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

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Division of State Government Accountability

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# **Compliance With the Reimbursable Cost Manual**

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## **Achievements, PLLC State Education Department**

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# Executive Summary

## Purpose

To determine whether the costs claimed by Achievements, PLLC (Achievements) on the Consolidated Fiscal Reports (CFRs) were properly calculated, adequately documented, and allowable under the State Education Department's Reimbursable Cost Manual (Manual). The audit covers the five fiscal years ended June 30, 2010.

## Background

Achievements is a for-profit corporation, having its principal executive office located in Latham, New York. Achievements' Executive Director is also a co-owner of the business, and her husband is Achievements' Fiscal Director. The Executive Director and Fiscal Director (directors) derive average annual compensation of \$148,000 and \$138,000 from Achievements, respectively. Achievements provides special education and related services to pre-school children with certain disabilities within Albany, Rensselaer and Schenectady Counties ("Counties"). The Counties pay tuition to Achievements using rates set by the State Education Department (SED). SED sets these rates based upon the fiscal information that Achievements presents in the CFRs it submits to SED annually. During the five fiscal years ended June 30, 2010, Achievements reported costs totaling about \$8.2 million for the publicly supported pre-school special education programs we audited.

## Key Findings

- We disallowed \$182,590 in claimed costs because they were incurred for the personal enrichment of Achievements' directors, their family members, and staff and/or were otherwise ineligible per the Manual. Our audit findings included:
  - \$68,072 in disallowances for personal expenses for goods and services not related to Achievements' educational programs. The directors and their family personally benefitted from these expenses - including \$12,616 for a home entertainment center delivered and installed in the personal residence of the directors. Other personal expenses included airfares and hotels at various vacation sites such as DisneyWorld, a Carnival Cruise trip, tickets to Dave Matthews and Phish rock concerts, fencing and a dish washer installed at their personal residence and annual membership fees to a family recreation center.
  - \$66,225 in excessive charges to lease office space in a building owned by Achievements' directors;
  - \$48,293 in other claimed costs (for various personal services and other-than-personal-services) that did not comply with the requirements of the Manual; and
  - non-compliance with the Manual's requirements for time and attendance records, cost allocation methodologies, and other financial management functions.
- We further found that the directors attempted to conceal their personal charges by intentionally distributing them to various accounts which are used to prepare the CFR.

## **Key Recommendations**

- SED should review the disallowances identified by our audit and determine if adjustments to Achievements' tuition reimbursement rates are needed.
- Achievements should ensure that the expenses claimed on the CFR comply with the requirements prescribed by the Manual.
- We are referring this matter to law enforcement for appropriate action.

## **Other Related Audits/Reports of Interest**

[Special Education Associates, Inc: Compliance With the Reimbursable Cost Manual \(2010-S-31\)](#)

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

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

**Division of State Government Accountability**

November 20, 2012

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

Mrs. Tami Callister  
Executive Director  
Achievements, PLLC  
623 New Loudon Road  
Latham, NY 12110

Dear Dr. King and Mrs. Callister:

The Office of the State Comptroller is committed to helping State agencies, public authorities and local government agencies manage government resources efficiently and effectively 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 of our audit of the State Education Department entitled *Achievements, PLLC: 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 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](http://www.osc.state.ny.us)

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## Background

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Achievements, PLLC (Achievements) is a for-profit corporation organized in 1998 under the laws of the State of New York. Achievements' Executive Director is also a co-owner of the business, and her husband is Achievements' Fiscal Director. Achievements' principal executive office is located in Latham, New York in office space leased from the building's owner, Kayan Holdings, L.L.C. (Kayan). Kayan is a holding company owned by Achievements' Executive and Fiscal Directors (directors). Achievements employs more than 100 individuals in various capacities, including the Executive and Fiscal Directors, who derived average annual compensation of \$148,000 and \$138,000 from Achievements, respectively.

Achievements operates early intervention and special education programs (for about 200 children ages two through five) at six facilities located in Albany, Rensselaer, and Schenectady Counties. The special education programs include the Preschool-Special Class (code 9100), the Preschool Special Education Itinerant Teacher program (code 9135), and two Preschool-Integrated Special Classes (codes 9160 and 9165). During the five fiscal years ended June 30, 2010, Achievements reported costs totaling about \$13.3 million for the State-approved programs that it operates. Of this amount, Achievements reported costs totaling about \$8.2 million for the four pre-school special education programs we audited.

The Counties pay tuition reimbursements to Achievements using rates set by the State Education Department (SED). SED sets these rates based upon certified financial information provided by Achievements in an annual Consolidated Fiscal Report (CFR). SED issued the Reimbursable Cost Manual (Manual) to provide guidance regarding the eligibility of costs and the support documentation required for data included on the CFR. A school's senior manager must certify that the CFR was prepared in accordance with all instructions, including the Manual's requirements, and further that "Misrepresentation of any information contained in this report may be punishable by fine and/or imprisonment under New York State Law." Based upon the certified information provided on the CFR, the State (through SED) reimburses the counties for 59.5 percent of the tuition payments made to special education schools, such as Achievements.

## Audit Findings and Recommendations

We disallowed \$182,590 in costs Achievements inappropriately claimed for its four SED programs for the five fiscal years ending June 30, 2010. These disallowances included \$158,941 in other-than-personal-service (OTPS) costs and \$23,649 in personal service costs. The disallowances affected direct care and indirect care costs reported by Achievements. Due to the nature of some of the disallowed costs, we are referring our findings to law enforcement for further review.

### OTPS Disallowances

Achievements claimed \$550,634 in OTPS costs during our audit period. As detailed in the following paragraphs, we disallowed certain Achievements-claimed OTPS expenses (totaling \$158,941) related to: purchases solely for the personal enrichment of the Achievements' directors, their family members and staff; excessive lease charges for office space; and other ineligible costs.

#### *Goods and Services Acquired for Personal Benefit*

Per the Manual, reported costs should be reasonable, necessary, related to the education program, and properly documented. The Manual also specifically states that costs for personal expenses, food and entertainment for officers or employees, and activities not related to the education program are not reimbursable. However, Achievements claimed \$68,072 in costs for various goods and services that were unrelated to Achievements' education programs - but personally enriched the directors, their family members, and staff to the detriment of Achievements' education program. The purchases included \$12,616 for a home entertainment center which was installed in the directors' personal residence. (Near the time we questioned the Fiscal Director about this expense, he purchased another video system for installation at Achievements' facility.) The balance (\$55,456) of the ineligible costs were for items such as: airfares and hotels at various vacation sites such as DisneyWorld; a Carnival Cruise trip; tickets to Dave Matthews and Phish concerts; fencing and a dish washer installed at the directors' personal residence; and annual membership fees to a family recreation center.

On July 15, 2011, Achievements' directors admitted that they claimed about \$15,000 annually in personal expenses on the CFRs for the 2008-09 and the 2009-10 years. They further indicated that the Fiscal Director wrote the letter "P" next to those charges on their monthly credit card statements that were for personal expenditures. The directors also claimed that they ceased their practice of recording personal expenses in Achievements' accounting records in May 2011, about the time we engaged our audit. Based on the Fiscal Director's statements, we expanded our audit scope to the 2005-06, 2006-07, and 2007-08 fiscal years. Our review of those years also identified significant amounts of personal expenses that were included on the CFRs.

#### *Excessive Charges for Leased Office Space*

As previously noted, Achievements paid the directors (through Kayan) rents (which averaged \$64,000 per year) to lease administrative office space. According to CFR instructions, when office



space is rented from a related party, the cost of rent claimed on the CFR may not exceed the building owners' actual costs for depreciation, mortgage interest, and property and school taxes.

In addition to Achievements, six other private business entities rent office space in the same building from Kayan. During our audit period, Achievements rented 42 to 47 percent of the available space in the building from Kayan, and the balance was rented to the six other businesses. Nevertheless, the depreciation, mortgage interest, and property and school taxes reported on the CFRs were for the entire building. They were not limited to the space occupied by Achievements. We pro-rated the space-related costs based on the portion of the building rented by Achievements. Based on our calculations, we disallowed \$66,225 in charges that exceeded Kayan actual costs for depreciation, mortgage interest, and property and school taxes applicable to the space leased to Achievements.

