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**New York State Office of the State Comptroller**  
Thomas P. DiNapoli

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Division of State Government Accountability

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# **Compliance With the Reimbursable Cost Manual**

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## **State Education Department Pinnacle Organization**

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Report 2018-S-6

December 2018

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# Executive Summary

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## Purpose

To determine whether the costs reported by Pinnacle Organization (Pinnacle) on its Consolidated Fiscal Report (CFR) 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 Pinnacle's CFR for the fiscal year ended June 30, 2015 and certain expenses reported on Pinnacle's CFRs for the two fiscal years ended June 30, 2014.

## Background

Pinnacle is an SED-approved, not-for-profit special education provider located in Oswego County. Pinnacle provides preschool special education services to children with disabilities who are between three and five years of age. Pinnacle is managed by an eight-member Board of Trustees.

Pinnacle is reimbursed for preschool special education services through rates set by SED. The reimbursement rates are based on financial information, including costs that Pinnacle reports to SED on its annual CFR. To be eligible for reimbursement, reported costs must comply with the RCM requirements. For the three fiscal years ended June 30, 2015, Pinnacle reported approximately \$2.8 million in reimbursable costs on its CFRs for the two rate-based preschool special education programs (Programs) that it operated.

## Key Findings

For the three fiscal years ended June 30, 2015, we identified \$103,220 in ineligible costs that Pinnacle reported on its CFRs for the Programs. The ineligible costs included:

- \$66,329 in other than personal service costs, which consisted of \$58,667 in contracted personal service payments related to less-than-arm's-length (LTAL) transactions, \$3,550 in lease payments related to LTAL transactions, and \$4,112 in non-reimbursable expenses; and
- \$36,891 in personal service costs, which consisted of \$35,770 in non-reimbursable compensation for Pinnacle employee lunch breaks and \$1,121 in salary costs for a related-party employee wherein the compensation received was for more than one full-time-equivalent.

## Key Recommendations

### To SED:

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

### To Pinnacle:

- 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**

[Hawthorne Foundation, Inc.: Compliance With the Reimbursable Cost Manual \(2017-S-3\)](#)

[The Network for Children's Speech, Occupational & Physical Therapy, LLC: Compliance With the Reimbursable Cost Manual \(2017-S-79\)](#)

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**State of New York  
Office of the State Comptroller**

**Division of State Government Accountability**

December 27, 2018

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

Ms. Gail Pemberton  
Trustee  
Pinnacle Organization  
216 County Route 64  
Mexico, NY 13114

Dear Ms. Elia and Ms. Pemberton:

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

Following is a report of our audit of the costs submitted by Pinnacle Organization to the State Education Department for the purpose of establishing the preschool special education tuition reimbursement rates used to bill public funding sources that are supported by State aid payments, entitled *Compliance With the Reimbursable Cost Manual*. The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution; Article II, Section 8 of the State Finance Law; and Section 4410-c of the State Education Law.

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

Respectfully submitted,

*Office of the State Comptroller  
Division of State Government Accountability*

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This report is also available on our website at: [www.osc.state.ny.us](http://www.osc.state.ny.us)

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## Background

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Pinnacle Organization (Pinnacle) is a not-for-profit organization located in Oswego County, New York. Pinnacle 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, Pinnacle operated two rate-based preschool special education programs: Preschool Integrated Special Class – 2.5 hours per day and Preschool Special Education Itinerant Teacher services (collectively referred to as the Programs). The Programs served 83 children with special education needs from Oswego County. Pinnacle is managed by an eight-member Board of Trustees (Board). The Board is responsible for the overall direction of Pinnacle.

Any county that uses Pinnacle’s preschool special education services pays tuition to Pinnacle using reimbursement rates set by SED. The State, in turn, reimburses the counties 59.5 percent of the tuition paid. SED sets the special education tuition rates based on financial information, including costs, reported by Pinnacle on the 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, 2015, Pinnacle reported approximately \$2.8 million in reimbursable costs for the Programs 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 fiscal years ended June 30, 2015, we identified \$103,220 in costs that Pinnacle reported on its CFRs that did not comply with the RCM's requirements for reimbursement. The ineligible costs included \$66,329 in other than personal service (OTPS) costs and \$36,891 in personal service costs (see the Exhibit at the end of this report).

### Other Than Personal Service Costs

For the three fiscal years ended June 30, 2015, we identified a total of \$66,329 in OTPS costs that Pinnacle reported on its CFRs that were not allowable under SED's requirements.

