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 Therapy Placement Services, Inc.

Report 2016-S-87 December 2018

Executive Summary

Purpose

To determine whether the costs reported by New York Therapy Placement Services, Inc. (NYTPS) on its Consolidated Fiscal Reports (CFRs) were properly calculated, adequately documented, and allowable under the State Education Department's (SED) guidelines, including the Reimbursable Cost Manual (RCM). The audit covered expenses reported on NYTPS' CFR for the fiscal year ended June 30, 2014 and certain expenses reported on NYTPS' CFRs for the two fiscal years ended June 30, 2013.

Background

NYTPS is an SED-approved, for-profit organization that provides preschool special education services to children with disabilities who are between three and five years of age. NYTPS is reimbursed for these services through rates set by SED. The reimbursement rates are based on financial information, including costs, that NYTPS reports to SED on its annual CFR. To be eligible for reimbursement, reported costs must comply with the RCM's requirements. For the three fiscal years ended June 30, 2014, NYTPS reported $23.5 million in reimbursable costs on its CFRs for its rate-based preschool special education program.

Key Findings

For the three fiscal years ended June 30, 2014, we identified $841,392 in reported costs that did not comply with SED's requirements, including $483,136 in personal service costs and $358,256 in non-personal service costs, as follows:

- $420,281 in employee salaries that lacked sufficient documentation to support the amount allocated to the preschool special education program;
- $308,761 in agency administration costs that were inappropriately allocated and overcharged to the preschool special education program;
- $62,855 in executive compensation that exceeded median salaries for comparable administrative job titles of public school districts in the region; and
- $49,495 in ineligible non-personal service costs, including $31,560 in non-program-related costs; $11,331 in costs for a different reporting period; $6,047 in non-reimbursable expenses such as non-audit services, bank fees, and food for staff; and $557 in expenses that lacked required supporting documentation.

Key Recommendations

To SED:

- Review the disallowances identified by our audit and, if warranted, make the necessary adjustments to the costs reported on NYTPS' CFRs and to NYTPS' tuition reimbursement rates.
- Remind NYTPS officials of the pertinent SED requirements that relate to the deficiencies we identified.

To NYTPS:

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

Other Related Audits/Reports of Interest

Adirondack Helping Hands, Inc.: Compliance With the Reimbursable Cost Manual (2016-S-88)
Building Blocks Developmental Preschool, Inc.: Compliance With the Reimbursable Cost Manual (2017-S-1)

State Of New York
Office of the State Comptroller

Division of State Government Accountability

December 31, 2018

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

Ms. Barbara Johnston
Executive Director
Ms. Joanne Lynn
Assistant Executive Director
New York Therapy Placement Services, Inc.
299 Hallock Avenue
Port Jefferson Station, NY 11776

Dear Ms. Elia, Ms. Johnston, and Ms. Lynn:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for tax dollars spent to support government-funded services and operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. The 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 costs submitted by New York Therapy Placement Services, Inc. to the State Education Department for purposes of establishing preschool special education tuition reimbursement rates. This audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution; Article II, Section 8 of the State Finance Law; and Section 4410-c of the State Education Law.

The audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Office of the State Comptroller
Division of State Government Accountability

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Background

New York Therapy Placement Services, Inc. (NYTPS), a for-profit organization that provides special education services from locations in Farmingdale and Port Jefferson Station, New York, is authorized by the State Education Department (SED) to provide, among other programs, preschool special education services to children with disabilities who are between three and five years of age. During our audit period, NYTPS operated one rate-based preschool special education program, Preschool Special Education Itinerant Teacher Services (SEIT Program). During the fiscal year ended June 30, 2014, the SEIT Program served 638 preschool children with special education needs from New York City as well as from Nassau and Suffolk counties.

The counties that use NYTPS' preschool special education services pay tuition to NYTPS using reimbursement rates set by SED. The State, in turn, reimburses the counties 59.5 percent of the tuition that the counties pay. SED sets the special education tuition rates based on financial information, including costs, reported by NYTPS on its annual Consolidated Fiscal Report (CFR) that it submits to SED. Costs reported on the CFR must comply fully with the guidelines in SED's Reimbursable Cost Manual (RCM) regarding the eligibility of costs and documentation requirements, and must meet the reporting requirements prescribed in the Consolidated Fiscal Reporting and Claiming Manual (CFR Manual). For the three fiscal years ended June 30, 2014, NYTPS reported over $23 million in reimbursable costs for the SEIT Program on its CFRs.

Audit Findings and Recommendations

According to the RCM, costs reported on the CFR are considered for reimbursement if they are reasonable, necessary, directly related to the special education program, and adequately documented. For the three years ended June 30, 2014, we identified a total of $841,392 in reported costs that did not comply with SED's requirements for reimbursement. The ineligible costs included $483,136 in personal service costs and $358,256 in non-personal service costs.

Personal Service Costs

Personal service costs, including all taxable and non-taxable salaries paid or accrued to employees on the provider's payroll as well as fringe benefits, are reported on the CFR as either direct care costs (e.g., teachers' salaries) or non-direct care costs (e.g., administrators' salaries). For the three-year period ended June 30, 2014, NYTPS reported total direct care and non-direct care personal service costs of $15.1 million on its CFRs. We identified $483,136 in personal service costs that did not comply with the requirements in the RCM and the CFR Manual. NYTPS did not have sufficient documentation to support the allocation of personal service costs reported on its CFRs. Further, we determined NYTPS' executive compensation exceeded the median salary limitations set by the RCM.

Excessive Allocation of Personal Service Costs

According to the CFR Manual, providers with personnel working in more than one program should allocate salaries and fringe benefits among the programs based on actual time and attendance records. Otherwise, the provider must complete a time study for each employee who works in more than one program. The CFR Manual provides specific criteria for an acceptable time study, including that it must encompass at least two weeks per quarter of the cost-reporting period.

NYTPS provided original time studies to support the personal service costs reported on the 2013-14 CFR for its Port Jefferson Station location. However, NYTPS did not have time and attendance records that indicated actual hours worked among different programs or sufficient time studies to support the personal service costs reported on its 2013-14 CFR for its Farmingdale location. NYTPS did not have any time studies for some employees, while for others the time studies NYTPS provided were for only one or two quarters, not all four quarters as required by the CFR Manual. Additionally, NYTPS did not have sufficient time and attendance records or time studies to support the personal service costs reported on its 2011-12 and 2012-13 CFRs for either location.

Because NYTPS did not have adequate documentation to support the allocation of personal service costs charged to the SEIT Program, we assessed the costs using the following allocation methods:

- For direct care staff, we reallocated each employee's salary based on the percentage of total operating costs charged to the SEIT Program compared to the total operating costs charged to all programs the employee was charged to.

- For certain non-direct care administrative staff, NYTPS allocated a portion of their personal service costs across all programs and a portion to specific programs. However, NYTPS did not maintain sufficient documentation to support the basis of the amounts allocated to specific programs (to support the percentage of time individuals dedicated to each program). Therefore, we reallocated their entire personal service costs across all programs, using the ratio value method, the SED-required allocation methodology for agency administrative costs. For other non-direct care administrative staff, NYTPS allocated their personal service costs only to specific programs. Similarly, NYTPS did not maintain sufficient documentation to support the basis of the amounts allocated to each program. We, therefore, reallocated their personal service costs to those specific programs based on the operating costs of those programs. In response to our preliminary audit findings, NYTPS proposed an alternative allocation methodology based on job descriptions and available time studies. However, the job descriptions did not include the percentage of time dedicated to each program. Further, certain job descriptions stated that all job duties were not listed and were subject to change. Therefore, these could not be used to identify specific programs an employee worked on. In addition, the time studies did not meet SED's requirements for sufficient time studies, per the CFR Manual.

On its 2013-14 CFR for the Farmingdale office, NYTPS allocated $319,363 in salary costs to the SEIT Program. The audit-calculated allocations totaled $270,968, a difference of $48,395; and the corresponding excess fringe benefit allocations totaled $8,325. Using the same methodology, we also found NYTPS over-allocated personal service costs for both Farmingdale and Port Jefferson Station personnel who worked on more than one program during 2011-12 and 2012-13. This resulted in an over-allocation of $282,589 and $80,972 in salary and fringe benefits for 2011-12 and 2012-13, respectively.

We discussed our findings with SED officials, and they agreed with our methodologies and conclusions.

Excessive Executive Compensation

The RCM requires that compensation (salaries plus fringe benefits) reported on the CFR for an Executive Director, Assistant Executive Director, and Chief Financial Officer not exceed the regional median salary compensation for comparable administrative job titles of public school districts, as determined and published annually by SED. Compensation for an Executive Director may not exceed the median salary for a "Superintendent," and compensation for an Assistant Executive Director and Chief Financial Officer may not exceed the median salary for an "Assistant Superintendent."

NYTPS has two owners; one was reported as the Director of Division (equated to an Assistant Executive Director by SED). The reported compensation for the Director of Division was not limited to the median salary restrictions. We compared the compensation reported for this title to the median salary for an Assistant Superintendent and found that, for 2013-14, it exceeded the limitation by $20,863, of which $5,887 was charged to the SEIT Program under the ratio value methodology. We note, during its 2013-14 rate-setting process, SED reclassified the owner's title from Director of Division to Assistant Executive Director and made the same adjustment. We also found that the reported compensation for the Executive Director and Chief Financial Officer exceeded the median salary compensation levels in 2013-14.

For our three-year audit period, we compared the salaries of the Executive Director, Assistant Executive Director, and Chief Financial Officer to the median salaries for Superintendents and Assistant Superintendents in the region. We found their compensation exceeded the median salaries for comparable positions in the region by a total of $177,703, which resulted in adjustments to the SEIT Program of $62,855, as shown in Table 1.

Table 1

Job Title	2011-12	2012-13	2013-14	Total
Executive Director	$2,721	$0	$625	$3,346
Assistant Executive Director	26,522	20,160	5,887	52,569
Chief Financial Officer	0	0	6,940	6,940
Totals	**$29,243**	**$20,160**	**$13,452**	**$62,855**

We discussed these findings with SED officials, and they agreed with our methodologies and conclusions.

Non-Personal Service Costs

According to the RCM, non-personal service costs must be reasonable, necessary, program-related, and sufficiently documented. Any expenditure that cannot be charged directly to a specific program must be allocated across all programs that benefited from the expenditure. Providers must use allocation methods that are fair and reasonable. Allocation percentages should also be reviewed on an annual basis and adjusted as necessary. For the three fiscal years ended June 30, 2014, NYTPS reported $8.4 million in non-personal service costs on its CFRs. We identified $358,256 in such costs that did not meet SED's requirements for reimbursement, including $308,761 that was over-allocated to the SEIT Program and $49,495 that was not allowable due to various reasons, such as costs that were not related to the SEIT Program and costs that were for a different reporting period.

Excessive Allocation of Non-Personal Service Costs

NYTPS based its allocation of certain non-personal service costs on the percentage of salary expenses and the number of full-time equivalents (FTEs) assigned to each program. However, its FTE calculations only included personnel classified as employees, and excluded contracted personnel who were generally utilized by the other programs. As a result, NYTPS' methodology unfairly skewed allocated costs to the SEIT Program, which did not utilize contracted personnel.

We reallocated non-personal service costs by including contracted service personnel in the FTEs used to allocate costs to each program. We found that NYTPS over-allocated a significant share of non-personal service costs to the SEIT Program. For example, in 2012-13, NYTPS allocated $271,760 (67.53 percent) of $402,429 in costs for Repairs/Maintenance, Utilities, Supplies/Materials, Telephone, Equipment Depreciation, and Other to the SEIT Program. If NYTPS had included contracted service personnel in its allocation methodology, only $104,511 (25.97 percent) would have been allocated to the SEIT Program. Therefore, NYTPS over-allocated $167,249 ($271,760 - $104,511) to the SEIT Program.

For the three fiscal years in our audit period, we calculated that NYTPS over-allocated $308,761 in non-personal service costs to the SEIT Program, as shown in Table 2.

Table 2

Fiscal Year	Percent of NPS Allocated to SEIT	Amount of NPS Allocated to SEIT	Recalculated Percent of NPS Allocated to SEIT	Recalculated Amount of NPS Allocated to SEIT	Amount of NPS Over-Allocated to SEIT
2013-14	53.57%	$171,501	17.68%	$52,394	$119,107
2012-13	67.53%	271,760	25.97%	104,511	167,249
2011-12	41.83%	162,994	36.08%	140,589	22,405
Totals		**$606,255**		**$297,494**	**$308,761**

NPS = non-personal service costs; SEIT = Preschool Special Education Itinerant Teacher Services Program.

Non-Program-Related Costs

According to the RCM, costs are reimbursable if they are directly related to the program. For the three-year period ended June 30, 2014, we identified $97,378 in costs that were not directly related to the SEIT Program, of which $31,560 was incorrectly allocated to the SEIT Program. The non-program-related costs charged to the SEIT Program included: professional and legal fees of $29,947; purchases of $831; $440 in fundraising; $282 in therapy services; and $60 for cable television.

Costs Reported for a Different Reporting Period

The CFR Manual states that only expenses and revenues for the proper CFR reporting period should be included on the CFR, and that CFRs submitted with costs for a different reporting period will not be accepted. NYTPS reported a total of $21,472 in costs from other reporting periods on its 2013-14 CFR. Of this amount, $11,331 was incorrectly allocated to the SEIT Program.

Non-Audit Services

The RCM states that non-audit services provided by a registered public accounting firm, or any person associated with that firm, during or within 365 days of required audit work (prior to the beginning of the fiscal period being audited or after the date of the audit report issued for the audit period) are not reimbursable. On its 2012-13 and 2013-14 CFRs, NYTPS reported a total of $15,882 in non-audit services for the accounting firm that audited its financial statements. Of this amount, $5,557 was incorrectly allocated to the SEIT Program.

Additional Non-Personal Service Costs

Other non-reimbursable costs, according to the RCM, include food provided to staff and costs resulting from violations of or failure to comply with federal, State, or local laws and regulations. Further, all purchases must have adequate supporting documentation, including invoices and canceled checks. We identified $2,458 in additional ineligible non-personal service costs, of which $1,047 was incorrectly allocated to the SEIT Program. These costs included $557 in insufficiently documented purchases, $362 for food provided to staff, and $128 in unnecessary bank fees and late charges.

We discussed our findings related to non-personal service costs with SED officials. They agreed with our methodologies and conclusions.

Recommendations

To SED:

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

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

To NYTPS:

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

Audit Scope, Objective, and Methodology

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

To accomplish our objective and assess internal controls related to our objective, we reviewed the RCM as well as the CFR Manual and its related appendices. We also evaluated the internal controls over the costs claimed on, and the schedules prepared in support of, the CFRs submitted to SED. We interviewed NYTPS officials and personnel to gain an understanding of their financial and business practices. We reviewed NYTPS' CFRs for the three fiscal years ended June 30, 2014. We selected a judgmental sample of reported costs that were considered high risk and reimbursable in limited circumstances (such as salary allocations) and obtained accounting records and supporting information to assess whether the costs were properly calculated, adequately documented, and allowable.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for the purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution; Article II, Section 8 of the State Finance Law; and Section 4410-c of the State Education Law.

Reporting Requirements

We provided draft copies of this report to SED and NYTPS officials for their review and formal comment. Their comments were considered in preparing this final report and are included at the end of it. In SED's response, officials agreed with our recommendations and indicated they will take steps to address them. In NYTPS' response, officials disagreed with most of our proposed disallowances. Our responses to certain comments are embedded within NYTPS' response.

