State Education Department

UCP of Niagara County dba Empower – Compliance With the Reimbursable Cost Manual

Report 2023-S-3 | June 2024

OFFICE OF THE NEW YORK STATE COMPTROLLER

Thomas P. DiNapoli, State Comptroller

Division of State Government Accountability

Audit Highlights

Objective

To determine whether the costs reported by United Cerebral Palsy Association (UCP) of Niagara County dba Empower (Empower) on its Consolidated Fiscal Reports (CFR) were reasonable, necessary, directly related to the special education program, and sufficiently documented pursuant to the State Education Department's (SED) Reimbursable Cost Manual (RCM) and the Consolidated Fiscal Reporting and Claiming Manual (CFR Manual). The audit covered expenses reported on Empower's CFRs for the 3 fiscal years ended June 30, 2020.

About the Program

Empower is a not-for-profit special education provider located in Niagara Falls that serves students in Niagara County. Empower is an affiliate of the Cerebral Palsy Associations of New York State. Empower is authorized by SED to provide education services—Preschool Special Class – over 2.5 hours per day, Preschool Integrated Special Class – 2.5 hours per day, and Preschool Integrated Special Class – over 2.5 hours per day—to children with disabilities up to 5 years old. For the purpose of this report, these programs are referred to as the SED preschool cost-based programs. Empower also operated other SED-approved preschool special education programs including Evaluations, Related Services, and 1:1 Aides. However, payments for services under these programs are based on fixed fees, as opposed to the cost-based rates established through CFR-reported financial information. During the 2019–20 school year, Empower served 94 preschool children in the SED preschool cost-based programs.

Niagara County pays tuition to Empower using reimbursement rates set by SED. The State, in turn, reimburses the county for a portion of the tuition paid. SED sets the special education rates based on financial information, including costs, that Empower reports to SED on its annual CFRs. For the 3 fiscal years ended June 30, 2020, Empower reported approximately $6.6 million in reimbursable costs for the SED preschool cost-based programs.

Key Findings

For the 3 fiscal years ended June 30, 2020, we identified $1,141,685 in reported costs that did not comply with the requirements in the RCM and CFR Manual, as follows:

- $482,418 in personal service costs reported on the CFR but not supported by the general ledger;
- $389,873 in staffing expenses that were in excess of the approved staffing ratios;
- $198,461 in unsupported salary costs;
- $42,220 in other than personal service (OTPS) costs that were reported on the CFR but not supported by the general ledger;
- $19,416 in expenses that are ineligible for reimbursement including: investment costs, banking service charges, gifts, staff food, personal travel costs, lobbying, advertising, membership fees, and other miscellaneous ineligible costs;
- $3,976 in non-allowable compensation costs;
- $3,164 in unsupported OTPS costs, including leased property and rental equipment; and
- $2,157 in bonus payment compensation that did not comply with the RCM.

Key Recommendations

To SED:

- Review the recommended disallowances identified by our audit and make the necessary adjustments to the costs reported on Empower's CFRs and Empower's tuition reimbursement rates, as warranted.
- Remind Empower officials of the pertinent SED requirements that relate to the deficiencies we identified.

To Empower:

- Ensure that costs reported on annual CFRs fully comply with SED's requirements and communicate with SED to obtain clarification as needed.
- Ensure that expenses reported on the CFR match the expenses reported on the financial statements.

Office of the New York State Comptroller
Division of State Government Accountability

June 21, 2024

Betty A. Rosa, Ed.D.
Commissioner
State Education Department
State Education Building
89 Washington Avenue
Albany, NY 12234

Diane Baehre
Executive Director
UCP of Niagara County
9812 Lockport Road
Niagara Falls, NY 14304

Dear Dr. Rosa and Ms. Baehre:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage their resources efficiently and effectively. By so doing, it provides accountability for the 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 the UCP of Niagara County (Empower) to the State Education Department for the purpose of establishing the preschool special education tuition reimbursement rates used to bill public funding sources that are supported by State aid payments. 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 report, please feel free to contact us.

Respectfully submitted,

Division of State Government Accountability

Contents

Glossary of Terms

Term	Description	Identifier
SED	State Education Department	*Auditee*
CFR	Consolidated Fiscal Report	*Key Term*
CFR Manual	Consolidated Fiscal Reporting and Claiming Manual	*Policy*
Commissioner's Regulations	Regulations of the Commissioner of Education	*Key Term*
FTE	Full-time equivalent	*Key Term*
Empower	UCP of Niagara County dba Empower	*Service Provider*
OTPS	Other than personal service	*Key Term*
RCM	Reimbursable Cost Manual	*Policy*

Background

The United Cerebral Palsy Association (UCP) of Niagara County dba Empower (Empower) is a not-for-profit special education provider located in Niagara Falls, serving students from Niagara County in western New York. Empower is an affiliate of the Cerebral Palsy Associations of New York State. Empower is authorized by the State Education Department (SED) to provide education services—Preschool Special Class – over 2.5 hours per day, Preschool Integrated Special Class – 2.5 hours per day, and Preschool Integrated Special Class – over 2.5 hours per day—to children with disabilities up to 5 years old. For the purpose of this report, these programs are referred to as the SED preschool cost-based programs. During the 2019–20 school year, Empower served 94 preschool children in the SED preschool cost-based programs.

