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
Fred S. Keller School

Report 2015-S-98 December 2016

Executive Summary

Purpose
To determine whether the costs reported by Fred S. Keller School (FSK) on its Consolidated Fiscal Reports (CFRs) were properly calculated, adequately documented, and allowable under the State Education Department's (SED) guidelines, including the Reimbursable Cost Manual (Manual). The audit covered expenses claimed on FSK's CFR for the fiscal year ended June 30, 2014, and certain expenses claimed on FSK's CFRs for the two fiscal years ended June 30, 2013.

Background
FSK is an SED-approved not-for-profit special education provider located in Palisades and Yonkers, New York. FSK provides preschool special education services to children with disabilities who are between the ages of three and five years. FSK is reimbursed for preschool special education services through rates set by SED. These reimbursement rates are based on financial information, including costs, that FSK reports to SED on its annual CFR. To be eligible for reimbursement, reported costs must comply with the Manual. For the three years ended June 30, 2014, FSK reported over $21.2 million in reimbursable costs on its CFRs for five rate-based preschool special education programs.

Key Findings
For the three years ended June 30, 2014, we identified $455,117 in costs that were not in compliance with the Manual. These costs included:

- $433,588 in non-personal service costs, which consisted of $224,430 in unnecessary consultant costs; $101,625 in insufficiently documented consultant costs, vehicle costs, and credit card purchases; $78,474 in consultant costs that were not related to the preschool special education programs; and $29,059 in non-reimbursable purchases; and
- $21,529 in personal service costs, which consisted of $14,709 for work that was not related to the preschool special education programs and $6,820 for ineligible employee bonuses.

In addition, we questioned the propriety of certain actions involving FSK's Board of Directors that pertain to related-party business transactions. For example, three members of FSK's four-member Board of Directors had significant, material business transactions with FSK. We concluded that improvements in the Board of Directors' conduct are needed to ensure the financial and programmatic integrity of FSK's programs in the future.

Key Recommendations
To SED:

- Review the disallowances identified by our audit and, if warranted, make the necessary adjustments to the costs reported on FSK's CFRs and to FSK's tuition reimbursement rates.
- Remind FSK officials of the pertinent SED requirements that relate to the deficiencies we identified.
- Direct FSK to develop a conflict of interest policy consistent with SED's requirements and guidelines.

To FSK:

- Ensure that costs reported on annual CFRs fully comply with SED's requirements, and communicate with SED to obtain clarification as needed.
- Develop a conflict of interest policy consistent with SED's requirements and guidelines. At a minimum, the policy should incorporate SED's provisions, which discourage conflicts of interest, and specify protocols to follow when conflicts of interest arise.

Other Related Audits/Reports of Interest

The Arc of Orange County: Compliance With the Reimbursable Cost Manual (2015-S-45)
Center for Disability Services: Compliance With the Reimbursable Cost Manual (2015-S-40)

State of New York
Office of the State Comptroller

Division of State Government Accountability

December 27, 2016

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

Ms. Robin Nuzzolo
Executive Director
Fred S. Keller School
One Odell Plaza
Yonkers, NY 10701

Dear Ms. Elia and Ms. Nuzzolo:

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

Following is a report of our audit of the costs submitted by Fred S. Keller School to the State Education Department for the purpose of establishing preschool special education tuition reimbursement rates used to bill public funding sources that are supported by State aid payments, entitled *Compliance With the Reimbursable Cost Manual*. 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 report, please feel free to contact us.

Respectfully submitted,

Office of the State Comptroller
Division of State Government Accountability

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Background

Fred S. Keller School (FSK), a not-for-profit entity located in Palisades and Yonkers, New York, is authorized by the State Education Department (SED) to provide preschool special education services to children with disabilities between the ages of three and five years. During the audit period, FSK also provided preschool special education services in Tappan, New York; however, the Tappan location closed subsequent to our audit period. For the fiscal year ended June 30, 2014, FSK operated five SED-funded, rate-based preschool programs: Preschool Special Class – over 2.5 hours per day; Preschool Special Class – 2.5 hours per day; Preschool Integrated Special Class – over 2.5 hours per day; Preschool Integrated Special Class – 2.5 hours per day; and Preschool Special Education Itinerant Teacher Services (collectively referred to as the Programs). The Programs served 154 children from three New York counties (Orange, Rockland, and Westchester).

