



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

Division of State Government Accountability

Compliance With the Reimbursable Cost Manual

The Norman Howard School State Education Department



Report 2012-S-18

July 2013

Executive Summary

Purpose

To determine whether costs reported by the Norman Howard School (NHS) on the Consolidated Fiscal Report (CFR) were properly calculated, adequately documented and allowable under the Consolidated Fiscal Report Manual (CFR Manual) and the Reimbursable Cost Manual (RCM). This audit covered the period July 1, 2008 through June 30, 2011.

Background

NHS, located in Rochester, New York provides special education services to children with learning disabilities in grades 5 through 12. NHS is reimbursed for these services based upon financial information contained in the CFR it files with the New York State Education Department (SED). To be eligible for reimbursement, the expenses must comply with the guidelines contained in the CFR Manual and RCM. For the three fiscal years ended June 30, 2011, NHS reported costs totaling \$11.3 million for the special education program we audited.

Key Findings

- We disallowed \$208,305 in personal service and other-than-personal-service costs for the three fiscal years ended June 30, 2011 because they were unnecessary or unallowable, or were not correctly reported on the CFR.
- The disallowances for personal services consisted of \$170,325 in compensation for uncertified teachers and teachers' assistants.
- The disallowances for other-than-personal-services included \$30,000 in overstated mortgage interest costs and \$7,980 in contracted direct care expenses that were not reasonable or necessary for NHS' special education program.
- We also questioned personal services costs totaling \$67,295 for two employees who did not have the required professional certifications during portions of our audit period. Further, we questioned \$21,729 in other-than-personal-service costs for a contracted program that might no longer be necessary.

Key Recommendations

- SED should review the disallowances resulting from our audit, make the appropriate adjustments to the costs reported by NHS, and reduce NHS reimbursement rates, as appropriate.
- NHS should ensure that the reporting of reimbursable expenses complies with SED requirements and that professional employees have the certifications required for the positions they hold.

Other Related Audits/Reports of Interest

[Capital District Beginnings, Inc.: Compliance With the Reimbursable Cost Manual \(2011-S-1\)](#)
[Achievements, PLLC: Compliance With the Reimbursable Cost Manual \(2011-S-18\)](#)

State of New York
Office of the State Comptroller

Division of State Government Accountability

July 15, 2013

Dr. John B. King, Jr.
Commissioner
State Education Department
State Education Building - Room 125
89 Washington Avenue
Albany, NY 12234

Mr. Joseph Martino
Executive Director
The Norman Howard School
275 Pinnacle Road
Rochester, NY 14623

Dear Dr. King and Mr. Martino:

The Office of the State Comptroller is committed to 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 intended to safeguard assets.

Following is a report of our audit of State Education Department and The Norman Howard School entitled *Compliance with the Reimbursable Cost Manual*. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

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

Respectfully submitted,

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

The Norman Howard School (NHS) was established in 1980, under New York State Law, and is located in Rochester, New York. NHS is a not-for-profit organization. In 1990, the State Education Department (SED) approved NHS as a special education program. NHS serves students with average or above average cognitive ability who have certain learning disabilities. NHS operates a School Age Regular Special Education program (SED code 9000). NHS has an enrollment of about 130 students with learning disabilities in grades 5 through 12. These students come from 38 different school districts located in 9 counties in western New York. Most of NHS' graduates pursue college educations.

School districts pay tuition and fees to NHS using rates set by SED. SED sets tuition rates by using financial data provided by NHS in an annual Consolidated Fiscal Report (CFR). SED issued the Reimbursable Cost Manual (RCM) and the CFR Manual to provide guidance on the eligibility of costs and documentation requirements that must be met for reporting and rate-setting purposes. The school districts use the tuition rates established by SED to pay special education providers (including NHS) for their services. SED reimburses the school districts for a portion of the special education tuition charges they pay. For the three fiscal years ended June 30, 2011, NHS reported costs totaling \$11.3 million for its special education program (code 9000).

Audit Findings and Recommendations

For the three fiscal years ended June 30, 2011, we disallowed \$208,305 in personal service and other-than-personal-service costs because they were unnecessary, unallowable, or incorrectly reported on the CFR (see Exhibit). The disallowances included \$170,325 in personal service costs and \$37,980 in other-than-personal-service costs. In addition, we questioned certain personal service costs totaling \$67,295 for professional staff who did not have the appropriate educational certifications during portions of our audit period. Also, we questioned \$21,729 in other-than-personal-service costs for a contracted direct care program that might no longer be necessary.

