



New York State Comptroller
THOMAS P. DiNAPOLI

E&D Children Center, Inc.: Compliance With the Reimbursable Cost Manual

State Education Department

Report 2020-S-44 | November 2021

Spotlight on Education



Audit Highlights

Objective

To determine whether the costs reported by E&D Children Center, Inc. (E&D) on its Consolidated Fiscal Reports (CFRs) were reasonable, necessary, directly related to the special education program, and sufficiently documented, pursuant to the State Education Department's (SED) Reimbursable Cost Manual (RCM) and the Consolidated Fiscal Reporting and Claiming Manual (CFR Manual). The audit focused primarily on expenses claimed on E&D's CFR for the fiscal year ended June 30, 2015 and certain expenses claimed on its CFRs for the 2 fiscal years ended June 30, 2014.

About the Program

E&D is a New York City-based proprietary organization approved by SED to provide preschool Special Education Itinerant Teacher (SEIT) services to children with disabilities who are between the ages of 3 and 5 years. During the 2014-15 school year, E&D served approximately 275 students with disabilities.

The New York City Department of Education (DOE) refers students to E&D and pays for its services using rates established by SED. The rates are based on the financial information E&D reports to SED on its annual CFRs. For the 3 fiscal years ended June 30, 2015, E&D reported approximately \$11.8 million in reimbursable costs for the SEIT preschool cost-based program.

Key Findings

For the 3 fiscal years ended June 30, 2015, we identified \$711,676 in reported costs that did not comply with the requirements in the RCM and the CFR Manual, as follows:

- \$300,142 in independent contractor and consultant costs that did not comply with RCM requirements, including \$133,612 in legal and accounting fees, \$108,000 in contracted software maintenance, \$41,530 in contracted computer repairs, and \$17,000 in CFR/RCM consulting fees. These costs were not supported by detailed invoices, as required by the RCM.
- \$260,173 in non-mandated fringe benefits expenses (e.g., pension, health insurance) that were not proportionately similar between classes or groups of E&D employees.
- \$82,648 in unallowable personal service expenses, including \$82,273 in unsupported year-end adjusting entries and \$375 in personal parking expenses.
- \$34,859 in other than personal service (OTPS) expenses that were unsupported and/or insufficiently documented.
- \$20,442 in depreciation costs that were funded by another government grant.
- \$13,412 in unallowable OTPS costs, including \$5,805 in staff commuting, \$3,186 in food for staff, \$2,400 in costs reported in the incorrect CFR reporting period, \$1,621 in miscellaneous gifts to staff, and \$400 paid to a charitable organization.

Key Recommendations

To SED:

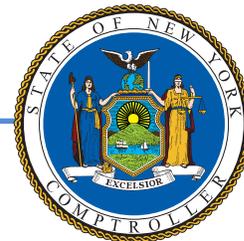
- Review the recommended disallowances identified by our audit and make the necessary

adjustments to the costs reported on E&D's CFR and to E&D's tuition reimbursement rates, as warranted.

- Remind E&D officials of the pertinent SED requirements that relate to the deficiencies we identified.

To E&D:

- 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**

November 16, 2021

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

Aron Igel
Executive Director
E&D Children Center, Inc.
1316 48th Street
Brooklyn, NY 11219

Dear Dr. Rosa and Mr. Igel:

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 E&D Children 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> |
| DOE | New York City Department of Education | <i>Agency</i> |
| E&D | E&D Children Center, Inc. | <i>Service Provider</i> |
| OTPS | Other than personal service | <i>Key Term</i> |
| RCM | Reimbursable Cost Manual | <i>Policy</i> |
| SED | State Education Department | <i>Auditee</i> |
| SEIT | Special Education Itinerant Teacher | <i>Key Term</i> |

Background

E&D Children Center, Inc. (E&D) is a New York City-based proprietary organization approved by the State Education Department (SED) to provide preschool Special Education Itinerant Teacher (SEIT) services to children with disabilities who are between the ages of 3 and 5 years. During the fiscal year ended June 30, 2015, E&D served approximately 275 students with disabilities.

