



New York State Comptroller
THOMAS P. DiNAPOLI

The Kelberman Center, Inc. – Compliance With the Reimbursable Cost Manual

State Education Department

Report 2019-S-57 | December 2020

Spotlight on Education



Audit Highlights

Objective

To determine whether the costs submitted by The Kelberman Center, Inc. (Kelberman) 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. The audit covered expenses reported on Kelberman's 2016 and 2017 CFRs for the fiscal year ended June 30, 2017.

About the Program

Kelberman is an SED-approved special education provider located in Utica. Kelberman's mission is to provide state-of-the-art programs and services for children and adults with Autism Spectrum Disorder and their families through various programs and services. As part of that mission, Kelberman provides preschool special education services to children with disabilities who are between three and five years of age. Kelberman is reimbursed for these services through rates set by SED. The reimbursement rates are based on school year financial information, including costs that Kelberman reports to SED on its annual CFRs. To be eligible for reimbursement, reported costs must be reasonable, necessary, directly related to the special education program, and sufficiently documented. For the fiscal year ended June 30, 2017, Kelberman reported approximately \$1.77 million in reimbursable costs on its CFRs for the Preschool Special Class over 2.5 hours (Promise Program) that it operated.

Key Findings

For the fiscal year ended June 30, 2017, we identified \$23,616 in ineligible costs Kelberman reported on its CFRs for the Promise Program. The ineligible costs included:

- \$2,510 in personal service costs, consisting of \$1,600 in longevity payments and \$910 in payments for services that were not related to the Promise Program.
- \$21,106 in other than personal service costs, consisting of \$20,435 in ineligible advertising expenses and \$671 in other non-reimbursable costs such as food for staff, non-audit services provided by a registered public accounting firm, expenses not related to the Promise Program, and unsupported expenses.

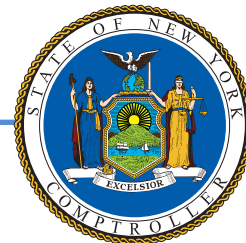
Key Recommendations

To SED:

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

To Kelberman:

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



Office of the New York State Comptroller Division of State Government Accountability

December 23, 2020

Dr. Betty A. Rosa
Interim Commissioner
State Education Department
State Education Building
89 Washington Avenue
Albany, NY 12234

Ms. Tara Costello
Executive Director
The Kelberman Center, Inc.
2608 Genesee Street
Utica, NY 13502

Dear Dr. Rosa and Ms. Costello:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage their resources efficiently and effectively. By so doing, it provides accountability for the 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, entitled *Compliance With the Reimbursable Cost Manual*, of our audit of the costs submitted by The Kelberman Center, Inc. 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. 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.

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,

Division of State Government Accountability

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Glossary of Terms

Term	Description	Identifier
CFR	Consolidated Fiscal Report	<i>Key Term</i>
CFR Manual	Consolidated Fiscal Reporting and Claiming Manual	<i>Policy</i>
Kelberman	The Kelberman Center, Inc.	<i>Provider</i>
OTPS	Other Than Personal Service	<i>Key Term</i>
Promise Program	Rate-Based Preschool Special Class	<i>Key Term</i>
RCM	Reimbursable Cost Manual	<i>Policy</i>
SED	State Education Department	<i>Auditee</i>
UCP	Upstate Cerebral Palsy	<i>Provider Affiliate</i>
UCPI	Upstate Caring Partners, Inc.	<i>Provider Parent Company</i>

Background

The Kelberman Center, Inc. (Kelberman) is a not-for-profit organization located in Utica. Kelberman is an affiliate of the parent corporation, Upstate Caring Partners, Inc. (UCPI). Kelberman purchases office support services, including information technology and accounting, from Upstate Cerebral Palsy (UCP), another affiliate of UCPI.

Part of Kelberman's mission is to provide state-of-the-art programs and services for children and adults with Autism Spectrum Disorder and their families through various programs and services. Kelberman provides these services to more than 1,000 children and adults throughout the Central New York area. Kelberman is authorized by the State Education Department (SED) to provide preschool special education services to children with disabilities who are between three and five years of age. During our audit period, Kelberman operated one rate-based Preschool Special Class over 2.5 hours (Promise Program). The Promise Program served 86 children for the fiscal year ended June 30, 2017.

The counties that use Kelberman's preschool special education services pay tuition to Kelberman using school year 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 school year financial information, including costs, reported by Kelberman on the annual Consolidated Fiscal Reports (CFRs) 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 fiscal year ended June 30, 2017, Kelberman reported approximately \$1.77 million in reimbursable costs for the Promise Program.

