-based programs. We identified $132,479 of these expenses that did not comply with the requirements in the Manual, as follows:

Consultant Costs

According to the Manual, adequate documentation for consultant services includes, but is not limited to, the consultant's resume, a written contract that describes the nature of the services to be provided, the charge per day, and the dates of service. In addition, payments to consultants must be supported by itemized invoices that indicate the specific services actually provided; and for each service, the date(s), number of hours provided, and fee per hour; and the total amount charged. The Manual also states that costs associated with a retainer for legal, accounting, or consulting services are not reimbursable unless the fee represents payment for actual documented reimbursable services. Furthermore, when direct care services are provided, the documentation must indicate the names of the students served, the dates of service, and the number of service hours for each child on each date.

For the three fiscal years ended June 30, 2014, we identified $87,178 in consultant costs that did not comply with the requirements in the Manual, as follows:

- TLC claimed $64,440 in consulting costs for a CPA firm that provided services on a retainer basis. The firm's invoices did not indicate the specific services provided, the number of hours worked, nor the hourly fee charged. Instead, the invoices simply listed either "retainer" or "services rendered." Moreover, we noted that TLC did not have a written contract with the consultant in effect (signed) during the period of July 1, 2012 through June 30, 2014 – the period for which reimbursement was claimed. Instead, the contract for the audited three-year period was signed in February 2017, approximately 32 months after the closing of the 2013-14 fiscal year. TLC officials disagreed with our disallowance. They advised that the CPA firm provided audit services and that it is a common practice for such invoices to not be itemized. Nevertheless, the guidelines in the Manual require that payments to consultants be supported by itemized invoices.
- TLC's CFRs include $22,738 for payments to consultants that provided nursing, music therapy, and physical therapy services to students. We found that the invoices did not identify the students served, the dates of service, or the number of service hours for each student on each date. Moreover, TLC did not have a contract with the music therapist, as required by the Manual. TLC officials disagree with this disallowance. They state that some of these services were for coverage or to groups of students and thus specific students served may not be easily identifiable. TLC officials, however, could not provide documentation to support their assertion. Further, as previously noted, the invoices did not detail the dates of service and hours of services provided, as otherwise required.

Consequently, we recommend that SED disallow $87,178 in consultant costs that did not comply with the requirements in the Manual.

Other Ineligible and/or Unsupported Expenses

The Manual states that all purchases to be reimbursed must be supported with invoices that list the items purchased, the dates of purchase and payment, as well as with canceled checks. In addition, costs must be reasonable, necessary, directly related to the special education program, and sufficiently documented. For the three fiscal years ended June 30, 2014, we identified $45,301 in expenses that were ineligible for reimbursement because these expenses were not related to the SED cost-based programs and/or were insufficiently documented, as follows:

- On the CFR for the fiscal year ended June 30, 2012, TLC officials reported $24,000 in expenses for software and other related information technology consulting services. However, we noted that these expenses were listed under TLC's Early Intervention program. TLC officials advised us that the software and associated maintenance were for the cost-based, fixed-fee, and Early Intervention programs. However, they could not provide documentation to support their assertion. Thus, we disallowed the $19,990 (of the $24,000) that TLC allocated to its cost-based programs. TLC officials agreed with the disallowance.
- We disallowed $12,024 in supplies and materials expenses that TLC charged to its cost-based programs for the 2012-13 fiscal year. However, these expenses were listed on TLC's general ledger as 'early intervention assistive equipment costs.' TLC officials could not provide invoices or receipts to support this expenditure. Moreover, Early Intervention is a Department of Health program whose costs are not reimbursable by SED. TLC officials agreed with this disallowance.
- We disallowed $6,830 in information technology expenses that TLC charged to its cost-based programs for the 2011-12 fiscal year. TLC provided us with invoices in support of the expenses. However, the invoices do not detail the services provided or the service dates, as required. Instead, the invoices indicate that the expenses were 'monthly billings for flat rate services.'
- We disallowed $4,511 in staff travel, bank fees, office supplies, and employee screening expenses that TLC charged to its cost-based programs. These expenses should have been charged to TLC's Early Intervention and Evaluation programs. TLC officials agreed with this disallowance.
- We disallowed $1,946 in expenses for repairs and maintenance, automobile insurance, and postage that TLC charged to its cost-based programs. However, officials could not provide documentation to support these expenses. TLC officials agreed with this disallowance.

