New York State Office of the State Comptroller
Thomas P. DiNapoli
Division of State Government Accountability

Compliance With the Reimbursable Cost Manual

State Education Department
Yeled v'Yalda Early Childhood Center

Report 2015-S-19 December 2015

Executive Summary

Purpose

To determine whether the costs reported by Yeled v'Yalda Early Childhood Center (Yeled) on its Consolidated Fiscal Reports (CFRs) were properly documented, program-related, and allowable pursuant to the State Education Department's (SED) Reimbursable Cost Manual (Manual). The audit included all expenses claimed on Yeled's CFR for the fiscal year 2013-14, and certain expenses claimed on Yeled's CFRs for the two fiscal years ended June 30, 2013.

Background

Yeled is a Brooklyn, New York-based not-for-profit organization that is authorized by SED to operate, among other SED-approved programs, a Special Education Itinerant Teacher (SEIT) program to serve disabled children between the ages of three and five years. During the 2013-14 school year, Yeled provided SEIT services to 1,582 students. The New York City Department of Education (DoE) refers students to Yeled based on clinical evaluations and pays for its services using rates established by SED. The rates are based on the financial information that Yeled reports to SED on its annual CFRs. SED reimburses DoE for a portion of its payments to Yeled based on statutory rates. For the three fiscal years ended June 30, 2014, Yeled reported approximately $81 million in reimbursable costs for the audited program.

Yeled also operates numerous other programs, such as Head Start, Infant/Toddler Early Intervention, and Women, Infants, and Children (WIC).

Key Findings

For the three fiscal years ended June 30, 2014, we identified $2,950,518 in reported costs that did not comply with the Manual's requirements and recommend such costs be disallowed. These ineligible costs included $1,026,139 in personal service costs and $1,924,379 in other than personal service (OTPS) costs. Among the disallowances we identified were:

- $1,062,157 in OTPS costs related to non-approved SEIT sites. The ineligible costs include mortgage interest, depreciation, and other costs related to 20 sites that were not approved by SED;
- $683,915 in non-program related OTPS costs. The ineligible costs pertained to a Head Start program, an Early Intervention program, a portion of a building Yeled leased to a medical center, and other non-SEIT related programs;
- $571,929 in salaries and fringe benefits for employees who did not work for the SEIT program. According to Yeled time records, job descriptions, cost allocation sheets, and personnel records, certain employees worked as administrators for other affiliated programs, such as the WIC program, a Fitness Center, Early Intervention, Evaluations, Head Start, and Early Head Start;
- $215,528 in excessive allocation of shared employees; and
- $74,025 in vehicle expenses not supported by usage logs.

Key Recommendations

To SED:

- Review the recommended disallowances resulting from our audit and make appropriate adjustments to the costs reported on Yeled's CFRs and to Yeled's reimbursement rates.
- Work with Yeled officials to help ensure their compliance with Manual provisions.

To Yeled:

- Ensure that costs reported on future CFRs comply with Manual requirements.

Other Related Audits/Reports of Interest

Whitestone School for Child Development: Compliance With the Reimbursable Cost Manual (2014-S-38)
Institutes of Applied Human Dynamics: Compliance With the Reimbursable Cost Manual (2014-S-39)

State of New York
Office of the State Comptroller

Division of State Government Accountability

December 31, 2015

Ms. MaryEllen Elia
Commissioner
State Education Department
State Education Building
89 Washington Avenue
Albany, NY 12234

Mr. Solomon Igel
Chief Executive Officer
Yeled v'Yalda Early Childhood Center
1312 38th Street
Brooklyn, NY 11218

Dear Ms. Elia and Mr. Igel:

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 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, entitled *Compliance With the Reimbursable Cost Manual*, of our audit of the costs submitted by Yeled v'Yalda Early Childhood Center to the State Education Department for the purposes of establishing preschool special education tuition reimbursement rates. This audit was performed 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.

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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Background

Yeled v'Yalda Early Childhood Center (Yeled) is a not-for-profit organization authorized by the State Education Department (SED) to provide Special Education Itinerant Teacher (SEIT), Preschool Evaluations, and Related Services programs to disabled children between the ages of three to five years. During the 2013-14 fiscal year, Yeled provided SEIT services to about 1,582 students. Based in Brooklyn, New York, Yeled provides its SEIT program primarily to children in Kings County. Yeled also operates a range of other programs, such as Head Start, Infant/Toddler Early Intervention, and Women, Infants, and Children (WIC).

The New York City Department of Education (DoE) refers students to Yeled based on clinical evaluations and pays for Yeled's services using rates established by SED. The rates are based on the financial information that Yeled reports to SED on its annual Consolidated Fiscal Reports (CFRs). To qualify for reimbursement, Yeled's expenses must comply with the criteria set forth in SED's Reimbursable Cost Manual (Manual), which provides guidance to special education providers on the eligibility of reimbursable costs, the documentation necessary to support these costs, and cost allocation requirements for expenses relating to multiple programs. Reimbursable costs must be reasonable, program-related, and properly documented. The State reimburses the DoE 59.5 percent of the statutory rate it pays to Yeled.

Chapter 545 of the Laws of 2013 mandates the State Comptroller to audit the expenses reported to SED by special education service providers for preschool children with disabilities. For the three fiscal years ended June 30, 2014, Yeled reported approximately $81 million in reimbursable costs for its SEIT program. Our audit period focused on fiscal year 2013-14; however, we expanded our review to include certain items claimed on the CFRs for fiscal years 2011-12 and 2012-13.

Audit Findings and Recommendations

For the three fiscal years ended June 30, 2014, we identified $2,950,518 in reported costs that did not comply with the Manual's requirements for reimbursement. The ineligible costs included $1,026,139 in personal service costs and $1,924,379 in other than personal service (OTPS) costs (see Exhibit on page 15 of this report).

Personal Service Costs

According to the Manual, personal service costs, which include all taxable and non-taxable salaries and fringe benefits paid or accrued to employees on the agency's payroll, must be reported on the provider's CFR as either direct care costs (e.g., teachers' salaries) or non-direct care costs (e.g., administrators' salaries). All claimed costs must comply with the applicable provisions of the Manual. For the three fiscal years ended June 30, 2014, Yeled reported approximately $74.4 million in personal service costs for its SEIT program.

Excessive Compensation Expenses

The Manual states that staff should be reported in the job code title supported by salary agreements and job descriptions. Time and attendance of individuals whose salaries are charged to the SEIT program must be documented by official time records or similar documents. Compensation of individuals who work on multiple programs must be allocated based on their actual work effort. If hours of service cannot be calculated or a time study cannot be completed, then alternative methods that are equitable and conform to generally accepted accounting principles may be utilized. SED requires that the service provider make all attempts to directly charge expenses to the appropriate cost center. Further, SED requires prior written approval for education program expansion requiring additional staff. We recommend disallowing $1,026,139 in personal service costs that do not comply with the Manual's guidelines for reimbursement, as follows:

Non-SEIT Employees

For the three fiscal years ended June 30, 2014, Yeled officials allocated $571,929 in compensation to the SEIT program for 14 employees who did not work for the SEIT program. We found that Yeled's time records, job descriptions, cost allocation sheets, and other corroborating personnel records indicated that these employees worked as administrators for other programs, such as WIC, Fitness Center, Early Intervention, Evaluations, Head Start, and Early Head Start. However, $424,920 of these employees' salaries was allocated to the SEIT program as agency administration expenses (CFR-3) and $30,822 as a program administration expense (CFR-1).

For example, for the three fiscal years ended June 30, 2014, Yeled reported the Fitness Center Director's entire salary ($277,089) on CFR-3 as an agency administration expense instead of on CFR-2 as a Fitness Center expense (under "Other Programs"). Consequently, Yeled improperly allocated $95,662 of his salary to the SEIT program using the ratio value method. Yeled also reported $30,822 of an Evaluations Coordinator's salary as an administrative expense to the SEIT program instead of to the Evaluations program. We recommend SED disallow $571,929 ($455,741 in salaries and $116,188 in fringe benefits) that was improperly allocated to the SEIT program.

Excessive Allocation of Shared Employees' Compensation

For the three fiscal years ended June 30, 2014, we identified $215,528 in over-allocated compensation paid to employees who were shared among multiple Yeled programs. We recommend SED disallow $215,528 in over-allocated compensation costs allocated to the SEIT program, as follows:

- $103,257 ($92,962 in salaries and $10,295 in related fringe benefits) in compensation for three employees whose compensation was primarily charged to the SEIT program, although their written job descriptions and time records showed that they worked for all of Yeled's special education programs. We reallocated the employees' compensation among all Yeled special education programs and determined that $103,257 was over-allocated to the SEIT program;
- $60,353 ($54,469 in salaries and $5,884 in related fringe benefits) in over-allocated compensation for two Yeled employees for periods when they did not perform SEIT-related work. During these periods, the employees' time records indicated that they worked for non-SEIT programs (e.g., Head Start);
- $51,918 ($46,744 in salary and $5,174 in related fringe benefits) in over-allocated compensation for an information technology assistant. Although this employee's job description and time records indicated that he provided support to the entire agency, his salary was allocated only among Yeled's preschool special education programs.

Employees at Unapproved Sites

For the three fiscal years ended June 30, 2014, we found $238,682 ($215,045 in salaries and $23,637 in related fringe benefits) in compensation for 11 maintenance employees who were assigned to two Yeled sites that were not approved by SED. In fact, SED denied Yeled's December 2014 request to add SEIT space at these locations. Therefore, we recommend that SED disallow the $238,682 in question.

Yeled officials partially disagreed with our disallowances, claiming that the employees' time records, cost allocation sheets, and other corroborating personnel records did not reflect their actual work assignments. Nevertheless, the Manual requires that providers maintain actual work effort records for staff shared among multiple programs, or allocate their compensation among the programs based on documented time studies or other reasonable methods.

Other Than Personal Service Costs

For the three fiscal years ended June 30, 2014, Yeled charged approximately $6.6 million in OTPS expenses to the SEIT program. We identified $1,924,379 of these expenses that did not comply with SED reimbursement requirements.

Expenses Related to Unapproved Sites

The Regulations of the Commissioner of Education (Regulations) define SEIT as an itinerant service provided by a certified special education teacher of an approved program to preschool students attending a regular early childhood program, a child care setting selected by the parent, or the child's home. For the SEIT program, providers must obtain written approval from SED for program expansion requiring additional property-related costs, classroom equipment, etc. Further, proposals for renovations, alterations, or major repairs must be submitted to SED for review and comment.

For the three fiscal years ended June 30, 2014, Yeled had SED approval for only one site for its SEIT program. However, Yeled reported expenses related to 21 sites. In a December 2014 letter to SED, Yeled requested approval for additional SEIT space at three of these locations. Yeled officials advised SED that the additional sites were needed to provide SEIT administration as well as supervision of children diagnosed with autism spectrum disorder who receive multiple services, such as SEIT, applied behavioral analysis (ABA), and related services.

