

State Education Department

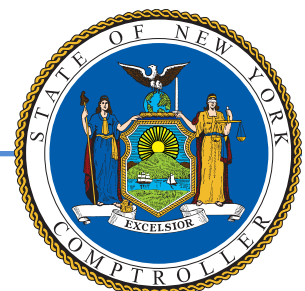
Small Wonder Preschool, Inc.: Compliance With the Reimbursable Cost Manual

Report 2023-S-36 | September 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 Small Wonder Preschool, Inc. (Small Wonder) on its Consolidated Fiscal Reports (CFRs) 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 focused primarily on expenses claimed on Small Wonder's CFR for the fiscal year ended June 30, 2021 and certain expenses claimed on its CFRs for the 2 fiscal years ended June 30, 2020.

About the Program

Small Wonder is a New York City-based not-for-profit organization authorized by SED to provide full-day Special Class services to children with disabilities who are between the ages of 3 and 5 years. For the purpose of this report, this program is referred to as the SED preschool cost-based program. Small Wonder also operated two other SED-approved preschool programs: Evaluations and 1:1 Aides. However, payments for services under these other programs are based on fixed fees, as opposed to the cost-based rates established through financial information reported on CFRs. During the fiscal year ended June 30, 2021, Small Wonder served approximately 85 students in the SED preschool cost-based program.

The New York City Department of Education refers students to Small Wonder based on clinical evaluations and pays for its services using rates established by SED. The rates are based on the financial information that Small Wonder reports to SED on its annual CFRs. For the 3 fiscal years ended June 30, 2021, Small Wonder reported approximately \$5.9 million in reimbursable costs for the SED preschool cost-based program.

Key Findings

For the 3 fiscal years ended June 30, 2021, we identified \$264,701 in reported costs that did not comply with the requirements in the RCM and the CFR Manual, as follows:

- \$153,004 in undocumented or insufficiently documented other than personal service costs, including \$85,578 in audit fees, \$52,456 in information technology service costs, \$7,383 in storage fees, \$3,163 in miscellaneous costs, \$2,508 in website marketing and advertising costs, and \$1,916 in adjusting journal entries.
- \$70,308 in bonus compensation that was not in compliance with the RCM's guidelines.
- \$30,173 in compensation costs for seven 1:1 aides that were incorrectly charged to the SED preschool cost-based program. The costs for 1:1 aides should have been reported on Small Wonder's CFRs under the 1:1 aide cost center.
- \$8,527 in costs that did not meet RCM requirements, including \$4,740 in non-reimbursable contracted direct care costs, \$1,281 in personal vehicle insurance premiums, \$824 in costs that were claimed in the incorrect CFR reporting period, \$809 in interest on a non-SED approved loan given to Small Wonder by its Executive Director, \$378 in overallocated repairs and maintenance costs, \$260 in notary public exam costs, \$134 in lobbying-related costs, \$52 in food for staff, and \$49 in travel costs related to an administration law court hearing.
- \$2,689 in staffing expenses that were in excess of the approved staffing ratios.

Key Recommendations

To SED:

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

To Small Wonder:

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



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

September 5, 2024

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

Ursula Salih, Ed.D.
Executive Director
Small Wonder Preschool, Inc.
90-45 Myrtle Avenue
Glendale, NY 11385

Dear Dr. Rosa and Dr. Salih:

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 expenses submitted by Small Wonder Preschool, Inc. 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

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Glossary of Terms

Term	Description	Identifier
SED	State Education Department	<i>Auditee</i>
CFR	Consolidated Fiscal Report	<i>Key Term</i>
CFR Manual	Consolidated Fiscal Reporting and Claiming Manual	<i>Policy</i>
DOE	New York City Department of Education	<i>Agency</i>
LTAL	Less-than-arm's length	<i>Key Term</i>
OTPS	Other than personal service	<i>Key Term</i>
RCM	Reimbursable Cost Manual	<i>Policy</i>
Small Wonder	Small Wonder Preschool, Inc.	<i>Service Provider</i>