### *Other Ineligible OTPS Charges*

The Manual requires all purchases to be supported with invoices listing the items purchased, date of purchase and payment, as well as with copies of canceled checks. We disallowed \$24,643 of expenses that: lacked an invoice or other information to support their relationship to Achievements' educational programs; or were expressly prohibited by the Manual. For example, Achievements' directors did not maintain a mileage log to support that trips made with a personal vehicle were business-related. Examples of personal vehicle expenses the Fiscal Director included on Achievements' CFR included numerous costs for repairs of personal vehicles and EZ Pass tolls. Achievements' directors also improperly included the costs of gifts and donations on their CFRs. The Manual does not permit gifts and donations to be claimed as reimbursable expenses.

## **Personal Service Disallowances**

We disallowed \$23,649 for personal service costs that did not comply with Manual requirements. Specifically, we disallowed certain costs for bonuses and compensation to relatives that was not properly supported by required time sheets or other available records.

### *Improper Bonus Compensation*

According to the Manual, bonus compensation may be reimbursed if it is merit-based (i.e., measured and supported by employee performance evaluations). Achievements paid its employees monthly and end-of-the-year bonuses. Full-time employees and part-time employees (on a pro-rated basis) were eligible for bonuses. A substitute teacher (paid on a per diem basis) was not eligible for a bonus. According to Achievements' officials, an employee earned a monthly bonus when he/she made (or exceeded) 90 percent of the scheduled student visits for a given month. In addition, Achievements' directors told us that the amount of the monthly bonus could not exceed \$100.

We disallowed \$11,390 in bonuses reported on the CFRs. In certain instances, Achievements did not have documentation to support that employees made 90 percent or more of their scheduled



child visitations (as required for a monthly bonus). In other instances, the amount of the monthly bonus exceeded the \$100 limitation. Also, we identified a bonus payment improperly paid to a substitute teacher.

### *Compensation of Family Members*

Employee compensation must be based on approved payrolls and contemporaneous time records. According to the Manual, employee time sheets must be signed by an employee and his/her supervisor, and must be completed at least monthly. In addition, providers should develop employer/employee agreements with written salary scales and issue them to employees.

We disallowed \$12,259 in compensation paid to the directors' family members. At various times during our audit period, Achievements employed the two children and mothers of Achievements' directors. According to the directors, the four family members performed administrative work in the office. Each of the two children received a bi-weekly salary of \$250 throughout the year. We disallowed the salaries of the four family members because they did not prepare time sheets, as required by the Manual. Also, Achievements' directors were unable to provide us with any documentation substantiating their claims that their family members performed administrative work for the days they were paid.

## **Non-Compliance With Accounting and Recordkeeping Requirements**

The Manual describes specific accounting and recordkeeping requirements that all CFR filers must adhere to. We found that Achievements' directors did not adhere to several of the prescribed requirements, as detailed as follows:

### *Documentation of Cost Allocation Methods*

The Manual requires special education schools to maintain documentation evidencing the methodologies used to allocate costs to the various programs they operate. The directors stated that they did not prepare Achievements' CFRs themselves; instead, they hired a consultant to prepare them. The directors further told us that they provided the consultant with Achievements' general ledger trial balances, and the consultant developed the cost allocation methodologies for the CFRs. We requested documentation of the allocation methodology from the consultant. However, the consultant did not provide us with any such documentation. Thus, neither Achievements nor its consultant provided explanations of cost allocations to us. Nonetheless, each year, one of the directors certified to the truth and accuracy of the CFR Achievements submitted to SED. Achievements should ensure that documentation of allocation methodologies is prepared and retained in the future.

### *Maintenance of Time and Attendance Records*

The Manual requires that payroll costs be supported by employee time and attendance records prepared during (not after) the time period for which the employee was paid. The time sheets must be signed by the employee and a supervisor and must be completed at least monthly. Achievements had no employee time and attendance sheets for the period of July 1, 2005 through June 30, 2008. Further, eleven months of time records were unavailable for the 2008-09 year, and four months of time records were unavailable for the 2009-10 year. Achievements' directors told us that the time records in question were shredded to help save file storage space.

With the exception of the directors' family members, we did not disallow personal service costs relating to missing time records because we were able to confirm employees' attendance on a test basis using other records. Nevertheless, Achievements' officials should ensure that time and attendance records are prepared and maintained as required in the future.

### *Classifications of Expenses*

The Manual requires schools to comply with generally accepted accounting principles. Thus, each payment should be posted to the appropriate account (or accounts) specifically designated for a particular type (or types) of costs. Achievements' Fiscal Director, however, often misclassified costs in the school's accounting records. For example, the Fiscal Director recorded the aforementioned entertainment center (totaling \$12,616) in four different accounts, including "Supplies" and "Materials" (as opposed to equipment). Also, the Fiscal Director recorded personal travel such as cruises, entertainment expenses for rock concerts and sporting events, and restaurant charges for meals in the Advertising account. These accounts are used to aggregate information that Achievements reports on its CFRs. Therefore, the misclassification of these personal expenditures suggests a conscious effort to conceal the improper charges in Achievements' accounting records and the corresponding CFRs.

### *Equipment Inventory Control Records*

The Manual requires school officials to maintain perpetual inventory records and invoices for all furniture and equipment items purchased for the benefit of the approved special education programs. Achievements, however, had no inventory control records for the furniture and equipment it purchased. The lack of inventory records prevented us from locating all computers and other electronic equipment purchased by Achievements. Consequently, we were unable to account for the equipment and determine if it was still in use at Achievements, retired (or disposed), or abused (not used to support Achievements' programs).

## **Recommendations**

### **To SED:**

1. Review the disallowances resulting from our audit and make the appropriate adjustments to

the costs claimed on Achievements' CFRs for the five years ended June 30, 2010.

2. Adjust Achievements' tuition rates for this period as appropriate and ensure excessive payment amounts are recovered.

**To Achievements:**

3. Comply with the Manual's requirements for the eligibility, documentation and allocation of all costs reported on the CFRs for the special education programs administered by Achievements.
4. Comply with the Manual's requirements for time and attendance records, classification of expenses, and equipment inventory records.

## Audit Scope and Methodology

We audited the costs reported by Achievements on its CFRs for five fiscal years ended June 30, 2010. The objective of our audit was to determine whether the costs reported by Achievements had been properly calculated, adequately documented, and allowable according to the Manual. Our audit was limited to the four rate-based preschool special education programs (codes 9100, 9135, 9160 and 9165) operated by Achievements. We did not audit the quality or the quantity of the services provided to students by Achievements.

To accomplish our objective, we reviewed Achievements' financial records, including audit documentation maintained by their independent certified public accountants. OSC's Investigations Unit also secured vendor and lending institution records via 17 subpoenas. We interviewed selected Achievements' 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 Manual. To complete our audit work, we reviewed supporting documentation for costs submitted for the four programs in our audit scope and made a determination of whether the costs complied with and were allowable by the Manual. We also made site visits to certain administrative and program facilities operated by Achievements.

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

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. 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

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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

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We provided draft copies of this report to Achievements and SED officials for their review and formal comment. We considered the comments of Achievements and SED in preparing this report and have included them at the end of it. Our rejoinders to those comments are included in the report's State Comptroller's Comments. Also, in its response to our draft report, Achievements submitted 18 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 that officials of Achievements 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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**Dave Fleming**, Audit Manager  
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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

## Achievements, PLLC

### Schedule of Submitted, Disallowed, and Allowed Program Costs (9100, 9135, 9160 and 9165) For the Five Fiscal Years July 1, 2005 through June 30, 2010

	Amount Per CFR	Amount Disallowed Per Audit	Amount Allowed Per Audit	Notes to Exhibit
<b>Personal Services</b>	\$5,924,950	\$6,786	\$5,918,164	A, B, C, D, Y, AD, AG
<b>Other Than Personal Services</b>	\$550,634	\$65,041	\$485,593	E, F, G, H, I, J, K, M, N, O, P, Q, R, S, T, U, V, W, X, Z, AB, AC, AE, AF
<b>Administrative Costs*</b>	\$1,708,368	\$110,763	\$1,597,605	A, B, C, D-O, Q-U, Z, AA-AG
<b>Total Program Costs</b>	<u>\$8,183,952</u>	<u>\$182,590</u>	<u>\$8,001,362</u>	

\* Includes allocated Personal and Other Than Personal Services costs

## Notes to Exhibit

The Notes shown below refer to specific sections of the Reimbursable Cost Manual upon which we have based our adjustments. We have summarized the applicable section to explain the basis for the disallowance. Details of the transactions in question were provided to SED and Achievements officials during the course of the audit.