However, in May 2015, SED formally denied Yeled's request and advised Yeled that the SEIT program described as SEIT/ABA at these locations was inconsistent with the purpose of a SEIT program. In addition, SED reviewed Yeled's floor plans and found that there was a significant amount of space allocated for activities (e.g., ABA pull-out services, staff lounge) that fall outside the boundaries of SEIT services. Consequently, no additional space was allowed because (per the Commissioner's Regulations) SEIT teachers are to provide services at the usual preschool student's environment, such as an early childhood program, child care setting selected by the parent, or the child's home.

Consequently, for the three fiscal years ended June 30, 2014, we recommend SED disallow $1,062,157 in mortgage interest, depreciation, and other OTPS costs related to unapproved sites as detailed below:

Mortgage Interest

For the three fiscal years ended June 30, 2014, Yeled paid $5,184,981 in mortgage interest for four buildings owned by the organization. Yeled allocated $948,091 (for three of the buildings) to the SEIT program. However, only one of the buildings was approved by SED for SEIT. SED denied Yeled's December 2014 request to add SEIT space at the other two buildings. As such, for the three fiscal years ended June 30, 2014, we recommend SED disallow $272,248 in mortgage interest reported to the SEIT program for these two buildings.

Depreciation

For the three fiscal years ended June 30, 2014, Yeled allocated $505,385 to the SEIT program for depreciation costs for 16 unapproved locations owned or leased by Yeled. Examples of the depreciation costs include demolition, construction, remodeling, architectural, and interior design costs. However, SED denied Yeled's December 2014 request to add SEIT space at three of these locations, and Yeled never requested SED approval for the other 13 locations. Consequently, we recommend that SED disallow the $505,385.

Other Unapproved Site Expenses

For the three fiscal years ended June 30, 2014, Yeled charged $284,524 (to the SEIT program) for other property-related costs at seven locations for which Yeled did not obtain SED approval. These costs included $19,608 in electric and gas utility costs. Therefore, we recommend that SED disallow the $284,524.

Yeled officials disagree with our audit disallowances. However, correspondence between Yeled and SED indicated that the additional sites were not approved. For three of the sites, SED based its decision on the Regulations, which clearly state that SEIT services are to be provided in a child's regular setting, such as a preschool program or child care setting selected by the parent. In addition, the letter advised Yeled that prior to implementing any changes to the program design, the proposed modifications must be submitted to SED for written approval. Yeled never requested approval from SED for the remaining 17 sites. Accordingly, all costs related to the unapproved SEIT sites reported to the SEIT program for our audit period are not reimbursable.

Non-Program Related Costs

According to the Manual, costs must be reasonable, necessary, program-related, and supported by sufficient and appropriate documentation. The Consolidated Fiscal Reporting and Claiming Manual (CFR Manual) states that when programs share the same geographic location or more than one State Agency is served at the same geographic location, property and related costs must be allocated between the programs/State Agencies benefiting from those resources. These costs include expenses such as utilities, repairs and maintenance, depreciation, and leases or mortgage interest. The recommended allocation method for shared space uses square footage as the statistical basis. However, if the use of this method in a specific situation does not result in a fair allocation of the costs, another reasonable method may be used. For the three fiscal years ended June 30, 2014, we recommend SED disallow $683,915 in non-program related costs, as detailed below:

Mortgage Interest

For the three fiscal years ended June 30, 2014, Yeled paid $2,517,401 in mortgage interest for the building approved by SED as a SEIT administration site. Yeled also administers other programs at this location, such as Head Start, Early Intervention, and WIC. Further, Yeled rents a portion of the building to a medical center. We recommend SED disallow $398,074 in mortgage interest that was over-allocated to the SEIT program, as follows:

- $183,580 for space occupied by the medical center;
- $119,308 for space used for Early Intervention administration;
- $90,589 for space used for Head Start administration; and
- $4,597 for space used for the Facilitated Enrollment program.

Depreciation

For the three fiscal years ended June 30, 2014, Yeled reported $5,359,809 in depreciation for buildings, leasehold improvements, vehicles, furniture, fixtures, and equipment. As previously mentioned, Yeled operates multiple programs requiring allocation of the depreciation of shared assets to the appropriate programs. Yeled used the mortgage interest allocation percentages to allocate depreciation costs to the SEIT program. We reviewed Yeled's depreciation schedules and recommend SED disallow $222,910 for the following non-reimbursable costs reported to the SEIT program:

- $147,222 in additional depreciation that was over-allocated to the SEIT program based on unreasonable allocation methods, including:
    - $74,969 allocated based on the percentage of owned space occupied by the medical center that rents space from Yeled;
    - $37,001 based on a percentage of owned space used for Head Start administration;
    - $33,370 allocated based on the percentage of owned space used for Early Intervention administration; and
    - $1,882 allocated based on the percentage of owned space used for the Facilitated Enrollment program.
- $75,688 in depreciation of non-SEIT related assets reported to the SEIT program, including:
    - $29,133 for playground/play areas and associated equipment;
    - $13,263 for exercise/gym/Fitness Center equipment;
    - $10,875 for kitchen equipment and food carts;
    - $7,676 for buses;
    - $6,983 for facilitated enrollment property;
    - $5,292 for assets that were not used;
    - $2,176 for Early Head Start property; and
    - $290 for a partition used for the WIC program.

Yeled officials partially disagree with our disallowances, arguing that we improperly characterized certain assets and building spaces as non-SEIT property. However, we based our disallowances on our review of Yeled's asset and square footage records as well as discussions with Yeled officials during our fieldwork to obtain an understanding of their methodologies and to address their concerns.

Other Non-Program Related Expenses

We also recommend SED disallow $62,931 in other non-program related costs, including $22,808 in Fitness Center service fees charged to the SEIT program.

Vehicle Costs

The Manual states that vehicle usage must be documented with individual vehicle logs that include, at a minimum, the date and time of travel, places of departure and destination, mileage, purpose of travel, and the name of the traveler. During the audit period, Yeled leased ten vehicles (eight of which were in effect at a given time) and charged expenses, including lease payments, insurance, maintenance, gas, penalties, and fees on its CFRs. However, Yeled officials did not maintain logs for vehicle usage, as required by the Manual. Yeled officials acknowledged that the required logs were not maintained. Thus, we recommend SED disallow $74,025 in vehicle-related costs that were charged to the SEIT program.

Other Various Ineligible Expenses

We identified additional expenses totaling $104,282 that are ineligible for reimbursement based on the Manual and recommend that SED disallow them. These ineligible costs include:

- $62,645 for costs that were not supported by invoices or the invoices did not indicate the specific services provided, service dates, or items purchased. Yeled contends that most of the costs were adequately documented because the applicable contracts provided for a monthly fee and described the services to be provided. We noted that some of the described services were for ambulance and emergency room tours.
- $10,353 for 2013-14 unnecessary costs, including $10,099 in cell phone charges for 20 employees. We reviewed Yeled's explanations for why these employees were issued cell phones and found that their duties and/or access to Yeled landline phones did not substantiate a need for them to have cell phones to further the operations of the SEIT program. For instance, Yeled allocated the Fitness Center Director's cell phone costs to the SEIT program although he did not perform SEIT-related services and had access to Yeled landline phones;
- $19,597 for gifts, including $645 for flowers and $16,191 for gift baskets given to both employees and nonemployees;
- $7,713 for food, beverages, utensils, and tableware, including $4,881 for coffee and tea;
- $1,340 in 2013-14 travel expenses for non-employees;
- $1,246 for unallowable 2013-14 interest, penalties, and fees, including $259 in penalties for NYC Fire Department and Environmental Control Board violations;
- $921 for unnecessary and/or non-SEIT related 2013-14 advertising costs, including $282 to advertise occupational therapy certification training to the public and $101 for an advertisement that congratulated a Yeled volunteer; and
- $467 for ineligible donations in fiscal year 2013-14.

Yeled officials partially disagreed with our disallowances. However, they claimed that certain service contracts, such as the one for ambulance services, help SEIT students in case of medical emergencies. They also claimed that providing cell phones to top, middle management, and other staff is necessary to further Yeled operations. We reviewed Yeled's support for the cell phone assignments, including travel details and job descriptions, and determined that these costs were not necessary and/or not reasonable, indicating a need for re-evaluation of Yeled's cell phone assignment policies.

Recommendations

To SED:

1. Review the recommended disallowances resulting from our audit and make appropriate adjustments to the costs reported on Yeled's CFRs and to Yeled's reimbursement rates.

2. Work with Yeled officials to help ensure their compliance with Manual provisions.

To Yeled:

3. Ensure that costs reported on the future CFRs comply with Manual requirements.

Audit Scope and Methodology

We audited the costs reported on Yeled's CFRs to determine whether they were properly documented, program-related, and allowable pursuant to SED's Manual. The audit included all claimed expenses for fiscal year 2013-14 and certain expenses claimed on Yeled's CFRs for the two fiscal years ended June 30, 2013.

To accomplish our objective, we reviewed the Manual, the CFR Manual, Yeled's CFRs, and relevant financial records for the audit period. We also interviewed Yeled officials, staff, and independent auditors to obtain an understanding of their financial and business practices. To complete our audit work, we selected a judgmental sample of costs reported by Yeled for review. Our sample took into account the relative materiality and risk of the various costs reported by Yeled. We assessed the sample of reported costs to determine whether they were supported, program-appropriate, and reimbursable. Our review of Yeled's internal controls focused on the controls over Yeled's CFR preparation process.

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 objectives. We believe that the evidence obtained during our audit provides a reasonable basis for our findings and conclusions based on our audit objectives.

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; Article II, Section 8 of the State Finance Law; and Section 4410-c of the State Education Law.

Reporting Requirements

We provided draft copies of this report to SED and Yeled officials for their review and formal comment. We considered their comments in preparing this final report and attached the comments to the end of the report. In their response, SED officials agreed with our recommendations and indicated that they would take certain actions to address them. Yeled officials, however, disagreed with some of our report's findings. Our rejoinders to certain Yeled comments are included in the report's State Comptroller's Comments. Yeled officials also included a lengthy set of attachments with their response. Those attachments are not included in this report. However, they have been retained on file at the Office of the State Comptroller.

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.

