

THOMAS P. DINAPOLI
STATE COMPTROLLER



110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

April 8, 2022

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

Julianne Lopreto
President – Agency Director
Empowering Minds Therapy Inc.
38 Buckingham Drive
Holbrook, NY 11741

Re: Compliance With the Reimbursable
Cost Manual
Report 2021-S-21

Dear Dr. Rosa and Ms. Lopreto:

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 an audit of the expenses submitted by Empowering Minds Therapy Inc. (Empowering Minds) to the State Education Department (SED) for purposes of establishing the preschool special education tuition reimbursement rates used to bill public funding sources that are supported by State aid payments.

Background

Empowering Minds is an SED-approved, for-profit special education provider located in Holbrook. Empowering Minds provides preschool special education services to children with disabilities who are between 3 and 4 years of age. For the fiscal year ended June 30, 2015, Empowering Minds provided Special Education Itinerant Teacher services (referred to as the Program) to 22 children with special needs from Suffolk County.

Suffolk County pays tuition to Empowering Minds using school year reimbursement rates set by SED. The State, in turn, reimburses the county 59.5% of the tuition paid. SED sets the special education tuition rates based on school year financial information, including costs, reported by Empowering Minds on the annual Consolidated Fiscal Report (CFR) that it submits to SED. Costs reported on the CFR must comply fully with the guidelines in SED's Reimbursable Cost Manual (RCM) regarding 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, 2015, Empowering Minds reported \$235,364 in reimbursable costs for the Program.

Results of the Audit

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, 2015, we identified \$7,811 in costs Empowering Minds reported on its CFR that did not comply with SED's requirements for reimbursement. The ineligible costs included \$6,899 in personal service costs and \$912 in other than personal service (OTPS) costs.

Personal Service Costs

For the fiscal year ended June 30, 2015, Empowering Minds reported \$221,003 in personal service costs charged to the Program. We reviewed employee time records and support for all employees charged to the Program and identified \$6,899 that did not comply with the RCM's requirements for reimbursement.

According to the RCM, payroll compensation costs must be based on approved and documented payrolls and supported by employee time records. Also, compensation for employee lunches is not reimbursable. Additionally, 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.

We found that Empowering Minds charged compensation for one employee that was not fully supported by employee time records, resulting in an overstatement of \$2,437 (\$2,201 in salary and \$236 in fringe benefits) charged to the Program. Furthermore, Empowering Minds charged compensation for three employees' non-reimbursable half-hour lunches, resulting in an overstatement of \$2,188 (\$1,976 in salaries plus \$212 in fringe benefits). Finally, we found Empowering Minds charged compensation for one employee who, during June 2015, was working in a dual-employment role at both Empowering Minds and a local school district, resulting in an overstatement of \$2,274 (\$2,052 in salary plus \$222 in fringe benefits).

Other Than Personal Service Costs

For the fiscal year ended June 30, 2015, Empowering Minds reported \$14,361 in indirect OTPS costs allocated to the Program. We reviewed supporting documentation for selected expenses totaling \$3,417, of which \$1,106 was charged to the Program. Of this amount, we determined \$912 was not allowable under SED's requirements.

The RCM states that costs must be reasonable, necessary, directly related to the special education program, and sufficiently documented. Also, goodwill, which is defined as the stated value of a business in excess of its book value, is not a reimbursable expense. We found that Empowering Minds charged non-reimbursable goodwill expense to the Program, resulting in an overstatement of \$1,009.

Conversely, payment of minimum New York State Corporation Franchise Tax, or similar business tax, is a reimbursable expense. We reviewed an adjustment made by SED for \$97 in non-allowable franchise tax; however, we found that this is an allowable expense. We reached out to SED officials, who were unable to provide justification for the disallowance. As such, we offset our goodwill expense disallowance of \$1,009 by SED's adjustment of \$97, resulting in a disallowance of \$912.

Other Matter: Undisclosed Less-Than-Arm's-Length Relationship

According to the CFR Manual, all related-party transactions must be reported on the CFR-5. Further, Empowering Minds' conflict of interest policy requires employees to provide a full written disclosure of interests, relationships, and holdings that could be a conflict of interest. Empowering Minds' President and Vice President share a familial relationship and received compensation. However, Empowering Minds failed to disclose this relationship on its CFR-5.

Recommendations

To SED:

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

To Empowering Minds:

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 Empowering Minds on its CFR were properly calculated, adequately documented, and allowable under SED guidelines, including the RCM and the CFR Manual. The audit covered the period from July 2014 through June 2015.

