

State Education Department

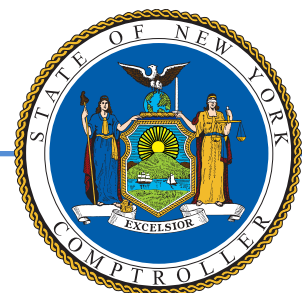
Adaptive Solutions Multi Services, PLLC: Compliance With the Reimbursable Cost Manual

Report 2022-S-48 | October 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 Adaptive Solutions Multi Services, PLLC (Adaptive Solutions) on its Consolidated Fiscal Reports (CFRs) were reasonable, necessary, directly related to the special education programs, 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 Adaptive Solutions' CFR for the fiscal year ended June 30, 2018, and certain expenses claimed on its CFRs for the 2 fiscal years ended June 30, 2017.

About the Program

Adaptive Solutions is a New York City-based proprietary organization authorized by SED to provide full- and half-day Special Class and full-day Special Class in an Integrated Setting services to children with disabilities who are between the ages of 3 and 5 years. For purposes of this report, these programs are collectively referred to as the SED preschool cost-based programs. Adaptive Solutions also operated one other SED-approved program, 1:1 Aides. However, payments for services under this other program 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, 2018, Adaptive Solutions served approximately 200 students in the SED preschool cost-based programs.

Adaptive Solutions also shared services, building space, and staff with another proprietary school, Our Children The Leaders of Tomorrow, Inc. (Our Children), that was owned and operated by the same individuals who own and operate Adaptive Solutions—the Executive Director and the Clinical Director. Further, these two officials owned a day care named Sunflower Kidz Daycare LLC (Sunflower). They each received compensation from all three entities during our audit period.

The New York City Public Schools (NYCPS) refers students to Adaptive Solutions based on clinical evaluations and pays for its services using rates established by SED. The rates are based on the financial information that Adaptive Solutions reports to SED on its annual CFRs. For the 3 fiscal years ended June 30, 2018, Adaptive Solutions reported approximately \$11.2 million in reimbursable costs for the SED preschool cost-based programs.

Key Findings

For the 3 fiscal years ended June 30, 2018, we identified \$803,921 in reported costs that did not comply with the requirements in the RCM and the CFR Manual, as follows:

- \$277,388 in compensation costs for two Adaptive Solutions' officials who also operated, and had common ownership, in two other entities. Together, they exceeded the allowable limit of a 1.0 full-time equivalent employee.
- \$230,051 in compensation costs for 16 employees reported as 1:1 aides that were incorrectly charged to the SED preschool cost-based programs. The costs for 1:1 aides should have been reported on the Adaptive Solutions' CFRs under the 1:1 Aides program cost center.
- \$206,354 in insufficiently documented IT (\$116,700) and cleaning/janitorial services (\$89,654). The invoices provided by Adaptive Solutions officials did not include required information such as the specific service provided, dates of service, fee per hour, and number of hours provided.

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- \$61,999 in interest working capital costs where officials could not provide sufficient supporting documentation, including official amortization schedules and details on the purpose of the loans.
 - \$14,204 in unsupported and non-program-related personal service costs, including \$7,693 in employee compensation and \$6,511 in pension contribution costs.
 - \$13,925 in ineligible and insufficiently documented other than personal service costs, including \$5,653 in staff development costs, \$5,159 in lease/rental property costs, and \$3,113 in start-up and other various costs.

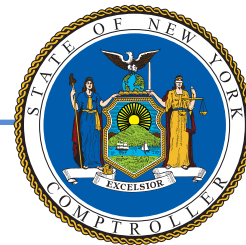
Key Recommendations

To SED:

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

To Adaptive Solutions:

- 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

October 9, 2024

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

Marcia Ross
Executive Director
Adaptive Solutions Multi Services, PLLC
992 Gates Avenue
Brooklyn, NY 11221

Dear Dr. Rosa and Ms. Ross:

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 Adaptive Solutions Multi Services, PLLC 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	New York State Education Department	<i>Auditee</i>
Adaptive Solutions	Adaptive Solutions Multi Services, PLLC	<i>Service Provider</i>
CFR	Consolidated Fiscal Report	<i>Key Term</i>
CFR Manual	Consolidated Fiscal Reporting and Claiming Manual	<i>Policy</i>
FTE	Full-time equivalent	<i>Key Term</i>
NYCPS	New York City Public Schools	<i>Agency</i>
OTPS	Other than personal service	<i>Key Term</i>
Our Children	Our Children The Leaders of Tomorrow, Inc.	<i>Entity</i>
RCM	Reimbursable Cost Manual	<i>Policy</i>
Sunflower	Sunflower Kidz Daycare LLC	<i>Entity</i>

Background

Adaptive Solutions Multi Services, PLLC (Adaptive Solutions) is a New York City-based proprietary organization approved by the State Education Department (SED) to provide full- and half-day Special Class and full-day Special Class in an Integrated Setting services to children with disabilities who are between the ages of 3 and 5 years. For purposes of this report, these programs are referred to as the SED preschool cost-based programs. During the fiscal year ended June 30, 2018, Adaptive Solutions served approximately 200 students with disabilities in the SED preschool cost-based programs. In addition to the SED preschool cost-based programs, Adaptive Solutions operated one other SED-approved program, 1:1 Aides. However, payments for services under this program are based on fixed fees as opposed to the cost-based rates established through financial information reported on the annual Consolidated Fiscal Reports (CFRs).

Adaptive Solutions also shared services, building space, and staff with another proprietary school, Our Children The Leaders of Tomorrow, Inc. (Our Children), that was owned and operated by the same two individuals who own and operate Adaptive Solutions. Further, these Adaptive Solutions officials—the Executive Director and the Clinical Director—owned another entity named Sunflower Kidz Daycare LLC (Sunflower). Each official received compensation from all three entities during our audit period.

The New York City Public Schools (NYCPS) refers students to Adaptive Solutions based on clinical evaluations and pays for Adaptive Solutions' services using rates established by SED. The rates are based on the financial information Adaptive Solutions reports to SED on its annual CFRs. To qualify for reimbursement, Adaptive Solutions' 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 NYCPS 59.5% of the statutory rate, which NYCPS pays to Adaptive Solutions.

For the 3 fiscal years ended June 30, 2018, Adaptive Solutions reported approximately \$11.2 million in reimbursable costs for the SED preschool cost-based programs. This audit focused primarily on expenses that Adaptive Solutions claimed on its CFR for the year ended June 30, 2018, and certain expenses reported on its CFRs for the 2 fiscal years ended June 30, 2017.

