



New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Compliance With the Reimbursable Cost Manual

State Education Department Kennedy Child Study Center



Executive Summary

Purpose

To determine whether the costs reported by Kennedy Child Study Center (Kennedy) 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). The audit focused primarily on expenses claimed on Kennedy's CFR for the fiscal year ended June 30, 2014, and included certain expenses claimed on Kennedy's CFRs for the two fiscal years ended June 30, 2013.

Background

Kennedy is a New York City-based not-for-profit organization authorized by SED to provide preschool special education services to children with disabilities who are between the ages of three and five years. During the 2013-14 school year, Kennedy served about 345 students. The New York City Department of Education (DoE) refers students to Kennedy and pays for its services using rates established by SED. The DoE is reimbursed by SED for a portion of its payments to Kennedy. For the three fiscal years ended June 30, 2014, Kennedy reported approximately \$41.7 million in reimbursable costs for the SED preschool cost-based programs.

Key Findings

For the three fiscal years ended June 30, 2014, we identified \$612,781 in reported costs that did not comply with the guidelines in the RCM, as follows:

- \$583,400 in excessive compensation costs charged to the SED cost-based programs for six psychologists who also worked for the fixed-fee Evaluations program;
- \$24,106 in ineligible expenses, including \$13,116 in charitable donations, \$9,741 in parking garage costs for the Executive Director's privately owned vehicle, \$799 in maintenance staff uniforms, and \$450 in MetroCards provided to non-employees; and
- \$5,275 in bonuses that were not in compliance with the RCM's requirements.

Key Recommendations

To SED:

- Review the recommended disallowances resulting from our audit and make the appropriate adjustments to Kennedy's CFRs and tuition reimbursement rates, as warranted.
- Work with Kennedy officials to ensure their compliance with SED's reimbursement requirements.

To Kennedy:

- Ensure that all costs reported on future CFRs comply with the requirements in the RCM.

Other Related Audits/Reports of Interest

[Hebrew Institute for the Deaf and Exceptional Children: Compliance With the Reimbursable Cost Manual \(2015-S-67\)](#)

[Books and Rattles, Inc.: Compliance With the Reimbursable Cost Manual \(2016-S-25\)](#)

State of New York
Office of the State Comptroller

Division of State Government Accountability

December 29, 2017

Ms. MaryEllen Elia
Commissioner
State Education Department
State Education Building - Room 125
89 Washington Avenue
Albany, NY 12234

Ms. Jeanne Alter
Executive Director
Kennedy Child Study Center
2212 Third Avenue
New York, NY 10035

Dear Ms. Elia and Ms. Alter:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage their resources efficiently and effectively and by so doing, providing accountability for the tax dollars spent to support government-funded services and 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 Kennedy Child Study Center to the State Education Department for the purposes of establishing the tuition reimbursement rates. 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 draft report, please feel free to contact us.

Respectfully submitted,

Office of the State Comptroller
Division of State Government Accountability

Table of Contents

Background	4
Audit Findings and Recommendations	5
Personal Service Costs	5
Other Than Personal Service Costs	7
Recommendations	8
Audit Scope, Objective, and Methodology	8
Authority	9
Reporting Requirements	9
Contributors to This Report	10
Exhibit	11
Notes to Exhibit	12
Agency Comments - State Education Department	13
Agency Comments - Kennedy Child Study Center	15
State Comptroller's Comments	18

State Government Accountability Contact Information:

Audit Director: Kenrick Sifontes

Phone: (212) 417-5200

Email: StateGovernmentAccountability@osc.state.ny.us

Address:

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

This report is also available on our website at: www.osc.state.ny.us

Background

Kennedy Child Study Center (Kennedy) is a New York City-based not-for-profit organization authorized by the State Education Department (SED) to provide preschool special education services to children with disabilities between the ages of three and five years. During our audit period, Kennedy operated two rate-based preschool special education programs: full-day Special Class and half-day Special Class. For purposes of this report, these programs are collectively referred to as the SED preschool cost-based programs.