The New York City Department of Education (DOE) refers students to E&D based on clinical evaluations and pays for E&D's services using rates established by SED. The rates are based on the financial information that E&D reports to SED on its annual Consolidated Fiscal Reports (CFRs). To qualify for reimbursement, E&D's expenses must comply with the criteria in SED's Reimbursable Cost Manual (RCM) and the Consolidated Fiscal Reporting and Claiming Manual (CFR Manual), which provide guidance to special education providers on the eligibility of reimbursable costs, the documentation necessary to support these costs, and cost allocation requirements for expenses related to multiple programs and entities. SED reimburses DOE 59.5% of the statutory rate, which DOE pays E&D.

For the 3 fiscal years ended June 30, 2015, E&D reported approximately \$11.8 million in reimbursable costs for the SEIT preschool cost-based program. This audit focused primarily on expenses that E&D claimed on its CFR for fiscal year ended June 30, 2015, but also included certain expenses that E&D claimed on its CFRs for the 2 fiscal years ended June 30, 2014.

Audit Findings and Recommendations

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. For the 3 fiscal years ended June 30, 2015, we identified \$711,676 in reported costs that did not comply with SED's requirements for reimbursement. These ineligible costs include \$342,821 in personal service costs and \$368,855 in other than personal service (OTPS) costs (see Exhibit at the end of the report).

Strong internal controls are critical to the overall health of an organization. These controls help to safeguard assets and ensure reliable financial reporting and compliance with regulatory requirements. We attributed the disallowances detailed in this report to weaknesses in E&D's internal controls over its compliance with SED's guidelines.

Personal Service Costs

Personal service costs, which include all salaries and fringe benefits paid or accrued to employees on the service provider's payroll, must be reported on the CFR as either direct care costs (e.g., teachers' salaries) or non-direct care costs (e.g., administrators' salaries). For the 3 fiscal years ended June 30, 2015, E&D reported approximately \$10.8 million in personal service costs for the SEIT preschool cost-based programs. To determine whether these expenses complied with SED's requirements for reimbursement, we judgmentally selected a sample totaling \$1,196,754 in personal service expenses. We identified \$342,821 in personal service costs that did not comply with the RCM's requirements for reimbursement.

Non-Mandated Fringe Benefits

According to the RCM, fringe benefits (including pensions, life insurance, and tax-sheltered annuities) for individual employees or officers/directors should be proportionately similar to those received by other classes or groups of employees. We identified \$260,173 in non-mandated fringe benefits that were not in compliance with the RCM's requirements.

Pension Benefits

For the 2 fiscal years ended June 30, 2015, E&D reported \$160,000 in pension expenses. We reviewed pension-related records provided by E&D, and determined that the pension plan benefited only a select group of management and/or highly compensated employees, such as the Executive Director, Controller, five office workers, and one supervising teacher. However, no eligible SEIT teachers were offered pension benefits.

We recommend that SED disallow \$160,000 in pension benefit expenses that did not meet the requirements of the RCM.

E&D officials disagreed and stated that no SEIT teachers were eligible; however,

they could not provide us with any additional information, except for the employee contracts, to substantiate their claim.

Health Benefits

For the 3 fiscal years ended June 30, 2015, E&D reported a total of \$100,173 in health insurance expenses. We reviewed health insurance records provided and determined that E&D's Executive Director and Controller were the only employees who received paid health insurance benefits.

We recommend that SED disallow \$100,173 in health benefit expenses that did not meet the requirements of the RCM.

E&D officials disagreed and advised us that that several eligible SEIT teachers benefited from E&D's insurance coverage; however, E&D officials could not provide any evidence to support their assertion. Moreover, we noted that the SEIT teachers' contracts included a clause that stated "SEIT providers are not entitled to receive any benefits from E&D Inc."

