



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 Kidz Therapy Services, PLLC



Executive Summary

Purpose

To determine whether the costs reported by Kidz Therapy Services PLLC (Kidz Therapy) on its Consolidated Fiscal Reports (CFRs) were properly documented, program-related, and allowable pursuant to the State Education Department's (SED) Reimbursable Cost Manual (Manual). The audit covered expenses claimed on Kidz Therapy's CFR for fiscal year 2011-12 and certain expenses claimed on Kidz Therapy's CFRs for fiscal years 2012-13 and 2013-14.

Background

Kidz Therapy is a Nassau County based for-profit organization authorized by SED to provide Special Education Itinerant Teacher (SEIT) and other preschool special education programs to disabled children between the ages of three and five years. During the 2013-14 school year, Kidz Therapy served about 200 students. Local school districts refer students to Kidz Therapy based on clinical evaluations and pay for their services using rates established by SED. The rates are based on the financial information that Kidz Therapy reports to SED on its annual CFRs. Reimbursable costs must be reasonable, necessary, program-related, and properly documented. SED reimburses the school districts for a portion of their payments to Kidz Therapy based on statutory rates. For the three fiscal years beginning July 1, 2011 and ended June 30, 2014, Kidz Therapy reported approximately \$4.77 million in reimbursable costs for its SEIT Program.

In addition to the SEIT Program, Kidz Therapy operated two other SED-approved preschool special education programs: Evaluations and Related Services. However, payments for services under these two programs were based on fixed fees, as opposed to cost-based rates established through CFR reported financial information. Kidz Therapy also operates an affiliated entity, Gayle E. Kligman Therapeutic Resources (GEK), which offers evaluations, other services, and programming options for school-age children who are not eligible for services through their local school districts, as well as services for children who are not eligible for services through the Early Intervention or Preschool Programs.

Key Findings

For the three fiscal years ended June 30, 2014, we identified \$249,850 in reported costs that did not comply with the Manual's requirements and recommend such costs be disallowed. These ineligible costs included \$240,553 in personal service costs and \$9,297 in other than personal service (OTPS) costs, as follows:

- \$164,004 in ineligible compensation. Kidz Therapy overstated the number of hours eligible for allocation to the SEIT program;
- \$37,041 in pension expenses that did not comply with the applicable provision of the Manual;
- \$17,300 in bonuses to employees who served in non-direct care titles. Bonus compensation is restricted only to direct care employees;
- \$16,025 in ineligible expenses, including \$13,225 in fringe benefits for employees of a related entity, \$2,149 in life insurance premiums, and \$651 in health insurance expenses for a former employee;

- \$9,297 in OTPS costs that did not comply with the Manual's requirements; and
- \$6,183 in excess compensation to certain Kidz Therapy employees.

Key Recommendations

To SED:

- Review the recommended disallowances resulting from our audit and make the appropriate adjustments to Kidz Therapy's CFRs and reimbursement rates.
- Work with Kidz Therapy officials to help ensure their compliance with Manual provisions.

To Kidz Therapy:

- Ensure that costs reported on future CFRs comply with all Manual requirements.

Other Related Audits/Reports of Interest

[Starting Point Services for Children: Compliance With the Reimbursable Cost Manual \(2014-S-64\)](#)

[Kew Gardens SEP Inc.: Compliance With the Reimbursable Cost Manual \(2014-S-63\)](#)

**State of New York
Office of the State Comptroller**

Division of State Government Accountability

September 15, 2016

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

Ms. Gayle Kligman
Executive Director
Kidz Therapy Services, PLLC
300 Garden City Plaza
Garden City, NY 11530

Dear Ms. Elia and Ms. Kligman:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and, by so doing, providing accountability for 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 Kidz Therapy Services, PLLC 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*

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

Background

Kidz Therapy Services, PLLC (Kidz Therapy) is a Nassau County based for-profit organization authorized by the State Education Department (SED) to provide Special Education Itinerant Teacher (SEIT) and other preschool special education services to disabled children between the ages of three and five years. Located in Garden City, New York, Kidz Therapy served approximately 200 students during the 2013-14 school year.

Local school districts refer students to Kidz Therapy based on clinical evaluations and pay for Kidz Therapy's services using rates established by SED. The rates are based on the financial information that Kidz Therapy reports to SED on its annual Consolidated Fiscal Reports (CFRs). To qualify for reimbursement, Kidz Therapy's expenses must comply with the criteria set forth in SED's Reimbursable Cost Manual (Manual), which provides 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, program-related, and properly documented.

Chapter 545 of the Laws of 2013 requires the State Comptroller to audit the expenses reported to SED by special education service providers for preschool children with disabilities. For fiscal years 2011-12, 2012-13, and 2013-14, Kidz Therapy reported approximately \$4.77 million in costs for its SEIT Program. Our audit scope focused primarily on fiscal year 2011-12. However, we expanded our review to include certain items claimed on the CFRs for fiscal years 2012-13 and 2013-14.

In addition to the SEIT Program, Kidz Therapy operated two other SED-approved preschool special education programs: Evaluations and Related Services. However, payments for services under these two programs were based on fixed fees, as opposed to cost-based rates established through CFR reported financial information. Kidz Therapy also operates an affiliated entity, Gayle E. Kligman Therapeutic Resources (GEK), which offers evaluations, other services, and programming options for school-age children who are not eligible for services through their local school districts, as well as services for children who are not eligible for services through the Early Intervention or Preschool Programs.

Audit Findings and Recommendations

For the three fiscal years ended June 30, 2014, we identified \$249,850 in reported costs that did not comply with the Manual's requirements for reimbursement. These ineligible costs included \$240,553 in personal service costs and \$9,297 in other than personal service (OTPS) costs (see Exhibit on page 14 of the report).

