



New York State Comptroller
THOMAS P. DiNAPOLI

Westchester County Chapter NYSARC, Inc.: Compliance With the Reimbursable Cost Manual

State Education Department

Report 2020-S-27 | September 2021

Spotlight on Education



Audit Highlights

Objective

To determine whether the costs reported by Westchester County Chapter NYSARC, Inc. (WARC) 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 WARC's 2015 and 2016 CFRs for the fiscal year ended June 30, 2016 and certain expenses for the fiscal year ended June 30, 2015.

About the Program

WARC is an SED-approved, non-profit special education provider located in Westchester County, serving students from Westchester and Putnam counties. Among other programs, WARC provides preschool special education services to children with disabilities who are 3 and 4 years of age. WARC is reimbursed for these services through rates set by SED. The reimbursement rates are based on financial information, including costs, that WARC reports to SED on its annual CFR. To be eligible for reimbursement, reported costs must comply with RCM requirements. For the fiscal year ended June 30, 2016, WARC reported approximately \$5.3 million in reimbursable costs on its CFR for the Preschool Special Class – over 2.5 hours per day and Preschool Integrated Special Class – over 2.5 hours per day (collectively referred to as the Programs) that it operated.

Key Findings

For the fiscal year ended June 30, 2016, we identified \$49,605 in ineligible costs reported by WARC on its CFRs for the Programs. The ineligible costs included:

- \$6,416 in personal service costs, consisting of \$1,723 in bonus payment to the Executive Director and \$4,693 in duplicated reimbursements for services provided.
- \$13,294 in other than personal service costs, consisting of \$4,094 in staff awards; \$5,638 in incorrectly allocated legal fees; \$3,245 for non-reimbursable food for staff/Board, a holiday party, a staff picnic, and a donation; and \$317 in overreported expenses on the CFR.
- \$29,895 in costs not offset by grant revenue received.

Prior to our audit, SED adjusted reported costs for staff awards and grant revenue, totaling \$33,989, when establishing the Programs' 2014-15 and 2015-16 tuition rates.

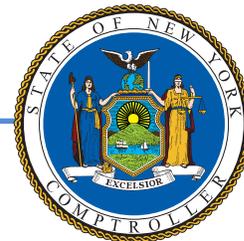
Key Recommendations

To SED:

- Review the disallowances identified by our audit and, if warranted, make the necessary adjustments to the costs reported on WARC's CFR and to WARC's tuition reimbursement rates.
- Make necessary changes to ensure proper calculation of tuition rates and recover overpayments.
- Remind WARC officials of the pertinent SED requirements that relate to the deficiencies we identified.

To WARC:

- 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

September 29, 2021

Betty A. Rosa, Ed.D.
Commissioner
State Education Department
State Education Building
8 Washington Avenue
Albany, NY 12234

Tibi Guzmán
Executive Director/Chief Executive Officer
Westchester County Chapter NYSARC, Inc.
265 Saw Mill River Road
Hawthorne, NY 10532

Dear Dr. Rosa and Ms. Guzmán:

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 Westchester County Chapter NYSARC, Inc. to the State Education Department for the purpose of the 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 under Article V, Section 1 of the State Constitution; Article II, Section 8 of the State Finance Law; and Section 4410-c of the Education Law.

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>
OTPS	Other than personal service	<i>Key Term</i>
Programs	Preschool Special Class – over 2.5 hours and Preschool Integrated Special Class – over 2.5 hours	<i>Key Term</i>
RCM	Reimbursable Cost Manual	<i>Policy</i>
SED	State Education Department	<i>Auditee</i>
WARC	Westchester County Chapter NYSARC, Inc.	<i>Service Provider</i>

Background

Westchester County Chapter NYSARC, Inc. (WARC) is a not-for-profit organization with administrative offices located in Westchester County, serving students from Westchester and Putnam counties. WARC is authorized by the State Education Department (SED) to provide, among other programs, preschool special education services to children with disabilities who are 3 and 4 years of age. During our audit period, WARC operated two rate-based preschool education programs: Preschool Special Class – over 2.5 hours per day and Preschool Integrated Special Class – over 2.5 hours per day (collectively referred to as the Programs). The Programs operate 25 full-day classes providing special education services to about 133 children.

