



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

Division of State Government Accountability

# **Compliance With the Reimbursable Cost Manual**

## **Capital District Beginnings, Inc. State Education Department**



Report 2011-S-1

June 2012

# Executive Summary

## Purpose

To determine whether the costs reported by Capital District Beginnings (Beginnings) on the Consolidated Fiscal Report (CFR) were properly calculated, adequately documented and allowable under the Reimbursable Cost Manual (Manual). This audit covers the two fiscal years ended June 30, 2009 and 2010.

## Background

Beginnings, located in Troy, provides special education services to children from birth through five years of age. Beginnings is reimbursed for these services based upon financial information contained in the CFR it files with SED. To be eligible for reimbursement, the expenses must comply with the guidelines contained in SED's Manual. During fiscal years 2008-09 and 2009-10, Beginnings claimed and received \$16.5 million in State support, of which about \$12.1 million was related to the three programs we audited.

## Key Findings

We disallowed a total of \$831,244 in personal service and other than personal service costs for the two fiscal years ended June 30, 2010 because they were unnecessary, unreasonable, unallowable, or undocumented; or were incurred for the personal benefit of officials at Beginnings. The \$462,748 in disallowed personal service costs include:

- \$240,041 to Beginnings owner/executive directors. One owner/executive director received a full-time salary. However, she lives in a southern State and spent an average of only 55 days in New York State during the two fiscal ended June 30, 2010. The other owner/executive director also received a full-time salary but performed limited service during the same period.
- \$121,158 in salary expenses related to certain undisclosed less-than-arms-length (LTAL) transactions
- \$101,549 in administrative and employee bonuses that were not merit based, as required.

The \$368,496 in disallowed other than personal service costs include the costs related to other undisclosed LTAL relationship transactions, an unapproved site, undocumented vehicle and travel expenses, and the charges for hotel rooms used by the out-of-State owner/executive director when she travelled to Troy from her home in the southern State. Beginnings officials advised that conferences would take place in these hotel rooms. However, appropriate office space was always available at Beginnings' administrative sites.

## Key Recommendations

- SED should review the exceptions identified by our audit and make the necessary adjustments to Beginnings' tuition reimbursement rates.
- Beginnings should ensure that the reporting of reimbursable expenses complies with SED requirements.

## Other Related Audits/Reports of Interest

[Integrated Treatment Services: Compliance with the Reimbursable Cost Manual \(2009-S-37\)](#)

[Henry Viscardi School: Compliance with the Reimbursable Cost Manual \(2009-S-70\)](#)

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

**Division of State Government Accountability**

June 22, 2012

Dr. John B. King, Jr.  
Commissioner  
NYS Education Department  
89 Washington Avenue  
Albany, New York 12234

Dr. Mary K. Garrett  
Director  
Capital District Beginnings  
597 Third Avenue  
Troy, NY 12182

Dear Dr. King and Dr. Garrett:

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 Capital District Beginnings, Inc.: *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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### State Government Accountability Contact Information:

**Audit Director:** Brian Mason

**Phone:** (518) 474-3271

**Email:** [StateGovernmentAccountability@osc.state.ny.us](mailto:StateGovernmentAccountability@osc.state.ny.us)

**Address:**

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

This report is also available on our website at: [www.osc.state.ny.us](http://www.osc.state.ny.us)

## Background

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Capital District Beginnings, Inc. (Beginnings) is a private corporation organized under the laws of the State of New York and is located in Troy, New York. Beginnings provides early intervention and special education services to about 800 children, from birth through five years of age, who reside in a 12-county area in eastern New York. The services include the Preschool-Special Class (code 9100), Preschool Special Education Itinerant Teacher (SEIT - code 9135), and Preschool-Integrated Special Class (code 9160) programs.

The counties and/or school districts pay tuition and fees to Beginnings using rates set by the State Education Department (SED). SED sets these rates by using financial information provided by Beginnings in an annual Consolidated Fiscal Report (CFR). SED has issued the Reimbursable Cost Manual (Manual) to provide guidance on the eligibility of costs and documentation requirements that must be met for rate-setting purposes. The counties and/or school districts use the SED rates to pay for the services and then are partially reimbursed by SED. During fiscal years ended June 30, 2009 and June 30, 2010, Beginnings received State support for its three programs totaling \$5.7 million and \$6.4 million, respectively.

Beginnings is privately-owned and has more than 200 employees. It lists two owner/co-executive directors and two co-assistant executive directors on its CFRs. One of the owner/co-executive directors resides in a southern State. The other resided in-State and serves as a consulting director to Beginnings. The two assistant co-executive directors managed Beginnings' day-to-day operations during the audit period. In addition, the two owner/co-executive directors are part-owners of Service Connections Inc. (Connections), an entity that provides special education services to school-aged children. Connections and Beginnings share the same administrators and direct care staff. The owner/co-executive directors are also part-owners of two buildings that are rented to Beginnings.

# Audit Findings and Recommendations

## Personal Service Costs

Personal service costs, which include all taxable salaries and fringe benefits paid or accrued to employees on the agency payroll, must be reported on the CFR as either direct care costs (teachers' salaries) or non-direct care costs (administrators' salaries). Direct care costs should be charged to specific programs based on employees' work locations and functions. According to the Manual, costs are considered for reimbursement if they are reasonable, necessary, related directly to the education program, and documented sufficiently. We disallowed \$462,748 in personal service costs attributed to the inappropriate payment of salaries during the two fiscal years ended June 30, 2010.

### *Owner's Salary*

According to the Manual, employee compensation must be based on approved payrolls and contemporaneous time records. SED approved Beginnings proposal to operate under a co-director model. According to the Manual, the total reimbursement for co-executive directors is limited to one full-time equivalent (FTE) position. However, Beginnings has four FTE director positions: two executive directors/owners and two assistant executive directors. One of the executive directors lives in a southern State and was physically present in the New York Capital Region for just 92 and 18 days in fiscal years 2008-09 and 2009-10, respectively. During this time she was compensated as a full-time employee. Beginnings officials provided us with emails, rather than time and attendance records, as justification for her role and salary. However, our review showed that she was simply copied on and did not respond to many of these emails. For example, one of the emails was from an applicant seeking a position with Beginnings. The executive director replied that she was spending most of her time at her out-of-State home, but still had "a foot" in Beginnings. She advised that the email would be forwarded to the assistant executive directors "who are in charge."

Minutes of Board of Directors meetings indicate that the other owner/executive director was also compensated as a full-time employee. His official work responsibility was to serve as the consulting executive director to the two assistant executive directors. As with the other owner/executive director, Beginnings officials provided a list of emails and dates of meetings attended, rather than time and attendance records, to justify his full-time salary. However, only 5 percent, or 22 of the 479 emails, had been sent by this Director.

Beginnings' two owner/executive directors are part-owners of Service Connections Inc. and receive compensation for managing it. Service Connections is a for-profit entity that uses Beginnings' administrative and direct care employees to provide special education services for school-aged children. They are also part-owners of PREMED 600 LLC and Barnyard Drive LLC, two entities that own and rent property to Beginnings. The two owner/executive directors advised that their main role at Beginnings is to serve as trustees and to personally stand behind Beginnings' line of credit;

something the assistant executive directors are unable to do. However, according to the Manual, compensation for trustee services is not reimbursable. We therefore disallowed the \$240,041 in claimed expenses for salaries paid to the two owner/executive directors.

### *STAR Center Salary Expense*

In September 2007, Beginnings entered into a 10-year lease agreement to rent space from PREMED 600 LLC an entity consisting of the co-owners and other executives at Beginnings, as well as the husband of one of the co-owners. This space, which Beginnings refers to as the STAR Teacher Resource Center (STAR Center), is not used for instructional purposes - but rather as a location where Beginnings employees can use computers and access shared resources. In addition to annual lease payments, Beginnings also pays all real property taxes and other costs associated with this property.

According to the Manual, a less-than-arm's-length (LTAL) relationship exists when one of several related parties can exercise control or significant influence over the management or operating policies of another party, to the extent that the other is or may be prevented from fully pursuing its own separate interests. Related parties consist of all affiliates of an entity. Furthermore, the Manual states that these relationships must be disclosed in the notes to the audited financial statements. It also states that space occupied by approved instructional and non-instructional programs must be pre-approved in writing by SED. We found no evidence that Beginnings received written pre-approval to use the STAR Center. We disallowed \$121,158 in allocated personal service costs related to the STAR Center because this LTAL transaction was not disclosed, as required; nor was the use of the center pre-approved by SED.