The counties that use FSK's preschool special education services pay tuition to FSK using reimbursement rates set by SED. The State, in turn, reimburses the counties 59.5 percent of the tuition that counties pay. SED sets the special education tuition rates based on financial information, including costs, reported by FSK on its annual Consolidated Fiscal Reports (CFRs) filed with 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. In addition, costs must comply with the reporting requirements prescribed in the Consolidated Fiscal Reporting and Claiming Manual. For the three years ended June 30, 2014, FSK reported over $21.2 million in reimbursable costs for the Programs.

Audit Findings and Recommendations

According to the Manual, costs reported on the CFR are considered for reimbursement if they are reasonable, necessary, directly related to the special education program, and adequately documented. For the three fiscal years ended June 30, 2014, we identified $455,117 in costs reported by FSK that did not comply with SED's requirements for reimbursement, including $433,588 in non-personal service costs and $21,529 in personal service costs. In addition, we questioned the propriety of certain actions involving FSK's Board of Directors that pertain to related-party business transactions. The following table summarizes the non-allowable costs identified by the audit.

Reason for Disallowance	Unallowable Amount 2011-12 CFR	Unallowable Amount 2012-13 CFR	Unallowable Amount 2013-14 CFR	Total
Non-Personal Service Costs				
Unnecessary Consultant Costs - Training	$87,170	$68,075	$69,185	$224,430
Non-Program-Related Consultant Costs	22,737	26,772	28,965	78,474
Insufficiently Documented Consultant Costs	12,950	3,367	25,071	41,388
Insufficiently Documented Vehicle Costs	9,668	9,770	16,550	35,988
Non-Reimbursable Purchases	8,620	9,948	10,491	29,059
Undocumented Credit Card Purchases	0	0	24,249	24,249
Subtotal Non-Personal Service Costs	**$141,145**	**$117,932**	**$174,511**	**$433,588**
Personal Service Costs				
Non-Program-Related Compensation	$9,039	$2,940	$2,730	$14,709
Ineligible Employee Bonuses	0	0	6,820	6,820
Subtotal Personal Service Costs	**$9,039**	**$2,940**	**$9,550**	**$21,529**
Total Non-Allowable Costs	**$150,184**	**$120,872**	**$184,061**	**$455,117**

Also, a summary of the costs that FSK submitted on its CFRs and the disallowed costs identified by the audit, along with the corresponding references to the Manual, is presented in Exhibit A on page 14 of this report.

Non-Personal Service Costs

We identified $433,588 in non-personal service costs that did not meet the Manual's requirements for reimbursement. This included $224,430 in unnecessary consultant costs, $78,474 in consultant costs that were not related to the Programs, $41,388 in insufficiently documented consultant costs, $35,988 in insufficiently documented vehicle costs, $29,059 in non-reimbursable purchases, and $24,249 in undocumented credit card purchases.

Unnecessary Consultant Costs – Training

According to the Manual, costs are reimbursable provided such costs are reasonable and necessary. For the three years ended June 30, 2014, FSK claimed $224,430 in consultant fees for staff to receive Comprehensive Application of Behavior Analysis to Schooling (CABAS) training. CABAS is a behavior analytic teaching program for children with special needs. SED does not require teachers in special education programs to receive CABAS training. Accordingly, prior to our audit, SED deemed the CABAS training unnecessary and disallowed $69,185 of the training costs claimed by FSK for the fiscal year ended June 30, 2014. We identified an additional $155,245 in unnecessary CABAS training costs for the prior two fiscal years ended June 30, 2013. (Note: this matter is further addressed in the section entitled "Board Governance.")

Non-Program-Related Consultant Costs

For the three years ended June 30, 2014, FSK claimed $134,977 for fees paid to a consultant for occupational therapy services. However, we found that $38,552 of the fees were for FSK's early intervention program, and not the Programs. Because these expenses were not related to the Programs, they are non-reimbursable.

FSK claimed an additional $139,773 in fees for the same consultant to provide non-direct care services, such as completing paperwork and other administrative tasks. However, FSK was unable to provide sufficient documentation to demonstrate that these non-direct care services were related to children enrolled in the Programs. We compared the consultant's direct care time for children enrolled in the Programs to the consultant's direct care time for children not enrolled in the Programs. Based on this comparison, we determined that 28.6 percent of the consultant's direct care time was not related to the Programs. Therefore, we estimated that $39,922 (28.6 percent[1] of $139,773) of FSK's claimed costs for the consultant's non-direct care time was not related to the Programs and was, therefore, non-reimbursable.

In total, we identified $78,474 ($38,552 + $39,922) in non-Program-related consultant costs that were ineligible for reimbursement during the audit period.