Unallowable Personal Service Costs

According to the RCM, generally, costs will be considered for reimbursement provided such costs are reasonable, necessary, directly related to the special education program, and sufficiently documented. All personal expenses, such as personal travel expenses, are not reimbursable unless specified otherwise in the RCM. We identified \$82,648 in miscellaneous unallowable expenses, as follows:

- \$82,273 in unsupported year-end personal service adjusting entries. E&D officials could not provide records to support these expenses.
- \$375 in personal parking reimbursement expenses.

We recommend that SED disallow \$82,648 in unallowable expenses charged to the SEIT preschool cost-based program.

Other Than Personal Service Costs

According to the RCM, costs must be reasonable, necessary, directly related to the special education program, and sufficiently documented. For the 3 fiscal years ended June 30, 2015, E&D reported \$954,326 in OTPS expenses for its SEIT preschool cost-based program. We identified \$368,855 of these expenses that did not comply with SED's reimbursement requirements.

Insufficiently Documented Independent Contractor/ Consultant Fees

According to the RCM, costs will not be reimbursable on field audit without appropriate written documentation of costs. Consultants include independent accountants, lawyers, and other independent contractors. Record-keeping

requirements for consultants include, but are not limited to, the consultant's résumé, a written contract that includes the nature of the services to be provided, the charge per day, and service dates. All payments must be supported by itemized invoices that indicate the specific services actually provided and, for each service, the date(s), number of hours provided, fee per hour, and total amount charged. For the 3 fiscal years ending June 30, 2015, we identified \$300,142 in costs that did not comply with the RCM's requirements, as follows:

- \$133,612 in legal and accounting fees. These expenses were not supported by detailed invoices as required by the RCM.
- \$108,000 in contracted software maintenance expenses. The invoices did not include the specific services actually provided and, for each service, the date(s), number of hours provided, and fee per hour.
- \$41,530 in contracted computer repair expenses for which there was no support or the supporting invoices were not detailed as required by the RCM.
- \$17,000 in CFR/RCM consulting fees that were not supported by detailed invoices.

We recommend that SED disallow \$300,142 in contractor and consultant fees that were not in compliance with the RCM's requirements.

E&D officials disagreed with the recommended disallowance. They contended that their vendors did not need to provide itemized invoices because the work to be performed was already stated in the written contracts. We disagree. The RCM explicitly states that all payments must be supported by itemized invoices that indicate the specific services actually provided and, for each service, the date(s), number of hours provided, fee per hour, and total amount charged.

Unsupported and/or Insufficiently Documented OTPS Costs

The RCM states that costs will be considered for reimbursement provided such costs are reasonable, necessary, directly related to the special education program, and sufficiently documented. Further, costs will not be reimbursable on field audit without appropriate written documentation. We identified \$34,859 in expenses that did not comply with the requirements in the RCM because E&D did not have adequate supporting documentation, as follows:

- \$11,131 in year-end adjusting entries purportedly representing payments made to the landlord for reimbursement of real estate taxes. However, E&D officials could not provide sufficient records to support these expenses.
- \$8,008 in unsupported petty cash transactions.
- \$4,058 in unsupported staff training expenses, including staff conferences and seminars.

-
- \$3,887 in unsupported office/program supplies.
 - \$3,830 in unsupported professional fees (\$600) and liability insurance costs (\$3,230).
 - \$1,750 in insufficiently documented service fees related to E&D's pension plan.
 - \$1,494 in unsupported payroll service expenses.
 - \$500 in employee recruiting fees that were insufficiently documented.
 - \$201 in other unsupported purchases.

We recommend that SED disallow \$34,859 in expenses that were not in compliance with the RCM.