The counties that use WARC's preschool special education services pay tuition to WARC using reimbursement rates set by SED. The State, in turn, reimburses the counties for a portion of the tuition paid. SED sets the special education rates based on financial information, including costs, that WARC reports to SED on the annual Consolidated Fiscal Report (CFR). Costs reported on the CFR must comply fully with the guidelines in SED's Reimbursable Cost Manual (RCM) regarding eligibility 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, 2016, WARC reported approximately \$5.3 million in reimbursable costs for the Programs.

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, 2016, we identified \$49,605 in costs that WARC reported on its CFR that did not comply with SED's requirements for reimbursement. The ineligible costs include \$6,416 in personal service costs, \$13,294 in other than personal service (OTPS) costs, and \$29,895 in costs not offset by grant revenue received. SED adjusted some of these costs when establishing the Programs' 2014-15 and 2015-16 tuition rates. A summary of ineligible costs is presented in the Exhibit at the end of this report.

Personal Service Costs

For the fiscal year ended June 30, 2016, WARC reported \$3.6 million in personal service costs charged to the Programs. We selected judgmental samples of various categories of personal service costs (as described below) and identified \$6,416 in expenses that were not allowable under SED's requirements.

Bonuses

According to the RCM, a merit award (or bonus compensation) shall mean a non-recurring and non-accumulating (i.e., not included in base salary of subsequent years) lump sum payment in excess of regularly scheduled salary 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 that are completed prior to the determination and accrual of the merit award and within one year of such determination and accrual. In order to demonstrate that a merit award is based on merit and measured and supported by employee performance evaluations, the provider's governing entity must adopt a written employee performance evaluation policy and form that contain sufficient detail as to the criteria and methods used to determine each employee's final evaluation rating. In addition, merit awards are restricted to direct care titles/employees as defined by the RCM's Appendix A-1 and those in the 100 position title code series and position title code 505 and 605, as defined by the CFR's Appendix R.

We determined during our review that a \$15,000 bonus that is ineligible for reimbursement was paid to the Executive Director. The mandated fringe benefits associated with the bonus brought the total recommended disallowance to \$16,148, of which \$1,723 was charged to the Programs.

1:1 Aides

According to the RCM, costs will be considered for reimbursement provided they 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. Within the RCM, the 2015-16 Tuition Rate-Setting Methodology states that a regional weighted average 1:1 aide add-on rate will be developed and

added to the schools' base tuition rate. All 1:1 aide costs (salaries, fringe benefits, and allocated direct and indirect costs) should be reported in one separate cost center on providers' financial reports. Providers are to report 1:1 aide costs that will be reimbursed through the weighted average per diem on the CFR under program code 9230.

We found that WARC charged \$4,693 (\$3,560 in salaries and \$1,133 in fringe benefits) to the Programs even though reimbursement was received for these costs under program 9230 through the per diem rate. In its response to our findings, WARC contended that the costs identified were appropriately charged, as employee time sheets separately documented the allocated time to the Programs (9102 and 9163) versus the 1:1 aide program (9230). Furthermore, WARC stated that, when the students to whom the 1:1 aides are assigned are absent, its decision to redeploy those aides to the Programs as substitutes was per SED's verbal guidance. We maintain that, because the 1:1 aides were funded under the 1:1 aide program (program code 9230), the costs associated with the revenue should be reported under program code 9230 in accordance with RCM requirements.

Other Than Personal Service Costs

For the fiscal year ended June 30, 2016, WARC reported \$1.7 million in OTPS costs charged to the Programs. Of this, we judgmentally selected \$418,244 in various categories (as described below) and identified \$112,128 in non-reimbursable OTPS costs. Of this amount, \$13,294 was charged to the rate-based programs.