We recommend that SED disallow $45,301 for the aforementioned ineligible and/or insufficiently supported expenses that did not comply with the requirements in the Manual.

Recommendations

To SED:

1. Review the recommended disallowances resulting from our audit and make the appropriate adjustments to TLC's CFRs and reimbursement rates.

2. Work with TLC officials to ensure their compliance with SED's reimbursement requirements.

To TLC:

3. Ensure that costs reported on future CFRs comply with SED's reimbursement requirements.

Audit Scope, Objective, and Methodology

We audited the costs reported on TLC's CFRs to determine whether they were reasonable, necessary, directly related to the special education program, and sufficiently documented pursuant to SED's manuals. The audit included claimed expenses for the three fiscal years ended June 30, 2014.

To accomplish our objective, we reviewed the Manual, the CFR Manual, TLC's CFRs, and relevant financial and program records for the audit period. We also interviewed TLC officials and staff to obtain an understanding of their financial and business practices. In addition, we selected a judgmental sample of reported costs to determine whether they were supported, program related, and reimbursable. Specifically, we reviewed costs that were considered high-risk and reimbursable in limited circumstances (such as for certain salary and consultant expenses) based on prior audit findings. 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. Also, our review of TLC's internal controls focused on the controls over TLC'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 objective. We believe that the evidence obtained during our audit 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 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 Education Law.

Reporting Requirements

We provided draft copies of this report to SED and TLC officials for their review and formal comment. We considered officials' comments in preparing this final report and attached the comments to the report. In their response, SED officials agreed with our recommendations and indicated that they will take steps to address them. TLC officials, however, disagreed with some of our report's findings. Our rejoinders to certain TLC comments are included in the report's State Comptroller's Comments. Also, TLC officials included a lengthy set of attachments with their response. Those attachments are not appended to this report. However, we retained the attachments on file at the Office of the State Comptroller.

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.

Contributors to This Report

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Division of State Government Accountability

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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

Therapy and Learning Center, Inc.
Summary of Submitted and Disallowed Costs
for the 2011-12, 2012-13, and 2013-14 Fiscal Years

Program Costs	Amount Per CFR	Amount Disallowed	Amount Remaining	Notes to Exhibit
Personal Services				
Direct Care	$9,217,699	$119,061	$9,098,638	A, B, D, E, H
Agency Administration	1,314,332	24,913	1,289,419	A-E
Total Personal Services	**$10,532,031**	***$143,974**	**$10,388,057**	
Other Than Personal Services				
Direct Care	$491,185	$37,098	$454,087	A, F, G
Agency Administration	1,913,767	95,381	1,818,386	A, F, G
Total Other Than Personal Services	**$2,404,952**	**$132,479**	**$2,272,473**	
Total Program Costs	**$12,936,983**	***$276,453**	**$12,660,530**	

*SED previously made certain adjustments to these costs.

Notes to Exhibit

The following Notes refer to specific sections of SED's 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 TLC officials during the course of our audit.