Insufficiently Documented Consultant Costs

According to the Manual, 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, the fee per hour, and the total amount charged. During the audit scope, FSK claimed $28,438 in consulting costs for the development of an iPad software application. However, the invoices lacked the specific services performed, along with the date, the number of hours, and the fee per hour. In addition, FSK also claimed $12,950 in consulting fees for therapy services that were not supported by invoices. In total, we identified $41,388 ($28,438 + $12,950) in non-reimbursable costs.

[1] 28.6 percent is rounded from 28.56216 percent.

Insufficiently Documented FSK Vehicle Costs

According to the Manual, vehicle costs, such as fuel and repairs, are reimbursable if they are supported by vehicle logs that document: the date, time of travel, to and from destinations, mileage between each, purpose of the travel, and name of the traveler. For the three years ended June 30, 2014, FSK claimed $35,988 in costs related to two Program vehicles. However, FSK's vehicle logs did not meet the minimum requirements specified in the Manual. Specifically, we found the vehicle logs were missing the time of travel, mileage between each trip, the purpose of the travel, and the name of the traveler. Therefore, the reported costs are not reimbursable. The non-reimbursable costs include the following:

- $30,778 for lease payments, gas, repairs and maintenance, and travel; and
- $5,210 for auto insurance.

Non-Reimbursable Purchases

According to the Manual, expenses for food, entertainment, parties, gift certificates, gifts, and flowers are not reimbursable. For the three years ended June 30, 2014, we identified $25,965 in non-reimbursable costs that FSK claimed on its CFR for gifts and food for staff. The non-reimbursable costs include the following:

- $14,171 for company barbeques, parties, and entertainment;
- $5,315 for staff gift certificates;
- $2,967 for food, which included staff appreciation day and staff lunches;
- $2,031 for staff clothing for the company barbeque and CABAS conference;
- $989 for gifts, which included a retirement gift; and
- $492 for flowers for employees.

In addition to the $25,965 in non-reimbursable costs, FSK also claimed $3,094 for violin rentals for the children enrolled in the Programs. These costs are not reimbursable because they are unnecessary.

In total, we identified $29,059 ($25,965 + $3,094) in non-reimbursable purchases during the audit period.

Undocumented Credit Card Purchases

According to the Manual, all purchases must be properly supported with invoices that list the items purchased and indicate the dates of purchase. For the year ended June 30, 2014, FSK claimed $24,249 in credit card purchases that were not supported by invoices. Therefore, the reported costs are non-reimbursable.

Personal Service Costs

We identified $21,529 in personal service costs that did not meet the Manual's requirements for reimbursement. This included $14,709 in non-Program-related compensation costs and $6,820 in ineligible employee bonuses.

Non-Program-Related Compensation

For the three years ended June 30, 2014, FSK claimed $14,709 in compensation costs ($11,724 in salary and $2,985 in associated fringe benefits) for an employee whose work was not related to the Programs. Rather, the employee's work was related to FSK's early intervention program.

Ineligible Employee Bonuses

A merit award (or bonus compensation) shall mean a non-recurring and non-accumulating (i.e., not included in the base salary of subsequent years) lump sum payment in excess of regularly scheduled salary which is not directly related to hours worked. A merit award may be reimbursed if it is based on merit, as measured and supported by employee performance evaluations. In addition, merit awards are restricted to direct care titles and certain non-direct care titles.

We identified $6,820 in ineligible costs pertaining to non-reimbursable bonus payments ($6,257) and associated fringe benefits ($563) that FSK claimed on its CFR. These bonus payments either were not supported by an employee performance evaluation ($4,509) or were paid to employees in ineligible titles ($2,311).

Board Governance

The Manual requires all entities receiving public funding to develop a written code of ethics, which must include a specific conflict of interest policy and a code of conduct. The Manual does not expressly prohibit conflicts of interest; however, it does discourage them, and states the best way to handle conflicts of interest is to avoid them entirely. The Manual precludes members of the Board of Directors (Board) from participating in any decision where conflicting interests may be advanced. Furthermore, the Manual requires all conflicts of interest to be fully disclosed.

The Manual includes the "Statement on the Governance Role of a Trustee or Board Member," which is published by the State Board of Regents. According to the Statement, "The conduct of a trustee/board member must, at all times, further the institution's goals and not the member's personal or business interests. Consequently, trustees/board members should not have any personal or business interest that may conflict with their responsibilities to the institution. A trustee/board member should avoid even the appearance of impropriety when conducting the institution's business."