Background

Small Wonder Preschool, Inc. (Small Wonder) is a New York City-based not-for-profit organization approved by the State Education Department (SED) to provide full-day Special Class services to children with disabilities who are between the ages of 3 and 5 years. For the purpose of this report, this program is referred to as the SED preschool cost-based program. During the fiscal year ended June 30, 2021, Small Wonder served 85 students with disabilities in the SED preschool cost-based program. In addition to the SED preschool cost-based program, Small Wonder operated two other SED-approved preschool programs: Evaluations 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 financial information reported on the annual Consolidated Fiscal Reports (CFRs).

The New York City Department of Education (DOE) refers students to Small Wonder based on clinical evaluations and pays for Small Wonder's services using rates established by SED. The rates are based on the financial information Small Wonder reports to SED on its annual CFRs. To qualify for reimbursement, Small Wonder's reported costs must comply with SED's Reimbursable Cost Manual (RCM) and the Consolidated Fiscal Reporting and Claiming Manual (CFR Manual), which provide 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 and entities. SED reimburses DOE 59.5% of the statutory rate, which DOE pays to Small Wonder.

For the 3 fiscal years ended June 30, 2021, Small Wonder reported approximately \$5.9 million in reimbursable costs for the SED preschool cost-based program. This audit focused primarily on expenses that Small Wonder claimed on its CFR for the year ended June 30, 2021 and certain expenses reported on its CFRs for the 2 fiscal years ended June 30, 2020.

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, 2021, we identified \$264,701 in reported costs that did not comply with SED's requirements for reimbursement. These ineligible costs include \$103,170 in personal service costs and \$161,531 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. These controls 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 Small Wonder'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, 2021, Small Wonder reported approximately \$4.6 million in personal service costs for the SED preschool cost-based program. We identified \$103,170 in personal service costs that did not comply with the RCM's requirements for reimbursement.

Ineligible Bonus Compensation

According to the RCM, a merit award (or bonus compensation) shall mean a non-recurring and non-accumulating (i.e., not included in base salary of subsequent years) lump sum payment in excess of regularly scheduled salary that is not directly related to hours worked. A merit award may be reimbursed if it is based on merit as 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. In addition, 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.

For the fiscal year ended June 30, 2020, Small Wonder reported \$33,144 in bonus compensation to 26 SED preschool cost-based program employees. However, Small Wonder officials did not provide adequate support that the bonus compensation was measured and supported by employee performance evaluations. Officials did not provide performance evaluations for 10 of the employees, and evaluations for the remaining 16 employees did not indicate how the performance ratings correlated to the bonus amount, as required by the RCM. In addition, two of the 26 employees

held non-direct care positions/titles that made them ineligible to receive bonus compensation: An accountant received an \$1,800 bonus, and the Executive Director received a \$3,457 bonus—the highest bonus paid for the 2019–20 fiscal year. The Executive Director was among the 10 employees for whom officials did not provide performance evaluations.

For the fiscal year ended June 30, 2019, Small Wonder reported \$30,129 in bonus compensation to 25 SED preschool cost-based program employees. However, Small Wonder officials did not provide adequate support that the bonus compensation was measured and supported by employee performance evaluations. Officials did not provide performance evaluations for five of the employees, and evaluations for the remaining 20 employees did not indicate how the performance ratings correlated to the bonus amount, as required by the RCM. We also found that two of the 25 employees held non-direct care positions/titles that made them ineligible to receive bonus compensation: An accountant received a \$3,000 bonus, and the Executive Director received a \$3,600 bonus—the highest bonus paid for the 2018–19 fiscal year. Both employees were among the five employees for whom officials did not provide performance evaluations.

Small Wonder officials responded that the bonuses correlated with the ratings achieved. However, we found instances where employees with lower ratings received higher bonuses. Officials stated that the evaluation narratives occasionally identified unique elements that demonstrated other positive externalities and attributes not otherwise captured by the evaluation metric but nonetheless worthy of note and recognition. However, this explanation is contrary to the RCM's requirement that the evaluation policy describe how the final evaluation rating will directly correlate to the bonus amount. Moreover, the evaluations that officials provided did not even contain a final evaluation rating.