A. Section II - 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) - Compensation for personal services includes all salaries and wages, as well as fringe benefits and pension plan costs. Accrued vacation/sick leave is not reimbursable. Payments for vacation/sick leave are reimbursable when paid.
C. Section II(13)(A)(4)(a) - Compensation (i.e., salaries plus fringe benefits) for an entity's staff whose function is that of Executive Director, Assistant Executive Director or Chief Financial Officer will be directly compared to the regional compensation for compatible administration job titles of public school districts, as determined and published annually by SED's Basic Educational Data Systems (BEDS). Reimbursement of employee compensation for these job titles shall not exceed the median compensation paid to comparable personnel in public schools for similar work and hours of employment in the region in which the entity is located.
D. Section II(13)(A)(10) - A merit award (or bonus compensation) may be reimbursed if it is based on merit as measured and supported by employee performance evaluations. The provider must adopt a written employee performance evaluation policy and form that contains sufficient detail as to the criteria and methods used to determine each employee's final evaluation rating. The written employee performance evaluation policy must also describe how the final evaluation rating will directly correlate to any amount of a merit award.
E. Section III(1)(A) - Compensation costs must be based on approved, documented payrolls.
F. Section III(1)(C)(2) - Adequate documentation includes, but is not limited to, the consultant's resume, a written contract which includes the nature of the services to be provided, the charge per day, and service dates. All payments must be supported by itemized invoices which indicate the specific services actually provided; and for each service, the date(s), number of hours provided, the fee per hour; and the total amount charged.
G. 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.
H. Section IV(2)(F) - All 1:1 aide costs (salaries, fringe benefits of the aide, and allocated direct and indirect costs) should be reported in one separate cost center on the provider's financial reports.

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
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June 7, 2017

Mr. Kenrick Sifontes
Audit Director
Division of State Government Accountability
59 Maiden Lane, 21st Floor
New York, NY 10038

Dear Mr. Sifontes:

The following is the New York State Education Department's (SED) response to the draft audit report, 2016-S-44, Compliance with the Reimbursable Cost Manual: Therapy and Learning Center, Inc. (TLC).

Recommendation 1: Review the recommended disallowances resulting from our audit and make the appropriate adjustments to TLC's CFRs and 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 TLC officials to help ensure their compliance with SED's reimbursement requirements.

We agree with this recommendation. SED will continue to provide technical assistance whenever requested and will strongly recommend the TLC 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 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

Sharon Cates-Williams

c: Christopher Suriano
Belinda Johnson
Suzanne Bolling

Agency Comments - Therapy and Learning Center, Inc.

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June 8, 2017

VIA ELECTRONIC MAIL

Kenrick Sifontes, Audit Director
Office of the State Comptroller
Division of State Government Accountability
59 Maiden Lane, 21st Floor
New York, New York 10038

Re: State Education Department
Compliance with the Reimbursable Cost Manual
Therapy and Learning Center, Inc.
Report #2016-S-44
Draft Report

Dear Mr. Sifontes:

We have reviewed the aforementioned Draft Report concerning the expenses submitted by Therapy and Learning Center, Inc. (TLC) on its Consolidated Fiscal Report for the fiscal year ending June 30, 2014, and certain expenses claimed on CFR's for the two fiscal years ending June 30, 2013, and appreciate the opportunity to provide comment and context to the findings set out within. While TLC does not challenge many of the findings, we reassert and reaffirm our challenge to certain select findings and recommendations as set out below.

Personal Service Costs

1:1 Aides

While TLC does not challenge the auditors' finding that expenses associated with a single employee should have been reported exclusively as 1:1 aide expenses in an amount of $22,465 (salary and fringe), we vigorously challenge the auditors' conclusion that compensation for all three identified individuals should have been reported exclusively as 1:1 aide expenses.

Kenrick Sifontes
June 8, 2017
Page | 2

As confirmed in correspondence with NYSED Rate Setting Unit, the NYSED set 1:1 aide reimbursement rate is based upon 5 hours of educational support activities aligned with the physical presence of the student to whom the aide is assigned. As TLC shared with the audit team, a student's period of enrollment may end before or during the 10-month school year, thus allowing the redeployment/reassignment of that former 1:1 aide. TLC has provided the auditors with voluminous documentation including classroom staff directories, attendance reports, and enrollment/disenrollment records which confirm the redeployment/reassignment of former 1:1 aides to Program, thus substantiating the appropriateness of the expenses reported. We challenge the auditors' determination on the "sufficiency" of this documentation, and respectfully request reconsideration of the finding. ***(See: Attached #1 and #2)***

*
Comment
1

Fringe Benefits

TLC appreciates the opportunity to review the calculation formulae used by the audit team in determining the fringe benefit disallowance which first appeared in the Draft Report without mention in any previous preliminary report. TLC does not challenge this newly presented finding in the amount of $51,733.