Personal Service Costs

The RCM provides guidance on the eligibility for reimbursement of personal service costs and the documentation that is required to properly support such costs when they are reported on the CFR. Personal service costs, which include all taxable salaries and fringe benefits paid or accrued to staff on the agency payroll, must be reported on the CFR as either direct care costs (such as teachers' salaries) or non-direct care costs (such as administrators' salaries). It is important that teaching staff have the required certifications to help ensure that students obtain an adequate education. Consequently, the CFR Manual requires that direct care staff hold the necessary educational certifications and qualifications for their titles. Further, State Education Law requires that special education instruction be provided by individuals who are appropriately certified or licensed.

For the three years ended June 30, 2011, we reviewed NHS's compliance with the prescribed certification requirements for 67 employees in several direct care positions - including teacher, teacher's assistant, and curriculum coordinator. Based on our review, we disallowed \$170,325 in personal service costs related to the salaries of six NHS staff who did not have the required certifications for their job titles. The six staff included two teachers and four teacher's assistants. One of the teachers was certified as a teacher's assistant, and the other teacher had no certification. None of the four teacher's assistants were certified. Consequently, we disallowed the difference between the compensation NHS paid these employees (and claimed on the CFR) and the compensation they were entitled to given their qualifications, as summarized in the following table.

| Fiscal Year | Compensation Claimed on CFR | Adjusted Compensation Based on Qualifications | Amount of Disallowance |
|--------------------|------------------------------------|--|-------------------------------|
| 2008-2009 | \$235,886 | \$173,240 | \$62,646 |
| 2009-2010 | \$234,207 | \$178,435 | \$55,772 |
| 2010-2011 | \$208,455 | \$156,548 | \$51,907 |
| Totals | \$678,548 | \$508,223 | \$170,325 |

In addition, we questioned compensation totaling \$67,295 for a teacher and a curriculum coordinator who had the qualifications (certifications) for their positions prior to our audit period, but did not have the required certifications during some portion of the audit period. Although the teacher was certified, that certification expired in 2006, and the teacher resigned in 2010. Nevertheless, we questioned a portion (\$45,929) of the teacher's compensation that NHS claimed. The curriculum coordinator was a long-term employee who was certified in nursery school and kindergarten education. Prior to May 2009, the curriculum coordinator met SED's requirements for that position. At that time, however, SED required (per updates to the CFR Manual) that curriculum coordinators be certified in special education or school administration. Consequently, we questioned a portion (\$21,366) of the curriculum coordinator's compensation that NHS claimed. Although we did not disallow these costs, SED officials should formally assess their propriety for our audit period and subsequent periods, as warranted.

Other-Than-Personal-Service Costs

The RCM provides guidance on the eligibility of costs for reimbursement and the documentation that is required to properly support such costs when they are reported on the CFR. According to the RCM, reported costs will be considered for reimbursement, provided that such costs are reasonable, necessary and directly related to the education program. Costs must also have adequate supporting documentation and approval from SED. We disallowed other-than-personal-service costs totaling \$37,980 because they were not in compliance with the RCM. These disallowances included \$30,000 in mortgage interest costs and \$7,980 in contracted direct care costs. In addition, we questioned other contracted direct care costs totaling \$21,729.

Mortgage Interest Expense

For the 2009-10 year, NHS overstated the amount of mortgage interest expense it claimed by \$30,000. The correct amount of NHS' mortgage interest expense was \$15,154. However, due to an error, NHS reported its interest expense as \$45,154, or \$30,000 more (\$45,154 - \$15,154) than the actual amount. Consequently, we disallowed \$30,000 in mortgage interest expense reported by NHS for the 2009-10 year.

Contracted Direct Care Costs

NHS claimed contracted direct care expenses for a therapeutic horseback riding program and a pack, paddle and ski program. Generally, publicly-funded special education schools do not provide such programs. To determine if payments to contracted direct care providers for these programs were reasonable and adequately supported, we met with NHS officials and reviewed pertinent documentation. In addition, we requested technical assistance from SED officials to ascertain the necessity of these programs for an appropriate education.