Consequently, we recommend that SED disallow \$70,308 in non-reimbursable bonus compensation (\$63,273 in salaries [\$33,144 + \$30,129] and \$7,035 in associated fringe benefits).

Ineligible 1:1 Aide Costs

According to the CFR Manual, expenses (e.g., salaries and fringe benefits) for approved 1:1 teacher aides must be reported as a separate column (Program Code 9230) on the provider's CFRs.

For the 2 fiscal years ended June 30, 2020, Small Wonder claimed \$30,173 in compensation costs for seven employees reported as 1:1 aides to the SED preschool cost-based program; however, the costs for 1:1 aides should have been reported on the provider's CFRs under the fixed fee 1:1 aide cost center. Small Wonder officials agreed that these costs were incorrectly reported.

We recommend that SED disallow \$30,173 in compensation costs (\$27,137 in salaries and \$3,036 in fringe benefits) that were incorrectly charged to the SED preschool cost-based program.

Excess Staffing Expenses

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 personnel costs in excess of the approved ratios are not reimbursable.

For the 3 fiscal years ended June 30, 2021, we compared teacher aide/assistant staffing levels reported on Small Wonder's CFRs with the relevant SED approval letters. For the fiscal year ended June 30, 2020, the SED-approved staffing limit for Small Wonder SED preschool cost-based program teacher aides/assistants was 8.9 full-time equivalents; however, Small Wonder reported 8.97 full-time equivalents on its CFR. Small Wonder officials agreed that the reported ratio exceeded the approved ratio for these positions.

We recommend that SED disallow \$2,689 in excess compensation costs (\$2,291 in salaries and \$398 in fringe benefits).

Other Than Personal Service Costs

For the 3 fiscal years ended June 30, 2021, Small Wonder reported approximately \$1.3 million in OTPS costs for its SED preschool cost-based program. To determine whether these expenses complied with SED's requirements for reimbursement, we judgmentally selected a sample of OTPS expenses totaling \$338,086. We identified \$161,531 of these expenses that did not comply with SED's reimbursement requirements.

Undocumented/Insufficiently Documented Costs

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. All purchases must be supported with invoices listing the items purchased and the date of purchase. Adequate documentation for consultants includes, but is not limited to, the consultant's résumé, 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 and/or deliverable actually provided and, for each service and/or deliverable, the date provided and the total amount charged.

We identified \$153,004 in undocumented or insufficiently documented OTPS costs. Small Wonder officials either did not provide invoices to support these costs, or the invoices/documents provided did not include information required by the RCM. These costs include:

- \$85,578 in audit fees.
- \$52,456 in information technology service costs.
- \$7,383 in storage costs for a facility that the Executive Director's spouse (non-employee) had access to.

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- \$3,163 in miscellaneous costs (e.g., telecommunications, permits, food, and training).
 - \$2,508 in website marketing and advertising costs.
 - \$1,916 in adjusting journal entries.

Small Wonder officials responded that the storage costs were recurring monthly charges agreed to in Small Wonder's contracts with the vendors. However, the contracts provided did not support all the amounts charged. Further, we noted that the storage facility contained confidential student and employee records and, therefore, should not have been accessible to a non-employee. Officials also indicated that the information technology service costs cannot be easily itemized on an invoice in a service, date, and time format because the vendor charges its customers based on availability as well as general services such as anti-spam and monitoring. However, the RCM requires that all payments to consultants be supported by itemized invoices that indicate the specific services and/or deliverable actually provided and, for each service and/or deliverable, the date provided and the total amount charged.

Consequently, we recommend that SED disallow \$153,004 for these undocumented/insufficiently documented costs.

