



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

Division of State Government Accountability

Compliance With the Reimbursable Cost Manual

Special Education Associates, Inc.
State Education Department



Executive Summary

Purpose

To determine whether the costs reported by Special Education Associates, Inc. (SEA), on the Consolidated Fiscal Report (CFR) were properly calculated, adequately documented, and allowable under the Reimbursable Cost Manual (Manual). The audit covers the two fiscal years ended June 30, 2008 and June 30, 2009.

Background

SEA, located in Brooklyn, New York, provides special education itinerant teacher (SEIT) and related services to disabled preschool children. The New York City Department of Education pays tuition and fees to SEA using rates set by the State Education Department (SED). SED sets these rates using financial information that SEA presents in an annual CFR filed with SED. During fiscal years 2007-08 and 2008-09, SEA claimed and received \$12.5 million in State support. The Executive and Assistant Executive Directors of SEA are husband and wife.

Key Findings

- We disallowed \$324,881 in personal service costs. SEA officials fraudulently claimed \$324,881 in salary for the Assistant Executive Director for the 2007-08 and 2008-09 fiscal years, even though she was not a full-time employee in their SEIT program but rather a full-time employee at a senior college of the City University of New York. We referred this matter to the Office of the Manhattan District Attorney for investigation and possible prosecution. On December 13, 2011, SEA's Executive Director pled guilty to one count of defrauding the government, a Class E Felony, and paid restitution of \$610,000. The \$610,000 represented salary paid to the Assistant Executive Director, including \$285,000 for the period July 2004 through June 2007 and \$325,000 for the period January 2008 through June 2010. SEA's Assistant Executive Director is scheduled to appear in court in June 2012, at which time it is anticipated she will have resigned her CUNY position and will plead guilty to a crime.
- We disallowed an additional \$60,857 for expenses that did not comply with the Manual.

Key Recommendations

- SED should review the exceptions identified by our audit, as well as the restitution paid by SEA's Executive Director, and determine necessary adjustments to SEA's tuition reimbursement rates.
- SEA 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
State Education Department
89 Washington Avenue
Albany, NY 12234

Mr. Samuel J. Bernstein
Executive Director
Special Education Associates, Inc.
440 Avenue P - 2nd Floor
Brooklyn, NY 11223

Dear Dr. King and Mr. Bernstein:

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 Special Education Associates, Inc.: *Compliance with the Reimbursable Cost Manual*. This 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.

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

Respectfully submitted,

*Office of the State Comptroller
Division of State Government Accountability*

Table of Contents

Background	4
Audit Findings and Recommendations	5
Personal Service Costs	5
Other than Personal Service Costs	6
Another Matter	8
Recommendations	8
Audit Scope and Methodology	9
Authority	9
Reporting Requirements	10
Contributors to This Report	11
Exhibit	12
Notes to Exhibit	13
Agency Comments - SED	14
Agency Comments - SEA, Inc.	16
State Comptroller's Comments	23

State Government Accountability Contact Information:

Audit Director: Frank Patone

Phone: (212) 417-5200

Email: StateGovernmentAccountability@osc.state.ny.us

Address:

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

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

Background

Special Education Associates, Inc. (SEA), located in Brooklyn, New York, is a Sub-Chapter S corporation organized under the laws of the State of New York to provide special education itinerant teacher (SEIT) and related services, such as speech and occupational therapy to disabled children. SEA serves children between three and five years of age. The New York City Department of Education (DoE) pays tuition and fees to SEA using rates set by the State Education Department (SED). SED sets these rates using financial information that SEA presents in an annual Consolidated Fiscal Report (CFR) filed with SED. SED 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. DoE uses the SED rates to pay for the services and then is partially reimbursed by SED. During fiscal years ended June 30, 2008 and June 30, 2009, SEA received State support for its SEIT program totaling \$6.1 million and \$6.4 million, respectively.