#### *Less-Than-Arm's-Length Contract Costs*

According to the RCM, all less-than-arm's-length (LTAL) transactions will be reimbursed using actual documented costs of the owner or vendor. Pinnacle has contracts with three LTAL companies, including CANI Management Corporation (CANI Management) for administrative services and CANI Building, LLC (CANI Building) for leased space. We identified \$62,217 in LTAL costs that were ineligible for reimbursement because they exceeded the owner's actual costs. The ineligible costs included:

- \$58,667 in contracted personal service provided by CANI Management; and
- \$3,550 in space leased from CANI Building.

#### *Other Ineligible Costs*

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. Expenses for gifts, non-program-related advertising, charitable donations, tax penalties, bank penalty fees, food for meetings, and food for staff are not reimbursable. In addition, costs for non-audit services provided by Pinnacle's financial statement auditor within a 365-day window of required audit work are not reimbursable. We identified \$4,112 in costs that were ineligible for reimbursement because they were not in compliance with these RCM requirements, as follows:

- \$1,254 in gifts;
- \$963 in non-audit services;
- \$582 in advertising;
- \$462 in tax penalties;
- \$336 in donations;
- \$270 in bank fees;
- \$186 in sales tax paid by a not-for-profit entity; and
- \$59 in food provided for staff meetings.

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## Personal Service Costs

For the three fiscal years ended June 30, 2015, we identified a total of \$36,891 in personal service costs that Pinnacle reported on its CFRs that were not allowable under SED's requirements.

### *Paid Lunch Time*

Pinnacle compensates its full-time staff for a half-hour lunch period for each day worked. According to the RCM, compensation paid to employees for their lunch period is not reimbursable. We determined Pinnacle reported \$35,770 (\$31,682 in salary and \$4,088 in associated fringe benefits) in non-reimbursable personal service costs associated with paid lunch time for employees for the three years ended June 30, 2015.

### *Excess Compensation for LTAL Employee*

According to the RCM, compensation beyond one full-time-equivalent (FTE) for non-direct care staff, owners, or related parties is non-reimbursable. For each of the three years we reviewed, Pinnacle reported compensation for one LTAL employee – the daughter of its two Board trustees – that exceeded 1.0 FTE. As a result, Pinnacle reported \$1,121 in excess personal service costs (\$995 in salary and \$126 in associated fringe benefits) that were ineligible for reimbursement.

## Recommendations

### To SED:

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

### To Pinnacle:

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

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We audited the costs that Pinnacle reported on its CFR for the fiscal year ended June 30, 2015 and certain costs reported on its CFRs for the two fiscal years ended June 30, 2014. The objective of our audit was to determine whether the reported costs were allowable, properly calculated, and adequately documented in accordance with applicable SED requirements.



To accomplish our objective, we reviewed the RCMs that applied to the years we examined as well as the CFR Manuals and related appendices. We also interviewed Pinnacle personnel to obtain an understanding of their practices for reporting costs on the CFR. We also evaluated the internal controls over the costs claimed on and the schedules prepared in support of the CFR submitted to SED. We reviewed Pinnacle's CFRs for the three fiscal years ended June 30, 2015 and relevant financial records for the audit period. We obtained accounting records and supporting information to assess whether certain costs claimed by Pinnacle on the CFRs that were considered high risk and reimbursable in limited circumstances (such as LTAL administrative services, LTAL leased space, and employee lunches) were allowable, properly calculated, and adequately documented.

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

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

## Authority

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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

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We provided a draft copy of this report to SED and Pinnacle officials for their review and formal comment. We considered their comments in preparing this report and have included them in their entirety at the end of this report. In SED's response, officials agreed with the audit recommendations and indicated the actions they will take to address them. In Pinnacle's response, officials challenged the proposed audit disallowances related to costs for a LTAL contract, advertising, and paid lunch time. Our responses to Pinnacle's comments are included in the report's State Comptroller's Comments.

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

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## 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

**Pinnacle Organization**  
**Schedule of Submitted and Disallowed Program Costs**  
**for the Three Fiscal Years Ended June 30, 2015**

<b>Program Costs</b>	<b>Amount per CFR</b>	<b>Amount Disallowed</b>	<b>Amount Remaining</b>	<b>Notes to Exhibit</b>
Personal Services	\$965,677	\$36,891	\$928,786	A-B
Other Than Personal Services	1,879,417	66,329	1,813,088	C-L
<b>Total Program Costs</b>	<b>\$2,845,094</b>	<b>\$103,220</b>	<b>\$2,741,874</b>	

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## Notes to Exhibit

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The following Notes refer to specific sections of the RCM that we used as a basis for 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 Pinnacle officials during the course of the audit.

