

THOMAS P. DINAPOLI
COMPTROLLER



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ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

December 29, 2014

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

Mr. Thomas A. Sy
Chief Executive Officer
Aspire of Western New York
2356 North Forest Road
Getzville, NY 14068

Re: Compliance With the Reimbursable
Cost Manual: Aspire of Western New
York
Report 2014-S-36

Dear Dr. King and Mr. Sy:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution, Article II, Section 8 of the State Finance Law, and Section 4410-c of the State Education Law, we conducted an audit of the expenses submitted by Aspire of Western New York to the State Education Department for purposes of establishing the preschool special education tuition reimbursement rates used to bill public funding sources that are supported by State aid payments.

Background

Established in 1947, Aspire of Western New York (Aspire) provides a wide range of services to children with disabilities from birth through age 21. Aspire is authorized by the State Education Department (SED) to provide special education services. Aspire provides such services to approximately 600 children with learning disabilities from 45 school districts in six counties in western New York. The preschool special education services provided by Aspire for children between the ages of three and five years include Preschool Integrated Special Education and

Special Education Itinerant Teacher services (collectively referred to as the Programs).

The counties that use Aspire's special education services pay tuition to Aspire using reimbursement rates set by SED. The State reimburses the counties 59.5 percent of the special education tuition that counties pay. SED sets the special education tuition rates based on financial information, including costs, reported by Aspire on its annual Consolidated Fiscal Reports (CFRs) filed with SED. Costs reported on the CFR must comply fully with the guidelines in SED's Reimbursable Cost Manual (RCM) regarding the eligibility of costs and documentation requirements and meet the reporting requirements prescribed in the Consolidated Fiscal Reporting and Claiming Manual. For the year ended December 31, 2012, Aspire reported approximately \$3.8 million in reimbursable costs for the Programs.

Results of Audit

For the year ended December 31, 2012, we identified \$7,501 in costs charged to the Programs that did not comply with SED's requirements for reimbursement. The costs included \$5,262 in consultant services and \$2,239 in various other than personal service (OTPS) costs such as entertainment and food expenses. We also identified \$32,377 in questionable costs for consultant services that either were not selected through solicitation of competitive bids or lacked sufficient evidence that the services were the most economical and/or appropriate.

Consultant Services

Non-Audit Services

According to the RCM, costs associated with non-audit services provided by a public accounting firm within 365 days of audit work are not reimbursable. In 2012, Aspire paid Dopkins & Company, LLP (a contractor hired to provide accounting and auditing services) \$40,285 for information technology services, \$37,900 for other non-audit services, and \$15,200 for Aspire Foundation services. The portion of the cost disallowance of \$93,385 (\$40,285 + \$37,900 + \$15,200) allocated to the Programs was \$5,262. Per the RCM, these costs are not reimbursable, and SED previously disallowed the aforementioned information technology and other non-audit service costs.

Selection of Consultants

To ensure the most economical and/or appropriate consultant is selected, services should be procured through solicitation of competitive bids, and requests for proposals and other bidding documentation must be kept on file. We identified \$32,377 in questionable costs for consultant services that either were not selected through a solicitation of competitive bids or lacked sufficient evidence that the services were the most economical and/or appropriate.

We reviewed two of Aspire's highest paid consultants who provided services related to the Programs. One consultant provided information technology services; the second provided accounting and auditing services (Dopkins). The 2012 CFR submitted by Aspire indicates the

information technology consultant was paid \$468,882 and Dopkins was paid \$444,280. The portion of the \$468,882 and \$444,280 that was allocated to the Programs was \$26,421 and \$16,997,¹ respectively.

We determined the contract for information technology services (with allocated costs of \$26,421) was not competitively bid. Regarding the second contract, according to officials, Aspire has contracted with Dopkins to provide accounting and auditing services since 1983. In 2011, Aspire sought to rebid these services and a request for proposal was sent to five accounting firms. Four of the firms solicited responded. Of the four respondents, Aspire officials believed three were qualified. Aspire's Audit Committee recommended that Dopkins continue providing accounting and auditing services although they were not the lowest bidder.

