New York State Comptroller
THOMAS P. DiNAPOLI

Step Up Therapy Services, PLLC – Compliance With the Reimbursable Cost Manual

State Education Department

Report 2021-S-31 | **July 2023**

Spotlight on Education

Audit Highlights

Objective

To determine whether the costs reported by Step Up Therapy Services, PLLC (Step Up) 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 Step Up'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

Step Up is a New York City-based not-for-profit organization approved by SED to provide preschool special education itinerant teacher services to children with disabilities who are between the ages of 3 and 5 years. For purposes of this report, this program is referred to as the SED preschool cost-based program. Step Up also operated another SED-approved preschool special education program: Evaluations. However, payments for services under this program are based on fixed fees. During the fiscal year ended June 30, 2015, Step Up served 209 students with a disability.

The New York City Department of Education refers students to Step Up and pays for its services using rates established by SED. The rates are based on the financial information Step Up reports to SED on its annual CFRs. For the 3 fiscal years ended June 30, 2015, Step Up reported approximately $7.4 million in reimbursable costs for the SED preschool cost-based program.

Key Findings

For the 3 fiscal years ended June 30, 2015, we identified $810,382 in reported costs – $697,499 in personal service costs and $112,883 in other than personal service costs (OTPS) – that did not comply with the requirements in the RCM and the CFR Manual, as follows:

- $304,356 in ineligible fringe benefits, including pension and health insurance contributions that were not proportionally similar among groups of employees or for which employees did not meet eligibility requirements.
- $197,826 in salaries for the Controller pertaining to his fiscal management responsibilities.
- $195,317 in salaries for the work employees performed for the non-SED preschool cost-based program. This includes work performed for the Evaluations program and the professional corporation co-owned by Step Up officials.
- $112,883 in OTPS costs, including $69,540 in unsupported and/or ineligible consultant costs, $34,565 in overallocated and/or unsupported office costs, and $8,778 in various other costs that did not comply with the RCM requirements.

Key Recommendations

To SED:

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

To Step Up:

- 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

July 20, 2023

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

Ashraf Saad
Executive Director
Step Up Therapy Services, PLLC
1100 Coney Island Avenue, Suite 414
Brooklyn, NY 11230

Dear Dr. Rosa and Dr. Saad:

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 expenses submitted by Step Up Therapy Services, PLLC to the State Education Department for the purposes of establishing the preschool special education tuition reimbursement rates used to bill public funding sources that are supported by State aid payments. The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution; Article II, Section 8 of the State Finance Law; and Section 4410-c of the State Education Law.

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

Respectfully submitted,

Division of State Government Accountability

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Glossary of Terms

Term	Description	Identifier
SED	State Education Department	*Auditee*
CFR	Consolidated Fiscal Report	*Key Term*
CFR Manual	Consolidated Fiscal Reporting and Claiming Manual	*Policy*
DOE	New York City Department of Education	*Agency*
OTPS	Other than personal service	*Key Term*
RCM	Reimbursable Cost Manual	*Policy*
SEIT	Special education itinerant teacher	*Key Term*
Step Up	Step Up Therapy Services, PLLC	*Service Provider*

Background

Step Up Therapy Services, PLLC (Step Up) is a New York City-based not-for-profit organization approved by the State Education Department (SED) to provide preschool special education itinerant teacher (SEIT) education services to children with disabilities who are between the ages of 3 and 5 years. For purposes of this report, this program is referred to as the SED preschool cost-based program. During the fiscal year ended June 30, 2015, Step Up served 209 students with a disability.

In addition to the SED preschool cost-based program, Step Up operated another SED-approved preschool special education program: Evaluations. However, payments for services under the Evaluations program are based on fixed fees, as opposed to the cost-based rates established through financial information reported on Consolidated Fiscal Reports (CFRs). Further, during the 3 fiscal years ended June 30, 2015, Step Up's Executive Director and its Controller co-owned a professional corporation that provides physical therapy services.

The New York City Department of Education (DOE) refers students to Step Up based on clinical evaluations and pays for Step Up's services using rates established by SED. The rates are based on the financial information that Step Up reports to SED on its annual CFRs. To qualify for reimbursement, Step Up'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 Step Up.

For the 3 fiscal years ended June 30, 2015, Step Up reported approximately $7.4 million in reimbursable costs for the SED preschool cost-based program. This audit focused primarily on expenses that Step Up claimed on its CFR for the fiscal year ended June 30, 2015, but also included certain expenses that Step Up 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 $810,382 in reported costs that did not comply with SED's requirements for reimbursement. These ineligible costs include $697,499 in personal service costs and $112,883 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 Step Up'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, Step Up reported approximately $6.9 million in personal service costs for the SED preschool cost-based program. We identified $697,499 in personal service costs that did not comply with the RCM and CFR Manual requirements for reimbursement.