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

Contributors to This Report

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Vision

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

Mission

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

Exhibit

New York Therapy Placement Services, Inc.
Schedule of Submitted and Disallowed Program Costs
for the Three Fiscal Years Ended June 30, 2014

Program Costs	Amount per CFR	Amount Disallowed	Amount Remaining	Notes to Exhibit
Personal Services				
Direct Care	$13,899,527	$420,281	$13,479,246	
Agency Administration	1,243,718	62,855	1,180,863	
Total Personal Services	**$15,143,245**	**$483,136**	**$14,660,109**	A, B, G, I, J, L
Non-Personal Services				
Direct Care	$7,865,850	$321,519	$7,544,331	
Agency Administration	518,471	36,737	481,734	
Total Non-Personal Services	**$8,384,321**	**$358,256**	**$8,026,065**	A, C-F, H-K
Total Program Costs	**$23,527,566**	**$841,392**	**$22,686,174**	

Notes to Exhibit

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

A. RCM Section II: Cost Principles – Generally, costs will be considered for reimbursement provided such costs are reasonable, necessary, directly related to the special education program, and sufficiently documented. Such reimbursable costs will be included in the calculation of tuition rates up to any limits or cost parameters approved annually in the rate setting methodology.
B. RCM Section II.13.A(4).a – Compensation (i.e., salaries plus fringe benefits) for an entity's staff whose function is that of Executive Director, Assistant Executive Director, or Chief Financial Officer will be directly compared to the regional median compensation for comparable administration job titles of public school districts, as determined and published annually by SED's Basic Educational Data Systems (BEDS). Reimbursement of employee compensation for these job titles shall not exceed the median compensation paid to comparable personnel in public schools for similar work and hours of employment in the region in which the entity is located. Compensation for an Executive Director providing services to an Article 81 and/or Article 89 funded program will be compared to the median "Superintendent-Independent" compensation for the region in which the entity is located and compensation for an Assistant Executive Director and Chief Financial Officer will be compared to the median compensation for "Assistant Superintendent."
C. RCM Section II.14.F – Costs associated with non-audit services provided by a registered public accounting firm, or any person associated with that firm, during or within 365 days of required audit work (prior to the beginning of the fiscal period being audited or after the date of the audit report issued for the audit period) are not reimbursable. Such non-audit services include:
    - Bookkeeping or other services related to the accounting records or financial statements of the audit client;
    - Financial information systems design and implementation;
    - Appraisal or valuation services, fairness opinions or contribution-in-kinds reports;
    - Actuarial services;
    - Internal audit outsourcing services;
    - Management functions or human resources;
    - Broker or dealer, investment advisor or investment banking services;
    - Legal services and expert services unrelated to the audit; and
    - Any other service that the Board of the provider does not approve, or that SED or other governing State agency does not approve as reasonable and necessary, consistent with applicable requirements and the RCM.
D. RCM Section II.21 – Costs resulting from violations of or failure by the entity to comply with federal, State and/or local laws and regulations are not reimbursable.
E. RCM Section II.22.C – Costs of food provided to any staff including lunchroom monitors

are not reimbursable.

F. RCM Section II.23 – Costs or organized fundraising (i.e., financial campaigns, endowment drives or solicitation of gifts and bequests) to raise capital, or to obtain contributions are not reimbursable.

G. RCM 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. Guidelines for acceptable time studies for CFR filers are provide in Appendix L - "Acceptable Time Studies" - of the CFR Manual.

H. RCM Section III.1.D – All purchases must be supported with invoices listing items purchased and indicating date of purchase and date of payment, as well as canceled checks.

I. RCM Section III.1.M(1) – Any expenditure that cannot be charged directly to a specific program must be allocated across all programs and/or entities benefited by the expenditure. For example:
   - 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.
   - The cost of supplies that are purchased for distribution among multiple programs must be allocated among these programs if direct charges are not possible. Adequate documentation of the allocation methodology should be maintained.

J. RCM 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 (7) years. Allocation percentages should be reviewed on an annual basis and adjusted as necessary.

K. CFR Manual Section 3.0 – Only expenses and revenues for the proper CFR reporting period should be included in the CFR. CFRs submitted with expenses and revenues for a different reporting period will not be accepted.

L. CFR Manual Appendix L – Providers with personnel who work in more than one program should allocate their salary to the proper cost center during the normal accounting cycle based on actual time and attendance records. If this does not occur, the service provider must complete a time study for each employee who works in more than one program. Following are criteria for an acceptable time study. These criteria are the minimum standards. If necessary, a service provider can expand the length of the time study.
   - A minimally acceptable time study must encompass at least two weeks per quarter of the cost reporting period.
   - Each week selected must be a full week (Monday to Friday, Monday to Saturday, or Sunday to Saturday).
   - The weeks selected must be equally distributed among the months of the cost reporting period, e.g., week 3 and 4 in March, week 2 and 3 in June, week 3 and 4 in September, and week 1 and 2 in December.

- No two consecutive quarters may use the same weeks for the study, e.g., week 1 and 2 in March and June.
- The time study must be contemporaneous with the costs to be allocated. Thus, a time study conducted in the current cost reporting year may not be used to allocate the costs of prior or subsequent cost reporting years.
- The time study must be provider specific.

Agency Comments - State Education Department

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

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May 29, 2018

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

Dear Ms. Inman:

The following is the New York State Education Department's (SED) response to the draft audit report, 2016-S-87, Compliance with the Reimbursable Cost Manual: New York Therapy Placement Services, Inc. (NYTPS).

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

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

Recommendation 2:

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

We agree with this recommendation. SED will continue to provide technical assistance whenever requested and will strongly recommend the NYTPS officials take advantage of our availability to help them better understand the standards for reimbursement as presented in Regulation and the Reimbursable Cost Manual (RCM). Furthermore, CFR training is available online on SED's webpage. SED recommends that all individuals signing the CFR certification statements, namely Executive Directors and Certified Public Accountants, complete this training. This training is a requirement for preschool special education providers upon approval and reapproval.

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

Sincerely,

Sharon Cates-Williams

Sharon Cates-Williams

c: Christopher Suriano
Hal Matott
Suzanne Bolling

Agency Comments - New York Therapy Placement Services, Inc. and State Comptroller's Comments

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June 11, 2018

VIA ELECTRONIC EMAIL

Ms. Andrea Inman
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Dear Ms. Inman,

Re: New York Therapy Placement Services- Report 2016-S-87

State Comptroller's Comment 1: Throughout this audit, we worked to accommodate NYTPS' concerns, minimize disruptions to NYTPS' staff and operations, and afford ample opportunities for NYTPS to provide sufficient support for the costs reported on its CFRs.

In response to our draft audit report, NYTPS disputed several of our findings and conclusions. We maintain that our findings and conclusions are correct and supported by sufficient, appropriate audit evidence. We conduct our audits in accordance with generally accepted government auditing standards, which require us to obtain sufficient, appropriate evidence to support our findings and conclusions. To ensure compliance with those standards, our audits undergo an internal quality assurance review. In addition, we undergo regular external peer reviews established by the National State Auditors Association. Lastly, we discussed our audit results with SED officials and they agreed with our methodologies and conclusions.

Our responses to each of NYTPS' concerns with the audit findings are presented throughout this response in the applicable sections, beginning after the NYTPS Executive Summary.

This letter is in response to the Draft Audit Report issued to New York Therapy Placement Services, Inc. ("NYTPS") dated April 2018 and is submitted by Barbara Johnston, Executive Director and 50% shareholder of NYTPS. We wish to extend our appreciation for the time and consideration in reviewing the preliminary findings in order that the audit report contain an accurate representation of audit findings that are supported by the relevant regulations and guidance.

Over the span of the OSC audit, NYTPS appreciates the six teleconferences with the Office of the State Comptroller ("OSC"), extension of time to respond and also the opportunity to provide detailed clarifying information and supporting documentation with the purpose and intent to remove prior incorrect preliminary findings.

We adamantly object, however, that some items that remain in the Draft Audit Report are based on inaccurate utilization of guidance not in effect for the audit years, inconsistent, arbitrary and capricious

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determinations, subjective interpretations of the available methodology and creation of an unpublished and unsupported methodology. In addition, NYTPS objects to a standard being applied in the audit that is not measurable, published nor available to agencies prospectively and is based on an unreasonable subjective determination.

NYTPS is a large, highly respected provider of educational and clinical services, including Special Education Itinerant Teacher ("SEIT") services for over 30 years serving over 8,000 infants, children and adults on an annual basis. NYTPS prides itself on an excellent well-respected partnership with all governmental agencies, especially the New York State Education Department ("NYSED").

As a result of NYTPS consistent self-reporting, the certified tuition rates approved by NYSED and the Division of the Budget have decreased from $41 in 2009-10 to $39.00 in 2011-12. The $39.00 rate remained until the regional rate was established.

Upon review of the NYSED reconciliation rates found at nysed.gov for each of the OSC audit years 11/12, 12/13 and 13/14, the NYTPS SEIT rate of $39.00 is in the lowest 25% quartile when New York, Nassau and Suffolk counties are combined. The decrease to $39.00, as mentioned earlier, is due to NYTPS reasonable and consistent reporting, not due to NYSED desk audit disallowances.

NYTPS has achieved excellence in service delivery as demonstrated by its history of exemplary audits by state regulators. This service excellence has been achieved by having respect and adherence for our government partners by adhering to regulations and guidance issued by each agency and ensuring our internal control systems are adequate to protect its funds against fraud, waste and abuse.

Therefore, NYTPS takes great exception to the OSC findings and conclusions, especially where NYTPS takes extensive measures to cite numerous regulatory guidance, government directives and legal opinions in support of our fair, consistent and reasonable reporting.

The OSC audit spanned over a year with several months on site at NYTPS which placed a tremendous burden upon our resources and staffing. NYTPS provided all information requested on a timely basis. Despite being available to provide information, NYTPS was not made aware of the OSC's major findings until the preliminary audit report and was not asked to provide additional information to support our position during the onsite fieldwork. In addition, with other OSC findings, OSC did not request or review supporting documentation to obtain sufficient, appropriate evidence.

For the OSC finding **"Excessive Allocation of Personal Service Costs"** OSC neglected to review available information and created hybrid methodologies treating reliance on NYTPS documentation inconsistently. NYTPS strongly objects to the OSC reallocation methodologies that discriminate against the SEIT program and allocates employees in direct violation to regulatory guidance which results in placing employees in programs not worked, despite available job descriptions for OSC (indicating programs worked) and/or time and attendance records. NYTPS also contends that the OSC did not request and/or consider sufficient, appropriate evidence in accordance with Government Auditing Standards ("GAS") Yellow Book 6.56 before conclusion of a finding.

For the OSC finding **"Excessive Allocation of Non-Personal Service Costs"** OSC recommended that NYTPS directly consult with NYSED on a finding. NYTPS, as requested, presented support to NYSED through regulatory guidance, government directives and an expert legal opinion and also requested a meeting. After NYSED provided email communication to NYTPS, NYSED denied a meeting to speak directly to NYTPS, despite recommendation by OSC. NYTPS contends the NYSED response lacks regulatory support and is an arbitrary, capricious and subjective determination that our method was not reasonable. The questions posed by NYTPS to NYSED included reasonable questions such as; What are the standard measurements to support the conclusion? Is there a protocol, maximum % allocation or directives for allocations not published in the manual that define reasonable? Did OSC share the procedures and sufficient, appropriate evidence to conclude the finding as *"Unfairly skewed allocated costs to the SEIT Program"?*

NYSED stated the following position in an email to NYTPS on 6-1-18: *"The standard used to disallow some of your expenses was that your method for allocating certain costs between your programs was not reasonable. It was deemed not reasonable because it directed more costs to the SEIT program and less cost to your other program and there was not a justification to support this "skew" - I feel like I have answered all the questions on this matter."* See Exhibit G

We are extremely concerned with the denial of rights afforded to our agency in terms of obtaining supporting information from NYSED that supports a fair, reasonable measurable protocol or standard that is published and used consistently for all agencies. We also question the role of the NYSED in "directing" the OSC, as OSC stated in a meeting 2-6-18: *"that as the final administrator of this program, SED will make the final determination"* when the OSC is the one performing an audit of NYTPS pursuant to Article V, Section 1 of the State Constitution and Section 4410-c of the Education Law. Upon review and research of the OSC cited references in the engagement letter, NYTPS does not find the authority for NYSED.

NYTPS indicated citation of six regulatory guidelines from the Reimbursable Cost Manual ("RCM") and Consolidated Fiscal Reporting Manual ("CFRM") as well as government directives and an expert legal opinion to support our methodology. NYTPS questions when specific published information does not exist from OSC or SED, how an audit body can make a subjective determination resulting in a disallowance without a protocol for our agency to follow?

NYTPS provided extensive support and justification which is the very published guidance approved by the Consolidated Fiscal Reporting System Interagency Committee and by The University of the State of New York, New York State Education Department, Rate Setting Unit. NYTPS objects to non-consideration of published guidance available for NYTPS to follow. NYTPS objects to a "standard" that is used in an audit that is not measurable or available for review and measure prior to reporting expenditures on a CFR report.

In this response, NYTPS will further explain how the OSC created and NYSED supported an unpublished hybrid allocation methodology that does not exist and also violates published guidance and is not in accordance with Generally Accepted Accounting Principles ("GAAP"), RCM, CFRM, Department of Labor ("DOL") and Internal Revenue Service ("IRS") directives. In addition, the unpublished hybrid methodology is in direct conflict with an expert legal opinion submitted by NYTPS. NYTPS was not provided, from either OSC as the State's chief fiscal officer or NYSED as the final administrator (as referred to by OSC), an adequate response based on facts and regulatory guidance.

NYTPS takes great exception to the OSC headings: "Excessive Allocation of Personal Costs", "Excessive Executive Compensation" and "Excessive Allocation of Non-Personal Service Costs" which have the impact of discrediting our CFR submissions for three years. The CFR reports were certified by an independent certified public accountant who followed the CFR Manual Audit AA Guidelines to conclude that *"the schedules are, in all material respects, in conformity with the applicable instructions relating to the preparation of the Consolidated Fiscal Report."*

The Draft Audit Report findings by your office represent an aberration in NYTPS' otherwise impeccable audit history. Accordingly, we request that the OSC and the NYSED give careful consideration to our objections which are based on a comprehensive accounting and legal examination. NYTPS looks forward to a fair and equitable examination of the contested disallowances and elimination from the final audit report.

Sincerely,

Barbara Johnston
Executive Director

Enc.

Ms. Tina Kim, OSC
Ms. MaryEllen Elia, NYSED

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NYTPS Executive Summary to OSC Audit 2016-S-87

The Engagement Letter dated October 20, 2016 states: *"This payment audit will focus on whether the costs and other required data submitted by New York Therapy Placement Services to the State Education Department on its Consolidated Fiscal Reports for purposes of rate-setting and State reimbursement were properly calculated, adequately documented and allowable under the State Education Department's guidelines, including the Reimbursable Cost Manual."*

The following report will explain and support each of the key points for each finding and will document arbitrary and capricious determinations, usage of incorrect guidance for the audit years, standards used that are not measurable and based on subjective opinion and departures from procedures prescribed in the GAS Yellow Book. (not all inclusive).

For all the above reasons, NYTPS states the audit should be deemed to be null and void and the findings based on the below should be removed.

OSC Finding: Personal Service Costs: Excessive Allocation of Personal Service Costs

OSC Utilized Incorrect References in Support of Reallocations of NYTPS Staff and Regulatory Guidance Not in Effect for the Audit Years

The OSC Draft Audit Report Includes False and Inaccurate Statements

NYTPS Provides Clarifying Information to OSC

OSC Incorrectly Identifies OSC Audit Procedures for Non-Direct Care Staff Reallocations

OSC Inconsistently Relies on NYTPS Program Identification Time and Attendance Records for Selected NYTPS Staff

OSC Cites an Invalid Reason for Reallocation of Non-Direct Care Staff Based on Subjective Determinations

OSC Discriminates Against SEIT Program with Non-Direct Care (PTC 500/600) Allocation Methodology

OSC Incorrectly Interprets the Ratio-Value Method, Incorrectly Calls Program Administration Staff "Agency Administration Staff" and Disregards NYTPS Program Identification for CFR 1 & CFR 2 Staff in Violation of CFRM Appendix I Guidance

OSC Improperly Assigns Non-Direct Care (Program Administration) Employees to Programs in Which the Employees Did Not Work Which Is in Direct Violation of RCM III 1. M.

NYTPS Contends OSC Did Not Perform Due Diligence and Gather Sufficient, Appropriate Evidence in Violation of Government Audit Standards ("GAS")

NYTPS Supporting Documentation and Regulatory Guidance in Support of the Fair, Reasonable, Consistent Allocations

NYTPS Summary Statement in Objection to OSC Finding Excessive Allocation of Personal Service Costs

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OSC Finding: Personal Service Costs: Excessive Executive Compensation

OSC's Reassignment of One of NYTPS' Owners Was Erroneous

OSC Finding: Non-Personal Service Costs: Excessive Allocation of Non-Personal Service Costs

OSC Dismantles A Consistent & Reasonable Methodology Which Incorporates NYSED Mandates

OSC and NYSED Conclusions Lack Regulatory Support in the Definition of "Unfairly Skewed" or Measurement of Reasonable

NYTPS Allocation Methodology Supports the RCM Definition of Reasonable Cost

OSC Created Hybrid Methodology That Is Unsupported by Regulatory Guidance and Government Directives

OSC Disregards Expert Legal Opinion Obtained By NYTPS

OSC Hybrid Methodology Allocate Costs in Violation of CFRM Appendix J- Usage

NYTPS Documents Usage and Applicability of Costs to SEIT Employees vs Independent Contractors Ignored by OSC and NYSED

OSC Hybrid Methodology Allocates Costs in Violation of RCM III 1. Recordkeeping M. (1) Allocations

OSC Reallocation Was Not Discussed Until Almost 3.5 Months After OSC On-Site Fieldwork Concluded

NYTPS Consults with NYSED at Recommendation of OSC

NYTPS Supports the Consistent, Reasonable Allocation Methodology with the Following Regulatory Guidance, Government Directives and Legal Opinion

NYTPS Summary Statement in Objection to OSC Finding Excessive Allocation of Non-Personal Service Costs

OSC Finding: Personal Service Costs: Excessive Allocation of Personal Service Costs

NYTPS is not in agreement with the OSC's interpretation of the regulatory guidance that is being cited for the proposed disallowance of staff. NYTPS contends adherence to the RCM and CFRM standards applicable for the audit years 11/12, 12/13 and 13/14. NYTPS will explain, the OSC's inconsistent treatment of direct care and non-direct care administrative staff and how it results in allocation of employees to programs not worked in direct violation of RCM and CFRM guidance.