Other Ineligible 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. Certain costs such as expenses of a personal nature or for lobbying activities are not reimbursable. The RCM also states that entities operating approved programs must use the accrual basis of accounting, and the CFR Manual states that CFRs submitted with expenses for a different reporting period will not be accepted. In addition, the RCM states that less-than-arm's-length (LTAL) interest expense will be reimbursed only with SED's prior written approval upon establishment of the necessity and cost effectiveness of the transaction. A cost-effective transaction is one in which the interest rate charged by the LTAL lender is less than or equal to the prime rate available from lending institutions. The RCM also states that related service records must be maintained for each child and each service session, indicating the date, duration, nature, and scope of service provided, with the name, license or certification number, and signature of the related service provider. We identified \$8,527 in OTPS costs that were ineligible for reimbursement, as follows:

- \$4,740 in non-reimbursable contracted direct care costs. This included \$3,600 for therapy sessions that were not supported by session notes, \$610 for sessions where the students were absent, \$458 for sessions that involved multiple students but were billed for each student individually, and \$72 for a therapist to attend a webinar that was not related to the SED preschool cost-based program.

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- \$1,281 in insurance premiums for Small Wonder employees' use of their personal vehicles.
 - \$824 in costs that were claimed for reimbursement on a CFR for the incorrect reporting period.
 - \$809 in interest expense for a loan given to Small Wonder by its Executive Director. Small Wonder officials did not obtain SED's prior written approval for this LTAL loan, and the interest rate charged was above prime rate.
 - \$378 in repairs and maintenance costs that were overallocated to the SED preschool cost-based program.
 - \$260 in costs for a Small Wonder employee to prepare for and take the notary public exam.
 - \$235 in other ineligible expenses, including \$134 in expenses related to lobbying activities, \$52 in food for staff, and \$49 in expenses for Small Wonder's Executive Director to travel to an administrative law court hearing that was not related to the SED preschool cost-based program.

Small Wonder officials indicated that many of the contracted direct care costs noted above related to therapists performing non-direct care tasks, such as assembling packets and collaborating with parents. They stated that the student's attendance is not necessary for such tasks. However, the documents officials subsequently provided in support of these costs contained the same general work descriptions for multiple therapists. Officials also stated that the webinar provided necessary training for all staff attending to the needs of students during the COVID-19 pandemic. However, Small Wonder should not be claiming the costs of training or webinars for non-employees.

Consequently, we recommend that SED disallow \$8,527 for these non-reimbursable costs.

Recommendations

To SED:

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

To Small Wonder:

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

The objective of our audit was to determine whether the costs reported by Small Wonder on its CFRs were reasonable, necessary, directly related to the special education program, and sufficiently documented pursuant to SED's RCM and the CFR Manual. The audit focused primarily on expenses claimed on Small Wonder's CFR for the fiscal year ended June 30, 2021 and certain expenses claimed on its CFRs for the 2 fiscal years ended June 30, 2020.

To accomplish our objective, we reviewed the RCM, the CFR Manual, Small Wonder's CFRs, and relevant financial and program records for the audited period. We also interviewed Small Wonder officials and staff to obtain an understanding of Small Wonder'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 objective as well as test internal controls and compliance. We selected a judgmental sample of reported 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. 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.

We obtained data from Small Wonder's general ledgers and other financial systems and 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

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 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 Small Wonder's compliance with the RCM and the CFR Manual.

Reporting Requirements

We provided a draft copy of this report to both SED and Small Wonder officials for their review and formal comment. Their comments were considered in preparing this final report and are included in their entirety at the end of it. In their response, SED officials agreed with our recommendations and indicated that they will take steps to address them. Small Wonder officials accepted some of our conclusions but disagreed with certain proposed disallowances. Our responses to certain Small Wonder comments are embedded within Small Wonder's response as State Comptroller's Comments. Small Wonder officials also included a 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 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.