### *Bonuses*

According to the Manual, bonus compensation may be reimbursed if based on merit as measured and supported by employee performance evaluations. Beginnings paid a total of \$110,486 in bonuses to employees during the months of December 2009 and June 2010. We reviewed documentation in support of these bonuses and concluded that they were not merit-based, as otherwise required. For example, Beginnings management, as well as some of the administrative staff, did not receive individual performance evaluations. We disallowed \$101,549 in bonus payments made during fiscal years 2008-09 and 2009-10 because the payments were made to everyone on Beginnings' payroll without regard to merit.

## **Other Than Personal Service Costs**

The Manual 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 Manual, all purchases must be supported with invoices listing the items purchased and the date they were purchased and paid for, as well as copies of canceled checks related to the purchases. In addition, the costs for personal expenses, food and entertainment for officers or employees, and activities not related to the program are not reimbursable. Also, schools must



report LTAL relationships that impact their financial affairs. We disallowed a total of \$368,496 in other than personal service costs because Beginnings did not comply with the Manual.

*Undisclosed LTAL Relationships/Unapproved STAR Center program site and the Tinsley Institute for Human Services*

In addition to the STAR Center, we identified another LTAL relationship that Beginnings failed to disclose. The Tinsley Institute for Human Services (Tinsley), a not-for-profit company, provides training and consultant services to Beginnings. Tinsley was founded by the co-owners of Beginnings. These same individuals also previously served as the co-directors of Tinsley, but they no longer have ties to Tinsley. However, the wife of one of the current associate executive directors of Beginnings was an employee of Tinsley during our audit scope period, and subsequent to this period she became Director of Tinsley. This LTAL relationship was not disclosed on Beginnings' CFRs.

We disallowed \$152,718 and \$47,159 in other than personal service costs associated with the Tinsley Institute and the STAR Center, respectively, because Beginnings officials failed to disclose the LTAL relationships that existed with these entities, as otherwise required. The disallowances include \$85,000 for training provided by the Tinsley Institute and \$36,000 in lease payments for the STAR Center.

*Rent*

We disallowed \$77,266 in rent expenses, as follows:

- \$67,586 paid to rent two program sites from Nare LLC and Barnyard Drive LLC. Nare LLC is owned by the husband of one of the owner/executive directors and Barnyard Drive LLC is co-owned by the co-directors of Beginnings. We also determined that the rents paid by Beginnings for the two program sites were more than the actual documented costs of the LTAL relationship owners, an arrangement that is prohibited according to the Manual. We disallowed the \$67,586.
- \$8,280 for parking spots in downtown Albany. In addition to misclassifying this expense as a rent expense, these parking spots were used by Beginnings employees at their primary work location which is considered a personal travel expense, and is not reimbursable. The Manual states that no personal expenses, including personal travel expenses are reimbursable.
- \$1,400 paid to two collaborative partners for space to hold integrated programs. This amount was in excess of the costs required by the Memoranda of Understanding with the collaborative partners.

*Vehicle and Travel Expenses*

Beginnings officials claimed reimbursement for expenses (lease payments, gas, insurance, repairs, and maintenance) totaling \$40,744 for four vehicles allocated to the programs. The Manual states that the costs associated with the personal use of a program-owned or leased automobile



are not reimbursable. Moreover, the costs to commute to and from an employee's home are not reimbursable. The Manual also requires the use of the vehicles to be documented with individual logs that include, at a minimum, the dates and times of travel, departure and destination sites, mileage between sites, purpose of travel, and the names of the travelers.

The vehicles were registered to and insured by Beginnings with insurance documents stating the vehicles would be garaged at the Troy Office at night. However, three of the vehicles were actually garaged at the homes of the Directors, including the Director who lives in the southern State. We disallowed the \$40,744 because no logs or other documentation were maintained for the four vehicles, as required. Included in the disallowed amount are the cost of towing an employee's personal vehicle and the cost of airplane tickets used by the one of the owner/executive director to commute from her home in the southern State to Beginnings' office in Troy.

### *Insurance and Other Financial Expenses*

According to the Manual, insurance costs are reimbursable if the costs are used to guard against loss to the program. We disallowed \$19,191 in insurance expenses paid on behalf of Service Connections and PreMed 600 LLC, both of which have an undisclosed LTAL relationship with Beginnings, as well as the ineligible costs to insure the four vehicles owned by Beginnings.

The Manual states that interest expense on working capital loans incurred in an LTAL transaction will be reimbursed only with prior written approval by the commissioner. We disallowed \$1,714 in interest expense because the \$150,000 in working capital loans secured from Beginnings co-owners were not pre-approved by SED.

Costs resulting from related penalties associated with fines from Federal, State and local taxes are not reimbursable. We disallowed \$474 in fines and penalties incurred because of the incorrect estimation of taxes paid by Beginnings officials.

### *Cell Phones*

According to the Manual, improperly documented cell phone charges will not be reimbursed. Moreover, only charges for calls related to the special education program are reimbursable. We found that Beginnings provided cell phones to 10 employees during fiscal year 2008-09 and 11 employees during fiscal year 2009-10. We disallowed \$12,586 of the \$16,793 in cell phone charges because Beginnings did not maintain documentation to substantiate the business usage of these phones. The charges included the costs of more than 15,698 night and weekend minutes during fiscal year 2008-09 and 16,363 night and weekend minutes during fiscal year 2009-10.

### *Meetings, Conferences, and Food*

According to the Manual, food for staff, including food provided during meetings and conferences, is not reimbursable. In addition, the costs of conferences attended by administrative staff are limited to two people per conference. We disallowed \$10,960 in expenses for food, beverages,

and supplies for staff days and conferences attended by all employees.

We also disallowed \$2,068 in charges for rooms at a Troy hotel. On three occasions, Beginnings paid for a suite of rooms for its out-of-State owner/executive director when she travelled to Troy from the South. Beginnings officials advised that conferences would take place in the suite. Since there was ample office space at both administrative sites owned by Beginnings, we deemed the cost of the hotel rooms to be unnecessary and unreasonable.

### *Gifts and Other Miscellaneous Expenses*

According to the Manual, gift certificates given to staff and vendors as well as the costs for activities unrelated to the program are not reimbursable. We disallowed \$1,724 in expenses associated with the purchase of gift cards, gift certificates, and club memberships. We also disallowed \$1,892 in miscellaneous expenses, as follows:

- \$1,066 that did not have adequate substantiating documentation,
- \$439 for personal expenses, and
- \$387 that was allocated incorrectly.

## **Recommendations**

### **To SED:**

1. Review the adjustments resulting from our audit and make the appropriate adjustments to the costs reported on Beginnings' CFR. Reduce future payments to beginnings, as appropriate.
2. Consider providing Reimbursable Cost Manual training and/or additional guidance to Beginnings' administrators and staff, as appropriate.

### **To Beginnings:**

3. Comply with the Reimbursable Cost Manual's requirements for eligibility and documentation of all reported program costs.
4. Ensure that all LTAL relationships are disclosed and SED's pre-approval is obtained for sites for which costs are submitted, as required.

## Audit Scope and Methodology

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We audited the costs reported by Beginnings on its CFRs for the two fiscal years ended June 30, 2010. The objective of our audit was to determine whether the costs reported by Beginnings had been properly calculated, adequately documented, and allowable according to the Manual. Our audit was limited to the three rate-based preschool special education programs (codes 9100, 9135, and 9160) provided by Beginnings.

To accomplish our objective, we reviewed Beginnings' financial records, including audit documentation maintained by their independent Certified Public Accountants. We interviewed selected Beginnings 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 all costs submitted for the three programs in our audit scope and made a determination of whether the costs complied with and were allowable by the Manual. We also made visits to certain administrative and educational sites administered by Beginnings.

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

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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 a draft copy of this report to Beginnings and SED officials for their review and formal comment. We considered their comments in preparing this report and have included them in

their entirety at the end of it. In their response, SED officials agreed with our recommendations and indicated the actions they will take to recover the identified overpayments. In contrast, Beginnings officials largely disagreed with our findings. Also, our rejoinders to the Beginnings' comments are included as State Comptroller's Comments.