In addition, the descriptions and OSC reallocations referenced in the draft audit report are incorrect.

OSC Utilized Incorrect References in Support of Reallocations of NYTPS Staff and Regulatory Guidance Not in Effect for the Audit Years

The OSC stated: *"According to the RCM, providers working in more than one program should allocate salaries and fringe benefits among the programs based on actual time and attendance records. Otherwise, the provider must complete a time study for each employee who works in more than one program. ".*

The above OSC statement and reference to the passage in the RCM is incorrect. The OSC has cited the RCM which is an incorrect reference for the statement. That statement is not contained in the RCM.

State Comptroller's Comment 2: As acknowledged below in NYTPS' response, the RCM also states 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. We modified our report to clarify the reference.

The RCM, in reference to guidance on salary allocations for the audit years is as follows:

The RCM Section III General Requirements 1. Recordkeeping B. Time Distribution: (11/12, 12/13, 13/14) "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."*** See Exhibit A

The regulations, per the RCM for the audit years, allowed NYTPS to utilize an alternative method in conformity with generally accepted accounting principles. In performing an audit to determine allowable costs, the State Education Department's guidelines, including the Reimbursable Cost Manual, that is in effect for each audit year, must be utilized.

OSC fails to recognize that the RCM expressly allowed agencies to utilize an alternative method in accordance with generally accepted accounting principles. The OSC conclusion: *"NYTPS did not have sufficient time and attendance records or time studies to support the personal service costs reported on its 2013-14 CFR for its Farmingdale location"* is a subjective conclusion.

State Comptroller's Comment 3: NYTPS' response references, "If … a time study cannot be completed, then alternative methods that are equitable and conform to generally accepted accounting principles may be utilized." We acknowledge that the RCM allows for alternative methods that are equitable and conform to generally accepted accounting principles. However, NYTPS used time studies as an allocation methodology to report personal service costs on its CFR. Yet, as stated in our report, the time studies did not meet minimum standards required by SED per Appendix L of the CFR Manual. NYTPS also used job descriptions/responsibilities as a basis to allocate costs. Yet, as also stated in our report, the job descriptions did not indicate the percentage of time dedicated to each program, and stated that all job duties were not listed and were subject to change. NYTPS did not have sufficient documentation to support the allocation of personal service costs reported on the CFRs. Absent sufficient supporting documentation from NYTPS to determine if the methodology and resulting cost allocations were fair and reasonable, we reallocated the costs using allocation methods that SED agreed with. Based on the recalculations, we maintain that personal service costs were over-allocated to the SEIT Program.

OSC referenced an incorrect requirement, for the audit years 11/12, 12/13 and 13/14, that a provider must utilize time studies and criteria as outlined in the CFR Manual. This basis is inaccurate and must be dismissed and removed due to the RCM Section III General Requirements 1. Recordkeeping B. Time Distribution cited above which was the regulatory guidance for each of the audit years.

See State Comptroller's Comment 3.

OSC used a subjective determination, without support from a regulatory basis, when they cited: *"NYTPS did not have sufficient time and attendance records."* In fact, NYTPS provided time and attendance records, for applicable employees for two quarters which were signed by both employee and supervisor with the significance that it represents a fair representation of time for the year. The signatures, assuring a fair representation of actual time and detailed job description by program worked, add a greater level of assurance of evidence. CFR Manual Appendix L- Time Studies does not require signatures. NYTPS also had available job descriptions indicating programs worked which were not all requested and/or reviewed by OSC.

State Comptroller's Comment 4: Time and attendance records provided by NYTPS did not indicate the hours worked on each program. Further, as stated in our report, NYTPS did not have any time studies for some employees, while for other employees, the time studies NYTPS provided were for one or two quarters, not all four quarters as required by Appendix L of the CFR Manual.

The RCM or CFRM does not define or use the term "time and attendance records". The RCM Section 111 General Requirements 1. Recordkeeping: *Payroll 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*. OSC performed an extensive audit of payroll records, timesheets, payroll files and job descriptions for the 13/14 year. NYTPS is not aware of any exceptions in the payroll recordkeeping or departure from the prescribed guidance indicated above in the RCM from OSC.

State Comptroller's Comment 5: The payroll records provided by NYTPS supported its aggregate payrolls costs. However, these records were not sufficient to support NYTPS' allocation of payroll costs for employees who worked on multiple programs. See State Comptroller's Comment 4.

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The OSC Draft Audit Report Includes False and Inaccurate Statements

OSC: "For non-direct care administrative staff, we reallocated personal service costs using the ratio value method, the SED-required allocation methodology for agency administrative costs."

This statement is not accurate. The OSC did not allocate all non-direct care administrative staff using the ratio value method. Inconsistent methodologies were utilized by OSC depending upon CFR reporting by NYTPS. CFRM Appendix I defines both agency administration and program administration and provides definitive guidance on CFR reporting which is violated by the OSC.

State Comptroller's Comment 6: For certain non-direct care administrative staff, NYTPS allocated a portion of their personal service costs across all programs (indicating they worked across all programs) and a portion to specific programs. However, NYTPS did not maintain sufficient documentation to support their allocations to specific programs. Therefore, we reallocated their entire personal service costs across all programs, using the SED-required ratio value allocation methodology for agency administrative costs. For other non-direct care administrative staff, NYTPS allocated their personal service costs only to specific programs. Yet again, NYTPS did not maintain sufficient documentation to support these allocations. Therefore, we reallocated their personal service costs to those specific programs based on the operating costs of those programs. As stated in our report, SED officials agreed with our methodologies and conclusions. We modified our report to further clarify our reallocation methodologies.

OSC: "As previously stated, NYTPS could not provide sufficient documentation to support its allocations of administrative staff salaries to specific programs."

The above statement is inaccurate for several reasons. The OSC did not previously state in the draft audit report that NYTPS could not provide sufficient documentation to support its allocations of administrative staff salaries to specific programs. In addition, the OSC is making a subjective determination of the term sufficient using a basis that was not in effect for the audit years.

State Comptroller's Comment 7: As stated on page 6 of our report, NYTPS did not have sufficient time and attendance records or time studies to support personal service costs reported on its CFRs. Our statement is applicable to both program and administrative staff. Our determination of "sufficient documentation" is based on the provisions in the RCM and CFR Manual. RCM Section III.1.B and CFR Manual Appendix L specify the documentation required to support allocations of personal service costs for staff who work on multiple programs. These provisions were in effect throughout our audit scope. In addition, as stated in our report, SED agreed with our conclusions.

OSC: "Therefore, in response to our preliminary audit findings, NYTPS proposed an alternative allocation methodology based on job descriptions and available time studies".

This statement is completely false and inaccurate. Subsequent to the preliminary audit report, NYTPS and OSC had calls to review inaccuracies, errors in worksheet calculations and OSC reallocation methodology misapplications. NYTPS did not, at any time, propose an alternative method to OSC in agreement that the method utilized on the certified CFR report was incorrect.

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State Comptroller's Comment 8: Subsequent to our preliminary audit findings report, in an April 3, 2018 letter, NYTPS proposed an alternative allocation methodology using a weighted ratio value to allocate personal service costs to specific programs based on job descriptions. However, as noted in State Comptroller's Comment 3, job descriptions did not indicate the percentage of time dedicated to each program and stated that all job duties were not listed and subject to change.

OSC: "However, the job descriptions did not include the percentage of time dedicated to each program. Further, certain job descriptions stated that all job duties were not listed and were subject to change. Therefore, these could not be used to identify specific programs an employee worked on".
The OSC is inconsistent and arbitrary when reliance was placed and utilized in decisions on the reallocations and placements of other employees. All job descriptions for OSC reallocated employees for 13/14 indicated the same disclaimer. All the job descriptions that OSC reviewed in the 13/14 audit year indicated applicability for the 13/14 fiscal year.

Discussed below, NYTPS can support through documented emails and records that OSC did not review all job descriptions for 13/14 and did not review the 2012/13 and 2011/12 job descriptions. See Exhibit E

State Comptroller's Comment 9: Reviewing a sample of records is a standard audit practice. We reviewed a sample of job descriptions and conducted 22 interviews with selected employees. As previously noted in State Comptroller's Comments 3 and 8, for employees who worked on multiple programs, we could not rely on job descriptions to determine the programs or amount of time worked on each program.

OSC: "In addition, the time studies did not meet SED's requirements for sufficient time studies, per the CFR Manual."

This statement is false and failed to include the RCM citation despite being listed in the OSC Draft Report Exhibit.

See State Comptroller's Comment 4.

The RCM Section III General Requirement 1. Recordkeeping B. Time Distribution: (11/12, 12/13, 13/14) "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."*** See Exhibit A

See State Comptroller's Comment 3.

NYTPS Provides Clarifying Information to OSC

NYTPS Clarifying Information OSC Audit 2016-S-87 Submitted 1-8-18 (Pages 24)
Thank you for the opportunity for allowing New York Therapy Placement Services ("NYTPS") to submit clarifying information to the Office of the State Comptroller ("OSC") regarding the audit 2016-S-87. As we stated in our Response to Preliminary Audit Findings dated September 15, 2017, and also during the conference call on 11/20/17, we are not in agreement with the departures from standard practices under

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the Consolidated Fiscal Report ("CFR") Manual and Reimbursable Cost Manual ("RCM") utilized by OSC. As stated in the Response to Preliminary Audit Findings and also on the conference call, NYTPS had found significant errors and inconsistencies on the OSC methodologies utilized and applied. These OSC methodologies served as a basis for the computation of the proposed OSC disallowances.

NYTPS also appreciates the OSC suggestion to schedule another call so that all parties understand the information contained in this report.

This report contains the following information which resulted from OSC questions during the call, suggestions by NYTPS to provide clarifying information and also additional information requested in an email by OSC on 12/6/17.

With this information and report, NYTPS continues to contend that our responses to the OSC preliminary findings warrant removal of the OSC's finding prior to the preparation of the OSC's Draft Audit Report. This submission is supplementary and does not replace the Response to Preliminary Audit Findings filed or denote that we are in agreement with any items not contained in this report.

Thank you very much. We appreciate your cooperation and willingness to review and to consider amendment of your proposed disallowances in order to prepare the OSC draft report. We are available, at your convenience to review further and look forward to our call.

NYTPS Clarifying Information OSC Audit 2016-S-87 Submitted 4-3-18 (Pages 59)
Thank you for the opportunity for allowing New York Therapy Placement Services ("NYTPS") to submit clarifying information to the Office of the State Comptroller ("OSC") regarding the audit 2016-S-87.

With this packet we are including schedules and comments on the OSC Worksheets received prior to the call on April 3, 2018. The following is attached:

1) Reallocation % for Ratio Value using a weighted ratio value to correctly identify employees to programs that are evidenced by job descriptions.
2) Clarification in reference to the OSC utilization of independent contractors and OTPS reallocation.
3) OSC OTPS Reallocation

With this information and report, NYTPS continues to contend that our responses to the OSC preliminary findings warrant removal of the OSC's finding prior to the preparation of the OSC's Draft Audit Report. This submission is supplementary and does not replace the Response to Preliminary Audit Findings filed or denote that we are in agreement with any items not contained in this report.

Thank you very much. We appreciate your cooperation and willingness to review and to consider amendment of your proposed disallowances in order to prepare the OSC draft report.

State Comptroller's Comment 10: We acknowledge NYTPS provided clarifying information in response to our preliminary audit findings. We reviewed the information and adjusted our findings as appropriate.

OSC Incorrectly Identifies OSC Audit Procedures for Non-Direct Care Staff Reallocations

The OSC draft audit report's description of OSC audit procedures and actual calculations performed are incorrectly stated for the Non-Direct Care staff.

OSC Finding: *"For non-direct care administrative staff, we reallocated personal service costs using the ratio value method, the SED-required allocation methodology for agency administrative costs. As previously stated, NYTPS could not provide sufficient documentation to support its allocations of administrative staff salaries to specific programs."*

The OSC conclusion and statement is not correct. The OSC did perform reallocation for administrative staff based on operating cost utilizing and relying on NYTPS program identification for PTC 500 Codes who worked in and were reported only in CFR 1 or CFR 2.

For the OSC reallocated employees reported with any time in CFR 3, the OSC chose not to rely on the NYTPS program administration program identification for those non-direct care staff for programs reported on CFR 1 and CFR 2 but chose to rely only on the CFR 3 NYTPS reporting. The significant and subjective departure rests in the OSC determination to ignore the CFR 1 & CFR 2 NYTPS program administration program identification and reallocate to all programs, disregarding actual programs worked in the OSC utilization of "Ratio Value".

State Comptroller's Comment 11: Our reallocation methodology is explained in our report and State Comptroller's Comment 6. Our reallocation methodology did not disregard actual programs worked. We reallocated personal service costs only among the programs NYTPS initially charged those costs to.

The OSC performed multiple reallocations, based on varying methodologies, based upon NYTPS program identification. The OSC states that *"NYTPS could not provide sufficient documentation to support its allocations of administrative staff salaries to specific programs"* but OSC is utilizing the same NYTPS documentation and support used for the Direct Care, 100% to Program Administration, 100% to SEIT or other Non-SEIT programs including CFR 3 reporting.

State Comptroller's Comment 12: To verify whether employees worked 100 percent on the SEIT Program, we conducted interviews with a sample of those employees. We did not reallocate the personal service costs of staff who NYTPS charged to a single program.

<u>OSC Inconsistently Relies on NYTPS Program Identification Time and Attendance Records for Selected NYTPS Staff</u>

OSC: "For direct care staff, we reallocated each employee's salary based on the percentage of total operating costs charged to the SEIT Program compared to the total operating costs charged to all programs the employee was charged to."

In order to reach the reallocation decisions stated in the report for Direct Care and 100% to Program Administration, as stated above, the OSC must have relied on the employee's job description and/or time and attendance record (signed by the employee and supervisor for two quarters). In addition, OSC must have determined those employees reported 100% to SEIT or other Non-SEIT programs as being valid based on employee's job description and/or time and attendance record.

Notwithstanding the fact that the OSC is incorrectly applying the requirements for the necessity of time studies to the incorrect years, the OSC has stated four quarters were necessary. The OSC, nonetheless credited one or two quarters of time and attendance records to validate the program identification reporting by NYTPS of employees charged as Direct Care, 100% to Program Administration, 100% to SEIT or other Non-SEIT programs including CFR 3 reporting. OSC selectively utilized NYTPS job

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description and/or time and attendance records for reliance and disregarded the same program identification information for others.

See State Comptroller's Comment 12.

State Comptroller's Comment 13: As noted in State Comptroller's Comment 7, the requirements for sufficient documentation to support allocations of personal service costs for staff who work on multiple programs were in effect throughout our audit scope.

OSC Cites an Invalid Reason for Reallocation of Non-Direct Care Staff Based on Subjective Determinations

OSC Finding: *"Further, certain job descriptions stated that all job duties were not listed and were subject to change. Therefore, these could not be used to identify specific programs an employee worked on."*

As stated previously, the OSC is inconsistent and arbitrary when reliance was placed and utilized in decisions on the reallocations and placements of other employees. All job descriptions for OSC reallocated employees for 13/14 indicated the same disclaimer. All the job descriptions that OSC reviewed in the 13/14 audit year indicated applicability for the 13/14 fiscal year.

Discussed below, NYTPS can support through documented emails and records that OSC did not review all job descriptions for 13/14 and did not review the 2012/13 and 2011/12 job descriptions. See Exhibit E

See State Comptroller's Comment 9.

The job descriptions requested and reviewed by the OSC were clearly labeled for the 13/14 year. The job descriptions, which had the same notations, must have been utilized by OSC for programs identification for other Direct Care and Non-Direct Care reallocations. The notation on the job description does not discredit the validity or accuracy.

State Comptroller's Comment 14: We did not rely on job descriptions to identify the programs staff worked on. See State Comptroller's Comment 9.

OSC Discriminates Against SEIT Program with Non-Direct Care (PTC 500/600) Allocation Methodology

As indicated above the OSC targeted only the SEIT employees for ratio value reallocation amongst all programs despite whether the employee worked in the program. If a Non-Direct Care (PTC 500/600) employee did not work in the SEIT program, and therefore was not reported in the SEIT program on CFR 1, but worked in other multiple programs as both program administration and CFR 3, this was not factored in the pool of reallocation by OSC. The SEIT program only received the downside of the OSC allocation using ratio value. Therefore, only reallocating the entire cost of the employee providing SEIT services to other programs, in which the employee did not work or have job descriptions, distorts and discriminates against the SEIT Program.