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's payroll, must be reported on the CFR as either direct care costs (teachers' salaries) or non-direct care costs (administrators' salaries). According to the Manual, costs are considered for reimbursement if they are reasonable, necessary, related directly to the education program, and documented sufficiently.

SEA's Executive Director and Assistant Executive Director are husband and wife. They have held their positions at SEA since the corporation was established in 1995. We disallowed \$324,881 attributed to the improper payment for the salary of the Assistant Executive Director (See Exhibit on page 12).

Defrauding the Government

We disallowed \$324,881 attributed to the improper payments for the salary of the Assistant Executive Director. For fiscal years ended June 30, 2008 and 2009, SEA officials claimed on the CFRs submitted to SED that \$324,881 in personal service costs were incurred on behalf of their Assistant Executive Director — \$157,703 for 2007-08 and \$167,178 for 2008-09. SEA officials provided us with time sheets and other payroll records to substantiate her full-time work schedule in the SEIT program and the compensation she received.

However, our audit determined that she was never a full-time employee in SEA's SEIT program. Instead, we determined that she had been a full-time employee at one of CUNY's senior colleges since 1998. In her role as professor, dean, and/or departmental chairperson she earned an average of about \$90,000 annually in taxpayer funds from CUNY, including \$123,897 and \$127,999 for calendar years 2008 and 2009, respectively. She also currently serves as secretary to CUNY's Lehman College Foundation, which raises, invests, and distributes private funds for scholarships and other educational endeavors.

In fact, except for some sick and administrative leaves of absence, we found that the hours reportedly worked at CUNY by SEA's Assistant Executive Director were often the same hours that she had reportedly worked for SEA. In one instance, CUNY's attendance records showed that she had attended a conference in Florida on June 17, 2008. However, her SEA time sheet showed her working at SEA on that same day from 9 a.m. to 6 p.m.

In addition, we determined that the Assistant Executive Director did not disclose her dual employment to CUNY, as required. When we reviewed the disclosure forms she filed with the New York State Commission on Public Integrity for calendar years 2007 and 2008, we found she asserted that she worked only at CUNY. She made similar assertions on the Multiple Position Reports she submitted to CUNY for the fall 2007 through spring 2010 semesters.

We referred these issues to CUNY's administrators and to the Office of the Manhattan District Attorney (DA). On December 13, 2011, the Executive Director of SEA pled guilty to one count of defrauding the government - a Class E felony. As part of his plea, the Executive Director admitted to, among other things:

- Engaging with his wife (the Assistant Executive Director) in a scheme, from the Summer of 2005 through the Summer of 2010, to defraud the governments of the State and the City of New York.
- Creating and submitting fraudulent timesheets to the State Auditors to show that the Assistant Executive Director was a full-time employee at SEA.
- Encouraging his wife to make false disclosures on the Multiple Position Reports she submitted to CUNY, as well as on the filings she submitted to the Commission on Public Integrity.
- Submitting fraudulent CFRs to SED.
- Between 2004 and 2007, and January 2008 and June 2010, fraudulently claiming and being reimbursed with \$610,000 in taxpayer funds as a result of this scheme.

As a condition of his plea, the Executive Director, on behalf of SEA, paid restitution of \$610,000 to the DoE. This represented the loss attributable to the full-time salary paid to the Assistant Executive Director for the period July 2004 through June 2007 and January 2008 through June 2010. His wife is expected to plea at a later date.

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, certain types of costs, such as personal expenses, are not reimbursable. We disallowed a total of \$60,857 in other than personal service costs because officials at SEA did not comply with the guidance in the Manual (See Exhibit on page 12).