However, the Audit Committee's recommendation to the Board did not provide the basis for their selection. According to an Aspire official, they felt that Dopkins, as their present contractor, best understood their needs. Absent the basis for the Audit Committee's rejection of the lowest bidder, who was deemed qualified and was approximately \$49/per hour less than Dopkins, it is unclear whether Aspire obtained the best price and the services were the most economical and/or appropriate. Accordingly, we questioned \$5,956 in costs for this contract (this amount represents the difference in the hourly rate between Dopkins and the lowest bidder, which was then applied to the costs allocated to the Programs).

Based on a review of selected invoices from the two consultants, we determined services were provided; however, there is a lack of assurance that the \$32,377 (\$26,421 + \$5,956) in expenses for consultant services were the most economical and appropriate.

Other Than Personal Services

According to the RCM, reported costs should be reasonable, necessary, program related, and documented properly. We reviewed Aspire's OTPS costs reported on their 2012 CFR and determined that Aspire did not always comply with the RCM provisions. Specifically, we found the following:

- Aspire reported \$19,325 in entertainment expenses that were not in compliance with the RCM. These included expenses for a DJ, decorations, invitations, and gift cards for an employee celebration. In addition, they claimed expenses for a 65th anniversary picnic for Aspire, holiday cards, and tickets to an "Aspiring Night With the Chamber" event. Entertainment expenses of \$1,098 that were not eligible for reimbursement were allocated to the Programs.
- Aspire charged \$1,219 under Meetings and Conferences for golf outings, luncheons, and gala dinners to support local businesses such as the Chautauqua Chamber of Commerce, Niagara Construction Company, and Planned Parenthood of Western New York. Such costs are not eligible for reimbursement. The portion of these expenses charged to the Programs was \$69.
- Aspire mischaracterized \$8,958 in expenses as either Office Supplies and Postage (\$1,116)

¹ This amount is net of the \$5,262 in non-audit service disallowances identified previously.

or Other (\$7,842) for items such as Wegman's gift cards, holiday raffle baskets, and years-of-service gifts for employees. The amount allocated to the Programs for these ineligible expenses was \$505.

- Aspire claimed food expenses of \$3,678 that were not in compliance with the RCM. The amount allocated to the Programs for these food purchases totaled \$284.
- Aspire paid \$607 for a yearly membership to the Chautauqua Chamber of Commerce for the Director of Development that does not meet the RCM's criteria for reimbursable professional dues. This expense was also mischaracterized as Office Supplies and Postage. The portion allocated to the Programs was \$34.
- Charitable donations of \$470 were made to several local volunteer fire companies that were mischaracterized under Other, Equipment. The portion allocated to the Programs was \$26.
- Aspire staff were unable to provide supporting documentation for several transactions totaling \$1,992. Absent appropriate supporting documentation, these costs are not reimbursable. The amount charged to the Programs for these transactions totaled \$121.

We also reviewed the 2012 monthly statements and supporting documentation for Aspire's American Express and MasterCard accounts. Of the 159 transactions allocated to the Programs, we identified 13 American Express charges totaling \$647 for lobbying activities, personal items, and food that were not reimbursable. We identified an additional 15 MasterCard charges totaling \$1,176 for food, gifts, and entertainment that were not program related and, therefore, not reimbursable. The amounts allocated to the Programs for these charges were \$36 and \$66, respectively.

Recommendations

To SED:

1. Review the disallowances and questionable costs identified by our audit and, if warranted, make the necessary adjustments to Aspire's reimbursement rates.
2. Remind Aspire officials of the pertinent SED guidelines that relate to the deficiencies we identified.

To Aspire:

3. Ensure that costs reported on annual CFRs fully comply with SED's guidelines and requirements.

Audit Scope, Objective, and Methodology

We audited the expenses submitted by Aspire on its CFR for the year ended December 31, 2012. The objective of our audit was to determine whether the costs submitted by Aspire on its CFR were properly calculated, adequately documented, and allowable under SED's guidelines, including the RCM.