State Comptroller's Comment 15: We audited the costs NYTPS reported on its CFRs for the SEIT Program. Accordingly, we did not review documentation to support personal service costs for staff NYTPS did not charge to the SEIT Program.

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<u>OSC Incorrectly Interprets the Ratio-Value Method, Incorrectly Calls Program Administration Staff "Agency Administration Staff" and Disregards NYTPS Program Identification for CFR 1 & CFR 2 Staff in Violation of CFRM Appendix I Guidance</u>

In the OSC section for non-direct care administrative staff, OSC states: *"we reallocated personal service costs using the ratio value method, the SED-required allocation methodology for agency administrative costs"*

As discussed previously, the OSC incorrectly classified, only SEIT employees, as "agency administrative costs". The above OSC reference to the SED-required allocation methodology is only correct if the employee is 100% agency administrative and meets the definition and guidelines in CFRM Appendix I. The OSC discriminately selected and targeted PTC 500/600 SEIT employees in the SEIT program only.

Therefore, OSC utilized an incorrect reference to justify and support the reallocation of SEIT staff and disallowances. The OSC statement implies that all dual SEIT employees such as PTC 500 Program Administration /PTC 600 Agency Administration codes are 100% agency administrative costs, only for the SEIT employees who were also reported in CFR 3. The OSC ratio value method pooled the entire salary paid to the SEIT employee and reclassed to CFR 3, utilized ratio value and allocated to all programs even those not worked.

See State Comptroller's Comment 6.

As indicated in the previous section, OSC relied upon the NYTPS documentation for program identification in order to reach the decisions stated in the report for Direct Care, 100% to Program Administration, 100% to SEIT or other non-SEIT programs, including CFR 3 reporting, but ignored the CFR 1 and CFR 2 program identification for the SEIT PTC 500/600 employees, choosing to place their entire salary to CFR 3 and reallocate using ratio value. The result is the incorrect allocation of staff to programs not worked.

See State Comptroller's Comments 11 and 14.

The CFRM Appendix I Guidance states and defines "Agency Administration" as follows in direct contradiction to the OSC actions and conclusions. <u>See Exhibit B</u>

Agency Administration Defined

Agency administration costs include all the administrative costs **that are not directly related to specific programs/sites** but are attributable to the overall operation of the agency such as:
•Costs for the overall direction of the organization;
•Costs for general record keeping, budget and fiscal management;
•Costs for governing board activities;
•Costs for public relations (excluding fund raising and special events); and
•Costs for parent agency expenses.

Agency administration costs do not **include program/site specific costs or program administration costs**. Program/site costs are costs directly associated with the provision of services and are included on the appropriate line of expense on Schedules CFR-1 (lines 16 through 63).

Program administration costs are administrative costs which are directly attributable to a specific program/site (i.e., personal services and fringe benefits of Billing Personnel, Program Director, Program

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Coordinator, etc.) and **are to be included on the appropriate line of expense on CFR-1** (lines 16 through 63).

The CFRM Appendix I Guidance states and defines "Ratio Value": Allocation of Total Agency Administration Costs to Program/Sites

To **ensure equity of distribution** and to provide uniformity in allocation of **agency administration**, OASAS, OMH, OPWDD, and SED require the ratio value (R/V) method of allocation to be used on the core CFR schedules (CFR-1 through CFR-6).

The ratio value method uses operating costs as the basis for allocating agency administration expenses. Agency administration expenses must be allocated to programs operated by OASAS, OMH, OPWDD and SED as well as shared programs and "Other Programs" (includes fundraising, special events, management services contracts provided to other entities, all programs funded by non-CFRS participating State agencies, etc.) based upon the ratio of agency administration costs to the service provider's total operating costs. Please refer to Section 8.0 (FAQ) for further information.

The deeming of all dual (PTC 500/600) staff, for SEIT employees only, as 100% agency administration or ratio value eligible is an arbitrary procedure based on an arbitrary, discriminatory and inaccurate OSC assumption, in direct violation to CFRM guidance and grossly misstates and misreports the time according to program identified job descriptions, signed time and attendance records and actual job responsibilities placing staff in programs not worked or without any job responsibilities.

State Comptroller's Comment 16: In accordance with Appendix I of the CFR Manual, program administrative costs which are directly attributable to a specific program should be directly charged to that specific program. However, these costs must be allocated among the specific programs in accordance with, and meet the documentation requirements of, both the RCM and the CFR Manual. As previously stated, NYTPS' job descriptions and time and attendance records did not meet SED's documentation requirements. These records were not sufficient to support NYTPS' personal service cost allocations to specific programs. As such, we reallocated their personal service costs using the methodology explained in State Comptroller's Comment 6.

OSC Improperly Assigns Non-Direct Care (Program Administration) Employees to Programs in Which the Employees Did Not Work Which Is in Direct Violation of RCM III 1. M.

As discussed, the non-direct care (PTC 500/600) OSC reallocation for SEIT employees only, pooled together all PTC 500/600 employees who had any time recorded in CFR 3 and reallocated them to all CFR programs, using an agency administration ratio value % for each reported program that was reported on the certified CFR report. This is contrary to the employee program identification job description and available signed time and attendance records. The OSC action resulted in an inaccurate and misrepresentation of employees' job descriptions with the result of employees allocated and recorded to programs not worked in direct violation to RCM III 1. M (1). See Exhibit C

RCM III 1. M. Salaries of employees who perform tasks for more than one program and/or entity must be allocated among all program and/or entities for which they work.

See State Comptroller's Comment 11.

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<u>NYTPS Contends OSC Did Not Perform Due Diligence and Gather Sufficient, Appropriate Evidence in Violation of Government Audit Standards ("GAS")</u>

OSC Expanded the Audit but Never Reviewed and/or Requested 2011/12 and 2012/13 Documentation NYTPS contends that OSC did not obtain sufficient, appropriate evidence per GAS Section 6.56 <u>Obtaining Sufficient, Appropriate Evidence- See Exhibit D</u> to base their conclusion. For the 11/12 and 12/13 years, OSC requested generic job descriptions for which NYTPS responded that "For those codes, we do provide employees with individual job descriptions based on employees' responsibilities." OSC never requested further information and did not review any 11/12 or 12/13 job descriptions. <u>See Exhibit E</u>

State Comptroller's Comment 17: As noted in State Comptroller's Comment 9, we reviewed a sample of job descriptions and concluded we could not rely on them to determine which programs employees worked on or the amount of time worked on each program. Therefore, we did not review additional job descriptions.

OSC Did Not Review Programs at Each Location Regarding Employee Reallocations
NYTPS had furnished OSC with the detail of the revenue and costs for each of the office locations for the SEIT Program. Despite being on site for over 4 months and visiting the two offices, OSC never requested detail of the costs as they pertain to the two offices. In this case employees were reallocated to programs that did not exist at the locations that they worked.

See State Comptroller's Comment 11.

<u>NYTPS Supporting Documentation and Regulatory Guidance in Support of the Fair, Reasonable, Consistent Allocations</u>

1. RCM Section III.1. B <u>See Exhibit A</u>
   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.

2. RCM III 1. M (1) <u>See Exhibit C</u>
   Salaries of employees who perform tasks for more than one program and/or entity must be allocated among all program and/or entities for which they work.

3. CFR Appendix I: <u>See Exhibit B</u>
   Agency administration costs do not include program/site specific costs or program administration costs. Service Providers should note that all attempts should be made to directly charge an expense to the appropriate cost center (agency administration or program/site and program administration).

4. Generally Accepted Accounting Principles: GAAP AU Section 420 Consistency of Application of Generally Accepted Accounting Principles. <u>See Exhibit F</u>

<u>NYTPS Summary Statement in Objection to OSC Finding Excessive Allocation of Personal Service Costs</u>

NYTPS objects to the OSC caption: "Excessive Allocation of Personal Service Costs" and the OSC comments that NYTPS did not have sufficient documentation. NYTPS takes great exception to the dismantling of the NYTPS certified CFR 4 Personal Service Costs when the OSC is basing findings on

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inaccurate regulatory guidance for the audit years, incorrect and discriminatory interpretations of published guidance, inconsistent treatments based on the same NYTPS documentation and the OSC failure to obtain sufficient, appropriate evidence before making an audit conclusion.

In contrast, NYTPS has provided sufficient documentation, the correct regulatory adherence to the published guidance for the audit years and sufficient support for the submission of CFR 4 for each audit year.

Based on a very careful and detailed review of the OSC audit conclusions and calculations throughout the audit, NYTPS is confident in contending that subjective and arbitrary actions were taken in order to potentially recoup funding from the SEIT program. This section of the OSC draft report should be deemed null and void.

See State Comptroller's Comment 1.

OSC Finding: Personal Services: Excessive Executive Compensation

NYTPS is not in agreement with the OSC conclusions and basis that is being cited for the proposed additional median offset of salary costs for NYTPS.

OSC's Reassignment of One of NYTPS' Owners Was Erroneous

This section of the report contains numerous inaccuracies and misstatements. The OSC states: *"NYTPS has two owners; one was reported as the Director of Division (equated to an Assistant Executive Director by SED)"*

This is an inaccurate statement as the OSC was provided with a full job description during field audit. The other owner is not an Assistant Executive Director. The OSC also did not mention that NYSED internally altered a certified CFR report to perform this reclassification without notification to NYTPS.

This section also fails to mention that the review of the compensation reported for PTC 601, 602 and 603 on the CFR reports is contained in the methodology and adjusted each year by NYSED. In fact, the TRATE for each provider already includes an offset for reported applicable positions.

State Comptroller's Comment 18: Our statement is accurate. NYTPS reported one owner as Executive Director and the other owner as Director of Division for all three years of our audit scope. SED reclassified the Director of Division to an Assistant Executive Director on the 2013-14 CFR and applied the median salary threshold. Further, SED is authorized by the Education Commissioner's Regulations to make adjustments to costs reported on the CFR.

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OSC Finding: Non-Personal Service Costs: Excessive Allocation of Non-Personal Service Costs

NYTPS adamantly objects to the OSC finding that does not cite a basis other than *"Providers must use allocation methods that are fair and reasonable"* In addition OSC uses a terminology *"unfairly skewed"* which is a subjective and arbitrary determination as it does not exist in any regulations and therefore is not measurable.

State Comptroller's Comment 19: The RCM requires providers to use allocation methods that are fair and reasonable. We concluded NYTPS' allocation methodology was neither fair nor reasonable because it unfairly skewed non-personal service costs to the SEIT Program.

OSC Dismantles A Consistent & Reasonable Methodology Which Incorporates NYSED Mandates

NYTPS has utilized an allocation method consistently of Staff FTE Methodology, in accordance with regulatory guidance, for certain applicable OTPS, excluding CFR 4A independent contractors, that could not be charged directly to a program. It must be noted that the audit years were 11/12, 12/13 and 13/14.

The SEIT employees were first included in Staff FTE Methodology in the 12/13 year as it was the first year following an NYSED mandate, of SEIT Conversion from independent contractor to W2 Employee, With the conversion, the SEIT employees are now employees, supervised and belong in the Staff FTE Methodology calculation in accordance with the NYTPS consistent and reasonable methodology.

OSC and NYSED Conclusions Lack Regulatory Support in the Definition of "Unfairly Skewed" or Measurement of Reasonable

The only explanation in the Draft Audit Report from OSC to justify the OTPS reallocation is that the *"NYTPS' methodology unfairly skewed allocated costs to the SEIT program, which did not contain contracted personnel."*

As mentioned, the terminology "unfairly skewed" is a purely subjective conclusion not published in any guidance or regulation.

As NYTPS indicated in the cover letter, OSC recommended that we speak directly to NYSED which was denied. NYTPS was afforded email communications.

NYTPS requested, among other information, the details of the reimbursement standard and the standard measurements to support the conclusion that would render a fair, reasonable, consistent methodology in accordance with six published regulatory guidelines, to include an expert legal opinion, that would support the OSC and NYSED conclusion that the NYTPS allocation methodology as not fair and reasonable.

NYTPS did receive a final communication which is attached from NYSED: See Exhibit G
"The standard used to disallow some of your expenses was that your method for allocating certain costs between your programs was not reasonable. It was deemed not reasonable because it directed more costs to the SEIT program and less cost to your other program and there was not a justification to support this "skew" – I feel like I have answered all the questions on this matter."

NYTPS, after reaching out to NYSED, at the direction of OSC, was not provided support in terms of requested regulatory guidance or measurement to support this finding and therefore, concludes the finding to be an arbitrary, capricious and subjective conclusion.

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State Comptroller's Comment 20: As stated on page 8 of our report, NYTPS based its allocation of certain non-personal service costs on the number of FTEs assigned to each program. NYTPS excluded contracted personnel – who are generally utilized by non-SEIT programs – from their FTE calculations. NYTPS provides administrative billing and collection services for independent contractors, and processes their invoices. Also, while NYTPS argued contracted personnel do not use facility space, we determined contracted personnel use a similar service delivery model as SEIT personnel and neither provide services at NYTPS' facilities. Because NYTPS excluded contracted personnel from the allocation methodology, NYTPS' allocation was not reasonable and it allocated a disproportionate share of non-personal service costs to the SEIT Program. In 2012-13, NYTPS allocated nearly 70 percent of non-personal service costs to the SEIT Program.

NYTPS Allocation Methodology Supports the RCM Definition of Reasonable Cost See Exhibit H

RCM Section 1 Definitions: Reasonable Cost: A. Ordinary and Necessary; E. NYTPS did not significantly deviate from established practices of the entity or similar entities to unjustifiably increase the cost. The same methodology was used since inception and incorporated NYSED mandates.

State Comptroller's Comment 21: Converting SEIT staff from independent contractors to employees had a material impact on NYTPS' allocation methodology. In 2011-12, the last year SEIT staff were classified as independent contractors, NYTPS allocated 41.83 percent of non-personal service costs to the SEIT Program. In contrast, in 2012-13, the first year SEIT staff were classified as employees, NYTPS allocated 67.53 percent of non-personal service costs to the SEIT Program.

OSC Created Hybrid Methodology That Is Unsupported by Regulatory Guidance and Government Directives

The OSC hybrid methodology to include independent contractors serves to undermine the consistent and reasonable NYTPS methodology which has been utilized since inception of the SEIT Program and contradicts regulatory RCM and CFR guidance, Internal Revenue Service, Department of Labor and an expert legal opinion.

See State Comptroller's Comment 21.

The inclusion of CFR 4A and CFR 2 therapists (independent contractors) by OSC in the NYTPS Staff Allocation Methodology contradicts the very nature and contractual relationship NYTPS has with their independent contractors. The OSC inclusion is contradictory to guidance published in the RCM, CFR and guidance dictated by the Department of Labor and the Internal Revenue Service.

By the OSC including the therapists in the NYTPS Staff FTE Methodology calculation (for which there is no guidance in the CFR Manual or RCM for inclusion), OSC is classifying them as an employee and falsely allocated costs, that are not related to the independent contractors based on usage and NYTPS contracts to programs.

See State Comptroller's Comment 20.

The Draft Audit Report does not explain how the OSC calculated and included the CFR 4A Independent Contractors in the Staff FTE Methodology Calculation. OSC calculated an average rate of other CFR 1

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therapists to calculate an hourly rate for a total amount of CFR 2 contractors and created a standard work week which did not exist. The CFR 4 A & CFR 2 independent contractors do not have a standard work week. The CFR regulatory guidance clearly indicates how to calculate an FTE for employees only with standard work weeks.

State Comptroller's Comment 22: To allocate costs among all workers and not just those who were employees, it was necessary to recognize everyone on the same basis. Consequently, we calculated FTEs for independent contractors by taking reported hours paid and dividing it by the total number of hours in the year based on the standard work week (40 hours per week x 52 weeks per year). We used the same standard work week reported by NYTPS for employees to convert NYTPS independent contractors to an FTE. Using the same standard work week allowed for a fair and reasonable distribution of costs.

OSC Disregards Expert Legal Opinion Obtained By NYTPS

As suggested in the CFR Manual CFR 4A, NYTPS sought the opinion from a legal expert to review the OSC proposed reallocation. The report was provided to OSC on 4-3-18 which concluded:

"This, pursuant to the clear language in the Consolidated Fiscal Report and Claiming Manual, the determination by the Internal Revenue Service that the Therapists contracting with NYTPS are independent contractors is binding on OSC. Therefore, it is not proper to include the independent contractors in an allocation base of costs for which NYTPS does not reimburse or provide facilities and therefore the independent contractors cannot be included in a Staff FTE Allocation" See Exhibit I

State Comptroller's Comment 23: We are not questioning IRS determinations that NYTPS therapists are independent contractors. As stated in State Comptroller's Comment 20, we concluded both employees and independent contractors should be included in the FTE calculations used to allocate non-personal service costs.