Exhibit

Small Wonder Preschool, Inc.
Summary of Reported and Disallowed Program Costs
for the 2018–19, 2019–20, and 2020–21 Fiscal Years

Program Costs	Amount Reported on CFR	Amount Disallowed	Amount Remaining	Notes to Exhibit
Personal Services				
Direct Care	\$3,628,694	\$87,953	\$3,540,741	B, C, E, O
Agency Administration	\$950,052	\$15,217	\$934,835	
Total Personal Services	\$4,578,746	\$103,170	\$4,475,576	
Other Than Personal Services				
Direct Care	\$1,019,714	\$66,899	\$952,815	A, C, D, F-N
Agency Administration	\$267,792	\$94,632	\$173,160	
Total Other Than Personal Services	\$1,287,506	\$161,531	\$1,125,975	
Total Program Costs	\$5,866,252	\$264,701	\$5,601,551	

Notes to Exhibit

The following Notes refer to specific sections of the RCM and the CFR 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 Small Wonder officials during the course of our audit.

- A. RCM Section I.B.5 – Reimbursement of interest expense in LTAL relationships and/or for reimbursement of costs incurred in LTAL relationships above actual costs of the owner or vendor requires fiscal designee written approval. In addition, RCM Section II.28.B states that LTAL’s interest expense on capital indebtedness or on working capital loans incurred in a LTAL transaction between the lender and the borrower will be reimbursed only with the prior written approval of the Commissioner upon establishment of the necessity and cost effectiveness of the transaction. A cost-effective transaction relating to interest expense on capital indebtedness or on working capital loans is one in which the interest rate charged by the LTAL lender is less than or equal to the prime rate available from lending institutions and is greater than the actual cost of the capital rate to the lender.
- B. RCM Section I.6 – Staff-to-student ratios are defined in Part 200 of the Commissioner’s Regulations. A specific, approved program’s student-to-staff ratio is also defined in that program’s programmatic approval letter from SED’s Office of Special Education. Direct care personnel in excess of, or not prescribed by such ratios, are not reimbursable unless supported by the student’s individualized education program (IEP) requirements and the program-generated summary data relating to those IEPs. An SED programmatic review and approval of variations from these ratios is required for costs of additional staff to be reimbursable.
- C. 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.
- D. RCM Section II.13.A.6 – Expenses of a personal nature are not reimbursable.
- E. RCM Section II.13.A.10 – Merit award (or bonus compensation) shall mean a non-recurring and non-accumulating (i.e., not included in base salary of subsequent years) lump sum payment in excess of regularly scheduled salary that is not directly related to hours worked. 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 containing 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. In addition, 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.
- F. RCM Section II.14.B – 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.

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- G. RCM Section II.21 – Fines and penalties resulting from violations of, or failure by, the entity to comply with federal, State, and/or local laws and regulations are not reimbursable.
 - H. RCM Section II.22.C – Costs of food provided to any staff, including lunchroom monitors, are not reimbursable.
 - I. RCM Section II.57.B – Payments for federal, State, and local income taxes or any related penalties and interest are not reimbursable.
 - J. RCM Section III.2.B – Accrual basis of accounting is required for all programs receiving Article 81 and/or Article 89 funds.
 - K. RCM Section III.1.C.2 – Adequate consultant documentation includes, but is not limited to, the consultant’s résumé, a written contract that includes the nature of the services to be provided, the charge per day, and service dates. In the case of legal and accounting services, all payments must be supported by itemized invoices that indicate the specific services and/or deliverable actually provided and, for each service and/or deliverable, the date provided and the total amount charged. For all other consultant services, all payments must be supported by itemized invoices that indicate the specific services and/or deliverable actually provided and, for each service and/or deliverable, the date(s), number of hours provided, the fee per hour, and the total amount charged.
 - L. 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.
 - M. RCM Section III.1.F(2) – Related service records must be maintained for each child and each service session indicating the date, duration, nature, and scope of service provided, with the name, license or certification number, and signature of the related service provider.
 - N. CFR Manual (Page 3.3) – Only expenses and revenues for the proper CFR reporting period should be included in the CFR. CFRs submitted with expenses and revenues for a different reporting period will not be accepted.
 - O. CFR Manual (Page 8.5) – Expenses and revenues and full-time equivalent enrollment for approved 1:1 teacher aides (preschool and school age) must be reported as a separate column (Program Code 9230).

