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 New York Center for Child Development, Inc.

Report 2015-S-101

December 2016

Executive Summary

Purpose

To determine whether the costs reported by the New York Center for Child Development, Inc. (NYCCD) 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 (Manual). The audit included all expenses claimed on NYCCD's CFR for the fiscal year ended June 30, 2014, and certain expenses claimed on NYCCD's CFRs for the two fiscal years ended June 30, 2013.

Background

NYCCD, formerly known as the Manhattan Center for Early Learning, Inc., is a New York City-based not-for-profit organization authorized by SED to provide Special Education Itinerant Teacher (SEIT) and full-day and half-day Special Class (SC) preschool special education services to children with disabilities 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, NYCCD served about 415 students. The New York City Department of Education (DoE) refers students to NYCCD based on clinical evaluations and pays for NYCCD's services using rates established by SED. The rates are based on the financial information that NYCCD reports to SED on its annual CFRs. SED reimburses DoE for a portion of its payments to NYCCD 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, NYCCD reported approximately $24.5 million in reimbursable costs for the audited cost-based programs.

In addition to the SEIT and SC cost-based preschool special education programs, NYCCD operates three other SED programs: Evaluations, Related Services, and 1:1 Aides. However, payments for services under these other programs were based on fixed fees, as opposed to the cost-based rates established through CFR-reported financial information. NYCCD also receives monetary grants from public and private sources. Furthermore, NYCCD's executive director and his spouse also own the for-profit entity New York Center for Infants and Toddlers (NYCIT), which operates Early Intervention programs.

Key Findings

For the three fiscal years ended June 30, 2014, we identified $776,901 in reported costs that did not comply with the Manual's requirements and recommend such costs be disallowed. The ineligible costs included $312,897 in personal service costs and $464,004 in other than personal service costs. Specifically, such costs included:

- $308,905 in inadequately documented consulting costs. The consultants' invoices did not indicate the specific services provided and the hourly fee charged, as otherwise required by the Manual;
- $254,268 in over-allocated staff salaries for three employees. NYCCD's allocation of these costs did not comply with the guidelines in the Manual;
- $65,705 in Maintenance and Repairs, Cellphone, and Supplies and Materials expenses that

were incorrectly allocated to the SED cost-based programs we audited;
- $49,935 in non-allowable rent expenses;
- $38,923 in non-program expenses, including $20,618 paid to the executive assistant to the executive director and $18,305 in compensation paid to a NYCCD employee who also worked for the executive director's for-profit entity (a non-SED program);
- $21,591 in travel expenses that were either inadequately supported or not applicable to the programs we audited;
- $19,706 in ineligible staff compensation costs for NYCCD's fixed-fee 1:1 Aides program, which were incorrectly charged to the SED cost-based programs; and
- $17,868 in ineligible costs, including $9,480 for gifts, $4,154 for goods and/or services provided to NYCIT, $2,326 for food provided to staff, and $1,908 in fines and penalties.

Key Recommendations

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

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

Other Related Audits/Reports of Interest

Milestone School for Child Development, Inc.: Compliance With the Reimbursable Cost Manual (2014-S-37)
Manhattan Center for Early Learning: Compliance with the Reimbursable Cost Manual (2004-S-14)

State of New York
Office of the State Comptroller

Division of State Government Accountability

December 30, 2016

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

Mr. Michael Gordon
Executive Director
New York Center for Child Development, Inc.
159 W 127th Street
New York, NY 10027

Dear Ms. Elia and Mr. Gordon:

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 the New York Center for Child Development, Inc. to the State Education Department for the purposes of establishing the 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

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Background

The New York Center for Child Development, Inc. (NYCCD), formerly known as the Manhattan Center for Early Learning, Inc., is a New York City-based not-for-profit organization authorized by the State Education Department (SED) to provide Special Education Itinerant Teacher (SEIT) and full-day and half-day Special Class (SC) preschool special education services to children with disabilites 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, NYCCD served about 415 students.

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

Chapter 545 of the Laws of 2013 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, NYCCD reported approximately $24.5 million in reimbursable costs for the SED cost-based programs. Our audit focused primarily on fiscal year 2013-14. However, we expanded our review to include certain items claimed on the CFRs for the two fiscal years 2011-12 and 2012-13.

In addition to the SEIT and SC cost-based preschool special education programs, NYCCD operates three other SED programs: Evaluations, Related Services, and 1:1 Aides. However, payments for services under these other programs were based on fixed fees, as opposed to the cost-based rates established through CFR-reported financial information. NYCCD also receives monetary grants from public and private sources. Furthermore, NYCCD's executive director and his spouse also own the for-profit entity New York Center for Infants and Toddlers (NYCIT), which operates Early Intervention programs.

Audit Findings and Recommendations

For the three fiscal years ended June 30, 2014, we identified $776,901 in reported costs that did not comply with the Manual's requirements for reimbursement. The ineligible costs included $312,897 in personal service costs and $464,004 in other than personal service (OTPS) costs (see Exhibit at the end of the report).

Personal Service Costs

According to the Manual, costs will be considered for reimbursement provided such costs are reasonable, necessary, directly related to the special education program, and sufficiently documented pursuant to the guidelines in the Manual. In addition, personal service costs, which include all taxable and non-taxable salaries and fringe benefits paid or accrued to employees on the agency's payroll, must be reported on the CFR as either direct care costs (e.g., teachers' salaries) or non-direct care costs (e.g., administrators' salaries). We identified $312,897 in personal service costs that did not comply with the Manual's guidelines for reimbursement.

Allocated Shared Staff

According to the Manual, salaries of employees who perform tasks for more than one program must be allocated among all programs for which they work based on their actual work effort or other allocation methods that are fair and reasonable. Entities must maintain appropriate documentation reflecting the hours used in this allocation.

For the three fiscal years ended June 30, 2014, NYCCD claimed $376,433 in compensation costs for two employees: the director of therapy services and the assistant director of therapy services, who worked for both NYCCD and NYCIT. NYCCD did not maintain time studies or actual work effort records for the two employees to show the amount of time spent working for each of the two entities. Instead, NYCCD charged the employees' compensation solely to NYCCD's SED cost-based programs. To calculate a fair and reasonable allocation for the director and assistant director of therapy services, we used the ratio value method (as described by the Manual) and allocated $188,217, or 50 percent of the $376,433, to NYCCD's overall operations and the remaining 50 percent to NYCIT. Further, we determined that only $149,755 of the $188,217 allocated to NYCCD was applicable to its SED cost-based programs. Therefore, we recommend that SED disallow $226,678 ($376,433 less $149,755) in over-allocated compensation for the two therapists.

In addition, for the three fiscal years ended June 30, 2014, NYCCD charged a custodian's compensation totaling $128,156 to the SED cost-based programs. Because the custodian provided services to both NYCCD's cost-based and fixed-fee programs, his compensation should have been allocated between both of those programs. Using a ratio value of the SED cost-based programs to the other NYCCD programs, we determined that only $100,566 of the custodian's compensation should have been charged to the SED cost-based programs. Therefore, we recommend that SED disallow the difference of $27,590 ($128,156 less $100,566) in over-allocated compensation because NYCCD did not comply with the Manual's guidelines.

Executive Assistant

According to the Manual, compensation costs must be based on approved, documented payrolls, which must be supported by employee time records prepared during, not after, the time period for which the employee was paid. Employee time sheets must be signed by the employee and a supervisor, and must be completed at least monthly. In addition, expenses incurred solely to enhance investment income are not reimbursable.

For the two fiscal years ended June 30, 2014, NYCCD reported $25,713 in compensation paid to the executive assistant of NYCCD's executive director. We found that NYCCD did not maintain time records or other documentation to support these expenses. We interviewed the executive director and was told that the executive assistant, who lived in and worked from the state of Maryland, was his personal assistant, a personal assistant to his family, and an office manager for both NYCCD and NYCIT. We requested a copy of the executive assistant's job description. In lieu of a job description, officials asked her to prepare a list of the services she performed for the entities, the executive director, and his family. The resultant spreadsheet showed time spent on NYCCD and NYCIT activities, as well as on the executive director's personal business. In addition, as examples of the tasks performed by his executive assistant, the executive director provided us with emails, bank deposit slips, and property tax filings for real or other property located in Maryland, and Quicken reports that were used to track the activities of NYCCD's investments/profit-sharing plans. Nevertheless, the documents failed to show that the executive assistant actually provided services to NYCCD's SED cost-based programs. Therefore, we recommend that SED disallow $20,618, the amount of unsupported compensation charged to the SED cost-based programs.

1:1 Aides

According to the Manual, salaries of employees who perform tasks for more than one program must be allocated among all programs for which they work. Entities must maintain appropriate documentation reflecting the hours used in this allocation. In addition, according to the Manual and the Consolidated Fiscal Reporting and Claiming Manual (CFR Manual), all costs (salaries, fringe benefits, and allocated direct and indirect costs) for 1:1 Aides should be reported in a separate fixed-fee cost center.

For the fiscal year ended June 30, 2014, we selected and reviewed employee files for a judgmental sample of 14 employees who were high risk, based on information in their personnel files, whose compensation totaled $262,868. We found that compensation totaling $19,706 for 3 of the 14 employees was incorrectly allocated to the SED cost-based programs rather than to the fixed-fee 1:1 Aides program. Therefore, we recommend that SED disallow the $19,706.

Non-Program Costs

According to the Manual, salaries of employees who perform tasks for more than one program must be allocated among all programs for which they work. Furthermore, entities must maintain appropriate documentation reflecting the hours used in this allocation.

For the two fiscal years ended June 30, 2014, NYCCD officials allocated $26,362 of a NYCCD/NYCIT employee's compensation to NYCCD's SEIT cost-based program. However, officials could not provide documentation to support their allocation. We reviewed the employee's "NYCCD Requisition to Hire/Change of Status Forms" (Status Forms) for the two fiscal years. These annual Status Forms indicate which of the two entities an employee is assigned to, as well as the percentage of time assigned to a particular program/entity. For the fiscal year 2012-13, the Status Form showed that 50 percent of the employee's time was assigned to NYCIT and 50 percent was assigned to NYCCD. For the fiscal year 2013-14, the Status Form showed that 100 percent of the employee's time was assigned to NYCIT. We then reviewed the employee's annual contracts which showed that the employee was hired by NYCIT.

We attempted to interview the employee, but found that she had resigned from NYCCD/NYCIT in June 2015. Consequently, we interviewed the former employee's supervisor and was told that the former employee worked for both NYCCD and NYCIT during the two-year period. Based on a review of the former employee's contracts, Status Forms, time allocation records, and other information provided by the supervisor, we determined that only $8,057 of her compensation should have been charged to the SED cost-based programs. Therefore, we recommend that SED disallow the difference of $18,305 ($26,362 less $8,057) in compensation because these costs were incorrectly allocated to the SED cost-based programs.