- A. Section I.14(05-06, 06-07, 07-08, 08-09), Section II.14(09-10) - Compensation for personal services includes all salaries and wages, as well as fringe benefits and pension plan costs.
- B. Section I.14.A.4d (05-06, 06-07, 07-08, 08-09), Section II.14.A.4c (09-10) - For any individual who works in more than one entity (including organizations that have a less-than-arm's-length relationship with the approved program), the FTE in total across entities cannot exceed 1.0, the allocation of compensation must be supported by time and effort reports or equivalent documentation which meets the following standards:
  - They must reflect contemporaneous time record of the actual activity of each employee.
  - They must account for the total activity for which each employee is compensated.
  - They must be prepared at least monthly and coincide with one or more pay periods.
  - They must be signed and dated by the employee and employee's supervisor.
  - Budget estimates or other allocation methods determined before the services are performed are not adequate documentation for use in completing annual financial reports but may be used for interim accounting purposes.
- C. Section I.14.A.5(05-06, 06-07, 07-08, 08-09), Section II.14.A.5(09-10) - 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 to actual services provided as program employees or consultants and shall not include any distribution of earning in excess of reimbursable compensation. For all individuals, compensation for board service or trustee service is not reimbursable.
- D. Section I.14.B.2.b(05-06, 06-07, 07-08, 08-09), Section II.14.B.2.b(09-10) - Costs of benefits for employees who provide services to more than one program and/or entity must be allocated to separate programs and/or entities in proportion to the salary expense allocated to each program.
- E. Section I.21.A (05-06, 06-07, 07-08, 08-09), Section II.21.A (09-10) - Costs incurred for entertainment of officers or employees, or for activities not related to the program, or any related items such as meals, lodging, rentals, transportation and gratuities are not reimbursable.
- F. Section I.21.B (05-06, 06-07, 07-08, 08-09), Section II.21.B (09-10) - All personal expenses, such as personal travel expenses, laundry charges, beverage charges, gift certificates to staff and vendors, flowers or parties for staff, holiday parties, repairs on a personal vehicle, rental expenses for personal apartments, etc. are not reimbursable unless specified otherwise in this Manual.
- G. Section I.22 (05-06, 06-07, 07-08, 08-09), Section II.22 (09-10) - Costs resulting from violations of, or failure by, the entity to comply with Federal, State and/or local laws and regulations are not reimbursable.
- H. Section I.23.C (05-06, 06-07, 07-08, 08-09), Section II.23.C (09-10) - Costs of food provided



to any staff including lunchroom monitors is not reimbursable.

- I. Section I.30.3 (05-06, 06-07, 07-08, 08-09), Section II.30.C (09-10) - Costs for food, beverages, entertainment and other related costs for meetings, including Board meetings, are not reimbursable.
- J. Section I.30.5 (05-06, 06-07, 07-08, 08-09), Section II.30.E (09-10) – Costs of Conferences attended by administration staff are limited to two people per conference and are reimbursable provided that the purpose of the conference is to improve or demonstrate new administrative techniques or concepts.
- K. Section I.41.B.2 (05-06, 06-07, 07-08, 08-09), Section II.41.B.2 (09-10) – Occupancy costs are based on actual documented rental charges, supported by bills, vouchers, etc.
- L. Section I.41.B.5 (05-06, 06-07, 07-08, 08-09), Section II.41.B.5 (09-10) – Costs incurred in less-than-arm’s length lease of real property transactions that are determined to be above the actual documented costs of the owner shall be reimbursed only with written approval of the Commissioner upon the establishment of the cost effectiveness resulting from the transaction. This written approval must be obtained prior to the LTAL transaction upon the establishment of the cost-effectiveness that may result from the transaction.
- M. Section I.42.C.1 (05-06, 06-07, 07-08, 08-09), Section II.42.C.1 (09-10) – Cost of maintenance and repair of vehicles provided as perks to agency officers or employees for personal use are not reimbursable.
- N. Section I.53.A (05-06, 06-07, 07-08, 08-09), Section II.53.A (09-10) – Reasonable and necessary costs incurred for purchased supplies and materials that are related to Article 81 and Article 89 programs are reimbursable.
- O. Section I.53.A.4 (05-06, 06-07, 07-08, 08-09), Section II.53.A.4 (09-10) – The costs of consumable medical supplies (aspirin, bandages, etc.) are reimbursable provided they are administered for emergency care by qualified professionals.
- P. Section I.55.A.1 (05-06, 06-07, 07-08, 08-09), Section II.55.A.1 (09-10) – Costs incurred for telephone service, local and long distance telephone calls, electronic facsimiles (FAX) and charges for cellular telephones etc., are reimbursable provided that they pertain to the special education program.
- Q. Section I.55.A.2 (05-06, 06-07, 07-08, 08-09), Section II.55.A.2 (09-10) – Costs incurred for telephone service, local and long distance telephone calls, electronic facsimiles (FAX) and charges for cellular telephones, etc. are reimbursable provided that long distance telephone or message charges are documented by monthly bills and proof of payment and directly attributable to the Article 81 and Article 89 funded programs.
- R. Section I.55.B (05-06, 06-07, 07-08, 08-09), Section II.55.B (09-10) - Long distance telephone charges and all cell phone charges that are not properly documented will not be reimbursed.
- S. Section I.55.C (05-06, 06-07, 07-08, 08-09), Section II.55.C (09-10) - Reimbursement is received from persons who make personal calls from business phones, including business cell phones, must be offset against this expense.
- T. Section I.57.B (05-06, 06-07, 07-08, 08-09), Section II.57.B (09-10) - Out-of-state travel costs, except for conferences as explained in Section I (05-06, 06-07, 07-08, 08-) or Section II (09-10) (meetings and conferences), are not reimbursable.
- U. Section I.57.D.1 (05-06, 06-07, 07-08, 08-09), Section II.57.D.1 (09-10) - Costs of personal use of a program-owned or leased automobile are not reimbursable. The costs of vehicles

used by program officials, employees or Board members to commute to and from their homes are not reimbursable.

- V. Section I.57.D.3 (05-06, 06-07, 07-08, 08-09), Section II.57.D.3 (09-10) - Auto repair, depreciation, insurance, rental, garage and maintenance costs incurred by employees for privately-owned vehicles are not reimbursable.
- W. Section I.57.D.4 (05-06, 06-07, 07-08, 08-09), Section II.57.D.4 (09-10) - For CFR filers, reimbursement for the purchase of vehicles will be in accordance with Appendix O of the CFR Manual governing depreciation. Reimbursable depreciation expense for vehicles used by administrative staff and Board members will be subject to the limitations of the nondirect care cost parameter.
- X. Section I.57.F (05-06, 06-07, 07-08, 08-09), Section II.57.F (09-10) - Travel Expenses of spouses, family members or any nonemployee are not reimbursable unless the spouse or family member is an employee of the entity and a legitimate business purpose exists for them to travel.
- Y. Section II.A.1 (05-06, 06-07, 07-08, 08-09), Section III.1.A (09-10) - 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.
- Z. Section II.A.4 (05-06, 06-07, 07-08, 08-09), Section III.1.D (09-10) - 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.
- AA. Section II.A.7 (05-06, 06-07, 07-08, 08-09), Section III.1.G (09-10) - All contractual agreements (e.g. leases) must be in writing, signed and dated.
- AB. Section II.A.5 (05-06, 06-07, 07-08, 08-09), Section III.1.E (09-10) - Logs must be kept by each employee indicating dates of travel, destination, purpose, mileage and related costs such as tolls, parking and gasoline and approved by supervisor to be reimbursable.
- AC. Section II.A.10 (05-06, 06-07, 07-08, 08-09), Section III.1.J.2 (09-10) - Vehicle use must be documented with individual vehicle logs that include at a minimum - the date, time of travel, to and from destinations, mileage between each, purpose of travel and name of traveler.
- AD. Section II.A.13.a (05-06, 06-07, 07-08, 08-09), Section III.1.M.(1).(i) (09-10) - Salaries of employees who perform tasks for more than one program and/or entity must be allocated among all programs and/or entities for which they work.
- AE. Section II.B.2 (05-06, 06-07, 07-08, 08-09), Section III.2.B (09-10) - The accrual basis of accounting is required for all programs receiving Article 81 and Article 89 funds.
- AF. Section II.C.1.b(05-06, 06-07, 07-08, 08-09), Section I.1.B.2(09-10) - Program and fiscal issues that require prior written approval of the Commissioner's designees include but are not limited to new or renovated space, both instructional and non-instructional to be occupied by approved programs including costs associated with such space.
- AG. Section II.14.10 (05-06, 06-07, 07-08, 08-09) - Bonus compensation may be reimbursed if based on merit as measured and supported by employee performance evaluations.