In addition to the SED preschool cost-based programs, Empower also operated other SED-approved preschool special education programs, including Evaluations, Related Services, and 1:1 Aides. However, payments for services under these programs are based on fixed fees, as opposed to the cost-based rates established through Consolidated Fiscal Reports (CFRs).

Niagara County pays tuition to Empower using reimbursement rates set by SED. The State, in turn, reimburses the county for a portion of the tuition paid. SED sets the special education rates based on financial information, including costs, that Empower reports to SED on its annual CFRs. Costs reported on the CFR must comply fully with the guidelines in SED's Reimbursable Cost Manual (RCM) regarding eligibility and documentation requirements and must meet the reporting requirements prescribed in the Consolidated Fiscal Reporting and Claiming Manual (CFR Manual). For the 3 fiscal years ended June 30, 2020, Empower reported approximately $6.6 million in reimbursable costs for the SED preschool cost-based programs.

Audit Findings and Recommendations

According to the RCM, costs will be considered for reimbursement provided they are reasonable, necessary, directly related to the special education program, and sufficiently documented. For the 3 fiscal years ended June 30, 2020, we identified $1,141,685 in costs that Empower reported on its CFR that did not comply with SED's requirements for reimbursement. These ineligible costs include $1,076,885 in personal service costs and $64,800 in other than personal service (OTPS) costs. See Exhibit at the end of the report.

Strong internal controls are critical to the overall health of an organization and help to safeguard assets and ensure reliable financial reporting and compliance with regulatory requirements. We attributed the disallowances detailed in this report to weaknesses in Empower's internal controls over its compliance with SED's guidelines.

Personal Service Costs

Personal service costs, which include all salaries and fringe benefits paid or accrued to employees on the service provider's payroll, must be reported on the CFR as either direct care costs (e.g., teachers' salaries) or non-direct care costs (e.g., administrators' salaries). For the 3 fiscal years ended June 30, 2020, Empower reported approximately $5.8 million in personal service costs for the SED preschool cost-based programs. We identified $1,076,885 in personal service costs that did not comply with the RCM and the CFR Manual's requirements for reimbursement.

General Ledger Discrepancies

According to the RCM, costs will be considered for reimbursement if they are reasonable, necessary, directly related to the special education program, and sufficiently documented. The RCM states that Section 200.9(d) of the Regulations of the Commissioner of Education (Commissioner's Regulations) requires entities operating approved programs to retain all pertinent accounting, allocation, and enrollment/attendance records supporting reported data directly or indirectly related to the establishment of tuition rates for 7 years following the end of each reporting year. We found Empower reported personal service costs of $482,418 on its CFR that were not supported by its general ledger and were therefore ineligible for reimbursement.

We recommend that SED disallow the $482,418 in personal service costs that were reported on the CFR but not supported by the general ledger.

Excess Student-to-Staff Ratios

SED program approval letters establish the direct care student-to-staff ratios under which preschool special education classrooms are to operate. According to the RCM, direct care personal costs in excess of the approved ratios are not reimbursable.

We compared Empower's staffing levels reported on its CFRs to the SED-approved staffing ratios and found the following:

- For the fiscal year ended June 30, 2020, the SED-approved teacher staffing level for the Preschool Special Class – over 2.5 hours per day was 13.918 full-time equivalents (FTEs). However, Empower reported 16.225 FTEs on its CFR. The compensation associated with the excess teachers amounted to $152,612 ($120,997 in salaries and $31,615 in fringe benefits).
- For the fiscal year ended June 30, 2018, the SED-approved teacher aide staffing level for the Preschool Special Class – over 2.5 hours per day was 9.496 FTEs. However, Empower reported 9.637 FTEs on its CFR. The compensation cost for this excess staffing was $4,370 ($3,485 in salaries and $885 in fringe benefits).
- For the fiscal year ended June 30, 2020, the SED-approved teacher staffing level for the Preschool Integrated Special Class – over 2.5 hours per day was 5.999 FTEs. However, Empower reported 8.586 FTEs on its CFR. The compensation cost for this excess staffing was $165,848 ($131,811 in salaries and $34,037 in fringe benefits).
- For the fiscal year ended June 30, 2019, the SED-approved teacher aide staffing level for the Preschool Integrated Special Class – over 2.5 hours per day was 0.5 FTEs. However, Empower reported 2.836 FTEs on its CFR. The compensation cost for this excess staffing was $67,043 ($53,252 in salaries and $13,791 in fringe benefits).

Consequently, we recommend that SED disallow $389,873 in salary and fringe benefit expenses related to excess staffing of teachers and teacher aides that did not comply with the RCM's requirements.