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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

Yeled v'Yalda Early Childhood Center
Schedule of Submitted and Disallowed Program Costs
for Fiscal Years 2011-12, 2012-13, and 2013-14

Program Costs	Amount Per CFR	Amount Disallowed	Amount Remaining	Notes to Exhibit
Personal Services				
Direct	$69,611,757	$488,353	$69,123,404	
Agency Administration	4,832,348	537,786	4,294,562	
Total Personal Services	**$74,444,105**	**$1,026,139**	**$73,417,966**	A,B,E,O,P
Other Than Personal Services				
Direct	$3,984,943	$1,224,856	$2,760,087	
Agency Administration	2,579,402	699,523	1,879,879	
Total Other Than Personal Services	**$6,564,345**	**$1,924,379**	**$4,639,966**	A-D,F-N,Q-S
Total Program Costs	**$81,008,450**	**$2,950,518**	**$78,057,932**	

Notes to Exhibit

The following Notes refer to specific sections of SED's Reimbursable Cost Manual used to develop our recommended disallowances. We summarized the applicable sections to explain the basis for each disallowance. We provided the details supporting our recommended disallowances to SED and Yeled officials during the course of our audit.

A. Section II. Cost Principles - Costs must be reasonable, necessary, program-related, and sufficiently documented.
B. Section I.1.B. - Program and fiscal issues that require prior written approval of the Commissioner's designees include but are not limited to: 1) Education program expansion requiring additional staff, property-related costs, classroom equipment, etc., when the cost is expected to be reimbursed fully or partially through the tuition rate. Both program and fiscal designee written approval are required. 2) New or renovated facility space, both instructional and non-instructional, to be occupied by approved programs in which space is new, or substantially altered or result in capitalized costs will require both program and fiscal designee written approval prior to implementing.
C. Section II.3. - Outreach activities such as publications and other public relations endeavors that describe the services offered by approved private schools, enabling them to better contribute to community educational objectives, are reimbursable. The intended outcome of these publications and public relations endeavors should be that of providing information and not for the purpose of recruiting students into programs or soliciting fund-raising monies or donations. New York State places students without regard to advertising or public relations activities.
D. Section II.9.A.(1) - Renovations of existing buildings: Costs of renovations, alterations, or major repairs must be approved by the District Board in accordance with the District's annual approved budget policy. Proposals for renovations, alterations, or major repairs must be submitted to SED for review and comment.
E. Section II.13.A.(4)b. - Staff should be reported in the job code title supported by salary agreements and job descriptions.
F. Section II.16. - Political and charitable contributions and donations made by the program are not reimbursable.
G. Section II.20.A. - 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.
H. Section II.20.B. - 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.
I. Section II.21. - Costs resulting from violations of, or failure by, the entity to comply with Federal, State, and/or local laws and regulations are not reimbursable.
J. Section II.22.C. - Costs of food provided to any staff, including lunchroom monitors, are not reimbursable.

K. Section II.22.D. - Food costs will not be reimbursed for special education itinerant programs unless required by the student's IEP as an instructional supply.
L. Section II.24. - Gifts of any kind are not reimbursable.
M. Section II.57.A. - Costs incurred for telephone/cell phone service, local and long distance telephone calls, and electronic facsimiles (fax) are reimbursable provided that they are used primarily in furtherance of the operation of the special education program.
N. Section II.59.F - Travel expenses of spouses, family members, or any nonemployee (e.g., consultants, independent contractors) are not reimbursable unless the spouse or family member is an employee of the entity(s) and a legitimate business purpose exists for them to travel.
O. Section III.1.A. - 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.
P. Section III.1.B. - Actual hours of service are the preferred statistical basis upon which to allocate salaries and fringe benefits for shared staff who work on multiple programs. Entities must maintain appropriate documentation reflecting the hours used in this allocation. Acceptable documentation may include payroll records or time studies. If hours of service cannot be calculated or a time study cannot be completed, then alternative methods that are equitable and conform to generally accepted accounting principles may be utilized. Documentation for all allocation methods (bases and percentages) must be retained for a minimum of seven years. Guidelines for acceptable time studies for CFR filers are provided in Appendix L - "Acceptable Time Studies" of the CFR Manual.
Q. Section III.1.C.(2) Consultants - Adequate documentation includes, but is not limited to, the consultant's resume and a written contract that includes the nature of the services to be provided, the charge per day, and service dates. All payments must be supported by itemized invoices that 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. In addition, when direct care services are provided, the documentation must indicate the names of students served, the actual dates of service, and the number of hours of service to each child on each date.
R. Section III.1.D. - 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. When applicable, competitive bidding practices should be used in conformance with the Purchasing Handbook.
S. Section III.1.J.(2) - 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. If the vehicle was assigned to an employee, also list the name of the employee to whom it was assigned. The annual mileage for program purposes and repairs and maintenance costs for each vehicle should be summarized and maintained.

Agency Comments - State Education Department

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

DEPUTY COMMISSIONER
Office of Performance Improvement and Management Services
O: 518.473-4706
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December 29, 2015

Mr. Frank Patone
Audit Director
Office of the State Comptroller
Division of State Government Accountability
59 Maiden Lane, 21st Floor
New York, NY 10038

Dear Mr. Patone:

The following is the New York State Education Department's (SED) response to the draft audit report, 2015-S-19, Compliance with the Reimbursable Cost Manual: Yeled v'Yalda Early Childhood Center.

In addition to the actions that will be taken in response to the specific recommendations described below, SED will closely examine the circumstances that led to the findings described in the audit report. This examination will include an assessment of the programmatic oversight and fiscal management employed at Yeled v'Yalda Early Childhood Center (Yeled) and will be a factor in the consideration of the continued approval of this provider and the corrective action or enforcement actions that may be warranted.

Recommendation 1:

Review the recommended disallowances resulting from our audit and make appropriate adjustments to the costs reported on Yeled's CFRs and to Yeled's reimbursement rates.

We agree with this recommendation. SED 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:

Work with Yeled officials to help ensure their compliance with Manual provisions.

We agree with this recommendation. SED will continue to provide technical assistance whenever requested and will strongly recommend the Yeled officials take advantage of our availability to help them better understand the standards for reimbursement as presented in Regulation and the Reimbursable Cost Manual (RCM). Furthermore, Consolidated Fiscal Report (CFR) training is available both in person, at one of the six locations it is offered across the State, and online on SED's webpage. SED recommends that all individuals signing the CFR certification statements, namely Executive Directors and Certified Public Accountants, complete this training. At the direction of the Board of Regents, the Department intends to require that this training be mandatory and will require individuals to verify that they have completed the training.

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

Sharon Cates-Williams

c: James P. DeLorenzo
Belinda Johnson
Suzanne Bolling

Agency Comments - Yeled v'Yalda Early Childhood Center

Yeled v'Yalda
EARLY CHILDHOOD CENTER

1312 38th Street [ ]
Brooklyn, NY 11218
Administrative Site
718.686.3700
WIC Program
718.686.3799
Fitness Center
718.686.3788
NYS OHPM Health Exchange [ ]
1265 38th Street, 2nd floor
718.686.2188
Yeled v'Yalda Learning Center [ ]
1257-63 38th Street
Brooklyn, NY 11218
718.514.8600
12 Franklin Avenue [ ]
Brooklyn, NY 11249
718.302.0905
99 Heyward Street [ ]
Brooklyn, NY 11206
718.855.6916
407 East 53rd Street [ ]
Brooklyn, NY 11203
718.485.0020
563 Bedford Avenue [ ]
Brooklyn, NY 11211
718.384.1430
600 McDonald Avenue [ ]
Brooklyn, NY 11218
718.854.7192
667 Eastern Parkway [ ]
Brooklyn, NY 11213
718.778.8654
712 Bedford Avenue [ ]
Brooklyn, NY 11206
718.514.8925
1200 Ocean Parkway [ ]
Brooklyn, NY 11230
718.514.8928
1326 38th Street [ ]
Brooklyn, NY 11218
718.686.3715
1349-53 50th Street [ ]
Brooklyn, NY 11219
718.854.6922
1377 42nd Street [ ]
Brooklyn, NY 11219
718.514.8930
1601 42nd Street [ ]
Brooklyn, NY 11204
718.436.4445
2166 Coney Island Avenue [ ]
Brooklyn, NY 11223
718.732.7770
3909 15th Avenue [ ]
Brooklyn, NY 11218
718.853.9853
4206 15th Avenue [ ]
Brooklyn, NY 11219
718.686.5500
5110 18th Avenue [ ]
Brooklyn, NY 11204
718.871.9100
6002-12 Farragut Road [ ]
Brooklyn, NY 11236
718.209.1122
10 Gregg Place [ ]
Staten Island, NY 10301
718.815.4488
20 Park Hill Circle [ ]
Staten Island, NY 10304
718.720.0090

December 22, 2015

Mr. Stephen Lynch
Audit Manager
NYS Office of the State Comptroller
State Government Accountability
59 Maiden Lane
New York, New York 10038

Re: State Education Department
Yeled v'Yalda Early Childhood Center
Compliance with the Reimbursable Cost Manual
Report 2015-S-19

Dear Mr. Lynch:

We have reviewed the Draft audit report of Yeled v'Yalda Early Childhood ("YvY") for the three audit years 2011-12, 2012-13 and 2013-14 as referenced above and appreciate the further consideration accorded our comments as provided at the exit conference and in our detailed response to the preliminary audit reports and findings. We must, however, renew our challenges to certain findings as set out below and request reconsideration of the information provided in finalizing the audit.

Contextual Point of Reference

YvY believes strongly that the complexity of its operations may present to the auditors certain challenges which may be overcome by an improved understanding of the unique partnership YvY enjoys with the federal ACF/DHHS, the New York State Education Department and innumerable human services agencies. (See: MMU/NYSED: Attachment A)

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Head Start/SEIT Partnership

The Head Start program was created 50 years ago to provide a quality preschool education to the nation's neediest children. Today, all Head Start programs are guided by the Head Start Early Learning Outcomes Framework which outlines the domains of development – cognitive, social/emotional, language/literacy, perceptual/physical – that must be addressed in the Head Start classroom in order to assure children's school readiness. The Congressional mandate under which Head Start operates (CFR 45 part 1308), the Head Start Act, also calls for Head Starts to enroll at least ten percent of children with disabilities, who must also be educated in all these developmental domains – with individualized services where necessary. The Individuals with Disabilities Education Act (IDEA) charges the State Education Agency with the responsibility for assuring the availability of a free appropriate public education for all children with disabilities. Together, these two Acts call for a sharing of responsibility between Head Start and the local LEA for educating children with disabilities. "IDEA stresses the role of multiple agencies and requires their maintenance of effort." (See: Appendix to Part 1308, Head Start Performance Standards: Attachment B)

Yeled v'Yalda (YvY) Early Childhood Center has a long history of providing a quality Head Start preschool education to eligible three to five year olds. Its reputation for welcoming children with disabilities has resulted in the agency exceeding its ten percent mandate. Today, more than 30% of the children who attend YvY Head Starts receive special education services.

Yeled v'Yalda's Special Education Division was founded to serve these children, as well as children in other programs. Yeled v'Yalda's Special Education Itinerant Program has, for the last 20 years, been a contract agency for the local LEA, the NYC Department of Education, to provide mandated SEIT services to children ages three to five, most of whom attend Head Start programs.