Other Than Personal Service Costs

According to the Manual, OTPS costs must be reasonable, necessary, directly related to the special education program, and sufficiently documented pursuant to the guidelines in SED's Manual. During the three fiscal years ended June 30, 2014, NYCCD charged $3,318,643 in OTPS costs to the SED cost-based programs. We identified $464,004 of these costs that did not comply with SED's reimbursement requirements.

Inadequately Documented Consultant Costs

The Manual states that costs will not be reimbursable on field audit without appropriate written documentation. For a consultant, documentation includes, but is not limited to, the consultant's resume and a written contract, which includes the nature of the services to be provided. Moreover, all payments to the consultant 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. In addition, all contractual agreements must be in writing, signed, and dated. Furthermore, expenditures that cannot be charged directly to a specific program must be allocated across all programs and/or entities that benefited from the expenditure, using allocation methods that are fair and reasonable. The allocation methods and their basis should be documented and retained.

For the three fiscal years ended June 30, 2014, NYCCD retained a controller and an occupational therapist as consultants and charged $467,470 ($266,660 and $200,810, respectively) of their fees to the SED cost-based programs. We requested contracts for both consultants. NYCCD provided a 2005 calendar year contract for the controller. This contract, which did not have an expiration date, listed the controller's fee as $70 per hour. However, we found that invoices submitted to NYCCD by the controller during this three-year period listed rates of $85 and $90 per hour. We asked NYCCD's executive director to explain why the controller's rates were inconsistent with the rate agreed to in the contract. In response, the executive director provided us with an email from the controller, dated March 26, 2013, in which the controller requested a rate increase from $85 per hour to $90 per hour. In a subsequent email dated November 2, 2013, the executive director rejected the rate increase request, but agreed to meet with the controller to discuss his request.

However, there is no documentation to show that the rate increase was subsequently discussed and approved. In addition, the executive director advised that, in his view, NYCCD's payment of the increased rates, on receipt of the controller's invoices, represented a binding unilateral contract. We question the executive director's assessment. In our view, the circumstances presented do not form the basis of a unilateral contract. Rather, it appears that the parties have improperly attempted to modify their 2005 bilateral agreement. In any event, no matter how this arrangement is characterized, it does not comply with the Manual's requirements that contractual agreements must be in writing, signed, and dated.

Effective September 1, 2011, NYCIT engaged an occupational therapist to provide occupational therapy services at an hourly rate of $75. According to this 12-month contract, 100 percent of the occupational therapist's compensation would be charged to NYCIT. For the 12-month period beginning September 1, 2012, NYCCD issued its own consulting contract to the occupational therapist at an hourly rate of $75 with the stipulation that 100 percent of her compensation would be charged to NYCCD. The contract was later extended for another 12-month period.

We requested and reviewed invoices submitted by both consultants (the controller and the occupational therapist) and found that the invoices did not adequately comply with the guidelines in the Manual. For example, the invoices did not detail the specific services actually provided by the consultants. In addition, the invoices showed that both consultants billed for services provided to NYCCD and NYCIT. However, NYCCD did not maintain records showing how it allocated the consultants' costs between the two entities and their respective programs. We requested and reviewed alternate documentation, such as logs, job duties, and emails, for the controller, as well as service logs and EasyTrac records for the occupational therapist. (Note: EasyTrac is a DoE software that compiles and streamlines the data collection and processing associated with providing related services at New York State-approved non-public schools.) Using this available documentation, we were able to support $158,565 ($29,865 and $128,700, respectively) of the costs NYCCD reported for the controller and the occupational therapist. However, we recommend that SED disallow $308,905 ($467,470 less $158,565) in inadequately documented costs for the two consultants. The disallowance includes $236,795 for the consulting controller and $72,110 for the consulting occupational therapist.

Furthermore, Schedule CFR-6 (Governing Board and Compensation Summary) requires providers to disclose their five highest independent contractors/consultants who received compensation in excess of $50,000. Although the controller is one of the five highest-paid independent contractors/consultants, NYCCD failed to list him on their Schedule CFR-6 for each of the three fiscal years that ended June 30, 2014.

Allocated Shared Costs

According to the Manual, any expenditures that cannot be charged directly to a specific program must be allocated across all programs and/or entities benefited by the expenditure using allocation methods that are fair and reasonable. These allocation methods and their basis should be documented and retained.

We reviewed $263,070 in Repairs and Maintenance, Cellphone, and Supplies and Materials costs NYCCD reported on its CFRs for the three fiscal years ended June 30, 2014. We found that NYCCD did not properly allocate these costs among its various programs and/or related entities that benefited from them. We reviewed available documentation and determined that $65,705 of the claimed costs should not have been allocated to the SED cost-based programs. Therefore, we recommend that SED disallow the $65,705.

Rent Expense

According to the Manual, donated rent is not reimbursable. In addition, occupancy costs of a new location are not reimbursable if the costs are incurred before the date the program actually occupies the space, unless such costs are incorporated in an approved tuition rate. Similarly, occupancy costs for a prior location are reimbursable up to the actual date of the occupancy of the new location, unless prior SED approval allows an exception. A move to a new location must be approved by SED, and any associated moving cost is subject to review and preapproval by the Division of the Budget (DOB). Likewise, instructional and non-instructional facility space, to be occupied by approved programs in which space is new, is substantially altered, or resulted in capitalized costs in excess of $100,000, requires written pre-approval from SED's program and fiscal designees.

Furthermore, the Manual states that costs incurred in a less-than-arm's-length (LTAL) lease of real property shall be reimbursed based on the lower of the owner's actual cost or fair market value. According to the CFR Manual, actual cost may include depreciation, amortization, mortgage interest, property taxes, insurance, utilities, and repairs and maintenance. Moreover, expenditures that cannot be charged directly to a specific program must be allocated across all programs and/or entities that benefit from the expenditures, using allocation methods that are fair and reasonable. These allocation methods and their basis should be documented and retained.

Prior to January 2014, NYCCD leased and occupied space at 328 East 62nd Street, Manhattan, at a monthly rent of approximately $8,333. On August 1, 2013, NYCCD entered into a lease agreement for use of a building at 159 West 127th Street, Manhattan, at a monthly cost of $31,590 ($24,696 in rent and $6,894 in property taxes). NYCCD's executive director owns a 50 percent share of the building at 159 West 127th Street. Although the effective date of the lease was August 1, 2013, NYCCD did not move into the new space until January 2014. In addition, the lease indicated that

NYCCD would receive an abatement from August 1, 2013 through December 31, 2013, when it did not occupy the new space.

Also, during the three fiscal years ended June 30, 2014, NYCCD shared its facilities with NYCIT. To determine if the costs reported on the CFRs for the three fiscal years were reasonable and necessary and complied with the Manual's other requirements, we requested: support for NYCCD's lease payments (for 30 months at 62nd Street and six months at 127th Street); documentation of NYCCD's cost allocation methodologies; and the statistical basis for the amounts allocated, as required by the Manual. Although NYCCD officials provided us with the allocation methodologies and leases, they did not provide the statistical basis for the amounts allocated.

In fact, based on our review of the lease, lease payments, and other documentation, we found that NYCCD did not comply with the Manual's guidelines to calculate the owner's actual cost for the LTAL space at 159 West 127th Street. To calculate the allocations, NYCCD officials included unsupported costs and an incorrect depreciation methodology (for 39 years rather than 40 years). In addition, officials included six months' rent expenses (from July 1, 2013 through December 31, 2013) for the old location and 12 months' operating costs, which included facility costs (from July 1, 2013 through June 30, 2014) for the new location. As such, NYCCD claimed redundant and ineligible facility costs.

As the Manual provides that occupancy costs of a new location are not reimbursable prior to the date the program actually occupies the space, we determined that NYCCD incorrectly allocated $42,879 in operating costs for the space at 159 West 127th Street to the SED cost-based programs. We also determined that NYCCD incorrectly allocated $7,056 in rent expense for the 328 East 62nd Street space to the SED cost-based programs. Therefore, we recommend that SED disallow the $49,935 ($42,879 and $7,056) in ineligible facility costs that were charged to the SED cost-based programs.

Staff Travel

According to the Manual, expenses associated with the personal use of a car are not reimbursable. In addition, logs must be kept by each employee to indicate the dates of travel, destination, purpose, mileage, and related costs such as tolls, parking, and gasoline, and approved by a supervisor to be reimbursable. Expenditures that cannot be charged directly to a specific program must be allocated across all programs and/or entities that benefit from the expenditure, using allocation methods that are fair and reasonable. The allocation methods and their basis should be documented and retained.

For the three fiscal years ended June 30, 2014, NYCCD charged $21,591 in travel expenses (including $2,838 in non-program-related travel expenses) to the SED cost-based programs. However, NYCCD officials could not provide vehicle logs, invoices, receipts, or other documentation to support these costs. Therefore, we recommend that SED disallow the $21,591 in unsupported and non-program-related travel expenses that were charged to the cost-based programs.

Other Ineligible Costs

According to the Manual, costs resulting from violations of or failure by an entity to comply with federal, State, and/or local laws and regulations are not reimbursable. In addition, gifts of any kind and costs of food provided to staff, including lunchroom monitors, are not reimbursable.

For the three fiscal years ended June 30, 2014, NYCCD's officials allocated $17,868 in non-reimbursable expenses to the SED cost-based programs. The non-reimbursable expenses included $9,480 for gifts, $4,154 for goods and/or services provided to NYCIT, $2,326 for food provided to staff, and $1,908 in fines and penalties. Therefore, we recommend that SED disallow the $17,868 in ineligible costs because they did not comply with the Manual's requirements. In response, NYCCD officials advised us that they have improved NYCCD's internal controls to ensure NYCCD does not request reimbursement for ineligible expenses.

Recommendations

To SED:

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

2. Work with NYCCD officials to help ensure their compliance with Manual provisions.

To NYCCD:

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

Audit Scope and Methodology

We audited the costs reported on NYCCD's CFRs to determine whether they were reasonable, necessary, directly related to the special education program, and sufficiently documented pursuant to the guidelines in SED's Manual. The audit included all claimed expenses for fiscal year 2013-14 and certain expenses claimed on NYCCD's CFRs for the two fiscal years ended June 30, 2013.