OSC Hybrid Methodology Allocate Costs in Violation of CFRM Appendix J-Usage

The result of the OSC reallocation is that expenses are not allocated to programs based on usage. OSC created a hybrid methodology that does not exist and results in a departure from all the standards included in the NYTPS response, especially the CFR Appendix J which indicates costs should be allocated on usage. The RCM, among other provisions, also states allocations should be allocated across all programs and/or entities benefited by the expenditure. The OSC hybrid methodology directly violates those regulatory directives. See Exhibit J

State Comptroller's Comment 24: The RCM requires providers to use allocation methods that are fair and reasonable. NYTPS' initial allocation of these costs was based on FTEs, as was our reallocation of these costs. As previously explained in State Comptroller's Comment 20, we concluded NYTPS' calculation of FTEs used in their allocation methodology resulted in a disproportionate share of non-personal service costs allocated to the SEIT Program.

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NYTPS Documents Usage and Applicability of Costs to SEIT Employees vs Independent Contractors Ignored by OSC and NYSED

NYTPS provided and documented the following information which serves to support the NYSED mandated employee status of the SEIT teachers and their correct inclusion in the 12/13 Staff FTE Methodology and forward allocation base.

Direct Employee SEIT Teacher Supplies: The SEIT Teachers, as a W2 employee, were **provided direct supplies** to be used in the service to the students. Supplies are not afforded to independent contractors.

Direct Employee SEIT Teacher Related Supplies & Costs: As an employee, NYTPS pays the mandated fringe benefits and also the nonmandated health and pension (based on hour qualification). A separate SEIT Employee Policy handbook was created. This process includes **processing paperwork, eligibility, communication to payroll company, insurance companies, pension, etc. requires supplies, telephone, internet, staff time, among other expenses** due to taxes and benefits over that not afforded to 1099.

In addition, Employee SEIT Teachers are also subject to the NYC Earned Safe and Sick Time Act which requires **additional paperwork, supplies, recordkeeping, internet, equipment, telephone among other expenses.**

Direct Employee SEIT Mandatory Orientation Costs: Beginning 2012, the first year of conversion to W2, all SEIT Teachers, as employees, were required to undergo orientations. In 2012 and 2013, two of the orientation sessions were held on-site. All sessions required **supplies and materials, staff time, telephone communications, rental costs, furniture, computers & internet time, among other expenses to coordinate.**

Direct Employee SEIT Training Costs: NYTPS held SEIT trainings at various locations throughout the 2012/13 and 2013/14 year for the SEIT Teachers who are employees. All training sessions required **supplies, telephone, computers & internet among other expenses**.

Meetings and orientations and handouts include among other materials: Workshop on FBA and BIP, New school year mandatory orientation meetings, SEIT policy manual, SEIT employee manual.

Direct Employee SEIT Related Telephone Costs: Employees were **assigned cellphones** that were reviewed during OSC audit that applied to the SEIT Program.

Computer & Internet Expenses: NYTPS is required to keep and maintain an additional level of detail for the SEIT program per mandates. In addition, Employee SEIT Teachers are required to submit their schedules electronically to the office.

Insurance Costs: Employee SEIT Teachers **are not required to have their own insurance policies**, unlike the independent contractors and **are covered under the NYTPS policy** and are factored into the total cost of the policy.

Supervisory Teacher/IEP Coordinator Expenses: The SEIT Teachers, requiring supervision, have time spent interacting with and conversing with PTC 215 and PTC 238. **Supplies and materials** would include **office supplies, telephone, computers** in review and further of their responsibilities

See State Comptroller's Comment 20.

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<u>OSC Hybrid Methodology Allocates Costs in Violation of RCM III 1. Recordkeeping M. (1) Allocations- See Exhibit C</u>

Any expenditures that cannot be charged directly to a specific program must be allocated across all programs and/or entities benefited by the expenditure.

State Comptroller's Comment 25: Our allocation methodology did not violate RCM III. (1). We reallocated non-personal service costs among the programs NYTPS initially allocated these costs to.

<u>OSC Reallocation Was Not Discussed Until Almost 3.5 Months After OSC On-Site Fieldwork Concluded</u>

The OTPS reallocation proposed by the OSC was not discussed as a concern nor questioned during the on-site fieldwork phase by OSC. The OSC left the site on March 31, 2017 where the OSC clearly expressed the audit was in the final phase. On 5-31-17 OSC requested information on the NYTPS allocations. It was not until 7-12-17 on a call that NYTPS was informed of the OSC intention to reallocate the OTPS, On August 2, 2017 NYTPS was sent the OSC worksheets and the Preliminary Report.

State Comptroller's Comment 26: To accommodate NYTPS, we completed our on-site work on March 31, 2017 and continued our audit fieldwork from our office in Albany, NY. Our initial audit information request, dated October 20, 2016, included NYTPS' allocation methodology for the period July 1, 2013 through June 30, 2014.

<u>NYTPS Consults with NYSED at Recommendation of OSC</u>

Upon OSC suggestion, NYTPS reached out to NYSED for an opinion and was denied a meeting and was afforded email communications.

NYSED, among other items, asked for explanations on usage of the expenses OSC reallocated and their applicability to the SEIT Program, namely usage. NYTPS provided information, clearly providing support for inclusion in the NYTPS consistent methodology, as to additional expenses which are afforded to employees based on usage and relevance over that of an independent contractor.

The following are excerpts from communications with NYSED:

NYSED upon review of the requested material sent from NYTPS stated: *"I am not able to re-create the in-depth review that is taken as a part of an audit engagement and therefore cannot validate the information as accurate.*

When NYTPS questioned NYSED further states: *"We did consider the relevant information, and I am reading the facts in the audit and the standard applied in the audit - the facts in the audit, as applied to the standard for reimbursement are proper."*

NYSED Position in an email communication on 6-1-18: <u>See Exhibit G</u>
The standard used to disallow some of your expenses was that your method for allocating certain costs between your programs was not reasonable. It was deemed not reasonable because it directed more costs to the SEIT program and less cost to your other program and there was not a justification to support this "skew" - I feel like I have answered all the questions on this matter. "

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NYTPS Supports the Consistent, Reasonable Allocation Methodology with the Following Regulatory Guidance, Government Directives and Legal Opinion

NYTPS was able to cite and support that a reasonable and consistent allocation method was followed as provided below:
RCM Section 1 Definitions: Reasonable Cost: A. Ordinary and Necessary; E. NYTPS did not significantly deviate from established practices of the entity or similar entities to unjustifiably increase the cost. The same methodology was used since inception and incorporated NYSED mandates. See Exhibit H

See State Comptroller's Comment 21.

CFR Appendix J: If the recommended allocation method does not apply, the provider should determine a more reasonable method of allocation. Example: A service provider needs to allocate supplies and materials costs to several program/sites. The recommended allocation method noted above is units of service. However, all the program/sites do not report units of service. In this case, a more reasonable method of allocating supplies and materials would be to allocate the cost based on usage. (The IC contractors do not use the expenses and therefore should not be a driver) See Exhibit J

See State Comptroller's Comment 20.

CFR - CFR 4 Personal Services Calculation of an FTE: CFR Manual Section 16 explains and provides a directive for CFR 4 Employees Only, OSC calculated a weighted average rate from CFR 4A programs and made up a standard work week which does not exist for Independent Contractors but for only employees. See Exhibit K

See State Comptroller's Comment 22.

CFR 4A does not provide guidance for calculation of standard work weeks CFR Manual Section 17 speaks to reporting hours. An important guidance which the agency followed is: Questions regarding whether or not an individual is a contractor or an employee should be directed to the IRS, the service provider's accountant and/or tax attorney. Individuals receiving W-2 tax forms from the service provider are considered to be employees of the service provider and should be reported on Schedule CFR-4.
See Exhibit L

See State Comptroller's Comment 23.

RCM III 1. M Allocations: Any expenditures that cannot be charged directly to a specific program must be allocated across all programs and/or entities benefited by the expenditure. The cost of supplies that are purchased for distribution among multiple programs must be allocated among these programs if direct charges are not possible. See Exhibit C

Internal Revenue Service, Department of Labor Directives: NYTPS has been deemed in compliance in past audits where it categorized the Independent Contractors as Independent Contractors in accordance with all our information submitted.

See State Comptroller's Comment 23.

Opinion from Legal Expert on Classification of Independent Contractors: In accordance with the CFR directive in CFR 4A Section 17, NYTPS consulted an attorney and obtained a legal opinion which we sent in 4/3/18 which is a 26- page report with attachments. Exhibit I

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See State Comptroller's Comment 23.

NYTPS Summary Statement in Objection to OSC Finding Excessive Allocation of Non-Personal Service Costs

NYTPS strongly disagrees with the joint decision by NYSED and OSC that the OSC hybrid methodology, a methodology that does not exist and is not supported in regulatory guidance, is relevant and valid to be used in an audit. A "standard" that is used in an audit must be available for review and measure prior to reporting expenditures on a CFR report. If a standard such as the OSC "unfairly skewed" is used, the definition, measurement and guidelines of what constitutes *"unfairly"* and *"skewed"* must be published and made available prior to reporting of CFR expenditures.

See State Comptroller's Comment 19.

This constitutes a total lack of transparency, both on the part of OSC and NYSED. This decision, without appropriate evidence and information available to NYTPS, is arbitrary and capricious on the part of both OSC and NYSED and should be null and void.

Non-Program-Related Costs; Costs Reported for a Different Reporting Periods; Non-Audit Services; Additional Non-Personal Service Costs

The total expenditures for the NYTPS program audited for the three years 11/12, 12/13 and 13/14 were **$8,727,005, $7,981,074 and $6,819,487 respectively for a total of $23,527, 566**. The disallowances total $31,560, $11, 331, $5,557 and $1,047 respectively for a total of $49,495. This amounts to a .21 % of our total in the programs.

NYTPS is not challenging the above findings in this category. NYTPS will take greater care in the recording of items. NYTPS is pleased that the only other findings, other than those detailed and objected to in this response that are subjective, arbitrary, capricious and lacking regulatory support, are less than .21% of operations. The OSC has concluded the extensive review of our invoices of OTPS expenses with minimal findings due to our strong internal control systems and adherence to published regulatory guidance.

Exhibits to
New York Therapy Placement Services, Inc.'s
Response to
Office of the State Comptroller's
Draft Audit Report, Audit 2016-S-87

Dated: June 11, 2018

EXHIBITS

Exhibit A

The University of the State of New York
New York State Education Department
Rate Setting Unit
Albany, New York 12234

Reimbursable Cost Manual for Programs Receiving Funding Under Article 81 and/or Article 89 of the Education Law to Educate Students with Disabilities

This Manual applies to the July 2013 to June 2014 Tuition Rates and defines Reimbursable Costs for the July 2013 to June 2014 period.

Effective as of January 13, 2014

July 2013 Edition

SECTION III
GENERAL REQUIREMENTS

1. ***Recordkeeping***

Section 200.9 (d) of the Commissioner's Regulations requires entities operating approved programs to retain all pertinent accounting, allocation and enrollment/attendance records supporting reported data directly or indirectly related to the establishment of tuition rates for seven years following the end of each reporting year. Information relating to the acquisition of fixed assets, equipment, land or building improvements and any related financing arrangements and grants must be retained as long as the facility is used by any education program the provider operates if this period exceeds seven years.

Costs will not be reimbursable on field audit without appropriate written documentation of costs. Documentation includes but is not limited to:

A. Payroll

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.

B. Time Distribution

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. Guidelines for acceptable time studies for CFR filers are provided in Appendix L - "Acceptable Time Studies" of the CFR Manual.

C. Consultants

(1) The Department will use government publications including the IRS Publication 15-A Employer's Supplemental Tax Guide and the Handbook for Employers published by the New York State Unemployment Insurance Division as a guide to determine when individuals employed by the program are independent contractors or consultants and when individuals are employees. Teachers who provide core (IEP mandated) special education instructional services in approved special education programs must be supervised and therefore should always be treated as employees.

(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. In addition, when direct care

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The University of the State of New York
New York State Education Department
Rate Setting Unit
Albany, New York 12234

Reimbursable Cost Manual for Programs Receiving Funding Under Article 81 and/or Article 89 of the Education Law to Educate Students with Disabilities

This Manual applies to the July 2012 to June 2013 Tuition Rates and defines Reimbursable Costs for the July 2012 to June 2013 period.

July 2012 Edition

SECTION III
GENERAL REQUIREMENTS

1. **Recordkeeping**

Section 200.9 (d) of the Commissioner's Regulations requires entities operating approved programs to retain all pertinent accounting, allocation and enrollment/attendance records supporting reported data directly or indirectly related to the establishment of tuition rates for seven years following the end of each reporting year. Information relating to the acquisition of fixed assets, equipment, land or building improvements and any related financing arrangements and grants must be retained as long as the facility is used by any education program the provider operates if this period exceeds seven years.

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C. Consultants

(1) The Department will use government publications including the IRS Publication 15-A Employer's Supplemental Tax Guide and the Handbook for Employers published by the New York State Unemployment Insurance Division as a guide to determine when individuals employed by the program are independent contractors or consultants and when individuals are employees. Teachers who provide core (IEP mandated) special education instructional services in approved special education programs must be supervised and therefore should always be treated as employees.

(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. In addition, when direct care services are provided, the documentation must indicate the names of students served, the actual dates of service and the number of hours of service to each child on each date.

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The University of the State of New York
New York State Education Department
Rate Setting Unit
Albany, New York 12234

Reimbursable Cost Manual for Programs Receiving Funding Under Article 81 and/or Article 89 of the Education Law to Educate Students with Disabilities

This Manual applies to the July 2011 to June 2012 Tuition Rates and defines Reimbursable Costs for the July 2011 to June 2012 period.

July 2011 Edition

SECTION III
GENERAL REQUIREMENTS

1. Recordkeeping

Section 200.9 (d) of the Commissioner's Regulations requires entities operating approved programs to retain all pertinent accounting, allocation and enrollment/attendance records supporting reported data directly or indirectly related to the establishment of tuition rates for seven years following the end of each reporting year. Information relating to the acquisition of fixed assets, equipment, land or building improvements and any related financing arrangements and grants must be retained as long as the facility is used by any education program the provider operates if this period exceeds seven years.

Costs will not be reimbursable on field audit without appropriate written documentation of costs. Documentation includes but is not limited to:

A. Payroll

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.

B. Time Distribution

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. Guidelines for acceptable time studies for CFR filers are provided in Appendix L - "Acceptable Time Studies" of the CFR Manual.

C. Consultants

(1) The Department will use government publications including the IRS Publication 15-A Employer's Supplemental Tax Guide and the Handbook for Employers published by the New York State Unemployment Insurance Division as a guide to determine when individuals employed by the program are independent contractors or consultants and when individuals are employees. Teachers who provide core (IEP mandated) special education instructional services in approved special education programs must be supervised and therefore should always be treated as employees.

(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. In addition, when direct care

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Exhibit B

New York State Consolidated Fiscal Reporting and Claiming Manual	Subject: Appendix I – Agency Administration	Section: 42.0	Page: 42.1
	Reporting Period: July 1, 2013 to June 30, 2014		Issued: 05/14

Agency Administration Defined

Agency administration costs include all the administrative costs that are not directly related to specific programs/sites but are attributable to the overall operation of the agency such as:

- Costs for the overall direction of the organization;
- Costs for general record keeping, budget and fiscal management;
- Costs for governing board activities;
- Costs for public relations (**excluding fund raising and special events**); and
- Costs for parent agency expenses.

Which may include but are not limited to the following:

- Personal service costs of agency administrative staff (i.e., Executive Director, Comptroller, Personnel Director, etc.)
- Leave accruals and fringe benefits corresponding to the personal services listed above
- Other than personal services costs (OTPS) costs associated with agency administration activities (i.e., telephone, repairs and maintenance, utilities)
- Agency-wide auditing costs for independent licensed or certified public accountants. (Note that agency-wide auditing costs cannot be directly charged as program costs on CFR-1.)
- Depreciation and/or lease costs associated with vehicles and equipment used by agency administration staff.
- Depreciation and/or lease costs associated with space occupied by agency administrative offices.

Agency administration costs do not include fundraising costs, special events costs and management services contracts provided to other entities. Costs of fundraising, special events and management services contracts are reported on Schedule 2 in Column 7 under "Other Programs".

Agency administration costs do not include program/site specific costs or program administration costs. Program/site costs are costs directly associated with the provision of services and are included on the appropriate line of expense on Schedules CFR-1 (lines 16 through 63), DMH-1 (lines 6 through 11) and DMH-2 (lines 5 through 10). **Program administration costs** are administrative costs which are directly attributable to a specific program/site (i.e., personal services and fringe benefits of Billing Personnel, Program Director, Program Coordinator, etc.) and are to be included on the appropriate line of expense on CFR-1 (lines 16 through 63), DMH-1 (lines 6 through 11) and DMH-2 (lines 5 through 10). The program administration level of administration may not be applicable to all service providers. However, all service providers must report agency administration.