Many of the children who attend YvY Head Starts have been diagnosed as being on the autistic spectrum. These children require intensive therapy services, and the YvY Special Education Itinerant Program has responded appropriately. In fact, the success of the behavior interventions provided by YvY is widely recognized.

YvY SEIT's work with children on the autistic spectrum primarily by using the ABA (Applied Behavior Analysis) approach, an approach validated by research, and one of the recommended best intervention practices described in the Early Intervention Clinical Practice Guidelines issued by the NY State Department of Health in furtherance of the State's implementation of Part C of the federal IDEA, the federal special education program for 0-3 year old toddlers which transitions into NYSED's special education programs. One basic element of this "intensive behavioral and educational intervention program" which requires "systematic use of behavior teaching techniques and intervention procedures" is "intensive direct instruction by the therapist, usually on a one-to-one basis."

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The New York State guidance further stresses that "[a] continuum of behavioral strategies may be important as the children progress. Strategies generally progress from more individualized (structured one-on-one sessions) to more general interactions (such as with peers in social groups)." Yeled V'Yalda Head Start is unique in that it is one of only a few agencies that can offer the full continuum of services to children, both the intensive one-to-one SEIT services required by the ABA approach (and all other approaches recommended by the NYSDOH guidelines) and the general interactions with peers that complement the recommended strategies. It is probably the only such agency that also services Yiddish-speaking children.

Many children who receive ABA services provided by YvY SEITs are also enrolled in YvY Head Start. They spend a portion of the day receiving one-on-one SEIT services – the number of hours of service is determined by the IEP, which is issued by the NYC Department of Education. The intensity of the interactions demands total attention and focus, so the SEITs must work with the children in a quiet, private area. As they progress, the children spend more time in the classroom, where Head Start staff, assisted by YvY SEITs, helps ease the transition to this mainstream setting. A team approach is crucial to assure the children's success in being mainstreamed, with the proper balance between one-on-one time and time spent interacting with other children. This approach is consistent with both Head Start guidance in Part 1308 of the Head Start Performance Standards, which calls for flexibility in the amount of time spent in the classroom vis a vis the time spent in Special Education, and the State guidelines, as cited above. ("Children may spend part of the program hours in Head Start for a mainstreaming experience and part in a specialized program such as an Easter Seal Society or a local mental health center. The amount of time spent in either program should be flexible, according to the needs of the individual child....Staff of both programs should observe each other's work with the child who is enrolled and maintain good communication." Part 1308)

Indeed, local NYC DOE districts have referred children to Yeled v'Yalda Head Starts because Yeled V'Yalda has the ability to offer the full spectrum of services required by children who have been diagnosed as being on the autistic spectrum, and because space in Center-Based/Special Class programs is limited and often unavailable.

It bears repeating that the amount of time the SEIS teacher expends working with a child in a quiet, private area is highly individualized and is aligned with the child's ability to benefit from a more socialized setting -- such as the classroom. As a child demonstrates the ability to interact with his/her peers while receiving discrete special education services, the provision of those services in such a setting becomes more frequent until ultimately the child receives most services within the classroom setting. Thus, services in a quieter setting will generally be more pronounced at the commencement of a program year and gradually reduce over the term of the IEP. It is this, fluid and ever-changing emmersion of services within the Head Start program which bears the greatest successes but also presents its own challenges. The duration of services within or without the classroom may change daily, making a traditional distinction between general early childhood education programming contrasted with special education programming more difficult. The degree to which the SEIT service is immersed into the Head Start program day changes with such frequency as to further blur the clear lines of distinction between Head

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Start and SEIT – as, we would suggest, was the fuller intent of the federal Head Start initiative. Clearly, the child is benefitting simultaneously from the two encoiled programs. It is this encoiling which requires a broader view when categorizing costs or reporting allocations.

This effective interventional approach also demands a large supportive infrastructure. SEIT practitioners need to be very well trained in the ABA approach, which is very specific in its demands, in order to practice it successfully. YvY has called in several trainers with expertise in the ABA approach to train its practitioners, in addition to employing a Clinical Director and trained supervisory staff. The Clinical Director observes the SEITs at work and guides them in their practice. Stein K. Lund, a well-known researcher in the field of autism, whose expertise is devising individualized curricula to deal with specific deficits across the spectrum of development, visits regularly, both to train intervention teams and to advise on curricula for specific children.

In addition to necessary private space for one-on-one SEIT sessions, space is needed for regular training, consultation on individual cases, and meetings with parents, whose cooperation is essential for children to benefit from the program. The Clinical Practice Guidelines stress "[f]amily involvement as a critical component in the overall program," and families of children who are receiving services are, indeed, part of the therapeutic team, together with YvY SEITs, their supervisors, consultants, and the YvY Head Start team. The YvY Special Education Itinerant Program has also offered a support group for parents to help them deal with their special children and with the problems that may occur in families when they have a child with special needs. Supervisory personnel are always on call to deal with problems that may arise, whatever the hour.

Enrollment in Yeled v'Yalda Head Start also confers additional benefits to children who are receiving SEIT (ABA) services. Head Start guidance insists that Head Start must "provide or arrange for [these children] the full range of health, dental, nutritional, developmental, parent involvement and social services provided to all enrolled children." Children are monitored for health concerns and receive all health screenings (medical, dental, vision, hearing, nutritional) given to YvY Head Start children. Parents benefit from participation in parent activities and receive the social services offered to parents of all Head Start children, in addition to the specific services offered by the SEIT staff.

Head Start mandates require that educational services be individualized for each Head Start child. To assure that every child receives the proper individualized attention, Head Start Education Directors must be trained to supervise teachers who are dealing with this specialized population; teachers and assistant teachers must be trained in proper interactions with children who are on the autistic spectrum and whose skills — attentional, language, cognitive, behavioral and social — are still fragile and must be carefully nurtured. Supervisory staff and teaching staff must be trained to deal with parents of such children, which requires extra time and effort, often after hours. Regular case conferencing is necessary, with directors', teachers', and SEITs' participation. Paperwork for students receiving SEIT (ABA) services needs to meet both Head Start and Department of Education guidelines, necessitating extra work for YvY teachers, supervisors, and Head Start Family Workers. The large numbers of children who receive SEIT (ABA) services and spend a portion of their day in the Head Start classroom calls for extra effort on the part of all YvY Head Start personnel, with full participation by all the employees of the YvY Head Start program.

The success of the collaboration of the YvY Special Education Itinerant Program and YvY Head Start in treating children on the autism spectrum speaks for itself. The program is much in demand. Parents seek out YvY Head Start so that their children can both receive services and participate in a regular preschool classroom. A large percentage of the children who receive SEIT (ABA) services in YvY and are enrolled in YvY Head Start are later mainstreamed into regular classrooms. Schools readily accept these children knowing that they have been through the YvY program. The success of this program benefits not only the child and family, but society at large.

As Relates to Current Operations

As reflected above, YvY has developed a unique and innovative service model in partnership with Head Start in furtherance of the state's education policy of the fullest integration possible of our community's children with special needs. In recognition of the complex needs of certain of these community-based students, YvY worked in collaboration with Head Start programs to identify specific space within or in proximity to the Head Start program classrooms within which our trained SEIS teachers could provide services without the distraction of the classroom to assure the optimal environment within which the child could derive the fullest educational benefit. The success of these educational interventions often relies heavily on the availability of that "space." As NYSED observes, and YvY acknowledges, SEIT is generally (itals added) "a service that would be provided off-site". (See: NYSED RSU Correspondence: Attachment C) In fact, YvY provides a good number of SEIT services through the traditional model. However, as NYSED also acknowledges, there are often unique situations which compel a variance from the traditional SEIT model - - circumstances as presented here, where the early childhood setting location at which the services are to be provided are inadequate to assure implementation of the child's IEP and where special accommodations must be made to address the challenges. The most effective accommodation available was the identification of the additional space referenced above. While this accommodation may not have been contemplated by NYSED in the development of the initial SEIT model, the model used by YvY is clearly necessary to meet the individual needs of children on the autism spectrum who require separate and protected space within which they may derive the greatest value from the SEIS teacher's efforts and which ultimately maximizes individual classroom integration. The innovative model developed by YvY was often acknowledged by Regional NYSED staff, and, in fact was often a determining factor in the development of certain children's IEPs.

Again, we believe there is value in reviewing YvY operations from this point of reference.

Personal Services Costs

Excessive Compensation Expenses

Non-SEIT Employees

As the auditors are aware, YvY is a multi-faceted community based organization whose strong roots in the federal Head Start program have prompted the development of complementary programming, including early intervention and special education, to assure the fullest integration of early childhood and special education services. (See: MMU/NYSED: Attachment A)

The complexity of its operations, however, presents specific challenges including the appropriate allocation of costs and expenses, consistent with the Reimbursable Cost Manual (RCM). While the fiscal management of YvY is attentive to the peculiarities of the RCM, and the "special rules" of the Consolidated Fiscal Report Manual as related to State Education Department programs, certain errors may have been made inadvertently in the categorization of certain costs and expenses, therefore affecting the allocation of select costs.

YvY challenges certain of the auditors' findings ($571,929) as relating to 12 of the 14 employees whose salaries, the auditors allege, were improperly allocated to the SEIT program. Of these employees, (3 of 6 initially identified by the auditors in the Preliminary Audit Report), were engaged as fiscal staff. The auditors recognized like-individuals' salaries as appropriately allocated to the SEIT program. Accordingly, we would anticipate the same sound reasoning to be applied as to these 3 individuals.

* Comment 1

On advise of our accounting firm, YvY had understood that it was wholly appropriate and, in fact, directed by GAAP, that <u>all</u> agency management positions/titles be included in agency administration although, upon application of the ratio value methodology of cost allocation, some individual's costs and expenses would be over-valued, while others' undervalued. This dynamic, we understood, was the natural consequence of the ratio value approach and was, in fact, contemplated.

* Comment 2

As more clearly presented by YvY's accountants, the overarching principle of agency administration is that it represents and includes the costs associated with the functions that are related to the overall administration of all the agency programs, or support function for the agency such as HR or accounting, and not to a single program. This typically includes the executive office, human resources, and all accounting functions including GL, AP, purchasing, billing and accounts receivable. Since these functions benefit the entire entity and need to be allocated on some equitable basis, the CFR requires the use of ratio value. The allocation of the pool of administrative costs utilizing ratio value recognizes the concept that individuals in the pool may have a larger or smaller role in a particular program and therefore, may be over or under allocated to a specific program. However at the same time there are also individuals in the administrative pool that have an opposite proportionate participation in that program which

* See State Comptroller's Comments, Page 42.