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, 2018, we identified \$803,921 in reported costs that did not comply with SED's requirements for reimbursement. These ineligible costs include \$521,643 in personal service costs and \$282,278 in other than personal service (OTPS) costs (see Exhibit).

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 Adaptive Solutions' 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, 2018, Adaptive Solutions reported approximately \$8.4 million in personal service costs for the SED preschool cost-based programs. We identified \$521,643 in personal service costs that did not comply with the RCM's requirements for reimbursement.

Excessive Executive Compensation

According to the RCM and CFR Manual, for owners or related parties who work in more than one entity and/or in more than one job title (including organizations that have a less-than-arm's-length relationship with the approved program), the full-time equivalent (FTE) across entities cannot exceed 1.0 FTE in total. Further, the RCM states 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.

According to the documentation we reviewed and interviews conducted, the Executive Director and the Clinical Director at Adaptive Solutions are responsible for the overall performance of Adaptive Solutions. Among other responsibilities, both sign Adaptive Solutions' checks and have access to Adaptive Solutions' bank accounts and credit cards. In the 3 fiscal years ending June 30, 2018, both were reported as a 1.0 FTE. During this time, Adaptive Solutions reported \$1,217,795 in compensation (salary and fringe benefits) for the Executive Director and the Clinical Director on its CFRs. However, we found that, during this same time period, these officials also operated and had common ownership in two other entities: Our Children and Sunflower. Consequently, Adaptive Solutions exceeded the 1.0 maximum FTE limit for each of these officials.

Adaptive Solutions' officials stated they worked at Our Children after normal business hours and on weekends. However, they were unable to provide contemporaneous time records, sign-in sheets, or time studies to substantiate their claim. Furthermore, both officials stated they did not work at Sunflower; instead, they were just the owners. However, the documentation we reviewed (i.e., IRS W-2 Forms, NYCPS Universal Pre-Kindergarten Expenditure reports) indicated they received compensation from both Our Children (fiscal years 2015-16, 2016-17, and 2017-18) and Sunflower (fiscal years 2015-16 and 2016-17).

Because Adaptive Solutions, Our Children, and Sunflower did not maintain time records to support the officials' work efforts between the three entities, we recalculated the correct portion of their compensation that should have been charged to the SED preschool cost-based programs. This calculation was based on the ratio value method—an allocation method prescribed by SED in the RCM. This method of allocation distributes the salaries of Adaptive Solutions as a percentage of the total of the three schools' salaries for fiscal years 2015-16 and 2016-17 and as a percentage of the total of two schools' salaries for fiscal year 2017-18. We determined that \$940,407 of the officials' compensation (salaries and corresponding fringe benefits) should have been charged to the SED preschool cost-based programs.

We recommend that SED disallow \$277,388 (\$1,217,795 – \$940,407) in excessive compensation inappropriately charged to the SED preschool cost-based programs.

1:1 Aides

According to the RCM and the CFR Manual, all 1:1 aide costs (salaries, fringe benefits of the aide, and allocated direct and indirect costs) should be reported in a separate cost center (Program Code 9230) on the providers' CFRs.

For the 3 fiscal years ended June 30, 2018, Adaptive Solutions officials claimed \$230,051 in compensation costs for 16 employees reported as 1:1 aides to the SED preschool cost-based programs. However, the costs for 1:1 aides should have been reported on the provider's CFRs under the fixed-fee 1:1 Aides program cost center.

Consequently, we recommend that SED disallow \$230,051 in compensation expenses that were not in compliance with the RCM's requirements.

Unsupported and Non-Program-Related 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. Costs will not be reimbursable on field audit without appropriate written documentation of costs. Compensation for personal service costs includes all salaries and wages, as well as fringe benefits. In addition, compensation costs must be based on approved, documented payrolls. For the 3 fiscal years ended June 30, 2018, we identified \$14,204 in costs that did not comply with the RCM's requirements, as follows:

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- \$7,693 in compensation costs for three employees. For two employees, there was no documentation to support they provided services to the SED preschool cost-based programs. For the third employee, Adaptive Solutions officials acknowledged they did not provide services to the SED preschool cost-based programs.
 - \$6,511 in unsupported pension contribution costs.

We recommend that SED disallow \$14,204 in compensation that was not in compliance with the RCM's requirements.

Other Than Personal Service Costs

For the 3 fiscal years ended June 30, 2018, Adaptive Solutions reported approximately \$2.8 million in OTPS costs for the SED preschool cost-based programs. To determine whether these expenses complied with SED's requirements for reimbursement, we judgmentally selected a sample of OTPS expenses totaling \$1,473,014. We identified \$282,278 of these expenses that did not comply with SED's reimbursement requirements.

Insufficiently Documented IT and Cleaning/Janitorial Service 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. For consultant services, payments require itemized invoices detailing services, dates, hours, fee per hour, and total amount charged. Further, according to the CFR Manual, transactions with related parties, including compensation, must be reported on the CFR-5, encompassing affiliates, owners, management, immediate families, and parties with significant management influence.

We identified \$206,354 in insufficiently documented IT (\$116,700) and cleaning/janitorial services (\$89,654) expenses. The invoices provided by Adaptive Solutions' officials did not meet the RCM requirements. For example, the invoices did not include the specific service provided, dates of service, fee per hour, and number of hours provided. Further, the two contracts were awarded to related-party vendors. Our review found that Adaptive Solutions' officials failed to disclose their related-party transactions with both vendors on the 2015-16 CFR, as required, and didn't disclose the related-party transactions with one of these vendors on the 2016-17 CFR.

Consequently, we recommend that SED disallow \$206,354 in costs that were not in compliance with the RCM.

Ineligible Interest Costs

According to the RCM, debt for capital expenditures shall be used only if funding from current revenue sources is unavailable, except with approval from the Commissioner of Education's designated representative. Borrowing transactions

are assessed for overall reasonableness regarding interest costs and professional service fees. Reimbursement for interest expense on capital indebtedness is generally contingent upon corresponding principal amortization and the absence of loans/notes receivable from related parties during the loan repayment period. Payments that represent “interest only” are not reimbursable without approval from the Commissioner’s designated representative.

We identified \$61,999 in interest-working capital expenses claimed in fiscal years 2015-16 and 2017-18 where officials could not provide sufficient supporting documentation, including official amortization schedules and details on the purpose of the loans.

We recommend that SED disallow \$61,999 in interest costs that were not in compliance with the RCM.