Leased Vehicles

SEA officials claimed reimbursement for expenses (i.e., lease payments, insurance, repairs, maintenance, gas, and tolls) totaling \$34,010 (\$14,270 in 2008 and \$19,740 in 2009) for two vehicles leased on behalf of the Executive Director and the Assistant Executive Director. The Manual states that the rental costs of vehicles are reimbursable provided that annual rental charges and maintenance costs are comparable to the costs that would be reimbursed if the vehicles were owned, maintained, and depreciated by the program. The Manual also requires the use of the vehicles to be documented with individual logs that include, at a minimum, the dates of travel, time of travel, sites of departure and destination, mileage between sites, purpose of travel, and the name of traveler. SEA's Executive Director claimed that both vehicles were used to conduct SEIT business. However, no logs were prepared and/or maintained, as required. Further, as previously indicated, we found that the Assistant Executive Director was not a full-time employee in the SEIT program; thus vehicle expenses claimed for her usage are not legitimate and

not reimbursable.

Food and Gifts

We disallowed \$10,996, (\$6,908 in 2008 and \$4,088 in 2009) for food consumed by officials and employees during lunch and dinner, as well as at training sessions. We found that, in 2008, officials spent an additional \$3,114 to purchase holiday gifts. SEA officials had erroneously reported the costs of the dinners and holiday gifts as office supplies and postage. According to the Manual, the cost of food and beverages provided to staff at meetings and conferences, and the costs for personal expenses, gift certificates to staff and vendors, and parties for staff are not reimbursable.

We also disallowed \$4,790 in legal expenses paid on behalf of an independent contractor in 2008 and 2009. SEA officials stated that they paid \$3,780 in 2008 and \$1,010 in 2009 to an attorney to change the immigration status of this individual who had performed work for the corporation. Such payments are not eligible for reimbursement.

Employment of Minors

NYS Labor Law prohibits the employment of minors who are under the age of 14 years to perform clerical work. We disallowed the \$3,220 SEA paid to a minor who was 12 and 13 years old in 2008 and 2009, respectively. This minor, the granddaughter of SEA's Executive Director, was employed to perform clerical tasks and received compensation totaling \$1,514 in 2008 and \$1,706 in 2009.

Further, we found that SEA had inappropriately classified this minor and another minor granddaughter as independent contractors instead of employees, thus avoiding the payment of applicable federal, State, and local payroll taxes on their earnings. The work these two individuals performed was under the control of SEA officials. Therefore, according to IRS regulations, they should have been classified as employees. The second granddaughter had worked at SEA when she was 16 and 17 years old, earning a total of \$1,917 (\$833 in 2008 and \$1,084 in 2009). We did not disallow this amount.

Other Inappropriate Expenses

We disallowed \$4,727 in other expenses for 2008 and 2009:

- \$2,520 for counseling services
- \$285 in insurance premiums on behalf of the Assistant Executive Director
- \$840 to reimburse the petty cash fund
- \$637 in membership dues for the Assistant Executive Director
- \$297 for a Home Reporter
- \$115 for a parking ticket paid on behalf of an employee
- \$33 in miscellaneous expenses

These expenses were not eligible for reimbursement because they were not documented properly

and/or were not allowable. Moreover, expenses claimed on behalf of the Assistant Executive Director are not eligible for reimbursement since the Executive Director has admitted that she was not a full-time employee of SEA's SEIT program.

Another Matter

Our audit also identified another matter that may not warrant dollar disallowances, but merits SED's review:

SEA's Independent CPA Was Not Registered in New York State

SED's Office of Professions licenses and registers public accounting professionals operating in the State. Such licensed CPAs are eligible to prepare, evaluate, and attest to the accuracy and completeness of financial statements and related information. To practice in New York State under the authority of this license, a CPA must re-register every three years with the Office of Professions.

Our audit revealed that, as of October 21, 2010, the independent CPA SEA had hired since its inception in 1995 to prepare its certified financial statements and CFRs was not registered to practice in New York State, as required. Moreover, this CPA had not been registered for at least ten years. Despite the lack of registration, SEA paid and claimed reimbursement totaling \$111,000 for the auditing and accounting services he provided the corporation in 2008 and 2009. We brought this matter to the attention of SEA's Executive Director and officials at the Office of Professions. Subsequently, the CPA contacted the State's Office of Professions and commenced the registration process.