To accomplish our objective, we reviewed SED's Manual, the CFR Manual, NYCCD's CFRs, and relevant financial records for the audit period. We also interviewed NYCCD's officials, staff, and independent auditors to obtain an understanding of their financial and business practices. In addition, we assessed a judgmental sample of reported costs to determine whether these costs were supported, directly related to the special education program, and reimbursable. Our judgmental sample was based on the relative materiality of the various categories of costs reported and their associated levels of risk. Also, our review of NYCCD's internal controls focused on the controls over NYCCD'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 a draft copy of this report to SED and NYCCD officials for their review and formal comment. Their comments were considered in preparing this report and are attached to it. In their response, SED officials agreed with our recommendations and indicated that they will take steps to address them. In their response, NYCCD officials accepted some of our audit conclusions, but generally disagreed with the audit's proposed disallowances. Also, our rejoinders to certain NYCCD comments are included in the report's State Comptroller's Comments.

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

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Vision

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

Mission

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

Exhibit

New York Center for Child Development, Inc.
Schedule of Submitted and Disallowed Program 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	$19,743,946	$292,279	$19,451,667	A, G-J
Agency Administration	1,426,217	20,618	1,405,599	A, B, F, H, I, T
Total Personal Services	**$21,170,163**	**$312,897**	**$20,857,266**	
Other Than Personal Services				
Direct Care	$2,455,628	$195,976	$2,259,652	A, C, D, F, H, L- S
Agency Administration	863,015	268,028	594,987	A, D, E, F, H, K, L
Total Other Than Personal Services	**$3,318,643**	**$464,004**	**$2,854,639**	
Total Program Costs	**$24,488,806**	**$776,901**	**$23,711,905**	

Notes to Exhibit

The following Notes refer to specific sections of SED's Reimbursable Cost Manuals, for the three fiscal years ended 2013-14, that were 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 NYCCD 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 III.1.A - Compensation costs must be based on approved, documented payrolls. Payroll must be supported by employee time records prepared during, not after, the time period for which the employee was paid. Employee time sheets must be signed by the employee and a supervisor, and must be completed at least monthly.
C. Section II.23.C - Costs of food provided to any staff including lunchroom monitors are not reimbursable.
D. 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.
E. Section II.14.A.(2) - Costs of consultant services are not reimbursable if the services could have been performed by an appropriately certified school officer or employee who possesses the necessary technical skills or by SED's staff.
F. Section III.1.M.3 - Agency administration costs shall be allocated to all programs operated by the entity based on the Ratio Value Method of allocation.
G. Section III.1.M.1(i) - Salaries of employees who perform tasks for more than one program and/or entity must be allocated among all programs and/or entities for which they work.
H. Section III.1.M.2 - Entities operating programs must use allocation methods that are fair and reasonable, as determined by the Commissioner's fiscal representatives. Such allocation methods, as well as the statistical basis used to calculate allocation percentages, must be documented and retained for each fiscal year for review upon audit for a minimum of seven years. Allocation percentages should be reviewed on an annual basis and adjusted as necessary.
I. Section III.1.B - Actual hours of service are the preferred statistical basis upon which to allocate salaries and fringe benefits for shared staff who work on multiple programs. Entities must maintain appropriate documentation reflecting the hours used in this allocation. Acceptable documentation may include payroll records or time studies. If hours of service cannot be calculated or a time study cannot be completed, then alternative methods that are equitable and conform to generally accepted accounting principles may be utilized. Documentation for all allocation methods (bases and percentages) must be retained for a minimum of seven years.
J. 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 providers'

financial reports.

K. Section III.1.G - All contractual agreements (e.g., leases) must be in writing, signed, and dated.
L. Section II.18.A.3 - A move to a new location must be approved by SED's program staff prior to the move.
M. Section II.41.B.1 - Entities operating approved programs may submit copies of new or renegotiated leases to SED's Rate Setting Unit staff for review at least 90 days before the effective date of the lease to allow the Commissioner's designated fiscal representatives to determine whether the costs of rental agreements are within the limitations of the program's non-direct care cost parameter. A move to a new location must be approved by SED's program staff, and such costs of a move are subject to review and approval by DOB prior to the program's move. Moving costs are reimbursable if the move is necessary to enable the program to conform to requirements of the Regulations of the Commissioner of Education or the students' individualized education program (IEP). However, the program must establish that a change in location or lease resulted from SED program mandates, consistent with regulatory or IEP requirements, or arm's-length landlord action in response to market forces. In addition, the program's occupancy costs of the new location are not reimbursable before the actual date of the program's occupancy unless such costs are incorporated in an approved tuition rate. The program's occupancy costs of the prior location are reimbursable up to the actual date of the program's occupancy in the new location unless prior approval allows an exception.
N. Section II.42.B.2 - Occupancy costs are based on actual documented rental charges, supported by bills, vouchers, etc. Donated rent is not reimbursable.
O. Section II.42.B.5 - Costs incurred in less-than-arm's-length (LTAL) lease of real property transactions that are determined to be above actual documented costs of the owner shall be reimbursed only with written approval of the Commissioner upon the establishment of the cost effectiveness resulting from the transaction. This written approval must be obtained prior to the LTAL transaction upon the establishment of the cost effectiveness that may result from the transaction. The Commissioner's approval may be rescinded retroactively if, based on further review/reconciliation/audit, it is determined that information used in the initial approval was erroneous, incomplete, did not fairly represent all relevant facts, data, or issues or there is inadequate supporting documentation for information/data provided and used during the approval process.
P. Section II.41.B.4 - Costs incurred in less-than-arm's-length lease of real property transactions shall be reimbursed based on owner's actual cost or fair market value, whichever is less.
Q. Section I.1.B(2) - New or renovated facility space, both instructional and non-instructional to be occupied by approved programs in which space is new, substantially altered, or resulted in capitalized costs in excess of $100,000, requires written pre-approval from SED's program and fiscal designees.
R. Section II.14.A.6 - Expenses of a personal nature, such as a residence or personal use of a car, known as perquisites (or perks), are not reimbursable. When costs are disallowed because they are of a personal nature, providers should inform the employee(s) in writing that the employee(s) must refund the disallowed costs to the provider within a date certain. If the employee(s) fails to do so, the amount should be recovered through a reduction in compensation.

S. Section III.1.J - Logs must be kept by each employee indicating dates of travel, destination, purpose, mileage, and related costs such as tolls, parking and gasoline, and approved by a supervisor to be reimbursable.
T. Section II.30 - Cost of investment counsel and staff and similar expenses incurred solely to enhance income from investments are not reimbursable.

Agency Comments - State Education Department

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

DEPUTY COMMISSIONER
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November 17, 2016

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

Dear Mr. Sifontes:

The following is the New York State Education Department's (Department) response to the draft audit report, 2015-S-101, Compliance with the Reimbursable Cost Manual: New York Center for Child Development, Inc. (NYCCD).

Recommendation 1: Review the recommended disallowances resulting from our audit and make the appropriate adjustments to NYCCD's CFRs and 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: Work with NYCCD officials to help ensure their compliance with Manual provisions.

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

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

Sincerely,

S. Cates-Williams

Sharon Cates-Williams

c: Christopher Suriano
Suzanne Bolling

Agency Comments - New York Center for Child Development, Inc.

VIA ELECTRONIC MAIL

Kenrick Sifontes
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, New York 12236

RE: State Education Department
New York Center for Child Development
Audit #2015-S-101
Draft Audit Report
Compliance With the Reimbursable Cost Manual

THE CREATION OF THE AUDIT REGIME FOR 4410 SCHOOLS

By a law with an effective date of December 18, 2013, the Office of State Controller was charged with conducting audits on Special Education preschools funded by Section 4410 of the Education Law. The legislative history indicates that the law was a response to audits which revealed widespread fraud and abuse which threatens the existence of special education programs. The audits were to examine, audit, and evaluate relevant financial documents and records of provider and shall include findings and recommendations of the comptroller regarding the propriety of the amounts reported as expenses to the department as well as other findings deemed appropriate with respect to the public funding of the special education services. Supporting memoranda in the New York State Senate and House expressed the view that "These problems and potential problems should be remedied so that taxpayer dollars are spent appropriately on the children in need of such services." The memoranda also listed as the Purpose that "This Legislation would provide for greater oversight and improve the quality of special education preschool provider programs in this State." And the Memoranda stated that the fiscal implications of the law were stated to be "Savings to State and local taxpayers."

We note that the statute and its supporting documents focus on fraud, abuse, the propriety of the amounts reported as expenses to the department, findings appropriate with respect to public funding of special education services, savings to state and local taxpayers, and improving the quality of special education programs in the State. It does not refer to recoupment as the primary remedy or to finding weaknesses in internal controls or to the failure to meet documentation requirements apart from the impact that failure might have on misspending taxpayer dollars. * Comment 1

In this audit, the Auditors have identified weaknesses in our internal controls and a failure to understand and follow certain documentation procedures. We value that input and have made significant changes to remedy the internal control issues raised by the Auditors. At the same

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*See State Comptroller's Comments, page 38.

time in some of those cases we believe there are alternative method to confirm that there was no overspending of taxpayer dollars or to demonstrate that the recoupment proposed by the auditors is excessive and believe that recoupment may negatively impact our ability to continue to provide the quality special education services which have been our hallmark. We will illustrate these suggestions below in discussions of particular recoupment proposals by the Auditors in their Draft report.

* Comment 2

Proposed Recoupment by the Auditors

The Auditors Draft Report proposes recoupments of $776,655.43. As indicated below we propose substantial reductions in their recoupment proposals. However, even without any reduction in their proposal, because the spending in the three years by NYCCD was greater than the total costs reimbursable by SED and the difference was funded by contributions by NYCIT, the actual total recoupments as shown in the table below for the 3 year period would $343,064.03 and for FY14 there would be no recoupment.

* Comment 3

	FY12	FY13	Fy14	Total
Proposed Audit Recoupment	$220126.08	$228,634.42	$327,894.94	$776,655.43
Adjusted Recoupment Amount	$181,827.36	$161,236.67	$0	$343,064.03

BACKGROUND INFORMATION ABOUT NEW YORK CENTER FOR CHILD DEVELOPMENT

NYCCD PROGRAMS WITH THE STATE EDUCATION DEPARTMENT

New York Center for Child Development (NYCCD) – formerly known as the Manhattan Center for Early Learning (MCEL) – is a not-for-profit organization authorized by the State Education Department (SED) to provide Special Class over 2.5 hours (program 9100), Special Class for 2.5 hours (program 9115), and Special Education Itinerant Services (program 9135) to disabled children between the ages of three to five years. For the purpose of this report, these programs are collectively called the audited programs. During the 2013-14 fiscal year, NYCCD provided these Special Education services to about 415 students. NYCCD also operates another SED program, an Evaluation program (program 9190) which served approximately 700 children during that fiscal year. Based in New York, NYCCD provides SED program services to students in 24 New York school districts. For the three fiscal years ended June 30, 2014, NYCCD reported approximately $24.5 million in reimbursable coasts for the audited cost based programs. In those years, NYCCD spent approximately $462,328 In on the SED programs beyond the amount which was reimbursable by SED, which it funded with contributions.