# 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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October 24, 2012

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

Dear Mr. Mason:

The following is the New York State Education Department's (Department) response to the draft audit report (2011-S-18) of the State Education Department Achievements, PLLC: Compliance with the Reimbursable Cost Manual.

**Recommendation 1:**

**Review the disallowances resulting from our audit and make the appropriate adjustments to the costs claimed on Achievements' CFR's for the five years ended June 30, 2010.**

We agree with this recommendation. The Department will review and make the appropriate adjustments to Achievements' reported costs based upon the audit findings which totaled \$186,389. This will entail additional discussion with the Office of the State Comptroller's auditors and a review of auditor's worksheets to determine the impact of adjustments by year and by program. The auditors were still compiling the adjustments in the manner needed for the Department to adjust reported costs at the time this response was written. We will also review and consider additional information Achievements may submit in response to this report.

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Comment  
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\* See State Comptroller's Comments, Page 32.

**Recommendation 2:**

**Adjust Achievements' tuition rates for this period as appropriate and ensure excessive payment amounts are recovered.**

We agree with this recommendation, but note that the tuition rate-setting methodology employed by the Department removed expenses reported by Achievements on the Consolidated Fiscal Report and were therefore not reimbursed in the tuition rates established. In the case of Achievements, for the five-year period, \$423,755 of reported expenses were excluded from reimbursement in the tuition rates. Consequently, the \$186,389 in audit findings may not result in a change to Achievements' existing tuition rates.

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: Commissioner King  
Valerie Grey  
Ann Marsh  
Mary Kogelmann  
James Conway

# Agency Comments - Achievements, PLLC



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October 22, 2012

## VIA HAND DELIVERY

Brian Mason  
Audit Director  
Office of the State Comptroller  
Division of State Government Accountability  
110 State Street, 11<sup>th</sup> Floor  
Albany, New York 12236

Re: Achievements, PLLC // Compliance with the Reimbursable Cost Manual//  
Draft Report 2011-S-18

Dear Mr. Mason:

We have reviewed the Draft Report as initially provided on August 28, 2012 and separately revised September 21, 2012 and then again October 12, 2012 and have identified certain factual inaccuracies in the Draft as well as certain instances in which we believe select principles contained within the Reimbursable Cost Manual (RCM) may have been misapplied or misconstrued. We are unable to determine the validity of some audit findings, however, given the encrypted/tab platform of the auditors' spreadsheets which prevented our full analysis of the detail upon which the auditors are presumed to have based their findings both substantively and in the calculation of amounts proposed to be disallowed. Although Achievements has received some assistance from the auditors in understanding the basis of many proposed disallowances, we continue to note a significant number of expenses / costs for which we have provided substantial documentation and which have nonetheless been included in an aggregate amount of disallowed costs without explanation. We observe a number of troubling inconsistencies in the auditors' protocols most notably in the standards employed by the auditors - one level of documentation appears acceptable in some contexts while unacceptable in others. This apparent subjectivity in determining the "reasonableness" and legitimacy of reported costs, we believe, casts doubt on the integrity of certain audit report findings. We also observe that entire portions of the auditors' worksheets upon which our review and analysis of the audit disallowances is based, appear available to the auditors only - again making a full, concise and detailed response difficult.

We take particular exception to the auditors' finding that Achievements' representatives "attempted to conceal their personal charges by intentionally distributing them to various accounts which are used to prepare the CFR". As the auditors themselves concede, Achievements was not well served by its accounting consultant who "developed" the cost allocation methodologies for the CFR nor by its business and personal accountant who performed general accounting services for the Achievements corporation and TC/JC and audited Achievements' financial statements.

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Comment  
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Comment  
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Comment  
2, 4

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\* See State Comptroller's Comments, Page 32.

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Auditors also note the consultants' failure to provide documentation supporting the allocation methodology employed by the consultant and relied upon by Achievements. Accordingly, Achievements certified to the accuracy of the CFR prepared by said less-than-cooperative accounting consultant upon whose advise and counsel Achievements relied to their apparent detriment. Achievements makes its financial records, spreadsheets and other relevant documentation available to all accountant consultants throughout the year for their review and testing in advance of the development or auditing of the CFR to assure accuracy. While Achievements CFO may have misclassified certain costs and mistakenly included non-program related costs in the records and documents provided to the accountant, it was the consultant, not Achievements, who ultimately "verified" and confirmed the integrity of the costs upon review of documentation provided by Achievements during the CFR preparation process. As described in greater detail below, Achievements has demonstrated a clear intent to self-disclose and correct reporting errors well in advance of the audit in direct contrast to any alleged attempt to conceal.

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Comment  
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Given the comprehensiveness of the auditors' worksheets and a limited understanding of the basis of their conclusions, Achievements has replicated the worksheets which accompanied the September revised draft report and provided comment to identified findings to the extent time allowed (See: Attached Disc). Achievements is also attaching duplicate copies of receipts previously provided to the auditors which appear to have been disregarded (See: Attached #1).

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Comment  
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Accordingly, Achievements challenges the Report findings to the extent we are able to discern these specific costs and expenses as follows:

#### Background

Achievements seeks to correct the misstatement that it reported costs totaling \$13.3M for its preschool special education programs. Achievements reported \$8.3M in expenses for the audited tuition based programs and was reimbursed \$7.5M for those programs.

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Comment  
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Achievements is a professional service limited liability corporation with principle purposes to provide special education therapeutic services to infants, toddlers and children to the age of 21 with disabilities and their families. Achievements was appropriately incorporated in 1998 under the Limited Liability Company Law consistent with New York State's Corporate Practice doctrine limiting the practice of most licensed professions to individual providers and specialized businesses such as professional service corporations (Education Law, Sections 6512, 6513). This prohibition against corporate practice compels Achievements' for-profit corporate structure (Education Law, Section 6503-a).

Achievements' corporate structure was dictated by the State's own corporate practice doctrine and not motivated by considerations of profit or personal gain - - yet the organization is viewed through the same prism as had Achievements been incorporated as a for-profit entity under the Business Corporations Law with intent to realize personal gain and benefit. In fact, TC has never availed herself of any profit-sharing privileges or dividend distributions. It does not escape even the most casual observer's attention that this corporate structure - - for profit in its construct -



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- appears, at least initially, to be of particular interest to the Office of the State Comptroller and to foster suggestions of personal gain and benefit when like audits of not-for-profit corporations would more likely yield findings of disallowances without reference or suggestion of individual benefit.

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Comment  
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Moreover, the Draft Report misrepresents the ownership of Achievements. The Executive Director, a licensed speech pathologist, shares membership/ownership of the professional service company with three other licensed professionals as required by law - - and does not share ownership with her husband who is employed by Achievements as the Fiscal Director.