We determined that contracted service costs totaling \$7,980 for the therapeutic horseback riding program were not reasonable or necessary, and therefore, we disallowed them. According to NHS officials, the horseback riding program was used to improve students' self-regulation, management,

problem solving, and sense of responsibility through equine-facilitated mental health sessions. The sessions provided horseback riding lessons and taught students how to properly care for the horses. However, this unique program was not necessary for the school's special education curriculum. Further, NHS did not request or receive SED approval for reimbursement of this program's costs.

We also questioned contracted service costs totaling \$21,729 for NHS' pack, paddle, and ski program. In 1991, NHS had no physical education teachers, and consequently, SED approved NHS' request to use the pack, paddle, and ski program to fulfill State physical education requirements. This program provided 90 minutes of physical education classes to students weekly. Through this program, students could also participate in overnight trips, day outings, back-packing and canoeing trips. However, since the 2000-01 year, NHS has employed at least one full-time physical education instructor. Consequently, we questioned whether NHS still needed the pack, paddle, and ski program to fulfill State physical education requirements. Although we did not disallow the costs (totaling \$21,729) for this program, SED officials should assess their propriety for our audit period and subsequent periods, as warranted.

Recommendations

To SED:

1. Review the disallowances resulting from our audit and make the appropriate adjustments to the costs reported on the CFRs submitted by NHS. Reduce NHS reimbursement rates, as appropriate. In addition, review the questionable costs identified and determine if these costs are reimbursable.
2. Provide NHS administrators and staff with training and/or additional guidance on the application of the RCM, as appropriate.

To NHS:

3. Ensure all staff providing special education instruction or administration are properly qualified and certified.
4. Comply with the RCM's requirements for eligibility and documentation of all reported program costs and ensure that all costs reported on the CFR are accurate.

Audit Scope and Methodology

We audited the costs reported by NHS on its CFRs for the three fiscal years ended June 30, 2011. The objective of our audit was to determine whether the costs reported by NHS were properly calculated, adequately documented, and allowable according to the RCM. Our audit was limited to the School Age Regular Special Education program (code 9000) provided by NHS.

To accomplish our objective, we reviewed NHS' financial records and we interviewed selected NHS officials and staff to obtain an understanding of their financial and business practices. We also interviewed SED officials to obtain an understanding of the CFR and the policies and procedures contained in the CFR Manual and the RCM. To complete our audit work, we reviewed supporting documentation and made a determination of whether the costs complied with and were allowable by the CFR Manual and the RCM.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members (some of whom have minority voting rights) to certain boards, commissions and public authorities. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these 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 and Article II, Section 8 of the State Finance Law.

Reporting Requirements

We provided draft copies of this report to NHS and SED officials for their review and formal comment. We considered the comments of NHS and SED in preparing this report and have included them at the end of it. Our rejoinders to NHS' comments are included in the report's State Comptroller's Comments. Also, in its response to our draft report, NHS submitted attachments which we have not appended to the final report. We will, however, retain those attachments on file at the Office of the State Comptroller.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of Education shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and if the recommendations were not implemented, the reasons why. We also request NHS officials to advise the State Comptroller of actions taken to implement the recommendations addressed to them, and where such 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

The Norman Howard School
Schedule of Submitted, Disallowed, and Allowed Program Costs (9000)
For the Three Fiscal Years July 1, 2008 Through June 30, 2011

| Program Costs | Amount Per CFR | Amount Disallowed | Amount Allowed | Notes to Exhibit |
|---------------------------------------|----------------------------|--------------------------|----------------------------|-------------------------|
| Direct Care: | | | | |
| Personal Services | \$8,079,864 | \$170,325 | \$7,909,539 | D,E,F |
| Other-than-Personal Services | \$2,217,550 | \$37,980 | \$2,179,570 | A,B,C |
| Sub-Total Direct Care | \$10,297,414 | \$208,305 | \$10,089,109 | |
| | | | | |
| Indirect Care (Administration) | \$1,007,082 | \$-0- | \$1,007,082 | |
| | | | | |
| Total Program Costs | <u>\$11,304,496</u> | <u>\$208,305</u> | <u>\$11,096,191</u> | |

Notes to Exhibit

The Notes shown below refer to specific sections of the Reimbursable Cost Manual (RCM), Consolidated Fiscal Reporting Manual (CFR Manual), Part 200 of the Regulations of the Commissioner of Education and Education Law (EDN), upon which we have based our adjustment. We have summarized the applicable section to explain the basis for the disallowance. Details of the transactions in question were provided to SED and NHS officials during the course of the audit.