Audit Findings and Recommendations

According to the RCM, costs reported on the CFR are considered for reimbursement provided they are reasonable, necessary, directly related to the special education program, and sufficiently documented. For the fiscal year ended June 30, 2017, we identified \$23,616 in costs that Kelberman reported on its CFRs that did not comply with SED's requirements for reimbursement. These ineligible costs included \$2,510 in personal service costs and \$21,106 in other than personal service (OTPS) costs. A summary of ineligible costs is presented in the Exhibit at the end of this report.

Personal Services

For the fiscal year ended June 30, 2017, we identified \$2,510 in personal service costs reported by Kelberman on its CFRs that were ineligible for reimbursement.

Merit Awards

According to the RCM, a merit award is a non-recurring and non-accumulating lump sum payment in excess of regular scheduled salary that is not directly related to hours worked. A merit award may be reimbursed if it is based on merit as measured and supported by employee performance evaluations completed prior to the determination and accrual of the merit award and within one year of such determination and accrual. To demonstrate that a merit award is based on merit and measured and supported by employee performance evaluations, the provider's governing entity must adopt a written employee performance evaluation policy and form that contains sufficient detail as to the criteria and methods used to determine each employee's final rating. The written employee performance evaluation policy must also describe how the final evaluation rating will directly correlate to any amount of a merit award. In addition and as a supplement to employee performance, merit awards may also factor in an employee's longevity and attendance as a demonstration of merit, provided that these aspects are measured and supported by the written employee performance evaluation.

We reviewed \$5,850 and identified \$1,600 in longevity payments to Kelberman employees in 2016. The supporting documentation indicated that these payments were calculated solely upon years of service and not in addition to, or as a supplement to, employee performance awards, as required.

Earnings Codes

The RCM states that costs will generally be considered for reimbursement if they are reasonable, necessary, directly related to the special education program, and adequately documented. While reviewing payroll documentation provided by UCP, we identified payments made to employees in addition to normal salary under different earnings codes. One of these codes, VISIT, is used to indicate stipends paid to an employee for a specific reason outside of normal working hours. When we requested additional documentation to support the nature and calculation of VISIT payments, UCP indicated that the bulk of these payments were not charged to the Promise Program; however, \$910 of the \$8,335 in VISIT payments was incorrectly

charged to the Promise Program. These stipend payments were not directly related to the Promise Program and were therefore ineligible for reimbursement.

Other Than Personal Service

For the fiscal year ended June 30, 2017, we identified \$21,106 in OTPS costs reported by Kelberman on its CFRs that were ineligible for reimbursement or otherwise unsupported.

Advertising Costs

According to the RCM, advertising costs for the purpose of recruiting students into programs or soliciting fundraising monies or donations are not reimbursable and remain non-allowable in the calculation of tuition rates. New York State places students without regard to advertising. Kelberman's Board of Directors meeting minutes, dated February 8, 2016, indicated that the Kelberman Executive Director would consult with a public relations firm for a Promise Program advertising campaign due to declining enrollment. Subsequent board meeting minutes dated June 27, 2016, indicated that, after marketing and TV commercials, Kelberman saw results in the form of increased enrollment, doubling the number of filled classes for the upcoming fall semester over what was previously reported. For the fiscal year ended June 30, 2017, we reviewed \$32,016 in advertising costs and identified \$20,435 that was ineligible for reimbursement.

Ineligible Expenses

According to the RCM, costs for meals, beverages, and other related expenses for meetings, including the costs of food provided to staff, are not reimbursable. The RCM also states that 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, are not reimbursable. Lastly, costs reported on the CFR are considered for reimbursement if they are reasonable, necessary, directly related to the special education programs, and sufficiently documented. Costs will not be reimbursable on field audit without appropriate written documentation.

Of the \$46,166 in costs we reviewed, \$2,142 was ineligible for reimbursement per RCM guidelines, of which \$671 was charged to the Promise Program. These costs include \$339 for food reimbursement for staff or parent/staff events; \$118 for non-audit services; \$108 in costs not directly related to the Promise Program; \$95 for unnecessary tax paid for travel expenses; and \$11 in expenses that did not have sufficient documentation to support the amount charged to the Promise Program.

Recommendations

To SED:

1. Review the disallowances identified by our audit and, if warranted, make the

necessary adjustments to the costs reported on Kelberman's CFRs and to Kelberman's tuition reimbursement rates.