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offsets that over or under allocation to that program. For example, Accounts Payable (A/P) is a function that is performed for all programs operated by the agency. However, certain of the A/P staff may spend more, or all of their time dealing with programs other than the SEIT program. However, if these individuals are eliminated from the allocation based on ratio value, then only the SEIT A/P staff is being allocated through ratio value and a share of them will be allocated to the other non-SEIT programs. Accordingly, the non-SEIT programs are receiving a disproportionate share of the A/P costs (100% of the staff spending most of their time and their ratio value share of the A/P staff spending a majority of their time on SEIT).

The accountants further observe that proper cost accounting would require that both sides of the pool be included before a universal allocation methodology is used, otherwise the cost allocation will be skewed to one program or another. Therefore, carving individuals out of the pool of agency administration is inappropriate from a GAAP accounting basis since these are Agency Administration expenses, but also result in the over allocation of these costs to a program through their share of ratio value.

Therefore, although we believe that GAAP accounting would direct that these are Agency Administration expenses and should be reported as such, if the auditors' final determination is that these staff must be removed from the pool of agency administration, then the corresponding SEIT staff included in agency administration must also be carved out of the pool.

We challenge the disallowances associated with these three fiscal employees whose responsibilities include a multitude of fiscal operations such as purchase order review, invoice verification, bookkeeping, accounts payable recording and other general fiscal record keeping, budget and fiscal tasks. Since the auditors deemed appropriate the costs associated with three colleague staff, we would anticipate the same sound reasoning would apply as to these three individuals as well.

* Comment 3

These individuals performed services which are <u>not</u> directly related to a specific program or site, but rather, are attributable to the overall operation of the agency, and, therefore, the costs associated with these services are appropriately categorized as agency administrative costs and expenses. These are exactly the category of services identified in the CFR Manual as "agency administrative" expenses properly allocated across all cost centers through the application of the ratio value allocation methodology, as was appropriately applied by YvY. (See: Fiscal Operations Chart: Attachment D)

* Comment 4

YvY provided the auditors with fiscal staff job descriptions and employment summaries reflecting their agency wide fiscal operation activities. Nevertheless, the auditors appear to have given undue weight to other documents in the personnel files, such as placeholder funding source and activity report denomination and/or cost allocation sheets. (See: Fiscal Staff Employment Documentation: Attachment E) YvY's internal designation of funding source or cost allocation serves as an initial internal categorization that serves as a placeholder designation for an interim period until appropriately categorized as a whole fiscal department unit, and reported on CFR 3 as agency administrative costs ultimately allocated using the ratio value method of allocation

* Comment 5

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across all agency cost centers. This approach is recommended by Department of Labor Guidelines for Cost Allocation Plans, as well as the CFR Manual. (See: NYSDOL Guidelines: Attachment F) YvY's funding source and initial cost allocation sheets serve as initial interim placeholders for costs benefitting more than one funding stream and retroactively equitably allocated, as when allocating the fiscal group in the aggregate, based on ratio value of the agency's operations. Therefore, the categorization of these three personnel costs as agency administration costs placed in a cost pool is appropriate and any designations or descriptives of a particular funding source or allocation sheet should not negate the ultimate appropriate allocation and reporting of such agency administrative costs.

* Comment 5

As shared with the auditors, the allocation of a pool of administrative costs using ratio value method of allocation incorporates the concept that some individuals in the pool may have a larger or smaller role in a particular program but others may have an opposite proportionate participation in another program, offsetting under or over allocation and resulting in an equitable allocation across the entire pool. To better illustrate the equitable pooling of administrative costs, we have attached documentation of another three fiscal operations staff whose funding source designation is labeled Special Education and whose fiscal operation activities involve the SEIT program who have similarly been placed in the pool of administrative costs allocated across all cost centers irrespective of their designation to a particular program. Two of these three also provide bookkeeping and other fiscal operations services and duties when needed, including for the Special Education department, irrespective of their Early Intervention designation, and assist in meeting YvY's Special Education fiscal needs. (See: Example of Pooled Allocation: Attachment G)

Consistent with the approach identified above, YvY included certain individuals' personal service costs within the "agency administrative" categorization, again, based on the tasks performed and the attribution to the overall operation of the agency. More specifically, personal service costs associated with the Policy Council Liaison position are of clear benefit to the **entire** agency and not a specific discrete program. Policies affecting the SEIT program are but a single component or aspect of that individual's responsibilities which included acting as a liaison between the agency's Governing Board and the Agency's Policy Council which is comprised exclusively of parents.

* Comment 6

The Policy Council, as mandated by 45 Code of Federal Regulations 1304.5, is a coequal governing body with the Board of Directors of the entire agency. As such, irrespective of the Policy Council as a construct of the Head Start program, Policy Council members are involved with decision making on an agency administrative level, such as overall human resources decision making and disabilities services decision making. As evidenced by the attached minutes of the Ad-hoc Sub-committee Meeting Program Approval (Attachment) of June 12, 2014 and June 16, 2014, the Policy Council Ad-hoc Sub-committee approves agency program plans and policies, such as Grant Administration & Fiscal, Child Health & Development Services, Program Governance, Human Resources and Individualization & the Disabilities Service Plan policies, which are then presented to, and approved by, the Policy Council. Please also see attached item number 12 and 13 of the Minutes for Policy Council

* Comment 6

Meeting of 9/11/2012 (Attachment) demonstrating the Policy Council's involvement with the agency's Accounting and Financial Policies & Procedures Manual & Cost Allocation Policy & Plan, and with disabilities services. (See: Policy Council: Attachment H)

The contextual background for all of YvY's services is its inception as a Head Start services provider and the Special Education services provided by YvY extend outward from the Head Start services in order to provide our students and families with a comprehensive array of services to best meet their educational and disabilities needs. Furthermore, the Head Start Act requires Head Start providers to extend services to disabled children comprising of, minimally, 10% of their student population. At YvY, approximately 30% of our Head Start children are children with disabilities, many of whom have significant disabilities such as autism spectrum disorders necessitating many hours of Special Education therapeutic services. For instance, for the period of 2011-12, YvY provided SEIT services to 638 children in its Head Start program, for the period of 2012-13, YvY provided SEIT services to 592 children in its Head Start program, and for the period of 2013-14, YvY provided SEIT services to 543 children in its Head Start program. All these children received the SEIT services while remaining enrolled in our Head Start program, and, therefore the child's comprehensive services, while entailing costs directly attributable to both Head Start and SEIT, remains identified as a Head Start child, albeit a Head Start child also enrolled in the SEIT program. The expenses related to these children's SEIT services are direct SEIT services costs in order to provide the students individualized, appropriate education, meet their needs and realize their goals. Absent the need for these individualized special education services, the costs associated with meeting these needs would not be incurred. As provided by the US Department of Health and Human Services (HHS), issued jointly with the US Department of Education, in its Policy on Inclusion of Children with Disabilities in Early Childhood Programs of 9/14/15, in order to realize the ultimate goal of inclusive and comprehensive education services to children with disabilities, states should utilize funds available from multiple funding streams, such as IDEA funding, to support increased access to inclusive settings that meet the individualized learning and developmental needs of children with disabilities. (See: HHS Policy: Attachment I) The Head Start program provides an outstanding venue for providing a free appropriate public education to children with disabilities in an inclusive setting, together with peers without disabilities, while also using additional funding sources for provision of the disabilities services provided in the Head Start setting. Therefore, while the child with disabilities in the Head Start classroom may remain a Head Start child, special education services to such a child are appropriately direct service costs of the child's special education services. As such, since as explained above YvY does in fact include an enormous amount of children with disabilities in its Head Start program, YvY staff who may be associated in some human resources documentation as Head Start personnel necessarily also perform services directly associated with the special education services provided to the Head Start children and their personal service costs are appropriately allocated to the SEIT program.

Any descriptives or designations to agency personnel as associated with the Head Start program should be viewed within the contextual framework provided above wherein YvY's beginnings is rooted in the Head Start program and the Special Education department is a natural outgrowth of the Head Start program, especially where an astronomical amount of the Head Start

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children receive SEIT services. Thus, personnel associated with the Head Start program necessarily also provide personal services directly attributable to the SEIT program and, therefore, their personal service costs are appropriately and reasonably allocated to the SEIT program, as well as to other agency programs, using the ratio value method of allocation.

Accordingly, costs associated with 8 personnel who perform administrative services as record clerks, administrative assistants etc. within Head Start and as such also provide services directly benefitting the Special Education program inasmuch as services provided to the children with disabilities while enrolled in Head Start necessitate additional extensive personal services associated with those special needs children must be recognized as SEIT costs. As discussed above, the Head Start program provides the perfect setting for providing a free appropriate public education to children with disabilities in an inclusive environment. Since YvY serves a proportionately high number of children with disabilities in its Head Start program, YvY staff who may be associated with the Head Start program necessarily also perform services directly associated with the special education services provided to the Head Start children and their personal service costs are, thus, appropriately allocated to the SEIT program. As noted above, YvY's allocation decision was informed by its fiscal consultant who advised that generally accepted accounting principles (GAAP) authorize the "pooling" of all such administrative costs which are then allocated through application of the ratio value methodology. (See: Administrative Services Staff: Attachment J)

* Comment 7

Accordingly, we believe the personal service costs associated with these individuals should be reinstated.

Accordingly, we request adjustment of the auditors' findings in recognition of GAAP.

For all of the reasons cited above, as supported by job descriptions and engagement letters, none of the compensation of any of the individuals referenced in this section were "over-allocated" to the SEIT program and should not have been revised upon application of either YvY's "internal salary allocation sheets" nor the ratio value allocation methodology, as the auditors suggest.

Excessive Allocation of Shared Employees' Compensation

YvY takes exception to the auditors claim that $103,257 in costs were improperly allocated to the SEIT program based upon the false premise that these individuals "worked for all…special education programs" and not SEIT exclusively. Two such individuals are clearly "SEIT only" in both titled position and functions performed. The titled position "Placement Coordinator" and SEIT Clinical Coordinator are clearly <u>exclusively</u> SEIT - - the individual responsible exclusively for the provision of SEIT in the Boro Park area; the other exclusively in Crown Heights and Flatbush. We may only speculate that the auditors' review of supporting documentation included certain entries which were mistakenly pre-populated on employee timesheets via a mail merge due to a system failure. Corrections were made immediately, and both the original erred copy and the corrected copy were shared with the auditors. (See:

* Comment 8

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Placement Personnel Documentation: Attachment K) The third position under challenge is that of Compliance Director of the SEIT program. While her responsibilities may include the occasional review of other educational program components' policies and procedures, those activities are necessary to assure that the SEIT program is operating consistent with the policies and procedures of those complementary programs - - the responsibilities remain exclusively focused on SEIT operations. Incidental involvement with the complementary program is, then, a necessary function of the SEIT Compliance Director and does not support allocation of time or personal service costs to those programs.

Accordingly, the personal service costs associated with each of these three individuals should be recognized as wholly SEIT costs and allocated accordingly.