Other Ineligible or Insufficiently Documented Costs

The RCM states that costs will be considered for reimbursement provided they are reasonable, necessary, directly related to the special education program, and sufficiently documented. The RCM also states that programs shall be required, upon audit, to provide brochures or agendas that verify attendance and document the purpose of any conference or meeting. Further, documentation to support the cost of meetings and conferences must include the names and job titles of staff who attended and the program(s) served by each staff person. For consultant services, payments require itemized invoices detailing services, dates, hours, fee per hour, and total amount charged. The RCM states that start-up costs for new programs must be pre-approved to be considered for reimbursement. Finally, start-up costs must be incurred after the date of program approval issued by SED to be considered for reimbursement. We identified \$13,925 in ineligible costs, as follows:

- \$5,653 in fiscal year 2017-18 in staff development expenses. The invoices provided by the staff development trainer did not have the required details, such as the specific services provided, number of hours, and fee per hour.
- \$5,159 in lease/rental property expenses for which there was no supporting documentation or the support provided was insufficiently documented and/or improperly allocated. For example, Adaptive Solutions’ officials did not provide documentation, such as the list of attendees, brochures, or agendas, verifying attendance for renting churches for a graduation ceremony and a teacher informational and instructional day to determine whether the costs were related to the SED preschool cost-based programs. Additionally, Adaptive Solutions did not correctly allocate the rental expenses to the different programs and locations.
- \$3,113 in ineligible costs, including start-up costs for new programs/location not pre-approved by SED, unsupported food costs, and other costs claimed for non-SED preschool cost-based programs.

Consequently, we recommend that SED disallow \$13,925 in other ineligible expenses that were not in compliance with the RCM.

Recommendations

To SED:

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

To Adaptive Solutions:

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 Adaptive Solutions 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 the CFR Manual. The audit focused primarily on expenses claimed on Adaptive Solutions' CFR for the fiscal year ended June 30, 2018, and certain expenses claimed on its CFRs for the 2 fiscal years ended June 30, 2017.

To accomplish our objective, we reviewed the RCM, the CFR Manual, the Regulations of the Commissioner of Education, Adaptive Solutions' CFRs, and relevant financial and program records for the audited period. We also interviewed Adaptive Solutions officials and staff to obtain an understanding of Adaptive Solutions' 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 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 Adaptive Solutions' 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 Adaptive Solutions' compliance with the RCM and the CFR Manual.

Reporting Requirements

We provided a draft copy of this report to both SED and Adaptive Solutions officials for their review and formal comments. 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. Adaptive Solutions officials accepted some of our conclusions but disagreed with certain proposed disallowances. Our responses to certain remarks are embedded within Adaptive Solutions' response as State Comptroller's Comments. Adaptive Solutions 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 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

Adaptive Solutions Multi Services, PLLC
Schedule of Submitted and Disallowed Program Costs
for the 2015-16, 2016-17, and 2017-18 Fiscal Years

Program Costs	Amount Reported on CFR	Amount Disallowed	Amount Remaining	Notes to Exhibit
Personal Services				
Direct Care	\$7,193,610	\$387,384	\$6,806,226	A-C, H-J, L-O
Agency Administration	1,167,945	134,259	1,033,686	
Total Personal Services	\$8,361,555	\$521,643	\$7,839,912	
Other Than Personal Service				
Direct Care	\$2,420,460	\$219,792	\$2,200,668	A, D-H, K, P
Agency Administration	425,863	62,486	363,377	
Total Other Than Personal Services	\$2,846,323	\$282,278	\$2,564,045	
Total Program Costs	\$11,207,878	\$803,921	\$10,403,957	

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 Adaptive Solutions 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.13 – Compensation for personal service costs includes all salaries and wages as well as fringe benefits.
- C. RCM Section II.13.A.(4b)d – For non-direct care staff under the 500 and 600 position title code series per Appendix R of the CFR Manual, and for owners or related parties who work in more than one entity and/or in more than one job title (including organizations that have a less-than-arm's length relationship with the approved program), the FTE in total across entities or job title cannot exceed 1.000. The allocation of compensation must be supported by time and effort reports or equivalent documentation that meets the following standards:
 - They must reflect contemporaneous time records of the actual activity of each employee.
 - They must account for the total activity for which each employee is compensated.
 - They must be prepared at least monthly and coincide with one or more pay periods.
 - They must be signed or electronically approved and dated by the employee and employee's direct supervisor. Executive Directors must have their time records signed or electronically approved by the agency's Controller, Compliance Officer, or staff employed in a similar capacity (in the event that the Executive Director also serves as the agency's Controller then a separate independent individual within the agency's management structure may serve this function). Budget estimates or other allocation methods determined before the services are performed are not adequate documentation for use in completing annual financial reports but may be used for interim accounting purposes.
- D. RCM Section II.28 – Debt for capital expenditures, including capital projects, operations, and equipment purchases, shall be used only when financing from current revenue sources is not available unless otherwise approved by the Commissioner's designated representative for fiscal issues. Borrowing transactions shall be evaluated on an overall level of reasonableness as they relate to interest costs and fees paid for professional services. Reimbursement of interest expense on capital indebtedness shall be subject to the following conditions: Generally, interest expense on the above is reimbursable only when there is a corresponding amortization of principal on the capital indebtedness and there are no loans/notes receivable from related parties at any time during the entity's loan repayment period. Payments that represent "interest only" are not reimbursable unless otherwise approved by the Commissioner's designated representative.
- E. RCM Section II.30 – For reimbursement purposes, conferences are generally defined to include meetings, conventions, symposiums, seminars, Department-sponsored sessions, or other such assemblies whose primary purpose is the dissemination of technical information. Conferences must be directly related to the education program or to the administration of the program. Programs shall be required, upon audit, to provide brochures, agendas, or other literature that verify attendance and document the purpose of the conference or meeting. The following reimbursement principles shall be applied to conference costs: Costs of conferences attended by teachers and other direct care staff that are designed to improve desired student learning

outcomes by more effective means are reimbursable. Documentation to support the cost of meetings and conferences must include the names and job titles of staff who attended and the program(s) served by each staff person.