To accomplish our objective and assess internal controls related to our objective, we interviewed SED officials to obtain an understanding of the CFR and the policies and procedures contained in the RCM and the Consolidated Fiscal Reporting and Claiming Manual. We also interviewed Aspire officials and staff to obtain an understanding of their financial practices relating to the expenses reported on its CFR. We reviewed Aspire's 2012 CFR, IRS-990, and financial statements. We reviewed selected consultant contracts, leases, and employee certifications. In addition, we judgmentally selected and reviewed 127 general ledger transactions totaling \$117,747 in expenses that were submitted on CFR-1 and CFR-3. We also reviewed 159 American Express and MasterCard transactions totaling \$20,636 that were allocated to the Programs.

We conducted our 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 (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.

Reporting Requirements

We provided a draft copy of this report to SED and Aspire officials for their review and formal comment. We considered SED's and Aspire's comments in preparing this report and have included them in their entirety at the end of it. In their response, SED officials concurred with our recommendations and indicated that certain actions will be taken to address them. In Aspire's response, officials disputed our audit conclusions. Our rejoinders to Aspire's comments are included in the report's State Comptroller's Comments.

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

Major contributors to this report were David Fleming, Ed Durocher, Cynthia Herubin, Jennifer Bordoni, and Bruce Brimmer.

We would like to thank SED and Aspire management and staff for the courtesies and cooperation extended to our auditors during this review.

Sincerely,

Andrea Inman
Audit Director

cc: Maria Guzman, Director - Office of Audit Services, SED
Suzanne Bolling, Director of Special Education Fiscal Services, SED

Agency Comments - State Education Department



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

DEPUTY COMMISSIONER
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December 15, 2014

Ms. Andrea Inman
Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street – 11th Floor
Albany, NY 12236

Dear Ms. Inman:

The following is the New York State Education Department's (Department) response to the draft audit report, (2014-S-36), Compliance with the Reimbursable Cost Manual: Aspire of Western New York.

Recommendation 1: Review the disallowances and questionable costs identified by our audit and, if warranted, make the necessary adjustments to Aspire's reimbursement rates.

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

Recommendation 2: Remind Aspire officials of the pertinent Department guidelines that relate to the deficiencies we identified.

We agree with this recommendation.

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

Sincerely,

Sharon Cates-Williams

c: James P. DeLorenzo
Suzanne Bolling
Maria Guzman

Agency Comments - Aspire of Western New York



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GENERAL INFORMATION
716.838.0047

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716.505.5500 : 716.894.8257 FAX
Brock Day Program
716.505.5720 : 716.632.2965 FAX
Communication & Development
716.505.5510 : 716.505.5608 FAX
Day Services Management
716.505.5508 : 716.894.8257 FAX
Fiscal Management
716.505.5560 : 716.894.0148 FAX
Human Resources
716.505.5610 : 716.894.6130 FAX
Purchasing
716.505.5509 : 716.505.5619 FAX

7 COMMUNITY CENTER
7 Community Drive
Buffalo, New York 14225
7 Community Day Program
716.505.5530 : 716.894.6397 FAX
Community Integration Program
716.505.5668 : 716.505.5536 FAX
Health Care Center
716.505.5630 : 716.892.1936 FAX

TRI-MAIN CENTER
2495 Main Street
Buffalo, New York 14214
Central Intake & Home Services
716.838.0047 : 716.838.5925 FAX
CO-OP Program
716.512.6788 : 716.512.6789 FAX
Housing & Residential Programs
716.505.5790 : 716.505.5799 FAX
Service Coordination
716.505.5830 : 716.838.3393 FAX
Individualized Career
and Transition Services
716.836.7235 : 716.831.1145 FAX
Technology Today
Buffalo:
716.836.7232 : 716.838.0865 FAX
Tonawanda:
716.743.8372 : 716.743.0847 FAX
Workforce Development
716.505.7130 : 716.505.5799 FAX