- A. RCM, Section I(08-09), Section I (09-10), Section I(10-11) - Costs will be considered for reimbursement provided such costs are reasonable, necessary, and directly related to the education program and are sufficiently documented.
- B. RCM, Section I.11.A(08-09), Section II.11.A(09-10), Section II.11.A(10-11) - Costs incurred for intramural activities, student publications, student clubs and other student activities, to the extent such activities are normally provided by public day schools, are reimbursable direct care expenditures. Reasonable costs of class field trips during school hours and extra-curricular activities after school hours are reimbursable as direct care expenditures.
- C. RCM, Section I.11.B(08-09), Section II.11.B(09-10), Section II.11.B(10-11) - Ordinary living expenses such as the cost of overnight class trips or other expenses that are normally assumed by parents of students attending public day schools are not reimbursable.
- D. Part 200, Regulations of the Commissioner of Education, Section 200.7 (b)(6)(2012) - All professional instructional and supervisory personnel at schools governed by this section shall be appropriately certified in accordance with the provisions of Part 80 of this Title and section 200.6 of this Part. All non-instructional personnel at residential schools governed by this section shall be appropriately qualified in accordance with the provisions of section 200.15 of this Part. Part 80 contains certification requirements for classroom teaching, administrative/supervisory and pupil personnel (school) service titles. State certification is also required for teachers employed in state-operated and state-supported schools, Special Act school districts, and approved private schools for the education of students with disabilities.
- E. EDN Title 4 Article 61 Section 3001 - No person shall be employed or authorized to teach in the public schools of the state who is: Not in possession of a teacher's certificate issued under the authority of this chapter or a diploma issued on the completion of a course in state college for teachers or state teachers college of this state.
- F. EDN Title 4 Article 61 Section 3009 - Unqualified teachers shall not be paid from school moneys. No part of the school monies apportioned to a district shall be applied to the payment of the salary of an unqualified teacher, nor shall his salary, or any part thereof, be collected by a district tax except as provided in this chapter.

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
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April 2, 2013

Mr. Brian Mason
Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street – 11th Floor
Albany, NY 12236

Dear Mr. Mason:

The following is the New York State Education Department's (SED) response to the draft audit report (2012-S-18) of the State Education Department The Norman Howard School: Compliance with the Reimbursable Cost Manual.

Recommendation 1:

Review the disallowances resulting from our audit and make the appropriate adjustments to the costs reported on the CFRs submitted by NHS. Reduce NHS reimbursement rates, as appropriate. In addition, review the questionable costs identified and determine if these costs are reimbursable.

We agree with this recommendation. The Department will review and make adjustments to the CFRs as noted in the report and recover any overpayments as appropriate by recalculating tuition rates. We will also review and consider additional information The Norman Howard School may submit in response to this report.

Recommendation 2:

Provide NHS administrators and staff with training and/or additional guidance on the application of the RCM, as appropriate.

We agree with this recommendation. SED will continue to provide technical assistance whenever requested and will strongly recommend NHS 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).

If you have any questions regarding this response, please contact Ann Marsh, Director of the Rate-Setting Unit at (518) 473-2020.

Sincerely,



Sharon Cates-Williams

c: Elizabeth Berlin
James Delorenzo
Ann Marsh
Mary Kogelmann
James Conway

Agency Comments - The Norman Howard School



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April 22, 2013

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

Re: Draft Audit Report 2012-S-18
The Norman Howard School

Dear Mr. Mason:

This letter constitutes the response of The Norman Howard School ("NHS") to the referenced draft audit report. We have identified misunderstandings, misstatements, and instances in which we believe State Education Department ("SED") policy as it existed during the audit period has not been applied by the Office of the State Comptroller ("OSC"). We respectfully request, for the reasons set forth below, that OSC (1) withdraw proposed findings recommending funding disallowances regarding personal services costs and other than personal services costs of the Pack, Paddle and Ski program, the Improvisation Club, and the Equine Center; and (2) advise SED that no disallowances are warranted in those instances. We agree with OSC that mortgage interest expense was incorrectly reported for 2009-2010 and do not object to that disallowance. We note, however, this disallowance will have no effect on the amount of reimbursement received by the school since it only increases the amount of total costs not reimbursed by the State under SED cost ceilings.