During the 2013-14 school year, Kennedy served about 345 students. In addition to the SED preschool cost-based programs, Kennedy operated three other SED-approved preschool programs: Evaluations, 1:1 Aides, and Related Services. However, payments for services under these programs are based on fixed fees, as opposed to the cost-based rates established through financial information reported on the annual Consolidated Fiscal Reports (CFRs) Kennedy files with SED.

The New York City Department of Education (DoE) refers students to Kennedy based on clinical evaluations and pays for Kennedy's services using rates established by SED. The rates are based on the financial information Kennedy reports to SED on its annual CFRs. To qualify for reimbursement, Kennedy's expenses must comply with the criteria set forth in SED's Reimbursable Cost Manual (RCM) and its 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 relating to multiple programs. Reimbursable costs must be reasonable, necessary, directly related to the special education program, and sufficiently documented. The State reimburses the DoE 59.5 percent of the statutory rate it pays to Kennedy.

Section 4410-c of the State Education Law authorizes the State Comptroller to audit the expenses reported to SED by special education service providers for preschool children with disabilities. For the three fiscal years ended June 30, 2014, Kennedy reported approximately \$41.7 million in reimbursable costs for the SED preschool cost-based programs. This audit included expenses claimed on Kennedy's CFR for the fiscal year ended June 30, 2014 and certain expenses claimed on its CFRs for the two fiscal years ended June 30, 2013.

Audit Findings and Recommendations

For the three fiscal years ended June 30, 2014, we identified \$612,781 in reported costs that did not comply with SED's requirements for reimbursement. The ineligible costs included \$588,675 in personal service costs and \$24,106 in other than personal service (OTPS) costs (see Exhibit at the end of this report). SED, pursuant to a desk review, previously disallowed some of these costs.

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 pursuant to the guidelines in the RCM. In addition, personal service costs, which include all salaries and fringe benefits paid or accrued to employees on the agency'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 three fiscal years ended June 30, 2014, Kennedy reported approximately \$32.4 million in personal service costs for its SED preschool cost-based programs. We identified \$588,675 in personal service costs that did not comply with the RCM's guidelines for reimbursement.

Excessive Direct Care Staffing

According to the RCM, compensation charged to a program must be supported by employee time records prepared during, not after, the time period for which the employee was paid. Further, the RCM requires that compensation of individuals who work on multiple programs should be allocated based upon actual hours of service for each program. Entities must maintain appropriate documentation reflecting the hours used in this allocation. Acceptable documentation may include payroll records or time studies. If hours of service cannot be calculated or a time study cannot be completed, then other fair and reasonable allocation methods, as determined by SED's fiscal representatives, may be used. Documentation for all allocation methods (bases and percentages) must be retained for a minimum of seven years. During our audit period, Kennedy officials charged \$713,245 in compensation costs for six staff psychologists to the SED cost-based programs.

We reviewed the staff psychologists' personnel files and determined that they provided services to the SED cost-based programs as well as the fixed-fee Evaluations program. When we requested the records of the actual hours worked for each program and/or time studies supporting the allocation of the psychologists' compensation to the SED cost-based programs, Kennedy officials advised us that they did not retain these records. Although Kennedy officials required psychologists to prepare monthly work schedules (showing time spent on various tasks including, but not limited to, evaluations, counseling, paperwork, classroom support, one-to-one supervision, and team meetings), they did not retain them. They also could not provide copies of the evaluations performed by these psychologists during the audit period. Finally, we were not able to interview the six psychologists because they were no longer employed by Kennedy.