CENTER FOR LEARNING
4635 Union Road
Buffalo, New York 14225
716.505.5700 : 716.633.9351 FAX
Children's Discovery Corner
716.505.5700 : 716.633.9351 FAX

ENVIRONMENT, SAFETY &
TRANSPORTATION
3330 Clinton Street
Buffalo, New York 14224
716.505.5715 : 716.656.1644 FAX

December 5, 2014

Ms. Andrea Inman
Audit Director
State of New York
Office of the State Comptroller
110 State St.
Albany, New York 12236

Re: Compliance with the Reimbursable Cost Manual: Aspire of
Western New York, Report 2014-S-36

Dear Ms. Inman:

Aspire's response to the Audit Findings that are detailed in the
"Draft" copy of the above referenced Report that you e-mailed to us
on 11/24/14 are as follows:

We believe that all of the "questioned costs" that you
identified in your Audit Report are allowable "Agency
Administration" Costs and as such they should be "reimbursable".

Aspire is a Multi-Program Agency with an Annual Budget of
approximately \$65,000,000 and in that capacity incurs costs that are
classified as Agency Administration Costs in accordance with New
York State Consolidated Fiscal Report (CFR) guidelines and in
accordance with Generally Accepted Accounting Principles. These
Agency Administration Costs are allocated to all Agency Programs
using the "Ratio Value" method of allocation which is mandated by
the CFR. (Aspire's Agency Administration Costs in 2012 were
12.3669% of "Operating Costs" a percentage that is significantly
lower than the Administrative Expense Limitation Percentage that is
currently prescribed by Governor Cuomo's Executive Order # 38 i.e.
the current EO # 38 Administrative Expense Limitation is 25% of
"Covered Operating Costs").

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Detailed below are some additional facts relating to certain of the “Questioned Costs” in your Audit Report:

Questioned Costs That Did Not Comply with SED’s Requirements for Reimbursement (\$7,501)

Justification for Agency Administration Expense Classification

- | | |
|---|---|
| 1. Costs to attend NYSACRA Lobby Day | Aspire is a 501 c 3 Corporation and does not lobby. These costs were incurred to facilitate a Self Advocacy Group of people with developmental disabilities, who annually meet with Legislators in Albany. |
| 2. Various Aspire Foundation Related Public Education Costs | The Aspire Foundation exists solely to benefit Aspire of WNY, Inc. and Aspire of WNY, Inc. pays all Foundation Administrative, Fund Raising and Public Education Costs and then charges the Foundation a “Management Fee” that reimburses the Agency for any and all Fund Raising Costs and Foundation Administrative Costs. |
| 3. Employee Celebration Event Costs | This is an annual event that recognizes Employee achievements during the year. |
| 4. 65 th Anniversary Picnic | A family picnic that celebrated and thanked employees for their services during the year. |
| 5. Tickets to Chautauqua Chamber of Commerce Events | Public Education Costs to raise awareness about Aspire in Chautauqua County. |
| 6. CFL Capital Fundraising Lunch | Lunch related to the campaign to fund approximately 25% of the Costs of Aspire’s Center For Learning Renovations. This “Fund Raising Cost” was charged to the Foundation in the Foundation Management Fee. |
| 7. Cost of “Non-Audit” Services provided by the Agency’s External Auditor | Aspire disagrees with the Reimbursement Cost Manual policy of not reimbursing amounts paid to an “External Auditor” for “non-audit” services that occur within 365 days of the period being audited. Aspire believes that all of the fees for the non-audit services that were paid to our External Auditors during 2012 and other years were necessary and were fairly priced. These services were highly technical work that required a level of expertise that our Auditors were able to provide. We further believe that it is more efficient to retain our External Auditors to perform this non-routine work that it would be to employ people with the skill level needed to do the work. Finally, we retain our External Auditors to do this non-audit work because they have the necessary knowledge relating to our Accounting Systems and Software, our many forms of Reimbursement and our Internal Controls. |

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Other Questioned Costs (\$32,377)

- | | |
|----------------------------------|---------------------------|
| 8. IT Department Operating Costs | See Explanation # 1 Below |
| 9. “Excess” External Audit Costs | See Explanation # 2 Below |

* See State Comptroller’s Comments on Page 12.