Agency Comments - State Education Department



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

Sharon Cates-Williams
EXECUTIVE DEPUTY COMMISSIONER

O: 518.473-4706
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July 16, 2024

Kenrick Sifontes
Audit Director
Office of the State Comptroller
Division of State Government Accountability
59 Maiden Ln. 21st Floor
New York, NY 10038

Dear Mr. Sifontes:

The following is the New York State Education Department's (SED) response to the draft audit report, 2023-S-36, *Small Wonder Preschool, Inc (Small Wonder) – 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 Small Wonder's CFR and to Small Wonder'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. NYSED will further review the staffing recommendations, audit and payroll charges to determine if the adjustments are appropriate.

Recommendation 2:

"Remind Small Wonder 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 Small Wonder 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 Small Wonder 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

cc: Christina Coughlin
Christopher Suriano
Suzanne Bolling
James Kampf
Jeanne Day
Nell Brady
Jennifer Finucan
William Meissner
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July 10, 2024

Office of the State Comptroller
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StateGovernmentAccountability@osc.ny.gov

Attn: Kenrick Sifontes
Audit Director

Re: State Education Department
Compliance with the Reimbursable Cost Manual
Small Wonder Preschool, Inc.
Audit Report 2023-S-036

Dear Mr. Sifontes

We have reviewed the above-referenced Draft audit report relating to Small Wonder Preschool, Inc.'s compliance with the Reimbursable Cost Manual (RCM) in its reporting of costs on its Consolidated Fiscal Reports (CFRs) and determinations as to whether such reported costs were reasonable, necessary, directly related to the special education program, and sufficiently documented for the fiscal year ended June 30, 2021 and certain expenses claimed for the two fiscal years ended June 30, 2020. We welcome the opportunity to correct any potential errors of fact and to provide additional information to be considered in the formulation of final audit conclusions, in furtherance of the stated goals of encouraging and maintaining transparency and an open dialogue throughout the audit process.

Personal Service Costs

Ineligible Bonus Compensation

Fiscal Year 2019-2020

We do **not** challenge the auditors' finding that we were unable to obtain from our records performance evaluations for 17 of the selected 26 employees. As we shared with the audit team, we had transitioned to a Microsoft 365 platform for online access while retaining use of our internal server. It would appear that some records may have been redirected or lost during the transition.

Nor do we challenge the auditors' finding that 2 of the 26 employees worked in non-direct care positions/titles, and while deserved of the monetary recognition, were not eligible for such awards under the restrictions of the RCM.

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However, we must challenge the auditors' determination that as relates to the remaining personnel, while the performance evaluations had in fact been conducted, that there was a lack of demonstrated correlation between the evaluation and resulting bonus award. To the contrary, the performance evaluation produces a rating of between 0 and 10, with a "passing" grade of 5.

State Comptroller's Comment – Small Wonder's response is misleading. The evaluations did not produce "a rating"; rather, they produced four ratings – one each for four different performance factors. Moreover, the evaluations did not define a "passing" grade and did not contain a final evaluation rating.

The amount of bonuses awarded each eligible individual correlated with the rating achieved – higher ranking performances generally receiving higher awards.

State Comptroller's Comment – As Small Wonder officials acknowledge, there were instances where lower ranking performances received higher awards.

On occasion, the narrative portion of the performance evaluation would identify unique elements which demonstrate other positive externalities and personnel attributes not otherwise captured by the evaluation metric, but nonetheless worthy of note and recognition. This subjective element allows us to recognize our staff's strengths beyond the evaluations instrument, and beyond the longevity factor.

State Comptroller's Comment – We disagree. Such subjectivity is not allowed by the RCM, which requires that the written employee performance evaluation and policy describe how the final evaluation rating will directly correlate to the bonus amount.