To determine a fair and reasonable amount that should have been charged to the SED cost-based programs, we reviewed documentation that we received from SED officials (e.g., memorandums, adjustment screens) regarding psychologist staffing levels at Kennedy. We found that during fiscal years 2012-13 and 2013-14, Kennedy officials had requested a waiver from SED in order to increase its tuition rate. As part of the assessment of Kennedy's need for a tuition rate increase, SED's Special Education Quality Assurance unit (SEQA) performed an analysis and recommended optimal staffing levels for Kennedy, including for psychologists. SEQA recommended reducing full-time equivalent (FTE) levels for the SED cost-based programs' staff psychologists because it determined that they spent a portion of their work time preparing evaluations for the Evaluations program. For fiscal year 2011-12, SED's Rate Setting Unit provided us with its recommended psychologist staffing levels. Subsequently, we compared the psychologist staffing levels reported on Kennedy's CFRs for the three years ended June 30, 2014 to the SED-recommended staffing levels and determined that Kennedy reported staffing in excess of those levels, as follows:

- Fiscal year 2011-12: SED's recommended psychologist staffing level for the SED cost-based programs was 0.443 FTEs. However, Kennedy reported 2.769 FTEs on its CFR – an excess of 2.326 FTEs. The compensation associated with the excess psychologist staffing amounted to \$229,457 (\$169,822 in salaries and \$59,635 in fringe benefits).
- Fiscal year 2012-13: SED's recommended psychologist staffing level for the SED cost-based programs was 0.398 FTEs. However, Kennedy reported 2.476 FTEs on its CFR – an excess of 2.078 FTEs. The compensation associated with the excess psychologist staffing amounted to \$216,709 (\$160,944 in salaries and \$55,765 in fringe benefits).
- Fiscal year 2013-14: SED's recommended psychologist staffing level for the SED cost-based programs was 0.443 FTEs. However, Kennedy reported 1.805 FTEs on its CFR – an excess of 1.362 FTEs. The compensation associated with the excess psychologist staffing amounted to \$137,234 (\$99,842 in salaries and \$37,392 in fringe benefits).

Consequently, we recommend that SED disallow \$583,400 (\$430,608 in salaries and \$152,792 in fringe benefits) in compensation for psychologists that were over-allocated to the SED cost-based programs. We noted that certain adjustments to costs and staffing levels were already made by SED.

Unsupported Bonuses

According to the RCM, a bonus is a non-recurring and non-accumulating (i.e., not included in base salary of subsequent years) lump sum payment in excess of regularly scheduled salary, which is not directly related to hours worked. A bonus may be reimbursed if it is based on merit, as measured and supported by employee performance evaluations. Moreover, reimbursable bonuses are restricted to direct care employees and those in position title code (PTC) series 100. Further, those in position title codes 505 and 605 were eligible for bonuses in fiscal year 2013-14.

For the fiscal year ended June 30, 2014, Kennedy reported \$5,275 (\$3,838 in salaries and \$1,437 in fringe benefits) in bonuses that were paid to eight employees. We determined that the \$5,275 in bonuses were not in compliance with the RCM's requirements, as follows:

- \$3,436 (\$2,500 in salaries and \$936 in fringe benefits) related to one-time payments of \$500 each to five employees based on the Executive Director’s memorandums to pay these employees an extra payment of \$500 for “their hard work on snow removal.” However, these payments were not supported by the required evaluations.
- \$1,839 (\$1,338 in salaries and \$501 in fringe benefits) in bonuses paid to three non-direct care employees (two accountants and a bookkeeper) who did not have an evaluation supporting the bonuses as required by the RCM. In addition, the bookkeeper, who was reported in PTC 606, was not eligible for a bonus.

Kennedy officials disagree that the one-time payments of \$500 to the five employees were not reimbursable. They stated that the Executive Director’s memorandum indicating “hard work on snow removal” reflects that the award was based on outstanding performance. We disagree. An email memorandum does not meet the requirements of an employee performance evaluation. Further, Kennedy officials acknowledged that the memo did not conform to the standardization of an employee performance evaluation.

As a result, we recommend that SED disallow \$5,275 in bonus payments because they did not comply with the RCM’s requirements.

Other Than Personal Service Costs

According to the RCM, OTPS costs must be reasonable, necessary, directly related to the special education program, and sufficiently documented. For the three fiscal years ended June 30, 2014, Kennedy reported approximately \$9.3 million in OTPS costs for SED’s preschool cost-based programs. We determined that \$24,106 of these costs did not comply with SED’s reimbursement requirements.