NHS is a private school provider of special education services chartered in 1980. It became a SED approved special education program in 1990. We offer a wide-ranged educational program and diversity in the experience and expertise of our leadership, faculty, staff and students. These help create a dynamic and highly effective learning environment and school culture. NHS is proud of our record as an exceptional school for students with disabilities. Our 99 % graduation rate significantly exceeds the New York State average, which is 74.5 % for all students and 44.4% for students with disabilities. NHS made every effort to maintain or exceed compliance with SED rules, regulations, and policies during the audit periods. NHS uses and used during the periods audited by OSC, the services of a certified public accountant when completing the Certified Financial Reports which are the subject of this audit.

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Comment
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* See State Comptroller's Comments, page 20.

OSC reviewed tuition rates established by SED and paid to NHS by local school districts for the periods July 1, 2008-June 30, 2009, July 1, 2009- June 30, 2010, and July 1, 2010-June 30, 2011. OSC's findings generated an alleged overpayment of \$ 231,634 that OSC has proposed to disallow, in our view, inappropriately. Without admitting liability for overpayments, we are submitting below an item by item response to the disallowances.

I. Personal Service Costs

OSC has recommended a disallowance totaling \$170,325 for personal service costs during the three years at issue alleging direct care staff was not appropriately certified or licensed contrary to the Consolidated Fiscal Report Manual ("CFRM") requirements. In particular, OSC has proposed a finding that six (6) of 67 staff (two (2) teachers and four (4) teacher's assistants) did not have the required certification for their job titles. OSC proposes to disallow the difference between the compensation NHS paid each employee and claimed on the Consolidated Fiscal Report ("CFR") and the compensation OSC believed they were entitled to, given their qualifications. We appreciate OSC's withdrawal of the disallowances for the salaries of the curriculum coordinator and one (1) of the teachers and referral of these items for discussion with SED. We continue to believe, nonetheless, that no disallowance for lack of certifications is warranted. If in OSC's judgment some action must be taken, the entire issue of personal service costs under the audit should be referred for discussion between NHS and SED without a disallowance for the following reasons.

When they were hired, all NHS staff met state qualification requirements as they existed at the time of their hiring and had relevant experience and training. The qualification requirements in law and regulation were made more stringent in 2004. SED never implemented this requirement by requiring immediate firing or demotion of all newly unqualified staff. Certainly NHS received no such directive. Rather, SED acknowledged a disconnect between need and available supply of certified staffing resources at the time and in ensuing years monitored progress towards achieving a fully certified and highly qualified teacher and staffing workforce in the State. See for example, Progress Report Teacher Supply and Demand in 2006-2007, at <http://www.highered.nysed.gov/pdf/tsd2008/finalpresentation.pdf>. SED was well aware that 100 percent compliance across the State had not been achieved and tolerated some non-compliance while progress towards a totally certified work force was made. In fact, SED created alternate pathways to certification and the Teacher Certification Grant Fund to support efforts of uncertified teachers who were pursuing certification. By doing so, SED avoided the total disruption of services to students across the State that would have resulted from an immediate demotion/ termination policy.

Once NHS became aware of its issues around Teacher and Teaching Assistant qualifications, it independently addressed them prior to the OSC audit. NHS sought to rectify the situation of uncertified staff by requiring teachers and teaching assistants to take steps to obtain certification and qualifications in a reasonable time. In 2010, NHS reduced the compensation and changed the positions of two (2) teachers who failed to progress in this effort. They subsequently left employment. All other staff has since obtained necessary qualifications.

The fact that this reasonable course of action was acceptable to SED is evident from SED's 2011 Program Focused Review of the Norman Howard School conducted during the

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2010-2011 school year. Although OSC says NHS was non-compliant, SED found NHS compliant in the areas of instructional certification for special education instruction and administrator or supervisor of special education programs and personnel qualification and screening. See Attachment A, Pages 7 and 9. OSC may not now arbitrarily ignore the SED finding to declare NHS non-compliant. And although the report covers 2010- 2011, we believe it is evidence of SED's tolerant interpretation and implementation of the certification requirements prior to 2011. It is certainly a conclusive finding for audit year 2010-2011. We believe any disallowance for uncertified staff at NHS prior to 2011 is improper and would be illegal if implemented. For these reasons, we respectfully ask OSC to take no disallowance for matters involving personal services costs in this audit.