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 Capital District Beginnings, Inc. 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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**Brian Mason**, Audit Director  
**Kenrick Sifontes**, Audit Manager  
**Ed Durocher**, Audit Supervisor  
**Stephen Lynch**, Audit Supervisor  
**Holly Thornton**, Examiner-in-Charge  
**Lauren Bizzarro**, Staff Examiner  
**Sally Perry**, Staff Examiner

## Division of State Government Accountability

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Andrew A. SanFilippo, Executive Deputy Comptroller  
518-474-4593, [asanfilippo@osc.state.ny.us](mailto:asanfilippo@osc.state.ny.us)

Elliot Pagliaccio, Deputy Comptroller  
518-473-3596, [epagliaccio@osc.state.ny.us](mailto:epagliaccio@osc.state.ny.us)

Jerry Barber, Assistant Comptroller  
518-473-0334, [jbarber@osc.state.ny.us](mailto:jbarber@osc.state.ny.us)

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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

**Capital District Beginnings, Inc.**  
**Schedule of Submitted, Disallowed, and Allowed Program Costs (9100, 9135 and 9160)**  
**For the two Fiscal Years July 1, 2008 through June 30, 2010**

	Amount Per CFR	Amount Disallowed Per Audit	Amount Allowed Per Audit	Notes to Exhibit
<b>Personal Services</b>	\$9,583,518	\$272,800	\$9,310,718	A, C, E, AK,AM-AO
<b>Other than Personal Service</b>	\$1,115,488	\$253,068	\$862,420	G, P, Q, S, AG, AH, AM, AN
<b>Administrative Costs*</b>	<u>\$ 1,376,669</u>	<u>\$305,376</u>	<u>\$1,071,293</u>	A, B, D-O, Q-U, Z, AA- AG, AI-AL, AN, AO
<b>Total Program Costs</b>	<u>\$12,075,675</u>	<u>\$831,244</u>	<u>\$11,244,431</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 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 Beginnings officials during the course of the audit.

- A. **Section I.14(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.4c (08-09), Section II.14.A.4b (09-10)** - An entity that employs Co-Executive Directors shall have total reimbursement for all Co-Executive Directors combined limited to a level commensurate with a 1.0 FTE position. This level will be the maximum compensation level for the entire entity operating the approved programs.
- C. **Section I.14.A.4d (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; and
  - 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.
- D. **Section I.14.A.5(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.
- E. **Section I.14.B.2.b(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.
- F. **Section I.21.A (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.
- G. **Section I.21.B (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.

- H. **Section I.22 (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.
- I. **Section I.23.C (08-09), Section II.23.C (09-10)** - Costs of food provided to any staff including lunchroom monitors is not reimbursable.
- J. **Section I.27.A (08-09), Section II.27.A (09-10)** - Reimbursable insurance premium costs include those for liability, fire/disaster or casualty loss insurance obtained to guard against loss to the program.
- K. **Section I.27.C(2008-2009), Section II.27.C(2009-2010)** - Costs of insurance on the lives of owners/officers or employees when the entity is identified as the beneficiary are not reimbursable. Costs to insure against the loss of key personnel are not reimbursable.
- L. **Section I.28.B (08-09), Section II.28.B (09-10)** - Interest expense on capital indebtedness or on working capital loans incurred in a LTAL transaction between the lender and the borrower will be reimbursed only with the prior written approval of the Commissioner upon establishment of the necessity and cost effectiveness of the transaction.
- M. **Section I.28.D.5 (08-09), Section II.28.D.5 (09-10)** - Interest expense is reimbursable only when there are corresponding payments of principal on the working capital loans *and* only if there are no loans/notes receivable from related parties at any time during the entity's loan repayment period. Payments, which represent "interest only", are not reimbursable.
- N. **Section I.30.3 (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.
- O. **Section I.30.5 (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.
- P. **Section I.41.B.2 (08-09), Section II.41.B.2 (09-10)** - Occupancy costs are based on actual documented rental charges, supported by bills, vouchers, etc.
- Q. **Section I.41.B.5 (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.
- R. **Section I.42.C.1 (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.
- S. **Section I.53.A (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.
- T. **Section I.53.A.4 (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.
- U. **Section I.54.B (08-09), Section II.54.B (09-10)** - Payments for Federal, State and local income taxes or any related penalties and interest are not reimbursable. Penalties and interest on late payments or nonpayment of payroll withholding taxes are not reimbursable.
  - V. **Section I.55.A.1 (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.
  - W. **Section I.55.A.2 (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.
  - X. **Section I.55.B (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.
  - Y. **Section I.55.C (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.
  - Z. **Section I.57.B (08-09), Section II.57.B (09-10)** - Out-of-state travel costs, except for conferences as explained in Section I (08-09) or Section II (09-10) (meetings and conferences), are not reimbursable.
  - AA. **Section I.57.D.1 (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.
  - AB. **Section I.57.D.3 (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.
  - AC. **Section I.57.D.4 (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.
  - AD. **Section I.57.F (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.
  - AE. **Section II.A.1 (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.
  - AF. **Section II.A.3 (08-09), Section III.1.C.(2) (09-10)** - Consultants: Adequate documentation includes, but is not limited to, the consultant's resume, a written contract which includes the nature of the services to be provided, the charge per day and service dates. All

payments must be supported by itemized invoices which indicate the specific services actually provided and for each service, the date(s), number of hours provided, the fee per hour and the total amount charged.

- AG. **Section II.A.4 (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.
- AH. **Section II.A.7 (08-09), Section III.1.G (09-10)** - All contractual agreements (e.g. leases) must be in writing, signed and dated.
- AI. **Section II.A.5 (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.
- AJ. **Section II.A.10 (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.
- AK. **Section II.A.13.a (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.
- AL. **Section II.B.2 (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.
- AM. **Section II.C.1.b (2008-2009), Section I.1.B.2 (2009-2010)** - 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.
- AN. **Section II.C.4 (08-09), Section I.4 (09-10)** - In general a LTAL relationship exists when there are related parties and one party can exercise control or significant influence over the management or operating policies of another party, to the extent that one of the parties is or may be prevented from fully pursuing its own separate interests. These relationships must be disclosed in the notes to the audited financial statements. Related parties consist of all affiliates of an entity including but not limited to its management and their immediate families; its principal owners and their immediate families.
- AO. **Section II.14.10(09-10)** - Bonus compensation may be reimbursed if based on merit as measured and supported by employee performance evaluations.

## Agency Comments - SED



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

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

May 15, 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 (SED) response to the draft audit report (2011-S-1) of the State Education Department: Capital District Beginnings, Inc. Compliance with the Reimbursable Cost Manual.

**Recommendation 1:**

**Review the adjustments resulting from our audit and make the appropriate adjustments to the costs reported on Beginnings' CFR. Reduce future payments to Beginnings, as appropriate.**

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


**Recommendation 2:**

**Consider providing Reimbursable Cost Manual training and/or additional guidance to Beginnings' administrators and staff, as appropriate.**

We agree with this recommendation. SED will continue to provide technical assistance whenever requested and will strongly recommend to Beginnings that they take advantage of our availability to help them better understand the standards for reimbursement as presented in Regulation and the Reimbursable Cost Manual (RCM). We will encourage Beginnings to develop a written Code of Ethics policy if not already in place and to adhere to those principles and policies. We will encourage all administrators to meet with representatives from the Rate-Setting Unit to go over any questions they have on reimbursement and information contained in the 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: Ann Marsh

# Agency Comments - Capital District Beginnings



Administrative Office | 597 3rd Avenue | Troy, NY 12182

Directors Paul F. Bashant Lara E. Horton

518.233.0544 Phone

518.233.0703 Fax

[www.cdbegin.com](http://www.cdbegin.com)

Supporting children where they live and learn since 1984

May 29, 2012

Brian Mason  
Office of the State Comptroller  
Audit Director  
110 State Street  
Albany, New York 12236

Re: Capital District Beginnings  
Compliance with the Reimbursable Costs Manual // 2011-5-1  
Draft Report

Dear Mr. Mason:

Capital District Beginnings (Beginnings) is an approved preschool special education agency that serves the greater Capital District. Founded in 1984 Beginnings has earned a reputation for high quality and innovative early childhood services for children with special needs and their families.