Staff Recognition Awards

According to the RCM, a merit award (or bonus compensation) shall mean a non-recurring and non-accumulating (i.e., not included in base salary of subsequent years) lump sum payment in excess of regularly scheduled salary 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 that are completed prior to the determination and accrual of the merit award and within one year of such determination and accrual. In order to demonstrate that a merit award is based on merit and measured and supported by employee performance evaluations, the provider's governing entity must adopt a written employee performance evaluation policy and form that contain sufficient detail as to the criteria and methods used to determine each employee's final evaluation rating.

WARC reported \$48,808 in staff recognition awards on its CFRs, including \$24,405 used in the calculation of the 2015-16 reconciliation rates and \$13,923 in the calculation of the 2014-15 reconciliation rates. As this is an adjustment to agency administration costs that are allocated to all programs based on operating costs, the total recommended disallowance to the Programs is \$4,094. SED adjusted these costs when establishing the Programs' tuition rates for the two fiscal years ending June 30, 2016.

Incorrectly Allocated Legal Fees

According to the RCM, any expenditures that cannot be charged directly to a specific program must be allocated across all programs and/or entities benefited by the expenditure. Additionally, the RCM defines agency administration as those expenses that are not directly related to a specific program but are attributable to the overall operation of the agency.

The RCM also states that administrative costs may include fees for lawyers, accountants, and consultants. The RCM requires CFR filers to allocate administrative costs to all programs operated by the entity based on the ratio value method of allocation.

We identified \$9,488 in legal fees directly charged to the Programs versus being reported on CFR-3 as agency administrative expenses and allocated using the ratio value percentages via CFR-3. The documentation WARC provided didn't clearly define the purpose of the legal fees. WARC officials disagreed with our findings and stated that they used the ratio value methodology to calculate the costs charged to the Programs; however, we determined that the appropriate ratio value was not used. WARC did not comply with the RCM criteria to apply the ratio method for such administrative costs and, based on the support provided by WARC and CFR instructions, we recalculated the ineligible costs to total \$5,638.

Ineligible Costs

According to the RCM, costs must be reasonable, necessary, directly related to the special education programs, and sufficiently documented. The RCM states that, when determining the reasonableness of a given cost, consideration is to be given to, among other things, whether the cost is a type generally recognized as ordinary and necessary for the operation of a special education program approved under Article 89 of the Education Law. The RCM also states that costs for food, beverages, and entertainment and other related costs for meetings, including board meetings, are not reimbursable. Additionally, costs for food provided to any staff, including lunchroom monitors, are not reimbursable. Furthermore, political and charitable contributions and donations made by the program are not reimbursable.

We determined WARC reported \$3,245 in costs that were ineligible for reimbursement because they were not in compliance with RCM requirements. The ineligible costs were related to food for staff and WARC's Board, a holiday party, a staff picnic, and a donation.

Overstated Expenses

According to the RCM, costs will not be reimbursable on field audit without appropriate written documentation. Documentation of all purchases includes, but is not limited to, canceled checks and invoices listing the items purchased, date of purchase, and date of payment. Costs must be charged directly to specific programs whenever possible. The programs must be identified on invoices or associated

documents. Furthermore, the RCM states that Section 200.9 (d) of the Regulations of the Commissioner of Education 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 7 years following the end of each reporting year. Additionally, the RCM states that entities operating programs must maintain accounts in accordance with generally accepted accounting principles and Section 200.9 (d) of the Commissioner's Regulations.

We found a discrepancy in what WARC reported on the CFRs versus what was recorded in the general ledger for certain line items. WARC officials explained that expense totals were incorrectly reported on the CFR and the totals in the general ledger were correct. We identified:

- \$99 for supplies and materials charged to the 2015 CFR-1;
- \$89 for leased/rented equipment charged to the 2016 CFR-1;
- \$74 in staff travel charged to the 2016 CFR-1; and
- \$55 in staff development costs charged to the 2016 CFR-1.

Consequently, we recommend that SED disallow \$317 in overstated expenses because it did not comply with the RCM requirements.