- A. RCM Section II.13.A.(12): Compensation paid to employees for their lunch period is not reimbursable.
- B. RCM Section II.13.A.(4)(d): Compensation beyond 1.0 FTE for non-direct care staff, owners, or related parties will not be considered reimbursable in the calculation of tuition rates.
- C. RCM Section II: Costs are considered for reimbursement if they are reasonable, necessary, directly related to the special education program, and sufficiently documented.
- D. RCM Section I.4.F.(7): All LTAL transactions will be reimbursed using actual documented costs of the owner or vendor. Invoices presented to the approved special education provider by the LTAL party do not constitute "actual costs." Actual costs are those the LTAL party incurs, and it is expected upon audit or review that the LTAL party will produce evidence of its costs.
- E. RCM Section II.24: Gifts of any kind are non-reimbursable.
- F. 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 non-reimbursable.
- G. RCM Section II.3.A: Promotional items of any kind are not reimbursable.
- H. RCM Section II.3: Advertising means the costs associated with publications and other public relations endeavors using the mediums of newspapers, Internet websites, magazines, radio and television programs, direct mail, trade papers, etc. Outreach activities, such as publications and other public relations endeavors that describe the services offered by approved private schools enabling them to better contribute to community educational objectives, are reimbursable.
- I. RCM Section II.56.B: Payments for federal, State, and local income taxes or any related penalties and interest are not reimbursable. Penalties and interest on late payments or nonpayment of payroll withholding taxes are not reimbursable.
- J. RCM Section II.16: Political and charitable contributions and donations made by the program are not reimbursable.
- K. RCM Section II.30.C: Costs for food, beverages, and entertainment and other related costs for meetings, including Board meetings, are not reimbursable.
- L. RCM Section II.22.C: Costs of food provided to any staff, including lunchroom monitors, are not reimbursable.

# Agency Comments - State Education Department



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

DEPUTY COMMISSIONER  
Office of Performance Improvement and Management Services  
O: 518.473-4706  
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December 4, 2018

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

Dear Ms. Inman:

The following is the New York State Education Department's (SED) response to the draft audit report, 2018-S-6, Compliance with the Reimbursable Cost Manual: Pinnacle Organization (Pinnacle).

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

We agree with this recommendation and will further review the recommended disallowances related to Paid Lunch Time and adjust the reported costs to recover any overpayments, as appropriate, through the recalculation of tuition rates.

Recommendation 2: Remind Pinnacle 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 Pinnacle 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 Harold Matott, Director of Rate Setting at (518) 474-3227.

Yours truly,

Sharon Cates-Williams  
Deputy Commissioner

c: Karla Ravida  
Christopher Suriano  
Suzanne Bolling  
James Kampf

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## Agency Comments - Pinnacle Organization

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Pinnacle

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Mexico, NY 13114

Email: [info@pinnacle-preschool.com](mailto:info@pinnacle-preschool.com)  
Phone: (315) 963-3680  
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November 19, 2018

Office of the State Comptroller  
Division of State Government Accountability  
110 State Street, 11<sup>th</sup> Floor  
Albany, New York 12236

Re: Audit 2018-S-006

Dear Andrea Inman,

Attached please find our responses to items listed in your findings.

Pinnacle Organization strives to provide a quality integrated preschool program to the children and families in Oswego County. We pride ourselves on being a leader in educating the children in this county. Our solid reputation stands alone.

Our original application to be a preschool provider came following requests from Oswego County based on the longstanding reputation of CANI. The less than arm's length concerns were thoroughly discussed with the State Education Department at a meeting in Albany before program approval was granted. It was understood and accepted.

We carefully monitor the interchange between these agencies and have demonstrated that Pinnacle is afforded many financial backings from CANI. At various times Pinnacle would not have been financially solvent if it were not for the loans provided to them. It took the Rate Setting Unit two years to provide us with a rate while bills needed to be paid.

We will take this information that you have provided us and make the necessary adjustments as we move forward. Your support and efforts are appreciated.