Beginnings currently employs over 200 professionals while serving over 1,000 children and families each year. We utilize a unique service delivery model that is based on providing services to children with disabilities in community-based settings that bring together children with and without disabilities. Beginnings offers services in collaboration with child care centers, Head Starts and Universal Pre-Kindergarten programs. Our model of integration focuses on providing supports to help children succeed in their existing community-based learning environments, as opposed to a segregated educational setting for children with special needs.

Beginnings is an example a cost effective public private partnership currently encouraged by state and national entities. Our model benefits both the taxpayers and the children we serve. We have one of the lowest tuition rates and administrative expenditure percentages in the State.

We understand the importance of the accountability for the use of public funds. Beginnings disagrees with any misuse of public dollars and view the Audit findings as a difference in interpretation. The great majority of disallowances during this Audit were allowable expenses that were actually irregularities and inconsistencies in reporting. Since this audit period we have employed a new controller to ensure these allowable expenses are allocated and reported appropriately in the future. The members of the Audit Team referred to the Reimbursement Cost Manual (RCM), the audit tool, as "vague and inconsistent" and a document with which this team had no experience applying; therefore this may have attributed to some of the disallowances. It is apparent that this lack of experience had a negative impact on our audit findings as they themselves stated that "unfortunately you will suffer from our learning curve."

\* Comment 1

Albany  
113 New Krumkill Road  
Albany, NY 12208  
518.512.5277 Phone  
518.512.5279 Fax

Berlin P.O. Box 496  
164 Green Hollow Road  
Berlin, NY 12022  
518.658.3895 Phone  
518.658.3896 Fax

Saratoga  
195 Church Street  
Saratoga Springs, NY 12866  
518.580.4520 Phone  
518.874.2900 Fax

Schenectady  
25 Lafayette Street  
Schenectady, NY 12305  
518.393.6535 Phone  
518.374.6375 Fax

Troy  
9 125th Street  
Troy, NY 12182  
518.328.0220 Phone  
518.328.0224 Fax

\* See Comptroller's Comments, p. 37.

Brian Mason, p.2 5-29-12

This audit expended a significant amount of time and administrative resources. As Beginnings was one of the first classroom based pre-school programs to be audited by the OSC, we want to help facilitate a more meaningful process for future audits, therefore, the following list of recommendations have been developed based on our experiences.

We recommend:

1. Shorten time period of the Audit.
  - a) A team of three auditors worked daily in our office space for six months. This Audit has continued to proceed for almost 1 ½ years. We estimate the total cost to the public of this process in terms of audit team and resources, supervisors and attorney fees as well as the time of Beginnings' staff and resources to be several hundreds of thousands of dollars. We suggest a review of the cost/benefits. \* Comment 2
  - b) Recognition that a lengthy process results in a disruption and increased expense in program operations.
2. Establish a more organized, objective, confidential and timely process for information exchange. \* Comment 3
3. Remain within scope of stated audit objectives and time frame to assure accurate findings.
4. Examine the effectiveness of the training curriculum by SED to OSC program accountants and providers on the RCM. If co-training were provided it could minimize misunderstandings between Auditors and Providers. \* Comment 4
5. Encourage the OSC to continue to work with SED to clarify any portions of the RCM that the auditors considered "vague and inconsistent", as SED has been very responsive to our questions surrounding the RCM.

We are including in our response a submission from our attorney which identifies factual inaccuracies in the draft report and instances where we believe the RCM may have been misapplied or misconstrued. Thank you for the opportunity to provide this response to the draft audit report.

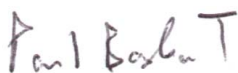
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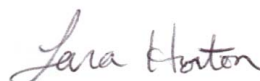
Mary K. Garrett, Ed.D.  
Former Co-Executive Director



Edward Welch, Ph.D.  
Former Co-Executive Director



Paul F. Bashant



Lara E. Horton

\* See State Comptroller's Comments, page 37.





Pamela A. Madeiros  
518.689.1412 (P)  
518.689.1499 (F)  
madeirosp@gtlaw.com

May 29, 2012

Brian Mason  
Office of the State Comptroller  
Audit Director  
110 State Street  
Albany, New York 12236

Re: Capital District Beginnings  
Compliance with the Reimbursable Costs Manual // 2011-5-1  
Draft Report

Dear Mr. Mason:

Capital District Beginnings ("Beginnings") appreciates the opportunity to provide comment in response to the Draft Audit Report issued April 11, 2012.

We have reviewed the document and supporting materials and have identified certain factual inaccuracies in the Draft for which we provide clarification. We have also identified certain instances in which we believe specific principles contained within the Reimbursable Cost Manual (RCM) may have been misapplied or misconstrued. In limited instances, we reassert the challenges shared in our July 13, 2011 response to the preliminary audit, as applicable.

#### General Observations

#### Notations

We have highlighted specific sections of the Report text in our comments herein provided through circled numbers for ease of reference.

#### Executive Summary

While the statements made in the Executive Summary are intended to reflect background, key findings and key recommendations, we provide the following clarifications which more accurately reflect the facts upon which such findings purport to be based:

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

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#### Key Findings

“; or were incurred for the personal benefit of officials at beginning”

1

As stated, the purpose of the Audit was to determine “whether the costs reported by Capital District Beginnings (Beginnings) on the Consolidated Fiscal Report (CFR) were properly calculated, adequately documented and allowable under the Reimbursement Cost Manual (RCM). As a reporting manual, the RCM makes no mention of “personal benefit”. Accordingly, any reference in the Report to alleged personal benefit is speculative, subjective, unwarranted and inflammatory, and reflects an unfounded prejudice against for-profit corporate structures. Were similar disallowances to have been recommended in an audit of a program operated by a not-for-profit entity, audit findings would not include any suggestion of gain. The review would assess whether costs were necessary, reasonable, allowable and documented as per the RCM. References to “personal gain” then, are unwarranted and prejudicial and therefore should be deleted as beyond the scope of the audit.

\* Comment 5

“However, she lives in a southern state...”

#### *Clarification:*

2

The Co-Executive Director currently lives in a Southern state yet maintained a residence in the Capital District during the audit years.

\* Comment 6

According, references to the Co-Executive Director as “out-of-state” are not factually accurate and are unnecessarily provocative. We request that the description references be deleted.

#### Other Related Audits/Reports of Interests

3

While we appreciate and acknowledge revisions made to the preliminary draft relating to tone and phraseology, we must object to the inclusion of the section within the Executive Summary entitled “Other Related Audits/Reports of Interest”. Capital District Beginnings alone was the subject of the present audit. The scope of the audit was limited to costs reported by Capital District Beginnings alone. Accordingly, the Draft of the Capital District Beginnings audit should likewise be limited to Capital District Beginnings alone, as directed by the “Understand the Audit Process” pamphlet which accompanied the Notice of Audit. We respectfully request the deletion of the section as inappropriate especially where, as here, the context of at least one referenced Audit Report -- the Henry Viscardi School (a “4201” private school for blind and deaf students) -- is significantly dissimilar with a dissimilar reimbursement methodology, dissimilar reimbursable cost manual, and dissimilar cost reporting expectations.

\* Comment 7

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### Background

We provide the following correction to specific statements made in the Background material:

The Draft appears to have inverted the level of State support for the audit years. State support for fiscal year ending 2009 was \$5.7M; support for fiscal year ending 2010 was \$6.4M.

4 \* Comment 8

Capital District Beginnings has been restructuring its organization's management through a transition plan over the past few years. For this reason, care should be given in the temporal presentation of certain "facts". More specifically:

- the statement "it lists two owner/executive directors and two assistant executive directors on its CFR" should be qualified to read "It listed during the audit period two owner/executive directors..."

5

- while the statement is factually accurate, it is misleading in its failure to also note that the combined salaries of the co-executive directors aligned with the compensation level of a single executive director as authorized in a PSRU correspondence to Beginnings, and deemed allowable under this RCM, as conceded on page 5 of the Draft.

\* Comment 6

- we renew our prior clarification that one Co-Executive Director currently resides in a Southern State.