Unallowable Fringe Benefits

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. Costs will not be reimbursable on field audit without appropriate written documentation of costs. In addition, the RCM stipulates that fringe benefits may include paid time off, such as vacation leave, sick leave, military leave, holidays, training, and educational costs, provided the benefit is established by written school policy. Payments into specific employee benefit packages, such as teachers' retirement, employees' retirement and pension plans, Social Security, health insurance, life insurance, unemployment insurance, and disability insurance, may also be included in fringe benefits. The RCM also states that, for reimbursement, costs of benefits for employees who provide services to more than one program and/or entity must be allocated to separate programs and/or entities in proportion to the salary expense allocated to each program and that 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. Further, entities must use allocation methods that are fair and reasonable, and the accrual basis of accounting must be used. In addition to the RCM requirements, Step Up has its own policies and procedures for employee eligibility and contribution requirements for pension and health insurance.

We reviewed the available records for pension, health insurance, workers' compensation, payroll taxes, and disability insurance for the 3 fiscal years ended June 30, 2015 and identified $304,356 in fringe benefit costs that did not comply with the RCM's requirements for reimbursement and/or Step Up's policies and procedures, as follows:

- $118,767 in pension costs, including $95,093 in contributions for the Executive Director and Controller that were not proportionately similar to contributions received by other classes or groups of employees. We found that the Executive Director and Controller's pension contributions were 36.24% and 16.99% of their compensation in fiscal years 2014 and 2015, respectively, whereas for other employees, their pension contributions were 14.06% in fiscal year 2014 and 5.83% in fiscal year 2015. We also identified $23,674 in pension contributions that either (1) were made on behalf of employees who didn't meet the pension plan's eligibility requirements (i.e., didn't work at least 1,000 hours during the 12-month period); (2) were not properly allocated to both programs where the employees worked (the SED preschool cost-based program and the Evaluations program); or (3) were overstated as a result of an incorrect calculation.
- $100,104 in health insurance costs, including dental and vision. This includes $21,346 in health insurance costs reported on the CFR for the fiscal year 2015 but that were for expenses incurred in the following fiscal year (2016). These costs were not reported using the accrual basis of accounting, as required. In addition, health insurance premiums of $38,483 were not proportionately similar among employees. We found that the Executive Director, Controller, and office staff did not contribute toward their health insurance premiums while other employees contributed 50% or more. Moreover, Step Up's own policy requires that teachers contribute 50% toward health insurance premiums, but we found that eight of the 18 teachers eligible for health insurance contributed less than or more than 50% for health insurance. Further, $40,275 in health insurance premiums were claimed for teachers who did not meet Step Up's eligibility requirements for health insurance as they did not maintain a caseload of at least 30 hours per week. We also found that health insurance premiums for two employees were paid although they had resigned.
- $85,485 in other unallowable fringe benefit costs, such as workers' compensation costs that were incurred in fiscal year 2016 but incorrectly reported on the CFR for fiscal year 2015 and payroll taxes associated with the salaries that we recommend be disallowed for employees included in the Controller's Fiscal Management Responsibilities and Non-Program Salary Costs sections of this report.

In response, Step Up officials stated that they followed the guidance of contracted advisors for the reporting of fringe benefits on its CFRs. Moreover, they advised that, for employees who did not meet the eligibility threshold for health insurance (30 hours per week caseload), they would ensure continued eligibility for these employees by assigning them additional work hours and tasks. However, Step Up officials were unable to provide documents to show that additional work hours and tasks were assigned. Also, regardless of the advice reportedly received from their contracted advisors, it is important that Step Up officials and their agents/advisors be knowledgeable about and adhere to the RCM requirements. Consequently, we recommend that SED disallow $304,356 charged to the SED preschool cost-based program for the 3 fiscal years ended June 30, 2015.

Unsupported Controller's Fiscal Management Responsibilities

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. Costs will not be reimbursable on field audit without appropriate written documentation.

For the fiscal years 2014 and 2015, Step Up reported a total of $266,481 in salary for the Controller. According to the CFR Manual, the Controller is responsible for the overall fiscal management of the agency.

When we requested the job description for the Controller's position, Step Up officials provided us with a job description for a Director of Operation dated May 15, 2013 and indicated the responsibilities listed are those of the Controller. Our review of the responsibilities listed found that generally all are fiscal in nature and align with the kinds of tasks that can reasonably be expected of someone with responsibility for overall fiscal management (e.g., reviewing all financial reports, approving all program expenditures, monitoring program budgets, reviewing and managing cash flow).

However, based on our interviews with the Controller, the Executive Director, and others, including the bookkeeper consultant, as well as our review of Step Up records, we determined that during fiscal years 2014 and 2015, the Controller performed the duties of an administrative office worker, as defined by the CFR Manual. The Controller's daily tasks included, for example, verifying invoices, entering data into the ADP payroll system, and mailing checks received from ADP to the SEIT program teachers. While Step Up officials provided documentation showing the Controller performed non-fiscal tasks, such as reviewing SEIT program teachers' session notes and therapists' credentials and invoices, no documentation or work product was provided to show his fiscal management responsibilities.

Consequently, we recommend $197,826 in salaries be disallowed – the difference between the salaries paid to the Controller for this 2-year period ($266,481) and an administrative office worker's salary for this same 2-year period ($68,655).