Personal Service Costs

According to the Manual, personal service costs, which include all taxable and non-taxable salaries and fringe benefits paid or accrued to employees on the agency's payroll, must be reported on the provider's CFR as either direct care costs (e.g., teachers' salaries) or non-direct care costs (e.g., administrators' salaries). During fiscal years 2011-12 through 2013-14, Kidz Therapy reported about \$4.4 million in personal service costs for the SEIT Program. We identified \$240,553 of these costs that did not comply with the Manual's guidelines for reimbursement, as follows:

Excess SEIT Expenses

According to the Manual, expenses incurred by a provider should be charged to the appropriate programs on the CFR. Part 200, Section 200.9 of the Regulations of the Commissioner of Education (Regulations) states that billable time for SEIT includes time spent providing direct and/or indirect SEIT services in accordance with the requirements mandated in a student's individualized education program (IEP). Direct services are associated with the provision of instruction to students with disabilities. Indirect services are defined as consultations provided by a certified special education teacher to assist the child's general education teacher.

Further, according to the Regulations, billable time shall not be less than 66 percent or more than 72 percent of any SEIT teacher's total employment hours. Moreover, the difference between the total hours in a SEIT standard week and the hours of direct and/or indirect SEIT hours must be spent on required functions. Such functions include preparation for and attendance at Committee on Preschool Special Education meetings, conferencing with the student's parents, classroom observations, and/or travel for such functions. According to the Regulations, billable time should be applied to each teacher's functions, that is, individually.

For the fiscal year ended June 30, 2012, Kidz Therapy claimed \$1,147,420 in salary and fringe benefits for 103 employees who worked for the SEIT Program. We selected and reviewed a judgmental sample of available SEIT session notes, time records, job descriptions, and payroll registers for 39 SEIT employees (6 salaried and 33 fee for service employees) who received salaries and fringe benefits totaling \$904,532 during the fiscal year ended June 30, 2012. Each of the 39 employees had earned more than \$10,000 in salary and fringe benefits for the year. We found that the six salaried SEIT teachers' compensation, reported on the CFR under Position Title Code (PTC) 218, included time spent on required functions in excess of the 34 percent allowed by the Regulations. Consequently, we recommend that SED disallow the excess \$164,004 (\$141,986 in salaries and \$22,018 in related fringe benefits) for these six teachers.

Kidz Therapy officials disagree with our finding and referenced “Tuition Rate Setting Methodology for 2011-12 Tuition Rates for Students with Disabilities,” a SED memo dated July 22, 2011. According to officials, the memo references teacher(s) as a parenthetical plural, and contradicts the Regulation. Hence, Kidz Therapy officials believe that when a provider measures billable time, all teachers listed under PTC 218 should be reviewed in the aggregate rather than individually. We disagree with Kidz Therapy’s position and note that the memo also states, “As in previous years, each provider’s financial data is reviewed by staff of SED’s Rate Setting Unit (RSU) and any necessary adjustments are made in accordance with Section 200.9 of the Commissioner’s Regulations and the Reimbursable Cost Manual.”

We sought SED’s input and were told that the Regulations are clear, and billable time should be measured individually for each teacher and not for teachers as a group. Subsequently, Kidz Therapy officials advised that the SEIT teachers were not solely teachers (PTC 218), although they were listed as such on the CFR filed with SED. They further advised that the six teachers performed the duties of IEP coordinators (PTC 238). Thus, Kidz Therapy officials asked us to reclassify the six teachers and to modify the 2011-12 CFR to show that they were PTC 238 rather than PTC 218.

We informed officials, however, that we do not have the authority to modify a CFR. Our process is to audit the certified CFRs Kidz Therapy submitted to SED. In certifying their CFRs, Kidz Therapy officials attested that the information on the CFRs is true and correct. If the six teachers were indeed IEP coordinators, Kidz Therapy officials should have indicated this and attested to it on the 2011-12 CFR they submitted to SED.

Pension Expense

According to the Manual, fringe benefits (including pensions, life insurance, and tax-sheltered annuities) for individual employees or officers/directors should be proportionately similar to those received by other classes or groups of employees. According to guidance provided by SED, fringe benefits are proportionately similar if the benefits to salaries ratio is the same/similar among all employees. The Manual also states that costs will be considered for reimbursement if such costs are reasonable, necessary, directly related to the special education program, and sufficiently documented. We recommended that SED disallow \$37,041 in fringe benefit expenses that did not comply with the Manual’s guidelines, as follows:

- For the three fiscal years ended June 30, 2014, Kidz Therapy contributed \$105,531 or about 26.7 percent of the Controller’s gross Kidz Therapy salary (of \$394,656) to an Employee Retirement Income Security Act (ERISA) approved “comparability profit sharing plan.” In particular, \$25,262 of the \$105,531 in pension plan contributions were allocated to the SEIT Program. Conversely, contributions for the other pension plan participants represented 7 percent or less of their gross salaries. Thus, a contribution of about 26.7 percent for the Controller (who is the spouse of the Executive Director), when compared with 7 percent or less for other employees, did not comply with the Manual’s requirement for the similar proportionality of such costs.

Kidz Therapy officials disagreed with our finding and stated that their pension plan

meets the IRS requirements and passed all non-discrimination tests. They added that contributions were made to the participants based on assigned categories/tiers that are comparable to their job responsibilities. They added that the contributions made on behalf of the Controller were based on his age, compensation, and remaining time until he meets the retirement age. Furthermore, the contributions were designed to allow the Controller, at retirement, to achieve the same or similar retirement benefits as the other plan contributors. Had the Controller received similar contributions as those of the other employees, the portion of his pension contributions allocated to the SEIT Program would be \$6,618 - a difference of \$18,644. As such, we recommend that SED disallow the \$18,644 in pension contributions because this excess amount did not comply with the Manual's guidelines.

- For the three fiscal years ended June 30, 2014, Kidz Therapy and GEK maintained a joint pension plan for their employees. On its CFR for the fiscal year ended June 30, 2012, Kidz Therapy failed to allocate \$18,397 in pension plan contributions to GEK. Thus, we recommend that SED disallow the \$18,397 in pension expenses.