NYCCD EARLY CHILDHOOD MENTAL HEALTH PROGRAMS

NYCCD also operates a range of additional programs primarily focused on early childhood mental health consultation and treatment and early childhood mental health training, and a research program partnering with UCLA to evaluate the effectiveness of a promising educational strategy for 2-3 year old toddlers on the autistic spectrum.

From 2006 to 2015, NYCCD received multiyear funding from the New York City Department of Health and Mental Hygiene (DOHMH) to create an Early Childhood Mental Health Consultation and Treatment Program serving children age birth to five and their families in East and Central Harlem. In partnership with community agencies, including day cares and other early care and education sites, preventive service settings, and pediatric primary care clinics. Its program partners included Settlement Health (a Federally Qualified Health Center (FHQC) in East Harlem), New York Presbyterian Weill Cornell Hospital, Nurse Family Partnership (EB-were they in DOHMH grant or only SAMHSA) as well as a number of public and private preschools at which NYCCD provided early childhood mental health training.

In 2010, the New York City Department of Health and Mental Hygiene reached out to NYCCD to partner with the Department in applying for a five-year grant from the U.S. Substance Abuse and Mental Health Services Administration (SAMHSA) to provide early childhood mental health consultation and intervention. New York City was awarded one of six five year grants in the U.S., with NYCCD as the major service provider. The program partners included Metropolitan Hospital, Urban Health Plan (a Federally Qualified Health Center), Nurse Family Partnership and a number of early care and education sites.

In 2014, NYCCD received funding under a federal Superstorm Sandy Block Grant through the New York State Office of Family and Children Services to provide mental health training to promote the social and emotional well-being of young children and caregivers affected by the Storm in family child care and early care and education programs. Our partners include the United Federation of Teachers, the New York City Administration for Children’s Services (ACS), the Professional Development Institute (PDI) at the City University of New York, the Women’s Health and Economic Development Corporation (WHEDCO), the Institute of Family Health (a Federally Qualified Health Center) and a wide group of ACS Network Providers. NYCCD was also selected by United Neighborhood Houses, an umbrella organization for New York Settlement Houses, to be the subcontractor and major service provider in their OCFS Superstorm Sandy grant.

In 2016 NYCCD received a grant from a foundation to provide early childhood mental health consultation and intervention an outpatient pediatric clinic at the Audubon Clinic at Columbia Presbyterian Hospital and a grant to provide early mental health services to children and families involved in the foster care Court system.

Most recently, in 2016, NYCCD was awarded a competitive grant from the New York City Department of Health and Mental Hygiene to become the Citywide Early Childhood Mental Health Training and Technical Assistance Center (TTAC) for New York City. NYCCD’s partner

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in this grant is New York University through its McSilver Institute for Poverty Policy and Research of the NYU Silver School of Social Work which is a subcontractor of NYCCD.

NYCCD provides mental health consultation to a number of organizations on a contractual basis including Childrens Aid Society, Harlem Children's Zone, Northern Manhattan Perinatal Network, and Staten Island Mental Health Society.

NYCCD has also been engaged in a research partnership with the University of California at Los Angeles (UCLA) funded by a grant from the FAR Fund in which it has been testing the effectiveness of a modification in the standard educational curriculum for 2-3 year old children on the autistic spectrum.

All of these additional activities are fully funded by grants or contracts to reimburse costs including fringe benefits of participating staff and overhead. Taking into account all its programs, NYCCD in FY14 served approximately 4700 children.

NEW YORK CENTER FOR INFANTS AND TODDLERS, INC.

In addition to sharing certain resources and allocating costs between the audited programs and NYCCD's other programs, New York Center for Child Development (NYCCD) shared certain resources and allocated costs with the New York Center for Infant and Toddlers (NYCIT) – a for profit entity owned by NYCCD's Executive Director and his wife which is primarily engaged in providing special education services to 2-3 year old children under the Early Intervention Program. Costs are allocated by NYCCD to NYCIT based primarily on time spent by staff members on tasks of each company and square footage in the case of space utilized. The Auditors contend that that the allocations of expenses to NYCIT have in some cases been insufficient. We believe that although NYCCD has allocated $ 1,204,087 of expenses to NYCIT over the 3 year audit period, the Audit has revealed some cases where NYCCD internal controls have not been adequate and some mistakes have been made where some expenses were not adequately charged to NYCIT. The Audit also enabled us to see cases where expenses incurred by NYCIT were not properly allocated to NYCCD although the Auditors took the position that they had no authority to make those adjustments to our CFR which would need to be made by SED.

It is also important to note that NYCIT is the major donor to NYCCD and that from Fiscal Year 2010 beginning in July, 2009 to fiscal year 2015, ending in June, 2015, NYCIT donated $1,511,500 to NYCCD, an amount far in excess of any undercharges to NYCIT. In addition, to deal with cash shortfalls over the years, NYCIT has furnished NYCCD with $5,470,758.71 of interest free loans which have all been repaid but which were critically important at times of cash flow challenges. We attach a table showing the NYCIT contributions to NYCCD and the contributions from the Executive Director of NYCCD and President and Co-Owner of NYCIT.

* Comment 3

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Fiscal Year	MG/RG	NYCIT	Total
FY09 Total	100,000		100,000
FY10 Total		240,000	240,000
FY11 Total		360,000	360,000
FY12 Total		210,000	210,000
FY13 Total		300,000	300,000
FY14 Total		276,500	276,500
FY15 Total	75,000	125,000	200,000
Grand Total	175,000	1,511,500	1,686,500

We also take note of the Auditor's mention of the rental of a building at 159 West 127th Street, from a Limited Liability Company in which NYCCD's Executive Director owns a 50 percent ownership interest. This was a result of a complicated series of events in which NYCCD was to move to the building temporarily while the building it rented from the Archdiocese of New York on East 62nd Street would be torn down and rebuilt and through an agreement with a real estate developer and a verbal agreement from the Archdiocese, NYCCD would receive a condominium interest of great value in the rebuilt building. When this understanding fell apart, NYCCD was threatened with eviction of from 62nd Street, the home it thought was a temporary home became its only home. In recognition of the Executive Director's less than arm's length relationship with the W. 127th Street Building ownership, he advised the Board of NYCCD that for the 3 year initial lease period, he would donate to NYCCD all distributions he received from the 127th Street building. To date, he has contributed $137,500 in honoring that commitment. All the documents relating to these transactions have been provided to the Auditors who have omitted essential facts which explain the background and details of the transaction and the contributions made by the Executive Director.

*
Comment
4

The following are comments on the largest recoupment recommendations of the Auditors which we believe should be revisited by the Auditors or by SED:

1. **<u>CONTROLLER</u>**

The Auditors propose to recoup almost 3 years full years of compensation of the NYCCD Controller (236,795 out of 266,660) because of their claim of two failures by the Controller to provide documentation required by the Reimbursable Cost Manual (the Manual).

*
Comment
5

First, they contend that the contractual documentation between the Controller and NYCCD is not consistent with the requirement that the contractual agreements must be in writing, signed, and dated. They express this view as follows.

> "This contract, which did not have an expiration date, listed the controller's fee as $70 per hour. However, we found that invoices submitted to NYCCD by the controller during this three-year period, listed rates of $85 and $90 per hour. We asked NYCCD's executive director to explain why the controller's rates were inconsistent with the rate

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> agreed to in the contract. In response, the Executive Director provided us with an email from the Controller, dated March 26, 2013, in which the Controller requested a rate increase from $85 per hour to $90 per hour. In a subsequent email dated November 2, 2013, the executive director rejected the rate increase request, but agreed to meet with the controller to discuss his request. However, there is no documentation to show that the rate increase was subsequently discussed and approved. In addition, the executive director advised that, in his view, NYCCD's payment of the increased rates, on receipt of the controller's invoices, represented a binding unilateral contract. We question the executive director's assessment. In our view, the circumstances presented do not form the basis of a unilateral contract. Rather, it appears that the parties have improperly attempted to modify their 2005 bilateral agreement. In any event, no matter how this arrangement is characterized, it does not comply with the Manual's requirements that contractual agreements must be in writing, signed, and dated."

We respectfully disagree. Immediately following the email exchange described and a subsequent conversation, although the Executive Director did not respond with a responsive email, NYCCD began paying the amount of the $90 per hour modification the Controller sought and has consistently paid at that rate in the three subsequent years. This constitutes a binding Unilateral Contract in which the contract is ratified by performance rather than by a promise. During all that time, there has been a wriiten agreement in force with a modification in the hourly rate proposed in an email and accepted by clear and responsive performance. Contrary to the Auditors doubts about whether a unilateral contract was formed, we believe this exchange is the epitome of a unilateral contract where performance in response to an offer creates a binding agreement. Here is the codification of this principle in the Uniform Commercial Code and the 2nd Restatement of Contracts.

* Comment 6

§32 of the Restatement of Contracts 2nd :

Invitation of Promise or Performance

> In case of doubt an offer is interpreted as inviting the offeree to accept either by promising to perform what the offer requests or by rendering the performance, as the offeree chooses.

Uniform Commercial Code: U.C.C. §2-206

Offer and Acceptance in Formation of Contract:

(1) Unless otherwise unambiguously indicated by the language or circumstances

(a) an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in circumstances;

(b) an order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt promise to ship or by the prompt or current shipment of conforming or non-conforming goods, but such a shipment of non-conforming goods does not constitute an acceptance if the seller seasonably notifies the buyer that the shipment is offered only as an accommodation to the buyer.

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(2) Where the beginning of a requested performance is a reasonable mode of acceptance an offeror who is not notified of acceptance within a reasonable time may treat the offer as having lapsed before acceptance.

Although we believe the agreement to the $90 is a legally binding agreement in which the email was answered with performance to create an agreement, we would raise the question whether the auditors would recommend the recoupment of three years of compensation if the contract was not a legally binding agreement under contract law even though they recognized that the Controller's work was done by in that three year period, that work was done well, and that the cost was acceptable given salary guidelines of the State Education Department. If so, we question whether that judgment is consistent with the statute establishing the audit regime. We will explore this further below.

* Comment 7

The auditor's second claim of a documentation deficiency by the Controller was that his invoices did not adequately comply with the guidelines in the Manual for consultants. For example, they claim the invoices did not detail the specific services actually provided by the consultants.