Non-Program Salary 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. Costs will not be reimbursable on field audit without appropriate written documentation. Further, salaries of employees who perform tasks for more than one program and/or entity must be allocated among all programs and/or entities for which they work. In addition, the CFR Manual states that all Evaluations program costs should be reported to the Evaluations program and not to the SED preschool cost-based program. For the 3 fiscal years ended June 30, 2015, we identified $195,317 in reported salaries that did not comply with the RCM's requirements, as follows:

- $167,338 in salaries for 18 employees (office workers, psychologists, teachers, and a translator) whose salaries (or portions thereof) were charged to the SED preschool cost-based program although the work performed was for the Evaluations program. Step Up officials advised that the salaries for some of these employees were inadvertently charged to the SED preschool cost-based program. For other employees, Step Up officials stated they worked for the SED preschool cost-based program. However, the documentation we reviewed (i.e., employment and consultant contracts as well as job descriptions) showed they worked for both programs and therefore their salaries should have been allocated. We allocated the salaries of these employees between both programs and disallowed the portions that are attributed to the Evaluations program.
- $27,646 in salaries for Step Up's Executive Director, Controller, and an administrative office worker whose salaries were partially charged to the SED preschool cost-based program, although the work they performed was for and paid by the professional corporation that the Executive Director and the Controller co-owned. Step Up officials did not provide any documentation to support that this expense was related to the SED preschool cost-based program or that the costs should have been allocated.
- $333 for overallocation of partial salaries claimed for two custodians for fiscal year 2015. Step Up did not use the correct allocation method (square footage), as required in the CFR Manual for housekeeping/janitorial staff who perform services for more than one program.

Consequently, we recommend that SED disallow $195,317 charged to the SED preschool cost-based program for the 3 fiscal years ended June 30, 2015.

Other Than Personal Service 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. For the 3 fiscal years ended June 30, 2015, Step Up reported $478,448 in OTPS costs for the SED preschool cost-based program. To determine whether these expenses complied with SED's requirements for reimbursement, we judgmentally selected a sample totaling $199,352 in OTPS expenses. We identified $112,883 of these expenses that did not comply with SED's reimbursement requirements.

Miscellaneous OTPS Expenses

The RCM states that costs will not be reimbursable on field audit without appropriate written documentation. For consultants, adequate documentation includes, but is 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. 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 provided to each child on each date. The RCM also states that the costs of consultants' services are reimbursable provided that paid consultants providing services to approved programs for students with disabilities are not officers or employees of the entity. In addition, the RCM states that any expenditure that cannot be charged directly to a specific program must be allocated across all programs and/or entities benefiting from the expenditure. Lastly, costs associated with non-audit services provided by a registered public accounting firm, or any person associated with that firm, during or within 365 days of required audit work (prior to the beginning of the fiscal period being audited or after the date of the audit report issued for the audit period) are not reimbursable.

We identified $112,883 in OTPS costs that did not comply with the RCM's requirements for reimbursement, as follows:

- $41,894 in unsupported consultant costs for payments made to two consultants, one who provided quality assurance services and the other who performed services as a special education supervisor. Step Up did not have contracts for the two consultants. In addition, the invoices did not have sufficient details of the specific services the consultants provided or the dates the services were provided. Moreover, Step Up's records indicate these consultants also provided services to the Evaluations program.
- $34,565 in overallocated and unsupported office expenses for rent, telephone, repairs and maintenance, utilities, and parking. Step Up overallocated the rent and telephone costs reported to the SED preschool cost-based program. In addition, they did not provide all the invoices to support expenses claimed for telephone, repairs and maintenance, and utilities or any vehicle logs for parking expenses, as required by the RCM.
- $27,646 in ineligible consultant costs for payments made to Step Up's Executive Director and Controller (consultant for a period) for services they provided to Step Up. Because these two individuals are officers/employees of Step Up, they are ineligible to also be paid as consultants. Moreover, the invoices provided did not include required information, such as dates when the services were provided or the number of hours for each service. In addition, some invoices we reviewed indicated the services were provided in another fiscal year.

- $4,219 for various costs that did not comply with the RCM requirements, including $1,842 in costs for an out-of-state conference the Executive Director attended in excess of 3 days. The RCM limits reimbursement for out-of-state conferences to 3 days. We also identified $1,522 in ineligible employee commuting costs (MetroCards) and $855 for non-audit services that were provided during the same 365 days of required audit work.
- $2,737 in costs not related to the SED preschool cost-based program, including $2,024 in postage meter expenses for the professional corporation owned by the two Step Up officials and $713 for expenses related to Step Up's Evaluations program and for a federal grant.
- $1,822 for expenses for which Step Up officials were unable to provide supporting documentation or the documentation provided was insufficient. For example, $475 was claimed for legal services; however, the invoice did not indicate the specific service(s) provided, service dates, service hours, or the hourly rate.

Consequently, we recommend that SED disallow $112,883 in expenses that were not in compliance with the RCM.