We similarly challenge the auditors proposed disallowance of $60,353 in "over-allocated compensation for two YvY employees for periods when they did not perform SEIT-related work." Both of these employees perform services solely for the SEIT program and, as noted above, their timesheets were erroneously prepopulated to reflect otherwise. The timesheets in question were corrected as soon as the error was discovered Please see attached. As can be seen from the attached sample timesheets from 2009-2/6/11, prior to the timesheet error of the period from 2/2011-2/2012, the employee's timesheet reflects no mail merge error of identification with the Head Start program. Since YvY prepopulates timesheets for an entire year period, the mail merge prepopulated error was not detected until February 2012 and was immediately corrected upon discovery. (See: Corrected Prepopulated Error Documentation: Attachment L)

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Comment
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Similarly, the proposed salary disallowance of $451,918 for the Information Technology Assistant is appropriately allocated to the SEIT cost center, consistent with the requirements of the CFR Manual, where, as here, it is the SEIT program which derives the benefit of the services provided. As shared with the auditors during field review, this employee was responsible <u>exclusively</u> for technical support of the Pre-school Special Education Easy Trac data entry system, developed by the NYCDOE to track and record service delivery, provider session notes and supporting materials. The system is further supported by the daily entries made by staff in furtherance of the child's IEP. The technology assistant assures daily access to the system, troubleshoots log-in difficulties, and otherwise manages the interface of YvY's own data retention system with the NYCDOE system. (See: IT Assistant Documentation: Attachment M)

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Comment
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The salary of the Information Technology Assistant was equitably allocated exclusively across YvY's Special Education programs inasmuch as his duties and responsibilities involve ensuring access to, and overcoming system difficulties related to Special Education data entry, record and service delivery tracking and interfacing with the NYCDOE secure data system. As such, his duties and responsibilities exclusively benefit the Special Education department, and a portion of the costs associated with his Special Education services are equitable and reasonably allocated to the SEIT program.

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Employees at Certain Sites

We challenge the auditors' finding that personal service costs associated with 11 maintenance employees assigned to certain sites should be disallowed ($238,682). *
Comment
11

YvY is mindful of the RCM's directive that "users of (this) Manual are strongly encouraged to contact (NYSED)…with questions or concerns" which may arise when applying the principles set out in the Manual. Consistent with that directive, YvY corresponded directly with RSU representative John Mackey around the propriety of reported expenses associated with the very locations in question. As the attached email exchange reflects, on April 5, 2012, John Mackey requested clarification of certain housekeeping expenses associated with the same sites for which the maintenance expenses had been reported, specifically noting that "while (the) agency is a very large SEIT provider, SEIT is **generally** (itals added) a service that would be provided off-site." YvY provided a fully detailed explanation of the costs - - that certain of its SEIT services were provided through "pull out" from the child's regular educational program (primarily Head Start), which necessitated an "unusually high need for dedicated space to perform these services." The exchange also clearly reflects YvY's cost allocation approach relative to the questioned "maintenance/housekeeping" expenses - - that the "workers servicing these buildings were allocated between the Head Start classes and therapy rooms based on square footage…the SEIT program then (claiming) a share of the maintenance/housekeeping cost associated with the therapy rooms based on their utilization of that space." (See: NYSED/RSU Correspondence: Attachment C) *
Comment
12

John Mackey responded to the explanation with his belief that "(nothing further) needed to be done" regarding his concerns. NYSED's express acceptance of the explanation, the cost allocation methodology and the costs was further confirmed by the traj sheets used by RSU staff to reflect disallowances in the calculation of rates. Notable by its absence was any disallowance associated with the questioned costs. *
Comment
12

YvY was fully transparent in its allocation of these costs. These were not subtle costs, the detail of which could only be revealed on audit, as contemplated by NYSED in its cautionary note that "designation of a cost as reimbursable during the initial rate-setting process or during reconciliation process does not mean that the cost will be reimbursed through the final audit rate since all rates are subject to adjustment on field audit…" (RCM, Page 3). That admonishment relates specifically and singularly to the requirement that costs have adequate substantiating documentation. The directive does <u>not</u> give the auditors authority to substitute NYSED's analysis and findings with their own, as is proposed here.

NYSED conducted a full analysis of the costs in its review of the CFR and determined the costs to be allowable. It is wholly inappropriate for the auditors to now challenge either the NYSED finding or YvY's adherence to that determination. *
Comment
13

We request restoration of the personal service costs associated with the 11 maintenance employees based upon NYSED's express acceptance of the costs.

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Other than Personal Service Costs

Expenses Related to Unapproved Sites

The auditors subscribed to a variety of reasoning to disallow significant amounts of reported mortgage interest and related costs, not the least controversial of which is that all costs associated with certain identified space - - the space described above as essential to provide SEIT services to certain children enrolled in a Head Start program - - are unreimbursable because the locations lacked SED approval.

We believe that auditors have exaggerated the meaning of SED's denial of YvY's request for additional space and have ignored SED RSU's clear acknowledgment and acceptance of costs associated with the very site locations the auditors now suggest SED has disallowed. (See: NYSED RSU Correspondence: Attachment C) Point of fact, YvY requested SED approval for additional "program administrative" space - - not "program related" space. Thus, SED's denial of the application to add more "administrative space" is immaterial and auditor's overreliance on that denial is misplaced. As shared above, and in our prepared responses to preliminary audit finds concerning personal services costs, the space in question was clearly directly related to the SEIT services provided for children on the autism spectrum.

* Comment 14

YvY's Director of Compliance and Legal Affairs summarizes the legal arguments as follows: (See: YvY's Director of Compliance Memorandum Attachments: Attachment N)

FROM: Ruth Akerman
Director of Compliance and Legal Affairs

TO: Solomon Igel, CEO
Rebecca Guttman, CFO

DATE: August 19, 2015

MEMORANDUM ON OSC AUDIT PROPERTY/EQUIPMENT COST PROJECTED DISALLOWANCES

INTRODUCTION:

The Office of State Comptroller (OSC), during its current audit process, has projected disallowances for property related costs, including mortgage interest; building and improvement, leasehold and equipment depreciation; maintenance personnel costs; Other Than Personnel Services (OTPS) and service contracts' costs related to various Yeled v'Yalda (YvY) Head Start sites where YvY provides Special Education Itinerant Teacher (SEIT) services, based on Section 1B(1) of the Department of Education's Reimbursable Cost Manual (RCM).

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DISCUSSION:

RCM Section 1B(1) defines an "education program expansion" or "new or renovated facility space . . . to be occupied by approved programs" (emphasis mine) requiring "property related costs" as one of several program and fiscal issues that require prior written approval of the Commissioner's designees (Attachment A-1). OSC has predicated its projected disallowance of the locations' property related costs on the lack of prior written approval from the Commissioner's designees for property costs related to the various locations where YvY provides SEIT services . However, as emphasized above, Section 1B(1) requires prior approval for such property related costs only in circumstances involving education program expansion, or new or renovated program facility space. The property related costs identified by OSC, however, do not in any manner or circumstance involve an education program expansion or program facility space. Furthermore, the costs in question do not in any manner involve physical or real property related acquisition or classroom costs, such as "classroom equipment" (RCM Section 1B(1)), but rather involve property ***use*** costs allocated according to program use of the property related costs identified. Therefore, RCM Section 1B(1) is wholly inapplicable to the costs identified.

* Comment 14

In fact, in April of 2012, YvY clarified its SEIT property related costs, such as housekeeping and maintenance, to Mr. John Mackey of the New York State Education Department RSU (Attachment A-2) who accepted YvY's clarifications for the SEIT property related costs.

In addition, a memo released from NYSED dated September 2013 (Attachment A-3) states that it has revised the modification application for Approval to Expand and / or Modify a Preschool Special Education and / or Multidisciplinary Evaluation Program. The memo states "that NYSED has revised its application materials and will now accept applications from agencies seeking State approval to modify or expand an already approved preschool special education program." YvY was not seeking to modify or expand prior to the 2015 school calendar year. The September 2013 Special Education memo reflects the April 2004 modification application (Attachment A-4) (prior to the newly revised September 2013 modification application) which makes no mention of administrative services. Rather, the choice of changes listed that are applicable reasons for request for modification are "changes in daily instructional hours," "in student-to-staff ratio," "in extended school year program, " in agency name", "in location" "in number or type of classes," in "instructional lunch, language(s) served," and adding or deleting sites, for instance for relocation of classes (Attachment A-4, page 4).

YvY's request seeking NYSED approval for additional administrative/supervisory space at three locations (1257-38th Street, Brooklyn, NY; 612 Bedford Avenue, Brooklyn, NY and 6002 Farragut Road, Brooklyn, NY) for the 2015 school calendar year (submitted December 2014, Attachment A-5) was seeking approval for "program administrative costs" "directly associated with the provision of services." (CFR Manual 2013-2014, Appendix I, 42.1) (Attachment A6) Such program administrative costs include space related costs directly associated with the SEIT services provided at these locations. As evidenced by SED's denial of YvY's December 2014 request for approval, SED does not grant approval for space related to SEIT activities and, therefore, denied the request because" there was a significant amount of

* Comment 15

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space allocated for activities that fall outside the boundaries of SEIS administration" and because the program described at these locations (for SEIT/ABA services) "is inconsistent with the purpose of a SEIS program." (Attachment A-7) Thus, the SED found that the SEIT related costs for which YvY was requesting approval was neither administrative (which would require approval) nor a center-based program (which would require approval). In effect, YvY need not have sought approval for property-related costs directly related to the SEIT services provided at these locations because no approval is needed where the costs are not deemed administrative nor costs of a center-based program.

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Comment
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Additionally, the most recent NYC DOE Non-Exclusive Requirements Agreement for the provision of Services for Preschool Students with Disabilities as of July 1, 2015,(Attach A-8) reiterates, in Section 7, that SEIT services "may be provided at the site of a non-SEIT program operated by Provider" however, "SEIT services shall not be provided at any of the sites that are used by the Provider solely for administration" (Section 7 (8)) and that "Center-based services shall be provided only at the site(s) approved by SED (Section 7 (9))." Furthermore, "Providers' program administration shall be conducted only at the site(s) approved by SED (Section 7 (10))." Therefore, the only sites requiring approval by SED are administrative sites and center-based sites. Provider SEIT services provided at provider sites that are not administrative, do not involve center-based services and are sites of a provider's non-SEIT program are allowable and reimbursable without obtaining prior approval from SED.