Depreciation of IDEA-Funded Assets

According to the RCM, the portion of the cost of building construction, acquisition, renovation, or equipment cost funded by a government grant or other public funding cannot be reimbursed again through depreciation of these costs. For the 2 fiscal years ended June 30, 2015, E&D reported \$20,442 in Individuals with Disabilities Education Act (IDEA) funded assets' depreciation to the SEIT preschool cost-based program. However, these costs should have been reported under the IDEA programs (program 9805 and/or program 9806). Consequently, we recommend that SED disallow \$20,442 in depreciation costs that were not in compliance with the RCM.

Unallowable OTPS Costs

According to the RCM, costs will be considered for reimbursement provided such costs are reasonable, necessary, directly related to the special education program, and sufficiently documented. Additionally, the cost of vehicles used by program officials, employees, or board members to commute to and from their homes are not reimbursable. Political and charitable contributions and donations made by the program are not reimbursable. The RCM also states that costs of food provided to any staff are not reimbursable. Further, all personal expenses, such as gift certificates to staff and vendors, are not reimbursable unless otherwise specified in the RCM. In addition, according to the CFR Manual, only expenses for the proper CFR reporting period should be included on the CFR. CFRs submitted with expenses for a different reporting period will not be accepted.

We identified \$13,412 in reported costs that were ineligible for reimbursement because they did not comply with the requirements in the RCM and CFR Manual. These include:

- \$5,805 in personal commuting expenses (e.g., car service).
- \$3,186 in staff food costs such as pizza, sushi, coffee, and ice cream.

-
- \$2,400 in consulting expenses that were charged to the incorrect CFR reporting period. E&D reported fiscal year 2015-16 expenses in fiscal year 2014-15.
 - \$1,621 in gifts to staff, including \$750 in tote bags and \$646 in flash drives. Additionally, we identified \$225 in taxes and shipping/handling expenses related to these gift items.
 - \$400 in telephone charges paid to a charitable organization. E&D officials could not explain the purpose of these payments or how they related to the program. Moreover, E&D had already paid another provider for telephone service.

We recommend that SED disallow \$13,412 in expenses that were not in compliance with the RCM and CFR Manual.

Recommendations

To SED:

1. Review the recommended disallowances identified by our audit and make the necessary adjustments to the costs reported on E&D's CFR and to E&D's tuition reimbursement rates, as warranted.
2. Remind E&D officials of the pertinent SED requirements that relate to the deficiencies we identified.

To E&D:

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 reported by E&D on its CFRs were reasonable, necessary, directly related to the special education program, and sufficiently documented, pursuant to SED guidelines. The audit focused primarily on expenses claimed on E&D's CFR for the fiscal year ended June 30, 2015 and certain expenses claimed on its CFRs for the 2 fiscal years ended June 30, 2014.

To accomplish our objective, we reviewed the RCM, the CFR Manual, the Regulations of the Commissioner of Education, E&D's CFRs, and relevant financial and program records for the audited period. In addition, we evaluated the internal controls over the costs claimed on, and the schedules prepared in support of, the CFRs submitted to SED. We also interviewed E&D officials and staff as well as its independent auditor to obtain an understanding of E&D's financial and business practices. Additionally, we selected a judgmental sample of reported costs to determine whether they were supported, program related, and reimbursable. Specifically, we reviewed costs that were considered high risk and reimbursable in limited circumstances based on prior audit report findings, such as salaries and fringe benefit expenses, cost allocation, and OTPS expenses. Our samples were based on the relative materiality of the various categories of costs reported and their associated levels of risk. Our samples were not designed to be projected to the entire population of reported costs.

Statutory Requirements

Authority

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

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 E&D's compliance with the RCM.