Recommendations

To SED:

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

To Step Up:

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 Step Up on its CFRs were reasonable, necessary, directly related to the special education program, and sufficiently documented pursuant to SED guidelines, including the RCM and the CFR Manual. The audit focused primarily on expenses claimed on Step Up'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, Step Up'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 determined that the data was sufficiently reliable for our use in accomplishing our audit objective. We also interviewed Step Up officials and staff to obtain an understanding of Step Up'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 allocations, 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 Step Up's compliance with the RCM.

Reporting Requirements

We provided a draft copy of this report to both SED and Step Up officials for their review and formal comment. Their comments were considered in preparing this final report and are included in their entirety 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, Step Up officials accepted some of our conclusions but disagreed with other proposed disallowances. We address certain of their remarks in our State Comptroller's Comments, which are embedded within Step Up's response.

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 the recommendations were not implemented, the reasons why.

Exhibit

Step Up Therapy Services, PLLC
Summary of Submitted and Disallowed Program Costs for the 2012-13, 2013-14, and 2014-15 Fiscal Years

Program Costs	Amount Claimed on CFR	Amount Disallowed	Amount Remaining	Notes to Exhibit
Personal Services				
Direct Care	$6,039,113	$307,927	$5,731,186	A-F, H, L, M, Q, R, T, V
Agency Administration	892,460	389,572	502,888	
Total Personal Services	**$6,931,573**	**$697,499**	**$6,234,074**	
Other Than Personal Services				
Direct Care	$181,585	$80,470	$101,115	A, B, G, I-L, N-Q, S-U
Agency Administration	296,863	32,413	264,450	
Total Other Than Personal Services	**$478,448**	**$112,883**	**$365,565**	
Total Program Costs	**$7,410,021**	**$810,382**	**$6,599,639**	

Notes to Exhibit

The following Notes refer to specific sections of SED's Manual and the CFR Manual used to develop our recommended disallowances. Although we looked at 3 years, the section numbers and requirements did not change from year to year. We summarized the applicable sections to explain the basis for each disallowance. We provided the details supporting our recommended disallowances to SED and Step Up officials during the course of our audit.

A. RCM I.3.B – Entities operating approved programs must use the accrual basis of accounting and maintain accounting books of original entry, including asset, liability, and fund balance or equity accounts as well as expenditure and revenue accounts.

B. 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.

C. RCM Section II 13 – Compensation for personal services includes all salaries and wages as well as fringe benefits and pension plan costs.

D. RCM Section II.13.A.5 – Compensation to all individuals who have a financial interest in the program, including shareholders, trustees, board members, officers, family members, or others, and who are also program employees must be commensurate to actual services provided as appropriately qualified program employees or consultants and shall not include any distribution of earnings in excess of reimbursable compensation. Compensation shall not exceed the average regional levels paid by similar private providers to comparably qualified and appropriately certified personnel for similar work and hours of employment. Any compensation determined to be excessive will not be reimbursed in the tuition rate.

E. RCM Section II.13.B.1 – Fringe benefits may include paid time off, such as vacation leave, sick leave, military leave, holidays, training, and educational costs, provided the benefit is established by written school policy. Payments into specific employee benefit packages, such as teachers' retirement, employees' retirement and pension plans, Social Security, health insurance, life insurance (to the extent the Internal Revenue Service does not require payment of such premiums to be included in the employee's income), unemployment insurance, disability insurance, union welfare funds, or pension plan termination insurance premiums paid pursuant to the Employee Retirement Income Security Act of 1974, may also be included.

F. RCM Section II.13.B.2.(c) – Reimbursement of fringe benefit expenses shall be subject to the principle that benefits for individual employees or officers/directors, including pensions, life insurance, and tax-sheltered annuities, are proportionately similar to those received by other classes or groups of employees.

G. RCM II.14.A.3 – Costs of consultants' services are reimbursable provided that paid consultants providing services to approved programs for students with disabilities are not officers or employees of the entity, employees of the State Education Department, employees of municipalities, or employees of other private schools whose positions are funded wholly or in part by State or local taxpayer funds.

H. RCM Section II.14.E – Fringe benefit costs for independent contractors or consultants are not reimbursable.

I. RCM Section II.14.F – Costs associated with non-audit services provided by a registered public accounting firm, or any person associated with that firm, during or within 365 days of required audit work (prior to the beginning of the fiscal period being audited or after the date of the audit report issued for the audit period) are not reimbursable. Such non-audit services include bookkeeping, financial information systems design, and actuarial services.

J. RCM Section II.30.B – Costs of conferences held outside of New York State are limited to the guidelines detailed in Appendix C. Reimbursement is allowed up to 3 days per conference for each person but only when each person requesting reimbursement attends 6 or more hours per day of conference sessions.

K. RCM II.48.A.3 – *July 2012 edition:* Allocation of property costs to SEIT should be based on direct usage when administrative space is shared with other programs or square footage when administrative space is stand alone. *July 2015 edition:* Allocation of property costs to SEIT should be based on square footage; administrative or shared space should be allocated based on the square footage and percentage of time used by the various programs. Also, both editions state that using ratio value, units of service, or similar methodology to allocate facility overhead costs is not an appropriate allocation methodology for SEIT.