Ineligible Expenses

The RCM states that political and charitable contributions and donations made by the program are not reimbursable. Moreover, personal expenses, such as personal travel expenses, are not reimbursable unless specified otherwise in the RCM. Further, the RCM states that travel expenses of non-employees are not reimbursable unless a legitimate business purpose exists for such travel. Moreover, the RCM states that clothing expenses for staff, such as uniforms for custodians or bus drivers, even if required by school policy, are not reimbursable. However, for the three fiscal years ended June 30, 2014, Kennedy reported \$24,106 in ineligible expenses, as follows:

- \$13,116 in charitable donations made to Catholic Charities;
- \$9,741 in parking garage costs for the Executive Director’s privately owned vehicle;
- \$799 in maintenance staff uniforms; and
- \$450 in MetroCards given to the parents of students. Travel costs for non-employees are not reimbursable.

Consequently, we recommend that SED disallow the \$24,106 because these costs were not eligible for reimbursement.

Recommendations

To SED:

1. Review the recommended disallowances resulting from our audit and make the appropriate adjustments to Kennedy's CFRs and tuition reimbursement rates, as warranted.
2. Work with Kennedy officials to ensure their compliance with SED's reimbursement requirements.

To Kennedy:

3. Ensure that all costs reported on future CFRs comply with the requirements in the RCM.

Audit Scope, Objective, and Methodology

We audited the costs reported on Kennedy's CFRs to determine whether they were reasonable, necessary, directly related to the special education program, and sufficiently documented pursuant to the guidelines in SED's manuals. The audit included all claimed expenses for the fiscal year ended June 30, 2014 and certain expenses claimed on Kennedy's CFRs for the two fiscal years ended June 30, 2013.

To accomplish our objective, we reviewed the RCM, the CFR Manual, Kennedy's CFRs, and relevant financial and program records for the audited period. We also interviewed Kennedy officials, staff, and independent auditors to obtain an understanding of Kennedy's financial and business practices. In addition, we selected and reviewed 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, as well as OTPS expenses. Our samples were based on the relative materiality of the various categories of costs reported and their associated level of risk. Our samples were not designed to be projected to the entire population of reported costs. Also, our review of Kennedy's internal controls focused on the controls over Kennedy's CFR preparation process.

We conducted our performance audit in accordance with generally accepted government auditing standards. These 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 during our audit provides a reasonable basis for our findings and conclusions.

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. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these management functions do not affect our ability to conduct independent audits of program performance.

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 State Education Law.

Reporting Requirements

We provided draft copies of this report to SED and Kennedy officials for their review and formal comment. Their comments were considered in preparing this final report and are attached to it. In their response, SED officials agreed with our recommendations and indicated that they will take steps to address them. In their response, Kennedy officials accepted some of our conclusions but disagreed with other proposed disallowances. Our rejoinder to certain Kennedy comments are included in the report's State Comptroller's Comments. Kennedy officials also included a lengthy set of attachments with their response. Those attachments are not included in this report. However, they have been retained at the Office of the State Comptroller.

Within 90 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.

Contributors to This Report

Kenrick Sifontes, Audit Director
Stephen Lynch, Audit Manager
Alina Mattie, Audit Supervisor
Dmitri Vassiliev, Examiner-in-Charge
Brenda-Lee Persad-Jeanmarie, Senior Examiner
Keino Thompson, Senior Examiner
Mario Uriarte, Senior Examiner

Division of State Government Accountability

Andrew A. SanFilippo, Executive Deputy Comptroller
518-474-4593, asanfilippo@osc.state.ny.us

Tina Kim, Deputy Comptroller
518-473-3596, tkim@osc.state.ny.us

Ken Shulman, Assistant Comptroller
518-473-0334, kshulman@osc.state.ny.us

Vision

A team of accountability experts respected for providing information that decision makers value.

Mission

To improve government operations by conducting independent audits, reviews, and evaluations of New York State and New York City taxpayer-financed programs.