Bonuses

According to the Manual, 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. In addition, bonus compensation is restricted to direct care employees only. Nevertheless, in fiscal year 2011-12, Kidz Therapy officials claimed \$17,300 in bonuses (including salary and fringe benefits) for 19 employees who served in non-direct care titles. Because these employees were not in direct care titles, we recommend that SED disallow the \$17,300 that was improperly charged to the SEIT Program.

Overstated Compensation

The Manual stipulates that reimbursable compensation costs must be based on approved and documented payrolls, which must be supported by employee time records that must be completed at least monthly and signed by both the employee and his/her supervisor. Furthermore, the Manual states that compensation (i.e., salaries plus fringe benefits) for an entity's staff whose function is that of Executive Director, Assistant Executive Director, or Chief Financial Officer (CFO) will be directly compared to the regional median compensation for comparable administration job titles of public school districts, as determined and published annually by SED's Basic Educational Data Systems (BEDS). Reimbursement of employees' compensation for these job titles shall not exceed the median compensation paid to comparable personnel in public schools for similar work and hours of employment in the region in which the entity is located. According to the Manual, compensation for a CFO should be compared to the median compensation for an Assistant Superintendent.

An analysis of the payroll register for fiscal year 2011-12 showed that Kidz Therapy officials overstated the compensation charged to the SEIT Program for five employees by \$5,077. In addition, we compared the CFO's compensation for fiscal year 2011-12 to the regional median compensation of an Assistant Superintendent and found that the CFO's compensation charged

to the SEIT Program was overstated by \$1,106. We therefore recommend that SED disallow the overstated \$5,077 in salaries and related fringe benefits for the five employees. However, we determined that at the time of our audit field work, SED had already adjusted the CFO's compensation to reflect the \$1,106 overstatement.

Miscellaneous Ineligible Expenses

According to the Manual, costs will be considered for reimbursement provided such costs are reasonable, necessary, directly related to the education program, and supported by the appropriate documentation. The Manual also states that the costs of life insurance for owners/officers or employees are not reimbursable when the entity is identified as the beneficiary of the insurance. We identified \$16,025 in various ineligible expenses, as follows:

- \$13,225 in mandated fringe benefits for GEK employees. Kidz Therapy officials maintained and processed joint payrolls for Kidz Therapy and GEK employees. However, for three months in fiscal year 2011-12, Kidz Therapy officials failed to allocate \$13,225 in payroll expenses (FICA) to GEK;
- \$2,149 in life insurance premiums for the Executive Director. The insurance policy listed Kidz Therapy as the beneficiary of the policy's proceeds; and
- \$651 in COBRA health insurance expenses for a former employee. Kidz Therapy officials inappropriately claimed this employee's health insurance expenses on the CFR although federal funds, under the American Recovery and Reinvestment Act, were available.

We recommend that SED recover the \$16,025 (\$13,225 + \$2,149 + \$651) in the ineligible expenses reported for the three fiscal years ended June 30, 2014.

Other Than Personal Service Costs

According to the Manual, OTPS costs must be reasonable, necessary, program-related, and supported by sufficient and appropriate documentation. Compensation to all individuals including trustees, board members, or others must be commensurate with actual services provided as appropriately qualified program employees. However, compensation for board service or trustee service is not reimbursable. In addition, use of privately owned vehicles can be compensated at a rate not to exceed the mileage rate allowed by the IRS for automobile travel. Moreover, auto repair, insurance, and maintenance costs incurred by employees for privately owned vehicles are not reimbursable. Costs of legal or consulting services and related costs incurred in connection with reorganization of the agency, unless mandated by SED, are not reimbursable. In addition, the Manual states that certain costs, such as personal expenses, food, and gifts, are not reimbursable. During the three fiscal years ended June 30, 2014, Kidz Therapy charged \$368,418 in OTPS expenses to the SEIT Program.

We identified \$9,297 in expenses that did not comply with SED reimbursement requirements, as follows:

- \$3,211 in payments to the Professional Limited Liability Company (PLLC) members (similar to the payments to board members/trustees in a non-profit organization) although no services were provided by these members. We noted that, at the time of our audit fieldwork, SED had adjusted Kidz Therapy's reimbursement rates for fiscal years 2011-12 and 2012-13 to reflect this expense;
- \$2,153 in privately owned vehicle expenses for the Executive Director and the CFO. These expenses included \$1,035 in gas and other auto-related purchases, \$660 in insurance premiums, and \$458 in leasing charges claimed in excess of the business mileage allowance;
- \$1,534 in staff travel expenses that were not related to the SEIT Program;
- \$859 in inadequately documented expenses that included \$533 in various American Express charges, \$274 in dues and subscriptions, and \$52 in depreciation expenses. No invoices, receipts, or contracts were provided to support these payments. Thus, we could not determine whether these charges were program-related;
- \$796 in non-reimbursable legal fees related to the entity's reorganization from a PLLC to a non-PLLC. There is no evidence that this reorganization was mandated by SED; and
- \$744 in miscellaneous non-reimbursable expenses, such as \$114 for food and beverages including alcoholic beverages, \$109 in cell phone charges unrelated to the SEIT Program, \$82 in legal expenses related to the purchase of a house, \$54 in gift cards, and \$21 in store memberships for the Executive Director's family members. These family members were not employed by Kidz Therapy.

We recommend that SED disallow the \$9,297 in ineligible expenses because these expenses did not comply with the applicable provisions of the Manual.

Recommendations

To SED:

1. Review the recommended disallowances resulting from our audit and make the appropriate adjustments to Kidz Therapy's CFRs and reimbursement rates.
2. Work with Kidz Therapy officials to help ensure their compliance with Manual provisions.

To Kidz Therapy:

3. Ensure that costs reported on future CFRs comply with all Manual requirements.

Audit Scope and Methodology

We audited the costs reported on Kidz Therapy's CFRs to determine whether they were properly documented, program related, and allowable pursuant to the Manual. The audit included claimed expenses for fiscal year 2011-12 and certain expenses claimed on Kidz Therapy's CFRs for fiscal years 2012-13 and 2013-14.