The Manual also includes "Best Practices for Boards to Follow," which states that Boards should:

- Consist of a minimum of five voting members who are independent;
- Avoid any conflicts of interests or even the appearance of a conflict and maintain a conflict of interest policy for board members and employees;
- Require each member to file an annual written disclosure of any business involvement with the institution or related parties; and
- Establish an audit and finance committee with responsibility to periodically meet with management and the auditors.

Exhibit B provides details of the various Manual provisions related to organizational governance.

We determined FSK's Board consisted of four voting members, which was less than the recommended minimum of five. Furthermore, three of FSK's four Board members had significant material business transactions with FSK, as follows.

For all three years of our audit period, both the Board President and Board Secretary were paid consultants for CABAS educational services that were provided to the school. FSK claimed a total of $224,430 for these services on the CFRs submitted for 2011-12, 2012-13, and 2013-14. Earlier (under "Unnecessary Consultant Costs – Training"), we reported that these costs were not reimbursable because the training the consultants provided was not required and was, therefore, unnecessary. We note that FSK disclosed the payments made to the Board President and Board Secretary on the CFRs and also in the Notes to FSK's audited financial statements.

A third Board member was a co-owner of the investment advisory company that brokered FSK's 410(k) plan. We note that FSK made no direct payments to the investment advisory company, and FSK disclosed this relationship in the Notes to its audited financial statements.

Although FSK had a conflict of interest policy for employees, that policy did not address conflicts involving Board members, as required by SED. Moreover, FSK's Board and management did not implement certain best practices contained in the Manual. For example, FSK did not require Board members to file annual written disclosures of business relationships with FSK or related parties, and did not establish an audit and finance committee.

FSK's business relationships with related parties creates at least the appearance of a conflict of interest, and raises questions as to whether the Board always acted in FSK's best interests and not members' own personal or business interests.

We concluded that improvements in the Board's conduct were needed to ensure the financial and programmatic integrity of FSK's programs in the future. Subsequent to our audit field work, FSK officials informed us that both the Board President and the Board Secretary resigned their positions on the Board. In addition, FSK appointed four new independent Board members.

Recommendations

To SED:

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

2. Remind FSK officials of the pertinent SED requirements that relate to the deficiencies we identified.

3. Direct FSK to develop a conflict of interest policy consistent with SED's requirements and guidelines.

To FSK:

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

5. Develop a conflict of interest policy consistent with SED's requirements and guidelines. At a minimum, the policy should incorporate SED's provisions, which discourage conflicts of interest, and specify protocols to follow when conflicts of interest arise.

Audit Scope and Methodology

We audited the costs FSK reported on its CFR for the fiscal year ended June 30, 2014 and certain costs reported on FSK's CFRs for the two fiscal years ended June 30, 2013. The objective of our audit was to determine whether the reported costs were properly calculated, adequately documented, and allowable in accordance with applicable SED requirements.

To accomplish our objective, and assess internal controls related to our objective, we interviewed SED officials to obtain an understanding of the CFR and the policies and procedures contained in SED's guidelines. We interviewed FSK officials and staff to obtain an understanding of their financial practices relating to the expenses reported on FSK's CFRs. We reviewed FSK's CFR for the year ended June 30, 2014, as well as its relevant financial records for the same period. We visited and performed observations at two of the preschool facilities in operation. We reviewed a judgmental sample of Program costs to determine whether they were supported, Program appropriate, and reimbursable. The sample included selected high-cost items, as well as selected items only reimbursable in limited circumstances, such as food and entertainment expenses. Based on issues found in our sample review, we expanded our review to include certain costs on the 2012 and the 2013 CFRs.

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.

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 FSK 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 the report. In SED's response, officials agreed with the audit recommendations and indicated the actions they will take to address them. In FSK's response, officials disputed our proposed disallowances pertaining to consultant costs for CABAS training and vehicle 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.

Contributors to This Report

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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 A

Fred S. Keller School
Schedule of Submitted and Disallowed Program Costs
for the Three Fiscal Years 2011-2014

Program Costs	Amount Per CFR	Amount Disallowed	Amount Remaining	Notes to Exhibit A
Non-Personal Services				
Direct Care	$4,045,844	$428,235	$3,617,609	
Agency Administration	897,982	5,353	892,629	
Total Non-Personal Services	**$4,943,826**	**$433,588**	**$4,510,238**	A-D
Personal Services				
Direct Care	$14,276,351	$18,524	$14,257,827	
Agency Administration	2,037,239	3,005	2,034,234	
Total Personal Services	**$16,313,590**	**$21,529**	**$16,292,061**	A, E
Total Program Costs	**$21,257,416**	**$455,117**	**$20,802,299**	

Notes to Exhibit A

The following Notes refer to specific sections of the Manual that we used as a basis for our findings and recommended disallowances. We summarized the applicable sections to explain the basis for the findings and each disallowance. We provided the details supporting our recommended disallowances to SED and FSK officials during the course of the audit.