Unsupported Salary Costs

According to the RCM, costs will be considered for reimbursement if they are reasonable, necessary, directly related to the special education program, and sufficiently documented. Further, 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. 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. Additionally, the CFR Manual states that providers with personnel who work in more than one program should allocate their salary to the proper cost center during the normal accounting cycle based on actual time and attendance. This is especially important when a provider operates multiple programs with different funding sources and staff work on more than one program.

We judgmentally selected a sample of 25 out of 135 direct care preschool special education employees to determine if the reported salaries were substantiated. We compared the total time sheet hours to the reported hours and, for the 3 fiscal years ended June 30, 2020, identified 6,791 hours that were unsupported. Those hours resulted in Empower overreporting salaries and associated fringe benefit expenses by $198,461 ($157,642 in salaries and $40,819 in associated fringe benefits).

We recommend that SED disallow $198,461 in salary and fringe benefit expenses related to unsupported salary costs that were charged to the SED preschool cost-based programs.

Unallowable Personal Service Costs

According to the RCM, costs will be considered for reimbursement provided such costs are reasonable, necessary, directly related to the special education program, and sufficiently documented. We identified $3,976 for non-reimbursable staff expenses related to medical staff and an agency administrative management fee that was charged to personal services. We recommend that SED disallow $3,976 in unallowable personal service costs that did not comply with the RCM's requirements. We note that SED previously disallowed these costs.

Bonus Payments

According to the RCM, bonus compensation is a non-recurring lump sum payment in excess of regularly scheduled salary, which is not directly related to hours worked and is restricted to direct care employees. A bonus may be reimbursed if it is based on merit, as measured and supported by employee performance evaluations. Furthermore, the provider's governing entity must adopt a written employee performance evaluation policy that contains sufficient detail as to the criteria and methods used to determine each employee's final evaluation rating and how the final evaluation rating will directly correlate to the bonus compensation amount.

During the 3 fiscal years ended June 30, 2020, $2,157 in bonus compensation paid to 17 agency administrative staff was allocated to the SED preschool cost-based programs. Because agency administrative staff are not direct care employees, bonus payments made to these employees are ineligible for reimbursement in accordance with the RCM.

Consequently, we recommend that SED disallow $2,157 in bonus payment compensation that did not comply with SED reimbursement requirements.

Other Than Personal Service Costs

According to the RCM, costs must be reasonable, necessary, directly related to the special education program, and sufficiently documented. For the 3 fiscal years ended June 30, 2020, Empower reported $791,671 in OTPS expenses charged to the SED preschool cost-based programs. To determine whether these expenses complied with SED's requirements for reimbursement, we judgmentally selected and reviewed a sample of OTPS expenses totaling $425,559, and we also compared Empower's general ledger to expenses reported on its CFRs. We identified $64,800 in expenses that did not comply with SED's reimbursement requirements.

General Ledger Discrepancies

The RCM states that Section 200.9(d) of the Commissioner's Regulations requires entities operating approved programs to retain all pertinent accounting, allocation, and enrollment/attendance records supporting reported data directly or indirectly related to the establishment of tuition rates for 7 years following the end of each reporting year. We found Empower reported OTPS costs of $42,220 on its CFR that were not supported by its general ledger and were therefore ineligible for reimbursement.

We recommend that SED disallow $42,220 in OTPS costs that were reported on the CFR but not supported by the general ledger.

Ineligible Costs

According to the RCM, costs must be reasonable, necessary, directly related to the special education program, and sufficiently documented. The RCM states that, when determining the reasonableness of a given cost, consideration is to be given to, among other factors, whether the cost is a type generally recognized as ordinary and necessary for the operation of a special education program approved under Article 89 of the Education Law. It also states that costs for staff—including clothing, food, beverages, entertainment, flowers, and gifts—and other related costs for meetings, including board meetings, are not reimbursable unless specified otherwise in the RCM. Promotional items of any type and charitable contributions and donations are not reimbursable. The RCM also states that costs for lobbying, personal travel costs, investment expenses, and advertising expenses related to student recruitment are not allowable. Further, the RCM states that investments incurred solely to enhance income from investments are not reimbursable. Finally, the RCM states that interest expenses are reimbursable provided the interest rate is not in excess of the prime rate plus 1%.

We found that Empower reported $19,416 in expenses that are ineligible for reimbursement, including: investment costs ($6,424), banking service charges ($5,430), miscellaneous expenses with insufficient support ($2,809), staff food ($2,725), personal travel costs ($879), interest costs ($690), gifts ($154), miscellaneous ineligible ($134), lobbying costs ($126), advertising ($30), and membership fees ($15). We note that SED previously adjusted $7,114 of the ineligible costs related to investments and interest expenses.

We recommend that SED disallow $19,416 in costs that were not in compliance with the RCM.

