THOMAS P. DiNAPOLI
COMPTROLLER

110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

December 29, 2016

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

Ms. Marguerite Feistel
Executive Director
Benchmark Family Services, Inc.
1635 Ohio Street
Watertown, NY 13601

Re: Compliance With the Reimbursable Cost Manual
Report 2016-S-47

Dear Ms. Elia and Ms. Feistel:

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

Background

BFS, a for-profit organization located in Watertown, New York, is an SED-approved provider of preschool special education services. BFS offers special education services to children with disabilities who are between the ages of three and five years. For the fiscal year ended June 30, 2013, BFS offered two SED-funded, rate-based preschool special education programs: Preschool Special Education Itinerant Teacher services and Preschool Integrated Special Class – over 2.5 hours per day (collectively referred to as the Programs). During the 2012-13 school year, BFS provided these services to 94 children from school districts located in Jefferson, Lewis, Oswego, and St. Lawrence counties.

The counties that use BFS's preschool special education services pay tuition to BFS using reimbursement rates set by SED. The State then reimburses the counties 59.5 percent of the special education tuition that counties pay. SED sets the preschool special education tuition rates based on financial information, including costs, reported by BFS on its annual Consolidated Fiscal Report (CFR) that it submits to SED. Costs reported on the CFR must comply fully with the provisions of SED's Reimbursable Cost Manual (RCM) regarding the eligibility of costs and documentation requirements. Reported costs must also comply with the reporting requirements prescribed by the State's Consolidated Fiscal Reporting and Claiming Manual (CFR Manual). For the year ended June 30, 2013, BFS reported $669,689 in reimbursable costs on its CFR for the Programs.

Results of Audit

For the fiscal year ended June 30, 2013, the personal service costs claimed by BFS that we tested were in compliance with the RCM and CFR Manual. However, we identified $18,012 in other than personal service costs that BFS reported that did not comply with SED's prescribed requirements for reimbursement. The ineligible costs included:

- $11,252 in unnecessary and insufficiently documented costs;
- $4,879 in interest expense on working capital loans;
- $1,051 in mortgage-related costs;
- $544 in improperly allocated administrative costs;
- $233 in bonus pay; and
- $53 in marketing costs.

Details of these ineligible charges are presented below.

According to the RCM, costs reported on the CFR are eligible for reimbursement if they are reasonable, necessary, and adequately documented. However, we identified $11,252 in costs that were not in compliance with these RCM provisions. Specifically, we found $34 in unnecessary late fees and $11,218 in insufficiently documented costs that included: depreciation ($7,362); mortgage interest ($1,934); staff development costs ($1,107); audit and legal fees ($411); repairs and maintenance ($220); and food ($184).

According to the RCM, interest expense on working capital loans will not be reimbursed if the entity files its cost report (i.e., CFR) more than 90 days after the respective due date. In addition, interest expense on working capital loans is reimbursable provided the interest rate is not in excess of the prime rate plus one percent. However, BFS failed to meet the 90-day deadline and exceeded the prime rate plus one percent interest rate requirement. Consequently, $4,879 in working capital interest that BFS allocated to the Programs is not reimbursable. (Note: Prior to our audit, SED identified this disallowance through its rate setting methodology.)

Per the RCM and CFR Manual, costs of facility acquisition or construction shall be depreciated over the useful life of the facility. BFS claimed depreciation expense for its capital facility costs; however, BFS also claimed $815 in mortgage principal payments. Therefore, the

$815 BFS claimed for mortgage principal payments is duplicative and not reimbursable. BFS also claimed $236 for payments to an escrow account. Third parties hold these funds in trust to pay future obligations (such as property taxes and insurance costs) at the time these costs are due. Because payments to escrow accounts are for expenses yet to be incurred, the $236 in payments to the escrow account that BFS claimed on its CFR are not reimbursable. As such, we recommend the disallowance of $1,051 ($815 + $236) in ineligible mortgage-related charges.

Per the RCM, agency administration costs are defined as expenses not directly related to a specific program, but attributable to the overall operation of the agency. We identified legal fees for government relations representation and New York State Unemployment Interest Assessment Surcharges that were improperly charged directly to the Programs. If the expenses were allocated as administration costs (rather than charged directly to the Programs), the Programs would have been charged lower amounts for the legal fees ($372) and surcharges ($172). As such, we recommend the disallowance of $544 ($372 + $172) for these improperly allocated administrative costs.

Further, per the RCM, bonus compensation may be reimbursed if it is based on merit, as measured and supported by employee performance evaluations, and does not exceed three and a half percent of the base salary of the direct care employee who is receiving the bonus. We found BFS misclassified a sign-on bonus as staff development and allocated $233 of that cost to the Programs. In addition, because the bonus was not based on merit or supported by performance evaluations, it is not eligible for reimbursement.

Also, per the RCM, advertising costs for the purpose of recruiting students into programs are not reimbursable. However, BFS claimed ineligible marketing costs of $53 against the Programs. (Note: Prior to our audit, SED identified these costs as ineligible for reimbursement.)

Recommendations

To SED:

1. Review the disallowances identified by our audit and, if warranted, make the necessary adjustments to the costs reported on BFS's CFR and to BFS's tuition reimbursement rates.

2. Remind BFS officials of the pertinent SED requirements that relate to the deficiencies we identified.

To BFS:

3. Ensure that costs reported on annual CFRs fully comply with SED's requirements, and communicate with SED to obtain clarification as needed.

Audit Scope, Objective, and Methodology

We audited the costs reported by BFS on its CFR for the fiscal year ended June 30, 2013.