6

- statements reflective of the audit years must be cast in the past tense to distinguish past practices from current; specifically, the statement "the other resides in-state and serves as a consulting director.." should be revised to read "the other resided in-state.." Moreover, Beginnings did not report either of its Co-director's as "Consultants" and the description is inappropriate and misleading. The co-director management model is clearly authorized by SRU and within specific RCM guidelines related to compensation. The word "consulting" should be deleted.

7 \* Comment 8

\* Comment 9

- similarly, the statement "the two assistant executive directors manage Beginnings..." should be revised to read "managed Beginnings day-to-day operations during the audit period..."

8 \* Comment 8

While factually accurate, the statement regarding ownership of Service Connections, an entity that provides Special Education Services to school-age children, suggests impropriety. It is important to note that Beginnings did not incur any costs associated with Service Connections, and therefore could report none on the CFR, as the Draft appears to suggest it should. In fact, the CFR-5 does not allow for reporting of related party transactions that do not result in costs to the reporting program.

9 \* Comment 10

\* See State Comptroller's Comments, pages 37 and 38.

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## Audit Findings and Recommendations

### Personal Service Costs

#### Owner's Salary

We renew our request that statements reflecting practice in the audit period be presented in the past tense -- "has" revised to read "had" for example, with further qualification "during the audit period".

We do not challenge the finding that MG and EW were incorrectly reported as a full FTE each during the audit period. We note, however, that the RCM clearly provides for disallowance only of that portion of salary which exceeds the median or accepted salary level for the services provided. As the CFR reflects, while the FTE may have been incorrectly reported, the salaries paid were commensurate with .5 FTE each of the co-directors fulfilled. Report statements around "compensation as a full-time employee" suggesting that the level of compensation was at full FTE levels are misleading and as demonstrated, each co-director's salary was adjusted downward to reflect .5 FTE of allowable compensation.

10

To the point of justification for salary, as auditors are aware, NYSED offers no guidance on maintaining proper documentation in support of management positions -- offers no "indicators" of work performance through work product. However, even in the absence of such guidance, Beginnings maintained in its customary business operations, countless communications between both co-directors and the Beginning management and personnel.

Beginnings provided auditors with copies of over 1,200 "sent emails", 6,300 "received emails" and over 9,000 phone call minutes in support of MG's meaningful participation and involvement in the management of Beginnings, to the extent, we would argue, of at least .5 FTE -- all of which appeared to have been summarily dismissed and disregarded. In fact, the single email that Draft offers by way of example is not representative of the thousands of pieces of correspondence shared with auditors. By contrast, we recall for auditors the attached email exchange with representatives of the Head Start Collaborative project which is far more representative of MGs level of involvement with Beginnings and states in part "...I am spending most of my time in South Carolina dealing with some personal disability issues. I am still actively involved with Beginnings through e-mail, phone and Skype conferences..."(see: Attachment "A").

\* Comment 6

As auditors are aware, the RCM (against which the audit was conducted) contains no requirement either express or implied of the physical presence of an executive director, or, as here, within a co-director management model. The depth and breadth of the documentation provided auditors clearly attests to both owner's substantial involvement in the management of

\* See State Comptroller's Comments, page 37.

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Beginnings - documentation which extends beyond the demonstrated email, mail and phone call presence at program offices to weekly communications on behalf of Beginnings and like activities.

The true reason for the co-executor Directors disallowance is not clear from the Report. In some instances, auditors insinuate "physical presence" was determinative in assessing reasonableness and allowance of reported salaries. In other instances, the auditors suggest the co-executive directors provided "trustee services" - a non-allowable expense. Beginnings has provided volumes of documentation attesting to the high level of involvement of both co-executives directors. Moreover, auditors are well aware of the acceptability of alternative modes of communication including telephone conferencing and other accommodations in the absence of physical presence in this case necessitated by MG's progressive physical disability.

\* Comment 6

We must also note that Beginnings is an employer and covered entity within the meaning of, among other statutes, the New York Human Rights Law, the federal Americans with Disabilities Act, and the federal Rehabilitation Act of 1973. Each of these laws impose on Beginnings the obligation to provide accommodation to employees with disabilities. Under each of the referenced statutes, where an individual is mobility challenged because of a disability but can perform the essential functions of her job through telecommuting, then it is statutorily required that Beginnings accommodate the individual by offering the opportunity to perform her job on a telecommuting basis. That is exactly what happened with MG. A polio sufferer since childhood MG, suffered a fall in July 2006 which not only compromised her mobility but intensified symptoms of post-polio syndrome including progressive muscle weakness, pain and fatigue. She became dependent on a wheelchair to get around, could not commute to Beginnings facilities or enter them without hardship, and was not able to use bathroom facilities with any degree of privacy while there. Accordingly, MG, sought, and was granted, the accommodation for her disabling condition of being mobility impaired the right to telecommute. MG was thereby able to perform all the essential functions of her job. Records submitted fully confirm that MG did actually perform all those functions and fully discharged all her duties and responsibilities. Disability Law Counsel advises that had Beginnings not granted MG the telecommuting accommodation, Beginnings would have been in violation of the above referenced statutes. Salary for MG's position should therefore be allowed. Failure to do so would raise grave questions of noncompliance with the New York Human Rights Law, the federal Americans with Disabilities Act, and the federal Rehabilitation Act of 1973, for the reasons set forth above.

\* Comment 6

For all the reasons set forth above, disallowances associated with the salaries of the co-executive directors should be re-instated as documented allowable costs, including fringe, consistent with the RCM.

We also request:

- revision of the statement around the reported number of directors consistent with information reported on the CFR: more specifically, two co-executive directors and two co-assistant executive directors. The Report suggestion that Beginnings claimed expenses of 4

\* See State Comptroller's Comments, page 37.

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FTEs for employees fulfilling Co-Executive Director positions is factually inaccurate. PB and LH were consistently coded 602 on the CFR - co-assistant directors -- consistent with CFR and RCM requirements;

- correction of the mischaracterization of the "work responsibility" of EW/Co-Executive Director. EW performed responsibilities associated with the fiscal management of Beginnings, as supported by documentation reflecting his constant interface with management and the financial institutions on which Beginnings' fiscal stability depends. Characterization of these responsibilities as merely "consultative" is inaccurate and misleading. Prior to and during the audit period, both MG and EW have provided significant managerial leadership in the overall direction of the Agency.

11

- correction of the misrepresentation that Service Connections currently "uses" Beginnings' employees. A relationship existed during the audit years; however, at no time were any contracted Service Connections costs allocated to SED programs.

12

\* Comment 11

- correction of the mischaracterization of either Co-Executive Director's role in Beginnings management as that of a "trustee". Neither individual made such a representation in any remarks to the auditors nor considered that role as justification for salaries.

13

For all of the reasons set forth above, disallowances associated with the salaries of the co-executive directors should be re-instated as documented allowable costs, including fringe benefits consistent with the RCM.

#### STAR Center Salary Expense

14

The Report mischaracterizes the use of space at the STAR Teacher Resource Center (STAR Center). While no direct instructional services to children were provided at the location, this satellite office served multiple purposes, including providing a centralized location for interaction between members of Beginnings multidisciplinary clinical and pedagogical staff. Other purposes included a location for meetings with parents, secretarial support, team meetings, staff development, child file review and file access, as well as computer and professional library materials. These activities were essential elements of an effective multidisciplinary approach to the provision of special education services to children and their families.

The Draft Report asserts disallowance of certain personal service costs associated with this Center because the LTAL relationship between Beginnings and PREMED 600 LLC was not properly disclosed. Beginnings concedes that the Agency's former Controller did not properly disclose the LTAL relationship between the parties; however, the RCM does not direct disallowances of all costs associated with LTAT transactions. In fact, the RCM directs allowance of such costs to the extent such expenses are "actual costs" to the record owner. Accordingly, costs incurred by Beginnings associated with the operation of its center are properly allowable to the extent such costs are actual as to the owner. Beginnings challenges the disallowances which are, then, actual owner costs.

\* Comment 12

\* See State Comptroller's Comments, page 38.