- F. RCM Section II.41.B.4 – The share of rental expense allocated to programs funded pursuant to Article 81 and/or Article 89 is based on documented and reasonable criteria, such as square footage utilization, when more than one program is operated in a rented facility.
- G. RCM Section II.50 – Start-up costs for new programs must be pre-approved to be considered for reimbursement. In addition, start-up costs must be incurred after the date of program approval issued by SED to be considered for reimbursement.
- H. RCM Section III.1 – Recordkeeping Section 200.9 (d) of the Commissioner’s Regulations requires entities operating approved programs to retain all pertinent records supporting reported data for 7 years following the end of each reporting year. Costs will not be reimbursable on field audit without appropriate written documentation of costs.
- I. 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.
- J. RCM Section III.1.B – Actual hours of service are the preferred statistical basis upon which to allocate salaries and fringe benefits for shared staff who work on multiple programs. Entities must maintain appropriate documentation reflecting the hours used in this allocation. Acceptable documentation may include payroll records or time studies. Guidelines for acceptable time studies are provided under “Acceptable Time Studies” in Appendix L of the CFR Manual.
- K. RCM Section III.1.C.2 – Adequate 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.M.(1)(i) – Salaries of employees who perform tasks for more than one program and/or entity must be allocated among all programs and/or entities for which they work.
- M. RCM Section III.1.M.(3) – Agency administration costs shall be allocated to all programs operated by the entity based on the ratio value method of allocation.
- N. RCM Section IV – All 1:1 aide costs (salaries, fringe benefits, and allocated direct and indirect costs) should be reported in one separate cost center on the provider’s financial reports.
- O. CFR Manual, Section 8.0 (page 8.5) – Expenses and revenues and FTE enrollment for approved 1:1 aides (preschool and school age) must be reported as a separate column (Program Code 9230).
- P. CFR Manual, Section 18.0 (page 18.1) – The CFR-5 schedule is used to report all transactions, including compensation, between the reporting entity, its affiliates, principal owners, management and members of their immediate families, and any other party (including an organization) with

which the reporting entity may deal when one party has the ability to significantly influence management or operating policies of the other to the extent that one of the transacting parties might be prevented from fully pursuing its own separate interests.

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

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August 20, 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, 2022-S-48, *Adaptive Solutions Multi Services, PLLC (Adaptive Solutions) - 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 Adaptive Solutions' CFRs and to Adaptive Solutions' 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 Adaptive Solutions 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 Adaptive Solutions' 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 Adaptive Solutions of online CFR training that is available on SED's webpage. SED requires 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
Rebecca Jones
Mary Moore

Agency Comments - Adaptive Solutions and State Comptroller's Comments

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Clinical Director

Marcia Ross MS. ED SAS
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**Marcia Ross
Executive Director
Adaptive Solutions Multi Services
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9/6/2024

Irina Kovaneva
Examiner In Charge
Office of the State Comptroller
Division of State Government Accountability
59 Maiden Lane
New York, NY 10038

Dear Ms. Irina

Subject: Response to Final Draft Reports for the Audit of Adaptive Solutions Multi Services

I hope this letter finds you well. On behalf of Adaptive Solutions Multi Services, I would like to formally submit our responses to the final draft reports you provided following the recent audit of our organization. We appreciate the thoroughness and professionalism exhibited by your team throughout this process.

We have carefully reviewed the findings and recommendations outlined in the reports. Attached to this letter, you will find our detailed responses, clarifications, and supporting documentation where necessary. These responses address the specific areas raised during the audit, including any proposed corrective actions or adjustments, and highlight areas where we believe further clarification is warranted.

We would like to emphasize that Adaptive Solutions is committed to maintaining the highest standards of compliance, transparency, and operational integrity. The audit

process has been an invaluable opportunity for us to strengthen our internal controls and ensure that we continue to meet our obligations under the relevant guidelines, including those outlined in the Reimbursable Cost Manual for programs receiving funding under Article 81 and/or Article 89 of the Education Law.

We trust that our responses will provide the necessary context and information to address any outstanding concerns. Should you require any additional details or have further questions, please do not hesitate to reach out to us.

Thank you once again for your time, effort, and collaboration during this audit process. We look forward to your feedback and are hopeful for a positive resolution of all matters discussed.

Sincerely,


Marcia Ross
Executive Director
Adaptive Solutions Multi Services

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Excessive Executive Compensation

RCM Criteria:

Section II. Compensation for Personal Services

Compensation for personal services includes all salaries and wages, as well as fringe benefits and pension plan costs.

(4) b.i.

For non-direct care staff as defined by the Consolidated Fiscal Report's Appendix R, and for owners or related parties who are employed in any job title or combination of job titles by the entity operating the approved programs, compensation up to 1.000 FTE for that individual in total, will be considered in the calculation of the portion of 1.000 FTE reimbursable in the tuition rates, subject to the limitations defined in (4) a. above.

iii. An individual who fills the position and holds the responsibility and authority of Executive Director must be reported 100% as Executive Director. Executive Directors must have their time records signed or electronically approved by the agency's Controller, Compliance Officer, or staff employed in a similar capacity (in the event that the Executive Director also serves as the agency's Controller then a separate independent individual within the agency's management structure may serve this function).

For non-direct care staff under the 600 position title code series per Appendix R of the CFR Manual, and for owners or related parties who work in more than one entity and/or in more than one job title (including organizations that have a less-than-arm's length relationship with the approved program), the FTE in total across entities or job title cannot exceed 1.000.

The allocation of compensation must be supported by time and effort reports or equivalent documentation which meets the following standards:

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- They must reflect contemporaneous time records of the actual activity of each employee.
- They must account for the total activity for which each employee is compensated.
- They must be prepared at least monthly and coincide with one or more pay periods.
- They must be signed or electronically approved and dated by the employee and employee's direct supervisor. Executive Directors must have their time records signed or electronically approved by the agency's Controller, Compliance Officer, or staff employed in a similar capacity (in the event that the Executive Director also serves as the agency's Controller then a separate independent individual within the agency's management structure may serve this function).

Adaptive Solutions complied with NYSED RCM requirements by providing contemporaneous time and attendance reports for the three-year ending audit scope of June 30, 2018.

State Comptroller's Comment – We disagree. Adaptive Solutions did not provide all the requested time and attendance records for its Executive Director and Clinical Director for the 3-year audit period. Rather, it provided attendance records for just 1 month for Adaptive Solutions for each of these two executives. Further, no other time records, sign-in sheets, or time studies were provided for the time they worked at Our Children The Leaders of Tomorrow, Inc. (Our Children) and Sunflower Kidz Daycare LLC (Sunflower).

Conditions:

Response to Excessive Executive Compensation

Adaptive Solutions adhered to the Reimbursable Cost Manual guidelines mandated by the NYSED Consolidated Fiscal Reporting Manual and Reimbursable Cost Manual as it relates to Adaptive Solutions. Regarding the Day Care programs operating outside Adaptive Solutions, OCLOT and Sunflower Kids complied with its NYCDOE funding source requirements according to its UPK/Early Learning contracts during that same audit scope period. Adaptive Solutions satisfied the time criteria required according to the RCM and CFR and Claiming Manual, which is based on the overall standard workweek between both entities.