It is the timeliness of now reviewing 2014/15 that challenges us. It is very difficult for programs such as ours to truly service the needs of children in our county when the process for reporting and receiving rates and feedback is set up such as it is. The system does not support a fluid and consistent funding stream. We are left with prospective rates which are modified at later dates and do not support predictable funding. It is our hope that this will change.

Pinnacle wishes to be an asset to the children and families in Oswego County as a provider, however, this may not be possible if we cannot remain financially solvent.

Sincerely,  
  
Gail P. Pemberton  
CEO Pinnacle Organization

**PINNACLE ORGANIZATION RESPONSE**

11/2018

***Less-Than-Arm's-Length Contract Costs***

It needs to be taken into consideration that the actual hours that were billed to Pinnacle for the jobs performed were a very low estimate of hours. The actual needs to complete all tasks for overall management, oversight of program and staff, as well as, the accounting needs of the program were not reflective of the actual hours that staff worked.

CMC incurred costs to employ the individuals that supported Pinnacle beyond those charged.

Another option for Pinnacle would have been to consider hiring their own staff to perform these job responsibilities. If staff were hired individually and given payrates and benefits comparable to other staff working in local school districts, the amounts would again exceed the costs billed to Pinnacle from CMC.

Average salaries in Oswego County are listed below.

Administration	\$ 92,270.00
Account Clerk	\$ 43,570.00
Office Staff	<u>\$ 40,212.00</u>
Total per year	\$176,052.00

\* Note: This does not include benefits

\*  
Comment  
1

***Other Ineligible Costs***

***Advertising***

Pinnacle Preschool relies on recruiting typical children from the surrounding area to fulfill our obligations to be an integrated preschool program. Children that come to our program at our Mexico location are enrolled by parents and tuition is paid. The advertisement listed and costs incurred were for this purpose. We understand it does not meet the cost principle established in the RCM manual. It appears that these parameters would be suited for advertisement for children with special needs only. However, in order for us to be compliant with state regulations for integration, we must have typical children.

Consideration should be given to the costs of \$582.00 that were incurred.

\*  
Comment  
2

***Paid Lunch Time***

Consideration should be given for all three school years that employees were truly paid a salary. Employees were not paid hourly.

This salary included extended hours one day per month for staff meetings. Staff worked on this day an additional 30-60 minutes. There were also various times throughout the year that staff worked extra hours for open house, parent teacher conferences and meetings. This is a part of their professional obligation and not hours that they were compensated for when the days were extended. True hourly employees would have been paid. Our staff are salaried.

If you look solely at the additional 30 minutes for staff meetings this adds the following hours to consideration for full time employees.

12/13 School Year	20 hours
13/14 School Year	25 hours
14/15 School Year	45 hours

This credit should be applied to the deduction for unpaid lunch.

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Comment  
3

***Excess Compensation for LTAL Employee***

This was an error made during calculations.

\* See State Comptroller's Comments, Page 16



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## State Comptroller's Comments

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1. According to the RCM, all LTAL transactions will be reimbursed using actual documented costs of the owner or vendor. Accordingly, we asked for such documentation from Pinnacle and used the provided documentation to calculate CANI Management's actual costs of services provided to Pinnacle. During the audit, Pinnacle officials did not indicate that the documented hours were estimates; nor did Pinnacle officials provide supplementary documentation showing additional hours worked.

Pinnacle stated CANI Management "incurred costs to employ the individuals that supported Pinnacle beyond those charged." Pinnacle did not provide documentation showing any additional costs were incurred by CANI Management beyond those reported on the CFR.

Regardless of Pinnacle's claim that its costs would have been higher if it hired its own administrative staff, because Pinnacle chose to outsource those services, the corresponding RCM requirements must be followed in determining whether those costs on the CFR were allowable. As stated, all LTAL transactions are to be reimbursed using the actual documented costs of the owner. The \$58,667 charged on the CFR for contracted personal services provided by CANI Management exceeded the owner's actual costs and are, therefore, ineligible for reimbursement.

2. We are pleased Pinnacle acknowledged that the advertising costs we identified for disallowance did not meet the reimbursement requirements of the RCM and, as such, we maintain that the proposed disallowance of \$582 is appropriate.
3. According to the RCM, compensation paid to employees for their lunch period is not reimbursable. Further, the documentation Pinnacle provided did not include support of extra time worked by staff. Therefore, we maintain that the \$35,770 in personal service costs attributable to paid lunch time is ineligible for reimbursement.