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Beginnings renews its challenge to this Report's characterization that the Center is an "unapproved site". It is customary practice for approved preschool programs requiring additional administrative or storage space to incur such costs without prior fiscal or programmatic authorization so long as the costs are "within the existing rate". In fact, many programs operate administrative settings other than the "principle business office" identified in the agency's approval letter. The Report's characterization of the STAR Center as an "unapproved site" implies failure to comply with applicable building codes, day care regulations, or any like requirement more appropriately associated with settings in which the provision of services occurs. STAR Center is a purely administrative location which, we would argue, did not require prior fiscal authorization and, importantly, was well known to the State Education Department's program regional associate who at no time advised Beginnings of the applicability of any prior authorization requirement or program interest. Accordingly, we argue that purely administrative space has not customarily required prior approval -- a belief obviously shared by SED's own Program staff.

\* Comment 12

#### Bonuses

We challenge the Report's assessment that Beginnings performance bonus procedures do not support awards made to employees. As shared with the auditors, Beginnings employs a rigorous performance review process which includes self-assessment instruments, supervisory input and management evaluation -- all well documented elements to any standard bonus award protocol -- in compliance with RCM requirements that bonus compensation be based on merit.

15

The Report suggests, however, that the Beginnings bonus protocol was somehow flawed because some management staff did not receive performance evaluations. The RCM does not require performance evaluations in any context other than in support of staff bonus awards.

Bonuses awarded as a result of the program's well documented performance evaluations, then, must be reinstated as allowable expenses. Awards made without such supporting documentation are appropriately disallowed. Auditors may not, however, substitute their own subjective assessment of performance for the assessments properly made through the performance evaluation process.

\* Comment 13

In the provocative example cited by the auditors of an employee who was terminated one week after receiving a performance based bonus award, the facts of that individual case reveal that the individual's performance was evaluated months earlier and supported a bonus at that time. Actions by the individual subsequent to the performance evaluation warranted immediate termination, which occurred a week after payroll had included the bonus. It is unseemly that the Auditors should regard this single example as a basis for the disallowance of all bonuses.

\* Comment 14

\* See State Comptroller's Comments, page 38.



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Tinsley Institute Program Development Administrator

The Report mischaracterizes the costs associated with the Program Development Administrator. Records shared with the auditors reflect CG was engaged by Beginnings on a part time basis -- .6 FTE -- and was compensated commensurate with that level of service effectively "full salary" only to the extent of .6 FTE. These costs were appropriately reported as Beginnings costs and should be allowed.

16

\* Comment 15

We also challenge the relevance and accuracy of the report statements made around the Tinsley Institute and express concern that a mischaracterization of ownership interest may have colored the auditor's assessment. While we do not challenge the statement asserting the co-owners of Beginnings founded the not-for-profit Tinsley Institute, as we shared with auditors, any management relationship with the Tinsley Institute which may have existed was terminated approximately ten years ago.

In the absence of a LTAL relationship, disclosure is unwarranted. Accordingly, the disallowance associated with the Program Development Administrator is based on a flawed premise of an undisclosed LTAL relationship, exaggerated by a rejection of documentation which substantiated part time services to Beginnings.

We also challenge the relevance and accuracy of the Report statement around the current director of the Institute. This arrangement is clearly outside the scope of the audit and the audit years, and was refuted by documentation shared with Auditors. Accordingly we request this statement be deleted.

Other Than Personal Service Costs

As noted above, we challenge the Report's assertion that Beginnings officials failed to disclose the LTAL relationship that was alleged to have existed with the Tinsley Institute in as much as the owners of Beginnings have had no association with the Institute for nearly a decade. The full body of NYS laws governing the transfer of business ownership clearly recognizes a final severance of relationship upon transfer. It is unreasonable that the Auditors should insist on continuing a relationship which NYS law has clearly severed. The RCM clearly contemplates disclosure of existing relationships where "one party can exercise control or significant influence over the management or operating policies of another party, to the extent that one of the parties is or may be prevented from fully pursuing its own separate interests". (RCM, Section I,4(A)). Without any real or ascertainable interest in the Tinsley Institute, the owners of Beginnings could not have conceivably exercised the "control" necessary to trigger the RCM disclosure requirements. Accordingly, all disallowances based upon the false premise of failure to disclosure must be reinstated; more specifically:

17

\* Comment 15

\* Comment 16

\* See State Comptroller's Comments, page 38.

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▪ \$85,000 for training provided by the Institute where, as here, such in service training is a mandated program component of NYSED an approved non-public special education school and the training was well-documented, relevant and necessary as authorized by the RCM (RCM, Section I, 30 (D)). “Costs of conferences attended by teachers and other direct care staff whose purpose is to improve desired student learning outcomes by more effective means are reimbursable”; and

\* Comment 16

▪ \$36,000 in lease payments for the STAR Center, where, as here, the RCM does not authorize the disallowance of costs associated with an “alleged” unapproved site.

\* Comment 12

#### Rent

▪ We challenge the suggestion that ownership of the Nare, LLC was not fully disclosed, as intimated by the inclusion of certain statements around “ownership” under the general heading “Undisclosed LTAL Relationships...”, and request qualification that the LTAL relationship was, in fact, properly disclosed to NYSED.

18

\* Comment 17

▪ We challenge the disallowance of costs associated with parking spaces used by employees of Beginnings’ CP site as a misapplication of the RCM. Parking space expenses are not personal expenses, and are not, as the Report suggests, analogous to non-allowable travel mileage expenses to / from one’s primary work location. These necessary expenses are clearly reimbursable, notwithstanding the reporting misclassification error as a “rent expense” and should be restored as personal service costs.

19

\* Comment 18

#### Vehicle and Travel Expenses

We do not challenge the Report finding that documentation in support of certain vehicle and travel expenses were not consistent with the RCM guidelines. However, we note that there was no “gain” realized by staff or management with regard to the reimbursement of these expenses. All such expenses including allocation of personal use were reported on personal W2 forms and subject to income tax.

20

\* Comment 19

#### Insurance and Other Financial Expenses

Beginnings challenges the disallowance of insurance expenses in the amount of \$19,191 as these costs were clearly incurred to regard against loss to the program as contemplated by the RCM and should not be disallowed on the basis of an unsupported allegation of a LTAL relationship.

21

\* Comment 20

\* See State Comptroller’s Comments, pages 38 and 39.

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We further challenge the disallowance of \$1,714 in interest expenses associated with working capital loans made necessary as a result of inconsistent payment schedules by the various state and local funding streams. Securing pre-approval of such “bridge” loan agreements is simply unrealistic in the face of the immediate payroll deadlines. Furthermore, the interest paid by Beginnings on such short term loans as extended by the owners was identical to the market rate and there was no financial gain realized by owners for these transactions.

\* Comment 21

#### Cell Phones

Beginnings does not challenge the Report finding that documentation was not maintained sufficiently to substantiate the obvious business usage of the phones. We note, however, that the phone service plan package, as auditors are aware, authorizes unlimited night and weekend usage as part of the fixed package fee, making the allocation of discrete business only costs practically difficult. Moreover, business use during nights and weekends is an essential management tool. Accordingly, Beginnings will no longer report any costs associated with cell phone usage until the RCM can provide clearer guidance on appropriate allocations.

22

#### Meetings, Conferences and Food

Beginnings challenges the disallowance of costs associated with the conduct of off-site management meetings. The RCM does not prohibit the conduct of management meetings off-site so long as such meetings are, as here, properly documented.

23

\* Comment 22

#### Gifts and Other Miscellaneous Expenses

Beginnings takes exception to the insinuation that “club membership” expenses have been reported for reimbursement when the “membership” in question was “Sam’s Club” -- a wholesale warehouse “club” which offers supply purchases at discount prices, the “gift membership” to which the Report refers being a package membership whose individual membership is not easily allocated. The “club membership” reference is quite less provocative when accurately described.

24

\* Comment 23

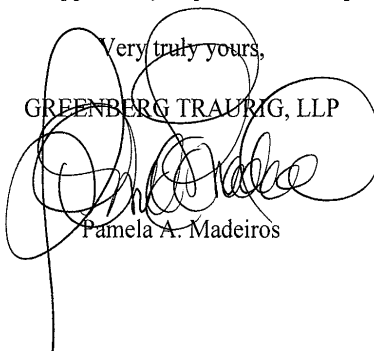
\* \* \* \* \*

\* See State Comptroller’s Comments, page 39.

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Beginnings appreciates the opportunity to provide this response to the Draft Report.