Unsupported Costs

According to the RCM, costs will be considered for reimbursement provided such costs are sufficiently documented. All purchases must be supported with canceled checks and invoices listing the items purchased, date of purchase, and date of payment. Costs must be identified on invoices or associated documents and charged directly to specific programs whenever possible. The programs must be identified on invoices or associated documents.

We identified $3,164 for leased property and rental equipment that had no supporting documentation.

We recommend that SED disallow $3,164 in costs that were not in compliance with the RCM.

Other Matters

CFR and Financial Statement Discrepancies

According to the RCM, Section 200.9(d) of the Commissioner's Regulations requires entities operating approved programs to retain all pertinent accounting, allocation, and enrollment/attendance records supporting reported data directly or indirectly related to the establishment of tuition rates for 7 years following the end of each reporting year. During our review, we found that the total expenses reported on Empower's audited financial statements were $13,248 higher than what Empower claimed on its CFR for the 3 fiscal years ending June 30, 2020. We performed our reconciliation based on the supporting documentation provided by Empower (i.e., audited annual financial statements), and found the expense amount reported in Empower's financial statements did not match the amounts reported on the CFR Reconciliation submitted to SED. When considering the total expenses reported in the financial statements and the adjustments reported on the CFR, we reached our conclusion that the expenses reported in the financial statements were higher than what was reported on the CFR. While this does not result in a disallowance, the expenses reported on the financial statements should match those reported on the CFR after adjustments.

Recommendations

To SED:

1. Review the recommended disallowances identified by our audit and make the necessary adjustments to the costs reported on Empower's CFRs and Empower's tuition reimbursement rates, as warranted.
2. Remind Empower officials of the pertinent SED requirements that relate to the deficiencies we identified.

To Empower:

3. Ensure that costs reported on annual CFRs fully comply with SED's requirements and communicate with SED to obtain clarification as needed.
4. Ensure that expenses reported on the CFR match the expenses reported on the financial statements.

Audit Scope, Objective, and Methodology

The objective of our audit was to determine whether the costs reported by Empower on its CFRs were reasonable, necessary, directly related to the special education program, and sufficiently documented pursuant to SED's guidelines, including the RCM and CFR Manual. The audit focused primarily on expenses claimed on Empower's CFRs for the 3 fiscal years ended June 30, 2020.

To accomplish our objective, we reviewed the RCM, the CFR Manual, the Commissioner's Regulations, Empower's CFRs, and relevant financial and program records for the audited period. We also interviewed Empower officials and staff to obtain an understanding of Empower's financial and business practices. In addition, we evaluated the internal controls over the costs claimed on, and the schedules prepared in support of, the CFRs submitted to SED.

We used a non-statistical sampling approach to provide conclusions on our audit objectives and to test internal controls and compliance. We selected a judgmental sample of reported OTPS costs to determine whether they were supported, program-related, and reimbursable. Specifically, we reviewed costs that were considered high risk and reimbursable in limited circumstances based on prior audit report findings, such as salaries and fringe benefit expenses, cost allocations, and OTPS expenses. We also selected a judgmental sample of employees based on their title codes, the number of programs their salaries were attributed to, and which CFR schedule they were charged to. Our samples were based on the relative materiality of the various categories of costs reported and their associated levels of risk. However, because we used a non-statistical sampling approach for our tests, we cannot project the results to the respective populations. Our samples are discussed in detail in the body of our report.

We obtained data from Empower's general ledger and other financial systems, and we assessed the reliability of that data by interviewing officials knowledgeable about the system and by tracing to and from source data. We determined that the data from these systems was sufficiently reliable for the purposes of this report.

Statutory Requirements

Authority

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 Education Law.

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. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our professional judgment, these duties do not affect our ability to conduct this independent performance audit of SED's oversight and administration of Empower's compliance with the RCM and CFR Manual.

Reporting Requirements

We provided a draft copy of this report to SED and Empower 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 the report. In SED's response, officials agreed with the recommendations and indicated the actions they will take to address them. However, in their response, Empower officials disagreed with many of the proposed disallowances. Our responses to Empower's comments are included in the report's State Comptroller's Comments. Empower 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 180 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the State Education Department 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.

Exhibit

UCP of Niagara County (Empower)
Schedule of Submitted and Disallowed Program Costs
for the 3 Fiscal Years Ended June 30, 2020

Program Costs	Amount Reported on CFR	Amount Disallowed	Amount Remaining	Notes to Exhibit
Personal Services				
Direct Care	$5,445,405	$1,072,044	$4,373,361	A, C, D, M, N
Agency Administration	398,325	4,841	393,484	
Total Personal Services	**$5,843,730**	**$1,076,885**	**$4,766,845**	
Other Than Personal Service				
Direct Care	$470,344	$29,387	$440,957	A, B, E-M, O
Agency Administration	321,327	35,413	285,914	
Total Other Than Personal Services	**$791,671**	**$64,800**	**$726,871**	
Total Program Costs	**$6,635,401**	**$1,141,685**	**$5,493,716**	

Notes to Exhibit

The following Notes refer to specific sections of the RCM that we 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 Empower officials during the course of our audit.