* Comment 7

To compensate for the failure of the Controller to provide detailed invoices, we have provided the Auditors with a job description of the Controller job with areas of Controller responsibility numbered, screen shot lists of all the Controller's emails and documents and provided them electronically with all the actual documents he received and produced during the audit period. We have labeled each file with the number of the corresponding area of Controller responsibility in the Controller Job Description. This constituted 616 of documents received for review and revision and 1530 prepared by him.

* Comment 8

In our view, we have provided more detail of his time worked for NYCCD during the audit period than would have been provided if he had supplemented his invoices with the descriptive comments generally provided by contractors. We believe they repair any deficiency in his invoices and justify approval of his compensation. By adding copies of his work product we hopefully add to the weight of supporting documents which satisfy the documentation requirement of the Reimbursement Cost Manual.

* Comment 7

* Comment 8

We note that Controller's time records contained his begin and end times for each work day and allocate his time between NYCCD and NYCIT beginning on November 4, 2013, and we also note the detail provided on his daily time records beginning on November 18, 2013.

* Comment 9

We add the fact that during the audit period, Controller was Controller of NYCCD, headed the financial department in which he personally was responsible for all financial department operations, directly supervised all financial department employees , personally prepared the CFR for most of the audit period, worked in the offices of NYCCD for over 4 days a week in the average week using NYCCD facilities and materials, interacted personally in his job responsibilities with all senior staff and with many other staff of NYCCD on a regular basis, and worked additional time on evenings and weekends as required to meet his job responsibilities. In addition, we note that Controller was closely supervised directly by Michael Gordon, Executive Director of NYCCD, who met with him frequently and regularly, set the priorities for his work, assigned tasks for Controller to perform and the like. The Associate Executive Director reviewed and approved his invoices and signed check for payment of his invoices.

The Auditors interviewed the Controller on several occasions and spoke to the members of his staff. I believe they recognize that the Controller job was performed and performed well, that the Controller performed the job, that only he on our staff was capable of performing the job. They were also shown the database programs he designed to enable his staff to work more efficiently.

We have described the supervision structure of the NYCCD financial department. Controller is the Controller who oversees all financial aspects of the business. He works in NYCCD offices 4 to 4 ½ days a week where he oversees all financial functions, personally prepares documents, schedules and reports in order to timely fulfill NYCCD financial responsibilities, supervises the Controller department and oversees the program specific billing staff. He reports to the Executive Director who supervises him. His invoices are signed by the Associate Executive Director who has daily contact with him and observes his daily work schedule. As documented in the files contained on the flash drive, he has voluminous work product and can demonstrate his day to day involvement and oversight for all agency administration controller operations including the general ledger, financial statements, financial reporting to regulators, payroll, payables, and receivables. He also trains and oversees the program specific billing staff. He works with our outside auditors to complete the CFR and beginning in FY13 completes the CFR himself for review by our auditors. There is no other person in the organization who can or does assume these responsibilities. He is a highly competent financial manager without whose presence the financial operations of NYCCD would be unexplainable. There is simply no other person in NYCCD who is capable of playing the critical role Controller plays. To disallow the total compensation for three years when there is no reasonable doubt that he not only performed these duties, but that there was no other person who provided or was compensated for the overall fiscal management seems inconsistent with the spirit of the RCM and the OSC to ensure that state funds are spent appropriately. If anything, we believe NYCCD's financial department operates at a cost below other programs of similar size. To support this view, we attach the salary costs charged to NYCCD for the Controller and the Controller department he supervised during the three year audit period. To recoup his compensation would seriously jeopardize the NYCCD program despite the fact that it is evident that these functions were performed by Controller and that the documentation we are have provided including the email log, and file log for the audit period and Controller's NYCCD files we now provide in a flash drive far exceeds what any detailed invoice could provide.

* Comment 10

In addition to creating the work product we have compiled for you via flash drive and the email and working file logs we have previously sent you, it is important to understand the level at which the Controller supervises the staff in his Controller department and the important contributions he makes to financial department workflow using his database capabilities. His supervision of these employees involves daily contact and oversight in person, on the phone and via email. The Controller has also used his expertise in database programming to design applications for his department that facilitate efficiencies and accuracy in his department. This allows us to operate cost effectively with a small finance team. The programs he has designed and created include 'AP Tracking' and 'Allocation Program' which act as an interface with our internal database and ADP, Peachtree and other sources of data. Our staff accountants use AP Tracking to enter provider billing information including the educational and clinical sessions provided, billing rate, and billing period. Financial staff can then process staff and service payments by automatically uploading the information to Peachtree and ADP from AP Tracking

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without having to enter the data directly in ADP or Peachtree. The Controller has used technology, with programs like AP Tracking, Leave Tracking, and Payroll Allocation Program by Time or Service Hour to build controls that avoid duplicate payment and documentation for all services – these provide security to ensure accuracy and reduce manual entry.

The following lists describe in some detail Controller's specific regular supervision of our two staff accountants, the A/P and Payroll Coordinator and Staff Accountant:

Examples of Supervision of the A/P and Payroll Coordinator
• Review invoices and cash disbursement documents prepared by the A/P and Payroll Coordinator ensuring the correct account is being charged twice monthly.
• Review IC and FFS payments made by the A/P and Payroll Coordinator using AP Tracking database. The A/P and Payroll Coordinator enters the provider name based on the Services Provided Report (SPR) into the AP Tracking program which uploads it into Peachtree. On a monthly basis, the Controller reconciles these payments between AP Tracking & ADP.
• Supervises the A/P and Payroll Coordinator's work accruing amounts for sick time for FFS employees by ensuring the amounts paid are consistent with the requirements of municipal law. enters the amounts into AP Tracking and processes payments which the Controller reviews. The Controller provides oversight and answers questions that NYCCD staff members have about sick time payments..
• Supervises all reporting requirements to the Department of Labor and other municipal requirements. Ensures deadlines are met by the A/P and Payroll Coordinator and she has all information she needs to complete Monthly Headcount report for the Department of Labor, Annual Workers Compensation Audit, Quarterly Short-term disability reports, Grant Audits, and other reports as necessary.
• Reviews payroll bank account reconciliation completed by the A/P and Payroll Coordinator.

Examples of Supervision of Staff Accountant
• Reviews bank reconciliations monthly when accounts do not reconcile to help track down the cause of lack of reconciliation.
• AP tracking used for allocation analysis.
• Reviews, modifies and obtains signatures for the invoice claims for mental health work that Staff Accountant creates.
• Staff Accountant creates a mid-year and end of year report for the UPK contract. The Controller reviews and modifies to be consistent with UPK contract.
• Staff Accountant creates depreciation schedule twice per year. The Controller reviews and modifies where necessary.
• Monthly departmental P/L report. The Controller supervises Staff Accountant work on the profit loss reports by using database programs to determine correct allocation percentages and to ensure accuracy of Staff Accountant work.
• Oversees Staff Accountant' work to ensure enrollment is accurate in the CMR to insure that we get paid for all enrolled students. The Controller identifies discrepancies between the CMR and our database to enable Staff Accountant to resolve the discrepancies in some cases by obtaining student first attends and approved IEPs.

As noted above, we believe the information provided repairs any failure to document invoices under the RCM. We think it demonstrates that the roll of Controller was fully performed by Controller and justifies the compensation paid to him as Controller and the claim for reimbursement of this compensation.

* Comment 7

Finally, the Auditors claimed that invoices showed that the Controller billed for services provided to NYCCD and NYCIT and did not maintain records showing how it allocated the Controller's costs between the two entities and their respective programs. In fact, NYCCD did maintain records showing the daily time allocation between NYCCD and NYCIT beginning on November 4, 2013, through the current date and showing detail of the services provided beginning on November 20, 2013, through the current date. We suggest that these records could constitute a time study for FY14. We also believe that although not contemporaneous, the FY 2015 and 2016 records which have been provided to you and are set out below include daily allocations for those entire fiscal years, are representative of the job requirements in each year and can be used to suggest appropriate allocations for the prior years and would be far more reasonable than the approach suggested by the Auditors to recoup almost the entire reimbursement of NYCCD for Controller services actually provided at reasonable cost. We believe the approach suggested in the Draft Report is punitive and damaging and bears no relationship to the cost of providing Controller services or the value to the State. On that basis we propose allocations each of the three audit years of 9.79% to NYCIT.

* Comment 7

* Comment 8

* Comment 11

Period	NYCCD		NYCIT		total	
7/1/14-6/30/15	1492	90.21%	162	9.79%	1654	100.00%
7/1/15-6/30/16	1615	91.34%	153	8.66%	1768	100.00%

We suggest using 9.79% or rounding at 10% for FY 12. Controller already allocated 10% to NYCIT for FY 13 and he charged NYCIT directly for time spent on NYCIT matters. It is also important to compare the Controller responsibilities in the Job Description provided you which shows the dramatically lower level of activities required for the Controller in NYCIT by task than NYCCD.

* Comment 12

It is also important to note that the compensation of the Controller at the cost billed is within the median Controller salary of $143,398 published by the State Education Department. As the table below indicates, not only is the total compensation for the Controller within the State median salaries, but because of charges to other grants and the allocation to NYCIT in FY 13 and the direct billing to NYCIT in FY14, the actual charge to NYCCD Agency Administration is significantly below the median salary for a full time controller who does not also provide billable services to other non-taxpayer funded sources.

* Comment 13

	NYCCD Compensation & Allocation					NYCIT
	Agency Administration	MHCT	Grant611/619	NYCIT	Total	Compensatior
FY12	100,571.00	7,018.00	18,145.00		125,734.00	
FY13	115,488.50	3,325.00		12,832.00	131,645.50	
FY14	123,140.00	683.00			123,823.00	14,207.0C

We believe this is a case where the Controller performed his job well and within the permitted compensation level permitted by the State Education Department. This is not a case where the proposed recoupment by the Auditors can be justified as a response to overspending. There was no financial harm to the State. The Auditors propose to reimburse NYCCD $29,865 out of the $266,660 it spent and billed for 3 years of Controller services to the audited programs. This would do great damage to NYCCD going forward and might result in NYCCD being unable to retain a chief financial officer with potential great threat to its program.

* Comment 7

In fact, we give considerable weight to cost effectiveness in all our compensation arrangements and general decision making. In a 2014 Fiscal Year analysis of comparative cost effectiveness of agency administration of New York City filers of CFRs, NYCCD is in the 17th percentile. See attached file of Ratio Value Factor for Agency Administration-NYC.