Reporting Requirements

We provided a draft copy of this report to SED and E&D officials for their review and formal comment. Their comments were considered in preparing this final report and are included at the end of it. In their response, SED officials agreed with our recommendations and indicated that they will take steps to address them. In their response, E&D officials generally disagreed with most of our conclusions. Our responses to certain E&D 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

E&D Children Center, Inc.
Summary of Reported and Disallowed Program Costs
for 2012-13, 2013-14, and 2014-15 Fiscal Years

| Program Costs | Amount Reported on CFR | Amount Disallowed | Amount Remaining | Notes to Exhibit |
|---|-------------------------------|--------------------------|-------------------------|-------------------------|
| Personal Services | | | | |
| Direct Care | \$9,156,136 | \$127,193 | \$9,028,943 | A,B,D,E |
| Agency Administration | 1,669,924 | 215,628 | 1,454,296 | |
| Total Personal Services | \$10,826,060 | \$342,821 | \$10,483,239 | |
| Other Than Personal Service | | | | |
| Direct Care | \$175,725 | \$13,485 | \$162,240 | A,C-H |
| Agency Administration | 778,601 | 355,370 | 423,231 | |
| Total Other Than Personal Services | \$954,326 | \$368,855 | \$585,471 | |
| Total Program Costs | \$11,780,386 | \$711,676 | \$11,068,710 | |

Notes to Exhibit

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

- A. RCM Section II – Costs will be considered for reimbursement provided such costs are reasonable, necessary, directly related to the special education program, and sufficiently documented.
- B. RCM Section II.13.B.2.(c) – Benefits, including pensions, life insurance, and tax-sheltered annuities, for individual employees or officers/directors are proportionately similar to those received by other classes or groups of employees.
- C. RCM Section II.17.A.7 – The portion of the cost of building construction, acquisition, renovation, or equipment cost funded by a government grant or other public funding cannot be reimbursed again through depreciation of these costs.
- D. RCM Section II.20.B – All personal expenses, such as personal travel expenses, laundry charges, beverage charges, gift certificates to staff and vendors, flowers or parties for staff, holiday parties, repairs on a personal vehicle, rental expenses for personal apartments, etc., are not reimbursable unless specified otherwise in the RCM.
- E. RCM Section III.1 – Costs will not be reimbursable on field audit without appropriate written documentation of costs.
- F. RCM Section III.1.C.2 – Adequate documentation for consultants includes, but is not limited to, the consultant's résumé, a written contract that includes the nature of the services to be provided, charge per day, and service dates. All payments must be supported by itemized invoices that indicate the specific services actually provided and, for each service, the date(s), number of hours provided, fee per hour, and total amount charged. In addition, when direct care services are provided, the documentation must indicate the names of students served, actual dates of service, and number of hours of service to each child on each date.
- G. RCM Section III.1.D – All purchases must be supported with invoices, listing items purchased and indicating dates of purchase and payment, as well as canceled checks.
- H. CFR Manual (page 3.2) – Only expenses and revenues for the proper CFR reporting period should be included in the CFR. CFRs submitted with expenses and revenues for a different reporting period will not be accepted.

Agency Comments - State Education Department



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

EXECUTIVE DEPUTY COMMISSIONER
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October 13, 2021

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

Dear Mr. Sifontes:

The following is the New York State Education Department's (SED) response to the draft audit report, 2020-S-44, E&D Children Center, Inc. (E&D) - Compliance with the Reimbursable Cost Manual.

Recommendation 1:

"Review the recommended disallowances identified by our audit and make the necessary adjustments to the costs reported on E&D's CFR and to E&D's tuition reimbursement rates, as warranted."

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

Recommendation 2:

"Remind E&D 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 E&D 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 E&D 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 - E&D Children Center, Inc.



October 4, 2021

Kenrick Sifontes
Office of the State Comptroller
Division of State Government Accountability
59 Maiden Lane - 21st Floor
New York, NY 10038

Dear Mr. Sifontes,

This letter serves as a response to the findings contained in the draft audit report 2020-5-44/ September 2021 issued by the NY State Comptroller (OSC) on E&D Children Center Inc. ("E&D"). We have reviewed the Draft Report's account of whether the costs reported by E&D on its Consolidated Fiscal Reports were reasonable, necessary, directly related to the special education program, and sufficiently documented, consistent with the State Education Department's Reimbursable Cost Manual (RCM) and the Consolidated Fiscal Reporting and Claiming Manual (CFR Manual) for the fiscal year ended June 30, 2015, and for certain expenses claimed on its CFRs for the two fiscal years ended June 30, 2014.