L. RCM Section III.1 – Costs will not be reimbursable on field audit without appropriate written documentation of costs.

M. RCM Section III.1.A – Compensation costs must be based on approved, documented payrolls.

N. RCM Section III.1.C.2 – Adequate documentation includes, but is 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. 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.

O. RCM 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.

P. RCM III.1.J – Vehicle use must be documented with individual vehicle logs that include at a minimum the date, time of travel, to and from destinations, mileage between each, purpose of travel, and name of traveler. If the vehicle was assigned to an employee, the name of the employee to whom it was assigned must be listed. The annual mileage for program purposes and repairs and maintenance costs for each vehicle should be summarized and maintained.

Q. RCM III.1.M.1 – Any expenditure that cannot be charged directly to a specific program must be allocated across all programs and/or entities benefited by the expenditure.

R. RCM III.1.M.1.(i) – Salaries of employees who perform tasks for more than one program and/or entity must be allocated among all programs and/or entities for which they work.

S. RCM III.1.M.3 – Agency administration costs shall be allocated to all programs operated by the entity based on the Ratio Value Method of allocation.

T. CFR Manual Appendix H (page 41.3) – Evaluations include physical examinations, psychological examinations, social history, and other suitable examinations and evaluations required to properly classify and place a child with a disability pursuant to Section 4410 of the Education Law and as defined in Section 200.16(c)(1) of the Commissioner of Education's Regulations. Only actual costs incurred for mandated initial Committee on Preschool Special Education evaluations for 3- and 4-year-old students should be reported. Indirect costs associated with the evaluations must also be reported. Evaluation cost data reported in the Evaluation program cost center should not be reported in any other program cost center.

U. CFR Manual Appendix J (page 43.2) – For housekeeping and janitorial staff who serve more than one program, compensation and fringe benefits may be allocated according to the square footage of the space the staff is maintaining.

V. CFR Manual Appendix R (page 51.13) – The position of Controller is responsible for overall fiscal management of the agency. Job titles may include business official or director of finance. The position of office worker is responsible for agency-wide record keeping, billing, correspondence, and general office duties. Job titles may include bookkeeper, clerk, receptionist, secretary, and typist.

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

May 15, 2023

Kenrick Sifontes
Audit Director
Office of the State Comptroller
Division of State Government Accountability
59 Maiden Ln. 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, 2021-S-31, Step Up Therapy Service, PLLC (Step Up) - 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 Step Up's CFRs and to Step Up'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. NYSED will further review the staffing recommendations to determine if the adjustments are appropriate.

Recommendation 2:

"Remind Step Up's 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 Step Up's 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 Step Up 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 Nell Brady, Director of the Rate Setting Unit, at (518) 474-1298.

Sincerely,

Sharon Cates-Williams

Sharon Cates-Williams

cc: Christina Coughlin
Christopher Suriano
Suzanne Bolling
James Kampf
Jerry Nestleroad
Jeanne Day
Nell Brady
Mary Moore

GreenbergTraurig

Pamela A. Madeiros
518-689-1412
madeirosp@gtlaw.com

May 16, 2023

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

Re: State Education Department
Compliance with the Reimbursable Cost Manual
Step Up Therapy Services, PLLC
Audit Report 2021-S-031
Draft Report

Dear Mr. Sifontes:

We have reviewed the above-referenced Draft Report relative to costs reported by Step-Up Services, PLLC (Step Up) on its Consolidated Fiscal Reports (CFRs) for the fiscal year ending June 30, 2015 and certain expenses claimed on the CFR for the two fiscal years ending June 30th, 2014 and determinations whether such costs 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). We appreciate the opportunity to provide context and comment on the Draft Report Findings.

General Comments

In addition to providing specific comments on particular proposed findings, we offer recommended corrections to what we believe are unintentional misstatements, specifically within the Background narrative.

The Narrative asserts that Step Up's Executive Director and its Controller co-owned a "private medical practice". To be clear, the entity in question is a Professional Corporation incorporated for the provision of physical therapy services. Such professional corporations are not "medical practices". Accordingly, we request the misstatement and mis reference in question be corrected throughout the Report.

State Comptroller's Comment – Language in the report has been revised to reflect that the Executive Director and Controller co-own a professional corporation that provides physical therapy services.

Personal Service Costs

Controller's Fiscal Management Responsibilities

We strongly disagree with the auditors' subjective assessment that the Controller performed the duties of an administrative worker rather than those of a Controller responsible for overall fiscal management.

State Comptroller's Comment – Our assessment is not subjective. Rather, it is based on our interviews with Step Up officials and a review of documents provided by Step Up officials (or the lack thereof).

The auditor based this mischaracterization, in part, on the fact that the agency contracted a consultant to perform certain bookkeeping functions which, the auditors assert are functions "typically handled by someone in the position of Controller". To the contrary, outsourcing certain fiscal, bookkeeping and payroll functions does not devalue the activities performed by the Controller who is responsible for overall agency fiscal operations, whether directly or indirectly. We are unaware of any restriction imposed by either the Reimbursable Cost Manual or Consolidated Fiscal Report Manual directing the performance of fiscal related tasks by others.