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Comment
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In addition, OSC's recommendation for disallowances of the difference between teaching assistants and teacher aide's salaries for the four teaching assistants is totally unreasonable. NHS employed one teacher aide, a high school graduate with less than one year experience, who was paid \$8.50 per hour. When OSC recommended disallowance of salary costs for four (4) teacher assistants, all college graduates, OSC "pegged" the costs of allowable salaries to teacher aide salaries, rather than recognizing the job functions the assistants actually performed. SED has established no salary mandates for teaching assistants or teacher aides. NHS paid a reasonable salary for the work these assistants actually performed. The costs of their salaries should not be disallowed. See also Reimbursable Cost Manual for Programs Receiving Funding under Article 81 and/or Article 89 of the Education Law to Educate Students with Disabilities, Appendix R- Position Titles and Codes, Codes 228 Teacher Aide and 232 Teacher Assistant, which described each position. The job functions are different.

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Comment
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In our experience it was SED's routine practice to amend the Reimbursable Cost Manual ("RCM") and CFRM whenever its rules changed. However, during the audited periods SED did not consistently revise its documents to reflect the rules OSC seeks to impose, thereby creating confusion and inconsistent statement of requirements. For example, the CFRM code definition of "Teacher Other" contained no certification requirement, as was explicit for other teacher categories. See Appendix R, definition for Code 222, compare with Definitions for Codes Definitions 263, 269-274. NHS's computer teacher was assigned to this category since it required no certification. We found no certification requirements in the RCMs covering the audited periods. No disallowance should be taken for the costs of NHS's computer teacher.

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Comment
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NHS has corrected the computer teacher's title for the 2011-2012 year to reflect the lack of certification after consultation with the New York State Education Department Rochester Office ("NYSEDRO") and the SED Rate Setting Unit. This in no way changes the fact that the CFRM code definition for the audit periods is inconsistent with the rule OSC seeks to impose. No disallowance should be taken for the computer teacher since NHS complied with the CFRM code definition.

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Comment
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II. Other than Personal Service Costs

A. Contracted Direct Care costs for Pack, Paddle and Ski, an outdoor adventure program.

Before addressing the substance of OSC comments on the Pack, Paddle and Ski program we wish to point out a cost reporting inconsistency that affects the amount of the disallowances

* See State Comptroller's Comments, page 20.

in issue. OSC did not acknowledge this matter in its response to our review of the first draft of the audit report. Upon reviewing costs reported on the CFR 4A for the audited periods, we discovered that gross costs of the program (including consideration of revenue from fundraising and family payments) were reported as Other than Direct Care costs in 2008-2009 and 2009-2010 and program costs net of these revenues were reported as Other than Direct Care costs in 2010-2011. Most of the program costs are funded through fundraising and family contributions. Therefore, this inconsistency resulted in an understatement of the cost of Participant Incidentals (line 26) and an overstatement of the costs of Contracted Direct Care (line 35.)

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Comment
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| | 2008-2009 | 2009-2010 | 2010-2011 |
|--------------------------|----------------------|------------------------|--------------|
| Fundraising | \$ 1,247 | \$ 2,036 | \$ 575 |
| Family contributions | 3,600 | 7,188 | 7,664 |
| NYSED Tuition Rate | | | |
| (corrected line 35) | <u>3,633</u> | <u>3,175</u> | <u>3,100</u> |
| Total Cost | 8,480 | 12,399 | 11,339 |
| Reported Line 35 | | | |
| (contracted direct care) | 8000 | 10,629 | 3100 |
| Reclass with Line 26 | | | |
| Participant Incidentals | 4,367 | 7,454 | No change |
| Correct Direct Care Cost | \$3633 (not \$8,000) | \$3,175 (not \$10,629) | |

The Pack, Paddle, and Ski Program involves training in school and student experiences outside of the school, including outdoor adventures, backpacking and canoe trips, some involving three (3) and five (5) days overnight stays.