A. RCM Section II – Costs will be considered for reimbursement provided such costs are reasonable, necessary, directly related to the special education program, and sufficiently documented.

B. RCM Section II.3.A – Advertising costs for the purpose of recruiting students into programs or soliciting fundraising monies or donations are not reimbursable and remain non-allowable in the calculation of tuition rates.

C. RCM Section II.13.A.10 – A merit award may be reimbursed if it is based on merit as measured and supported by employee performance evaluations that are completed prior to the determination and accrual of the merit award and within 1 year of such determination and accrual. In order to demonstrate that a merit award is based on merit and measured and supported by employee performance evaluations, the provider's governing entity must adopt a written employee performance evaluation policy and form that contains sufficient detail as to the criteria and methods used to determine each employee's final evaluation rating. The written employee performance evaluation policy must also describe how the final evaluation rating will directly correlate to any amount of a merit award should funds be available for such an award.

D. RCM Section II.13.A.10.(a) – Merit awards are restricted to direct care titles/employees as defined by the RCM's Appendix A-1 and those in the 100 position title code series and position title code 505 and 605 as defined by the CFR Manual's Appendix R.

E. RCM Sections II.3.A and II.16 – Promotional items of any type and charitable contributions and donations are not reimbursable.

F. RCM Section II.14.B – Costs of legal, accounting, or consulting services and related costs incurred in connection with bankruptcy, reorganization of the agency, including mergers and acquisitions, unless mandated by SED, are not reimbursable. Costs associated with retainers for legal, accounting, or consulting services are not reimbursable unless the fee represents payment for actual documented reimbursable services rendered, provided the services are not for lobbying efforts. Lobbying activities include, but are not limited to, advocating for legislation and activities associated with obtaining grants, contracts, cooperative agreements, or loans.

G. RCM Section II.14.E – Costs associated with non-audit services provided by a registered public accounting firm or any person associated with that firm, during or within 365 days of required audit work (prior to the beginning of the fiscal period being audited or after the date of the audit report issued for the audit period), are not reimbursable.

H. RCM 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, and rental expenses for personal apartments, are not reimbursable unless specified otherwise in the RCM.

I. RCM Section II.22.C – Costs of food provided to any staff, including lunchroom monitors, are not reimbursable.

J. RCM Section II.28.A – Arm's-length interest expense on capital indebtedness and working capital is reimbursable provided the interest rate is not in excess of the prime rate plus 1% of the lending institution at the time the loan was made. Interest expense will be reimbursed on loans in excess of the prime rate plus 1% in cases where the entity can establish that it was unable to secure a rate of prime plus 1% or lower despite its good faith efforts to do so.

K. RCM Section II.29 – Investment management costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are not reimbursable.

L. RCM Section II.30.C – Costs for food, beverages, entertainment, and other related costs for meetings, including Board meetings, are not reimbursable.

M. RCM Section III.1 – Costs will not be reimbursable on field audit without appropriate written documentation of costs.

N. RCM 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.

O. RCM Section III.1.D – All purchases must be supported with canceled checks and invoices listing the items purchased, date of purchase, and date of payment. Costs must be charged directly to specific programs whenever possible. The particular program(s) must be identified on invoices or associated documents.

Agency Comments - State Education Department

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

EXECUTIVE DEPUTY COMMISSIONER
(518) 473-8381
E-mail: Sharon.Cates-Williams@nysed.gov

April 17, 2024

Ms. Theresa Podagrasi
Audit Manager
Office of the State Comptroller
Division of State Government Accountability
110 State St, 11th Floor
Albany, NY 12236

Dear Ms. Podagrasi:

The following is the New York State Education Department's (SED) response to the draft audit report, 2023-S-3, *UCP Niagara dba Empower (Empower) - Compliance With the Reimbursable Cost Manual.*

Recommendation 1:

"Review the recommended disallowances identified by our audit and make the necessary adjustments to the costs reported on Empower's CFR's and to Empower's tuition reimbursement rates, as warranted."

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. NYSED will further review the staffing recommendations to determine if the adjustments are appropriate.

Recommendation 2:

"Remind Empower officials of the pertinent SED requirements that relate to the deficiencies we identified."

We agree with this recommendation. SED will continue to provide technical assistance whenever requested and will strongly recommend Empower officials avail themselves of our assistance to help them better understand the rules for cost reporting and criteria for cost reimbursement as presented in the CFR, Regulations, and the Reimbursable Cost Manual (RCM).

Furthermore, SED will alert Empower of online CFR training that is available on SED's webpage. SED recommends that all individuals signing the CFR certification statements, namely the Executive Director and Certified Public Accountant, complete this training. This training is a requirement for preschool special education providers upon approval and reapproval.

If you have any questions regarding this response, please contact Nell Brady, Director of the Rate Setting Unit, at (518) 474-1298.