Recommendations

To SED:

1. Review the adjustments resulting from our audit and the plea deal, and make the appropriate corrections to the costs reported on the CFRs. Reduce future payments to SEA, as appropriate.
2. Consider banning SEA's Executive and Assistant Executive Directors from participation in State-funded programs.

To SEA:

3. Comply with the Reimbursable Cost Manual's requirements for eligibility and documentation of all reported program costs.
4. Ensure that the CPA who prepares the certified financial statements and the CFR is registered with the Office of Professions.

Audit Scope and Methodology

We audited the costs reported by SEA on its CFRs for the two fiscal years ended June 30, 2008 and June 30, 2009. The objective of our audit was to determine whether the costs reported by SEA had been properly calculated, adequately documented, and allowable under SED's Manual. We did not audit the quality or the quantity of the services provided to students at SEA.

To accomplish our objective, we reviewed SEA's financial records, including audit documentation maintained by their independent Certified Public Accountants (CPAs). We interviewed selected SEA officials, as well as officials from SED, DoE, and CUNY. To complete our audit work, we selected and reviewed a judgmental sample of costs reported by SEA. In selecting our sample, we took into account the relative materiality and risk of the various costs reported by SEA. The scope of our audit work on internal control focused on gaining an understanding of the procurement and disbursement procedures related to personal and other than personal service expenditures. We identified certain control deficiencies that were significant to the audit's objective. These deficiencies are discussed in the appropriate sections of this report.

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

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these management functions do not affect our ability to conduct independent audits of program performance.

Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

Reporting Requirements

We provided a draft copy of this report to SED and Special Education Associates, Inc. (SEA), officials for their review and comment. Their comments have been considered when preparing this final report and are attached in their entirety at the end of this report.

SED officials agree with our report recommendations and advised us that, regarding personal services, SEA has already made the appropriate restitution.

However, SEA officials disagree with some of our report wording and with certain of our OTPS disallowances. We address these disagreements in our Comptroller's Comments following the SED and SEA responses.

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

Frank Patone, Audit Director
Kenrick Sifontes, Audit Manager
Sheila Jones, Audit Supervisor
Joan Williams, Examiner-in-Charge
John Ames, Staff Examiner
Katrina Lau, Staff Examiner
Margarita Ledezma, Staff Examiner
Teeranmattie Mahtoo-Dhanraj, Staff Examiner
Stacy Marano, OSC Investigations
Raymond Russell, OSC Investigations

Division of State Government Accountability

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

Elliot Pagliaccio, Deputy Comptroller
518-473-3596, epagliaccio@osc.state.ny.us

Jerry Barber, Assistant Comptroller
518-473-0334, jbarber@osc.state.ny.us

Vision

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

Mission

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

Exhibit

Special Education Associates, Inc.
Schedule of Submitted, Disallowed, and Allowed Program Costs

State Supported Educational Program (9135)
For the Fiscal Year July 1, 2007 through June 30, 2008

	Amount Per CFR	Amount Disallowed	Amount Allowed	Notes to Exhibit
Personal Services				
Direct Care Costs	\$233,618	0	\$233,618	
Non-Direct Care Costs	\$1,437,816	\$157,703	\$1,280,113	A, C, F
Other Than Personal Services	\$4,478,235	\$36,067	\$4,442,168	A - E, G, H
Total Program Costs	\$6,149,669	\$193,770	\$5,955,899	

State Supported Educational Program (9135)
For the Fiscal Year July 1, 2008 through June 30, 2009