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

To Kelberman:

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

The objective of our audit was to determine whether the costs submitted by Kelberman on its CFRs were properly calculated, adequately documented, and allowable under SED guidelines, including the RCM. We audited the costs that Kelberman reported on its 2016 and 2017 CFRs, focusing on costs associated with the fiscal year ended June 30, 2017. Kelberman submits its CFR on a calendar-year basis (January 1 through December 31).

To accomplish our objective and assess internal controls related to our objective, we reviewed the RCM that applied to the years we examined and the CFR Manuals and related appendices. We evaluated UCP's internal controls as they related to costs they reported on the Kelberman CFRs. We interviewed UCP personnel to obtain an understanding of their financial practices for reporting costs on the Kelberman CFRs. We obtained accounting records and supporting information to assess whether a judgmental sample of costs claimed by Kelberman on its CFRs that were considered high risk (e.g., OTPS allocations and travel, food, advertising, employee salary, and affiliated agency costs) were properly calculated, adequately documented, and eligible for reimbursement. Based on our sample design, we cannot project our results to the population as a whole.

Statutory Requirements

Authority

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.

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. 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.

Reporting Requirements

We provided a draft copy of this report to SED and Kelberman officials for their review and formal comment. We considered their comments in preparing this report and have included them in their entirety at the end of the report. In SED's response, officials agreed with the audit recommendations and indicated the actions they will take to address them. However, in their response, Kelberman officials disagreed with most of the proposed disallowances. Our responses to certain Kelberman comments are included in the report's State Comptroller's Comments.

Within 180 days after 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.

Exhibit

The Kelberman Center, Inc.
Schedule of Submitted and Disallowed Program Costs
for the Fiscal Year Ended June 30, 2017

Program Costs	Amount per CFRs	Amount Disallowed	Amount Remaining	Notes to Exhibit
Personal Services	\$1,452,571	\$2,510	\$1,450,061	A, D
Other Than Personal Services	\$313,040	\$21,106	\$291,934	A-C, E-K
Total Program Costs	\$1,765,611	\$23,616	\$1,741,995	

Notes to Exhibit

The following Notes refer to specific sections of the RCM and the CFR Manual 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 Kelberman officials during the course of the audit.

- A. RCM Section II – Costs are considered for reimbursement if they are reasonable, necessary, directly related to the special education program, and sufficiently documented.
- B. RCM Section II.3 – 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. The intended outcome of these publications and public relations endeavors should be that of providing information and not for the purpose of recruiting students into programs or soliciting fundraising monies or donations. New York State places students without regard to advertising or public relations activities.
- C. RCM Section II.3.A – Advertising costs for the purpose of recruiting students into programs or soliciting fundraising monies or donations are not reimbursable and remain non-allowable in the calculation of tuition rates. Promotional items of any type are not reimbursable.
- D. RCM Section II.13.A.10 – A merit award shall mean a non-recurring and non-accumulating lump sum payment in excess of regularly scheduled salary that is not directly related to hours worked. A merit award may be reimbursed if it is based on merit, as measured and supported by employee performance evaluations completed prior to the determination and accrual of the merit award and within one year of such determination and accrual. To demonstrate that a merit award is based on merit and measured and supported by employee performance evaluations, the provider's governing entity must adopt a written employee performance evaluation policy and form that contains sufficient detail as to the criteria and methods used to determine each employee's final rating. The written employee performance evaluation policy must also describe how the final evaluation rating will directly correlate to any amount of a merit award. In addition and as a supplement to employee performance, merit awards may also factor in an employee's longevity and attendance as a demonstration of merit, provided that these aspects are measured and supported by the written employee performance evaluation.
- E. RCM Section II.14.E – 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.
- F. RCM Section II.20.A – Costs incurred for entertainment of officers or employees, or for activities not related to the program, or any related items such as meals, lodging rentals, transportation, and gratuities, are not reimbursable.
- G. RCM Section II.22.C – Costs of food provided to any staff, including lunchroom monitors, are not reimbursable.
- H. RCM Section II.30.C – Costs for food, beverages, entertainment, and other related costs for meetings, including board meetings, are not reimbursable.

-
- I. RCM Section III.1 – Costs will not be reimbursable on field audit without appropriate written documentation.
 - J. RCM Section III.1.E – Logs must be kept by each employee indicating the dates of travel, destination, purpose, mileage, and related costs such as tolls, parking, and gasoline. Logs must have supervisory approval for the associated travel expense to be reimbursable.
 - K. 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 years. Allocation percentages should be reviewed on an annual basis and adjusted, as necessary.