To accomplish our objective, we reviewed the Manual and the Consolidated Fiscal Reporting and Claiming Manual, Kidz Therapy's CFRs, and relevant financial records for the audit period. We also interviewed Kidz Therapy officials, staff, and independent auditors to obtain an understanding of their financial and business practices. In addition, we assessed a judgmental sample of reported costs to determine whether they were supported, program appropriate, and reimbursable. Specifically, we reviewed costs that were considered high risk and reimbursable in limited circumstances, such as auto expenses and credit card charges. Our review of Kidz Therapy's internal controls focused on the controls over the 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 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. 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 Kidz Therapy officials for their review and formal comment. Their comments were considered in preparing this final report and are attached to the report. In their response, SED officials agreed with our recommendations and indicated that they will take steps to address them. In their response, however, Kidz Therapy officials disagreed with most of our report's findings. Our rejoinders to certain Kidz Therapy comments are included in the report's State Comptroller's Comments.

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

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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

Kidz Therapy Services, PLLC
Schedule 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	\$4,113,931	\$231,063	\$3,882,868	
Agency Administration	291,009	9,490	281,519	
Total Personal Services	\$4,404,94	*\$240,553	\$4,164,387	A-C, E,G,I
Other Than Personal Services				
Direct Care	\$161,636	\$2,030	\$159,172	
Agency Administration	206,782	7,267	198,843	
Total Other Than Personal Services	\$368,418	*\$9,297	\$358,015	A,D,F,H,J
Total Program Costs	\$4,773,358	*\$249,850	\$4,522,402	

*Includes certain adjustments previously made by SED

Notes to Exhibit

The following Notes refer to specific sections of SED's 2011-12, 2012-13, and 2013-14 Reimbursable Cost Manuals 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 Kidz Therapy 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 special education program, and sufficiently documented.
- B. Section II.14.A.10 - Bonus compensation shall mean a non-recurring and non-accumulating (i.e., not included in base salary of subsequent years) lump sum payment(s) in excess of regularly scheduled salary which is not directly related to hours worked. In addition, bonus compensation is restricted to direct care titles/employees only.
- C. Section II.14.A(4)a - Compensation (i.e., salaries plus fringe benefits) for an entity's staff whose function is that of Executive Director, Assistant Executive Director, or Chief Financial Officer will be directly compared to the regional median compensation for comparable administration job titles of public school districts, as determined and published annually by SED's Basic Educational Data Systems (BEDS). Reimbursement of employee compensation for these job titles shall not exceed the median compensation paid to comparable personnel in public schools for similar work and hours of employment in the region in which the entity is located. Compensation for a Chief Financial Officer will be compared to the median compensation for an "Assistant Superintendent."
- D. Section II.13.A(5) - Compensation to all individuals including shareholders, trustees, board members, officers, family members, or others who have a financial interest in the program and who are also program employees must be commensurate with actual services provided as appropriately qualified program employees or consultants and shall not include any distribution of earnings in excess of reimbursable compensation. For all individuals, compensation for board service or trustee service is not reimbursable.
- E. Section II.14.B(2)c - Benefits including pensions, life insurance, and tax sheltered annuities for individual employees or officers/directors are proportionately similar to those received by other classes or groups of employees.
- F. Section II.15.B - Costs of legal, accounting, or consulting services and related costs incurred in connection with reorganization of the agency, including mergers and acquisitions, unless mandated by SED, are not reimbursable.
- G. Section II.28.C - Costs of insurance on the lives of owners/officers or employees when the entity is identified as the beneficiary are not reimbursable.
- H. Section II.59.D (3) - Use of privately owned vehicles for program business by employees is reimbursable provided such use is documented and necessary. Such use will be compensated at a rate not to exceed the mileage rate allowed by the Internal Revenue Service (IRS) for automobile travel or for the use of privately owned motorcycles. Private car mileage reimbursements in excess of the allowable IRS reimbursement rate per mile are subject to withholding and reporting requirements. Auto repair, depreciation, insurance, rental, garage, and maintenance costs incurred by employees for privately owned vehicles are not reimbursable.

- I. 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.
- J. 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. Costs must be charged directly to specific programs whenever possible. The particular program(s) must be identified on invoices or associated documents.

Agency Comments - SED



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

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August 9, 2016

Mr. Kenrick Sifontes
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Office of the State Comptroller
Division of State Government Accountability
59 Maiden Lane, 21st Floor
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Dear Mr. Sifontes:

The following is the New York State Education Department's (SED) response to the draft audit report, 2015-S-63, Compliance with the Reimbursable Cost Manual: Kidz Therapy Services, PLLC.

Recommendation 1:

Review the recommended disallowances resulting from our audit and make the appropriate adjustments to Kidz Therapy's CFRs and reimbursement rates.

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

Recommendation 2:

Work with Kidz Therapy officials to help ensure their compliance with Manual provisions.

We agree with this recommendation. SED will continue to provide technical assistance whenever requested and will strongly recommend the Kidz Therapy officials take advantage of our availability to help them better understand the standards for reimbursement as presented in Regulation and the Reimbursable Cost Manual (RCM). Furthermore, Consolidated Fiscal Report (CFR) training is available both in person, at one of the six locations it is offered across the State, and 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. At the direction of the Board of Regents, the Department intends to require that this training be mandatory and will require individuals to verify that they have completed the training.

If you have any questions regarding this response, please contact Suzanne Bolling, Director of Special Education Fiscal Services at (518) 474-3227.

Sincerely,

Sharon Cates-Williams

c: Suzanne Bolling
Monica Short

Agency Comments - Kidz Therapy Services, PLLC



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GAYLE E. KLIGMAN M.Ed., C.C.C.
Executive Director

Kidz Therapy Services, PLLC: Response Draft Audit Findings- FY 2011-12, FY 2012-13 and FY 2013-14

Date of Submission

August 1, 2016

August 1, 2016

Mr. Kenrick Sifontes
Audit Manager
NYS Office of the State Comptroller
110 State Street
Albany, NY 12236

Dear Mr. Sifontes:

This response is being submitted by Kidz Therapy Services, PLLC in reference to the draft report 2015-S-63 for the years 2011-12 through 2013-14. We will include comments and assertions and provide a link to our objections from NYS Office of State Comptroller ("OSC") conclusions and NYS Education Department ("NYSED") comments, meetings and protocols.