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Comments
14, 16

The **applicable section** for the property related costs under discussion is RCM Section II 48A(3) that states, under the differentiated heading, "Special Education Itinerant Teacher Services," that administrative or <u>shared space</u> (emphasis mine) should be allocated "based upon the square footage and percentage of time <u>used</u> (emphasis mine) by the various programs." (Attachment A-9) Based on general cost principles that costs are reimbursable when costs are reasonable, necessary, and "directly related to the special education program," (Section II, Cost Principles), YvY has consistently applied an allocation methodology that reasonably and diligently allocates costs directly related to individual program use, including the SEIT program use, of property and equipment based on square footage allocation, in accordance with RCM Section II 48A(3), and Section II 17(9)[1], as well as in accordance with CFR1 Reporting and Claiming Manual, J, Sections 43.3. (Attachment A-10) Therefore, YvY is in complete accordance with RCM and SED requirements when applying a cost allocation methodology for property related costs at locations where YvY occupies shared space and that do not require pre-approval from SEQA, whether such costs are mortgage related, depreciation costs, maintenance personnel costs, or storage costs.

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Comment
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The cost allocation methodology is also in accordance with our Federal Head Start grant Performance Standards, 45 CFR Part 1308, requiring YvY to ensure that Head Start children with disabilities receive services for their special needs in full by using a combination of Head Start funds and other resources to service the children with disabilities. Administration for

[1] "If assets are shared by more than one program and/or entity, the share of depreciation expense allocated to programs funded pursuant to Article 81 and/or Article 89 shall be based on documented and reasonable criteria."

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Children and Family Services (ACFS) Guidance for Paragraph (m) (Appendix to Part 1308) (Attachment A-11) clearly states, "the Head Start legislation requires Head Start to access resources to meet the needs of all the children, enrolled, including those with disabilities."

YvY Head Start, in compliance with Federal regulation 45 CFR 1308, must enroll in the HS program a minimum of 10% of children with special needs. YvY has a 30% enrolled student population of children with special needs and a 23% enrolled student population whose special needs require SEIT services. At the various locations identified by OCS, the percentage of children receiving SEIT services reaches as high as 36% of the total student population. In some of the locations indicated, such as at 1257 38th Street and 6002 Farragut Road, Brooklyn, New York, where 179 children are receiving SEIT services, many of our children receiving SEIT services receive those services both as "push-in" services (in the classroom) and "pull-out" services (in separate therapy rooms dedicated for the provision of SEIT services). Since many of the children we service are on the autism spectrum, YvY provides a significant amount of related activities such as, 1:1 direct supervision by specialized Licensed Behavioral Analysts (SEIT/ABA services) to closely observe the services. The supervisor will observe the child with the SEIT teacher both in the classroom and then in a separately designated space, necessitating property related costs directly related to the SEIT services provided. The property related costs, such as depreciation, leasehold, equipment costs and OTPS property-related costs are allocated according to square footage use of the property between the different programs, such as between the Head Start program and SEIT services, so that SEIT services gets allocated a share of the property related costs directly associated with the therapy rooms and other space and equipment based on utilization of space for SEIT direct services and related SEIT activities. When the square footage methodology for allocation of space related costs "does not result in a fair allocation of the costs," (CFR Manual 2013-2014, Appendix J, 43.3) (Attachment A-10) YvY, in such limited circumstances, allocates its space related costs between YvY Special Education Related Services and SEIT services using a units-of-service allocation as the better, more accurate, and fairer allocation methodology. As noted in the CFR Manual, Appendix J such instances "occur when a program uses a significant amount of space, but not much space exclusively" and, "in that case, units of services or staff FTEs might be a better choice as the basis of allocation."

* Comment 17

Thus, YvY always uses a fair, accurate allocation methodology according to CFR requirements, Appendix J, 43.3 and in accordance with RCM Section II 48 A(3). The necessity, fairness, accuracy and reasonableness of YvY's allocation methodology with regard to SEIT property related costs is clearly understood, confirmed, and accepted by the New York State Education Department RSU's April 2012 acceptance of YvY's clarification of such costs, as noted above (page 1, Attachment A-2).

* Comment 17

In light of the above, YvY maintains that the projected disallowances should be considered allowable and reimbursable as reasonable and necessary costs directly related to the YvY SEIT program.

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Were the auditors to take exception to the sound legal reasoning presented above, perhaps even ignore RSU's express acceptance of associated costs, visual confirmation of the use of the space for the provision of direct SEIT services compels acknowledgment of the costs as reasonable and necessary. Simply stated, the incidental space is a natural consequence of our individualized SEIT services and is undeniably an essential program expense. YvY's current operations provides the backdrop for a contextual point of reference for the OTPS property related expenses the auditor's claim are ineligible for reimbursement. The children being serviced at these locations have multiple, complex challenges such as self-stimulatory behaviors, lack of cooperation, obsessions, rigidity, shut down, stimuli overload and distraction. In order to address their challenges, and in order to implement the children's IEPs mandating many hours of SEIT services (typically 15-20 hours), skills must be introduced, taught and reinforced both in a natural setting, the classroom, and in a contrived setting, outside of the classroom where presence and position of furniture, supplies and reinforcers are precisely monitored to rule out distractibility or outside stimuli that is present in the classroom setting, enabling the children to acquire greater focus and communication skills. The intense behavioral intervention program required by the ASD children necessitates use of discrete space outside of the classroom where they can independently learn the skills they can then apply in the classroom. Therefore, the SEIT services provided to this unique, highly challenged group, necessarily requires specific space set aside for the provision of those services so that we can achieve the ultimate goal of fully integrating the child in the mainstream classroom. The costs of the specific space are direct costs in the provision of an individualized, free and appropriate education for each child in our SEIT program and, therefore, are costs that are appropriately charged to the SEIT program.

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Comments
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Accordingly, we request acknowledgement and restoration of all costs auditors proposed to disallow (mortgage interest, depreciation, as well as miscellaneous other OTPS expenses) based upon the auditors' argument of non-approval. More specifically, as detailed below:

Mortgage Interest

For the reasons stated above, $272,248 in mortgage interest must be recognized as legitimate facility costs associated with program space the auditors' categorize as "unapproved".

Depreciation

For the reasons stated above, $505,385 in depreciation costs including demolition, construction, remodeling, architectural and interior design costs must be recognized as legitimate facility-related costs associated with program space the auditors' categorize as "unapproved".

Other Site Expenses

For the reasons stated above, $316,242 in other property related and service contract costs associated with locations the auditors' categorize as "unapproved" must be recognized as legitimate facility-related costs associated with the provision of SEIT services in community

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based settings. More specifically: $275,497.83 (utility and renovation costs), and $40,744.05 (service contracts).

We renew our specific challenge that the costs associated with coordination agreements between YvY and host community based organizations are ineligible for reimbursement. The legitimacy of these arrangements is undisputable -- YvY must be able to coordinate its staff schedules with those of the host community based organizations to assure the successful implementation of our students' IEPs. The host programs are often located at large complexes and invite great effort to appreciate the religious and cultural sensitivities of our students and staff. Clearly, the arrangements foster greater cooperation between our SEIT staff and host program, to the full benefit of our students.

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Comment
18

We further believe that auditors have misconstrued the terms of the arrangements by categorizing the associated costs as "site expenses". While the availability of space may have been discussed within the arrangement, no leasehold was created nor were other space related costs contemplated. Rather, the intent of the arrangement was to assure coordination of services. Accordingly, the legitimacy of these arrangements is unrelated to whether or not the space utilized by our staff is NYSED approved. Rather, the focus is more appropriately fixed on whether these arrangements support the SEIT program, which is undeniably the case. (See: Coordination Agreement: Attachment O)

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Comment
18

We also renew our challenge of $4,298 in cleaning and maintenance service contract costs for the reasons stated above; more specifically that these costs were directly related to the SEIT program's need for space to provide individualized, appropriate educational behavioral interventions. As argued above, YvY maintains that based on the RCM (Section II, 48A(3)), and the terms of the NYCDOE contract and DOE communications, YvY was not required to seek approval for these locations. Accordingly, YvY appropriately allocated these property related expenses.

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Comment
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Non-Program Related Costs

We renew our challenge to those findings which categorize certain costs as non-program related. More specifically, as detailed below:

Mortgage Interest/Depreciation

YvY has worked to improve its internal controls and fiscal management policies to assure that costs are allocated among programs/cost centers benefitting from those resources, consistent with the CFR claiming manual.

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Other Expenses

We renew our challenges to two specific findings which allege certain expenses are non-program related and therefore non-reimbursable: specifically, as relates to production of the Links Magazine, and certain agency administrative costs. ($19,998.08)

As relates to the Link Magazine, this publication serves as necessary support and guidance for orphaned children who would otherwise have no forum. The SEIT students YvY serves, some of whom are also orphaned, receive the magazine's invaluable support and guidance which enhances their educational performance and provides a venue wherein their grief may be presented to avoid disruption of academic progress and achievement. YvY offers many other newsletters or publications which directly relate to our mission to support the development of healthy, strong families -- each of which further enhances our students' ability to more fully benefit from the educational services YvY provides. (See: Links Magazine: Attachment P)

* Comment 19

We also renew our challenge of $3,263 in agency administration costs associated with certain 401k audit and EI attestation services. These costs are appropriately allocated to the SEIT program through the ratio value allocation methodology.

* Comment 20

Vehicle Costs

YvY has strengthened its existing protocols governing the maintenance of vehicle logs in support of claimed vehicle expenses.

Various Ineligible Expenses

We renew our challenge to the disallowance of certain costs which the auditors' characterize as ineligible. More specifically,

- Costs alleged not to be supported by invoices: We restate our position that costs associated with community based safety and emergency educational services were properly supported by documentation including contracts which set out stated fees for specific services rendered, as reflected in invoice statements. The services provided were fully described and fully anticipated in the agreement. No further itemization in the monthly invoice was warranted so long as the detail is provided in the central contract whose terms reflected monthly fees. As shared with the auditors, these services included safety instruction and hands-on demonstration (which would necessarily involve ambulance and emergency room tours and familiarizing children and families with safety and emergency protocols. ($29,811) (See: Community Safety Services Agreement: Attachment Q)

* Comment 21

We also restate our claim that costs associated with certain community liaison activities were properly documented ($21,046). The liaison consultant group service agreement properly reflected a monthly fee arrangement, and invoices submitted for payment detailed the activities

* Comment 21

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as identified in the agreement. Further detail or specificity was unnecessary. (See: Community Liaison Agreement: Attachment R)

o Costs categorized as unnecessary: We renew our challenge to the disallowance of cell phone costs associated with 20 employees for which we provided detailed job descriptions, schedules and narratives in support of our claim that these individuals' responsibilities warranted cell phone support ($10,099). As shared with the auditors, the individuals identified provide direct SEIT services which requires travel to/from and attendance at CPSE and IEP meetings. "Landlines" are not always available at these meeting locations. We had provided similar supporting documentation and narrative as related to four other like-individuals whose associated phone charges were determined by the auditors to be necessary and directly related to SEIT program services provided. We challenge the apparent exception made for a single individual whose duties and responsibilities similarly involves direct Special Education services. To restate, this individual must, similar to other individuals, maintain accessibility of contact by phone and email communications, as well as to secured data systems during standard work and after work hours. Simply stated, access to a landline does not sufficiently satisfy the operational needs of this individual. (See: Direct Staff Cellphone Documentation: Attachment S)

* Comment 22

We also renew our challenge to the disallowance of cell phone costs associated with two high management employees whose duties include SEIT oversight, services accountability, provider personnel placement, case management, parent satisfaction oversight, as well as interaction with personnel at sites where students are being served. Their commitment to ensuring the continuous efficient and high quality services to the students extends beyond the standard work week, as they are in constant contact, via phone and email communication during, and after the work week, with providers, parents, school personnel, and other agency staff in or out of the office. They are also in constant need of accessibility to secure data regarding our students, the location sites of services and the services provided. YvY has provided the auditors with these individuals' email communication records in support of our position that their responsibilities often exceeded the standard work week. The auditors recognized similar work product support when considering other high management personnel's cell phone costs.