Offsetting Revenue

According to the RCM, Section 4401 of the Education Law states that an approved tuition rate shall be computed after certain revenues have been offset by SED against the proper expenditures. As is relevant here, any cash receipts that reduce the cost of an item will be applied against the item, except gifts, donations, and earned interest from other than public funds. Gains from the sale of program equipment, vehicles, or buildings not purchased through a grant or private funds will be offset by SED against replacement assets or total program costs when a tuition rate is calculated. Losses from the sale or impairment of program equipment, vehicles, or buildings will not be reimbursed in the tuition rate calculation. Also, funding received from a governmental agency or unit for specific education programs or cost items will be offset by SED against the appropriate program costs in the calculation of tuition rates so that costs will not be reimbursed more than once by public funds.

We found \$29,895 in grant revenue was not applied against reported costs as offsetting revenue in the Preschool Integrated Special Class – over 2.5 hours per day. (Note: SED had already made this adjustment increasing offsetting revenue in the calculation of the 2015-16 tuition rate.)

Recommendations

To SED:

1. Review the disallowances identified by our audit and, if warranted, make the necessary adjustments to the costs reported on WARC's CFR and to WARC's tuition reimbursement rates.
2. Make necessary changes to ensure proper calculation of tuition rates and recover overpayments.
3. Remind WARC officials of the pertinent SED requirements that relate to the deficiencies we identified.

To WARC:

4. 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 the audit was to determine whether the costs and revenues reported by WARC on its CFR were properly calculated, adequately documented, and allowable under SED guidelines, including the RCM. The audit covered expenses reported on WARC's 2015 and 2016 CFRs for the fiscal year ended June 30, 2016 and certain expenses for the fiscal year ended June 30, 2015.

To accomplish our objective and assess internal controls related to our objective, we reviewed the RCM that applied to the calendar years we examined and the CFR Manual and related appendices. We evaluated WARC's internal controls as they related to costs it reported on the CFRs. We reviewed WARC's CFRs for the two calendar years ended December 31, 2016 with a focus on select costs for the fiscal year ended June 30, 2016, as well as relevant financial records for the audit period. We determined that the data was sufficiently reliable for our use in accomplishing our audit objective. We interviewed WARC personnel and reviewed policies to obtain an understanding of their financial practices for reporting costs on the CFR. For some expenses, we selected a judgmental sample of costs claimed by WARC on the CFRs that were considered high risk (e.g., food, higher dollar amounts, related-party transactions, employee salary costs, and costs that appeared not to be relevant to the Programs) to determine whether they were properly calculated, adequately documented, and allowable. Based on our sample design, we cannot project our results to the population as a whole. For other expenses (e.g., bonus payments to the Executive Director), we disallowed costs identified in this category.

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 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 professional judgment, these duties do not affect our ability to conduct this independent performance audit of SED's oversight and administration of WARC's compliance with the RCM.

Reporting Requirements

We provided a draft copy of this report to SED and WARC 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 their response, SED officials agreed with the audit recommendations and indicated the actions they will take to address them. WARC officials generally agreed with most of our disallowances. However, they disagreed with the disallowances related to 1:1 aides and legal fees, indicating that the costs were appropriately reported. Our responses to certain WARC 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

Westchester County Chapter NYSARC, Inc. Schedule of Submitted and Disallowed Program Costs for Fiscal Year Ended June 30, 2016 and Certain Expenses for Fiscal Year Ended June 30, 2015

Program Costs	Amount per CFR	Amount Disallowed	Amount Remaining	Notes to Exhibit
Personal Services	\$3,649,010	\$6,416	\$3,642,594	A-D
Other Than Personal Services	1,702,019	13,294*	1,688,725	A, B, E-N
Total Program Costs	\$5,351,029	\$19,710	\$5,331,319	
Offsetting Revenues	N/A	29,895*	29,895	O
Net Expenses	\$5,351,029	\$49,605	\$5,301,424	

*SED, pursuant to a desk review, previously adjusted offsetting revenue and some other than personal service costs.

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 WARC officials during the course of the audit.