Personal Service Costs

The auditors identified \$342,821 (\$260,173 + \$82,648) in personal service costs that they claimed did not comply with the RCM's requirements.

Non-Mandated Fringe Benefits - The auditors recommended that SED disallow \$260,173 (\$160,000 + \$100,173) in non-mandated fringe benefits they claimed were not in compliance with the RCM's requirements, as follows:

Pension Benefits - The auditors recommended that SED disallow \$160,000 in pension benefit expenses, asserting that E&D's pension plan benefited only a select group of management and/or highly compensated employees such as the Executive Director, Controller, five office workers, and one supervising teacher, with no eligible SEIT teachers offered pension benefits.

In fact, the auditors selected a sample of thirteen SEIT teachers from among the many employees employed by E&D and they determined that four of these were not provided pension benefits.

Response:

E&D's pension and retirement plans are in compliance with IRS guidelines and are accessible to all eligible employees. The assertion that employees were not provided with pension benefits, and that the Company's policy only provides benefits to a select few, is incorrect. In fact, based on the Company's Retirement (or pension) Plan, as cited below, **none** of the employees sampled by the

[Comment 1](#)

[Comment 2](#)

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auditors were qualified for pension benefits. Thus, no limitations were imposed; all eligible SEIT teachers were offered pension benefits.

E&D's pension plan's eligibility criteria includes:

- (1) The employee must be at least age of 18 and credited with at least 1,000 hours of service, and (2) Once in the plan, the employee must work 500 hours.

However, the auditors failed to acknowledge an additional and important criterion included in the E&D Retirement Plan, previously submitted for their review, in Article 2.1 (b), Page 22. This clause specifically addresses the terms that confer eligibility for pension benefits:

*"Eligibility Requirements. An Eligible Employee described in Section 2.1(a) will be eligible to enter the Plan as a Participant on the applicable entry date described in Section 2.1(c) upon the earlier of (A) reaching Age 21 and being credited with 1 Year of Service or (B) reaching Age 18 and being credited with **6 consecutive calendar months of employment during an Eligibility Computation Period. An Employee will be credited with a calendar month of employment for any calendar month in which the Employee is continuously employed with the Employer or an Affiliated Employer without interruption for that entire calendar month (except for those interruptions that are described in the definition of Hour of Service) and in which the Employee is credited with at least 83.33 Hours of Service per month.**"*

In conclusion, the proposal that the SED disallow \$160,000 in pension costs is unsustainable. E&D's retirement policy was accessible to all *eligible* employees.

Health Benefits

The auditors recommended that SED disallow **\$100,173** in health benefit expenses, claiming that E&D's Executive Director and Controller were the only employees who received paid health insurance benefits. Moreover, the auditors asserted that the SEIT teachers' contracts included a clause that stated "SEIT providers [are] not entitled to receive any benefits from E&D Inc."

Response:

E&D has provided the auditors with its Employee Handbook. On Page 29, the Handbook explicitly states which employees are eligible for health insurance benefits and is clearly non-discriminatory in conferring eligibility:

"HEALTH INSURANCE COVERAGE - Employees, including SEITs, providing thirty or more hours of services per week through E&D are entitled to receive individual health insurance free of charge. Employees providing 20-29 hours services per week through E&D have the opportunity to buy into the E&D's health insurance plan."