State Comptroller's Comment – Our finding is not whether Adaptive Solutions satisfied the standard workweek criteria required by the RCM and CFR Manual, but rather that Adaptive Solutions reported the Executive Director and Clinical Director as 1.0 FTE on its CFRs while these individuals also worked for and/or received compensation from two other entities: Our Children and Sunflower. Further, Adaptive Solutions' response does not adequately address the 1.0 FTE limit requirement across multiple entities. Moreover, our audit determined whether the expenses claimed on the CFR complied with SED's RCM and CFR Manual requirements—not with NYCDOE funding source requirements.

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In addition, Adaptive Solutions, OCLOT and Sunflower Kids stayed within the compensation thresholds mandated by each funding source (NYSED RSU and NYCDOE UPK/Early Learning).

State Comptroller's Comment – In its response, Adaptive Solutions does not specifically address the FTE 1.0 limit across all entities. Our finding pertains to Adaptive Solutions' reporting its Executive Director and Clinical Director as 1.0 FTE on its CFRs while they also worked for and/or received compensation from two other entities: Our Children and Sunflower. Moreover, our audit determined compliance with SED's RCM and CFR Manual requirements—not with NYCDOE funding source requirements.

The Executive Director and Clinical Coordinator performed the responsibilities for which they were hired by Adaptive Solutions, Our Children the Leaders of Tomorrow (OCLOT) and Sunflower Kids (Administrative) during the audit scope and performed these functions within the overall standard workweek totaling 50+ hours. Because of that, OSC is mistakenly calculating the staff FTE by using total annual hours worked and paid by 2,080 (40 * 52) instead of approximately 2,600 (50+ hours * 52). The NYCDOE does not recognize 40 standard hour workweek as its cap because that funding source and contract functions on a 10-hour work day; not an 8-hour work day.

State Comptroller's Comment – We disagree. We did not mistakenly calculate the staff FTE by using 2,080 hours instead of 2,600 hours—we did not perform such calculations. The FTE is required to be capped at 1.0 FTE, and this 1.0 FTE requirement applies regardless of whether the funding comes from SED or NYCDOE. Moreover, our audit is compliance with SED's RCM and CFR Manual requirements—not with NYCDOE requirements.

According to the NYS Consolidated Fiscal Reporting and Claiming Manual, please refer to Subject: CFR-4 – Personal Services Section: 16.0 Page: 16.5 Reporting Period: July 1, 2017 to June 30, 2018:

“Hours Paid: The actual number of hours paid to all employees in the position title for the same standard work week for the reporting period. Hours paid should include hours worked and vacation, personal, sick leave and holidays paid.

EXAMPLE 1: A social worker has a standard work week of 35 hours and worked 25 hours a week for 40 weeks during the reporting period. Total hours paid for the social worker is 25 hours x 40 weeks or 1,000 hours. The FTE calculation is: Hours paid = 1000 = .549 FTE Standard Work Week x 52 1820

EXAMPLE 2: A psychologist has a standard work week of 37.5 hours and worked 37.5 hours a

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week for 52 weeks during the reporting period. Total hours paid for the social worker is 37.5 hours x 52 weeks or 1,950 hours. The FTE calculation is: Hours paid = 1950 = 1.000 FTE Standard Work Week x 52 1950”

It is evident that the staff FTE calculation needs to be divided by the correct workweek and annualized to divide by correct annual hours before a judgement can be made regarding exceeding the 1.000 FTE. The OSC did not do that, and the NYSED software will only divide by a maximum of 2,080 hours, which is incorrectly skewing the staff FTE to be greater than a 1.000.

State Comptroller’s Comment – Our finding pertains to Adaptive Solutions’ reporting its Executive Director and Clinical Director as 1.0 FTE on its CFRs while these individuals also worked for and/or received compensation from two other entities: Our Children and Sunflower. It was not necessary for the auditors to perform the FTE calculations as described above.

“To ensure equity of distribution and to provide uniformity in allocation of agency administration, OASAS, OMH, OPWDD, and SED require the ratio value (R/V) method of allocation to be used on the core CFR schedules (CFR-1 through CFR-6).

The ratio value method uses operating costs as the basis for allocating agency administration expenses. Agency administration expenses must be allocated to programs operated by OASAS, OMH, OPWDD and SED as well as shared programs and "Other Programs" (includes fundraising, special events, management services contracts provided to other entities, all programs funded by non-CFRS participating State agencies, etc.) based upon the ratio of agency administration costs to the service provider's total operating costs. Please refer to Section 8.0 (FAQ) for further information.

The calculation of operating costs and the allocation of agency administration to program/sites is used to allocate agency administration operating costs are calculated first on an agency-wide basis and then within each State Agency. Operating costs include personal services, leave accruals, fringe benefits and OTPS. Operating costs do not include equipment, property and raw materials.

Regarding approved documented payrolls, contemporaneous time records, signing-in sheets and the allocation criteria in the RCM, Adaptive Solutions provided all of that supporting documentation during the audit scope and complied with NYSED regulations.

State Comptroller’s Comment – We disagree. Adaptive Solutions did not provide all the requested time and attendance records, time studies, or signing-in sheets for its Executive

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Director and Clinical Director for the 3-year audit period. Instead, it provided attendance records for just 1 month for each of these two executives—no other time records or signing-in sheets were provided for the time they worked at Our Children and Sunflower.

For the responsibilities assumed by the Executive Director and Clinical Coordinator when working in the day care operation, the NYCDOE already pre-approved a budgeted amount to be allocated to the Executive Director and Clinical Coordinator of Adaptive Solutions for their day care responsibilities. Adaptive Solutions complied with OSC audit requests by providing W-2 supporting documentation requested by the OSC during the audit scope, and that complies with the NYCDOE regulations. The NYCDOE costs met the requirements of Section III. B by using actual costs data (NYCDOE budgeted and pre-approved compensation allocation), a preferred statistical basis or acceptable allocation methodologies upon which to allocate costs to multiple programs within its entity. In this instance, the OSC should not arbitrarily use ratio value or any other allocation method and override the NYCDOE pre-approved salary allocation amount. That is not appropriate, fair nor reasonable when another unrelated funding source assumes payment for services met under its regulations.

State Comptroller's Comment – While Adaptive Solutions provided W-2s, the W-2s do not demonstrate how the FTEs were allocated across programs. Further, we did not arbitrarily use any allocation methodology; rather, we used the ratio value methodology—a methodology prescribed by SED in its RCM and CFR Manual. Moreover, we are not being unfair or unreasonable; our audit is of compliance with SED's requirements, not that of another funding source.