Very truly yours,  
GREENBERG TRAURIG, LLP  
  
Pamela A. Madeiros

PAM/map  
Enclosure  
ALB 1554913v2

## ATTACHMENT "A"

**From:** Frawley, Bob (CCF)  
**To:** Mary Garrett  
**Cc:** Paul Bashant  
**Subject:** RE: 6th Annual Collaborative Breakfast for The Capital Region Council for Young Children with Special Needs  
**Date:** Friday, May 14, 2010 10:20:37 AM

Mary,

Great to hear from you. Sorry to hear you are struggling with your disability. As I get older, my feet hurt, I have shoulder and knee issues. That all seems like a lot, but I cannot imagine what it must be like to deal with something more than aches and pains. Hope there is plenty of warmth and sunshine to make it easier for you.

I actually have a draft e-mail all written to you and Paul asking for your involvement in the Expanding Opportunities Initiative. We have talked about you frequently with tremendous praise. Candace Adams is on the larger team, and Meredith Bastiani, who had been child care licensor, have joined me in singing your praises in nearly every meeting. I have delayed sending the invitation to join us to give the state agencies an opportunity to determine what direction they want to go in. There seems to me a increased willingness to address these issues, so I jumped on the opportunity when it came up.

Six of us will be North Carolina next week at a national meeting of the initiative as part of the Inclusion Institute. That intensive time together should provide the opportunity to set a tentative agenda. After that we should be able to expand the group. I will try and stay in touch, but don't hesitate to contact me if you have not heard anything.

Bob

Robert G. Frawley  
 Deputy Director  
 and Director NYS Head Start Collaboration Project  
 Council on Children and Families  
 52 Washington Street, Suite 99 West  
 Rensselaer, New York 12144  
 phone: 518 473-8081  
 fax: 518 473-7568  
[www.earlychildhood.org](http://www.earlychildhood.org)  
[www.nysfamilyresources.org](http://www.nysfamilyresources.org)  
[www.ccf.state.ny.us](http://www.ccf.state.ny.us)  
 -----Original Message-----

**From:** Mary Garrett [mailto:MGarrett@CDBegin.com]  
**Sent:** Friday, May 14, 2010 9:30 AM  
**To:** Frawley, Bob (CCF); Paul Bashant  
**Subject:** RE: 6th Annual Collaborative Breakfast for The Capital Region Council for Young Children with Special Needs

Dear Bob,

It has been a while since last seeing you. I hope all is well. I have always had such respect for you and the work that you do.

I am spending most of my time in South Carolina dealing with some personal disability issues. I am still actively involved with Beginnings through email, phone and Skype conferences. I do hope you will be able to include Paul as you move forward with the Expanding Opportunities for Inclusion project. As you are aware, Beginnings has been committed to inclusion since our inception. Paul is as passionate as I am in the support for all children to be included in their local educational and childcare programs. He would be a valuable asset as he has pulled Beginnings through many obstacles we have faced over recent years. He is bright and thinks out of the box, but is keenly aware of community and systemic challenges.

Bob, continue with your good work. It's comforting to know that someone in a leadership position is a strong advocate for all children.

Mary

-----Original Message-----

**From:** Frawley, Bob (CCF) [mailto:Bob.Frawley@ccf.state.ny.us]

Sent: Friday, April 30, 2010 12:01 PM

To: Bastiani, Merideth (OCFS); Paul Bashant

Cc: Mary Garrett

Subject: RE: 6th Annual Collaborative Breakfast for The Capital Region Council for Young Children with Special Needs

Paul and Mary:

Our Expanding Opportunities for Inclusion project is just getting started. We will be looking to bring other people in involved as we move forward and would be happy to have you and Mary involved. I sing your praises often.

Bob

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From: Bastiani, Merideth (OCFS)

Sent: Thursday, April 29, 2010 5:11 PM

To: Paul Bashant

Cc: Frawley, Bob (CCF); Mary Garrett

Subject: RE: 6th Annual Collaborative Breakfast for The Capital Region Council for Young Children with Special Needs

Paul,

We appreciate being invited to the table for this sort of meetings.

Hearing about the local issues is a great way to get a sense of how the system is functioning and identifying where the challenges lie. There are certainly a number of things that DCCS can explore to help promote integrated services within \licensed programs, and the Expanding Opportunities initiative gives us not only a formal venue, but also support and resources as we take on the issue. Bob Frawley is our representative for Head Start and should be able to share some of the information on the successes your program has had. On a personal note, I am well familiar with the work of Beginnings, having been a licenser in the Albany Regional Office for a number of years. So thank you for the unique work that your organization is doing!

I look forward to working with you in the future and please feel free to reach out if you have specific ideas or thoughts regarding how DCCS can become more supportive of inclusive settings.

Merideth

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From: Paul Bashant [mailto:pbashant@CDBegin.com]

Sent: Thursday, April 29, 2010 4:53 PM

To: Bastiani, Merideth (OCFS)

Cc: Frawley, Bob (CCF); Mary Garrett

Subject: RE: 6th Annual Collaborative Breakfast for The Capital Region Council for Young Children with Special Needs

Hi Merideth,

On behalf of the Capital Region Provider Council, I wanted to thank you for sharing your morning with us. We found the discussion very helpful as we work together to better serve young children with special needs.

I was particularly interested in the Coalition on Integration you were speaking about. Beginnings has a very unique preschool integration model in NYS. Our mission is to provide services to children in their existing early childhood settings. We form collaborative partnerships with Head Starts, UPK's and day cares to support children so they can remain enrolled and learning in these programs. We place our special education teacher next to the early childhood teacher to form our integrated classrooms. There are many logistical barriers we navigate to make these classrooms work successfully. I had met with Suzanne Sennett in 2007 to discuss with her some of the barriers we were experiencing in providing truly integrated services for children with special needs in OCFS licensed settings. As a result she issued a Memo in support of encouraging these integrated collaborations. There is a fundamental difference between our program and other early childhood special education providers in that we go to where the children are instead of bringing children with special needs to our locations. We believe it is in the best interest of children and families and is a more effective educational model for children. If Beginnings

can be of assistance in any way to this Coalition, please let me know.

Thanks again for sharing with us today. Paul

From: Bastiani, Merideth (OCFS)

[mailto:Merideth.Bastiani@ocfs.state.ny.us]

Sent: Thursday, April 22, 2010 3:34 PM

To: Paul Bashant; Hogan, Barbara (OCFS)

Cc: Melissa Cummings

Subject: RE: 6th Annual Collaborative Breakfast for The Capital Region Council for Young Children with Special Needs

Looking forward to attending.

Merideth

Merideth Bastiani

Office of Children and Family Services- DCCS

52 Washington St., Room 309 South

Rensselaer, N.Y. 12144

(518) 473-5947 (phone)

(518) 474-9617 (fax)

From: Paul Bashant [mailto:pbashant@CDBegin.com]

Sent: Wednesday, April 21, 2010 8:10 AM

To: Hogan, Barbara (OCFS)

Cc: Bastiani, Merideth (OCFS); Melissa Cummings

Subject: RE: 6th Annual Collaborative Breakfast for The Capital Region Council for Young Children with Special Needs Hi Barbara, We are sorry you can't join us this year but we are glad Merideth is able to come. Take care, Paul

From: Hogan, Barbara (OCFS) [mailto:Barbara.Hogan@ocfs.state.ny.us]

Sent: Mon 4/19/2010 2:21 PM

To: Paul Bashant

Cc: Bastiani, Merideth (OCFS)

Subject: RE: 6th Annual Collaborative Breakfast for The Capital Region Council for Young Children with Special Needs Paul - Unfortunately, I'm unable to attend the breakfast next week. But Merideth Bastiani has agreed to attend and represent OCFS. She is involved in a number of initiatives that will be of interest to the group.