* Comment 14

We urge the Auditors to reconsider all this voluminous detail together which supports the compensation of Controller as a Controller together with their recognition as a result of their careful review of his work and their observations of the functioning of the Controller department that Controller did perform fully the Controller roll. We believe that relying entirely on the failure to document invoices for FY 12, FY13, and part of FY14 in light of this data and analysis could only be explained as a punishment for a documentation failure and would, in our judgment, not be consistent with the statutory audit guidance focused on fraud, abuse, and financial loss for State taxpayers. Their clearly has been no financial loss with respect to Controller and any financial recovery recommended by the Auditors cannot fairly be described as a recoupment of financial overcharge but only as a punishment or penalty. This penalty would effectively gut the financial capability of NYCCD to perform its important functions for children and families and we believe damage “not improve the quality of special education preschool provider programs in this State” as intended by the statute mandating these audits.

* Comment 15

11

2. Director of Therapy Services

* Comment 16

The Auditors recite that the Director worked for both NYCCD and NYCIT. What is the basis and support for this comment? There is no factual basis for this. It is not true. She worked for NYCCD. She had no NYCIT staff reporting to her-not Speech, OT or PT or anyone else. In some email you mention that the Manager of Community-Based Related Service reported to her. That was never the case.

* Comment 17

NYCIT related service providers were supervised by the Manager of Community-Based Related Services.

The Director had three limited special projects with NYCIT.

1. She supervised a speech pathologist in her supervision of two Speech Clinical Fellow during their Clinical Fellowship Year. Both the Director and the speech pathologist report that the supervision sessions were twice per month for approximately 3 months and then once per month thereafter all for one hour at NYCCD offices. The speech pathologist reports that the start date of her supervision for the first Clinical Fellow was in March of 2012 and the end date of her supervision for the second Clinical Fellow was in December 2013. This would suggest approximately 7 hours of the Director's time in FY12, 12 hours in FY13, and 6 hours in FY14.
2. She hosted a supervision group at NYCCD headquarters including 5 NYCIT Speech Pathologists and one NYCCD Occupational therapist who met for 1 hour 3 or 4 times in FY13, thus totaling 3 or 4 hours.
3. She interviewed candidate for Speech positions for both NYCCD and NYCIT. We have supplied to you the list of the interviews. As you saw on the list, over a 30 month period from July, 2011 through December, 2013, The Director of Therapy Services had interviews that were generally 1 hour with 16 candidates for NYCCD positions and 16 candidates for NYCIT and 3 candidates for positions that were available in both NYCCD and NYCIT. This works out to approximately 19 interviews over 30 months or less than 1 hour per month attributable to NYCIT.

The Director reports that she was available for occasional telephone consultation and every few months spent approximately 2 hours at the East Harlem NYCIT site but describes her contact with NYCIT as "very limited" and "negligible".

* Comment 18

Although we made major allocations from NYCCD to NYCIT over $1,200,000 over the audit period, we believed and continue to believe the Director of Therapy Services extremely limited consultation with NYCIT did not warrant allocations which in any event would have been insignificant.

* Comment 19

The OSC audit team asked and received our permission to interview the NYCIT's Manager of Community Based Related Services but we do not believe an interview with this individual was conducted.

* Comment 20

We believe the assumption that the Director worked for NYCIT has no basis in fact and that allocating 50% of her compensation is arbitrary and not justified.

12

3. Occupational Therapist

We have supplied a great deal of detail regarding the time of the Occupational Therapist referred to. We have supplied her contracts which set out her responsibilities and her invoices which provide important detail about the allocation of her time. They were invoices clearly representing time spent not allocated. They were titled "Invoice". They were reviewed by the Director of Therapy Services, her supervisor who worked closely with her throughout her employment and who approved them for payment. You have received communications from The Director of Therapy Services about that.

* Comment 21

We have also provided Services Provided Reports which were maintained on a current basis and show every direct service provided to every child on her caseload by date until September, 2013. From that date to the present we have provided you reports required by New York City's Easy Track System through June, 2014 which provide the same information showing the dates of every session for every child on her caseload. We have provided you copies of all her session notes for every service to every child for the entire period.

* Comment 21

Her invoices are quite informative. The first column is her Treatment Hours, her direct services. The second column is her Notes/ Meetings-these were primarily about her caseload-notes of her sessions and quarterly and annual reports on the cases on her caseloads, as well as team meeting about the children on her caseload in addition to the weekly department meetings which sometimes were STs, OTs, and PTs and sometimes just the OTs and PTs, all in support of the 9100 and 9115 programs. These first two columns representing The Occupational Therapist's services in respect of her caseload constituted about 65% of her billed time.

* Comment 21

The third column is Supervision hours which were the hours supervising the OTs and PTs in their services provided to their clients, again in support of the 9100 and 9115 programs. The fourth column is referred to as Administrative, a category drawn from The Occupational Therapist's contract for extra services which can be provided when children were absent which is not totally descriptive since it mainly contains additional clinical services when time is available. It includes additional supervision such as attending team meetings of children on the caseloads of OTs and PTs being supervised in support of the 9100 and 9115 programs and supervision of OT evaluations. It also included administrative functions like assigning cases to OTs and PTs, all departmental paperwork of OT and PT department, reviewing session notes and quarterly reports of OT and PT staff, acting as the Administrator for the Easy Trac computer system for the department, signing invoices of independent contractors, all of this in service of 9100 and 9115 at 62nd street and then at 127th Street.

* Comment 22

Amidst all the data, there is a simple but clear way to think about The Occupational Therapist's time. With the exception of some time spent at NYCIT's location in East Harlem which was billed to NYCIT virtually all of The Occupational Therapist's time was in support of the program at 328 E. 62nd Street and later at 159 W. 127th Street. Of this time, all was in support of the 9100 and 9115 program except for Evaluation Supervision. In your email, you suggested that we:

> "Please consider that as Ms. The Director of Therapy Services's explained, The Occupational Therapist was provided supervision and oversight of the Occupational Therapy/Physical Therapy department, and was also was involved in reviewing certain clinician's performance of functions such as: watching therapy sessions and evaluations, reviewing written work, and accompanying them to team meetings for their clients."

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The answer is clear-all of this time in your question is in support of the 9100 and 9115 programs except for time spent supervising evaluations. As the Director of Related Services indicates that The Occupational Therapist was advised that time for evaluation supervision should be limited to approximately 1.5 hours per week as I requested. Occupational Therapist confirmed that time in her discussions with our staff in reviewing these issues and indicated that while the time may have varied from week to week, it averaged 1.5 hours per week.

* Comment 23

The Director of Related Services also indicated that approximately once per month she might ask The Occupational Therapist to interview a candidate or review a home based chart where an issue was raised. This time is truly de minimis although in the extensive materials we have sent you we have identified interviews conducted for positions outside the 9100 and 9115 programs and allocated the time appropriately.

* Comment 24

We believe the allocation we have suggested of $16,625.50 for evaluation supervision and $1,438 for interviews not in support of the 9100 and 9115 are well documented and represent a fair and accurate statement of the portion of The Occupational Therapist compensation over the three audit years not properly charged to 9100 and 9115.

* Comment 25

Finally, we remind you that The Occupational Therapist was closely supervised and observed by The Director of Therapy Services whose comments have been forwarded to you.

4. <u>Rent Expense</u>

The Draft Report completely distorts the position of NYCCD with respect to rent expenses. NYCCD has claimed only the rent expense for the 6 months it occupied 62nd Street and the 6 months it occupied 159 West 127th Street. The conflict arises with respect to the requirement that rental charge in a less than arms length lease arrangement cannot exceed owner's costs.

* Comment 26

Although the lease for NYCCD was executed in July, 2013, and was effective on August 1, 2013, in the Closing Conference with Auditors on July 27, 2016, the Auditors expressed the view that Owner's Costs for purposes of limiting reimbursable rental expense does not include any Owners Costs prior to NYCCD beginning operations at the 127th Street building in January, 2014 and excludes some types of expenses incurred by Owner.

* Comment 27

We believe the suggestions of the Auditors at the Audit Closing Conference on July 27, 2016 (i) that only 6 months of the 159 W. 127th Street Owner LLC (Owner)'s costs for the 2014 fiscal year can be included as Owner's costs for purposes of determining the limit of LTAL rent and (ii) that some of Owner's actual costs for FY 2014 may be excluded in determining the limit of LTAL rent are not justifiable and are without authority under the Reimbursement Cost Manual.

* Comment 27

While a tenant under this lease beginning on August 1, 2013, NYCCD took occupancy of the 127th Street building and took the following actions in the building prior to January 1, 2013:

1. Door locks within the facility had to be changed to conform to DOHMH requirements that no child areas can be locked from within by a child.
2. Door locks within the facility had to be changed to conform to DOHMH requirements so that no utility rooms or storage rooms/closets could be accessed by a child.
3. The downstairs multi-stall child bathroom was converted to an adult women's bathroom.

4. The single stall children's bathrooms on the 2nd floor and Lower Level were converted to adult bathrooms with "power-flush" systems.
5. Purchased and installed workstations throughout the facility; including the front office reception desk.
6. Installed Plexiglas cover over HVAC units.
7. Telecom cabling work to setup to connect phone system and internet to phones and computers.
8. Installed of PBX in telecom room.
9. IT Consultant installed and setup servers and configured network.
10. Painted several rooms prior to opening.
11. Rooftop padding was reaffixed to the perimeter walls.
12. Several rooms were subdivided into small rooms and two large walk-in closets for storage were created in the facility (see attached drawings for specifics).
    - Lower Level: Two partition walls were built in a large classroom to subdivide it into a separate Evaluation Room, OT/PT Office, and Conference Room.
    - Lower Level: A door was built into the wall to create an entrance to the newly partitioned OT/PT Office.
    - Lower Level: A six stall child bathroom was converted to an adult, woman's six stall bathroom by replacing toilets and lifting the sinks and sink counter.
    - Lower Level: A single stall adult bathroom had its child sink replaced with an adult sink and a power-flush was installed on the toilet.
    - 1st Floor: Two partition walls were built in a large classroom to subdivide it into a separate Evaluation Room and MH/SW Room.
    - 1st Floor: Two treatment rooms with doors were created within the MH/SW Room.
    - 1st Floor: A walk-in closet was built in the Reception/Waiting Room by sectioning out a corner and building walls and a door.
    - 2nd Floor: A partition wall was built in a large classroom to subdivide it into a separate Nurse Office and Classroom.
    - 2nd Floor: A single stall adult bathroom had its child sink replaced with an adult sink and a power-flush was installed on the toilet.
    - 2nd Floor: A walk-in closet was built in the Admin Room by sectioning out a corner and building walls and a door.
    - 2nd Floor: A hole in the ceiling of the Admin Room was fixed.
13. Electrical outlets were added to all the rooms in which walls were created to subdivide larger rooms.
14. Changes in ventilation, lighting, and sprinklers were made to accommodate the subdividing of several rooms in the facility.
15. The glass side entrance/exit door was replaced with a regular (non-glass) door.
16. Special cleaning of the entire facility post construction and after conducting the office move prior to opening for official business.
17. Exterminator services throughout entire facility prior to opening.
18. Conducted largescale office move prior to opening.