In addition, NYCDOE UPK/Early Learning compensation costs cannot be measured fairly if the OSC uses NYSED regulations and overrides the NYCDOE pre-approved budget allocation to the Executive Director and Clinical Coordinator of Adaptive Solutions. The OSC is applying an incorrect annual hour's calculation to arrive at an FTE greater than 1.000 among multiple entities; it is not reasonable or acceptable to cap the annual hours at 2,080 instead of the actual NYCDOE workday; the UPK/Early Learning program operates daily for 10 hours and the NYSED program operates daily for 8 hours.

State Comptroller's Comment – Our audit is of compliance with SED's requirements and not that of another funding source. It is Adaptive Solutions' responsibility to ensure it is adhering to the requirements of the RCM and CFR Manual. Moreover, we are not applying an incorrect annual hours calculation; rather, this finding pertains to the two executives being reported as 1.0 FTE on Adaptive Solutions' CFRs while these individuals also worked for and/or received compensation from two other entities: Our Children and Sunflower.

Notwithstanding the foregoing, even if the OSC's recalculation of the allocation portion of the Executive Director and clinical coordinator's compensation from Adaptive Solutions and the

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daycare operations were wrongfully combined and were used to arrive at an allocation distribution, Adaptive Solutions overall staff FTE calculation would at a minimum, amount to no more than .800 (2,080/2,600), which is well below a 1.000 FTE. The OSC should still not apply one set of rules from one funding source (NYSED) to another (NYCDOE); that is arbitrary and unreasonable.

State Comptroller's Comment – We disagree. We are not being unreasonable or arbitrarily applying rules. Our audit is of compliance with SED's requirements and not that of another funding source. It is Adaptive Solutions' responsibility to ensure it is adhering to the requirements of the RCM and CFR Manual for the expenses reported on its CFRs.

OSC wrongfully prepared data calculation tables that incorrectly arrive at a disallowance finding by only applying the *compensation expenses* paid and reported in the UPK/Early Learning entities; the OSC did not apply *operating costs* (Ratio Value allocation Method) of each entity to arrive at a reasonable cost distribution measurement. However, the OSC states in its final draft audit report that their "calculation was based on the ratio value method – an allocation method prescribed by SED in the RCM." If that was the method applied, the operating costs in Adaptive Solutions CFR and the day care tax returns need to apply to arrive at a reasonable allocation distribution, which it did not. Instead, the OSC used personal services and fringe benefits which are not all of the cost components necessary to comply with the ratio value method.

State Comptroller's Comment – We stand by our findings. We did not wrongfully prepare data calculation tables to arrive at the disallowance. The finding pertains to the two executives being reported as 1.0 FTE on its CFRs while these individuals also worked for and/or received compensation from two other entities: Our Children and Sunflower. Further, Adaptive Solutions did not provide us with the operating expenses for Sunflower. Moreover, in its own calculations, Adaptive Solutions omitted the operating expenses of Sunflower and thus its calculations were incomplete.

However, if we were to allocate these positions across multiple entities by using ratio value as the methodology to determine the amount of compensation costs that should be distributed equitably across the entities, the following are the appropriate steps:

1. Determine whether the compensation charged for the Executive Director and clinical coordinator during the audit scope;
2. Measure that salary to meet NYSED and NYCDOE guidelines.
3. Apply a ratio value allocation methodology by using all of the cost components (Personal services, fringe and OTPS) of total operating expenses and apply that percentage to arrive at the total compensation payment to each entity.

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Finally, we have included an attachment which reflects these steps and which were also used to allocate these compensation costs as if all of the entities were reported on the CFR software. For the three years ending audit scope of June 30, 2018, Adaptive Solutions average operating costs amounted to 80% (8-hour work-day which corresponds to its CFR reporting) and the day care operations were at 20%; that means that when including the overall standard workweek of 50 hours (7:30-8AM though 6PM) from the day care operation, when all of the entities operated under one cost report, the total compensation distributed to each cost center would not result in excessive compensation. For all of these reasons, no finding should be reported to Adaptive Solutions for excessive compensation.

State Comptroller's Comment – We stand by our findings. Adaptive Solutions reported 1.0 FTE on its CFRs for these two executives while they held positions and/or received compensation at three entities: Adaptive Solutions, Our Children, and Sunflower. In its response, Adaptive Solutions did not specifically address the issue of exceeding the 1.0 FTE limit across multiple agencies. Moreover, our audit is of compliance with SED requirements outlined in the RCM and CFR Manual—not NYCDOE requirements. It is Adaptive Solutions' responsibility to ensure it is adhering to SED requirements regarding expenses claimed on the CFR regarding any other funding sources.

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Reimbursable Cost Manual Requirements

1:1 Aides (Program 9230)

RCM Sections I and II

Staffing

Ratios 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 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 IEP requirements and the program generated summary data relating to those IEPs. A Department programmatic review and approval of variations from these ratios is required for costs of additional staff to be reimbursable.

Compensation for Personal Services

Direct care student to staff ratios shall not exceed the approved staffing levels supported by the Department's program approval letter. Any net excess of staff will not be included as part of reimbursable costs in the program's reconciliation tuition rate. Such additional staff may be deemed reimbursable in the prospective rate upon amendment of the provider's program approval letter and **demonstration to the satisfaction of the Commissioner that such costs were necessary.**

One to One Staffing Finding \$230,051

The OSC representatives inaccurately reclassified teacher aide/assistant staff from the center-based reporting program cost center to the one-to-one aide program cost center based on temporary monthly staffing roster schedules instead of what actually occurred and what the agency reported while the program was operating on a daily basis (210 Days) which met mandates of all the children enrolled during the audit scope.

State Comptroller's Comment – We disagree. We did not inaccurately reclassify the staff. Our recommended disallowance is based on non-compliance with reporting and cost allocation requirements outlined in the RCM and CFR Manual. Although Adaptive Solutions' officials assert that the same staff worked across both the center-based programs (programs 9100 and 9160) and the 1:1- Aide program (program 9230), the documentation provided does not support this assertion or that employees were charged to the correct program based on actual services

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provided. The records don't clearly demonstrate which program these employees worked for, hours worked in each program, daily assignments, or the criteria used to make real-time staffing decisions based on student needs.

Because the preschool programs operate on a daily basis (210 days which include 30 in the summer and 180 in the 10-month school sessions), the teacher, curriculum coordinator, clinical coordinator and Executive Director must collectively make critical staffing decisions on a daily basis because the first step is to ensure the child receiving these services matches up with the best staff person based on the student's disability needs and behavior characteristics.