County operated service providers should note that Local Governmental Unit (LGU) Administration costs are reported as a shared program using Program Code 0890 on the applicable Schedules CFR-1 through CFR-6 and DMH-1. (Refer to Appendix K.)

New York State Consolidated Fiscal Reporting and Claiming Manual	Subject: Appendix I – Agency Administration	Section: 42.0	Page: 42.2
	Reporting Period: July 1, 2013 to June 30, 2014		Issued: 05/14

Service Providers should note that <u>all</u> **attempts should be made to directly charge an expense** to the appropriate cost center (agency administration or program/site and program administration). If you are unable to direct charge expenses to agency administration or program/site(s) and program administration, the following includes examples of recommended allocation methods:

Expense Item	Recommended Allocation Method
Repairs and Maintenance and Janitorial and Housekeeping Staff	Square Footage
Utilities	Square Footage
Staff Travel	Full-Time-Equivalents
Telephone	Number of Lines
Building Depreciation	Square Footage
Building Lease Costs	Square Footage
Mortgage Interest	Square Footage
Cafeteria Staff	Meals Served

Property Costs Relating to Agency Administrative Offices

If agency administrative offices and program offices are located in the same building, property related costs must be allocated using square footage as the statistical basis. These costs include expenses such as utilities, repairs and maintenance, depreciation, leases or mortgage interest. Square footage cost allocations must be calculated using the following procedure (square footage should be the interior square footage):

1. Determine the number of square feet which is used exclusively by agency administrative offices and each program or program/site, not shared in common.
2. Determine the number of square feet which is shared in common, i.e., lobby, restrooms, conference areas, etc.
3. Calculate an allocation ratio by dividing each exclusive square footage amount by the total amount less the commonly shared amount.
4. Multiply each respective cost by the allocation ratios to determine the allocated dollar amount.

Example: Program A and Agency Administrative Offices occupy the same building. Utility expenses of $5,000 must be allocated to Program A and to the Agency Administrative Offices as follows:

Step 1 - Exclusive square feet - Program A = 500 sq. ft.
Exclusive square feet - Agency Administrative Offices = 300 sq. ft.

Step 2 - Common square feet - 1,000 sq. ft.
Total square feet - 1,800 sq. ft.

Step 3 - Program A = 500/(1,800-1,000) = .625
Agency Administrative Offices = 300/(1,800-1,000) = .375

Step 4 - Utility expenses for this particular building total $5,000

Utility expenses allocated to Program A = $5,000 X .625 = $3,125
Utility expenses allocated to Agency Admin. Offices = $5,000 X .375 = $1,875

Property related expenses and revenues that do <u>**NOT**</u> pertain to your agency's DMH programs, SED programs and agency administration must be reported in the "Other Programs" Column (Column 7) of Schedule CFR-2.

New York State Consolidated Fiscal Reporting and Claiming Manual	Subject: Appendix I – Agency Administration	Section: 42.0	Page: 42.1
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- Personal service costs of agency administrative staff (i.e., Executive Director, Comptroller, Personnel Director, etc.)
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	Reporting Period: July 1, 2012 to June 30, 2013		Issued: 05/13

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New York State Consolidated Fiscal Reporting and Claiming Manual	Subject: Appendix I – Agency Administration	Section: 42.0	Page: 42.1
	Reporting Period: July 1, 2011 to June 30, 2012		Issued: 05/12

Agency Administration Defined

Agency administration costs include all the administrative costs that are not directly related to specific programs/sites but are attributable to the overall operation of the agency such as:

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Service Providers should note that **<u>all</u> attempts should be made to directly charge an expense** to the appropriate cost center (agency administration or program/site and program administration). If you are unable to direct charge expenses to agency administration or program/site(s) and program administration, the following includes examples of recommended allocation methods:

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Exhibit C

The University of the State of New York
New York State Education Department
Rate Setting Unit
Albany, New York 12234

Reimbursable Cost Manual for Programs Receiving Funding Under Article 81 and/or Article 89 of the Education Law to Educate Students with Disabilities

This Manual applies to the July 2013 to June 2014 Tuition Rates and defines Reimbursable Costs for the July 2013 to June 2014 period.

Effective as of January 13, 2014

July 2013 Edition

(1) Long-term payables (e.g., mortgages and loans) must be supported with amortization schedules, the signed and dated mortgage/loan agreements and evidence of payments made. The acquired assets related to each loan must be identified as well as the program(s) utilizing each of these assets.

(2) Working capital loans and lines of credit borrowings must be supported with the written agreement, loan dates and amounts of borrowings and repayments, applicable interest rates for each borrowing and documentation (i.e. Board meeting minutes) supporting the necessity for the loan and the borrowed amount.

I. Equipment and Furniture

Inventory records, including the invoice, must be kept for all items purchased by the entity or donated to the entity for the benefit of approved programs. These records should list: the invoice number; a description of the item; the make; model; or serial number of the item; cost; date of purchase; date retired; if applicable, the program(s) using the asset; and the location. For donated items, inventory records should identify the item as donated, listing the date of donation and the fair market value of the item at the time of donation.

J. Vehicles

(1) Records must include date purchased, cost, make, model, vehicle ID # and year of the vehicle. If vehicles were rented or leased, a copy of the rental agreements or leases should be retained.

(2) Vehicle use must be documented with individual vehicle logs that include at a minimum: the date, time of travel, to and from destinations, mileage between each, purpose of travel and name of traveler. If the vehicle was assigned to an employee, also list the name of the employee to whom it was assigned. The annual mileage for program purposes and repairs and maintenance costs for each vehicle should be summarized and maintained.

K. Buildings

Records for buildings and land owned by the entity and used by the program must describe the buildings and land owned. Records must include a copy of the purchase agreement, deed, any mortgages and the amortization schedule for such mortgages. Records must include the allocable portion of space in each building used by or for the benefit of each program (education and non-education) and for the purposes of program administration and agency administration. All related information must be retained as long as the facility is used by an approved education program even if this period exceeds seven years.

L. Building Improvements

Records must include the date work was completed, a description of the improvement, including location (i.e. floor, rooms), the cost, the program(s) that benefited, the share of costs allocable to each program and the basis for allocation. Detailed bills from the person or business doing the work are acceptable records.

M. Allocations

(1) Any expenditures that cannot be charged directly to a specific program must be allocated across all programs and/or entities benefited by the expenditure. For example:

(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. See also Section_II. 13. Compensation for Personal Services for additional allocation requirements.

(ii) The cost of supplies that are purchased for distribution among multiple programs must be allocated among these programs if direct charges are not possible. Adequate documentation of the allocation methodology should be maintained.

(iii) General maintenance and overhead expenses must be allocated among all programs and entities.

(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 (7) years. Allocation percentages should be reviewed on an annual basis and adjusted as necessary.

(3) For CFR filers (except Office of Children and Family Services Residential Facilities), agency administration costs shall be allocated to all programs operated by the entity based on the Ratio Value Method of allocation. Agency administration costs allocated to grant cost centers shall be the lower of actual costs allowable based on the Ratio Value Method (CFR Manual, Section 15.6) or the maximum amount that can be charged based on grantor requirements.

N. Classification (Direct Care/Non-Direct Care)

Entities operating programs may be required upon audit to support the classification of costs as direct care. For example, the classification of conference costs as direct care would be supported by copies of brochures or other literature that explains the purpose of the conference.

2. *Accounting Requirements*

A. Entities operating programs must maintain accounts in accordance with generally accepted accounting principles and Section 200.9 (d) of the Commissioner's Regulations.

B. The accrual basis of accounting is required for all programs receiving Article 81 and/or Article 89 funds.

C. Accounting books of original entry shall include asset, liability and fund balance or equity accounts, as well as expenditure and revenue accounts. Subsidiary revenue and expenditure accounts shall be maintained for, but not limited to, each approved program requiring a tuition rate, for preschool evaluation costs and for each government grant administered by the Commissioner.

D. As established in Section 200.9(e)(ii)(a) of the Commissioner's Regulations, the financial statements must be certified by a licensed or certified public accountant independent of the program. The certified public accountant or lead and reviewing audit partner of a CPA firm are encouraged to be rotated after five consecutive years on an engagement. In instances where a

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The University of the State of New York
New York State Education Department
Rate Setting Unit
Albany, New York 12234

Reimbursable Cost Manual for Programs Receiving Funding Under Article 81 and/or Article 89 of the Education Law to Educate Students with Disabilities

This Manual applies to the July 2012 to June 2013 Tuition Rates and defines Reimbursable Costs for the July 2012 to June 2013 period.

July 2012 Edition

(2) Working capital loans and lines of credit borrowings must be supported with the written agreement, loan dates and amounts of borrowings and repayments, applicable interest rates for each borrowing and documentation (i.e. Board meeting minutes) supporting the necessity for the loan and the borrowed amount.

I. Equipment and Furniture

Inventory records, including the invoice, must be kept for all items purchased by the entity or donated to the entity for the benefit of approved programs. These records should list: the invoice number; a description of the item; the make; model; or serial number of the item; cost; date of purchase; date retired; if applicable, the program(s) using the asset; and the location. For donated items, inventory records should identify the item as donated, listing the date of donation and the fair market value of the item at the time of donation.

J. Vehicles

(1) Records must include date purchased, cost, make, model, vehicle ID # and year of the vehicle. If vehicles were rented or leased, a copy of the rental agreements or leases should be retained.

(2) Vehicle use must be documented with individual vehicle logs that include at a minimum: the date, time of travel, to and from destinations, mileage between each, purpose of travel and name of traveler. If the vehicle was assigned to an employee, also list the name of the employee to whom it was assigned. The annual mileage for program purposes and repairs and maintenance costs for each vehicle should be summarized and maintained.

K. Buildings

Records for buildings and land owned by the entity and used by the program must describe the buildings and land owned. Records must include a copy of the purchase agreement, deed, any mortgages and the amortization schedule for such mortgages. Records must include the allocable portion of space in each building used by or for the benefit of each program (education and non-education) and for the purposes of program administration and agency administration. All related information must be retained as long as the facility is used by an approved education program even if this period exceeds seven years.

L. Building Improvements

Records must include the date work was completed, a description of the improvement, including location (i.e. floor, rooms), the cost, the program(s) that benefited, the share of costs allocable to each program and the basis for allocation. Detailed bills from the person or business doing the work are acceptable records.

M. Allocations

(1) Any expenditures that cannot be charged directly to a specific program must be allocated across all programs and/or entities benefited by the expenditure. For example:

(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. See also Section_II. 13. Compensation for Personal Services for additional allocation requirements.

(ii) The cost of supplies that are purchased for distribution among multiple programs must be allocated among these programs if direct charges are not possible. Adequate documentation of the allocation methodology should be maintained.

(iii) General maintenance and overhead expenses must be allocated among all programs and entities.

(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 (7) years. Allocation percentages should be reviewed on an annual basis and adjusted as necessary.

(3) For CFR filers (except Office of Children and Family Services Residential Facilities), agency administration costs shall be allocated to all programs operated by the entity based on the Ratio Value Method of allocation. Agency administration costs allocated to grant cost centers shall be the lower of actual costs allowable based on the Ratio Value Method (CFR Manual, Section 15.6) or the maximum amount that can be charged based on grantor requirements.

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2. **Accounting Requirements**

A. Entities operating programs must maintain accounts in accordance with generally accepted accounting principles and Section 200.9 (d) of the Commissioner's Regulations.

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D. As established in Section 200.9(e)(ii)(a) of the Commissioner's Regulations, the financial statements must be certified by a licensed or certified public accountant independent of the program. The certified public accountant or lead and reviewing audit partner of a CPA firm are encouraged to be rotated after five consecutive years on an engagement. In instances where a program retains a licensed or certified public accountant or accounting entity to certify the programs' financial statements and the CPA also provides other non-audit services such as

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July 2011 Edition

(2) Working capital loans and lines of credit borrowings must be supported with the written agreement, loan dates and amounts of borrowings and repayments, applicable interest rates for each borrowing and documentation (i.e. Board meeting minutes) supporting the necessity for the loan and the borrowed amount.

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(1) Records must include date purchased, cost, make, model, vehicle ID # and year of the vehicle. If vehicles were rented or leased, a copy of the rental agreements or leases should be retained.

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M. Allocations

(1) Any expenditures that cannot be charged directly to a specific program must be allocated across all programs and/or entities benefited by the expenditure. For example:

(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. See also Section_II. 14. Compensation for Personal Services for additional allocation requirements.

(ii) The cost of supplies that are purchased for distribution among multiple programs must be allocated among these programs if direct charges are not possible. Adequate documentation of the allocation methodology should be maintained.

(iii) General maintenance and overhead expenses must be allocated among all programs and entities.

(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 (7) years. Allocation percentages should be reviewed on an annual basis and adjusted as necessary.

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B. The accrual basis of accounting is required for all programs receiving Article 81 and/or Article 89 funds.

C. Accounting books of original entry shall include asset, liability and fund balance or equity accounts, as well as expenditure and revenue accounts. Subsidiary revenue and expenditure accounts shall be maintained for, but not limited to, each approved program requiring a tuition rate, for preschool evaluation costs and for each government grant administered by the Commissioner.

D. As established in Section 200.9(e)(ii)(a) of the Commissioner's Regulations, the financial statements must be certified by a licensed or certified public accountant independent of the program. The certified public accountant or lead and reviewing audit partner of a CPA firm must

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Exhibit D

United States Government Accountability Office

GAO

By the Comptroller General of the United States

December 2011

Government Auditing Standards

2011 Revision

U.S. Government Accountability Office

GAO 90 YEARS 1921-2011

ACCOUNTABILITY * INTEGRITY * RELIABILITY

GAO-12-331G

6.54 Audit supervision involves providing sufficient guidance and direction to staff assigned to the audit to address the audit objectives and follow applicable requirements, while staying informed about significant problems encountered, reviewing the work performed, and providing effective on-the-job training.[147]

6.55 The nature and extent of the supervision of staff and the review of audit work may vary depending on a number of factors, such as the size of the audit organization, the significance of the work, and the experience of the staff.

Obtaining Sufficient, Appropriate Evidence

6.56 Auditors must obtain sufficient, appropriate evidence to provide a reasonable basis for their findings and conclusions.

6.57 The concept of sufficient, appropriate evidence is integral to an audit. Appropriateness is the measure of the quality of evidence that encompasses its relevance, validity, and reliability in providing support for findings and conclusions related to the audit objectives.[148] In assessing the overall appropriateness of evidence, auditors should assess whether the evidence is relevant, valid, and reliable. Sufficiency is a measure of the quantity of evidence used to support the findings and conclusions related to the audit objectives. In assessing the sufficiency of evidence, auditors should determine whether enough evidence has been obtained to persuade a knowledgeable person that the findings are reasonable.

[147]See paragraph 6.83c for the documentation requirement related to supervision.

[148]See paragraph A6.05 for additional discussion of the appropriateness of evidence.

Exhibit E

D[redacted] S[redacted]

From: D[redacted] S[redacted]
Sent: Friday, May 5, 2017 3:12 PM
To: [redacted]
Cc: J[redacted] L[redacted] [redacted]
Subject: RE: Job Descriptions
Attachments: PTC CODE 215.docx

Hi K[redacted]

Please see the attached generic job description for Supervising Teacher code 215. Aside from PTC Code 215, we do not have a generic job description for Office Worker Program Administration code 505, Coordinator/Education Department Head code 516, and Accountant Program Administration/Accountant Agency Administration code 506/606. For those codes, we do provide employees with individual job descriptions based upon each employee's responsibilities. While they may be coded to a similar PTC Code (and in accordance with Appendix R definitions), they may have different functions depending on program and job function.

All the job descriptions were provided on site in the employee folders during OSC field work. We are not aware that any are missing and believe all were furnished. Please clarify to us what you would like to review and which descriptions you are missing.

Kind Regards,

D[redacted] S[redacted]
Managing Director
[redacted]
New York Therapy Placement Services, Inc.
500 Bi-County Blvd., Suite 450
Farmingdale, NY 11735
[redacted]
WWW.NYTPS.COM

From: [redacted]
Sent: Thursday, May 4, 2017 3:37 PM
To: D[redacted]

1

Cc: [redacted]
Subject: Job Descriptions

Hi [redacted]

We reviewed the job descriptions that were already sent to us and found we are missing some. If you could provide these ahead of the other information we requested, it would be appreciated. Please just send the generic job descriptions without any identifying information of the individual working in the position. That way you can just send them through email and we won't have to worry about confidentiality issues. We need the job descriptions for Supervising Teacher- code 215, Office Worker Program Administration code 505, Coordinator/Education Department Head code 516, and Accountant Program Administration/Accountant Agency Administration code 506/606.

Thank you.