The Pack, Paddle and Ski program offers more to NHS students than physical education ("PE") classes do. It develops leadership skills, self-regulation, perseverance and improved planning and organizational skills. The prospect of participation is used to encourage students to achieve behavioral and academic goals. Therefore, OSC is incorrect when it says the program was not directly related to NHS's special education curriculum and that the program was no longer necessary once the school hired PE teacher. Disallowance of any amount for the Pack Paddle and Ski program is improper because it has valid SED approval and is a necessary component of NHS's educational program.

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Comment
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The State Education Department approved NHS's Pack, Paddle, and Ski as a supplement to and equivalent to the required PE program on April 30, 1991 under a proposal to use the program "in conjunction with 90 minutes per week of physical education classes." See Attachment B. OSC alleges that the program was approved because NHS had no PE teachers at the time and it was needed to fulfill state PE requirements. However, the approval letter clearly states that the program was approved "in conjunction with," not as an alternative to, PE classes. Provision of the outdoor adventure program with PE classes, not in lieu of them, was contemplated by NHS and approved by SED. The approval remains effective.

OSC asserts the school was required to tell SED when it hired a PE teacher. The approval letter contains no such condition and we have no record of having received such a

* See State Comptroller's Comments, page 20.

direction from SED. SED received notice of the expense through the CFR accounting for this program.

A significant portion of the Pack, Paddle and Ski costs are paid by fundraising and student families and offset against program costs. These efforts pay the costs that would ordinarily be assumed by parents of students attending public day schools and that are not reimbursable under the RCM. See RCM 2008-2009, Section I (11)(B); RCM 2009-2010 and 2010-2011, Section II, B. But costs not normally assumed by parents are reimbursable. As a SED approved supplement to PE classes, the costs of Pack, Paddle and Ski that were not reimbursed by fundraising or family payments were reimbursable during the audit periods.

B. Contracted Direct Care Costs for Equicenter, the therapeutic horseback riding program.

The OSC has recommended a disallowance of \$7,980 related to costs claimed for the Equicenter, a therapeutic horseback-riding program. OSC proposes to find it not necessary to the school's special education curriculum and unapproved by SED. The Equicenter offers equine facilitated mental health sessions to NHS students, with the goals of improving self-regulation, management, problem-solving, and developing responsibility.

We contest the finding that this program is not necessary to provide an appropriate education. Social and emotional learning programs that promote self-regulation, self-management, and problem-solving are an integral part of any special education program. The therapeutic horseback riding program serves these curriculum goals and is part of the NHS social skills program.

We did not ask for a rate increase for this program and do not believe it was a program expansion requiring SED approval. SED received notice of the costs through the CFR accounting for this program.

C. Contracted Direct Care Costs for the after-school Improvisation Club.

The OSC has recommended a disallowance of \$1600 for costs of the after school Improvisation Club on the basis that it is not necessary to provide an appropriate education, and was not approved. We contest this disallowance.

The Improvisation Club is an after-school program that exposes students to Arts Education Standard 1, Creating Performing and Participating in the Arts. Students engage in the processes that constitute creation and performance in the arts during hour long after school sessions culminating in a school-wide assembly during which students demonstrate their abilities. In addition to exposing students to theater education, the program enables students to practice positive social communication, improvisation, responding to directions, self-regulation and impulse control, necessary and integral components of any special education program.

The RCM for the years under review provided that the costs of student clubs are reimbursable direct care expenditures to the extent they are provided by public day schools. See RCM 2008-2009, Section I, (11)(A); RCM 2009-2010 and 2010-2011, Section II (11)(A). After school theater programs are fairly routine activities. Since NHS has no theater program, the after

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school club offered NHS special education students equal access to the kind of programs offered to public day school students with State reimbursement during the audit period.


While the Improvisation Club supports our educational mission, we do not believe a club of this limited nature is a program expansion requiring Commissioner of Education approval. SED received notice of the change through the CFR accounting for this program. Therefore, its costs should not be disallowed.