- A. RCM Section II – Costs will be considered for reimbursement provided they 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 III.1 – 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.
- C. RCM Section II.13.A.(10) – Merit award (or bonus compensation) shall mean a non-recurring and non-accumulating (i.e., not included in base salary of subsequent years) lump sum payment in excess of regularly scheduled salary 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 that are completed prior to the determination and accrual of the merit award and within one year of such determination and accrual. In order to demonstrate that a merit award is based on merit and measured and supported by employee performance evaluations, the provider’s governing entity must adopt a written employee performance evaluation policy and form that contains sufficient detail as to the criteria and methods used to determine each employee’s final evaluation rating. In addition, merit awards are restricted to direct care titles/employees as defined by the RCM’s Appendix A-1 and those in the 100 position title code series and position title code 505 and 605 as defined by the CFR’s Appendix R.
- D. RCM Section IV.2.F – Rate-Setting Methodology for the 2015-16 Tuition Rates: For the 2015-16 school year, regional weighted average 1:1 aide add-on rates will be developed and added to the schools’ base tuition rates. All 1:1 aide costs (salaries, fringe benefits, and allocated direct and indirect costs) should be reported in one separate cost center on the providers’ financial reports.
- E. RCM Section I.10.A – Consideration shall be given to whether the cost is a type generally recognized as ordinary and necessary for the operation of the special education program approved under Article 89 of the Education Law.
- F. RCM Section II.30.C – Costs for food, beverages, entertainment, and other related costs for meetings, including board meetings, are not reimbursable.
- G. RCM Section II.22.C – Costs for food provided to any staff, including lunchroom monitors, are not reimbursable.
- H. RCM Section III.1 – Costs will not be reimbursable on field audit without appropriate written documentation. Section III.1.D: All purchases must be supported with canceled checks and invoices listing the items purchased, date of purchase, and date of payment. Costs must be charged directly to specific programs whenever possible. The programs must be identified on invoices or associated documents.

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- I. RCM Section II.16 – Political and charitable contributions and donations made by the program are not reimbursable.
 - J. RCM Section II.14.B – Costs associated with retainers for legal, accounting, or consulting services are not reimbursable unless the fee represents payment for actual documented reimbursable services rendered, provided the services are not for lobbying efforts. Lobbying activities include, but are not limited to, advocating for legislation and activities associated with obtaining grants, contracts, cooperative agreements, or loans.
 - K. RCM Section III.1.M.(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.
 - L. RCM Section I.9 – Agency administration are those expenses that are not directly related to a specific program but are attributable to the overall operation of the agency.
 - M. RCM Section II.2.B – Administrative costs may include, but are not limited to: OTPS costs of professional dues and conferences; travel; telephone; office equipment and supplies; bonding of employees handling program funds; fees for lawyers, accountants, and consultants; charges from parent organizations; personnel advertising and other recruiting costs; minimum corporation franchise tax or similar business tax; postage; office equipment rental or depreciation; repairs and maintenance; depreciation on assets related to administration; administrative purchase of services; organization dues; licenses and permits; subscriptions and publications; interest on operating loans; administrative staff development; and membership in civic, business, professional, or technical organizations.
 - N. RCM Section III.1.M.(3) – For CFR filers (except Office of Children and Family Services residential facilities), administrative costs shall be allocated to all programs operated by the entity based on the ratio value method of allocation.
 - O. RCM Section II.44.A – Section 4401 of the Education Law states that an approved tuition rate shall be computed after the following revenues have been offset by SED against the proper expenditures: (1) Any cash receipts that reduce the cost of an item will be applied against the item, except gifts, donations, and earned interest from other than public funds. Gains from the sale of program equipment, vehicles, or buildings not purchased through a grant or private funds will be offset by SED against replacement assets or total program costs when a tuition rate is calculated. Losses from the sale or impairment of program equipment, vehicles, or buildings will not be reimbursed in the tuition rate calculation. See Section II.17 Depreciation/Amortization relating to costs funded by grants. (2) Funding received from a governmental agency or unit for specific education programs or cost items will be offset by SED against the appropriate program costs in the calculation of tuition rates so that costs will not be reimbursed more than once by public funds.