Exhibit

**Kennedy Child Study Center
Summary of Submitted and Disallowed Program Costs
for the 2011-12, 2012-13, and 2013-14 Fiscal Years**

Program Costs	Amount per CFR	Amount Disallowed	Amount Remaining	Notes to Exhibit
Personal Services				
Direct Care	\$29,947,384	\$588,675	\$29,358,709	
Agency Administration	2,405,420	0	2,405,420	
Total Personal Services	\$32,352,804	*\$588,675	\$31,764,129	A,C,G,H
Other Than Personal Services				
Direct Care	\$8,791,213	\$7,734	\$8,783,479	
Agency Administration	599,521	16,372	583,149	
Total Other Than Personal Services	\$9,390,734	\$24,106	\$9,366,628	A,B,D-F,I
Total Program Costs	\$41,743,538	\$612,781	\$41,130,757	

*SED, pursuant to a desk review, previously disallowed some of these costs.

Notes to Exhibit

The following Notes refer to specific sections of SED's Reimbursable Cost 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 Kennedy officials during the course of our audit.

- A. Section II - Costs will be considered for reimbursement provided such costs are reasonable, necessary, directly related to the education program, and sufficiently documented.
- B. Section II.11 - Ordinary living expenses, such as the cost of clothing and uniforms that are normally assumed by parents or legal guardians of students attending day care centers or public day schools, are not reimbursable. Clothing expenses for staff such as uniforms for custodians or bus drivers, even if required by school policy, are not reimbursable.
- C. Section II.13.A(10) - (July 2013 Edition) - A merit award (or bonus compensation) shall mean a non-recurring and non-accumulating (i.e., not included in base salary of subsequent years) lump sum payment in excess of regularly scheduled salary which is not directly related to hours worked. A merit award may be reimbursed if it is based on merit as measured and supported by employee performance evaluations. In addition, merit awards are restricted to direct care titles/ employees and those in the 100 position title code series and position title codes 505 and 605.
- D. Section II.16 - Political and charitable contributions and donations made by the program are not reimbursable.
- E. 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 this Manual.
- F. Section III.1 - Costs will not be reimbursable on field audit without appropriate written documentation of costs.
- G. Section III.1.A - Compensation costs must be based on approved documented payrolls. Payroll must be supported by employee time records prepared during, not after, the time period for which the employee was paid. Employee time sheets must be signed by the employee and a supervisor, and must be completed at least monthly.
- H. Section III.1.B - Actual hours of service are the preferred statistical basis upon which to allocate salaries and fringe benefits for shared staff who work on multiple programs. Entities must maintain appropriate documentation reflecting the hours used in this allocation. Acceptable documentation may include payroll records or time studies. If hours of service cannot be calculated or a time study cannot be completed, then alternative methods that are equitable and conform to generally accepted accounting principles may be utilized. Documentation for all allocation methods (bases and percentages) must be retained for a minimum of seven years.
- I. Section III.1.D - All purchases must be supported with invoices listing items purchased and indicating date of purchase and date of payment, as well as canceled checks.

Agency Comments - State Education Department



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

DEPUTY COMMISSIONER
Office of Performance Improvement and Management Services
O: 518.473-4706
F: 518.474-5392

December 20, 2017

Mr. Kenrick Sifontes
Audit Director
Division of State Government Accountability
NYS Office of the State Comptroller
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, 2017-S-7, Compliance with the Reimbursable Cost Manual: Kennedy Child Study Center (Kennedy).

Recommendation 1: Review the recommended disallowances resulting from our audit and make the appropriate adjustments to Kennedy's CFRs and tuition reimbursement rates, as warranted.

We agree with this recommendation; provided that SED will further review the recommended disallowance for the excess psychologist staffing. While SED did consider recommended staffing levels as part of a tuition waiver, the context of a tuition waiver is different and distinct from adjustments that would be made upon reconciliation of tuition rates. SED will review 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: Work with Kennedy officials to ensure their compliance with SED's reimbursement requirements.