III. Mortgage Interest Expense

OSC has recommended a total disallowance of \$30,000 in mortgage interest expense for 2009-2010. NHS agrees that the correct mortgage interest expense for 2009-2010 is \$15,154. This was inadvertently (by key punch error) and incorrectly entered on the CFR as \$45,154. However, this error has no effect on the reimbursement received by the school. This error only increased the amount by which the school exceeded the total cost not reimbursed by the State by \$30,000 for 2009-2010. It has no effect on the amount paid to the school for mortgage expense for 2009-2010 or in succeeding years.

For the reasons stated above, we respectfully request that findings under Draft Audit Report 2012-S-18 with respect to staff salaries, costs of the Pack, Paddle and Ski program, the Improvisation Club, and the Equine Center be reconsidered and reversed and proposed disallowances withdrawn. We remain committed to working with the State Education Department to assure our students receive high quality education and resources necessary to achieve this goal. If you require additional information about any of the items, please contact me.

Sincerely,



Joseph M. Martino
Chief Executive Officer

Enclosures (2)

cc: Barbara Asheld, Counsel, Nixon Peabody LLP
Lisa Connelly, Board Chair
Patricia Dell, Chief Financial Officer
Rosemary Hodges, Co-Head
Linda Lawrence, Co-Head

State Comptroller's Comments

1. During the audit, OSC staff routinely met with SED officials to obtain clarification and confirmation of pertinent audit-related matters. Consequently, we maintain that our interpretations of the applicable rules (particularly the provisions of the Reimbursable Cost and CFR Manuals) that pertain to special education programs are correct. Based on comments and additional evidence provided by NHS officials, we reduced certain proposed disallowances that were included in our draft report. Also, in their response to our draft report, SED officials agreed with our findings and indicated they will make recoveries as appropriate.
2. We did not question whether or not there was a shortage of certified staff for NHS to hire. Further, we acknowledge that SED provided grant funding to support teacher certification. Nevertheless, these matters did not obviate NHS from complying with the applicable provisions of the CFR Manual. Pursuant to the CFR Manual, we disallowed the amounts of excessive costs NHS reported for the compensation of uncertified teachers and teacher's assistants.
3. We did not question whether or not NHS took actions to address staff certification issues. The pertinent matter is that NHS did not comply with the applicable provisions of the CFR manual relative to the amounts of compensation claimed for uncertified staff. We disallowed the excessive amounts of compensation claimed for uncertified staff.
4. SED found NHS compliant for the sample of employees SED included in its review. Further, we were aware of SED's review and did not ignore it. In fact, we assessed SED's review and determined that SED's sample methodology excluded the employees we identified as lacking the required certifications. Consequently, SED's review and our audit test yielded different results.
5. We did not question the nature of the work performed by these four employees. Nevertheless, these employees did not possess the certifications required for a teaching assistant. Because these employees had the credentials for a teacher aide, we allowed compensation costs corresponding to that position and disallowed costs in excess of the amounts normally claimed for it.
6. Throughout our audit period, SED required teachers to have specific credentials (certifications) for such positions. Further, as detailed in their response, NHS officials reflected the computer teacher's lack of certification in the CFR for the 2011-12 year after consulting SED staff. Nonetheless, NHS claimed excessive costs for this teacher prior to the 2011-12 year and during our audit period. We disallowed the excessive amounts reported for the audit period.
7. Our audit was based on NHS's CFRs as they existed at the time of our fieldwork. Further, the "cost reporting inconsistency" in question was relatively immaterial and had little or no impact on our audit findings. If NHS officials believe the CFRs should be revised for these matters, they should formally advise SED of the adjustments to be made.
8. Based on the comments and evidence provided by NHS, we re-categorized the reported costs (totaling \$21,729) for the pack, paddle and ski program as questionable for our audit period. Although SED formally approved the pack, paddle, and ski program 22 years ago, the program's justification might no longer exist. Hence, SED should assess the current

need for and reasonableness of this program for tuition rate-setting purposes.

9. Typically, horseback riding programs are not offered or provided by publically-funded special education schools. Further, unlike the pack, paddle, and ski program, NHS neither sought nor obtained SED's approval for the horseback riding program. According to SED officials, programs of this nature are not essential to an appropriate education. Thus, we concluded that the horseback riding program was not reasonable or necessary (as otherwise required by the Manual.) As a result, we disallowed the costs of this program.
10. Based on the comments provided by NHS officials, we allowed the reported costs (totaling \$1,600) for this program and reduced the amount of our recommended audit disallowance by that amount.