To accomplish our objective, we reviewed the RCM, CFR Manual, and related appendices that applied to the year we examined. We also evaluated the internal controls over the costs claimed on and the schedules prepared in support of the CFR submitted to SED. We evaluated Empowering Minds' internal controls as they related to costs it reported on the CFR. We reviewed Empowering Minds' CFR for the fiscal year ended June 30, 2015 as well as relevant financial records for the audit period. We determined the data was sufficiently reliable for our use in accomplishing our audit objective. We reviewed Empowering Minds' policies to obtain an understanding of its financial practices for reporting costs on the CFR. For personal service costs, we reviewed time records and support for all employees charged to the Program. Due to the limited number of OTPS costs reported by Empowering Minds on its CFR, and self-reported non-allowable OTPS expenses, we verified adjustments made by SED to Empowering Minds' OTPS expenses on its CFR. The results of this judgmental sample cannot be projected to the population.

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 Empowering Minds' compliance with the RCM and CFR Manual.

Reporting Requirements

We provided a draft copy of this report to SED and Empowering Minds 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. Empowering Minds officials agreed with our disallowances regarding personal service and OTPS costs. However, they disagreed that they failed to disclose a less-than-arm's length relationship. Our response to Empowering Minds' comment is included in the report's State Comptroller's Comment.

Within 180 days of the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of Education shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and if the recommendations were not implemented, the reasons why.

Major contributors to this report were Theresa Podagrosi, Scott Heid, Don Cosgrove, and Ryan Chauvin.

We would like to thank the management and staff of SED and Empowering Minds for the courtesies and cooperation extended to our auditors during this review.

Sincerely,

Brian Reilly
Audit Director

cc: Vincent Lopreto, Empowering Minds
Sharon Cates-Williams, State Education Department
Jeanne Day, State Education Department
James Kampf, State Education Department
Phyllis Morris, State Education Department
Jerry Nestlerod, State Education Department
Brian Zawistowski, State Education Department

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

March 7, 2022

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, 2021-S-21, *Empowering Minds Therapy (Empowering Minds) - Compliance with the Reimbursable Cost Manual*.

Recommendation 1:

"Review the audit findings identified by our audit and, if warranted, make the necessary adjustments to the costs reported on Empowering Minds' CFR and to Empowering Minds' tuition reimbursement rates."

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

Recommendation 2:

"Remind Empowering Minds 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 Empowering Minds 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, Regulations, and the Reimbursable Cost Manual (RCM). Furthermore, SED will alert Empowering Minds 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,

A handwritten signature in black ink that reads "Sharon Cates-Williams". The signature is written in a cursive style.

Sharon Cates-Williams

c: Christopher Suriano
Suzanne Bolling
Brian Zawistowski
James Kampf
Jerry Nestleroad
Jeanne Day
Nell Brady

Agency Comments - Empowering Minds Therapy Inc.

February 23, 2022

Mr. Scott Heid
Office of the State Comptroller
110 State Street 11 Floor
Albany, NY 12236

Dear Mr. Heid

This letter will serve as a final response from Empowering Minds Therapy Inc. ("EMT") to the February 15, 2022 findings 2021-S-21 RCM Audit.

Response to findings for Personal Services Costs:

Over-Reported Personal Services: EMT agrees with this finding. This was a clerical error in reporting on the CFR.

Paid Employee Lunches: EMT agrees with this finding. This was an oversight on the part of EMT. Corrective action will include the addition of lunch to time sheets in which employees must sign in and out for lunch time.

Dual Employment: This was an oversight on the part of EMT. Training and careful review of time reports will be in place. The amount will be recovered from employee.

Response to findings for Other Than Personal Services Costs:

RCM Charges: EMT agrees with this finding.

Response to Other Matter:

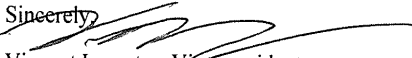
EMT is not in agreement with the finding and provides the passage from the CFR Manual:

Question #1: Determine if there were payments to any related organizations and/or individuals according to the definitions and relationships listed below. If there were payments to any related organization and/or individual during the cost reporting period, indicate yes and continue to Section B. If there were no payments to a related organization and/or related individual during the cost reporting, indicate "no".

The Agency responded "no" to the question above. Both the PTC 601 and PTC 603 are co-owners of the agency. Per the agencies interpretation of the CFR-5 section 18.0 of the CFR Manual, payments to owners from the organization are not required to be reported under the definitions and relationships listed. If we are required to report both owners on CFR-5, we will make note to update for future reported CFR reports.

[Comment 1](#)

Sincerely,


Vincent Lopreto - Vice president

Empowering Minds Therapy Inc.

State Comptroller's Comment

1. According to the RCM, the CFR-5 is used to report all transactions, including compensation, between the reporting entity, its affiliates, principal owners, management and members of their immediate families, and any other party (including an organization) with which the reporting entity may deal when one party has the ability to significantly influence management or operating policies of the other to the extent that one of the transacting parties might be prevented from fully pursuing its own separate interests. As the PTC 601 (Executive Director) and PTC 603 (Comptroller/Controller) are spouses, they should report their relationship on the CFR-5.