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Comment  
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The Executive Director, as a member of the professional service company, has made significant financial investments in Achievements - - of which the auditors are well aware, and which are reflected on the financial statements yet are not referenced or acknowledged by the Report in its otherwise detailed analysis of Achievements' operations and fiscal integrity (See: Attached #2). As indicated, Achievements benefited in 1998 from the transfer of reasonable assets approximating \$143,810, together with approximately \$58,000 in liquidated assets from a prior owned company - - Albany Speech Language Pathology Associates - - an infusion of personal funds which could have been retained for personal benefit by TC but which, when invested in Achievements, effectively reduced the need for state support. The RCM clearly authorizes reimbursement of "start-up" funds - - a benefit of which Achievements chose not to avail itself, a clear reflection of Achievements' corporate culture of personal contribution to reduce state support. Both TC and JC have extended personal funds to Achievements' operating budget throughout the 15 years of operations (See: Attached #2).

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Comment  
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For all these reasons, it is disingenuous of the auditors to create wrongful impressions of Achievements, its professional members or the spouses of these company members through careless phraseology and factually inaccurate statements. We would encourage the auditors to correct these false statements and to provide a more balanced presentation of Achievements' operations.

#### Achievements Corporate Culture

Achievements is committed to maintaining the highest quality of both personal and professional integrity. As with all small, closely held businesses, Achievements has matured over the past years, enhancing its business acumen and fiscal sophistication. Achievements first became aware of weaknesses in its internal controls and procedures through the conduct of a self-assessment review in February of 2011 - - well in advance of the audit notice dated May 18, 2011 - - and efforts were already underway to correct reporting errors through repayments to Achievements which began in March, 2011 (See: Attached #3). Achievements also initiated discussions with RSU through representatives and with consultants to determine how best to address the identified reporting errors in prior years, including consideration of resubmission of relevant CFR's. Unfortunately, before these options could be explored, Achievements was notified of the OSC audit, effectively preempting corrections of reporting errors pending completion of the audit.

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Comment  
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Throughout the audit process, Achievements management and staff have presented themselves and the company's operation with full-disclosure including self-identifying errors to the auditors. This serves as a testament to the professional integrity at the core of Achievements' operations. Point in fact, the CFO had reviewed volumes of receipts and statements and identified with a "P" any cost which required additional review to confirm that the cost was program related. We believe auditors may have misunderstood that the markings had been made while preparing the applicable year's CFR when in fact the notations were made at the initiation of the self-review process in early 2011. Achievements does assume responsibility for mistakes and errors made - mistakes made as a result of relaxed attention to detail without malintent. It is important to note, however, that mistakes have also been made to the benefit of the State, as also revealed during the audit process. Review of the CFRs for audit years reveals a pattern of "under-reporting" of costs and expenses, both by design (in an effort to reduce the State's fiscal burden) and by human error. Achievements' corporate culture is reflective more of demonstrated self-sacrifice than "personal gain and benefit" (See: Attached #4; Receipts for program related costs not claimed on the CFR).

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#### Audit Findings and Recommendations

##### General Challenge

It would appear that the auditors disallowed entire costs when only a fraction of these costs are attributable to the audited programs. For example, SED funded programs constituted only 45% of Achievements total operation in 2005-2006, 44% in 2006-2007, 48% in 2007-2008, 55% in 2008-2009 and 60% in 2009-2010. Accordingly, disallowances associated with agency wide expenses such as advertising, maintenance and supplies must be pro-rated. The Draft Report figures should be adjusted accordingly (See: Attached #5).

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Comment  
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It also appears that the auditors disallowed entire costs incurred by Achievements, when only a fraction of those costs (i.e., depreciation) was reported as an expense. For example, one particular disallowance of \$5,217 was associated with a single purchased item when only the depreciation was reported on the CFR, thus artificially inflating the aggregate disallowance figures. The Report figures should be adjusted to disallow only depreciation expenses when only depreciation expenses were reported.

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Comment  
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#### **SECTION SUBTITLE I:**

##### OTPS Disallowances

##### *"Goods and Services Acquired for Personal Benefit"*

Achievements challenges the Report's overall allegation that certain goods and services were "acquired for personal benefit". In fact, in many cases Achievements provided ample evidence that goods and services were both acquired and used for educational program purposes,

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with certain exception where costs were inadvertently included in reportable cost calculations as a result of human error and oversight.

In this area, the draft audit makes particular note that a “home entertainment center” was “acquired for the personal benefit” of the owners. As Achievements shared with the audit team, however, the purchase was made with the single intent of installing the video capacity/telecommunication capacity/television at Achievements’ administrative site for, among other program related uses, provision of employee and staff webinars and teleconferencing. It was not immediately installed at the administrative office location because the purchase had been made in anticipation of a relocation of the Route 9 administrative offices to another site. The relocation decision was then postponed while an alternative site location was considered. In the interim, the equipment was installed at the owner’s residence. The cost of the equipment was later mistakenly included in the 2009-10 CFR.

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Comment  
16

That this was simply an error, rather than any intent for personal gain, is apparent from the subsequent events. In February of 2011, after the decision was made not to relocate the offices and as part of a self-initiated review, the CFO began to solicit and receive quotes for the purchase of a more advance-featured media center for Achievements. This center, which was installed in Achievements’ offices, was then purchased with the owner’s personal funds.<sup>1</sup> Further, as mentioned earlier, prior to the initiation of the audit, Achievements underwent a self-evaluation of the records. Through this process, the CFO identified the error in how the media center had been reported and sought the advice of two separate accountants regarding how best to correct the error - - how to accurately report the initial equipment purchase as well as the subsequent purchase of a “replacement” center using personal funds (See: Attached #6; Quote (2/11)/Sales Receipt (5/11)). Achievements believed the 2009-10 CFR had been corrected to reflect these events and were only recently made aware that the current accountant had not made the necessary reporting corrections under the belief that since the cost was proposed for disallowance by the audit, no additional corrections were warranted (See: Attached #7). As auditors are aware, SED does not encourage resubmission of revision of CFR’s for years currently under audit, thus making revision of the 2009-2010 CFR also problematic. However, receipt of the initial media center at TC’s residence was reflected in TC’s amended income tax returns, reinforcing our assertion that inadvertent mistakes were corrected immediately upon identification (See: Attached #8). Adjustments were made to the 2011-12 financial statements to reflect the two transactions and will be reflected in the 2012 CFR.

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Further, there are certain seemingly “personal” costs which, as Achievements explained during the audit review process, while not well documented are clearly and emphatically program related costs. More specifically, in regards to the two season ticket passes for Syracuse University football and Yankee baseball events which JC, CFO of Achievements, personally secured, these tickets were in fact purchased for the benefit of Achievements’ staff and not its owner. As

<sup>1</sup> The installation date of the “replacement” center at the administrative office location was scheduled well in advance of the audit and not as the auditors intimate “near the time” of the audit.

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documented in the series of email exchanges attached (See: Attached #9)<sup>2</sup> with minor exception, these tickets were made available to Achievements' staff and personnel for their own personal use through a system of "first come, first serve". Achievements concedes that the value of these "perks" should have been included in the calculation of staff compensation but vehemently objects to the characterization of "personal use" of these tickets by TC or her family.

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Comment  
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Similarly, "staff" benefits were reported, including theater and movie tickets, each provided as part of staff recognition efforts. While not accurately reported as compensation, these benefits are personal to Achievements' staff, and not, as the auditors suggest, to TC or her family. Auditors also inappropriately disallowed \$300 in seminar/conference costs associated with KC's continuing education benefits enjoyed by all Achievements' staff and personnel, as authorized by the RCM (See: Attached #10).

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Comment  
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Additionally, some of the other noted "tickets" and associated expenses incurred were for allowable costs. For example, as part of Autism awareness month, Achievements purchased Mets baseball tickets, as a donation, on behalf of a not-for-profit organization specializing in in-service training and consulting around autism. The organization, then, provided Achievements with several thousands of dollars of Continuing Education for Achievements' staff. Achievements' representatives provided the auditors with records of those trainings at a value of \$17,000 -- an allowable expense under the RCM -- however the auditors appear to have rejected the expenses suggesting, again, inaccurately, that the expenses were personal in nature. (See: Attached #11).