A. Section II: Generally, costs will be considered for reimbursement provided such costs are reasonable, necessary, directly related to the special education program and are sufficiently documented.
B. 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.
C. 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, and the fee per hour; and the total amount charged.
D. 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 traveler. If the vehicle was assigned to an employee, also list the name of the employee to whom it was assigned. The annual mileage for program purposes and repairs and maintenance costs for each vehicle should be summarized and maintained.
E. Section II.13.A.10: A merit award (or bonus compensation) shall mean a non-recurring and non-accumulating (i.e., not included in base salary of subsequent years) lump sum payment in excess of regularly scheduled salary which is not directly related to hours worked. A merit award may be reimbursed if it is based on merit as measured and supported by employee performance evaluations. In order to demonstrate that a merit award is based on merit and measured and supported by employee performance evaluations, the provider's governing entity 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 should funds be available for such an award. In addition, merit awards are restricted to direct care titles/employees as defined by the Reimbursable Cost Manual's Appendix A-1 and those in the 100 position code series and position title code 505-605 as defined by the Consolidated Fiscal Report's Appendix R.

Exhibit B

Manual Provisions Pertaining to Governance

1. Appendix B, Section 2: Establish an audit and finance committee with responsibility to periodically meet with management and the auditors.

2. Section I.4.B: In general, a conflict of interest exists when a person in a position of trust has a competing professional or personal interest. The existence of a conflict of interest does not mean that an unethical or improper act has occurred or will occur. However, care must be taken to ensure that such conflicts do not impair the employee's ability to perform his or her duties objectively and act in the best interest of the entity. Each provider must adopt a written conflict of interest policy that clearly sets forth the procedures to be followed in instance where a member of the governing entity of the provider (for example, the provider's board or person in a management position) have personal or business interests that may be advanced by an action of the board, including a provision that such member may not participate in any decision to approve any transaction where such conflicting interests may be advanced. The policy must also include a requirement and process for identifying and fully disclosing all less than arm's length (LTAL) relationships and transactions on an ongoing basis as well as on the CFR. The policy should be reviewed and discussed with the provider's attorneys and auditors prior to its adoption.

3. Appendix B, Section 5: To help ensure effectiveness, trustees/board members need to ensure boards address the following, consistent with statute: Consist of a minimum of five voting members who are independent; convene an annual meeting and elections as required by law; avoid any conflicts of interests or even the appearance of a conflict and maintain a conflict of interest policy for board members and employees; require each member to file an annual written disclosure of any business involvement with the institution or related parties; ensure processes for selecting new members result in diversity of viewpoints and seek out individuals with commitment, skills, life experience, background, and other characteristics that will serve the institution and its needs.

4. Section I.4.D: The best way to handle conflicts of interests is to avoid them entirely.

5. Section I.4.G: Codes of Ethics & Conflict of Interest Policies - All entities receiving public funding must develop a written Code of Ethics (which must include a specific conflict of interest policy) and Code of Conduct policies that are enforced within their organizations. Generally, codes of ethics and conflict of interest policies discourage conflicts of interests but acknowledge that conflicts of interest do exist and require that policies be developed to establish the protocols that must be followed when conflicts of interest arise. Codes of ethics help to minimize problems with conflicts of interests because they can spell out the extent to which such conflicts should be avoided, and what the parties should do when such conflicts are permitted by a code of ethics (disclosure, recusal, etc.). As previously described, each provider must adopt a written conflict of interest policy that clearly sets forth the procedures to be

followed in instances where a member of the governing entity of the provider (for example, the provider's board or person in a management position) has personal or business interests that may be advanced by an action of the board, including a provision that such member may not participate in any decision to approve any transaction where such conflicting interests may be advanced. The policy must also include a requirement and process for identifying and fully disclosing all LTAL relationships and transactions on an ongoing basis as well as on the CFR. The policy should be reviewed and discussed with the provider's attorneys and auditors prior to its adoption.