Agency Comments - State Education Department



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

EXECUTIVE DEPUTY COMMISSIONER
(518) 473-8381
E-mail: Sharon.Cates-Williams@nysed.gov

August 30, 2021

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, 2020-S-27, Westchester County Chapter NYSARC, Inc. (WARC) - Compliance with the Reimbursable Cost Manual.

Recommendation 1:

"Review the disallowances identified by our audit and, if warranted, make the necessary adjustments to the costs reported on WARC's CFR and to WARC'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.

Recommendation 2:

"Make necessary changes to ensure proper calculation of tuition rates and recover overpayments."

We agree with this. 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.

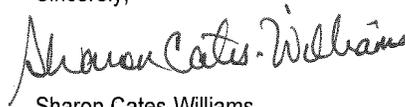
Recommendation 3:

"Remind WARC 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 WARC 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 WARC 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

c: Phyllis Morris
Christopher Suriano
Suzanne Bolling
Brian Zawistowski
James Kampf
Jerry Nestleroad
Jeanne Day

Agency Comments - Westchester County Chapter NYSARC, Inc.



Pamela A. Madeiros
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August 19, 2021

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

Re: State Education Department
Compliance with the Reimbursable Cost Manual
Westchester County NYSARC, Inc.
Draft Report 2020-S-027

Dear Mr. Reilly:

We have reviewed the above-referenced Draft Report relative to costs and revenue reported by Westchester County NYSARC, Inc. (WARC) on the 2015 and 2016 Consolidated Fiscal Reports (CFR's) for the fiscal year ending June 30, 2016 and certain expenses for the fiscal year ending June 30, 2015, and determinations as to whether such costs were properly calculated, adequately documented and allowable under the State Education Department's (SED) guidelines, including the Reimbursable Cost Manual (RCM). We appreciate the opportunity to provide comment and context to the Draft Report findings.

Audit Findings and Recommendations

WARC does not challenge a select number of the Audit Findings, as otherwise indicated herein, and appreciates the auditors' acknowledgement that SED had "adjusted some of these (nonallowable) costs when establishing the Program's 2014-15 and 2015-16 tuition rates", thus assuring "accountability for the tax dollars spent to support" WARC's educational operations and guarding against unjust enrichment. WARC strengthened its internal operations upon notice by SED during the rate setting process of the appropriateness of certain costs determined by SED to be ineligible for reimbursement to avoid the replication of such reporting errors.

Personal Service Costs

Bonuses

WARC does not challenge the auditors' finding that while considered a reimbursable expense in other reimbursement systems, the Reimbursable Cost Manual does not consider an Executive Director's salary enhancement beyond a certain threshold to be an allowable cost. We appreciate the auditors' reconsideration of the disallowance as initially proposed, and do not challenge the \$1,723 finding as related to the audited programs.

1:1 Aides

WARC respectfully challenges the auditors' determination that "because the 1:1 aides were funded under the 1:1 aide program (program code 9230), the costs associated with the revenue should be reported under the program code 9230" as the basis for a proposed disallowance of \$4,693 in salary and fringe

expenses. While WARC concurs with the auditors' assessment that costs associated with 1:1 aide activities must be reported with the revenue of the 9230 program, the costs and expenses under review here relate to non-1:1 aide activities – activities in which the 1:1 aide was engaged when the assigned student was absent. As we shared with the auditors, we have been advised by SED that redeployment of 1:1 aide staff into classrooms is an appropriate engagement of personnel and that costs associated with the redirected now classroom activities were appropriately reported as classroom costs so long as the time studies/time sheets/ or other supporting documents reflected the redeployment. Accordingly, in as much as WARC has complied fully with SED directives on this issue, we believe the auditors' finding should be reconsidered.