Personal Service Costs

EXCESS SEIT EXPENSES:

Summary of Sequence of Events:

We object first to the revision in terminology in the draft audit report of "Excess SEIT Expenses". This caption has been revised from the preliminary report in which OSC titled the finding "Over-Allocated Salaries and Fringe Benefits". Based on the OSC extensive payroll audit and subsequent audit conclusions, it was communicated to us that there was no question that all our employees charged to the SEIT program worked in the program.

*
Comment
1

In reading the draft OSC report we have noticed that many key aspects of the draft finding and subsequent events, including discussions, meetings and documentation submitted to both the OSC and NYSED, were not referenced or included in the draft report, resulting in a misleading presentation for public disclosure.

*
Comment
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In fact, the findings from the OSC on the extensive payroll audit which was performed for over six months and included a very detailed review of our SEIT staff was not mentioned. What is also not included in the draft OSC report is that OSC had stated in the exit conference to both our agency and NYSED representatives on the phone that OSC was able to validate through their audit that our agency had the required documentation to support that the SEIT employees worked within the SEIT program. The OSC validated through the audit process, in accordance with the prescribed recordkeeping requirements, that our time records, payroll records and job descriptions were compliant. We will repeat, that there was no question or OSC conclusion that

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*See State Comptroller's Comments, page 27.

we did not have supporting documentation in accordance with the Reimbursable Cost Manual (“RCM”) or the Consolidated Fiscal Report (“CFR”) guidelines.

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This is critical to defending our position that the employees are valid SEIT Employees. Therefore, once again, for the OSC to indicate “Excess SEIT Costs” is incorrect. There are no excess SEIT Costs as determined through the OSC audits, information and representations made to our agency by OSC.

In the draft report, the OSC indicates that our agency asked them to reclassify the six full time-salaried teachers and to modify the 2011-12 CFR to show that they were PTC 238 rather than PTC 218. What we requested is that the teachers documented and supported job functions be recognized and reimbursed in our SEIT Program. Once again, what is not in question is that they worked in the SEIT program and that we have all supporting documentation prescribed by the RCM and CFR manuals. To repeat, OSC has admitted and validated that through the audit process.

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This finding that was included in the draft report was brought to our attention by OSC at the conclusion of field work. At that time, we explained that our certified special education teachers in the SEIT program provide SEIT services, perform required functions and also have additional responsibilities for IEP Coordination. At no point were we questioned to explain the actual detail of roles or duties or asked for additional supporting documentation through the audit fieldwork in order that OSC could validate detailed roles. The end result of the OSC finding and recommendation would disallow 91% of our full-time salaried SEIT staff in our SEIT Program.

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The recordkeeping, documentation, meetings, coordination and quality assurance that must be adhered to be in compliance and run a compliant program is extensive. As we explained to OSC, the special education teachers were coded on the CFR as PTC 218 as per certified special education code. Upon review of the actual job description, which was furnished to OSC, it is clear the necessary required vital roles in the SEIT Program were performed and necessary for our program to be compliant. Our job description provided to the OSC clearly outlines the multiple roles of the teachers performed.

We also cited in our preliminary report, a recent comprehensive advisory from NYSED which clearly documents our *responsibility as a SEIS provider for Coordination of SEIS* and Related Services. This responsibility was in place 11/12 and has continued forward. It should be noted that approximately 61% of our SEIT children required coordination. Our special education teachers were performing additional functions that were mandated and necessary for our program. The guidelines relate, reference and validate our job description.

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The fact that the individuals were coded to PTC 218 is not a basis for disallowing their entire salary in the case of 2 employees and the partial amount for the other 4 employees when they performed the essential coordination and required other functions in order to adequately run our program. Unlike other audit report findings for other agencies that lacked documentation, we have and furnished extensive documentation during fieldwork and subsequent to fieldwork in response to the preliminary report. We will explain below.

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Since the exit conference with OSC, in which SED was participating by phone, it was agreed by OSC and NYSED that we would furnish additional documentation to support the dual roles of the PTC 218/238 codes and that this would be reviewed. It was agreed that this documentation was not requested by the OSC during the audit process nor was our agency questioned as to the PTC 218 roles during the audit. In addition, we also met with NYSED representatives in Albany to discuss our position. After a lengthy discussion of our position, NYSED stated that our agency had nothing to gain from recording the PTC codes as reported on the CFR. In other words, everybody agreed that there was no gain or increase in our SEIT tuition rate resulting from reporting these personnel entirely under 218 rather than partly under 218 and partly under 238. All special education teachers were audited and validated by the OSC that they did work within the SEIT Program.

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The documentation subsequently furnished to both OSC and SED included affidavits from special education teachers and over 4,000 pieces of documentation to support the dual PTC role of the special education teachers between PTC 218 and PTC 238. As we stated earlier, we have support to document the necessary roles within the SEIT Program. The documentation, was submitted both to OSC and SED, and it is under review at this time. This information was submitted in May 2016.

Other Factors to Consider Related to Regulatory Guidance, Previous OSC Audits and Clarifications in the 15/16 CFR Manual:

The only question and disallowance by OSC and the basis for the disallowance is the Part 200.9 Ratio for the SEIT Teachers. As we previously indicated this was never questioned by SED in desk audit and reviewed for the purpose of setting a reconciliation rate in the aggregate. We will state once again, the procedures and regulations that are practiced are not always clear to providers.