We agree with this recommendation. SED will continue to provide technical assistance whenever requested and will strongly recommend the Kennedy officials take advantage of our availability to help them better understand the standards for reimbursement as presented in Regulation and the RCM. Furthermore, Consolidated Fiscal Report (CFR) training is available online on SED's webpage. SED recommends that all individuals

signing the CFR certification statements, namely Executive Directors and Certified Public Accountants, 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 Suzanne Bolling, Director of Special Education Fiscal Services at (518) 474-3227.

Yours truly,

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

Sharon Cates-Williams
Deputy Commissioner

cc: Thalia Melendez
Christopher Suriano
Belinda Johnson
Suzanne Bolling

Agency Comments - Kennedy Child Study Center



Pamela A. Madeiros
518.689.1412
madeirosp@gtlaw.com

December 12, 2017

VIA ELECTRONIC EMAIL

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: Compliance With the Reimbursable Cost Manual
State Education Department
Kennedy Child Study Center
Draft Audit Report 2017-S-07**

Dear Mr. Sifontes:

We have reviewed the above referenced Draft Report concerning the expenses submitted by the Kennedy Child Study Center on its Consolidated Fiscal Report (CFR) for the fiscal year ending June 30, 2014 and certain expenses claimed on the CFRs for the two fiscal years ending June 30, 2013. We appreciate the opportunity to provide comment on the auditors' determinations of whether the costs reported on the CFR were reasonable, necessary, directly related to the special education program, and sufficiently documented in compliance with the State Education Department's (SED's) Reimbursable Cost Manual (RCM).

Direct Care Staffing

Kennedy does not challenge the accuracy of the auditors' presentation of facts regarding its request for fiscal relief from a profoundly inadequate reimbursement rate supported by a NYSED Special Education Quality Assurance (SEQA) unit analysis and recommendation for appropriate staffing levels including more specifically, psychological staffing.

SEQA staff had conducted a comprehensive review of Kennedy's program operations to ensure that all program staff were being engaged as effectively and efficiently as possible, and that there were sufficient staff to meet the needs of the students served. The team reviewed the profiles of students served, the intensity of needs identified, therapist caseloads, and the overall efficiency of the service delivery model (See: Special Education Quality Assurance Preschool Reapproval Review, Introduction, page 1.) Based upon that individual review, the team recommended staffing levels and staff ratios specific to the agency **as there are no standard staffing models for the preschool system**. While Kennedy acknowledges that standard developed by SEQA, in consultation with Kennedy, in March of

GREENBERG TRAURIG, LLP ■ ATTORNEYS AT LAW ■ WWW.GTLAW.COM
54 State Street ■ 6th Floor ■ Albany, NY 12207 ■ Tel 518.689.1400 ■ Fax 518.689.1499

Kenrick Sifontes
December 12, 2017
Page | 2

2015 is an important measure, we also believe it essential to understand the full context within which the staffing models were developed.

It is also important to note that while the SEQA reapproval review process does provide SED with the opportunity to assess the appropriateness of an agency's staffing levels, NYSED is likewise informed of an agency's staffing levels through the submission of salary data on the CFR. Rate setting unit staff often contact an agency during the rate setting process to discuss reported title/position costs which may have increased over prior years or otherwise appear misaligned with the number of students served.

The appropriateness of the reported staffing levels is further confirmed, then, by the standards developed through the 2015 SEQA Reapproval Review process. As confirmed by NYSED representatives at the Exit Conference, the above referenced waiver with adjustments applied to each of the audit years. We respectfully request, then, that the auditors' narrative reflect the fact that certain adjustments to costs and staffing levels were already made by SED.