The objective of our audit was to determine whether the costs submitted by BFS on its CFR were properly calculated, adequately documented, and allowable under SED's guidelines, including the RCM.

To accomplish our objective and assess internal controls related to our objective, we reviewed the RCM as well as the CFR Manual and related appendices. We interviewed SED officials to obtain an understanding of the CFR as well as the policies and procedures contained in the RCM and the CFR Manual. We became familiar with BFS's internal controls as they related to the costs BFS reported on the CFR. We also interviewed BFS personnel to obtain an understanding of their financial practices relating to the costs reported on the CFR. We reviewed BFS's CFR and relevant financial records for the audit period, and obtained accounting records and supporting information for our review of a judgmental sample of personal service and other than personal service costs that were considered high risk and reimbursable in limited circumstances, such as food and vehicles.

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

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members 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 functions do not affect our ability to conduct independent audits of program performance.

Reporting Requirements

We provided a draft copy of this report to SED and BFS officials for their review and formal comment. We considered their comments in preparing this report and have included them in their entirety at the end of it. In their responses, officials agreed with our audit recommendations and indicated the actions they will take to address them.

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

Major contributors to this report were David Fleming, Dan Towle, Laurie Burns, Karen Ellis, and Dylan Spring.

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

Sincerely,

Andrea Inman
Audit Director

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

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
F: 518.474-5392

December 13, 2016

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

Dear Ms. Inman:

The following is the New York State Education Department's (Department) response to the draft audit report, 2016-S-47, Compliance with the Reimbursable Cost Manual: Benchmark Family Services, Inc. (BFS).

Recommendation 1: Review the disallowances identified by our audit and, if warranted, make the necessary adjustments to the costs reported on BFS's CFR and to BFS's tuition reimbursement rates.

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

Recommendation 2: Remind BFS officials of the pertinent SED requirements that relate to the deficiencies we identified.

We agree with this recommendation. The Department will continue to provide technical assistance whenever requested and will strongly recommend that the BFS officials take advantage of our availability to help them better understand the standards for reimbursement as presented in Regulation and the Reimbursable Cost Manual. In addition, Consolidated Fiscal Report (CFR) training is available at six locations across the State and online on the Department's webpage. The training is recommended for all individuals signing CFR certification statements, namely Executive Directors and Certified Public Accountants, and is required for preschool special education providers upon approval and reapproval. Furthermore, the Department intends to require that the training be mandatory for all providers.

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

Sincerely,

S. Cates-Williams

Sharon Cates-Williams

c: Christopher Suriano
Suzanne Bolling

Agency Comments - Benchmark Family Services, Inc.

GreenbergTraurig

Pamela A. Madeiros
518-689-1412
madeirosp@gtlaw.com

December 9, 2016

VIA ELECTRONIC MAIL

Andrea Inman
Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, New York 12236-0001

Re: State Education Department
Compliance With the Reimbursable Cost Manual
Benchmark Family Services, Inc.
Draft Report 2016-S-47

Dear Ms. Inman:

We have reviewed the above-referenced Draft Report concerning expenses submitted by Benchmark Family Services, Inc. on its consolidated fiscal report for the school year ending June, 2013 and appreciate the opportunity to provide comment on select findings presented in the Draft Report.

Results of Audit

Other Than Personal Services (OTPS) Costs

While Benchmark does not challenge a number of the auditors' findings, we do offer additional explanation of a select number of findings as described below.

- *Insufficiently documented costs:*

Benchmark appreciates the auditors' review of additional supporting documentation in the reconsideration of certain mortgage interest costs, and, as a result, does not challenge disallowances associated with depreciation ($7,362); mortgage interest ($1,934); staff development ($1,107); audit and legal fees ($411); repairs and maintenance ($250); and food ($184).

In the instance of each of these reporting errors, Benchmark has refined its fiscal protocols to avoid future errors.

- *Working capital loans*:

Benchmark does not challenge the auditors' finding that an amount of working capital interest was inappropriately reported on the CFR as an allowable expense on the advice of our outside accountant. As the auditors noted, the expense was disallowed by NYSED during the rate calculation process which prevented any excessive reimbursement.

Benchmark has strengthened its fiscal accounting policies to include a higher level of scrutiny of the work product of its outside accountants to prevent such reporting errors in the future.

- *Mortgage-Related charges:*

Benchmark does not challenge the auditors' findings resulted from reporting errors relating to mortgage related charges which were made on the advice of our outside accountant. Benchmark has strengthened its internal protocols to assure enhanced accountability of its outside accountant consultant.

- *Mis-allocated administrative costs:*

Benchmark was unable to obtain from its outside accountant consultant an explanation of the reporting errors identified by the auditors relating to certain administrative costs which again prompted enhanced accountability protocols as noted above including elevated review of consultant work product.

- *Sign-on bonuses:*

Benchmark does not challenge the auditors' finding that a bonus was awarded to attract a particularly qualified staff member in an extremely competitive market. We note, however, that the RCM has been revised to allow sign-on bonuses such as the one here disallowed in recognition of the needs of small programs such as Benchmark which provide vital services in rural areas.

- *Advertising Costs:*

While Benchmark does not challenge the auditors' assessment that certain costs did not qualify as reimbursable advertising costs, we appreciate the auditors' note that NYSED RSU had identified the same costs during the rate calculation process and disallowed the expense to avoid reimbursement.

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We appreciate the opportunity to provide further context to the auditors' findings and note the professionalism and courtesy extended to our staff during the entire audit process.

Very truly yours,

GREENBERG TRAURIG, LLP

Pamela A. Madeiros

PAM/lle
ALB 1981997v1

cc: Suzanne Bolling, State Education Department
Thalia Melendez, State Education Department