Based on the data it reported on schedule CFR-4 in the New York State Education Department CFR software; that staffing data corresponds to lead schedules (Final Position controls) it provided to the OSC at the onset of the audit and the hours reported meet the mandate of the children that received the service.

Adaptive Solutions is including as an attachment herein, the staffing data it provided at the onset of the audit as one of its supporting documents, with all of the employees who worked as teacher aides/assistants during the audit scope; including employees who were working in the organization as a classroom teacher aide/assistant in a center-based program and as a teacher one to one aide to satisfy program staffing compliance with respect to the classroom ratios in programs 9100 and 9160 and one to one aide requirements in program cost center 9230.

In addition, this document includes three tabs of each employees' hours and amounts paid during the audit scope; Based on the data, it is apparent that the majority of employees employed by Adaptive Solutions during this audit scope did not work the entire school year based on the total annual hours for several employees but the organization did meet its program compliance obligation based on the IEP mandate which includes the start and end date;

Adaptive Solutions reviewed that data and reported it accurately on its CFR and it complies with the mandate approved by the NYSED. It would be unreasonable for the OSC to reclassify teacher aides/assistants to the one-to-one aide program cost center given the overall time data proves there were a sufficient number of aides and assistants providing one to one aide services and reported correctly on the CFR.

Based on the number of staffing hours reported on its CFR's, it is evident that the final number of staffing hours reported in each of these respective program cost centers (CB Programs 9100 and 9160 and 1:1 Program 9230) were accurate and meet fiscal and program compliance guidelines before the OSC reclassified several aides in each school year of the audit scope to arrive at its finding.

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State Comptroller's Comment – We stand by our findings. We reviewed all records provided by Adaptive Solutions officials throughout the audit. Our disallowance is based on non-compliance with reporting and cost allocation requirements outlined in the RCM and CFR Manual. Although Adaptive Solutions' officials assert that the same staff worked on the center-based programs (programs 9100 and 9160) and the 1:1 Aide program (program 9230), the documentation provided does not support this assertion or that employees were charged to the correct program based on actual services provided. The records don't clearly demonstrate which program these employees worked for, hours worked in each program, daily assignments, or the criteria used to make real-time staffing decisions based on student needs.

Staffing Data Reported on CFR Meets IEP mandates

To prove that the data reported on the CFR is correct, Adaptive Solutions prepared a staffing efficiency analysis attachment resulting from the data reported on each of its cost reports during this audit scope period. The staffing analysis include all of the aides and/or assistants that the OSC is claiming should be reclassified to the one-to-one aide program cost center. The following is the information used for this analysis:

- Hours reclassified;
- Daily work day requirement for providing one to one aide services;
- Hours reported by Adaptive Solutions on each of its CFR's during the audit scope;
- Staffing efficiency as reported in its one-to-one aide program cost center;
- Staffing efficiency as reported in its one-to-one aide program cost center including the OSC's staffing reclassification;
- Program Approval for its CB Programs;
- Required number of teacher aides/assistants in its CB Programs;
- Reported number of teacher aides/assistants in its CB Programs;
- Excess staffing beyond class ratio for substitution needs and over-enrollment;
- Staffing compliance percentage in CB Programs before OSC reclassification;
- Staffing compliance percentage in CB Programs after OSC reclassification;

Based on the foregoing, the one-to-one aide program cost center staffing compliance efficiency amounted to 92% in school year 2015-16, 101% in school year 2016-17 and 97% in school year 2017-18 prior to the OSC's reclassification of teacher aides and assistants; the classroom ratio staffing analysis amounted to 84% and 94% in programs 9100 and 9160 respectively in school year 2015-16, 106% in school year 2016-17 and 108% due to over-enrollment compliance requirements and 74% in respectively programs 9100 and 9160 respectively in school year 2017-18.

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In school year 2016-17, program 9100 operated three 8:1:2 classrooms which totals 24 children. However, on schedule SED-1 (Program and Enrollment Data), Adaptive over-enrolled 25.500 student FTE's in the summer session and 28.150 student FTE's in the ten-month session, and in school year 2017-18, program 9100 operated 3 in the summer and 3.8 8:1:2 classrooms ten-month school session respectively which total 24 and 30.400 and over-enrolled 27.333 and 33.600. The nominal amount of additional teacher aide/assistant staffing in these two school years allows the CB program staffing beyond the 100% and complies with the NYS Commissioners regulation with respect to over-enrollment, and Adaptive Solutions complied with that regulation and reported the data correctly.

However, there is no justification explaining OSC's arbitrary reclassification of more one-to-one aide staffing than is actually required and amount to 112%, 118% and 114% overstaffing, while at the same time incorrectly reducing the appropriate classroom staffing reported by Adaptive Solutions and lowering staffing efficiency to 70% and 69% in programs 9100 and 9160 respectively in school year 2015-16, 88% in program 9100 in school year 2016-17 and 96% and 62% in programs 9100 and 9160 respectively in school year 2017-18.

State Comptroller's Comment – We stand by our findings. Notwithstanding the results of the staffing analysis performed by Adaptive Solutions officials, our disallowance is based on non-compliance with the reporting and cost allocation requirements outlined in the RCM and CFR Manual. Although Adaptive Solutions officials assert that the same staff worked across both the center-based programs (programs 9100 and 9160) and the 1:1 Aide program (program 9230), the documentation provided does not support this assertion or that employees were charged to the correct program based on actual services provided. Further, the records don't clearly demonstrate which program these employees worked for, hours worked in each program, daily assignments, or the criteria used to make real-time staffing decisions based on student needs. In addition, certain documentation shows that some staff performed work only for the 1:1 Aide program, yet their compensation was solely reported to the SED preschool cost-based programs. Moreover, Adaptive Solutions' compliance with staffing ratios does not negate the fact that staff were reported to the incorrect cost center. While we recognize officials make day-to-day staffing decisions based on student needs, officials are also obligated to ensure costs associated with those decisions comply with SED requirements and are sufficiently documented and accurately reported on their CFRs.

Finally, during school year 2017-18, Adaptive Solutions employed and reported 23 teacher aide/assistants to provide one to one aide services to 18.119 student FTE's and none of them were reported in the CB programs, employed and reported 32 teacher aide/assistants to provide one to one aide services to 18.781 student FTE's in the 2016-17 school year and none of them were reported in the CB programs and employed and reported 23 teacher aides/assistants in the 2015-16 school year to provide one to one aide services to 14.658 student FTE's and only one of

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them worked in both the CB and one to one aide programs. In the three years ending audit scope of June 30, 2018, Adaptive Solutions indicated a staffing efficiency of 97% based on data reported by Adaptive Solutions in the one-to-one aide program cost center while allocating 78 one to one aide staff directly to that one program cost center and only used one of them in a dual role in that three-year ending audit scope period.