	Amount Per CFR	Amount Disallowed	Amount Allowed	Notes to Exhibit
Personal Services				
Direct Care Costs	\$256,025	0	\$256,025	
Non-Direct Care Costs	\$1,585,204	\$167,178	\$1,418,026	A, C, F
Other Than Personal Services	\$4,535,952	\$39,995	\$4,495,957	A - E, G, H
Total Program Costs	\$6,377,181	\$207,173	\$6,170,008	

Notes to Exhibit

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

- A. Section I. Cost Principles - Costs must be reasonable, necessary, program-related and sufficiently documented.
- B. Section 1.21.A - Costs incurred for entertainment of officers or employees, or for activities not related to the program, or for any related items such as meals, lodging, rentals, transportation, and gratuities, are not reimbursable.
- C. Section 1.22 - Costs resulting from violations of, or failure by, the entity to comply with Federal, State, and/or local laws and regulations, are not reimbursable.
- D. Section 1.23.C - Costs of food provided to staff, including lunchroom monitors, are not reimbursable.
- E. Section 1.57.D - Costs of the personal use of program-owned or -leased automobiles 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.
- F. Section II A (1) - Compensation costs must be based on approved, documented payrolls. Payroll must be supported by employee time records prepared during, not after, the 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.
- G. Section II A (4) - All purchases must be supported with invoices listing items purchased and indicating date of purchase and date of payment, as well as cancelled checks. Costs must be charged directly to specific programs whenever possible.
- H. Section II A (5) - 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 a supervisor as reimbursable.

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

March 15, 2012

Mr. Frank Patone
Audit Director
Office of the State Comptroller
Division of State Government Accountability
123 William Street - 21st Floor
New York, NY 10038

Dear Mr. Patone,

The following is the New York State Education Department's (Department) response to the draft audit report (2010-S-31) of Special Education Associates (SEA): Compliance with the Reimbursable Cost Manual. SEA provides special education itinerant teacher (SEIT) services, as well as related services which include speech and occupational therapy to disabled children. The Department understands that OSC's audit scope did not include non-rate based programs such as Preschool Related Services.

Recommendation 1:

Review the adjustments resulting from our audit and the plea deal, and make the appropriate corrections to the costs reported on the CFRs. Reduce future payments to SEA, as appropriate.

Improper Personal Service Costs:

Audit findings relevant to the 2007-08 and 2008-09 school years determined that improper personal service costs in the amount of \$324,881 were made to the Assistant Executive Director. A plea agreement was reached between the District Attorney of the County of New York and SEA's Executive Director. The agreement required the payment of \$610,000 in restitution to the NYC Department of Education. The \$610,000 was paid from the Executive Director's personal assets. Since the funds have been repaid to the NYC Department of Education, and they were the only municipality purchasing services from SEA, no adjustment will be made to SEA's reported costs.

Other than Personal Service Costs:

The Department agrees with the findings regarding invalid Other than Personal Service Costs (OTPS) which totaled \$36,067 in 2007-08 and \$39,995 in 2008-09. Adjustments will be made to SEA's reported 2007-08 and 2008-09 OTPS costs for these amounts in the respective years.

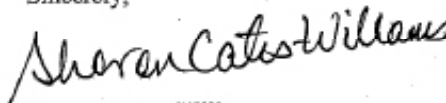
Recommendation 2:

Consider banning SEA's Executive and Assistant Executive Directors from participation in State-funded programs.

Part of the plea agreement between the owner and the District Attorney of the County of New York includes a provision that the owner agree to a lifetime ban from involvement, either directly or indirectly, in the operations of SEA commencing March 31, 2012. The Department will ensure that neither Executive Director nor the former Assistant Executive Director receive approval to operate programs under Department's purview.

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

Sincerely,


Sharon Cates-Williams

c: Ann Marsh
Mary Kogelmann
James Conway

Agency Comments - SEA, Inc.

SPECIAL EDUCATION ASSOCIATES, INC.