Sincerely,

Sharon Cates-Williams

Sharon Cates-Williams

cc: Christina Coughlin
Christopher Suriano
Suzanne Bolling
James Kampf
Jeanne Day
Nell Brady
Jennifer Finucan
William Meissner
Rebecca Jones
Mary Moore

Agency Comments - UCP of Niagara County (Empower)

EMPOWER

support services to help you live your best life

April 30, 2024

UCP of Niagara County dba Empower
SED – Compliance With the Reimbursable Cost Manual
Report 2023-S-3 April 2024 Draft Response

Background:

During 2022, Empower experienced turnover in key leadership roles, including the Executive Director, Chief Financial Officer, and Assistant Executive Director positions. The previous Chief Financial Officer had been employed in that position for over three decades, and was the person who solely prepared the annual Consolidated Fiscal Report. Her knowledge of the CFR and the Reimbursable Cost Manual was thorough, and she was a detail oriented, accurate accountant. Unfortunately, upon her retirement in 2022, the knowledge she had gained over her tenure left with her, and the new team did not have the opportunity to thoroughly get up to speed prior to her departure. The timing of CEO and CFO turnover coupled with notice of the Office of the State Comptroller audit led to a perfect storm for Empower.

When the Office of the State Comptroller arrived to begin their audit of Empower's SED programs, the new CFO attempted to be as helpful as possible in fulfilling their requests. He did so without the benefit of knowing how the CFR was actually prepared in the past, as he had not yet prepared a CFR himself in his new role. This unfortunate timing led to a difficult audit process for both the new CFO and the OSC team as they attempted to work through their testing. The CFO immediately recognized his unfamiliarity with CFR preparation and sought help. He hired a Consultant with vast knowledge of CFR preparation and the RCM, and over the next few months prepared his first CFR with the help of the Consultant. However his knowledge was not gained timely enough to be able to help the OSC auditors work through their audit questions, and led to the following significant findings. Empower strongly believes that many of the following findings would have been completely avoided and others minimized if the Empower team had the knowledge to help the OSC auditors work through their challenges.

Empower has undergone external financial statement and CFR audits for all years under audit, by the firm Lumsden McCormick CPA, and has received unqualified opinions for all years.

Empower also firmly believes that they are already addressing many of the recommendations issued by the OSC and will be a stronger organization as a result of having

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EMPOWER

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learned some difficult lessons through this period of turnover in leadership. Through improved internal control processes and adherence to updated policies, together with increased training and education, they feel as though they will be able to demonstrate their good business practices much better today and in the future.

OSC's report states that they found approximately $1.19M in costs not in compliance with SED's requirements for reimbursement. During this period, reimbursable expenses reported were approximately $6.65M, therefore the percentage of findings related to total funding is approximately 18%. If Empower were to lose 18% of their funding, they would not be able to continue operating their SED funded programs, and approximately 50 students would be displaced. This would be a significant burden to the families and to the community that Empower serves. Please consider this background as well as the following responses to the specific findings, and help us see our way through this together.

Finding: Personal Service Costs, General Ledger Discrepancies

In order to prepare the information on schedule CFR-4, Personal Service Costs, the former CFO went through several steps. The source data was taken directly out of the payroll system, Paylocity, and first tied in total to the General Ledger. Then the payroll data goes through various allocations to departments (programs), coding for position codes worked, and finally split into Jan-June and July-Dec for SED programs. Several excel files are utilized in these various steps, and while the former CFO had done this repeatedly for years, the new CFO could not find written procedures to show him the roadmap to follow. He was also unable to explain the roadmap to the OSC auditors, which led to this finding.

During preparation of the 2022 CFR, which started at about the same time that the OSC audit was wrapping up, the outside Consultant helped the CFO and his team to locate the files utilized in the CFR-4 preparation and to follow the path through to the CFR reporting. Empower has since documented this procedural roadmap to get from General Ledger through the various steps and data files, to what is reported in the CFR. We believe this would have greatly assisted the OSC had it been provided to them in time to coincide with their audit.

Empower is able to demonstrate that the Personal Service Costs reported on CFR-4 tie back to the General Ledger without exception. We have attached as Exhibit A a procedural roadmap of documentation. Empower feels that this finding should be removed.

Comment 1

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Finding: Personal Service Costs, Excess Student to Staff Ratios

Empower pays Teachers over 52 weeks even though they only work 48 (they have 4 weeks of breaks). This is outline in Teacher contracts, an excerpt of which is attached as Exhibit B. However, Empower failed to report the Teacher hours in accordance with the instructions in the CFR manual. Had they followed the instructions, the hours would have been multiplied by 1,680/1,820 and the FTE reported would have been lower, more closely aligning with the SED-approved teacher staffing levels. Please find attached as Exhibit C the revised teacher staffing ratios had the FTE been reported correctly.

Note that Teacher Aides are paid hourly and are not paid for breaks.