[Comment 1](#)

Other Than Personal Service Costs

Staff Recognition Awards

WARC does not challenge the auditors' finding that \$48,808 in reported staff recognition award costs \$24,405 (2015-16); \$13,923 (2014-15) did not comply with RCM requirements. We also appreciate the stated recognition that "SED adjusted these costs when establishing the Program's tuition rates for the two fiscal years ending June 30, 2016". In as much as SED made the necessary adjustments to assure WARC's tuition rate did not include these costs, consistent with rate review protocols and objectives, we respectfully request that the auditors recast this specific finding as "Other Related Matters" without emphasis on the identified dollar amount. To do otherwise, we would argue, distorts the audit determinations by suggesting that these costs were funded by State dollars which is inaccurate. We believe recasting the auditors' findings relative to these costs (\$4,094) *outside* the audit finding total of \$49,605 "in costs that did not comply with SED's requirements for reimbursement" more appropriately reflects the disallowable transaction by SED, in furtherance of the auditors' objectives to "safeguard (state) assets".

[Comment 2](#)

Legal Fees

We challenge the auditors' assertion that \$9,488 in legal fees had been incorrectly reported on the CFR. As shared with the auditors, these legal fees were incurred for the exclusive benefit of specific aspects of the WARC operations and was not, as the auditors suggest, an agency administrative expense subject to the ratio value method of cost allocation.

We have consulted with the SED Rate-Setting Unit on the propriety of allocating select legal fees to specific costs centers and have been advised that the CFR interagency committee's position, as we shared with the auditors, is to allow providers to direct charge audit and legal costs to specific cost centers when appropriate pursuant to CFR directives that providers should direct charge costs, including administrative costs, wherever possible. Examples of "direct charge audit/legal costs" included legal costs for renegotiating leases on rental apartment, lawsuits involving a specific program component of the agency's operations, and Medicaid audits of a specific cost center. Here, the legal costs were incurred around an investigation into the propriety of certain signatures on preschool documents – clearly, of exclusive focus and benefit to the 4410 operations and not the agency, as a whole.

Accordingly, we respectfully request reconsideration of the proposed disallowance of \$5,638 in legal costs as baseless and inconsistent with directives of the CFR Manual and supporting guidance from the SED Rate Setting Unit.

[Comment 3](#)

Ineligible Costs

WARC does not challenge the auditors' finding that \$3,245 in costs related to food for staff and the Board of Directors, staff appreciation events and a donation.

Overstated Expenses

WARC does not challenge the auditors' findings that approximately \$317 in expenses related to supplies and materials (\$99), leased equipment (\$89), staff travel (\$74), and staff development costs (\$55) was inadvertently reported as reimbursable expenses of the preschool program and should have been reported in other cost centers.

Offsetting Revenue

WARC does not challenge the auditors' determination that \$29,895 in grant revenue had not been reported as off-setting revenue against reported costs in a specific program code. However, as acknowledged in the Report Narrative, "SED (has) already made (this) adjustment increasing offsetting revenue in the calculation of the 2015-16 tuition rate". As respectfully requested above, we believe a more appropriate characterization and presentation of this finding is as "Other Related Matters" without inclusion of the expenses within the auditors total \$49,605 in "ineligible costs".

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We appreciate the opportunity to provide comment on the Draft Report.

Very truly yours,



GREENBERG TRAUIG, LLP

cc: James Kampf (NYSED)
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State Comptroller's Comments

1. WARC's assertion to report 1:1 aides in other programs when the 1:1 aide's assigned student is absent is contrary to RCM guidance. Since the 1:1 aide's services are reimbursed as a 1:1 aide when the student is absent, reporting those costs in another program, particularly one that is funded based upon costs, results in the 1:1 aide's services being funded twice.
2. The staff recognition awards finding is located within the Other Than Personal Service Costs section, consistent with OSC's past reports. The report does not suggest these costs were funded by State dollars. As stated in the report, SED adjusted these costs when establishing the Program's tuition rates for the two fiscal years ending June 30, 2016.
3. WARC did not provide documentation with adequate details to determine that the legal services only benefited the Programs. Furthermore, we note that while costs should be direct charged when they relate to a specific program, the CFR Manual specifically identifies audit/legal expenses as an agency administration expense. Inconsistent treatment of such costs impedes fair and equitable program funding.

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