[redacted]
State Program Examiner 2
Division of State Government Accountability
110 State Street
Albany, NY 12236-0001
[redacted]

2

From: [redacted]
Sent: Friday, June 9, 2017 10:10:49 AM
To: [redacted] L[redacted]
Cc: [redacted]
Subject: Allocations

Good Morning [redacted]

I am just verifying that you did not complete time studies for 2011-12 or 2012-13. Also, in a previous email, you indicated the allocations were reasonable. Do you have any documentation to support how you determined the reasonableness of the allocations for these two years?

K[redacted] H[redacted]
State Program Examiner 2
Division of State Government Accountability
110 State Street
Albany, NY 12236-0001
[redacted]

From: [redacted]
Sent: Thursday, June 15, 2017 1:29 PM
To: [redacted]
Cc: [redacted]
Subject: Final OSC Requested Information - NYTPS

Dear [redacted] and [redacted]

Please find below the responses to your separate emails below:

Per [redacted]

OSC Request: Good Morning [redacted]
I am just verifying that you did not complete time studies for 2011-12 or 2012-13.

NYTPS Response: That is true. We followed the guidance in the **RCM Manual Section III: General Requirements 1. Recordkeeping B. Time Distribution 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.**

OSC Request: Also, in a previous email, you indicated the allocations were reasonable. Do you have any documentation to support how you determined the reasonableness of the allocations for these two years?

NYTPS Response: Yes we have documentation.

Per [redacted]

OSC Request: In line with going back 2 years we found that the crosswalks you provided for 2011/2012 and 2012/2013 did not include the 'Allocation Methodology' Tab that was included in the 2013/2014 crosswalk. Can you please provide these? Can you also provide the detailed Staff FTE/Square Footage calculation spreadsheets for 2011/2012 and 2012/2013 that was provided to us for 2013/2014?

NYTPS Response: Please see the attached files for the 2011/12 and 2012/13 as requested.

We trust that this will complete the request of items for the audit. Thank you.

Best Regards,

[redacted]

New York Therapy Placement Services, Inc.

[redacted]

[redacted]

The information contained in this electronic e-mail transmission and any attachments are intended only for the use of the individual or entity to whom or to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this communication is not the intended recipient, or the employee or agent responsible for delivering this communication to the intended recipient, you are hereby notified that any dissemination, distribution, copying or disclosure of this communication and any attachment is strictly prohibited. If you have received this transmission in error, please notify the sender immediately by telephone and electronic mail, and delete the original communication and any attachment from any computer, server or other electronic recording or storage device or medium. Receipt by anyone other than the intended recipient is not a waiver of any privilege. Thank you.

Exhibit F

AU Section 420

Consistency of Application of Generally Accepted Accounting Principles*

Source: SAS No. 1, section 420; SAS No. 43; SAS No. 88.

See section 9420 for interpretations of this section.

Issue date, unless otherwise indicated: November, 1972.

.01 The second standard of reporting (referred to herein as the consistency standard) is:

> The auditor must identify in the auditor's report those circumstances in which such principles have not been consistently observed in the current period in relation to the preceding period.

[Revised, November 2006, to reflect conforming changes necessary due to the issuance of Statement on Auditing Standards No. 113.]

.02 The objective of the consistency standard is to ensure that if comparability of financial statements between periods has been materially affected by changes in accounting principles, there will be appropriate reporting by the independent auditor regarding such changes.[1] It is also implicit in the objective that such principles have been consistently observed within each period. The auditor's standard report implies that the auditor is satisfied that the comparability of financial statements between periods has not been materially affected by changes in accounting principles and that such principles have been consistently applied between or among periods because either (a) no change in accounting principles has occurred, or (b) there has been a change in accounting principles or in the method of their application, but the effect of the change on the comparability of the financial statements is not material. In these cases, the auditor would not refer to consistency in his report.

.03 Proper application of the consistency standard by the independent auditor requires an understanding of the relationship of consistency to

---

* This section has not been updated to reflect the issuance of Financial Accounting Standards Board (FASB) Statement No. 154, Accounting Changes and Error Corrections—a replacement of APB Opinion No. 20 and FASB Statement No. 3, which supersedes Accounting Principles Board Opinion No. 20, Accounting Changes. It is expected to be updated when this section is clarified in accordance with the AICPA Auditing Standards Board's (ASB) Clarity Project. The clarity project is a significant effort that the ASB has undertaken to make U.S. generally accepted auditing standards easier to read, understand, and apply by utilizing established clarity drafting conventions. Once finalized, the effective date of all clarified standards is expected to apply to audits of financial statements for periods beginning on or after December 15, 2010. This date is provisional, but will not be earlier.

In July 2009, FASB approved FASB Accounting Standards Codification (ASC), effectively superseding FASB Statement No. 162, The Hierarchy of Generally Accepted Accounting Principles, because all of the FASB ASC content carries the same level of authority. FASB ASC is now the source of authoritative U.S. accounting and reporting standards for nongovernmental entities, in addition to guidance issued by the Securities and Exchange Commission (SEC). As of July 1, 2009, all other non-grandfathered, non-SEC accounting literature not included in FASB ASC became nonauthoritative.

As a result of these developments, this section has not been conformed to reflect FASB ASC.

[1] The appropriate form of reporting on a lack of consistency is discussed in section 508, Reports on Audited Financial Statements, paragraphs .16–.18. [Footnote added to reflect the conforming changes necessary due to the issuance of Statement on Auditing Standards Nos. 53–62.]

Exhibit G

[redacted]

From: [redacted]
Sent:
To:
Subject:

[redacted]

Begin forwarded message:

From: [redacted]@nysed.gov>
Date: June 1, 2018 at 4:14:42 PM EDT
To: [redacted]@nytps.com>
Subject: RE: NYTPS

The standard used to disallow some of your expenses was that your method for allocating certain costs between your programs was not reasonable. It was deemed not reasonable because it directed more costs to the SEIT program and less cost to your other program and there was not a justification to support this "skew" – I feel like I have answered all the questions on this matter.

From: [redacted]@nytps.com>
Sent: Friday, June 01, 2018 1:34 PM
To: [redacted]@nysed.gov>
Subject: NYTPS

Dear [redacted]

[redacted] communicated to us that SED does not feel it necessary to meet and/or discuss with NYTPS the OSC findings so that we can fully air all the facts and circumstances. NYTPS is disappointed and requires clarification, especially with the latest email forwarded to us regarding our request for NYSED to review a New York State Office of State Comptroller ("OSC") Audit Finding in Report 2016-S-87.

NYTPS places a great importance to adherence to regulations and is confident that ALL of the available regulations and guidelines in existence during the audit years have been followed. We have not been afforded the opportunity to have a meeting or speak to SED in order to obtain the **facts in the audit** that are referenced despite being referred by the OSC to do so. Each one

1

of our points was extensively discussed and defended with OSC during calls and information submitted to OSC.

Numerous times, OSC indicated discussions with SED, and reported that SED agreed with them which implies that all information was shared with SED. In fact, on 2-6-18, OSC stated "that as the final administrator of this program, SED will make the final determination." On 5-3-18, OSC recommended that we have a conversation with SED because SED is actually interpreting.

On May 25th, you wrote: "The challenge is that the agency is providing to me their description of facts that were not included in the audit and therefore I cannot determine reliability after the fact. Meaning, I am not able to re-create the in-depth review that is taken as part of an audit engagement and therefore cannot validate the information as accurate"

NYTPS description of the facts were included throughout communications and documents since NYTPS became aware of the finding on a call 7-12-17 and from reading the preliminary report issuance on August 2, 2017. As we indicated in our 5-24-18 correspondence to you, this finding was not raised during the nearly 4 months of on-site fieldwork or at the fieldwork closing discussion meeting on 3-31-17 in The Farmingdale office.

Information provided to you last week was discussed with the OSC and/or provided and available to OSC. NYTPS had calls with OSC on 11-20-17, 2-6-18, 4-3-18 and 5-3-18 and submitted additional clarifying information on 1-8-18 and 4-3-18.

NYTPS is questioning, if SED is the final administrator, did OSC share the procedures and sufficient, appropriate evidence to conclude the finding to render the NYTPS allocation method as *"Unfairly skewed allocated costs to the SEIT Program"?*

NYTPS is concerned that all our conversations and documents may not have been shared with SED despite OSC informing us of discussions with SED. If SED is making the final determination, what role did SED play throughout the audit and what information is OSC required to provide SED?

On May 25th, you wrote: "However, the facts as reflected in the draft audit applied to the reimbursement standard used to support the OSC disallowance is correct."

We did not see any facts in the Draft Audit Report, only that *"NYTPS' methodology unfairly skewed allocated costs to the SEIT program."* On each call with OSC, NYTPS asked for the regulatory citation. On a call with OSC on 2-6-18, OSC stated that the only standard was that any allocations must be reasonable per the RCM.

Due to the fact we were directed by OSC to contact SED for clarification, we are requesting the details of the reimbursement standard you are referring to in the above statement. NYTPS has cited 6 regulatory guidelines from the RCM and CFR as well as government directives and an expert legal opinion that we followed to support our methodology.

What are the standard measurements that support the conclusion? We are not aware of another reimbursement standard, as you indicated, that would prohibit NYTPS from using a reasonable, consistent allocation that incorporates SED mandates and usage. Is there a

2

protocol, maximum % allocation or directives for allocations not contained in the manuals that is published that defines reasonable?

In all our CFR's submitted, SED never questioned our expense reporting as not reasonable.

When specific published information does not exist from OSC or SED, how can an audit body make a subjective determination resulting in a disallowance without a protocol for our agency to follow?

We are respectfully requesting to be provided the above information. Thank you very much.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

3

Exhibit H

The University of the State of New York
New York State Education Department
Rate Setting Unit
Albany, New York 12234

Reimbursable Cost Manual for Programs Receiving Funding Under Article 81 and/or Article 89 of the Education Law to Educate Students with Disabilities

This Manual applies to the July 2013 to June 2014 Tuition Rates and defines Reimbursable Costs for the July 2013 to June 2014 period.

Effective as of January 13, 2014

July 2013 Edition

(3) Approved programs are authorized to bill for scheduled SEIT services when the student is enrolled and present to receive the service and the SEIT teacher is absent. However, programs are encouraged to use substitute SEIT teachers in such instances. The cost of substitute SEIT teachers is reimbursable.

(4) A SEIT student's FTE enrollment is counted for reporting purposes only as a 1.0 FTE when the student is enrolled for the entire 10 month program or 1.0 when enrolled for the entire July –August program. The FTE is prorated for both the 10 month and 2 month programs if the student is enrolled for less than the full 10 month instructional school calendar or less than the full July-August instructional calendar.

8. Close Down

Close down, as defined in Section 200.7 (e) and 200.9 (g) of the Commissioner's Regulations, is the period during which an entity operating an approved program plans to cease operation, transfer ownership, voluntarily or non-voluntarily terminate its status as an approved private residential or non-residential program for students with disabilities that receives public funds pursuant to Article 81 and/or Article 89 of the Education Law. The close-down period means the period of time beginning with the date of the Commissioner's receipt of notice and ending on the date of the program's cessation of operations, transfer of ownership, voluntary or non-voluntary termination of its status as an approved program. Reimbursement shall be determined in accordance with the provisions set forth in Section 200.9 (g) of the Commissioner's Regulations and this Manual. Financial reports and financial statements as required pursuant to Section 200.9 (e) of the Commissioner's Regulations must be submitted to the Commissioner no later than 90 days following close down. The entity is required to transfer student records back to the public school district of origin's Committee on Special Education (CSE) or Committee on Preschool Special Education (CPSE). Financial and other records must be maintained by the entity for seven years. The entity must provide the Department with the name, address and phone number of the contact person for these records. See Section IV. 3. Close-Down Policy and Procedures.

9. Agency Administration

Agency administration is defined as those expenses which are not directly related to a specific program but are attributable to the overall operation of the agency. These costs include: costs for the overall direction of the organization; costs for general recordkeeping, budget and fiscal management; costs for public relations (non-fundraising); and costs for parent agency expenditures.

10. Reasonable Cost

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. In determining reasonableness of a given cost, consideration shall be given to:

A. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the approved special education program. Public special education funding shall_be used in accordance with Article 89 of Education Law Section 4401 and Section 4410 10.(e.)

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B. The restraints or requirements imposed by such factors as: sound business practices; arm's length bargaining; Federal, State or local laws and regulations.

C. Prices for comparable goods or services determined by reviewing similar entities.

D. Whether the individuals concerned acted with prudence given their responsibilities to the entity's Board of Directors, its employees, the public at large and the State government.

E. Significant deviations from the established practices of the entity or similar entities which may unjustifiably increase the cost of the approved program.

The University of the State of New York
New York State Education Department
Rate Setting Unit
Albany, New York 12234

Reimbursable Cost Manual for Programs Receiving Funding Under Article 81 and/or Article 89 of the Education Law to Educate Students with Disabilities

This Manual applies to the July 2012 to June 2013 Tuition Rates and defines Reimbursable Costs for the July 2012 to June 2013 period.

July 2012 Edition

9. Agency Administration

Agency administration is defined as those expenses which are not directly related to a specific program but are attributable to the overall operation of the agency. These costs include: costs for the overall direction of the organization; costs for general recordkeeping, budget and fiscal management; costs for public relations (non-fundraising); and costs for parent agency expenditures.

10. Reasonable Cost

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. In determining reasonableness of a given cost, consideration shall be given to:

A. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the approved special education program. Public special education funding shall_be used in accordance with Article 89 of Education Law Section 4401 and Section 4410 10.(e.)

B. The restraints or requirements imposed by such factors as: sound business practices; arm's length bargaining; Federal, State or local laws and regulations.

C. Prices for comparable goods or services determined by reviewing similar entities.

D. Whether the individuals concerned acted with prudence given their responsibilities to the entity's Board of Directors, its employees, the public at large and the State government.

E. Significant deviations from the established practices of the entity or similar entities which may unjustifiably increase the cost of the approved program.

The University of the State of New York
New York State Education Department
Rate Setting Unit
Albany, New York 12234

Reimbursable Cost Manual for Programs Receiving Funding Under Article 81 and/or Article 89 of the Education Law to Educate Students with Disabilities

This Manual applies to the July 2011 to June 2012 Tuition Rates and defines Reimbursable Costs for the July 2011 to June 2012 period.

July 2011 Edition

10. Reasonable Cost

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. In determining reasonableness of a given cost, consideration shall be given to:

A. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the approved special education program. Public special education funding shall_be used in accordance with Article 89 of Education Law Section 4401 and Section 4410 10.(e.)

B. The restraints or requirements imposed by such factors as: sound business practices; arm's length bargaining; Federal, State or local laws and regulations.

C. Prices for comparable goods or services determined by reviewing similar entities.

D. Whether the individuals concerned acted with prudence given their responsibilities to the entity's Board of Directors, its employees, the public at large and the State government.

E. Significant deviations from the established practices of the entity or similar entities which may unjustifiably increase the cost of the approved program.

Exhibit I

ARCHER
ATTORNEYS AT LAW

Barry H. Frank

bfrank@archerlaw.com
215-246-3103 (Ext. 5103) Direct
215-963-9999 Direct Fax

Archer & Greiner, P.C.
Three Logan Square
1717 Arch Street, Suite 3500
Philadelphia, PA 19103
(215) 963-3300 Main
(215) 963-9999 Fax
www.archerlaw.com

April 3, 2018

[redacted]
New York Therapy Placement Services, Inc.
299 Hallock Avenue
Port Jefferson Station, NY 11776

Re: New York State OSC Audit and Preliminary Report

Dear [redacted]

You have sought my opinion regarding the proposed reclassification of the independent contractors that contract with New York Therapy Placement Services, Inc. ("NYTPS") for the fiscal years 2011/2012, 2012/2013 and 2013/2014. As I understand, NYTPS is currently being audited by the Office of the New York State Comptroller ("OSC"). In that audit, there is a proposed calculation which seeks to include the service of the independent contractors with those of the employees of NYTPS. This would have the impact of utilizing the independent contractors to allocate expenses to include supplies, facility usage and other expenses which per your contracts are not afforded to the independent contractors.

[redacted]
New York Therapy Placement Services, Inc.
April 3, 2018
Page 25

Thus, pursuant to the clear language in the Consolidated Fiscal Report and Claiming Manual, the determination by the Internal Revenue Service that the Therapists contracting with NYTPS are independent contractors is binding on OSC. Therefore, it is not proper to include the independent contractors in an allocation base of costs for which NYTPS does not provide, reimburse or provide facilities and therefore the independent contractors cannot be included in a Staff FTE allocation.