*
Comment
2

Executive Compensation

While correct that we do not challenge the auditors' finding that the former Executive Director's salary for the audited year 2011-12 exceeded the allowable median salary and fringe benefits resulting in a disallowance of $20,342, the auditors failed to address our request that the narrative reflect the fact that, as the attached NYSED Adjustment Entry Sheets reflect, Executive Director salary expenses in excess of the allowable levels had been disallowed during the Rate Setting Unit's rate calculation review for the audited year 2011-12, thus guarding against reimbursement of these costs in the calculation of that year's rate ***(See: Attached #3).*** We also note that the Executive Director's salary had been reduced in 2012 to a level below the allowable amount and has remained at that reduced level since 2012.

*
Comment
3

Sick Leave Accruals

TLC does not challenge the auditors' recommendation for disallowance of certain sick leave expenses in the amount of $14,920 which had not been paid out during the appropriate fiscal year. TLC has refined its internal controls to assure proper reporting of such expenses in the future.

Employee Bonuses

While Therapy and Learning Center, Inc. does not challenge the auditors' finding that bonus payments in an aggregate amount of $5,272 made to three select employees did not meet the requirements set out by the Reimbursable Cost Manual, we note that the auditors acknowledged that these three bonus awards were the exception to the general rule

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*See State Comptroller's Comments, page 21.

of compliance with such RCM requirements -- three awards disallowed of the 42 employee bonuses report --thus signaling overall compliance.

Other Than Personal Service Costs

Consultant Costs

CPA Firm Services

We reaffirm our challenge of the auditors' finding that the CPA firm's invoices lacked sufficient detail or specificity. As the provided engagement letter reflected, the agreement included a fixed fee through periodic payment installments and a detailed summary of "services to be provided" – services which were performed throughout the period of the engagement and did not lend themselves to the level of specificity the auditors claim to be required by the RCM. ***(See: Attached #4)*** TLC advised the CPA firm in question that no alterations of the original invoices would be tolerated. We do understand, however, that the form and substance of the engagement letter, in fact, to reflect the industry standard for such audit services.

* Comment 4

Specific consultants

Nursing Services

We reassert our previous position clarifying that the nursing services in question were not "IEP driven" nor mandated for any specific child. Rather, the services were general nursing services to assure the availability of a nurse to any student who may require upon the occasion of our employee nurse absence. Accordingly, the invoice for these general nursing services does not contain the specific identifying information an invoice for a discrete, child-specific clinical service would reflect since the very nature of the service – constant availability with utilization on an "as needed" basis – would require otherwise. The hours of service were captured on the clinician's attendance records which had been verified and signed by the appropriate supervisory staff, thus attesting to the availability of the nurse during the invoiced period – the very "service" for which the individual had been engaged. ***(See: Attached #5)***

* Comment 4

Accordingly, we request the restoration of each of the proposed disallowances associated with the nurse consultant: $5,221 (2011-12); $3,882 (2012-13); and $2,544 (2013-14) as having been sufficiently documented as a general, non-child-specific service.

Music Services

TLC must reassert its challenge to the auditors' finding that invoices for costs associated with music therapy services were not sufficiently detailed. As the attached Music Therapy Project Schedule reflects, the contracted music teacher was engaged to provide music services at appointed times to assigned classrooms. ***(See: Attached #6)***

* Comment 4

Attendance records confirmed the music teacher's physical presence at the school and visual confirmation by management staff and the teaching staff of the classroom to which the music therapist was assigned provide sufficient support for payment of the invoice.