State Comptroller's Comment – We removed this statement from the report, but it should be noted that we did not devalue the activities performed by the Controller. Rather, we concluded that the support Step Up officials provided (or the lack thereof) does not support that this individual performed overall fiscal management tasks as indicated in the job description.

As the auditors' acknowledge, the Controller engages in a multitude of management tasks and overall supervision and responsibility for the agency's fiscal operations.

State Comptroller's Comment – This is a misrepresentation of what our report says. On page 10, we reference the overarching responsibility of the Controller position – for overall fiscal management of the agency – as defined in the CFR Manual. We do not state or otherwise imply that Step Up's Controller "engages in a multitude of management tasks" and provides overall fiscal oversight. Rather, we cite some of the Controller's daily tasks based on the support Step Up provided to us – and which the CFR defines as the duties of an administrative office worker.

The Controller performed management duties not performed by the Executive Director. Step Up Therapy's administration consists of 3-4 people only in addition to the Executive Director and Controller. The Controller performed such tasks as:

- Reviewing session notes of the SEIT teachers to assure they are following IEP session mandates.
- Each month upon receipt of session notes from the SEIT teachers, the Controller would review each student's paperwork for missed sessions and make-up session and call the SEIT teachers if the IEP mandates were not followed. This procedure takes place approximately 2 weeks each month to complete.
- Ensuring session notes that were entered into ProviderSoft (billing tracking system) matches the session notes in the children's files.
- Reviewing all therapists' invoices to make sure that these invoices are correct, and they match the session hours entered in the payroll system.
- Managing timecards for all employees – collecting the timecards, calculating hours and amount for hourly rate employees, signing and retaining them for any upcoming audit and for the payroll.
- Negotiating with the banks for financial loans.
- Monitoring the bank for account transactions on a daily basis.
- Processing payrolls, signing, copying, and mailing to SEIT teachers and evaluators.
- Ordering and receiving office supplies.
- Writing and mailing checks out for rent, utilities, supplies, medical insurance and etc.
- Checking the therapists credentials every two weeks, sending them reminder emails asking for missing documents.

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Office of the State Comptroller
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Documentation provided to the auditors reflects the performance of some of these several duties and tasks, each of which is definitely "managerial" in nature, in direct contrast to an administrative office worker's duties or responsibilities.

State Comptroller's Comment – We do not distinguish "managerial" versus "administrative" tasks, but rather illustrate that the tasks performed by the Controller are more clerical in nature than managerial. We determined that the Controller did not perform overall fiscal management responsibilities as detailed in his job description. While Step Up asserts the above tasks were being performed by the Controller, and provided support that shows the Controller performed some of them, we also found that Step Up contracted with and paid a vendor to provide similar services (e.g., reviewing session notes of SEIT teachers, ensuring information in the tracking system matches session notes in children's files, reviewing therapists' notes). Also, we note that Step Up's job description for Controller, which Step Up provided at the start of the audit, lists a number of fiscal tasks that we determined the Controller is not performing. Step Up officials did not provide any support that he performed these fiscal tasks and do not address these fiscal tasks in their response.

Tasks performed indicated "overall fiscal management of the agency" as defined by the CFR Manual, the title of which also includes Business Official and Director of Finance.

State Comptroller's Comment – Whether the title is Controller, Business Official, or Director of Finance has no bearing on our determination that Step Up's Controller did not perform fiscal management oversight.

Accordingly, we challenge the proposed disallowance of any portion of the Controller's compensation as baseless and subjective. We take exception to the auditors claim that interviews with the Controller the Executive Director and others "support their mischaracterization". We believe strongly that the individual's reserved demeanor and limited language proficiency may have contributed to the auditors' misconception.

State Comptroller's Comment – Our recommended disallowance is neither baseless nor subjective, and we object to Step Up officials' claim that it was influenced by anything other than facts. Rather, it is Step Up officials who are misrepresenting our words and the conclusion we reached. Our conclusion is based not just on interviews but also on our review of documentation Step Up provided and ultimately on Step Up's inability to provide support for the fiscal management responsibilities the Controller performed as cited in his job description.

Non-Program Salary Costs

Office Workers Title Code 505
FY 2014-15

We do not challenge the proposed disallowance of $19,736 related to individuals who performed evaluation services which were inadvertently reported to the SEIT program cost center as a result of a miscommunication with the former bookkeeper.

We likewise do not challenge certain proposed disallowances relating to services performed for the benefit of the Evaluation cost center which were inadvertently reported as SEIT program expenses, specifically:

- $599 (officer worker)
- $41,145 (officer worker)
- $4,620 (officer worker)

We appreciated the auditors' consideration of our challenge of the proposed disallowance of $40,800 related to compensation for S.I. whose responsibility it was to assist in billing for the SEIT program. The evaluation cost center did not require billing tasks be performed by Step Up personnel, as those tasks were performed by the NYCDOE Administrator.