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1) Clarifications to Reporting PTC 218 Code in the 15/16 CFR Manual (Appendix R)

In the CFR Manual 15/16 a clarification was made as to the reporting of a PTC 218 teacher as follows:

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CFR: PTC 215 Supervising Teacher (SED Only)

Provides for direct supervision of teachers. Certified Special Education teacher serving as a teacher 50 percent or more of his or her assignment in such capacity. Pursuant to Part 80 of the Regulations of the Commissioner of Education, a school administrator and supervisor serving greater than 25% (10 periods/week) of his or her assignment in any administrative or supervisory position must have valid administrative certification. If supervising more than 50 percent of assignment, see Code 518.

For SEIT programs, the time a teacher spends performing the duties of a SEIT teacher must be reported using code 218 and the time a teacher spends directly supervising SEIT teachers must be reported using code 518.

CFR: 218 Teacher – Special Education

A certified teacher who provides specialized instruction to students with disabilities.

Importance to Kidz Therapy Services: Our agency recorded the IEP Coordination time for certain employees in PTC 218. The above is the first time where the Appendix R actually references the codes in which a PTC 218 employee should be reported. The above is important to indicate that the manual was silent on the PTC 218 inclusions where employees have dual roles.

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2) *Review of Findings within Other OSC audit reports.*

We have reviewed the findings and recommendations in other published OSC audit reports. In fact, in the exit conference, when we objected to interpretation and usage of Part 200.9 regulation as the sole disallowance in our SEIT staffing, an OSC supervisor mentioned that we should review a recent audit of an agency that would support that they have followed similar guidelines in their audit practice. Our intention is not to pass judgement on the agency but highlight OSC comments. We reviewed 2014-S-64 audit and found that the issues were not similar to our situation or agency practice and reporting and actually support the fact that the finding should not be implemented or recommended for disallowance.

OSC 2014-S-64 Report: “However, — could not provide documentation to show that the 69,399 hours charged to the SEIT program were, in fact, attributable to the provision of SEIT services.”

Importance to Kidz Therapy Services: Our agency has compliant records evidenced through the OSC audit and provided over 4,000 pieces of supporting documentation and includes employee affidavits. There is no question, as OSC stated in the exit conference, that our special education teachers worked in the SEIT program.

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OSC 2014-S-64 Report: “According to the documentation officials provided to us, — billed 48,819 in mandated hours in accordance with students’ IEPs. To determine the maximum allowable SEIT hours — should have claimed, we divided the 48,819 mandated hours by 66 percent. This resulted in 73,967 maximum allowable SEIT hours. Therefore, we determined that — overstated the number of SEIT hours for cost reporting by 34,810 hours (108,777 hours minus 73,967 hours). When we applied the appropriate hourly rates to the excessive 34,810 SEIT hours, we determined that the SEIT program was over-charged a total of \$1,981,802 (including \$1,502,245 in salaries and \$479,557 in related fringe benefits). Consequently, we recommended that SED disallow the \$1,981,802 in over-allocated staff compensation costs.”

Importance to Kidz Therapy Services: **In our draft report OCS contends:** “Kidz Therapy officials disagree with our finding and referenced “Tuition Rate Setting Methodology for 2011-12 Tuition Rates for Students with Disabilities,” a SED memo dated July 22, 2011. According to officials, the memo references teacher(s) as a parenthetical plural, and contradicts the

Regulation. Hence, Kidz Therapy officials believe that when a provider measures billable time, all teachers listed under PTC 218 should be reviewed in the aggregate rather than individually. We disagree with Kidz Therapy's position and note that the memo also states, "As in previous years, each provider's financial data is reviewed by staff of SED's Rate Setting Unit (RSU) and any necessary adjustments are made in accordance with Section 200.9 of the Commissioner's Regulations and the Reimbursable Cost Manual."

Key Point: According to the reference above in the OSC Report 2014-S-64, in arriving at the allowable hours, OSC simply aggregated the total billable hours from SEIT staff and applied a formula dividing the TOTAL hours by 66% to arrive at total allowable SEIT Hours. This is in complete contradiction to how OSC formed the basis of their decision as indicated above which was by each INDIVIDUAL teacher's hours. We have submitted a FOIL request to obtain the detail work papers for that referenced audit.

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Our Request that OSC and NYSED Work Together to Remove and/or No Penalty:

We once again respectfully request that the proposed disallowance not be included in your final report. No financial penalty is warranted, based on the extensive documentation provided during OSC audit and prior to the issuance of the draft report, contradictions in regulation and guidance and actual job descriptions and duties performed by our special education teachers. To summarize we served over 237 children providing 31,432 units of service. The OSC audit has shown that we have documentation and records to support that the special education teachers reported as PTC 218 performed mandated, necessary and key roles in our SEIT Program. We trust you will also concur with our above request based on regulatory information, discussions and documentation provided at field work, subsequent to field work and prior to the issuance of the draft report to both the OSC and NYSED.

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PENSION EXPENSE:

We strongly object to the disallowance of a portion of the Controller's pension allocation for several reasons. As stated in our exit conference, with the explanations and information provided by our pension expert consultant the plan is an ERISA approved plan and is not discriminatory.

Pension Plan is not Discriminatory:

The RCM manual does not define "proportionately similar". This plan does provide comparable benefits at normal retirement plan and is subject to the cross testing and nondiscrimination testing. This is a retirement plan qualified under the code, subject to the rules of ERISA under the defined contribution rules. Different percentage contributions were made to the participants based on their assigned categories or tiers. There is not another tier or employee that is comparable to the

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job responsibilities of the Controller. By placing the Controller in an arbitrary tier and percentage is discriminatory toward his role and position within the company.

This plan was designed to provide comparable benefits to all eligible participants and much like any retirement plan in order for the older more highly compensated employee to receive the same benefit as a percentage of their compensation with fewer years for funding, the allocation percentage and dollar amount of the contribution needs to be higher. Once again, the contribution for the controller was determined to achieve the same or similar benefits at retirement based on age, years to retirement and compensation.