Accordingly we respectfully request these bonuses for these individuals, duly merited, be reinstated as allowable costs and expenses. (See: Attached policy statement)

State Comptroller's Comment – We stand by our findings. According to the RCM, bonus compensation may be reimbursed if it is based on merit as measured and supported by employee performance evaluations. To demonstrate this, the RCM requires that the provider's governing entity 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. However, the evaluations Small Wonder officials provided did not contain a final evaluation rating. Further, it is unclear how the evaluations correlated with the bonus amounts.

Fiscal Year 2018-2019

As set out above, we do **not** challenge the auditors' finding that we were unable to obtain from our records, the requisite performance evaluations for 5 of the selected 25 employees, in support of the awarded and well-deserved bonuses.

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Nor do we challenge the auditors' finding that 2 of the 25 employees worked in non-direct care positions/titles, and while deserved of the monetary recognition, were not eligible for such award under the restrictions of the RCM.

For all the reasons set out above, we respectfully request the bonuses awarded to the remaining selected individuals, duly merited, be reinstated as allowable costs and expenses as the awards were "**merit**" based, as substantiated by the performance evaluation and narrative.

State Comptroller's Comment – We stand by our findings. According to the RCM, bonus compensation may be reimbursed if it is based on merit as measured and supported by employee performance evaluations. To demonstrate this, the RCM requires that the provider's governing entity 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. However, the evaluations Small Wonder officials provided did not contain a final evaluation rating. Further, it is unclear how the evaluations correlated with the bonus amounts.

Expenses for 1:1 Aide

We do **not** challenge the auditors' finding that due to an oversight, costs and expenses associated with certain discrete hours of service provided by 1:1 aides who were reassigned as classroom aides were inadvertently misreported.

Excess Student-to-Staff Ratios

We do **not** challenge the auditors' finding that there was a slight discrepancy between approved classroom FTE's and FTE's reported, as it appears that certain 1:1 aides, when reassigned as classroom aides, were erroneously included within the calculation of classroom aides without adjusting for existing staff.

Other Than Personal Service Costs

Undocumented/Insufficiently Documented Costs

We offer the following challenges to select findings:

- *Audit fees:* We appear **unable** to challenge the auditors' finding that certain costs had been reported, under the advice of the agency's independent accountant, in certain years, consistent with GAAP principles, but nonetheless inconsistent with directives of the RCM. Nonetheless, the agency's independent accountant insists that the identified auditing expenses, were, in fact, properly reported in the appropriate reporting period, consistent with GAAP and standard accrual principles. (Accountant letter provided)

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State Comptroller's Comment – The RCM requires that entities operating approved programs must use the accrual basis of accounting. Moreover, the CFR Manual states that CFRs submitted with expenses for a different reporting period will not be accepted.

- *IT services*: While we recognize that many vendor/consultant arrangements lend themselves easily to the general detail requirements set out in the RCM, **select** arrangements around general services provided throughout a specific term, as here, on a monthly basis, are not easily disaggregated into “service/time/date” itemization. Rather, it is the contract itself which provides the requisite detail contemplated by the RCM requirement. As the attached example Monthly IT Support Services Agreement reflects, many services’ value lies in their availability, upon demand, such as Helpdesk services. Other services such a monitoring, antispam and data guard are constant, or “in the background services” which are not “clocked in/clocked out”, but a general service platform. The attached Agreement specifies each alert and task performed by the vendor, in complete satisfaction of the contemplated intent of the RCM requirements. Accordingly, we respectfully request the auditors reconsider this proposed disallowance in the amount of \$52,456.

State Comptroller's Comment – We disagree. The RCM requires that payments for consultant services be supported by itemized invoices that indicate the specific services and/or deliverables that were actually provided; and for each service and/or deliverable, the date(s), number of hours provided, the fee per hour; and the total amount charged. Consequently, we determined that the expenses claimed by Small Wonder did not comply with the requirements in the RCM.