Empower disagrees with one figure on OSC's file that summarizes the staffing ratio disallowance – the approved staff ratio for program 9160 should be 2.0 for both Spring and Fall 2019, not 0.5 as is used on the spreadsheet. Adjusting this approved ratio for both Teachers and Teacher Aides significantly changes the calculation for this program for 2019. Comment 2

Empower will report the Teacher FTEs in accordance with the CFR instructions in the future and will also incorporate a thorough review of the CFR instructions with its CFR preparation in the future. Empower believes this finding should be modified to adjust for the incorrectly reported FTEs.

Finding: Personal Service Costs, Unsupported Personal Service Costs

The OSC selected a sample of reported hours to substantiate with timesheet or timecard backup. Empower provided the timesheets that were requested at the time of audit, but also then sent additional timesheets to the auditors via email subsequent to audit fieldwork when notified of missing time documentation. Upon review, Empower found that some of the original scanned documents emailed were not legible, therefore they then supplied legible copies.

For the Teachers selected as part of the sample, they do not fill out timesheets for the 4 weeks/year that they are on break. As previously stated, Teachers work 48 weeks and are paid over 52 weeks as per their employment contract, therefore timesheets are not required during the breaks. Empower feels that these hours are incorrectly included as part of OSC's unsubstantiated hours. Comment 3

For all employees included in the sample, Empower has found timesheets for all but approximately 2,300 hours. Please find attached Exhibit D, which is the OSC payroll sample

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revised for the timesheets Empower has been able to find. The bulk of the missing timesheets were from teacher aides for one continuous period of time. It is the policy (Exhibit E) of Empower not to pay employees without existing completed time sheets. Furthermore, due to many of the sampled employees being hourly personnel, the payroll department would not have known how much to pay without a timesheet having been rendered. Empower feels that the records existed at one time but were misplaced or misfiled, and cannot locate them.

Comment 4

Empower recognizes that the recordkeeping processes in place need improvement and that a written policy regarding document retention needs to be developed. To further improve recordkeeping processes, Empower is also in the development of moving toward an electronic timekeeping system, supported by their current payroll system provider, and has already begun initial implementation and training. Full implementation is expected to take place during the 2024/25 school year.

Finding: Personal Service Costs, Bonus Payments

Historically, it has not been the practice of Empower to pay employees compensation in the form of bonuses that were not specifically tied to bonus-specific funding. Therefore a policy covering bonus compensation does not exist. The disallowed bonus finding resulted from a one-time bonus given by the former Executive Director to employees that went over and above job duties during the Covid pandemic, therefore he felt that it was warranted based on merit. However, employee performance evaluations were not specifically written for each employee that received a bonus.

Comment 5

Empower does not typically give bonus compensation. However, based upon OSC's recommendation, Empower will be developing a written policy for employee evaluation and bonus compensation, which will be in compliance with the guidance in the RCM.

Finding: Other Than Personal Service Costs, Unsupported Costs, "Leased property and rental equipment"

As a complete oversight during the audit, Empower failed to provide adequate support to the auditors for leased property and equipment costs with the SED programs. Support does however exist and we believe this finding would not exist had the attached support been provided to the auditors upon their initial request. Please find attached Exhibit F for a copy of the contract for copiers, as well as a sample of paid invoices that support the expense charged to the SED programs. Empower feels that this finding should be removed.

Comment 6

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Finding: Other Than Personal Service Costs, Unsupported Costs, "Contract for IT-related services"

One of Empower's Board Members provided in-house IT support to Empower during the period of the audit. This was appropriately reported a related-party transaction on schedule CFR-5. During this time frame, Empower put its outside IT-related services out to bid. The Board Member's Company that also provides in-house IT support was one of the bidding parties, however this Board Member's Company did not win the contract. Empower followed a competitive bid process for hiring the outside IT consultants, and the attached RFP and Scoring Rubric at Exhibit G shows that the contract was awarded to another company, Accessium. In schedule CFR-6 for each of the 2017-2019 CFRs, Accessium was reported under the highest paid contractors section.

Comment 7

Furthermore, there is a Conflict of Interest policy (Exhibit H), which is followed regularly. Leadership will ensure that it continues to maintain adherence to these policies. For the in-house consulting fees paid to the Board member, these costs were compared to average regional prices paid for comparably qualified services and are deemed reasonable by Empower. Empower feels that this finding should be removed.

Finding: Other Than Personal Service Costs, General Ledger Discrepancies

In order to prepare the information on schedule CFR-1, Expenses, Other Than Personal Service Costs, the former CFO went through several steps. The source data was taken directly out of the General Ledger. Then the payroll data goes through various allocations to departments (programs), and finally split into Jan-June and July-Dec for SED programs. Several excel files are utilized in these various steps, and while the former CFO had done this repeatedly for years, the new CFO could not find written procedures to show him the roadmap to follow. He was also unable to explain the roadmap to the OSC auditors, which led to this finding.