*
Comment
1

Psychological Staff

Kennedy challenges the auditors' assertion that the agency exceeded its determined "SED-approved staff" level for psychological/counseling services. As presented above, rate setting unit staff are charged with reviewing and assessing reported clinical costs to determine reasonableness and appropriateness. Once again, the rate setting staff accepted without challenge the salary costs associated with the provision of psychological/counseling services in each of the audited years. (See: Attachment #1)

*
Comments
2, 3

The appropriateness of the staffing levels is further confirmed by the standards developed through the 2015 SEQA Reapproval Review process – standards which clearly authorize nearly 3 full time personnel for the provision of psychological and counseling services for the 2015-16 year including the reapplication of a measure of those FTSs to enhance the Clinical Coordinator FTEs (1.062 increased to 3.52). (See: Attachment #2)

*
Comment
4

We also challenge the auditors' assertion that Kennedy failed to provide support for reported psychological evaluation costs when, in fact, Kennedy produced billing documents which aligned exactly with the costs claimed on the CFR for such psychological evaluations.

*
Comment
5

Accordingly, we respectfully request reconsideration of the proposed finding and restoration of the psychologist salary expenses.

Bonuses

While Kennedy does not challenge the auditors' assertion that certain bonus awards may have been made in advance of a formal performance evaluation, we do challenge the auditors' conclusion that certain one-time awards to select maintenance personnel lacked support. We have attached a representative email which clearly reflects that the award was based on outstanding performance - - "hard work on snow removal" - - even while not conforming to the standardization of a performance evaluation form, per se. The attached email communication clearly conditions the award of the bonus to outstanding work performed - - the singular objective of any performance evaluation. Moreover, a formal performance evaluation was performed at its regularly scheduled time. Accordingly, we respectfully request restoration of the bonus awards for these deserving individuals. (See: Attachment #3)

*
Comment
6

Kenrick Sifontes
December 12, 2017
Page | 3

Other Than Personal Services

Kennedy does not challenge the auditors' findings that certain food and staff appreciation costs were mistakenly reported as reimbursable expenses (\$1,972) or that staff uniform costs, while authorized in subsequent RCM's, were not eligible for reimbursement in the audited year (\$799); or that parking garage costs were mistakenly reported separately rather than included in staff salary (\$8,297); or that Kennedy made a charitable donation to the Cardinal Fund which is an important benefactor of the School (\$13,116); or that Metro Cards were given to parents to assure student attendance during an unprecedented transportation failure (See: Attachment #4). We do, however, believe that the Metro Cards were necessary, reasonable and cost-effective, to assure student participation during the abbreviated period that the City was unable to provide transportation and should be accepted as a reimbursable program related cost.

We do challenge the proposed disallowance of \$7,500 in expenses associated with a Feasibility Study which was conducted to identify potential sites for relocation of the School necessitated by the Landlord's notice of eviction. (See: Attachment #5) The study was incidental to the forced relocation of the school. Accordingly, the expense - - both reasonable and necessary - - should be recognized as fully reimbursable.

*
Comment
7

.
We appreciate the opportunity to provide comment and context to the auditors' findings.

Very truly yours,

GREENBERG TRAUBIG, LLP

Pamela A. Madeiros

PAM/hae
ALB 2070887v1

CC: Suzanne Bolling, NYSED
Thalia Melendez, NYSED
James Kampf, NYSED
Jeanne Alter, Kennedy
Stephen Lynch, OSC

State Comptroller's Comments

1. We have revised our report to reflect that certain adjustments to costs and staffing levels were already made by SED.
2. We did not use the phrase "SED-approved staff" quoted in Kennedy's response to our draft report. Our report states "SED-recommended staffing levels."
3. We disagree. According to SED's adjustment entry screens for the two fiscal years ended June 30, 2014, the Rate Setting Unit made negative adjustments associated with the Psychologist costs charged to the SED cost-based programs.
4. The recommended disallowance in our audit report applies specifically to licensed psychologists. In addition, SEQA's recommended staffing levels cited in the report also applies to licensed psychologists. The three FTE personnel that Kennedy officials refer to in their response to our draft report included both licensed psychologists and additional counseling employees.
5. We did not make any assertions related to the costs associated with Kennedy's psychological evaluations.
6. We stand by our finding that the bonuses were not in compliance with the RCM. Moreover, the bonus payments were made seven to nine months in advance of the formal employee performance evaluations.
7. Upon review of additional documentation provided by Kennedy officials, we revised our report and allowed \$7,500 in previously disallowed feasibility study expenses.