6. Appendix F: Duty of Loyalty/Conflicts of Interest – Trustee/board members owe allegiance to the institution and must act in good faith with the best interest of the institution in mind. The conduct of a trustee/board member must, at all times, further the institution's goals and not the member's personal or business interests. Consequently, trustees/board members should not have any personal or business interest that may conflict with their responsibilities to the institution. A trustee/board member should avoid even the appearance of impropriety when conducting the institution's business. Acts of self-dealing constitute a breach of fiduciary responsibility that could result in personal liability and removal from the board. The board of trustees/board of education should have a written conflict of interest policy that clearly sets forth the procedures to be followed in instances where a board member's personal or business interests may be advanced by an action of the board, including a provision that the trustee/board member may not participate in any decision to approve any transaction where such conflicting interests may be advanced. The policy should also include a requirement that each trustee/board member provide full, ongoing disclosure to the institution of any interest the trustee/board member and/or his or her family has in any entity that the board transacts business with. The policy should be reviewed and discussed with the institution's attorneys and auditors prior to its adoption.

Agency Comments - State Education Department

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

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November 17, 2016

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Dear Ms. Inman:

The following is the New York State Education Department's (Department) response to the draft audit report, 2015-S-98, Compliance with the Reimbursable Cost Manual: Fred S. Keller School (FSK).

Recommendation 1: Review the disallowances identified by our audit and, if warranted, make the necessary adjustments to the costs reported on FSK's CFRs and to FSK'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 FSK officials of the pertinent SED requirements 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 FSK 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.

<u>Recommendation 3</u>: Direct FSK to develop a conflict of interest policy consistent with SED's requirements and guidelines.

We agree with this recommendation. The Department will direct FSK to develop a written conflict of interest policy that is enforced within their organizations pursuant to Section 1.4.G. of the Reimbursable Cost Manual.

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

Agency Comments - Fred S. Keller School

FRED S. KELLER
APPLIED BEHAVIOR ANALYSIS CORP. SCHOOL A NOT-FOR-PROFIT CORPORATION

Audit Response and Justifications

Fred S. Keller ("FSK") has reviewed the results and recommendations in the draft audit report prepared by the Office of the State Comptroller ("OSC") and accepts the findings excluding the findings regarding the following Non Personal Service Costs: Unnecessary Consultant Costs - Training and Insufficiently Documented Vehicle Costs. We explain our justifications below.

Non Personal Service Costs

Unnecessary Consultant Costs - Training

In OSC's draft audit report, OSC appropriately states that the Manual provides that costs are reimbursable provided such costs are reasonable and necessary. However, OSC inappropriately applies that provision to mean "required" in order to support its position that NYSED does not *require* staff to receive CABAS training and therefore, such training is not reasonable and necessary. By doing so, the OSC fails to provide any basis for that conclusion.

*
Comment
1

To begin, the Manual, Section II, 49, allows for the reimbursement for costs relating to in-service training for employee development. "Required" is not written before "employee development." Therefore, barring language to the contrary, the costs relating to training must be reasonable and necessary. Based on the following analysis, we have determined these costs are indeed reasonable and necessary in light of NYSED's published positions and the total cost of the consultants relative to the agency's revenue and the consultants' credentials.

FSK is a preschool provider with substantial experience and expertise serving children in approved small classroom ratios who meet the definition of the term "preschooler with autism" as set forth in NYSED's Report to the Board of Regents, The Governor and The New York State Legislature titled "The Availability and Effectiveness of Programs for Preschool Children with Autism" (March 2004) (the "Report") (http://www.p12.nysed.gov/specialed/autism/preschoolstudy.htm)

The Report defines that term as follows:

"A child having a developmental disability affecting verbs and nonverbal communication and social interaction who may have behavioral characteristics associated with autism such as engagement in repetitive activities and stereotypical movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences; and who is likely to be classified as having autism upon reaching school age."

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*See State Comptroller's Comments on Page 25.

NYSED issued the Report (which is based on a study conducted by the State University of New York at Albany) to comply with Chapter 405 of the Laws of 1999 by reporting on the "effectiveness" of approved programs providing special education services to preschool children with autism. Therefore, in determining what is reasonable and necessary for a program serving preschoolers with autism, it is important to focus on what NYSED deems "effective."

To begin, the Report acknowledges that, with respect to program effectiveness in particular, "resources for *training*…need to be available statewide that would serve to increase program availability and enhance program expertise to serve preschoolers with autism." (p. 20) [emphasis added]. The Report cites NYSED's funded NYAN initiative as a significant accomplishment in that regard. Specifically, NYAN developed Autism Program Quality Indicators ("APQI), "a compilation of the *best practices* in educating students with autism," [emphasis added] (**http://www.p12.nysed.gov/specialed/autism/apqi.htm]**)

Since NYSED considers APQI a valuable resource in operating an effective program for students with autism, we note one of the relevant quality indicators set forth in APQI:

The program has a school-wide behavioral system that:
d) provides *training* for staff in recommended behavioral strategies. [emphasis added]

In light of the foregoing, we can conclude that NYSED holds the position that a quality program for students with autism would necessitate staff training.