The Reimbursement Cost Manual provides:

> [T]he program's occupancy costs of the new location are not reimbursable before the actual date of the program's occupancy unless such costs are incorporated in an approved tuition rate. The program's occupancy costs of the prior location are reimbursable up to the actual date of the program's occupancy in the new location unless prior approval allows an exception. Section 41.B.(1)

15

Costs incurred in less-than-arm's-length lease of real property transactions shall be reimbursed based on owner's actual cost or fair market value, whichever is less. Section 41.B.(4)

Section 41.B(1) is intended to prohibit programs from receiving reimbursement for occupancy costs at a new and prior location during the same time period. NYCCD has not requested or received reimbursement for occupancy costs prior to January 1, 2014.

* Comment 28

Section 41.B.(4) makes no reference to occupancy date or to limiting owners actual cost to a portion of the fiscal year, and we believe that the Auditors linking the two provisions is not justified. With respect to owner's cost the second provision is focused on the lease period of a LTAL lease insuring that the LTAL owner cannot make a profit under the lease. The owners cost limit on reimbursement does not suggest a concern about double counting occupancy expenses by Owner for two different properties which would not in any case be applicable here. Nor does it suggest any other reason for limiting owners actual cost to less than the 11 months of fiscal year 2014 included in the lease term. In this case the Owner recognized that NYCCD could not receive reimbursement for the 5 months of occupancy under the lease in 2013 and waived payment of rent for that period and accepted below market rent and a significant financial loss.

* Comment 29

Under these circumstances we believe ignoring the expenses incurred by Owner in the 1st five months of the lease and ignoring the substantial loss willingly incurred by Owner during the fiscal year constructs fictional owner's profit for fiscal year where it did not exist in reality. We believe it distorts the intent of the RCM by recouping funds actually paid by Tenant after January 1, 2014, in a LTAL situation where Landlord charged less than a fair market lease value and lost a substantial amount of money under the lease during the fiscal year.

* Comment 30

We have provided documents demonstrating that Owner purchased the property in order to provide for occupancy for NYCCD. Owner's sole business is the ownership and leasing of the 127th Street property. NYCCD leased the property as of August 1, 2013, in order to prepare the property for operation of its 4410 preschool and took many steps prior to January 1, 2014 to do so as indicated above. For reasons we have discussed, we believe that Owner's actual cost for the portion of the 11 months of the full fiscal year during the lease period should be the limiting factor on the NYCCD rental expense incurred after January 1, 2014.

* Comment 31

We also are concerned that Auditors proposed to exclude certain expenses incurred by owner in determining Owner's Costs. We believe that owner's actual cost means owner's actual cost and does not permit excluding legal fees, accounting fees or other charges which are part of owners cost in owning the property with NYCCD as the sole tenant.

* Comment 32

5. <u>Financial Assistant</u>

The Executive Director employs a Financial Assistant in the State of Maryland where he maintains a residence. The Auditors describe her as a personal assistant to the family of the Executive Director and an office manager for both NYCCD and NYCIT. They report that NYCCD maintained no time records or other documentation to support the expenses charged to NYCCD. They acknowledge that we sent documents like emails bank deposit slips and property tax filings for real or other property located in Maryland and Quicken reports.

16

Nevertheless that documents failed to show that the executive assistant actually provided services to NYCCD's cost based programs.

The facts are somewhat different. The auditors fail to mention that this individual has an MBA, that we reported that she played a major role in the administration of the NYCCD Pension and Profit Sharing Plans of and that we supplied a very large number of documents she prepared far far beyond what they describe and a large number of emails in the operation of the Pension and Profit Sharing Plans including the accounting firms preparing financial statement of the plans and account representative of the Sentinel Group which provides actuarial and administrative services for the Plans. We supplement that here by attaching a larger selection of emails from and to the Financial Assistant. While the auditors suggest we did not provide a job description, we supplied the following list of NYCCD and NYCIT responsibilities:

* Comment 33

* Comment 34

NYCCD tasks:

1. Processing all bank deposits for NYCCD (filling out deposit slips, electronic depositing, scanning checks and sending copies to the A/P and Payroll Coordinator, maintaining records) - ongoing
2. Maintaining financial records in Quicken, reconciling six bank/investment accounts for Profit Sharing and Pension Plans - ongoing
3. Producing Profit Sharing and Pension Plan Asset reconciliations, including all necessary reports for supporting documentation - twice a year
4. Processing Profit Sharing and Pension distributions (getting all the paperwork in order, issuing and mailing checks, filling out and sending tax forms to distribution recipients) – once a year
5. Filling out and filing necessary reports with IRS (Forms 1099-Rs, 1096, 945), handling communications with IRS – yearly and ongoing.
6. Working with auditors on Profit Sharing and Pension plans audits (providing all requested information – statements, reports, etc., answering all their questions) – every year
7. Filing Personal Property Returns for NYCCD for the state of Maryland –every year
8. Updating records tracking monthly Profit Sharing and Pension Plan Values in Excel – ongoing
9. Maintaining files/general records for Pension and Profit Sharing Plans – ongoing.

NYCIT tasks:

1. Processing all bank deposits for NYCIT (filling out deposit slips, electronic depositing, scanning checks and sending copies to Shue Fee, maintaining records) – ongoing

The Auditors make the surprising claim that NYCCD did not maintain time records or other documentation to support these expenses. In fact, we supplied a record of each days time allocated to NYCCD versus the much larger amount of time allocated to the Executive Director's personal financial administration beginning on September 18, 2012, shortly after she was employed by the Executive Director, through June 30, 2015. She did not allocate between NYCCD and NTCIT until January 1, 2014. We have provided data on the allocation between NYCCD and NYCIT based on the period beginning January 1, 2014, and made an allocation on that basis in FY14.

* Comment 35

17

Finally, the Auditors express doubt that the Financial Assistant did the work claimed for her or that she is responsible for the documents supplied on her behalf.

The Auditors asked to interview her and were invited to do so. They failed to do this and made no investigation which would warrant their conclusion which could have included interviews with the accountant and Sentinel officials she dealt with or officials of NYCCD. We believe this disallowance is completely unjustified.

*
Comment
36

State Comptroller's Comments

1. NYCCD's assertion is inaccurate. Section 4410-c of the Education Law requires our office to audit the expenses of such special education providers and states that these audits "shall include any appropriate findings and recommendations of the comptroller regarding the propriety of the amounts reported as expenses to the department as well as any other findings deemed appropriate with respect to the public funding of the special education services." As such, when we determine that costs do not meet the requirements of the SED's Reimbursable Cost Manual (Manual) and find other weaknesses in a provider's operations, it is within our authority to identify them and recommend that they be appropriately addressed and corrected.

2. During our audit, we reviewed the Consolidated Fiscal Reports (CFRs) which NYCCD submitted to SED, and determined if the costs NYCCD reported were properly calculated, adequately documented, reasonable, and allowable under SED's guidelines, including the Manual. We identified costs that did not meet this criteria and made recommendations to both NYCCD and SED.

3. Contributions from another entity to cover costs that were greater than those reimbursable by SED are outside the scope of our audit and cannot be used to reduce the amounts recommended for disallowance because they did not comply with the Manual's requirements. In addition, NYCCD did not reduce the costs reported for reimbursement by the identified donations. Further, our audit did not comment on NYCCD's spending of its private funds. Refer to Comment No. 2.

4. Our audit did not ignore information of essential fact. We reviewed the information provided and determined that it did not sufficiently support the reported costs. Moreover, NYCCD did not reduce the reported rental cost of the 159 West 127th Street building by the donation it received from the executive director and his partners in return for NYCCD giving up its verbal agreement to purchase the 62nd Street building from the Archdiocese. Additionally, NYCCD representatives did not provide us with documents honoring this commitment. Rather, on March 11, 2016, NYCCD's executive director advised us that he would transfer these distributions to NYCCD when NYCCD's financial statement was finalized within two weeks (or by the end of March 2016). However, NYCCD had not provided auditors with information confirming such transaction prior to the end of our audit.

5. We reassert our statement on page 8 of the report that the documentation provided by NYCCD does not meet the Manual requirements. The last contract executed with the controller was dated 2005. In addition, the time records kept for the controller did not meet the Manual's requirements that they note time in/out and a description of the tasks performed. The controller worked for both the preschool special education provider NYCCD (SED programs) as well as the for-profit (non-SED programs) entity owned by the executive director and his wife, NYCIT. The time records kept by the controller for the

majority of the period in scope do not clearly state how much of the recorded time was spent performing work for each entity. Furthermore, as reflected in our report, the Manual instructs that expenditures which cannot be charged directly to a specific program must be allocated across all programs and/or entities that benefitted from the expenditure. The Manual also states that all allocation methods and basis be documented and retained.

6. We disagree. The circumstances presented do not form the basis of a unilateral contract. No matter how this arrangement is characterized, it does not comply with the Manual's requirements that contractual agreements must be in writing, signed, and dated. Therefore, we determined that this consultant's rates may be reimbursable up to $70 per hour as prescribed by the most recently executed contract, if such rate is supported by adequate documentation as required by the Manual. Moreover, NYCCD did not maintain records showing the details of the controller's services prior to November 4, 2013. Further, we found that the controller incorrectly included for reimbursement the time he spent providing non-reimbursable services. This includes instances during which he provided services to NYCIT.

7. The basis for our recommended disallowance is a failure to meet multiple Manual requirements. For consultants, required documentation includes, but is not limited to, the consultant's resume and a written contract which includes the nature of the services to be provided. Moreover, all payments to the consultant 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. NYCCD did not meet these requirements.

8. We reviewed the documentation and determined that it did not meet the requirements of the Manual. For example, many of the files submitted by NYCCD were Excel files purportedly prepared by the controller. We reviewed the Excel files and determined they did not include the date(s) and number of hours provided.

9. We acknowledge that the controller's time contained the required information as of November 2013 and have already made adjustments for this fact in our report. However, the time period for which the controller kept daily time records that allocated his time between the SED and non-SED programs was a very small portion of the audited period. Further, we must note that the other time information provided for the controller did not fully meet the Manual requirements for time records. In some cases it was clear where work was performed for NYCIT in the notes; in other cases it was unclear, such as when supervising shared staff.