As previously stated this plan is an ERISA approved plan and is in compliance with all Department of Labor and Internal Revenue Service regulations. The plan satisfies code section 401(a)(4) which requires a qualified plan demonstrate that it does not discriminate in favor of highly compensated employees as to contributions or benefits. In other words, we are not deemed to be discriminatory within the plan. The definition of proportionate or disproportionate needs to be reviewed. The definition of similar needs to be reviewed. Both of the words require further definition in the RCM. This plan is subject to and passes discrimination and cross testing. All benefits are proportionately similar for all classes of employees. The contribution is based on age and compensation provides for equivalent benefit accruals at retirement (EBAR). The plan passes the required gateway requirement, Average Benefits Percentage Test and Non-Discrimination Test and is not top heavy.

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RCM Guidelines are Not Clear and Did Not Set a Maximum % Contribution until 16/17:

The 11/12 manual guidelines are not clear. There is not anything in the RCM that gives a provider any reason to believe that a contribution that is not discriminatory under the universally understood and applied federal standards is not acceptable.

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Also, in fact, the just published RCM 16/17, now includes a % limitation or cap as follows:

New Provision: "The amount of a discretionary pension contribution exceeding twenty-five percent of an Individual employee's salary is not reimbursable. "

Importance to Kidz Therapy Services: In the audit year, a cap did not exist. Neither did a definition of "proportionally similar" exist. How can we be held to a cap % limit of 7% when there was never any specification as to a total limit? Our plan is nondiscriminatory and meets all tests. The 16/17 change recognizes that a clarification was needed for the RCM as to how large a contribution the proportionally similar standard allows.

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Summary of Objection to Reduction of Controller's Pension Expense

In summary, we object and are not in agreement with the proposed reduction in the Controller's pension amount. We do not agree that it is not proportionally similar and refute the argument from OSC based on our information provided. We also insist on a qualified pension expert from OSC to be

present to explain to us the reasons and documentation to support that our pension contribution is not fully fundable to Kidz Therapy Services, PLLC.

Please provide the justification for placing the Controller in a category of 7% in light of the 16/17 clarification and cap. The role, responsibility and duties differ greatly from the other employees that are placed in this tier. We feel that this is discriminatory toward the Controller and his ability to receive a fair pension.

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OVERSTATED COMPENSATION:

We object to the terminology “Overstated” as this is misleading and denotes that we overstated our expenses. The NYSED as a part of the Median Salary Screen has already deducted the amount for this year from our approved and published SEIT Rate following the established rate setting methodology.

The Median Salary represents the maximum amount that can be funded through the rate. The comment “Overstated” is a judgement of the OSC and should be removed.

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OTHER THAN PERSONAL SERVICES COST:

Miscellaneous Non-Reimbursable Charges:

We are strongly requesting that the references to purchases at a liquor store be removed as they are inaccurate and OSC is in error. OSC notified us when we asked for the invoice details (\$46.31) that it was a charge to a restaurant and that OSC incorrectly assumed to be a liquor store by virtue of the name. The charge was not for liquor but at City Cellars, a restaurant. We have traced and found that this amount, for food, also was not charged (directly or indirectly) to the SEIT program, but was charged to another program. To imply that the agency was using state/federal funds for the purchase of alcoholic beverages is defamatory and inappropriate. We respectfully request that the wording be removed and OSC correct the finding.

In addition, it must be clarified that the \$54 in gift cards mentioned was contributed to a needy family as part of a drive at the holidays. We recognize it is non allowable and will take care not to charge such expense in the future.

The \$21 in store memberships for the Executive Director’s family members represented their name appearing as a “family” on the card. There were no purchases by family members charged to the agency.

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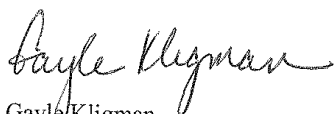
Summary of Request

We wish to thank the OSC for the courtesies and assistance provided to our agency during the audit. We have always viewed our agency as a partner with Federal and State government agencies in the quest to provide necessary and approved services to children. We are extremely proud of the educational and clinical services we provide to children and their parents thus enriching their lives and future. We pride ourselves on our professionalism, responding to changes in regulations and expanding to meet the needs of children and families.

We hope that we are also viewed as a partner in reviewing our responses to the audit findings and that OSC and NYSED are able to resolve the issues given all the information, documentation and support that we have submitted. We trust that OSC and NYSED will have the goal of not creating undue and unnecessary fiscal turmoil for our program. We call to the attention of OSC that it was indicated at the exit conference there was no fraud found and that we have excellent internal controls. They indicated that those statements would not be noted in the written report.

If any other documentation is needed please let us know. We are looking forward to a fair and equitable resolution based on all the above included in this report. Thank you.

Sincerely,



Gayle Kligman
Executive Director

State Comptroller's Comments

1. We did not review documentation to support the costs for all employees charged to Kidz Therapy's SEIT program. As noted in our report, we selected and reviewed a judgmental sample of 39 SEIT teachers. Our performance audit determined that the compensation for 6 of the 39 sampled teachers included time spent on required functions in excess of the amounts allowed by Part 200, Section 200.9 of the Regulations (Regulations).
2. We disagree. Information contained in our reports is not presented with the intention of misleading the public. In preparing this report, we reviewed and considered all evidence and information provided by Kidz Therapy officials. As a result, we maintain that our report accurately reflects the Kidz Therapy operations we audited.
3. We did not conduct a comprehensive payroll audit of Kidz Therapy. Rather, as stated in the Audit Scope and Methodology section of the report, we audited the costs reported on Kidz Therapy's CFRs to determine whether they were properly documented, program related, and allowable pursuant to the Manual. Based on our review of selected documentation (including time records, payroll records, and job descriptions), we found that compensation for 6 of the sampled 39 SEIT employees included time spent on certain functions that exceeded the 34 percent maximum allowed by the Regulations.
4. Refer to Comment Nos. 1 and 3.
5. We maintain that our report is factually accurate and that Kidz Therapy officials asked us to reclassify the six full-time employees and to accept from them a modified 2011-12 CFR. The documentation provided reflects that the six employees worked in the SEIT program. In addition, the documentation showed that they were compensated for functions in excess of the amount allowed by the Regulations.
6. Auditors brought the finding in question to the attention of Kidz Therapy officials prior to and after the end of fieldwork. Kidz Therapy officials claimed the six teachers under PTC 218 on the CFR submitted to SED for fiscal year 2011-12. Moreover, job descriptions for the six employees, given to us during fieldwork, confirmed they performed the job functions described under PTC 218. After we recommended disallowances for the excess compensation, Kidz Therapy officials provided modified job descriptions (that were not contemporaneous with the 2011-12 year) indicating that the six employees performed additional duties, including functions listed under both PTC 218 and PTC 238. As such, the burden was on Kidz Therapy officials to provide sufficient information and documentation in support of the various roles of the teachers who purportedly performed functions commensurate with PTC 238. However, officials did not provide such documentation. Also, our audit did not recommend the disallowance of 91 percent of the full-time salaried staff in Kidz Therapy's SEIT Program, as Kidz Therapy otherwise asserts. Instead, as detailed on page 6 of the report, we recommended that SED disallow \$164,004 (\$141,986 in salaries plus \$22,018 in related fringe benefits) for the six teachers because their compensation included time spent on functions in excess of the amount allowed by the applicable Regulations.
7. According to the documentation, Kidz Therapy's special education teachers were performing additional functions. However, the time spent on certain of these functions was not reimbursable under PTC 218. As stated on page 6 of the report, we recommended