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As to other costs identified as for "personal benefit", it is common practice in many closely-held corporations to maintain credit cards for all purchases, both personal and business, and to employ some mechanism whereby personal costs are distinguished from business for, by example, tax purposes, or, as here, the reporting of business related costs as Achievements' accountants clearly advised (See: Attached #2).

This "blended" approach, however, requires a heightened attention to detail during the cost identification process and increases the likelihood of misidentification. Such was the case here as related to certain costs identified by the auditors as "ineligible". Achievements concedes that the multiple credit card approach to purchasing goods and services increases the likelihood of error, as illustrated by the inadvertent inclusion of certain costs associated with trips as program related expenses.

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Comment  
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For example, TC would often travel to destinations associated with a program-related purpose. Some travel was related to visits with program models similar to that of Achievements, or of interest to Achievements. Some such travel would be related to Achievements' preschool programming, while others would be related to meeting the needs of Achievements' school age students and other "agency" business interests. Achievements concedes that the appropriate proportional allocation between program related costs and the personal costs of, for example,

<sup>2</sup> We respectfully request the identifying information provided in these emails be protected to the fullest extent possible.

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family members' travel expenses, was not made. The error was without malintent however, rather, a result of oversight by the CFO who failed to distinguish between legitimate "business expenses" for IRS purposes, and the smaller sub-set of program costs reimbursable under the RCM. Such failure to differentiate between "program" costs and "business costs" is pervasive in the preschool special education sector. Achievements provided auditors with ample program related materials from many of these visits, however, including program brochures and notes taken at conference meetings and challenges the disallowance of the entirety of the costs (See: Attached #12).

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Comment  
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Finally, the Report also suggests a number of costs and expenses were not program related given their "personal nature", such as food items. We are concerned that the auditors lack of familiarity with special education programming and young toddler therapeutic interventions may prevent them from recognizing the "program related" use of snacks or flour and spices for modeling clay exercises. The Executive Director provided the auditors with comprehensive lesson plans reflecting food items used commonly in preschool special education programs for sensory tables, science and art activities. The RCM clearly authorizes reimbursement of these expenses as program related. The auditor's lack of familiarity with and understanding of educational programming is further illustrated in the attached exchange between the auditors and the Executive Director in which the auditor challenged whether a book purchase was program related (See: Attached #13).

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Comment  
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*"Excessive Charges for Leased Office Space"*

Achievements challenges certain elements of this finding. In the mid 1990's, the CEO/CFO owned a small building that housed both administrative offices and special education programs. Achievements consulted with their RSU accountant to determine the appropriate reporting protocols on such a less-than-arms-length lease arrangement and were advised to report mortgage interest, taxes and depreciation only. This advice was clearly inaccurate, as the RCM lists MI, taxes and depreciation as mere examples of allowable property costs - costs which also appropriately include maintenance, cleaning, utilities, waste removal, repair and other property related expenses. Importantly, Achievements under-reported these costs on the CFR - to the benefit of the state. In 2000, Achievements relocated to the current building. Although there were tenants in the new building, Achievements continued to report its property expenses consistent with prior CFR reportings on the prior location, failing, as the auditors appropriately identified, to adjust costs to reflect partial usage only of the new building. Put in proper context, OSC proposes disallowing \$69,975 of the rental costs associated with the partial usage. The CFR-5 allows reporting of the above mentioned expenses (MI, taxes and depreciation) together with utilities, maintenance, lawn care, waste removal, cleaning, and snow removal, for example. During the audit years, none of these other allowed expenses were reported. Had these additional expenses been reported, another \$94,468.37 (using the 42% / 47% occupancy percentages) could have been claimed and reported to SED for reimbursement as allowed by the RCM. Accordingly, the disallowance should be adjusted to reflect the fact that the owners' costs were understated. Moreover, it appears that auditors may have made a calculation error relating to year 2006-07 mortgage interest costs by reflecting a negative number in the "allowable" cost column.

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In addition, the lease between Achievements and Kayan Holdings sets an annual rent due from Achievements to Kayan in the amount of \$84,000. In reviewing the audit period, rents paid by Achievements were: \$66,000, \$78,000, \$67,000, \$57,000 & \$54,000 respectively -- all below the lease costs. Therefore, Achievements under-reported these costs on the CFR -- to the benefit of the state. Kayan Holdings did not collect a total of \$98,000 during the 5 year period. Although CFR-5 allows the lesser of the 2 totals (total rent vs. total allowable expenses), Achievements purposefully reported only actual lease costs rather than lease amounts to which Kayan was legally entitled -- a privilege extended by Kayan owners to Achievements -- not common practice for an entity seeking "personal gain" as suggested.

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Comments  
22,24

	Lease Ach-->Kayan	Actual Rent Pd Ach--> Kayan	Difference
2005-06	\$ 84,000.00	\$ 66,000.00	\$ 18,000.00
2006-07	\$ 84,000.00	\$ 78,000.00	\$ 6,000.00
2007-08	\$ 84,000.00	\$ 67,000.00	\$ 17,000.00
2008-09	\$ 84,000.00	\$ 57,000.00	\$ 27,000.00
2009-10	\$ 84,000.00	\$ 54,000.00	\$ 30,000.00
	\$ 420,000.00	\$ 322,000.00	\$ 98,000.00

Not on cfr	Utilities-NiMo	Eastern Heating	Water
2005-06	\$ 22,828.64	3,461.96	\$ 436.02
2006-07	\$ 25,086.03	1,925.90	\$ 271.64
2007-08	\$ 20,999.90	2,112.81	\$ 270.90
2008-09	\$ 18,322.14	2,916.04	\$ 306.92
2009-10	\$ 19,630.75	5,056.40	\$ 319.17
	\$ 106,867.46	15,472.81	\$ 1,624.80

Not on cfr	Carroll Pro	Land/Skyview	County Waste	Misc Rep/Maint
2005-06	\$ 10,737.35	\$ 1,478.76	2,098.81	\$ 5,293.65
2006-07	\$ 9,911.40	\$ 3,650.40	2,080.29	\$ 334.80
2007-08	\$ 10,021.29	\$ 4,606.20	2,341.95	\$ 856.17
2008-09	\$ 8,339.36	\$ 2,130.80	2,361.94	\$ 1,098.36
2009-10	\$ 10,740.08	\$ 4,777.15	2,232.48	\$ 296.40
	\$ 49,749.48	\$ 16,643.31	\$ 11,115.47	\$ 7,879.38

2005-06	\$ 46,335.19	47%	\$ 21,777.54
2006-07	\$ 43,260.46	47%	\$ 20,332.42
2007-08	\$ 41,208.92	47%	\$ 19,368.19
2008-09	\$ 35,475.56	42%	\$ 14,699.74
2009-10	\$ 48,972.58	42%	\$ 18,090.48
not reported on cfr5			\$ 94,468.37



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*"Other Ineligible OTPS Charges"*

Achievements challenges a number of the proposed OTPS charge disallowances. For example, OSC proposes disallowing certain truck expenses as "not program related". As Achievement representatives had shared with the auditors, the Executive Director and CFO deemed it more cost effective to use equipment owned either personally or by a related party for truck related needs than to contract for those services. For example:

Estimated cost of 5 year truck rental w/labor for use in moving classrooms, etc.: \$8,061

Estimated total 5 year cost for contracted snow removal services: \$34,009

Total cost savings by Achievements and the state = \$42,961.

As shared with the auditors, the truck is essential to the maintenance of Achievements' offices, classrooms, and collaborations. Kayan Holdings owns a pick up truck with a plow. The terms of Achievements / Kayan Holdings lease provides that Achievements simply pay Kayan's truck maintenance, repairs, materials & supplies. There are no required labor/time/contract charges for any services that Kayan provides to Achievements: snow removal, moving of classrooms, rehabbing and/or making modifications to classroom furniture, painting walls, furniture /supply deliveries and garbage removal, for example. Achievements does not employ any maintenance personnel, the cost of which would have been separately reimburseable if not captured by the terms of the lease. The proposed total disallowance during the audit period is approximately \$8,500 in truck repairs, fuel, and supplies, the suggestion being that these costs were not program related. However, cost analysis of these services were Achievements to pay the invoices separately reveals the 5 year total would have exceeded \$42,000 - a figure that is allowable within the RCM - an amount that could have been included on CFR submissions each year. Supporting documentation had been provided to the auditors (See: Attached #14) including time lines that showed classroom moves during the 5 year period clearly reflecting the need for a truck together with plowing quotes to demonstrate the cost savings through use of the Kayan truck with snow plow attachment. Other than stated costs contained within the lease, there were no labor or time expenses charged to Achievements, again underscoring the cost savings to Achievements and ultimately to the State.