10. We reviewed the time studies of the staff in NYCCD's financial departments (that are supervised by the controller), including the time study of NYCCD's accounts payable and payroll coordinator and the time study of NYCCD's staff accountant, and found that they spent between 11 and 55 percent of their day working on NYCIT and other unspecified operations. Therefore, a portion of the controller's time should have been charged to NYCIT. Also, refer to Comment No. 8.

11. As a longtime provider of SED preschool special education programs (including years as the Manhattan Center for Early Learning, Inc.), senior NYCCD personnel should be well versed in the requirements of the Manual, including the acceptable basis for allocating shared costs. However, NYCCD provided no support for the basis of its proposed allocations. Further, prior to November 2013, the controller did not put in adequate detail into his invoices in terms of the amount of time spent working for the respective entities in question.

12. We disagree. NYCCD had no formal analytical basis to support these percentages. Also, refer to Comment No 7.

13. We did not recommend a disallowance of any portion of the controller's compensation based on the median salary published by SED. Instead, the recommended disallowance was based on non-compliance with the Manual's requirements pertaining to cost allocations for shared staff. Also, as noted in NYCCD's response, the controller worked 4 to 4.5 days per week, and therefore, might not have worked the equivalent of one full-time employee. To that extent the controller did not constitute one full-time equivalent employee, NYCCD would not have been able to claim 100 percent of the median salary published by SED.

14. We disagree. The Ratio Value Factor is a ratio of an agency's Agency Administrative costs related to its Program costs. A comparison of all New York City filers, some of whose costs may subsequently be revised upon audit, does not verify a program is seeking reimbursement only for allowable costs. The ratio value for each entity shown on the provided spreadsheet is the percentage of agency costs that should be picked up by SED. This value is based on the expenses at the particular entity and does not represent effectiveness.

15. The fact remains that NYCCD did not have the documentation to support the costs in question, as otherwise required by the Manual. Further, we reviewed the alternative documentation and work product provided by NYCCD and made adjustments to amounts allowed/disallowed, where necessary. Also, refer to Comment No. 7.

16. As indicated in NYCCD's response, the director of related services was available for occasional telephone consultation and every few months spent approximately 2 hours at the East Harlem NYCIT site. Also, in a previous email regarding this individual, NYCCD officials advised us that the supervision of the NYCIT fellow occurred every month – as opposed to every few months. However, NYCCD failed to maintain adequate supporting documentation, such as time studies, to determine the amount of time the Director actually spent providing services to NYCIT. As a result, NYCCD could not demonstrate that the services provided were negligible or very limited and did not allocate any of these staff's cost to NYCIT. Rather, NYCCD officials incorrectly reported 100 percent of this individual's cost to the cost-based program.

17. In our correspondence with NYCCD, we did not state that the director of related services

supervised NYCCD's manager of community-based related services. Rather, we noted that NYCCD's assistant director of related services supervised this individual. In the email to which NYCCD refers, we stated, "However, we found that NYCIT benefitted from these individuals [which includes NYCCD's assistant director of related services]." This includes supervising NYCIT's therapists such as the manager of community-based related services. Moreover, we interviewed NYCCD's assistant director of related services, who confirmed that she supervised this individual.

18. We disagree. NYCCD provided no evidence or support that the time spent was limited. The Manual requires that shared staff should be allocated over all programs that benefit from their services.

19. We did not interview the manager of community-based related services because we found sufficient evidence from other sources. Specifically, we reviewed the Manager's personnel files and interviewed her supervisor, NYCCD's assistant director of related services. The assistant director told us that she supervised the manager of community-based related services. Moreover, we also interviewed and requested information from NYCCD's executive director and director of human resources. The information they provided also confirmed that NYCCD's assistant director of related services supervised the manager of community-based related services.

20. The allocation of 50 percent of the employee's compensation was not arbitrary or unjustified. Section III.1.M.1(i) of the Manual states that salaries of employees who perform tasks for more than one program and/or entity must be allocated among all programs and/or entities for which they work. Because NYCCD would not provide us with the financial or other pertinent information for NYCIT, we concluded that it was fair and reasonable to allocate 50 percent of the employee's compensation to each entity for which she provided services. SED officials agreed with this allocation, given the circumstances.

21. As noted in our report, we requested and reviewed invoices submitted by the occupational therapist and found that these invoices did not adequately detail the services provided, as otherwise required by the Manual. In addition, NYCCD did not maintain records showing how it allocated the therapist's costs between the two entities and their respective programs. We requested and reviewed alternate documentation and, using this available documentation, were able to support some of the occupational therapist's costs.

22. We disagree. NYCCD could not provide evidence that these expenses were only related to the SED programs. Further, the "extra services" included time the occupational therapist spent reviewing NYCIT's home-based charts and interviewing candidates for NYCIT. We could not determine the amount of time she spent performing these tasks. As mentioned on page 9 of the report, we requested and reviewed alternative documentation (e.g., logs) from the occupational therapist to support costs for extra services. We also requested alternative documentation from NYCCD officials to support and detail the services this individual actually provided. However, they could not provide such details.

23. NYCCD should document the details of the actual services provided as well as the time spent on each activity as required by the Manual. As indicated in NYCCD's response, the time this individual spent on these services varied from week to week. However, NYCCD did not maintain records in support of costs it claimed for reimbursement on its CFRs.

24. NYCCD did not allocate the time this individual spent performing interviews. Moreover, prior to our report, NYCCD did not track the time this individual spent providing shared services to both NYCCD and NYCIT. Rather, NYCCD charged the entire cost of the shared service only to cost-based programs. Subsequently, NYCCD officials provided us with a list of all related services candidates NYCCD may have interviewed during the audit scope and estimated that they believe each interview took about an hour. NYCCD officials claimed that, based on this estimate, the cost would be minimal. However, we noted that NYCCD officials charged the entire cost of the services in question to the cost-based program – and none of the cost to NYCIT.

25. We disagree. The documentation provided by NYCCD officials did not meet the Manual's requirements. Refer to Comment No. 21.

26. Our report did not distort the position of NYCCD officials with respect to rent expenses. Our use of the term "rent expense" covers all claims for expenses paid to a landlord for occupying a building. This includes amounts paid to a third-party landlord, as well as claims for reimbursement of the owner's cost.

27. According to the Manual, occupancy costs of a new location are not reimbursable if the costs are incurred before the date the program actually occupies the space, unless such costs are incorporated in an approved tuition rate. This, however, did not occur. Similarly, occupancy costs for a prior location are reimbursable up to the actual date of occupancy of the new location, unless prior approval allows an exception. A move to a new location must be formally approved by SED, and any associated moving cost is subject to review and pre-approval by DOB. Likewise, instructional and non-instructional facility space, to be occupied by approved programs in which space is new, is substantially altered, or resulted in capitalized costs in excess of $100,000, requires written pre-approval from SED's program and fiscal designees. Again, this did not occur.

    Furthermore, the Manual states that costs incurred in an LTAL lease of real property shall be reimbursed based on the lower of the owner's actual cost or fair market value. According to the CFR Manual, the actual cost may include depreciation, amortization, mortgage interest, property taxes, insurance, utilities and repairs, and maintenance. Moreover, expenditures that cannot be charged directly to a specific program must be allocated across all programs and/or entities using allocation methods that are fair and reasonable. These allocation methods and their basis should be documented and retained.

28. We disagree. In their calculation of costs for reimbursement under owner's costs [occupancy costs] for fiscal year 2014, NYCCD officials included costs prior to January 1, 2014. For example, NYCCD officials included the real estate taxes and depreciation expense

calculated for periods prior to January 1, 2014. Additionally, NYCCD officials included the accountant fee associated with the owners hiring a consultant to prepare and review the Partnership Federal and State Income tax returns for the year ended December 31, 2012. In addition, NYCCD officials could not provide support documents for the other costs not included in our review. This includes the referenced accounting fees, real estate taxes, and depreciation expenses. Also, refer to Comments No. 26 and 27.

29. We disagree. Section 41.B.(4) outlines the reasonable criteria when more than one program is operated in a rented facility. Our basis for recommending disallowance is the failure of NYCCD to calculate costs based on actual utilization. The SED cost-based programs did not operate in the West 127th Street facility prior to January 1, 2014. Also, refer to Comment No. 27.

30. We disagree. NYCCD officials did not meet the Manual's requirement for providers to obtain SED's approval prior to incurring costs for moving to a new location. In addition, we cite the Manual's guidelines to request reimbursement for a new location while also requesting reimbursement for a prior location. Also, refer to Comment No. 27.

31. The Manual clearly states that the site must be approved by SED before costs can be reimbursed. However, NYCCD officials requested reimbursement for a new location's cost without complying with the Manual. Specifically, NYCCD officials failed to obtain SED's approval prior to December 6, 2013. Additionally, NYCCD officials sought operating cost reimbursement for the 127th Street location for the six months ended December 31, 2013, while also requesting reimbursement for the same period for the 62nd Street location. Furthermore, it should be noted that the 159 West 127th Street location was occupied by another preschool special education provider immediately before NYCCD occupied the space. Also, refer to Comments No. 27 and 28.

32. We reviewed the documents provided and considered them in determining the non-reimbursable costs reported by NYCCD officials. For example, we disallowed the legal fees because NYCCD officials could not provide support for this cost. Also, refer to Comments No. 27 and 28.

33. We did not question the financial assistant's qualifications to provide services as an office worker. Rather, we requested sufficient documentation, as required by the Manual, which NYCCD officials used to determine the amount of the assistant's salary that officials claimed on NYCCD's CFR.

34. We stand by our assertion that there was no job description for the financial assistant for the period under audit. The list referenced by NYCCD officials was prepared during the audit fieldwork – after auditors requested her job description.

35. The Manual requires that time records of non-direct staff, such as the financial assistant, who work for more than one entity must be signed and dated by the employee and the employee's supervisor. NYCCD did not provide us with such records. What we received

was a series of emails between the financial assistant and other NYCCD and NYCIT staff along with work that she purportedly completed. The spreadsheets, which NYCCD officials provided for the financial assistant, did not provide sufficient evidence of compliance with the related Manual requirement.

36. We made several requests to the executive director to speak with the financial assistant, including email requests on August 16, 2016 and August 23, 2016. On August 29, 2016, NYCCD's executive director responded that we could interview the individual, but our interview should be scheduled after Labor Day. However, NYCCD's executive director did not provide any contact information or set up a meeting for auditors and the financial assistant. Instead, we interviewed her supervisor (the executive director), the director of human resources, and NYCCD's consulting controller regarding this individual's functions.