During preparation of the 2022 CFR, which started at about the same time that the OSC audit was wrapping up, the outside Consultant helped the CFO and his team to locate the files utilized in the CFR-1 preparation and to follow the path through to the CFR reporting. Empower has since documented this procedural roadmap to get from General Ledger through the various steps and data files, to what is reported in the CFR. We believe this would have greatly assisted the OSC had it been provided to them in time to coincide with their audit.

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Empower is able to demonstrate that the Other Than Personal Service Costs reported on CFR-1 tie back to the General Ledger without exception. We have attached as Exhibit I as the procedural roadmap for documentation. Empower feels that this finding should be removed.

Comment 8

Finding: Other Than Personal Service Costs, Ineligible Costs

OSC lists several costs included in General and Administrative and allocated to the SED programs using the ratio value method. Empower agrees that it should cultivate a better understanding of reimbursable costs in order to more appropriately code these as disallowed on the cost report, if necessary, and has already set up a general ledger account to capture such costs.

For the period under audit, OSC found "investment costs" of $6,424 within the general ledger. Upon further investigation, these were not actually investment costs but bank service charges.

Comment 9

Purchasing policies and procedures, as well as accounts payable policies will be updated to reflect putting in place measure to ensure reasonable, necessary and allowable costs in accordance with the RCM, and costs will be directly charged to the programs that benefit in all possible cases.

Training, Education and Oversight:

Empower plans to incorporate a more robust training and education plan with all personnel involved with internal financial controls on the principles of the RCM beginning in 2024. Empower will utilize Sarah L. Hedges, CPA who is an outside Consultant with the appropriate background and expertise, to provide the training. Please see Exhibit J for the consultant's background.

Training on the RCM will take place in June 2024 and annually each subsequent year, and will include the CEO, CFO, Accounting Manager and Accounts Payable staff, as well as the Program Director who is involved in purchasing approval.

The CFO in charge of CFR reporting attended the NYS CFR training in January 2024, and will continue to attend the NYS CFR training offered to ensure appropriate understanding of the CFR preparation and current updates is obtained.

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For the 2023 CFR preparation, the CFO, with the outside Consultant's guidance, will review all expenses charged to the general ledger to ensure that they are reasonable, necessary and supported, and in compliance with the principles in the RCM.

Monthly, beginning in June 2024, the CFO will randomly select a general ledger account to review all supporting invoices for a monthly period. This review will ensure completeness and conformance to the RCM. Any findings will be adjusted within the original month reported. The CFO will report his findings to the Finance Committee of the Board.

Empower has a Policies and Procedures Committee that meets monthly to ensure all Policies and Procedures are current and updated. See Exhibit K for the Policy and Procedure Approval Process. Policies and procedures related to financial internal controls will be updated and regularly maintained to continue to ensure appropriate financial safeguards are in place.

In Closing:

Empower appreciates the ability to respond to this draft audit report. We sincerely hope that the above counter recommendations will be taken into consideration. If we can supply additional clarification or information to support our responses, we will be happy to do so in a timely manner. We strive to continue to serve the population that has come to depend on Empower's services.

Diane Baehre
Executive Director

Patrick Cosgrove
Chief Financial Officer

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State Comptroller’s Comments

1. We disagree. Empower officials were unable to demonstrate how the personal service costs reported on the CFR tied back to the general ledger. While Empower officials have now provided a procedural roadmap in Exhibit A, they did not provide the supporting documentation, such as time sheets, to support the personal service costs.
2. We stand by our findings. Our staffing ratio calculations are correct as reported and were based on what was reported to SED at the time the CFR was submitted. The disallowance cannot be adjusted based on an updated FTE that was not submitted to SED.
3. Empower may have not required time sheets for the teachers’ 4-week break; however, they are required by the RCM. The RCM requires that 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.
4. We stand by our findings. The RCM requires entities operating approved programs to retain all pertinent accounting, allocation, and enrollment/attendance records supporting reported data directly or indirectly related to the establishment of tuition rates for 7 years following the end of each reporting year.
5. As previously stated on page 9 of our report, a bonus may be reimbursed if it is based on merit, as measured and supported by employee performance evaluations. Furthermore, bonus compensation is restricted to direct care employees.
6. We reviewed Exhibit F and the paid invoice provided to us and amended the report to remove the recommended disallowance. However, while it may have been a complete oversight by Empower to provide the documentation, it was requested multiple times, and the finding was also reported to the school in our preliminary findings.
7. After reviewing Exhibit G and other documentation requested based on the school’s response, we amended the report to remove the recommended disallowance. However, we would like to note that this documentation was requested multiple times during the course of the audit.
8. We disagree. With the documentation provided to us during the audit, Empower officials were unable to demonstrate how the OTPS costs reported on the CFR tied back to the general ledger. While Empower officials have now provided a procedural roadmap in Exhibit I, the costs reported on the CFR are still not supported by the general ledger.
9. As stated on page 10 of our report, SED previously made adjustments for the $6,424 expense prior to our audit. Furthermore, SED also classified the expense as a non-reimbursable investment expense.

Contributors to Report

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