Agency Comments - State Education Department



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

SENIOR DEPUTY COMMISSIONER
Office of Performance Improvement and Management Services
O: 518.473-4706
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December 8, 2020

Mr. Brian Reilly
Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State St., 11th Floor
Albany, NY 12236

Dear Mr. Reilly:

The following is the New York State Education Department's (SED) response to the draft audit report, 2019-S-57, The Kelberman Center, Inc. (Kelberman) - Compliance With the Reimbursable Cost Manual.

Recommendation 1:

"Review the disallowances identified by our audit and make the necessary adjustments to the costs reported on Kelberman's CFRs and to Kelberman's 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. NYSED will further consider the treatment of advertising expenses in accordance with applicable requirements.

Recommendation 2:

"Remind Kelberman 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 Kelberman officials avail themselves of our assistance to help them better understand the rules for cost reporting and criteria for cost reimbursement as presented in the CFR, Regulation and the Reimbursable Cost Manual (RCM). Furthermore, SED will alert Kelberman of online CFR training that is available on SED's webpage. SED recommends that all individuals signing the CFR certification statements, namely the Executive Director and Certified Public Accountant, 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 Brian Zawistowski, Assistant Director of the Rate Setting Unit, at (518) 474-3227.

Sincerely,



Sharon Cates-Williams

cc: Phyllis Morris
Christopher Suriano
Suzanne Bolling
Brian Zawistowski
James Kampf
Jerry Nestleroad

Agency Comments - The Kelberman Center



December 15, 2020

Brian Reilly
Office of the State Comptroller
Division of State Government Accountability
110 State Street - 11th Floor
Albany, NY 12236-0001

RE: Kelberman Center Inc.
Response to Draft Audit 2019-S-57
December 9, 2020

Good Afternoon Mr. Reilly,

Below is the Kelberman Center response to the Draft Audit 2019-S-57.

Audit Finding:

Advertising Costs (Page 8 of Draft Audit)

The \$20,435 in advertising costs were done in accordance with the 2016 -2017 New York State Reimbursable Cost Manual (RCM) Section II – Cost Principals, Subsection 3 – Advertising guidelines. The language directly from this section of the RCM is as follows:

3. Advertising

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 which describe the services offered by approved private schools enabling them to better contribute to community educational objectives, are reimbursable. The intended outcome of these publications and public relations endeavors should be that of providing information and not for the purpose of recruiting students into programs or soliciting fund raising monies or donations. New York State places students without regard to advertising or public relations activities.

A copy of the commercial video in question was shown as backup to support the claim that it met the SED RCM guidelines as there was no mention of recruiting students and was used to describe the services offered. The commercial concludes with contact information for the Kelberman Center in order to learn more information about the services provided.

[Comment 1](#)

Ineligible Expenses (Page 8 of Draft Audit)

The \$118 in non-audit services mentioned was related to the outside audit firm assisting with preparing the required 990 – Return of Organization Exempt from Income Tax Form and CHAR 500 – New York State Annual Filing for Charitable Organizations. These are required forms and are part of the fees paid to the auditor as part of the agreed upon services.

[Comment 2](#)

If you have any additional questions or comments, please feel free contact me.

Sincerely,



Tara Costello
Executive Director

State Comptroller's Comments

1. Kelberman officials state the commercial did not mention recruiting students. However, as noted on page 8 of our report, Kelberman's Board of Director meeting minutes explicitly state that a public relations firm was engaged for an advertising campaign due to low student enrollment in the Promise Program, and subsequent Board meeting minutes describe the campaign as successful due to the additional students enrolled as a result of this advertising. We maintain that the \$20,435 in advertising expenses were ineligible for reimbursement because they did not comply with the RCM requirements, that "the intended outcome of these publications and public relations endeavors should be that of providing information and not for the purpose of recruiting students."
2. According to the RCM, costs associated with non-audit services provided by a registered public accounting firm during or within 365 days of required audit work are not reimbursable. The accounting firm that audited Kelberman's financial statements provided non-audit services (tax form preparation) within 365 days of required audit work. We maintain that the \$118 in non-audit services costs were ineligible for reimbursement because they did not comply with RCM requirements.

Contributors to Report

Executive Team

Tina Kim - *Deputy Comptroller*

Ken Shulman - *Assistant Comptroller*

Audit Team

Brian Reilly, CFE, CGFM - *Audit Director*

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