Take care,

Barbara

From: Melissa Cummings [mailto:MCummings@cdbegin.com] On Behalf Of Paul Bashant

Sent: Thursday, April 15, 2010 2:46 PM

To: bj08@health.state.ny.us; bkc03@health.state.ny.us; Rusty Kindlon; srybalto@mail.nysed.gov; Molnar, Janice (OCFS); Hogan, Barbara (OCFS); madeirosp@gtlaw.com; mcdonald@senate.state.ny.us; jmorelli@nysac.org; Andrew Jackowski; ngalto@mail.nysed.gov; cocfmxm@omh.state.ny.us; Frawley, Bob (CCF); awojtkie@mail.nysed.gov

Cc: Paul Bashant

Subject: 6th Annual Collaborative Breakfast for The Capital Region Council for Young Children with Special Needs

April 15, 2010

Hello,

The 6th Annual Collaborative Breakfast will be hosted by the Capital Region Council for Children with Special Needs on Thursday, April 29th, 2010 from 9:00-11:00 am at Capital District Beginnings, 597 Third Avenue, Troy, NY 12182. This yearly meeting is a collaborative conversation between Council Service Provider Agency and State Agency representatives in an effort to help us all work toward seamless and meaningful service provision. We hope that through our dialogue we can address any



issues that may arise so that positive outcomes for children with special needs can be achieved. Attached please find the agenda for this years' breakfast. Please RSVP to Melissa Cummings at (518) 233-0544 or by reply to this email. We look forward to another productive year of serving children with special needs in the Capital Region. We hope you are able to join us and we look forward to seeing you on the 29th.

Sincerely,  
Paul Bashant, Chairperson  
Capital Region Council for Young Children with Special Needs

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## State Comptroller's Comments

1. Collectively, the audit team has more than 90 years of professional auditing experience. A significant portion of this pertained to audits of special education providers. Also, throughout the review, the team routinely met with State Education Department (SED) officials to obtain clarification and confirmation of pertinent audit-related matters. Moreover, the audit complied with all generally accepted government auditing standards as prescribed by the U.S. Government Accountability Office. It should also be noted that this audit has a considerable value in helping to ensure that only legitimate transactions are appropriately charged to the State in the years ahead.
2. Professional standards require auditors to approach each review with a skeptical attitude and a questioning mind. Certain circumstances at Beginnings heightened our level of concern and required us to expand our audit testing and analysis. The audit team took the time needed to ensure that findings were properly developed and supported and that the audit complied with professional standards.
3. Our audit objectives remained constant throughout the review. Specifically, we sought to determine whether the costs reported by Beginnings were properly calculated, adequately documented and allowable under SED's guidelines. We expanded the level of testing, as necessary, with regard to certain risk factors we identified at Beginnings.
4. We informed Beginnings officials that we worked collaboratively with SED officials throughout the course of this assignment. Consequently, we maintain there are no misunderstandings regarding our interpretations of the rules that govern this program. Moreover, in their formal response to our draft audit report, SED officials agree with our audit findings and indicated they will make recoveries as appropriate.
5. We have sufficient basis for findings. The findings were formulated with SED's guidance and consider the documentation Beginnings provided to us for examination. Specifically, when a less-than-arms-length (LTAL) transaction involves the lease of real property, any claimed costs above the documented costs of the owner shall be reimbursed only with the written prior approval from SED. Beginnings had no such approval. Moreover, the available documentation clearly showed that the property owners (senior Beginnings officials) profited from these lease transactions.
6. Our presentation accurately reflects the conditions that existed at Beginnings. Because of an unusual staffing arrangement, we sought documentary evidence of the work activities and products of Beginnings' Co-Executive Directors. Such evidence was limited, and consequently, we considered costs attributable to one of the Co-Executive Directors to be excessive and unreasonable. Our findings have nothing to do with the disability of one of the Co-Executive Directors. Rather, we took exception with the lack of support for the time, attendance and completed work of the Co-Executive Director.
7. The inclusion of the report section entitled "Other Related Audits/Reports of Interest" is a standard component of all audit reports issued by our office. It is done to inform readers that other final reports may be of interest to them. Both reports listed deal with compliance with the Reimbursable Cost Manual, which is the subject matter of the Beginnings report.
8. We modified our report to reflect the comments made by Beginnings' officials.

9. Board Meeting Minutes for November 2007 noted that a resolution was unanimously passed in which the individual in question was to have a new role as “consulting” Executive Director. As such, use of this term is neither inappropriate nor misleading.
10. Our statements regarding Service Connections are factual. Contrary to the assertions made by Beginnings, cost was incurred and reported on CFRs that were for the benefit of Service Connections and another LTAL entity, PreMed 600 LLC. Specifically, \$19,191 in insurance expenses were paid on behalf of these two entities and reported as a cost to Beginnings, which we noted as a cost that should be disallowed. Beginnings is correct that neither of the LTAL relationships were disclosed on Beginnings’ CFR.
11. Our findings and statements reflect conditions during the audit period. We have no basis to attest to current conditions.
12. As acknowledged by Beginnings in their response, Beginnings did not disclose that this was a LTAL transaction, nor did they receive the appropriate approvals from SED to use this space as a component of their program. Further, they also failed to disclose this relationship in the notes to their audited financial statements, which is also a requirement. The Reimbursable Cost Manual (Manual) specifically says that any new leases must be submitted to SED staff for review and approval. Also, with a LTAL transaction, cost in excess of the owner’s cost shall only be reimbursed with the approval of the Commissioner, and such approval should be obtained prior to the transaction. Again, this did not occur and the owners were reimbursed above their costs for this lease arrangement. Consequently, all costs associated with the STAR Center were disallowed.
13. We do not dispute that Beginnings had a performance review process. We do, however, contend that bonuses that were awarded were not based on this performance review process, but instead were based on whether an individual was on Beginnings payroll as of a certain date. This does not meet the requirement that bonuses must be based on merit.
14. We removed this example from our report.
15. While we do maintain that Tinsley represents a LTAL that should have been disclosed by Beginnings, we have reviewed the information presented by Beginnings regarding the disallowance of the personal service costs associated with the Program Development Administrator, and we modified the report to remove this disallowance.
16. We maintain that an LTAL disclosure with respect to Tinsley was warranted. While we do acknowledge that the co-owners of Beginnings did sever their relationship with Tinsley years in advance of our audit, the spouse of the Co-director of Beginnings worked for Tinsley during our audit period. Subsequent to our audit period, she became the Director of Tinsley. We maintain that this is a relationship that should have been disclosed. Absent this disclosure, we disallowed the expenditures made to Tinsley during the audit period.
17. Beginnings’ response is incorrect with respect to statements regarding Nare LLC. The issues regarding Nare LLC are under the general heading “Rent” and not “Undisclosed LTAL Relationships...” as stated in their response. We fully acknowledge that Nare LLC was disclosed on Beginnings’ CFR as a LTAL.
18. The Manual clearly states that personal expenses, such as personal travel expenses are not reimbursable. We conclude that parking expenses fall under the parameters of personal travel expenses. It is important to note that a certain number of employees are permanently based at the location where the parking is being reimbursed, while others travel to this site for specific classroom assignments. We only disallowed the portion of

expense related to those employees who were permanently assigned to this location. The other employees were technically in travel status, when they went to this location, and as such, the expense for parking would be allowable.

19. The majority of the disallowances were made because Beginnings did not maintain the logs documenting the use of the vehicles, which is a requirement of the Manual. As such, we disallowed all costs associated with these vehicles. The entire cost of the lease payments/ car payments for these vehicles, any repairs and maintenance, insurance expense and fuel for these vehicles was charged to Beginnings. This is a benefit that accrues to employees to the extent the vehicles in question include personal use. Although officials claim the personal use of these vehicles was reported on the employees' W2s, the W2s were not provided to us even though we made several requests for them.
20. In addition to Beginnings, the insurance expense also covered PreMed 600 LLC (Star Center) and Service Connections (a separate line of business operated by Beginnings management. As identified previously in comment 12, we recommended disallowance of all costs associated with the STAR Center. With respect to Service Connections we maintain these costs should not have been classified as an expense to Beginnings. As such, we see no need to amend our report in this area.
21. We disallowed the \$1,714 in interest expense because the Manual requires that interest expense on working capital loans incurred in a LTAL transaction will only be reimbursed with prior written approval of the Commissioner. There is no indication that this was done.
22. Documentation provided to us does not substantiate the need to hold these meetings offsite, as there was ample space at their administrative sites. We deemed these costs to be unreasonable and unnecessary and, as such, we recommended they be disallowed.
23. Seven wholesale club memberships were given to staff during our audit period. However, nothing was purchased by Beginnings through this membership during our audit period. The cost of the membership does not appear to be necessary.
24. The response from Beginnings includes a copy of the draft audit report. We have not included the draft audit report as part of the final report.