- *Self-storage*: Similarly, storage occupancy agreements reflect the provision of occupancy as the service rendered – a service which has no detail of time of service/date/hourly rate beyond the terms of the agreement itself. Term agreements such as that provided the audit team, set out in great detail the size of the unit, the charge per month, and all applicable fees and charges. The level of detail provided in this agreement clearly satisfies the contemplated intent of the RCM requirements. In addition, we have provided supporting documentation of credit card charges for the storage space. Only Small Wonder items were housed in the storage unit, and the Executive Director’s husband often transported items from the storage unit to the school which would explain his occasional accessing of the unit. At no point were any personal items stored in the unit. Accordingly, we request reconsideration of this disallowance in the amount of \$7,383.

State Comptroller's Comment – Small Wonder officials did not provide all

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contracts and/or invoices to support these charges. Further, we noted that the storage facility contained confidential student and employee records and, therefore, should not have been accessible to a non-employee.

- *Website marketing*: The agency did not “snapshot” or otherwise retain copies of the advertisements purchased in the audit years at the time of the service, unfortunately, and are thus, several years later, unable to demonstrate the program related nature of the marketing services program. We are, therefore, unable to challenge the finding beyond of explanation of merit.

We are not challenging the remaining disallowances at this time, in the absence of itemized invoices, while we reassert the integrity of each of these services. We have, however, strengthened our internal record keeping protocols in response to the findings

Other Ineligible costs

We do not challenge the auditors’ finding **except** as provided below:

- Provided agreements and notes of select contracted direct care costs staff in support of expenses which reflect non-direct activities and tasks by the personnel performed beyond the direct service sessions as allowed by the RCM. The attached documentation reflects notes drawn from emails of the clinical coordinator who was responsible for verifying the accuracy of service hours claimed by contracted direct care personnel. Note that the attendance of the child is not necessary for the provision of non-direct tasks;

State Comptroller’s Comment – The documents Small Wonder officials provided contained insufficient detail and/or contained the same general work descriptions for multiple therapists.

- As the attached promissory note reflects, the interest rate charged was fractionally above prime (0.001%), and clearly statistically insignificant to result in a disallowance;

State Comptroller’s Comment – The interest rate charged was 0.1% rather than 0.001% above the prime rate. Moreover, Small Wonder officials did not obtain SED’s approval for this less-than-arm’s-length loan, as required by the RCM.

- Provided material in support of the webinar “Mindfulness for Educators” attended by a contracted service provider necessary to sensitize all staff to needs of students during COVID;

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State Comptroller's Comment – We stand by our findings. According to the RCM, fringe benefit costs (e.g., vacation leave, sick leave, training and educational costs) for independent contractors or consultants are not reimbursable.

- In addition, NYSED policy statements recognize that on occasion, service sessions may be abbreviated for a number of reasons, including the child's physical health, attentiveness, ability to benefit, etc. While some therapy sessions such as speech therapy, must be a minimum of 30 minutes to claim Medicaid reimbursement, standard protocols recognize that while some sessions may be abbreviated, the non Medicaid costs associated with the provision of services are nonetheless allowable costs;

State Comptroller's Comment – Small Wonder is mistaken. These expenses were not included in our recommended disallowances.

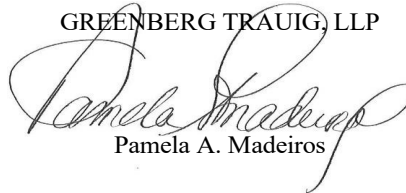
- As the attached documentation attests, the dues associated with membership in the Council for Exceptional Children is emphatically not applied for any lobbying activity.

State Comptroller's Comment – Small Wonder is mistaken. These expenses were not included in our recommended disallowances.

We appreciate the opportunity to provide these comments.

Very truly yours,

GREENBERG TRAUIG, LLP



Pamela A. Madeiros

With Attachments

Cc: Tania Rodriguez (OSC)
Ursula Salih (SWP)

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