Further, The Report lists, "Behavioral Approach, including Applied Behavioral Analysis" (of which CABAS is an example), as one of the primary and secondary theoretical and instructional approaches used with preschool students with autism (p. 7). Accordingly, NYSED's acceptance of this approach demonstrates that it deems the approach reasonable and necessary.

We have also reviewed the "Quality Indicator Review and Resource Guides for Behavioral Supports and Interventions" (Revised May 2014) (the "Guides") (**http://www.p12.nysed.gov/specialed/techassist/behaviorQI-May2014.htm**) given that NYSED intends for the "Guides…be used to support a process that includes:

- Assessing the quality of a school district's instructional programs and practices in the areas of literacy, *behavioral supports and interventions*; and *delivery of special education services*;
- Determining priority need areas; and
- Prescribing and planning activities to change practices and improve outcomes for *students with disabilities*."
  [emphasis added]

Throughout the Guides, we consistently see terms like "on-going training," "retraining" and "training," which support our position that NYSED views staff training costs "to improve results for students with disabilities" as reasonable and necessary.

The following serve as specific examples from the Guides:

Behavior: School-Wide Positive Behavioral Systems, School-Based Team

- School team receives *on-going training and technical assistance* in school-wide behavioral support systems;

Behavior: School-Wide Positive Behavioral Systems, *Ongoing Staff Development*

- School staff are *trained* in school-wide plan.
- *Retraining* provided as needed to staff on plan components.
- Professional development includes *training* on selecting expectations and acknowledgements that are appropriate for the entire school community.

Behavior: Small Group Interventions; *On-going staff development*
There is high-quality, *on-going staff development* that includes technical assistance in implementing best practices.

- Appropriate school staff are fully *trained* in providing general and disability-specific small group interventions.

Behavior: Intensive Individualized Behavioral Interventions; Professional Development
Staff are *trained* in effective intensive individual behavioral interventions.

- Appropriate school staff are fully *trained* in providing intensive individual interventions.
- Appropriate school staff are fully *trained* in their role in assessing the functions of student behavior.
- Technical assistance is provided to responsible parties about components of intervention plans.
- A system is in place to check fidelity of implementation and provide *retraining* as needed.

Behavior: Intensive Individualized Behavior Interventions; Nonclassroom Behavioral Supports

- Paraprofessionals and other staff responsible for these settings have been *trained* in the school-wide program.
  [emphasis added]

Finally, given NYSED's "approval" of CABAS and Columbia University as explained below, both consultants are qualified individuals to train staff serving preschoolers with autism in the area of behavior analysis. Specifically, effective September 1, 2009, NYSED required all candidates for a Classroom Teaching certificate in all areas of Special Education to complete coursework or training in the needs of children with autism from a State Education Department approved provider of such training. One of those approved providers is Rockland BOCES, which collaborates with Columbia University to offer CABAS programs, programs which focus on "the application of behavior analysis and the sciences of learning and teaching to general education and special education." In addition, NYSED has "approved" Columbia University as a licensure-qualifying program in applied behavior analysis. (nysed.gov/heds/IRPSL1.html) Both consultants are professors at this approved program; one is the Director of the Programs in Applied Behavior Analysis, and the other is Board Certified Behavior Analyst. Moreover, the total costs of the consultants amounted to 1 percent of the agency's costs which is more than reasonable given the size of the agency and the consultants' expertise and experience.

The foregoing demonstrates that NYSED finds it reasonable and necessary for teachers in special education programs to receive training in behavioral approaches such as CABAS to ensure the program's effectiveness and that it meets the needs of children with autism. Accordingly, the training costs claimed by FSK for the fiscal year ended June 30, 2012, June 30, 2013 and June 30, 2014 should be allowed.

In addition, we emphasize that NYSED Rate-Setting Unit ("RSU") approved these consultant costs in 2011-2012 and 2012-2013. In 2012-2013, FSK and RSU communicated regarding these cost, which RSU approved. However, in 2013-2014, with no communication or a written basis for its determination, RSU disallowed the cost, directly contradicting RSU's prior positions and, as demonstrated above, NYSED's published positions and support of training in behavioral approaches such as Comprehensive Application of Behavior Analysis to Schooling. It is inherently unfair and unjust to direct the agency in one direction for two fiscal years only to take an entirely different and prejudicial position the subsequent year, without advance notice of any kind, which significantly impacted the fiscal operations of the agency.