As is clearly documented in the Employee Handbook provided to the auditors, E&D's health insurance plan was not discriminatory and participation was not limited to a select group of employees. In fact, in the three years under review, several eligible SEITs chose to benefit from E&D's insurance coverage, as below (employee names redacted for reasons of confidentiality):

[Comment 3](#)

[Comment 4](#)

[Comment 5](#)

[Comment 6](#)



| Employee | Coverage Duration | Class |
|------------|-----------------------------------|-------|
| Employee A | July through September 2012 | SEIT |
| Employee B | July through October 2012 | SEIT |
| Employee C | Fiscal Year 2012-2013 | SEIT |
| Employee D | July through October 2013 | SEIT |
| Employee E | September 2012 through March 2014 | SEIT |
| Employee F | Fiscal Year 2013-2014 | SEIT |

The remainder of eligible employees who did not choose coverage in E&D's health insurance plan may have refused the benefit for many reasons. The plan offered by E&D had a high deductible and some employees were required to partially reimburse the costs of their premiums. Additionally, some employees may have chosen other insurance options because the policy offered by E&D did not include their choice of providers or provider locations were inconvenient to them.

Moreover, options presented by the NYS Health Insurance Exchange, and other NY State programs, offer more advantageous terms than the policy offered by E&D. E&D is not required to document why employees choose not to avail themselves of its health insurance benefits.

In conclusion, there is no substantial basis for disallowing E&D's \$100,173 in health benefit expenses.

[Comment 7](#)

Unallowable Personal Service Costs - The auditors recommended that the SED disallow \$82,648 in miscellaneous unallowable expenses, including \$82,273 in unsupported year-end personal service adjusting entries.

Response:

Payroll accruals are made to ensure that expenses are recorded in the period that they were incurred, regardless of when the expense was actually paid. For example, often, an employee may be paid in the first week of a new fiscal year for services that were performed in the previous fiscal year. An accounting journal entry will ensure that the expense is recognized in the appropriate, prior fiscal year. **This is a basic accounting practice that is utilized by all businesses to ensure accurate reporting.**

[Comment 8](#)

Furthermore, E&D has previously provided a detailed response in which it reconciled the amounts paid to each SEIT, per the general ledger, for the fiscal year ending June 30, 2015, with the amounts paid to each SIET as reported on the CFR.

[Comment 9](#)

Other Than Personal Service Costs – the auditors identified \$368,855 that they claimed did not comply with SED's reimbursement requirements.



Insufficiently Documented Independent Contractor/Consultant Fees

The auditors recommended that the SED disallow \$300,142 in contractor and consultant fees that they claim were not in compliance with the RCM's documentation requirements, based on the fact that vendors' bills were not itemized. The auditors disagreed with E&D's contention that vendors' invoices were in fact compliant, despite non-itemization, because the work to be performed was already itemized in the written contracts.

Response:

The RCM states that all payments must be supported by itemized invoices that indicate the specific services that are to be provided for each service. E&D provided the auditors with itemized retainer agreements that clearly detailed the services to be provided, as follows (vendor names redacted for reasons of confidentiality):

The auditors claimed that **\$116,612** in legal & accounting fees were not supported by detailed invoices as required by the RCM. They noted that the invoices in this category only state the word "retainer" and claimed this did not offer sufficient description of the services performed. E&D provided the auditors with copies of signed retainer agreements which **clearly itemize the audit services to be performed**. The invoices to E&D served only as monthly statements to remind it of its obligations, as per established, detailed, and itemized retainer agreements.

[Comment 10](#)

The auditors claimed that **\$17,000** in consulting fees were not supported by detailed invoices. In fact, a service agreement and accompanying, detailed invoices were previously submitted. Both the service agreement and the invoices include a comprehensive description of the services to be provided, including consultation services related to retirement and benefit plans, SEIS Methodology, training in QuickBooks operations, and performing breakeven analysis.

[Comment 11](#)

The auditors claimed that **\$108,000** in contracted software maintenance expenses were either unsupported by invoices, or the supporting invoices were not detailed. In fact, documentation for the following data was provided, as follows:

- In June of 2012, E&D contracted with [Company A], a professional entity specializing in e-commerce websites, web applications and knowledge systems. At the time of contract, E&D agreed to pay for specific services, which are clearly described in a written agreement, a copy of which was provided to the auditors.
- In July of 2013, E&D contracted with [Company B], a company specializing in software for SEIT agencies which enables the collection and tracking of all students and providers' data, their progress, and files, and includes an invoice system. The platform provides that that all activity is in compliance with the Board of Education regulations. E&D's responsibility for license fees and payment, and the services offered by [Company B], are clearly described in the contract, a copy of which was provided to the auditors.