FY 2013-14

We do not challenge certain proposed disallowances relating to services performed for the benefit of the Evaluation cost center which were inadvertently reported as SEIT program expenses, specifically:

- $1,155 (officer worker)
- $29,864 (officer worker)

We appreciated the auditors' consideration of our challenge of the proposed disallowance of $13,199 associated with S.I., for the reasons set out above.

FY 2012-13

We also appreciated the auditors' consideration of our challenge of certain proposed disallowances ($20,844) relating to E.A. whose job description clearly reflects exclusive SEIT responsibilities. Additional supporting documents attest to her SEIT functions, unrelated to evaluations.

Step Up Therapy Services recognizes the methodology used for the allocation of the afore mentioned shared service individuals' salaries – job description detail – may not have provided the most accurate metric for allocation.

Position Title Code 605

We do not challenge the proposed disallowance of $49,090 (2014-15) and $40,824 (2013-14) for salary costs associated with a particular individual who provided administrative services for the benefit of the Evaluation cost center, the expense of which was inadvertently reported as a SEIT program cost.

We appreciated the auditors' consideration of our challenge of the proposed disallowance of $44,800 associated with J.S. who performed the responsibilities of SEIT coordinator as of October 8, 2014. She became an Evaluation Coordinator as of July 13, 2015.

We also appreciated the auditors' consideration of our challenge of the proposed disallowance of $1,269 associated with S.K. whose responsibilities were exclusively related to the SEIT program, as the evaluation cost center requires nominal clerical services.

Custodial Services

We must question the proposed disallowance of a portion of compensation related to custodial staff. We believe the auditors may have undervalued the square footage upon which the services should have been allocated and requested confirmation that the additional documentation provided by the landlord was appropriately considered by the auditors in their analysis. Contrary to the auditors' assertion, Step Up did, in fact, use the correct allocation methodology – square footage – in allocating the salaries.

State Comptroller's Comment – We did not undervalue the square footage amount, and reviewed all documentation provided by Step Up and its landlord. Moreover, although Step Up officials claimed they used square footage to allocate salaries, they did not provide documentation to support this assertion. Based on our calculation using square footage, Step Up overallocated the salaries of these individuals to the SED preschool cost-based programs.

Work Performed by SEIT for the Evaluation Program

We do not challenge the auditors' proposed disallowance of $12,480 for work performed by SEIT personnel for the benefit of the Evaluation cost center as a result of a reporting error in allocation.

Fringe Benefits

We challenge the auditors' proposed disallowance related to claimed fringe benefits which were reported based upon the guidance of contracted pension, workers' compensation, and health insurance advisors. ($100,104 non-mandated health insurance costs; $118,767 in non-mandated pension costs, and $85,485 in non-mandated workers' compensation costs).

State Comptroller's Comment – Step Up officials did not provide any records to corroborate their assertion that the fringe benefits reported on the CFRs were based on guidance they received from contracted pension, worker's compensation, and health insurance advisors. Moreover, we emphasize it is important that Step Up officials and their agents/advisors be knowledgeable about and adhere to the RCM requirements.

As provided documentation reflected, eligibility for fringe benefits is clearly defined. If an individual's work hours fell below the eligibility threshold as a result of a reduction in caseload in any one period, Step Up would assure continued eligibility by assigning additional work hours and tasks.

State Comptroller's Comment – Our recommended disallowance is based on Step Up's eligibility requirements. Furthermore, Step Up officials did not provide documents to support that additional work hours and tasks were assigned to employees who did not meet the 30 hours per week caseload.

Other Than Personal Service Costs

Unsupported Costs

We challenge the audits' conclusion that salary costs associated with a consultant for quality assurance services should be disallowed. As the provided job description reflected, the consultant services were exclusively to the benefit of the 4410 programing. Moreover, the lack of a contract is not determinative where, as here, complimentary supporting documentation is provided.

State Comptroller's Comment – The lack of contract(s) was not the main reason for the recommended disallowance. The records provided by Step Up showed this consultant performed work for Step Up's Evaluations program. Further, the invoices provided did not have sufficient detail regarding the actual services or the dates the services were provided.

We also challenge the proposed disallowance for costs associated with a Special Education Supervisor who, as reflected in the title/position, provided services exclusively for the SEIT program. As the provided job description reflected, the Supervisor's responsibilities were specific to the SEIT program as supported by the previously provided emails / communications, observation records and other work product.

State Comptroller's Comment – Step Up officials did not provide detailed invoices to support the claimed costs, as required per the RCM. Moreover, Step Up's records showed this individual did not provide services exclusively to the SEIT program. Rather, we found this individual was responsible for interviewing, hiring, and performing administrative tasks for Step Up's other programs.

Ineligible Consultant Costs

We challenge the auditors' proposed disallowance of $27,646 associated with the contracted services of the Executive Director and Controller. As shared with the audit team, the audit years presented certain challenges for the Agency. Revenue was insufficient to support even the most skeleton of management teams, forcing the Executive Director and Controller to reduce their own compensation well below the allowable levels. The consultant arrangement provided an opportunity to dramatically reduce the direct care costs of management positions, while providing a fair wage compensation complement as an indirect personal service expense. The arrangement was, in fact, an extremely cost-effective response to diminished revenue during the early years of operation. Moreover, we are unaware of any prohibition of management staff providing both managerial as well as clinical services, so long as properly documented.