TLC must also challenge the auditors' initial assertion that "music therapy is not a SED approved tuition-based program." To the contrary, preschool special education programs are encouraged to embed enrichment programs within the school day to enhance social-emotional and other developmental milestones. Music and other creative arts therapeutic projects are common in these programs, as NYSED will confirm upon request.

* Comment 5

Physical Therapist Services

While Therapy and Learning Center, Inc. acknowledges that the invoice submitted by InterFysio, LLC for certain physical therapy services may lack certain detail, we must again assert that the integrity and accuracy of the invoice had been confirmed by management personnel consistent with TLC's internal control protocols. Management personnel reviewed the therapists' time sheets ***(See: Attached #7)*** to verify the provision of services by the therapist on whose behalf the invoice had been prepared as reflected by the initials appearing at the far left bottom of each record.

* Comment 4

Consultant Expenses

Software Vendor

TLC acknowledges that the invoice for certain billing and software services obtained from Billing Blocks may lack specificity and has attempted to contact the vendor to obtain additional detail. Those efforts have proven unsuccessful. We are therefore unable to challenge the finding ($19,900 FY 2011-12).

Supplies and Materials

TLC does not challenge the auditors' finding that certain costs associated with supplies and materials were erroneously reported ($12,024 FY 2012-13). TLC has strengthened its protocols to assure proper reporting.

Information Technology

TLC engaged Redstone as an information technology vendor to provide emergency infrastructure rebuilding services and maintenance. As the attached RFP reflects, the engagement was offered and accepted at a fixed fee of $14,000.00 with no expectation by either party of service dates, hours worked or other specificity as suggested by the auditors. Accordingly, the completion of the project reflects the fulfillment of this vendor's obligation. ***(See: Attached #8)*** The balance of the invoices (1240-1243) reflect "monthly billing for flat rate services" pursuant to a computer network maintenance agreement with the same vendor. ***(See: Attached #9)***

* Comments 6, 4

Staff Travel

TLC does not challenge the auditors' findings that certain staff travel and incidental expense in the amount of $4,511 lacked supporting documentation. TLC has strengthened its internal control protocols to assure staff travel is properly documented and detailed.

Incidental Expenses

TLC does not challenge the auditors' determination that we were unable to produce documentation sufficient to substantiate identified incidental expenses in the amount of $1,946 for repairs, maintenance, automobile insurance and postage.

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TLC appreciates the opportunity to provide comment and context to the auditors' proposed findings.

Very truly yours,

GREENBERG TRAURIG, LLP

Pamela A. Madeiros HAE

Pamela A. Madeiros

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Attachments
ALB 2029681v3

cc: Suzanne Bolling, NYSED
Thalia Melendez, NYSED
Tim Behr, TLC

State Comptroller's Comments

1. We agree that 1:1 aides can be redeployed and reassigned. However, we maintain that the documentation provided by school officials was insufficient to show that the two employees worked for the cost-based programs.
2. In fact, the fringe benefit disallowance did not first appear in the draft audit report. Rather, it was included in the preliminary audit findings issued to TLC on February 2, 2017.
3. Both the draft report and this report (paragraph 1, page 6 and the Exhibit on page 13) indicate that prior to our audit, SED's rate-setting staff had disallowed a portion of the ineligible personal service costs we identified.
4. TLC did not provide itemized invoices that indicate the specific services actually provided as well as the corresponding service dates and hours, as otherwise required by the Manual. Further, when direct care services are provided, documentation must indicate the names of the students served, the actual dates of service, and the number of hours of service to each child on each date. However, TLC did not provide that information.
5. We acknowledge that a preliminary audit finding stated that "music therapy is not an SED approved tuition-based program." However, we deleted that statement from the draft and final audit reports.
6. Our report does not recommend disallowance of the entire $14,000 in question. Rather, the report recommends that SED disallow $6,830 because this amount was insufficiently documented.