Insufficiently Documented Vehicle Costs

According to the July 2013 Edition of the Reimbursable Cost Manual for Programs Receiving Funding under Article 81 and/or Article 89 of the Education Law ("RCM"), Section III (General Requirements), Bookkeeping, E. Travel, provides that "Logs must be kept by each employee indicating the dates of travel, destination, purpose, mileage and related costs such as tolls, parking and gasoline." Based on that provision, we list and respond to each OSC claim below.

* Comment 2

(1) The OSC claims that the time of travel is required to validate the vehicle logs.

The OSC is incorrect. The RCM does not include that language; it only includes dates of travel.

(2) The OSC claims that the mileage between each trip is missing to validate the vehicle logs.

The OSC is incorrect. FSK provided the OSC with a vehicle log document, which included a column, marked "Mileage" and that mileage was in fact reported by the agency on each date the vehicle was used. For example, the vehicle logs indicated that the van was used on January 20, 2012 and the mileage on the odometer was 48 miles. That same log reported the next time the vehicle was used on January 23, 2012 and the mileage on the odometer totaled 83. This information clearly demonstrates that 35 miles of travel occurred between each trip (83-48). Consisting with the foregoing, this supporting documentation was reported throughout the entire vehicle log document.

(3) The OSC claims that the purpose of the travel was missing.

The OSC is incorrect. The agency's vehicles logs provided another header marked "Destination," which included the name of the destination to which the vehicle was driven and the purpose of the travel. In certain instances, the purpose was clearly evident based on the destination, the particular employee's position title code, job description and credentials. For example, in accordance with FSK's program approval letter, the agency operated multiple sites, which OSC representatives visited during its audit: Yonkers, Rockland and Palisades. The usage of the vehicle included but was not limited to the Executive Director and Director traveling to and from these respective sites for the purpose of performing their administrative responsibilities in accordance with the New York State Consolidated Fiscal Reporting and Claiming Manual (the "Claiming Manual"), Appendix R –Position Titles and Codes, as well as their respective job descriptions. The OSC interviewed these individuals, reviewed their job descriptions and approved their positions during its audit review. Moreover, as you are aware, the agency must adhere to Part 200 of the Education Law to meet the students' Individualized Education Programs. Therefore, for the foregoing reasons, when these employees' used the vehicle to visit the program sites, the administrative purpose of the vehicle's use was clearly indicated.

Moreover, when other destinations, not including the agency's program sites, were included in the vehicle logs for these same employees, the purpose of their travel was written in the log (e.g. attendance at CPSE meetings or purchasing supplies at stores such as Costco, as deemed necessary).

(4) The OSC claims that the name of the traveler was required.

The OSC is incorrect. The RCM requires that each employee must maintain vehicle logs. As far as identifying the name of each employee, the vehicle logs included the initials of each employee to identify them. FSK representatives communicated to the OSC the names of each person and, as stated previously, the OSC conducted interviews with these same employees during the audit.

Based on the foregoing, FSK met the minimum requirements specified in the RCM, and as a result, the costs should be considered reimbursable.

State Comptroller's Comments

1. As stated in our report, SED officials determined that the CABAS training was unnecessary, and therefore, disallowed $69,185 in training costs claimed by FSK for the fiscal year ended June 30, 2014. Accordingly, we identified and recommended for disallowance an additional $155,245 in CABAS training costs claimed by FSK for the prior two fiscal years ended June 30, 2013. We discussed this matter with SED officials during the audit fieldwork. They agreed with our recommended audit disallowances and confirmed that the costs for the CABAS training were unnecessary because the school was already using the CABAS curriculum, and most of the teachers working for FSK had already received CABAS certifications. Further, SED officials advised us that CABAS certification does not need to be renewed each year and is not required by SED. Since SED determined that the CABAS training costs were unnecessary, we maintain that the costs in question were not eligible for reimbursement.
2. FSK's response refers to the RCM's General Requirements for Travel. However, the vehicle costs in question pertain to FSK-owned vehicles (and not to the personal vehicles of FSK employees). Therefore, Section 3.1.J of the RCM applies, as follows: "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 traveler." All required elements are necessary for vehicle costs to be reimbursable. Additionally, regarding mileage, FSK officials stated that the vehicles were sometimes used for personal use. Therefore, simply indicating odometer mileage between the trips does not distinguish personal mileage from Program-related mileage. Regarding the purpose of travel, because FSK operated multiple programs at its various sites, absent documentation that clarified the purpose of the travel, auditors could not determine the specific programs that were served by the various instances of travel. Therefore, we maintain that the costs in question were not eligible for reimbursement.