440 Ave P Brooklyn, New York 11223
Phone # (718)376-5510 Fax (718) 376-6506

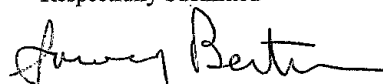
Mr. Frank Patone.
Audit Director
Office of the State Comptroller
123- Williams Street 21st Floor
New York, New York 10038

March 13, 2012

Dear Mr.Patone

Herein is the SEA response to the draft Audit Report 2010-S-31. Our response begins by a challenge to the accuracy of the statements made in the prefatory narrative. We then address each disallowance item individually by program year 2007-2008 and 2008-2009 in order to show where adjustments are appropriate and to provide back-up evidence for the adjustments. These adjustments are then shown to modify the amount of Allowed Costs similar to Exhibit A of the Audit Report. Moreover, each year of the Audit period is treated separately.

Respectfully Submitted



Samuel J. Bernstein,
SEA

Attachments: Audit 2007-2008 Response and Adjustments to Exhibit A
Audit 2008-2009 Response and Adjustments to Exhibit A

CC: Pamela Madeiros
Greenberg Traurig

SEA Responses to OSC Audit 2010-S-31
Explanatory Notes For Adjustments

2007-2008

PERSONAL SERVICE COSTS

We challenge the accuracy of the statements made in the prefatory narrative describing the contents of the plea agreement between the Executive Director of Special Education Associates, Inc. (SEA) and the office of the Manhattan District Attorney and request modification of the narrative as follows to more accurately represent the details of the agreement on page 5. The bullet pointers should read:

* Comment 1

- Creating and submitting fraudulent timesheets to the State Auditors to show that the Assistant Executive Director worked regular business hours for the period 2007-2010.
- Encouraged his wife to make false disclosure on certain forms she was required to submit to CUNY and the Commission on Public Integrity.
- Submitting CFRs to SED that did not reflect the actual services performed by Deena Bernstein.
- Between 2004 and 2006 and 2008 and June 2010, fraudulently claiming and being reimbursed \$610,000 from the government as a result of this scheme.

Furthermore, paragraph 2 of the same page 6 should be replaced as follows:

As a condition of his plea, the Executive Director, on behalf of SEA, paid restitution of \$610,000 to the DOE. This represented the total loss attributable to the Assistant Executive Director's full time salary versus the actual hours she worked for the period of July, 2004 through June, 2007 and January, 2008 through June, 2010.

A. Personal Services Cost Disallowed

1. (\$157,703) Personal Service Cost Disallowed:

Settlement Agreement with NYDA acknowledged work performed by Assistant Executive Director of 350 hours . A full-time workload per the CFR equal 2080 hrs. The percentage of work performed to full-time is 16.8% . This has the effect of reducing the disallowance by \$26,494. Support for this adjustment is provided in a copy of an e-mail from the office as the DA confirming 350 hrs a year. See Note #1.

* Comment 2

$$\$157,703 \div 16.8\% = \$26,494$$

2007-2008 Page 1

* See State Comptroller's Comments on page 23.

OTHER THAN PERSONAL SERVICE COSTSB. Other Than Personal Service Costs Disallowed

1. (\$3,883) of lease charges were disallowed because "all lease payments were charged to SEIT"

All payments were not charged to SEIT as alleged by the Audit but rather electronically allocated by the CFR across IS and RS programs. Although the CFR calls for an "allocation ... using an appropriate methodology" which is the basis of this disallowance, there are exceptions where it is unreasonable to disaggregate the cost. Here is such a case for the following reasons. One, RS services are not provided on site allowing for two different cost streams. Two, there is no RS administrative staff. Three, staff persons are considered part of the G & A expenses in accordance with accepted accounting practices. Hence, the entire office is considered a G & A expense including staff and rent. The cost of both staff and rent are best allocated by the CFR program in this case.