State Comptroller's Comment – Step Up officials did not provide support showing these individuals provided direct care services to the SED preschool cost-based programs. Rather, the records showed these individuals held and were reported for reimbursement under non-direct positions. Moreover, according to the RCM, allocation of non-direct care compensation among various direct care job titles is not allowable, and staff should be reported in the job code title that is supported by salary agreements and job description.

Office Expenses

We challenge any portion of the proposed disallowances associated with administrative office expenses which were appropriately allocated by square footage. The provided floor plan supported our contention as to the appropriateness of the square footage calculation applied in the allocation of expenses such as rent, utilities, repair and maintenance, telephone and parking. As the auditors' are well aware, the "leased" premises are clearly described in the lease document and the cost of those premises must be reimbursed in their entirety. The utility costs, for example, were invoiced directly to the Landlord and presented to the Agency for payment, pursuant to the terms of the Lease. The Landlord does not retain records beyond the standard business record period, thus preventing the Agency from obtaining copies of the utility bills / invoices.

State Comptroller's Comment – We reviewed all documentation provided and stand by our conclusion that Step Up overallocated rent and telephone costs to the SED preschool cost-based program and did not provide all the invoices to support expenses claimed for telephone, repair, and utilities.

As relates to the parking costs, however, we provided supporting documentation from the building's administrative offices attesting the additional parking spaces beyond those with Step Up identifying signage.

State Comptroller's Comment – Step Up officials did not provide vehicle logs as required for the associated vehicles. As a result, we have no assurance that the parking expenses pertain to the SED preschool cost-based program.

In addition, Step Up's claimed rent expenses are appropriately supported, no space left unaccounted. Accordingly, we request full reinstatement of all facility related costs, including rent and related expenses.

State Comptroller's Comment – As stated above, our recommended disallowances are due to the fact that Step Up did not properly allocate rent and related expenses or did not provide support for expenses claimed.

Additional Costs

We appreciated the auditors' consideration of our challenge of claimed expenses reflected on the Agency credit card lacked supporting invoices / receipts for FY 2014-15. The documentation provided attests to the reasonableness of each purchase reported as "office supplies and postage".

We do not challenge the auditors' proposed disallowance of costs related to postage meter refills which the auditors suggest were outside the scope of the 2016 executed Assignment of Lease and Assumption Agreement and therefore ineligible costs.

Staff Travel

We reassert the propriety of claimed expenses associated with the Council for Exceptional Children (CEC) – a professional association of educators dedicated to advancing the success of children with disabilities whose conferences provide countless information sharing opportunities, as well as strategies for working with children with special needs.

State Comptroller's Comment – We are not questioning the propriety of the claimed expenses but rather the dollar amount claimed. As stated in the report, the RCM limits reimbursement for the costs of out-of-state conferences to 3 days per conference. The recommended disallowance is for travel costs beyond the 3 days that were claimed on the CFR.

We also assert that additional documentation provided in support of staff travel specifically as it relates to Metrocard expenses with locations more specifically identified compels reconsideration of the proposed disallowance.

State Comptroller's Comment – We did consider the additional documentation provided. The recommended disallowed MetroCard expenses are those that did not adhere to the RCM requirements and/or Step Up's own policy. The support provided showed that employee(s) received MetroCard(s) for travel from their home(s) to one work location and back home, which is a non-allowed commuting cost, or the support provided was not sufficient as it did not show location(s) where the employee traveled to.

Audit / Legal

We are unable to challenge the auditors' proposed disallowance of $475 associated with properly incurred legal service expenses, although lacking sufficient detail in the invoice, as the attorney has refused to provide duplicate documents upon request.

Kenrick Sifontes
Office of the State Comptroller
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We appreciate the opportunity to review and provide comment on the auditors' Draft Report.

Very truly yours,

GREENBERG TRAURIG, LLP

PAM/maf
Enclosures
ACTIVE 687423973v1

cc: Jeanne Day (OSC)
James Kampf (SED)
Jerry Nestleroad (SED)
Dr. Saad (Step Up Therapy, PLLC)

Contributors to Report

Executive Team

Andrea C. Miller - *Executive Deputy Comptroller*

Tina Kim - *Deputy Comptroller*

Stephen C. Lynch - *Assistant Comptroller*

Audit Team

Kenrick Sifontes - *Audit Director*

Sheila Jones - *Audit Manager*

Cheryl May - *Audit Supervisor*

Dmitri Vassiliev - *Audit Supervisor*

Adefemi Akingbade - *Examiner-in-Charge*

John Ames - *Examiner-in-Charge*

Jeremy Mack - *Examiner-in-Charge*

Celedonia Deaver - *Senior Examiner*

Arjeeban Jeeveswaran - *Senior Examiner*

Irina Pyak - *Senior Examiner*

Bei Lei Wang - *Senior Examiner*

Contact Information
(518) 474-3271
StateGovernmentAccountability@osc.ny.gov
Office of the New York State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236