1. The cost of running Aspire's IT Department in 2012 was outsourced and was not bid out. Instead the Agency followed the procedures listed below to insure that the quality of its IT department was sufficient to meet Agency IT needs and to insure that IT Operating Costs did not exceed the Operating Costs that were incurred when we operated the Department ourselves.

- A. We identified an IT Company that was currently providing IT Services to four Agencies similar to Aspire's and obtained references from these Agencies.
- B. We then had the Company assess Aspire's IT needs and prepare a proposal to provide the needed services.
- C. We then negotiated an annual contract cost that did not exceed our annual IT Department Operating Cost from the year immediately preceding the Contract year when we operated the department internally.
- D. The result was that we substantially upgraded the Agency's IT capabilities and we kept the annual cost in line with our previous years operating costs.

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Comment
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2. Aspire believes that its decision to select its incumbent Auditors, at the conclusion of our External Auditor RFP process was a fiscally prudent decision despite that fact that they were not the low bidder in the RFP process. Our Board of Directors Audit Committee made that decision for the following reasons:

- The incumbent Auditor had an in depth knowledge of our very complex financial operations that any new auditor would take years to acquire.
- Aspire Management and the Board of Directors Audit Committee had established a relationship with the incumbent Auditors whereby we/they participated in establishing the annual Audit Plan/Budget based upon a joint Risk Assessment and then Management and the Audit Committee were able to monitor the actual audit time against the budgeted audit time monthly during the audit thus giving the Agency comfort that we were not being under served or over served by the audit.
- The incumbent Auditors have had a history of participating as volunteers in other Agency activities and fund raising events that provides value to the Agency.

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To summarize, Aspire believes that all the costs being questioned in your audit of our 2012 Preschool Program operating results are allowable Agency Administration Costs that are properly allocated to all Agency Programs including our Preschool Programs. We don't believe that the SED Reimbursement Cost Manual should be used as a basis for disallowing Allocated "Allowable" Agency Administration Costs because they didn't specifically benefit the Preschool Program. Similarly, in the case of External Auditor Other Services being questioned because they were incurred within (12) Months of the audit period and with regard to our purchase of External Audit and IT Services we believe that both processes were conducted prudently and resulted in cost effective outcomes.

Finally, we would like to commend Cindy and the other members of the Audit Team for their professional behavior during the Audit.

Very truly yours,



Thomas A. Sy
President & CEO

TS/jm

cc: Suzanne Bolling, Director of Special Education Fiscal Services, SED

State Comptroller's Comments

1. As stated on page 3 of our report, reported costs should be reasonable, necessary, program related, and documented properly. Aspire's comments #1 through #6 relate to costs such as entertainment expenses, lobbying activities, fundraising, and food for employees. These costs are not reimbursable according to the RCM.
2. Compliance with the RCM is mandatory (not optional). According to the RCM, costs associated with non-audit services provided by a registered public accounting firm or any person associated with that firm, during or within 365 days of required audit work, are not reimbursable.
3. As Aspire's response acknowledges, Aspire did not contract for IT services through a competitive bidding process. According to the RCM, the selection of professional services must be done through a formal request for proposal process that includes solicitation of competitive bids.
4. Aspire acknowledges the auditor selected was not the lowest bidder. According to the RCM, costs of consultants' services are reimbursable provided that fees do not exceed the prevailing rate for such services. In addition, the consultant must be the most economical and/or appropriate provider available for a particular service. However, Aspire did not provide any evidence that the firm in question did not exceed the prevailing rate or was the most economical and/or appropriate provider available for the particular service(s) needed.