* Comment 3

C. Other Inappropriate Expenses

1. (\$1,294) 25% of the Professional Liability Insurance premium was disallowed as attributable to Assistant Executive Director. The application for this Insurance and the payment stub show that the premium for each supervisor is \$ 285 per year of which the Assistant Executive Director was only one. Hence the disallowance of \$1,294, which is 25% of total premium of \$5,175, is incorrect, the correct adjustment is \$1,009. See Note #2

* Comment 4

$$\$1,294 - \$285 = \$1,009$$

- D. 1. (\$1,291,613) G & A expenses are calculated by the CFR program as the proportion of total G & A expenses attributable to SEIT. The calculation represents the percentage of "admin expenses" to total program expenses. Total program expenses for 07-08 year of SEIT is \$4,711,853 and RS \$357,673 totalling \$ 5,069,526; G & A expenses of \$ 1,389,623 equal 27.41% of program expenses. The G & A expenses allocated to SEIT is \$4,711,853 x 27.41% amounting to \$1,291,613; that portion of overall G& A expenses allocated to SEIT.

* Comment 5

* See State Comptroller's Comments on page 23.

SEA Responses to OSC Audit 2010-S-31

2007-2008

ADJUSTMENTS TO EXHIBIT A

Total Disallowed Audit 2010-S-31	\$193,770	
Adjustments:		
Personal Service Cost (A-1)	\$26,494	* Comment 2
Lease (B-1)	3,883	* Comment 3
Insurance (\$1294 for Assistant Executive Director) (C-1)	<u>1009</u>	* Comment 4
	<u>\$31,386</u>	
Adjustment to G & A expenses	\$162,384	
G & A per CFR #3, line 42	\$1,546,960	
Adjustments	<u>162,384</u>	* Comment 5
Adjusted Total G & A expense	\$1,384,576	
SEIT Program Expense CFR #1, line 64	\$4,711,853	
Allocation of G & A expense to SEIT (D-1)	<u>\$1,291,613</u>	
Total Program Costs	\$6,003,466	

2007-2008 Page 3

* See State Comptroller's Comments on page 23.

SEA Responses to OSC Audit 2010-S-31

Explanatory Notes For Adjustments

2008-2009

PERSONAL SERVICE COSTSA. Personal Services Cost Disallowed

1. (\$167,178) Personal Service Cost Disallowed:

Settlement Agreement with NYDA acknowledged work performed by Assistant Executive Director of 350 hours. A full-time workload per the CFR equals 2080 hours. The percentage of work performed to full-time is 16.8%. This has the effect of reducing this allowance by \$28,086. Support for this adjustment is provided in a copy of an e-mail from the office as the DA confirming 350 hrs a year. See Note #1.

* Comment 2

$$\$167,178 + 16.8\% = \$28,086$$

OTHER THAN PERSONAL SERVICE COSTSB. Other Than Personal Service Costs Disallowed

1. (\$4,530) of lease charges were disallowed because "all lease payments were charged to SEIT"

* Comment 3

All payments were not charged to SEIT as alleged by the Audit but rather electronically allocated by the CFR across IS and RS programs. Although the CFR calls for an "allocation ... using an appropriate methodology" which is the basis of this disallowance, there are exceptions where it is unreasonable to disaggregate the cost. Here is such a case for the following reasons. One, RS services are not provided on site allowing for two different cost streams. Two, there is no RS administrative staff. Three, staff persons are considered part of the G & A expenses in accordance with accepted accounting practices. Hence, the entire office is considered a G & A expense including staff and rent. The cost of both staff and rent are best allocated by the CFR program in this case.

2. (\$3,094) Health Insurance expenses were disallowed as documentation to substantiate claim was disallowed.

* Comment 6

Mr. A. Somerstein, to whom these charges are related, became an employee on about August 20, 2008. Mr. Somerstein was in need of health coverage and rather than join SEA health program it was cheaper to pay for Mr. Somerstein's Medicare and health benefits from his previous employer UBS. Mr. Somerstein was paid on monthly bases for Medicare Part B and for Benefits Concepts Inc. Social Security Medicare Statement and Benefit Concepts statement are provided. See Note #2.