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Comment  
22

Mileage logs were provided to the auditors for expenses associated with reimbursable staff travel. However, the mileage logs were not maintained relative to the truck expenses since the Achievements / Kayan lease specifically captures such services costs which are not based on mileage. Mileage reimbursement was not logged for the truck.

OSC also recommends certain percentages of the pick up truck be disallowed on the depreciation schedule due to the 47% / 42% occupancy. We strongly disagree with any disallowance regardless of occupancy. Although the truck was used for property maintenance at Achievements, primary administrative offices (owned by Kayan) the truck was used year round for the benefit of SED classrooms in distributing supplies, moving of classrooms and removal of

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garbage, for example. Whether the truck was used for office property maintenance is secondary to the fact that it was demonstrated to have been used for SED programs. The attached emails from staff requesting use of the truck for movement of materials between sites supports reporting the expense as program related (See: Attached #15).

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Comment  
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Achievements also challenges the proposed disallowance of maintenance costs associated with the platform lift that was installed to meet municipal ADA building requirements -- accommodations for the special education use of the building. The cost of the installation was an appropriate program related cost.

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Comment  
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Achievements believes the auditors misclassified certain business practices as gifts, contributions or donations. It is standard practice in the special education teaching community to provide classroom teachers with refillable gift cards such as "Wal-Mart" gift cards to purchase classroom supplies as needed. Cards were refillable upon depletion of funds. Achievements provided auditors with several of these receipts demonstrating a pattern of purchases and amounts refillable. It appears, however, that the auditors were unpersuaded by the documentation, perhaps as a result of their lack of familiarity with classroom operations and teachers' self-directed purchases. Each of these gift cards was used for classroom related purchases as supported by the provided documentation and none was used for personal benefit by either the teachers or Achievements management.

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Comment  
27

## SECTION SUBTITLE 2

### *Personal Services Disallowances*

#### *Improper Bonus Compensation*

We believe auditors disallowance of certain "bonus" costs is based upon a misunderstanding of Achievements' bonus protocols and certain errors in compensation categorization made by Paychex -- the vendor paycheck company. Achievements attempted at some length to explain to the auditors the multiple pathways to a bonus, only one feature of which was a demonstration of enhanced productivity (the 90% standard to which auditors refer). Additional consideration is given other "performance" based elements, consistent with RCM requirements. Thus, a candidate may well have failed to meet the 90% productivity threshold, but still have demonstrated another quality performance indicator to warrant a bonus. Auditors appear to have narrowly applied but one aspect of Achievements' bonus protocols. In addition, we believe that compensation based on the percentage of mandated services provided a performance based evaluation of merit as required by the RCM.

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Comment  
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Auditors' findings appear also to be based on payroll errors made by the payroll company that processed certain checks as 'bonus' checks rather than to 'regular' checks. The gross amounts were identical and therefore the employees W2's would reflect accurate compensation yet the amounts were disallowed. The payroll errors were not corrected from 'bonus' to 'regular' since



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the change would not have affected total compensation. The total compensation reported to SED would have been identical regardless of Paychex categorization error.

During a conversation with an OSC auditor, Achievements representatives were advised that the payroll company denied the possibility of their making any recording errors and claimed that they record checks exactly as given to them by Achievements.

As the attached email exchange between Achievements and Paychex reflects, Paychex does admit that it made classification / labeling errors. Accordingly, it would appear that those amounts auditors determined to have been “bonuses” were, in fact, standard compensation and any disallowance associated with these amounts should be restored. (See: Attached #16).

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Comment  
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As the attached entries also reflect, Achievements generally recorded “additional” compensation as “+100” on the payroll sheets - compensation for discrete services provided beyond services contemplated by salary including increased case load or supplemental evaluations or performing services beyond the school day. Bonuses were appropriately designated with a “B” - - a distinction which auditors appear to have ignored. The auditors likewise disallowed compensation for TC/JC which had been separately identified on the payroll sheets - - “R +100” reflecting “regular payroll” and one additional compensation sum - - to avoid overfunding the 401K account (the 401K contribution being taken from the “R” check only) (See: Attached #17).

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#### *Compensation of Family Members*

Achievements adamantly contests the auditors’ intimation that special consideration and benefits were extended to “family members”. Achievements’ representatives shares with the auditors multiple documents supporting the claimed compensation expenses including the work product, testimonials from staff and personnel attesting to the work performed and services rendered by these individuals, as well as time sheets and program advertisements. (See: Attached #18).

Each of the positions were administrative in nature and not easily supported by work product. However auditors did not challenge the authenticity or legitimacy of any other administrative staff or Achievement employees. In fact, the only basis for the disallowance was the familial relationship which suggest a particular bias against family or related employees. We believe this bias may have clouded the auditors judgments as to the legitimacy of the costs associated with these individuals, especially where, as here, staff interviews would unabashedly attest to the services provided.

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### **SECTION SUBTITLE 3**

#### *Non-Compliance with Accounting and Recordkeeping Requirements*

From the inception of its educational programming, Achievements has enlisted the assistance of a number of professionals to assure compliance with applicable program and fiscal

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requirements including program directors and outside accountants. Unfortunately, the highly specialized nature of the preschool special education program and finances, the annual modifications to the RCM and the often inconsistent guidance from the State Education Department requires a skill set and expertise beyond the capacity of most professionals. Accordingly, Achievements has not been well served by certain of the program and finance professionals upon whom they have relied for advice, as the audit clearly acknowledges. Achievements has developed a finer understanding of the competency to be expected of its consultants and accountants and has replaced those consultants who were clearly inadequate to assure strict compliance with accounting and record keeping requirements.

#### *Maintenance of Time and Attendance Records*

As Achievements' representatives shared with the auditors, "dated" time and attendance records were destroyed under the mistaken belief that secondary documentation used to support payment requests to the county were sufficient verification of work performed and services provided. Achievements appreciates auditors' efforts to confirm employees attendance on a test basis to other records and has revised its record maintenance and retention protocols accordingly.

#### *Classification of Expenses*

As previously noted, Achievements had not been well served by its fiscal consultants and accountants upon whom Achievements relied to assist in determining the proper classification of expenses. As also noted, Achievements' lack of sophistication and familiarity with the rigors of the RCM and the CFR lead as often to under-reporting of otherwise reimburseable expenses and to errors in classification. Accordingly, Achievements objects strenuously to the auditors insinuation that "misclassification of certain expenditures could have been a conscious effort to hide their disclosure in the accounting records and on the CFR." Achievements challenges auditors' claim that certain expenses were intentionally, for example, recorded in the advertisement account. Achievements' CFO did not retain worksheets reflecting allocation of costs, therefore cannot determine with any certainty how costs were allocated. However, CFO admits that there were occasions when he was careless in reviewing entire credit card statements and determining all costs on the statement as program related without analyzing the detail of the statement.

Reflective of its corporate culture, Achievements' representatives have readily disclosed to auditors self-realized weaknesses in its records and fiscal notations. Moreover, auditors contacted the accountant consultant upon whom Achievements relied for assistance in the preparation of the CFR and can confirm the marginal assistance provided in that regard by that accountant firm. All of these factors, when taken together, support an assessment of relaxed fiscal protocols, and a lack of sophistication but by no account any indication of insidious efforts to "hide" the disclosure of certain expenditures. Achievements requests the deletion of that insinuation in the Report as it is unwarranted, speculative and not supported by objective review of the facts presented by Achievements.

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*Equipment Inventory Control Records*

Achievements recognizes the RCM requirement that equipment inventory records be maintained to support costs and expenses. Achievements objects to the auditors characterization that no controls were in place, however. In fact, Achievements provided the auditors with ample invoices identifying specific pieces of equipment, clearly verifiable by visual observation of program sites and locations.