Sincerely,

Barry H Frank

BARRY H. FRANK

Exhibit J

New York State Consolidated Fiscal Reporting and Claiming Manual	Subject: Appendix J – Allocating Expenses for Shared Program/Site	Section: 43.0	Page: 43.5
	Reporting Period: July 1, 2013 to June 30, 2014		Issued: 05/14

General Operating Expense

Expenses such as food, transportation, supplies and material, staff travel and training, etc. which cannot be directly charged to a specific program or State Agency must be allocated across all such entities deriving benefits. If you are unable to direct charge expenses to agency administration or program/site(s), you may use the following recommended allocation methods for each specific OTPS item:

OTPS Item	Recommended Allocation Method
Food	Meals Served
Repairs and Maintenance	Square Feet
Utilities	Square Feet
Transportation Related	Number of Trips or Mileage
Staff Travel	Full-Time-Equivalents
Participant Incidentals	Direct Charge Only
Expensed Equipment	Units of Service if the item is shared by more than one State Agency or program site.
Subcontract Raw Materials	Units of Service Only
Participant Wages	Units of Service Only
Staff Development	Full-Time-Equivalents
Supplies and Materials	Units of Service
Telephone	Number of Lines
Insurance-General	Ratio Value
Other	Units of Service

If the recommended allocation method does not apply, the provider should determine a more reasonable method of allocation. Example: A service provider needs to allocate supplies and materials costs to several program/sites. The recommended allocation method noted above is units of service. However, all the program/sites do not report units of service. In this case, a more reasonable method of allocating supplies and materials would be to allocate the cost based on usage.

New York State Consolidated Fiscal Reporting and Claiming Manual	Subject: Appendix J – Allocating Expenses for Shared Program/Site	Section: 43.0	Page: 43.5
	Reporting Period: July 1, 2012 to June 30, 2013		Issued: 05/13

General Operating Expense

Expenses such as food, transportation, supplies and material, staff travel and training, etc. which cannot be directly charged to a specific program or State Agency must be allocated across all such entities deriving benefits. If you are unable to direct charge expenses to agency administration or program/site(s), you may use the following recommended allocation methods for each specific OTPS item:

OTPS Item	Recommended Allocation Method
Food	Meals Served
Repairs and Maintenance	Square Feet
Utilities	Square Feet
Transportation Related	Number of Trips or Mileage
Staff Travel	Full-Time-Equivalents
Participant Incidentals	Direct Charge Only
Expensed Equipment	Units of Service if the item is shared by more than one State Agency or program site.
Subcontract Raw Materials	Units of Service Only
Participant Wages	Units of Service Only
Staff Development	Full-Time-Equivalents
Supplies and Materials	Units of Service
Telephone	Number of Lines
Insurance-General	Ratio Value
Other	Units of Service

If the recommended allocation method does not apply, the provider should determine a more reasonable method of allocation. Example: A service provider needs to allocate supplies and materials costs to several program/sites. The recommended allocation method noted above is units of service. However, all the program/sites do not report units of service. In this case, a more reasonable method of allocating supplies and materials would be to allocate the cost based on usage.

New York State Consolidated Fiscal Reporting and Claiming Manual	Subject: Appendix J – Allocating Expenses for Shared Program/Site	Section: 43.0	Page: 43.4
	Reporting Period: July 1, 2011 to June 30, 2012		Issued: 05/12

General Operating Expense

Expenses such as food, transportation, supplies and material, staff travel and training, etc. which cannot be directly charged to a specific program or State Agency must be allocated across all such entities deriving benefits. If you are unable to direct charge expenses to agency administration or program/site(s), you may use the following recommended allocation methods for each specific OTPS item:

OTPS Item	Recommended Allocation Method
Food	Meals Served
Repairs and Maintenance	Square Feet
Utilities	Square Feet
Transportation Related	Number of Trips or Mileage
Staff Travel	Full-Time-Equivalents
Participant Incidentals	Direct Charge Only
Expensed Equipment	Units of Service if the item is shared by more than one State Agency or program site.
Subcontract Raw Materials	Units of Service Only
Participant Wages	Units of Service Only
Staff Development	Full-Time-Equivalents
Supplies and Materials	Units of Service
Telephone	Number of Lines
Insurance-General	Ratio Value
Other	Units of Service

If the recommended allocation method does not apply, the provider should determine a more reasonable method of allocation. Example: A service provider needs to allocate supplies and materials costs to several program/sites. The recommended allocation method noted above is units of service. However, all the program/sites do not report units of service. In this case, a more reasonable method of allocating supplies and materials would be to allocate the cost based on usage.

Exhibit K

New York State Consolidated Fiscal Reporting and Claiming Manual	Subject: CFR-4 – Personal Services	Section: 16.0	Page: 16.6
	Reporting Period: July 1, 2013 to June 30, 2014		Issued: 05/14

Hours Paid: The actual number of hours paid to all employees in the position title for the same standard work week for the reporting period. Hours paid should include hours worked and vacation, personal, sick leave and holidays paid. This total must include all overtime. All overtime hours must be reported as straight time hours. For example, 10 additional hours paid at time and one half should be reported as 10 hours, not 15 hours.

Note: **If an employee works at multiple program/sites, allocate the hours paid to each program/site. Refer to Appendices J and L.**

SED: Service providers should include hours spent on extracurricular activities (e.g., stipends for coaching) by direct care personnel in the hours paid column of position title "Other Direct Care Staff" (code 290).

For example, if a teacher, aide, related service provider, etc. is paid to work 35 hours per week for 40 weeks over the school year and 6 weeks over the summer, it is expected that 1,610 hours are reported (35 hours * 46 weeks = 1,610 hours). If the agency permits staff to elect to be paid over a 52 week period rather than 46 weeks, the total reported for the staff in this example should still be 1,610 hours. For payroll purposes **only**, the hours paid may need to be amended to 30.96 per week (30.96 * 52 weeks = 1,610 hours). The standard work week for CFR4 purposes would remain at 35 hours.

FTE (Full Time Equivalent): The FTE for each position title code is calculated to three decimal places. Calculate the FTE by dividing the number of hours paid by the product of the standard full-time work week times 52 weeks per year.

EXAMPLE 1: A social worker has a standard work week of 35 hours and worked 25 hours a week for 40 weeks during the reporting period. Total hours paid for the social worker is 25 hours x 40 weeks or 1,000 hours. The FTE calculation is:

$$\frac{\text{Hours paid}}{\text{Standard Work Week x 52}} = \frac{1000}{1820} = .549 \text{ FTE}$$

EXAMPLE 2: A psychologist has a standard work week of 37.5 hours and worked 37.5 hours a week for 52 weeks during the reporting period. Total hours paid for the social worker is 37.5 hours x 52 weeks or 1,950 hours. The FTE calculation is:

$$\frac{\text{Hours paid}}{\text{Standard Work Week x 52}} = \frac{1950}{1950} = 1.000 \text{ FTE}$$

Amount Paid: The amount paid to all employees in the position title for the reporting period. The amount must be reported in whole dollars. Cash paid as a cafeteria plan option is to be included here as salary.

Note: **Include all overtime, bonuses, and cafeteria or split dollar benefits. If an employee works at multiple program/sites, allocate the amount paid to each program/site. Refer to Appendices J and L.**

SED: Providers should include amounts paid for extracurricular activities (e.g., stipends for coaching) by direct care personnel in the amount paid column of position title "Other Direct Care Staff" (position title code 290).

New York State Consolidated Fiscal Reporting and Claiming Manual	Subject: CFR-4 – Personal Services	Section: 16.0	Page: 16.6
	Reporting Period: July 1, 2012 to June 30, 2013		Issued: 05/13

Hours Paid: The actual number of hours paid to all employees in the position title for the same standard work week for the reporting period. Hours paid should include hours worked and vacation, personal, and sick leave paid. This total must include all overtime. All overtime hours must be reported as straight time hours. For example, 10 additional hours paid at time and one half should be reported as 10 hours, not 15 hours.

Note: **If an employee works at multiple program/sites, allocate the hours paid to each program/site. Refer to Appendices J and L.**

SED: Service providers should include hours spent on extracurricular activities (e.g., stipends for coaching) by direct care personnel in the hours paid column of position title "Other Direct Care Staff" (code 290).

For example, if a teacher, aide, related service provider, etc. is paid to work 35 hours per week for 40 weeks over the school year and 6 weeks over the summer, it is expected that 1,610 hours are reported (35 hours * 46 weeks = 1,610 hours). If the agency permits staff to elect to be paid over a 52 week period rather than 46 weeks, the total reported for the staff in this example should still be 1,610 hours. For payroll purposes **only**, the hours paid may need to be amended to 30.96 per week (30.96 * 52 weeks = 1,610 hours). The standard work week for CFR4 purposes would remain at 35 hours.

FTE (Full Time Equivalent): The FTE for each position title code is calculated to three decimal places. Calculate the FTE by dividing the number of hours paid by the product of the standard full-time work week times 52 weeks per year.

EXAMPLE 1: A social worker has a standard work week of 35 hours and worked 25 hours a week for 40 weeks during the reporting period. Total hours paid for the social worker is 25 hours x 40 weeks or 1,000 hours. The FTE calculation is:

$$\frac{\text{Hours paid}}{\text{Standard Work Week x 52}} = \frac{1000}{1820} = .549 \text{ FTE}$$

EXAMPLE 2: A psychologist has a standard work week of 37.5 hours and worked 37.5 hours a week for 52 weeks during the reporting period. Total hours paid for the social worker is 37.5 hours x 52 weeks or 1,950 hours. The FTE calculation is:

$$\frac{\text{Hours paid}}{\text{Standard Work Week x 52}} = \frac{1950}{1950} = 1.000 \text{ FTE}$$

Amount Paid: The amount paid to all employees in the position title for the reporting period. The amount must be reported in whole dollars. Cash paid as a cafeteria plan option is to be included here as salary.

Note: **Include all overtime, bonuses, and cafeteria or split dollar benefits. If an employee works at multiple program/sites, allocate the amount paid to each program/site. Refer to Appendices J and L.**

SED: Providers should include amounts paid for extracurricular activities (e.g., stipends for coaching) by direct care personnel in the amount paid column of position title "Other Direct Care Staff" (position title code 290).

New York State Consolidated Fiscal Reporting and Claiming Manual	Subject: CFR-4 – Personal Services	Section: 16.0	Page: 16.6
	Reporting Period: July 1, 2011 to June 30, 2012		Issued: 05/12

Hours Paid: The actual number of hours paid to all employees within the position title for the same standard work week for the reporting period. This total must include all overtime. All overtime hours must be reported as straight time hours. For example, 10 additional hours paid at time and one half should be reported as 10 hours, not 15 hours.

Note: **If an employee works at multiple program/sites, allocate the hours paid to each program/site. Refer to Appendices J and L.**

SED: Service providers should include hours spent on extracurricular activities (e.g., stipends for coaching) by direct care personnel in the hours paid column of position title "Other Direct Care Staff" (code 290).

FTE (Full Time Equivalent): The FTE for each position title code is calculated to three decimal places. Calculate the FTE by dividing the number of hours paid by the product of the standard full-time work week times 52 weeks per year.

EXAMPLE 1: A social worker has a standard work week of 35 hours and worked 25 hours a week for 40 weeks during the reporting period. Total hours paid for the social worker is 25 hours x 40 weeks or 1,000 hours. The FTE calculation is:

$$\frac{\text{Hours paid}}{\text{Standard Work Week x 52}} = \frac{1000}{1820} = .549 \text{ FTE}$$

EXAMPLE 2: A psychologist has a standard work week of 37.5 hours and worked 37.5 hours a week for 52 weeks during the reporting period. Total hours paid for the social worker is 37.5 hours x 52 weeks or 1,950 hours. The FTE calculation is:

$$\frac{\text{Hours paid}}{\text{Standard Work Week x 52}} = \frac{1950}{1950} = 1.000 \text{ FTE}$$

Amount Paid: The amount paid to all employees within the position title for the reporting period. The amount must be reported in whole dollars. Cash paid as a cafeteria plan option is to be included here as salary.

Note: **Include all overtime, bonuses, and cafeteria or split dollar benefits. If an employee works at multiple program/sites, allocate the amount paid to each program/site. Refer to Appendices J and L.**

SED providers should include amounts paid for extracurricular activities (e.g., stipends for coaching) by direct care personnel in the amount paid column of position title "Other Direct Care Staff" (position title code 290).

Total Hours Paid: The total hours paid for each program/site.

Total FTE: The total FTEs for each program/site.

Total Amount Paid: The total amount paid for each program/site.

Exhibit L

New York State Consolidated Fiscal Reporting and Claiming Manual	Subject: CFR-4A – Contracted Direct Care and Clinical Personal Services	Section: 17.0	Page: 17.1
	Reporting Period: July 1, 2013 to June 30, 2014		Issued: 05/14

The CFR-4A schedule *MAY* be required for submission with Full CFRs (see below for requirements).

The CFR-4A schedule *IS NOT* required for submission with Abbreviated, Article 28 Abbreviated or Mini-Abbreviated CFRs.

This schedule is used to report the amount paid to individuals/organizations that have contracted with the service provider to provide direct care and/or clinical personal services. All other contracted services must be reported on the appropriate expense line of Schedule CFR-1 or Schedule CFR-3. **Questions regarding whether or not an individual is a contractor or an employee should be directed to the IRS, the service provider's accountant and/or tax attorney.** Individuals receiving W-2 tax forms from the service provider are considered to be employees of the service provider, and should be reported on Schedule CFR-4.

Complete a separate Schedule CFR-4A for each State Agency or shared program.

Note: If a contractor works at multiple program/sites, allocate the hours paid and amount paid to each program/site. Refer to Appendices J and L.

SED providers should use the data compiled on Schedule CFR-4A to report SED-4 information for direct care related service staff.

NYS CFRS Software Note

- *No data can be entered into this schedule prior to defining your agency and your agency's program/sites in the software.*
- *In the Submission Definition screen, specify all of the agencies that fund/certify your programs. Failure to do so will prohibit the completion of some schedules.*
- *Data in grayed-out fields has previously been entered into other CFR schedules and has been carried forward. If any of the carry-forward information is incorrect, it will need to be changed in the source schedule.*
- *Please refer to Getting Started with NYS CFRS Software in Section 9 for more details.*

Header Section

State Agency: The agency(ies) that fund(s)/certify(ies) the program/site(s) reported on this page.

Agency Name: The name of the organization (service provider).

Agency Code: The five-digit code assigned to the organization (service provider).

School Code (SED Only): The twelve-digit code assigned to your organization (service provider).

Column Number: CFRS Software automatically assigns column numbers within each of the funding state agency schedules. The columns are arranged in ascending order based on a hierarchy of program code, program code index and program/site identification number.

Program Code: The four digit number associated with the reported program. See the program type listings in Appendices E through H.

New York State Consolidated Fiscal Reporting and Claiming Manual	Subject: CFR-4A – Contracted Direct Care and Clinical Personal Services	Section: 17.0	Page: 17.1
	Reporting Period: July 1, 2012 to June 30, 2013		Issued: 05/13

The CFR-4A schedule *MAY* be required for submission with Full CFRs (see below for requirements).

The CFR-4A schedule *IS NOT* required for submission with Abbreviated, Article 28 Abbreviated or Mini-Abbreviated CFRs.

This schedule is used to report the amount paid to individuals/organizations that have contracted with the service provider to provide direct care and/or clinical personal services. All other contracted services must be reported on the appropriate expense line of Schedule CFR-1 or Schedule CFR-3. Complete a separate schedule for each State Agency or shared program.

> Note: **If a contractor works at multiple program/sites, allocate the hours paid and amount paid to each program/site. Refer to Appendices J and L.**

Questions regarding whether or not an individual is a contractor or an employee should be directed to the IRS, the service provider's accountant and/or tax attorney.

SED providers should use the data compiled on Schedule SED-4 to report CFR-4A information for direct care related service staff.

NYS CFRS Software Note

- *No data can be entered into this schedule prior to defining your agency and your agency's program/sites in the software.*
- *In the Submission Definition screen, specify all of the agencies that fund/certify your programs. Failure to do so will prohibit the completion of some schedules.*
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New York State Consolidated Fiscal Reporting and Claiming Manual	Subject: CFR-4A – Contracted Direct Care and Clinical Personal Services	Section: 17.0	Page: 17.1
	Reporting Period: July 1, 2011 to June 30, 2012		Issued: 05/12

The CFR-4A schedule *MAY* be required for submission with Full CFRs (see below for requirements).

The CFR-4A schedule *IS NOT* required for submission with Abbreviated, Article 28 Abbreviated or Mini-Abbreviated CFRs.

This schedule is used to report the amount paid to individuals/organizations that have contracted with the service provider to provide direct care and/or clinical personal services. All other contracted services must be reported on the appropriate expense line of Schedule CFR-1 or Schedule CFR-3. Complete a separate schedule for each State Agency or shared program.

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SED providers should use the data compiled on Schedule SED-4 to report CFR-4A information for direct care related service staff.

NYS CFRS Software Note

- *No data can be entered into this schedule prior to defining your agency and your agency's program/sites in the software.*
- *In the Submission Definition screen, specify all of the agencies that fund/certify your programs. Failure to do so will prohibit the completion of some schedules.*
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