3. (\$2,689) Bay Mechanical is not a vehicle expense as alleged by Audit but for HVAC maintenance which SEA's responsibility dictated by the rental lease. Invoices are provided to show the cost relating to HVAC as well as the lease document which determines our responsibilities. See Note #3.

* Comment 7

2008-2009 Page 1

* See State Comptroller's Comments on page 23.

C. Other Inappropriate Expenses

1. (\$2,520) Audit incorrectly classified these services as counseling. They are in-service training as the invoice show. The charges are for the Consultant leader and are allowable under CMR. #50. A copy of the invoice is attached along with agenda of what was covered along with "sign-ins". See Note #4.

* Comment 8

- D. 1. G & A expenses are calculated by the CFR program as the proportion of total G & A expenses attributable to SEIT. The calculation represents the percentage of "admin expenses" to total program expenses. Total program expenses for 08-09 year of SEIT is \$4,791,977 and RS \$478,298 totaling \$ 5,270,271; G & A expenses of \$ 1,582,521 equal 30.03% of program expenses. The G & A expenses allocated to SEIT is \$4,791,977 x 30.03% amounting to \$1,438,902; that, portion of overall G& A expenses allocated to SEIT.

* Comment 5

2008-2009 Page 2

* See State Comptroller's Comments on page 23.

SEA Responses to OSC Audit 2010-S-31

2008-2009

ADJUSTMENTS TO EXHIBIT A

Total Disallowed Audit 2010-S-31	\$207,173	
----------------------------------	-----------	--

Adjustments:

Personal Service Cost (A-1)	\$28,086	
-----------------------------	----------	--

Lease (B-1)	4,530	* Comment 3
-------------	-------	-------------

Insurance Medical (B-2)	3,094	* Comment 6
-------------------------	-------	-------------

Bay Mechanical (B-3)	2,689	* Comment 7
----------------------	-------	-------------

In-Service Training (C-1)	<u>2,520</u>	* Comment 8
---------------------------	--------------	-------------

	<u>\$40,919</u>	
--	-----------------	--

Adjustment to G & A expenses	\$166,254	
------------------------------	-----------	--

G & A per CFR #3, line 42	\$1,743,425	
---------------------------	-------------	--

Adjustments	<u>166,254</u>	* Comment 5
-------------	----------------	-------------

Adjusted Total G & A expense	\$1,577,171	
------------------------------	-------------	--

SEIT Program Expense CFR #1, line 64	\$4,791,977	
--------------------------------------	-------------	--

Allocation of G & A expense to SEIT (D-1)	<u>\$1,438,902</u>	
---	--------------------	--

Total Program Costs	\$6,230,879	
---------------------	-------------	--

2008-2009 Page 3

* See State Comptroller's Comments on page 23.

State Comptroller's Comments

1. Our report accurately reflects the narrative contained in the Plea Agreement. No report revisions are necessary.
2. We acknowledge the analysis performed by the Office of the Manhattan District Attorney. However, we were not provided with any documentation that the Assistant Executive Director had performed any full-time services for SEA. As such, no report revisions are necessary.
3. We agree and have removed the section on Allocation of Leased Space and the associated disallowance from the report.
4. We agree with SEA's recommended adjustment and have reduced the recommended disallowance by \$1,009.
5. We stand by our initial recommended disallowance. No report revisions are necessary.
6. We agree with SEA's recommended adjustment and have removed the section on Medical Expenses and the associated disallowance from our report.
7. We agree with SEA's recommended adjustment and have reduced the recommended disallowance by \$2,689.
8. The documents provided by SEA to support this expense provide no assurance that the service was actually provided. Moreover, on three occasions we attempted to contact the vendor to obtain additional information that would have assisted us in determining the legitimacy of the charges, and were unsuccessful. As such, no report revisions are necessary.