[Comment 12](#)

[Comment 13](#)



Invoicing is an important accounting practice for businesses however, invoices do not serve as a legally binding agreement between the business and its client. Therefore, E&D and its providers committed by contract and clearly conveyed their mutual responsibilities. **The contracts served as a service agreement, which was supported by monthly invoicing and payment.**

[Comment 14](#)

The auditors claimed that \$41,530 in contracted computer repair expenses were either unsupported by invoices, or the supporting invoices were not detailed. In fact, documentation for this expense was previously provided, including service contract agreements between E&D and [Company C] for each year under audit. The service agreements clearly describe the tech support services to be provided to E&D under the terms of the contract.

[Comment 15](#)

Unsupported and/or Insufficiently Documented OTPS Costs

The auditors recommended that the SED disallow \$34,859 in expenses, claiming that E&D did not comply with the documentation requirements in the RCM. Included in this sum was \$11,131 in year-end adjusting entries which represented payments made to E&D's landlord for reimbursement of real estate taxes. The auditors claimed these payments were not supported by sufficient documentation.

Response:

E&D's NY City tax bills and landlord's invoices supporting payments made to the landlord for reimbursement of real estate taxes were previously submitted to the auditors. A sum of \$11,131 was classified as 'Accrued Rent', representing payments made to the landlord for this expense. In reporting these transactions, an adjusting journal entry was made on June 30, 2013, to balance out the payments for taxes incurred between October 1, 2011 through June 30, 2013. The bills were paid in the following year.

[Comment 16](#)

We appreciate the opportunity to provide comment to the auditors' Draft Report.

Sincerely,

Marc Gelbtuch CPA CFF
Roth&Co. LLP

State Comptroller's Comments

1. We stand by our findings. Although SEIT teachers met the eligibility requirements for the pension, none were offered pension benefits.
2. We disagree. All sampled SEIT employees were eligible for pension benefits.
3. E&D is mistaken. We determined that eligible SEIT teachers met the 6 consecutive calendar months of employment requirement. Moreover, as stated on page 9 of our report, we noted that SEIT teachers' contracts included a clause that stated "SEIT providers are not entitled to receive any benefits from E&D Inc."
4. Refer to Comment 1.
5. We stand by our assertion. As stated on page 9 of our report, we noted that SEIT teachers' contracts included a clause that stated "SEIT providers are not entitled to receive any benefits from E&D Inc."
6. E&D's response is misleading. The employees who participated in E&D's health insurance plan had to pay for their health benefits while E&D's Executive Director and Controller received health benefits that were paid for by E&D. Accordingly, the health benefits received by the different classes and groups of employees were not proportionally similar.
7. We disagree. The health benefits received by the different classes and groups of employees were not proportionally similar. Refer to Comment 6.
8. We agree that payroll accruals are a basic accounting practice that is utilized by all businesses to ensure accurate reporting.
9. We disagree. E&D did not provide us with a detailed response in which it reconciled the amounts paid to each SEIT teacher.
10. We stand by our findings. The RCM requires that all payments be supported by itemized invoices that indicate the specific services actually provided and, for each service, the date(s), number of hours provided, fee per hour, and total amount charged. Auditors were not provided with invoices that included these details to support the payments.
11. We disagree. The invoices E&D officials provided to us did not meet the requirements of the RCM. Refer to Comment 10.
12. Refer to Comment 10.
13. Refer to Comment 10.
14. Refer to Comment 10.
15. Refer to Comment 10.
16. We disagree. E&D officials did not provide us with an invoice or any other documentation to support the cost claimed.

Contributors to Report

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