Achievements has strengthened its inventory control protocols, nonetheless, in response to auditors assessment.

Very Truly Yours,

GREENBERG TRAURIG, LLP

Pamela Madeiros

PAM/kac  
Enclosures

ALB 1,606,436v9

## State Comptroller's Comments

1. Based on the formal comments provided by Achievements, we reduced our audit's total disallowance to \$182,590.
2. The "tabs" in question pertain to specialized OSC audit software and did not limit the ability of Achievements officials to review in detail the costs we disallow in our audit. The electronic spreadsheets and supporting schedules we provided to Achievements included all of the pertinent details of our disallowances.
3. We were consistent in our application of RCM documentation requirements to determine the reasonableness and legitimacy of reported costs on Achievements' CFRs. All disallowances reflect the review and conclusions of the State Education Department.
4. The responsibility to ensure that the costs reported on the CFR comply with all aspects of the RCM rests solely with Achievements owners and directors - and not with their hired consultants. Furthermore, our report does not state or otherwise imply that Achievements was not well served by its business or accounting consultants.
5. We disagree with this assertion. In fact, Achievements' CFR consultant told us that he did not verify that the costs Achievements provided to him were reasonable and program-related. Further, the consultant stated that he relies on the client to ensure the accuracy of the data the client provides to him. The inappropriate and personal nature of certain of the disallowed costs makes it counter intuitive to assign all responsibility to the consultant.
6. In the course of conducting our audit, we did not disregard any receipts Achievements provided to us. We reviewed all receipts provided to us and determined whether the expenses documented were reasonable and program-related as prescribed by the RCM.
7. We have amended our report to note that Achievements reported costs totaling \$13.3 million for its State-approved programs. Of this amount, Achievements reported costs totaling about \$8.2 million for the four pre-school special education programs that we audited.
8. Achievements' "for profit" corporate structure had no impact on our audit approach or our conclusions that Achievements' officials and relatives personally benefitted from expenses for certain goods and services. As detailed in our report, certain disallowed expenses (for cruises, concerts, vacations, and other items not related to special education programs) directly enriched Achievements' management and relatives.
9. We have amended our report to correctly indicate the parties responsible for Achievements' ownership and management.
10. It is the responsibility of the reporting entity to include all relevant financial information on the CFR. Furthermore, the contributions mentioned are outside of our audit scope period and have no effect on our audit conclusions or disallowances.
11. SED's Rate Setting Unit has no record of Achievements' representatives contacting them to discuss reporting errors and possible resubmission of CFRs. Moreover, the initiation of our audit did not preclude Achievements from correcting any such CFR reporting errors. Such corrections could have been submitted to the Rate Setting Unit for further action at any time.
12. This assertion is factually incorrect. Achievements' Fiscal Director clearly stated (as witnessed by several auditors) that the letter "P" marked on credit card statements

- identified specific charges as a personal expenses (that were not related to Achievements' operations). Moreover, after the Fiscal Director acknowledged this, Achievements' legal counsel advised him to not use the term 'personal' in further discussions with the auditors.
13. We reviewed sixty months of credit card statements and determined that Achievements posted all of the personal charges from these statements to Achievements' accounting records. No personal items were excluded. Consequently, we concluded that the inclusion of personal charges in the accounting records (and thereafter the CFR) was intentional. Hence, the Fiscal Director's failure to exclude any such charges was likely not attributable to relaxed attention to detail and/or human error.
  14. We traced each account in Achievements' general ledger to the SED-approved program(s) to which it was charged on the CFRs. In some instances, one hundred percent of an account was charged to only one SED program, and consequently, any disallowance related to that account was charged solely to the one program in question. Further, when appropriate, we prorated expenses across multiple SED programs.
  15. This disallowance is reflected correctly in our report. The costs of the items in question were originally recorded in a Repairs and Maintenance (expense) account. At year end, these costs were journal transferred to the Lease Hold-Improvements (asset) account, apparently to be depreciated. However, no depreciation was charged to the CFR for these items. Subsequently, these costs were transferred back to the Repairs and Maintenance account and were fully charged (not depreciated) on the CFR.
  16. The claim that the home entertainment center was purchased in anticipation of a supposed relocation of Achievements' administrative offices is contradicted by the evidence. The system was not only purchased for the purpose of home entertainment use, but prior to the purchase, was specifically tailored for installation in the Callisters' residence, including installation of in-wall wiring. This justification was never offered during the course of the audit, despite affording the Callisters' ample opportunity to be heard. Moreover, the assertion that the \$7,798 "replacement system" installed at Achievements' administrative office is a more advanced system than the \$12,616 system installed in the Callisters' residence is additionally refuted by the evidence, as is the timing surrounding the Callisters' scheduling of the administrative office installation.
  17. All of the costs in question were disallowed because they are ineligible for reimbursement according to the RCM. We have modified the report to note that certain staff improperly benefitted from some costs Achievements reported on its CFRs.
  18. The cost in question was for a college course for the directors' daughter who worked (on an as needed basis) for Achievements during the summer as a part-time teaching assistant. The relationship of the college course to the daughter's limited duties at Achievements was not documented. Although the course likely benefited the daughter, we concluded that its cost was not reasonable and necessary for Achievements' education program.
  19. The tickets in question were purportedly purchased for an organization affiliated with Achievements' directors. Furthermore, Achievements provided no documentation of the direct relationship between the purchase of the tickets and the training sessions that the affiliated organization provided.
  20. Family members accompanied the director on these trips and the room and meal costs they incurred were improperly charged to the CFR. Furthermore, some of the travel included weekends, for which there was no documentation of activities related to special

education programming.

21. During the course of our audit fieldwork, we advised the directors that we did not disallow food purchases that were program-related.
22. During the course of our audit fieldwork, Achievements did not provide us with documentation of purportedly eligible costs that were not claimed on the CFR. Consequently, such costs were not subject of our audit. If Achievements believes that it has underreported eligible costs on its CFRs, it can submit revised CFRs to the State Education Department.
23. We corrected our report, thus reducing the disallowance for excessive facility rental costs by \$3,750 (\$69,975 - \$66,225).
24. The lease agreement between Achievements and Kayan represented a less-than-arms-length transaction. Thus, as documented in our report, Achievements should not have compensated Kayan more than its actual eligible costs, irrespective of the amounts prescribed by the lease contract.
25. The truck in question is owned by Kayan (and not Achievements). Consistent with the RCM's provision for use of a ratio value method to apportion costs, we allowed depreciation of the truck in proportion to the building space Achievements leased from Kayan (which excludes space Kayan leased to other private tenants).
26. The building is owned by Kayan (and not by Achievements). Consequently, it is Kayan's responsibility to comply with ADA building requirements. ADA-related costs incurred by Kayan should be reflected in the rent charged to Achievements, consistent with the RCM's provision for use of the ratio value method.
27. We allowed costs for items used in classrooms and disallowed costs for items which lacked documentation of their program-related purpose.
28. Achievements provided no documentation of the other performance-based elements referenced in its response. Thus, we did not accept these undocumented elements as support for some of the bonuses in question. Moreover, we maintain that such bonuses were inconsistent with RCM requirements.
29. The e-mail provided from the payroll company does not specifically acknowledge that an employee mislabeled (misclassified) standard compensation as a bonus. Instead, the e-mail simply acknowledges that errors can be made.
30. We allowed additional compensation paid when documentation was provided to support increased caseloads, supplemental evaluations and/or work performed beyond the standard school day. We disallowed additional compensation paid when documentation of extra work was not provided.
31. As stated in our report, we were able to confirm employee attendance by non-family members through reviews of other records when time and attendance sheets were not available. However, Achievements provided no records to support the time and attendance of family members during our audit fieldwork. In addition, Achievements' response to the draft report includes one family member's time sheets for three weeks (including one each in the months of July 2007, December 2007 and January 2008). These time sheets, however, are neither signed by the employee nor approved by a supervisor, as required by the RCM. Moreover, we question the reliability of these time sheets. As noted in our report, Achievements CFO told us that he shredded all employee time sheets for the period July 1, 2005 through June 30, 2008.