* Comment 22

For the reasons stated above, the proposed disallowance for another high management employee's cell phone usage who duties and responsibilities involve Special Education and SEIT related activities as the site supervisor for a location where there are many children receiving SEIT services must also be reconsidered. Such SEIT related activities include monitoring and facilitating SEIT related services, overseeing child safety concerns during and after standard hours and coordination of therapeutic services at the location during and after hours. This individual is in constant contact with other agency Special Education and SEIT personnel, agency administration personnel, and other personnel responsible for the safety and security of the children and parents who visit the site via phone and email communication both during and after the standard work week hours. Attached email records support our assertion of work related activities outside the work week. (See: High Management Cellphone Documentation: Attachment T)

* Comment 22

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We also renew our challenge to disallowances of cell phone costs incurred by certain middle management personnel, more specifically the family coordinator who must travel to and be present at various serve setting locations to coordinate with staff in identifying and meeting the needs of students and families, facilitate parent involvement and enhance communication with parents. As the attached sample work schedule reflects, extensive travel demands require accessibility to staff and families while traveling, a need met by the challenged cell phone.

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Comment
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Similar challenges are renewed of disallowances associated with cell phone costs incurred by the employee charged with after-hour safety -- a responsibility which clearly requires cell phone access. The auditors acknowledged as necessary the cell phone costs incurred by the facility superintendent. Similar reasoning is applicable here, as well. That the safety employee is within the parameters of the agency facility for some portion of the business day does not negate the need for cell phone access within the complex. (See: Middle Management Cellphone Documentation: Attachment U)

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Comment
22

A similar argument is renewed around disallowances of cell phone charges incurred by 3 IT employees whose responsibilities include ensuring and safeguarding secure and confidential access to student and agency records and continuous system operations during and after normal business hours. Attached are work product descriptions for such individuals, as well as documentation reflecting continual system alerts which required immediate attention, together with a sample IT helpdesk request and response document attesting to the need for continuous accessibility and communication during and outside the standard work day. The auditors have found similar support documentation compelling in their review of other IT personnel cell phone costs. (See: IT Employee Cellphone Documentation: Attachment V)

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Comment
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Lastly, we renew our challenge of cell phone cost disallowances associated with certain executive and administrative personnel. As shared with the auditors, the proposed disallowance of costs associated with employees who are all agency executive and administrative personnel and whose duties and responsibilities for the entire agency involve high-level executive decision making, including with regard to SEIT executive and administrative operations, must also be reconsidered. Their duties and responsibilities include interaction with agency governance; overseeing and ensuring compliance with rules, regulations and contractual requirements of agency services, including SEIT services; policy and procedure enactment and oversight for the agency, including for SEIT services; coordination and collaboration of student services; personnel management and oversight; safeguarding agency funds, including SEIT funds; as well as applying accounting and allocation methodology to agency operations and personnel, including SEIT operations and personnel. Their executive and administrative positions require commitment to ensuring the continuous efficient and high quality services to the children that results in a work product that far exceeds the 40 hour standard work week and they are in constant contact, via phone and email communication, during and after the standard work week, with each other, other executive or administrative personnel, management personnel of the agency, including with Special Education and SEIT management personnel to ensure the

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agency, including the SEIT services department, is fully operational and compliant with all regulatory and contractual requirements. They are also in constant need of accessibility of secure data and information regarding the children being serviced, the families of the children being serviced, the services being rendered, confidential and proprietary agency material, personnel information and agency governance communication. The auditors' recognized the cell phone costs of certain other executive and administrative personnel as legitimate, upon review of supporting documentation. We would anticipate the same sound reasoning would be applied as relates to these other personnel, as well.

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We appreciate the opportunity to provide comment on the Draft audit report findings and to inform the auditors' thinking around the services YvY provides to children and families.

Very truly yours,

Solomon Igel

Enclosures

State Comptroller’s Comments

1. We disagree. The employees’ job descriptions, time records, cost allocation sheets (where applicable), and other personnel records provided no indication that they worked for the SEIT programs. As such, their compensation should not have been allocated to Yeled’s SEIT program. The Consolidated Fiscal Reporting and Claiming Manual (CFR Manual) requires that service providers make all attempts to directly charge an expense to the appropriate cost center.
2. The CFR Manual does not require that all management positions/titles be included in agency administration. The requirement applies only to those positions/titles responsible for the overall operation of the agency (i.e., Executive Director, Comptroller). Further, as noted previously, the CFR Manual requires that service providers make all attempts to directly charge an expense to the appropriate cost center.
3. The three employees that we disallowed had job descriptions, time records, cost allocation sheets (where applicable), and/or other personnel records indicating that they worked for a non-SEIT program.
4. We stand by our findings and conclusions. The CFR Manual defines agency administration expenses as those which are not directly related to a specific program, but are attributable to the overall operation of the agency (i.e., Executive Director, Comptroller). Agency administration costs do not include program/site specific costs or program administration costs. Program administration costs are administrative costs which are directly attributable to a specific program. The evidence that we reviewed indicated that these employees provided services directly related to a specific program. Also, see Comment no. 2.
5. We reviewed and considered all evidence and information provided by Yeled. As such, we maintain that the evidence obtained during the audit provides a reasonable basis for our findings and conclusions.
6. We disagree with Yeled’s contention that the Policy Council Liaison position should be treated as an agency administration expense. This employee’s job description, time records, cost allocation sheets, and other personnel records clearly indicated that she worked for the Head Start program.
7. The employees’ job descriptions, time records, cost allocation sheets (where applicable), and other personnel records did not indicate that they performed any work for the SEIT program. Further, we did not recommend disallowances when evidence indicated that services were provided to the SEIT program.
8. The employees’ job descriptions, time records, cost allocation sheets (where applicable), and other personnel records indicated that they worked for Yeled’s various special education programs, but not primarily the SEIT program. As such, their compensation should have been allocated fairly to all of Yeled’s applicable special education programs.
9. The disallowance applies to periods when their time records indicated that they worked for non-SEIT programs. We noted that these time records were reviewed and certified by Yeled supervisors as accurate; and therefore, we question the need for corrected copies. Further we found two time records submitted for the Clinical Coordinator for the same period and one indicated that she was out on July 31, 2012, while the other timesheet had her working from 9:00 a.m. to 5:00 p.m. the same day.

10. We disallowed $51,918 of the Information Technology Assistant's compensation, not $451,918 as stated by Yeled. Further, this employee's job description and time records indicated that he provided support to the entire agency, not just Yeled's preschool special education programs.
11. The Reimbursable Cost Manual (Manual) clearly states that a provider needs to obtain prior SED approval for an education program expansion requiring additional staff, property related costs, classroom equipment, etc., when the cost is expected to be reimbursed fully or partially through the tuition rate established by SED.
12. SED's reviews and desk audits do not include the level of detail of OSC's on-site audits of the provider's source and supporting records for the costs reported on the CFRs. In the cited correspondence with SED, Yeled did not acknowledge that the sites (where the employees in question worked) had not been approved by SED. Further, SED denied Yeled's December 2014 request to add space at these locations and advised Yeled that the SEIT program described as SEIT/ABA at these locations was inconsistent with the purpose of a SEIT program.
13. We disagree. Final costs are determined upon field audit and will be considered for reimbursement provided that such costs are reasonable, necessary, and directly related to the education program. Also, refer to Comment no. 12.
14. The Manual clearly requires providers to obtain formal approval of the Commissioner's designees for "Education program expansion requiring additional staff, property related costs, classroom equipment, etc. when the cost is expected to be reimbursed fully or partially through the tuition rate. Both program and fiscal designee approval are required." Particularly because the SEIT program model generally does not provide for facility-related costs resulting from service delivery, Yeled should have sought and obtained SED approval for costs associated with the program spaces in question. However, Yeled was unable to provide any evidence that it sought and obtained either program or fiscal approval from SED for these spaces at any time.

    Further, SED's denial of Yeled's request for additional administrative/supervisory space "directly associated with the provision of services" does not at all mean that the locations (spaces) in question were, therefore, eligible for reimbursement. To the contrary, for the aforementioned reasons, it is more likely that space "directly associated with the provision of services" would be ineligible for reimbursement.
15. As Yeled acknowledged, SED generally does not approve space related to SEIT program activities. In this particular instance, SED denied the request because "there was a significant amount of space allocated for activities that fall outside the boundaries of SEIS administration and because the program described at these locations is inconsistent with the purpose of a SEIS program." (Note: SEIS refers to Special Education Itinerant Services.) SED's denial illustrates that costs for SEIT program-related space are not eligible for reimbursement.
16. New York City Department of Education guidance does not sanction space used exclusively for the provision of SEIT services. Program-related space for SEIT is not a component of the program model.
17. We did not review or question Yeled's compliance with regulations pertaining to Head Start, a federally funded program. Further, with respect to the issue at hand, our primary

concern was not with the allocation methodology employed by Yeled. Irrespective of the allocation method employed, the fact remains that Yeled had not obtained the required program and fiscal approvals from SED to use the locations (space) in question for SEIT purposes.

18. Based on information provided by Yeled, we revised our report to reduce the disallowance in question by $31,178.
19. The Links Magazine publication is not a necessary SEIT program-related cost, as required by the Manual.
20. Yeled's cost allocation sheet indicated that the 401K audit expense was not related to the SEIT program. Also, the invoice for the attestation services indicated that it was for the Early Intervention (EI) program.
21. As stated on page 11 of the report, the itemized invoices did not indicate the specific services actually provided; and for each service, the date(s), number of hours provided, and the fee per hour, as otherwise required by the Manual. Furthermore, these services were not a necessary component of the SEIT program.
22. We reviewed Yeled's explanations supporting cellphone distribution and determined that certain employees' duties and/or access to Yeled landline phones did not support the employees' need for cellphones to administer SEIT program operations.