that the excess compensation for the six SEIT teachers be disallowed.

8. The 2011-12 CFR submitted to SED by Kidz Therapy officials indicated that the salaries for the six teachers were reported under PTC 218. At the exit conference, however, Kidz Therapy officials told us that the teachers should have been reported under PTC 238 and then asked us to reclassify those teachers. Officials provided us with a document which showed how Kidz Therapy would modify the 2011-12 CFR to record the reclassification. Kidz Therapy officials also indicated they would provide us with additional documentation to support the proposed reclassifications and modification. We reviewed the 4,403 pages of documents submitted by Kidz Therapy officials after the exit conference. While the documentation included affidavits from the six teachers claiming they reviewed Annual/Quarterly reports and spent varying number of hours reviewing IEPs and other documents, the documentation did not substantiate that the six teachers performed the duties of IEP Coordinators. Further, the documentation provided by Kidz Therapy officials included estimates that were prepared in fiscal year 2015-16, almost four years after the fiscal year 2011-12 CFR was submitted to SED.
9. We cannot opine on the statements allegedly made by SED to the effect that Kidz Therapy had nothing to gain from recording the PTC codes as reported on the CFR, nor that there was no gain or increase in Kidz Therapy's SEIT tuition rate resulting from reporting these personnel entirely under PTC 218 rather than partially under PTC 218 and PTC 238. Our review found that Kidz Therapy claimed compensation for six SEIT teachers in excess of the amount allowed by the Regulations.
10. SED's desk reviews do not include the level of detail of OSC's on-site audits of the source and supporting records for the costs reported by providers on their CFRs. Consequently, the fact that a particular cost was allowed pursuant to SED's desk review does not mean that the same cost will not be disallowed upon on-site audit of the required supporting documentation. It is our understanding that SED officials have provided training on the Manual. In addition, in their response to the draft report, SED officials stated that they will continue to provide technical assistance whenever requested and strongly recommend officials take advantage of their availability to help them better understand the standards for reimbursement as presented in the Regulations and the Manual. The Manual is derived from SED's statutory authority and is the standard upon which our findings are based. In addition, the Manual's basic provisions do not change dramatically from year to year, and revisions go into effect when the Manual is issued.
11. We applied the FY 2011-12 Manual - the relevant Manual for that year.
12. When the Manual is silent on the treatment of a specific cost, it should not be assumed that such cost is automatically reimbursable or that any given method of the allocation of such costs is appropriate. The Manual explicitly states that users are strongly encouraged to contact the SED Rate Setting Unit with questions or concerns. Further, the Manual's general provisions should always be applied. Costs must be reasonable, directly related to the Program, and properly documented.
13. We disagree. In fact, we neither implied nor stated explicitly that Kidz Therapy's special education teachers did not work in the SEIT Program. However, as previously detailed, we recommended that SED disallow the portion of the six teachers' compensation that exceeded the amount allowed by the Regulations.
14. Kidz Therapy officials are incorrect when they claim that OSC simply aggregated the total

billable hours from SEIT staff. Similar to our procedure for the provider reported in Report # 2014-S-64, we reviewed each Kidz Therapy teacher, individually.

15. Our review of the extensive documentation provided by Kidz Therapy officials does not support the modified claim that the six teachers were IEP coordinators (PTC 238).
16. As detailed in the report, the pension contributions of all but the one employee in question was 7 percent or less of their respective gross salaries, while the one employee received contributions of about 26.7 percent of his respective gross salary. Given the magnitude of the differences in contribution rate ranges, we maintain that the contributions were not proportionately similar.
17. We do not state that the plan does not meet ERISA requirements. Instead, our audit determined that Kidz Therapy pension contributions did not meet the requirements of the Manual. Also refer to Comment No. 16.
18. Refer to Comment No. 16.
19. We disagree. We did not hold Kidz Therapy to a pension contribution limit of 7 percent. The 7 percent refers to the pension contributions Kidz Therapy officials made to all but one of its employees.
20. No additional clarification is warranted. The pension contributions do not meet the requirements of the Manual.
21. We use the term “overstated” to mean more than the proper amount. It does not indicate explicitly or implicitly whether or not any discrepancy was deliberate. Also, as stated on page 9 of the report, we acknowledged that SED had already made partial adjustments for the overstated compensation.
22. We revised our report to delete the reference to a liquor store. However, we stand by our finding that alcoholic beverages were purchased, as demonstrated by the pertinent invoice obtained from a restaurant. Moreover, the amount in question was claimed on the line items for “Supplies and Materials/Office Supplies and Postage” on Kidz Therapy’s CFR for fiscal 2011-12. The costs in question, however, were clearly not related to office supplies, materials, and/or postage.