It is evident that OSC's reclassification of teacher aides/assistant is unfair, unreasonable and unjustified given the OSC over-allocated more aides/assistants to the one to one aide program cost center than what is actually mandated according to the IEP; moreover, the understaffing efficiency outcome in the CB program classroom ratios staffing requirement analysis based on OSC's aides/assistants adjustment reclassification and finding calculation does not correspond with the number of classes and class ratio Adaptive Solutions is approved to provide and adhere to according to program approval letters in the CB programs (Program 9100 and 9160) for each of the school year's in this audit scope.

OSC unreasonably, unfairly, unjustifiably and arbitrarily should not reclass and overstaff a one-to-one aide program when that staffing reclassification does not logically and mathematically support that allocation based on the start and end date of the children who receive one to one aide service mandates. Adaptive Solutions should not be penalized given it reported its data accurately in each of the program cost centers (CB or one to one).

State Comptroller's Comment – We stand by our findings. We reviewed all records Adaptive Solutions officials provided and made decisions based on requirements in the RCM and CFR Manual. Our disallowance was not unreasonable, unfair, unjustifiable, or arbitrarily determined. We disagree that Adaptive Solutions reported its data accurately in the SED preschool cost-based and 1:1 Aide cost centers on the CFRs. Rather, our disallowance is based on Adaptive Solutions' non-compliance with reporting and cost allocation requirements outlined in the RCM and CFR Manual. Although Adaptive Solutions officials assert that the same staff worked across both the SED preschool cost-based programs (programs 9100 and 9160) and the 1:1 Aide program (program 9230), the documentation provided does not support this assertion or that employees were charged to the correct program based on actual services provided. Further, the records don't clearly demonstrate which program these employees worked for, hours worked in each program, daily assignments, or the criteria used to make real-time staffing decisions based on student needs. In addition, documentation showed that some staff performed work only for the 1:1 Aide program, yet their compensation was solely reported to the SED preschool cost-based programs. Moreover, it is Adaptive Solutions' responsibility to ensure costs are sufficiently documented and accurately reported on its CFRs.

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9/06/2024

ADAPTIVE SOLUTIONS MULTI-SERVICES PLLC

Response to Final Draft Audit Report

**Reimbursable Cost Manual for Programs Receiving Funding Under Article 81
and/or Article 89 of the Education Law to Educate Students with Disabilities**

Compliance with the Reimbursable Cost Manual

July 2017 Edition

Reimbursable Cost Manual (“RCM”) for Programs Receiving Funding Under Article 81 and/or
Article 89 of the Education Law to Educate Students with Disabilities

RCM GUIDELINES

Consultant/Vendor LTAL

1. “Fees do not exceed the prevailing rate for such services. The school will maintain documentation to support the regional prevailing rate at the time such costs are incurred.
2. Adequate documentation includes, but is not limited to, the consultant's resume, a written contract which includes the nature of the services to be provided, the charge per day and service dates.
3. Costs associated with retainers for legal, accounting or consulting services are not reimbursable unless the fee represents payment for actual documented reimbursable services rendered,
4. In the case of legal and accounting services, all payments must be supported by itemized

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invoices which 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 which 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.

5. Requests for proposals (RFP) or other bidding documentation must be kept on file by the entities operating the program. The entity will need to justify that the consultant hired was the most economical and/or appropriate available for a particular service, which Adaptive Solutions did.”

Response to LTAL Finding \$206,354

Insufficiently IT and Cleaning Janitorial Service Costs

“Less Than Arm’s Length (LTAL) costs that were provided by family members from the owners of the organization, the OSC requested documentation during the field audit, and those items included contracts, invoices and proof of payment, which Adaptive Solutions did provide. Based on the foregoing, the final draft audit report stated that Adaptive Solutions was not in compliance with the Reimbursable Cost Manual as a result of not providing details such as the specific services, fee per hour and number of hours provided. However, Adaptive Solutions did provide all of the necessary supporting documentation, including but not limited to contracts, logs corresponding to invoices and RFP proposals sent via email to bidders. During our exit conference, OSC reps claimed that Adaptive Solutions did not receive all of the three bids back from the RFP. The RCM does not require Adaptive to force bidders to send its bid back. Adaptive complied with RCM requirements by submitting an RFP to three bidders.

State Comptroller’s Comment – For the IT and Cleaning janitorial services, the RCM requires payments to be supported by itemized invoices. The invoices provided by Adaptive Solutions were not itemized and lacked pertinent information such as dates of service, fee per hour, and number of hours provided. We agree that the RCM does not force bidders to send bids back, and have revised our report accordingly. However, the basis for the finding and the recommended disallowance is the lack of itemized invoices.

In addition, the OSC also claimed in its final draft audit report that Adaptive Solutions did not send an IT RFP, which is not correct based on our records from our response to the OSC’s

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preliminary report. We are resending that supporting RFP, and OSC reps should note that the LTAL party included in its response to the proposal, a “monthly client log – providing a detail monthly log of work performed for client review.” We believe that the LTAL bidder had a clear understanding of where the genesis existed regarding contemporaneous and detailed recordkeeping to comply with RCM requirements and also Adaptive Solution understood from the RCM that adequate documentation included documented reimbursable services resulting from costs associated with retainers.

State Comptroller’s Comment – We revised our report to remove the references to bidding.

Maintenance

Adaptive Solutions had already attached supporting documents in its preliminary audit response, which included a complete detail of logs requested by the OSC from each of the family members who provided services to Adaptive Solution during the audit scope. These items are referred to as “Cleaning Logs or Monthly Cleaning Logs”, and include the following services:

- Floors/Carpet;
- Walls/Windows;
- Washrooms;
- Railing/Steps;
- Lights;
- Mirrors/Screens;
- Fixtures;
- Furniture;
- Exterior; and
- Trash/Recycling

In addition, included on these same monthly logs is the signature of the person (s) who provided the services on that day/date during the audit scope period.

State Comptroller’s Comment – We stand by our findings. The RCM requires payments to be supported by itemized invoices. The invoices provided by Adaptive Solutions (for the services provided by this related-party vendor) were not itemized and lacked pertinent information such as dates of service, fee per hour, and number of hours provided.

IT Services

For the IT services, a “Monthly Computer Maintenance log” is attached herein as supporting

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documents, which includes the following services provided to Adaptive Solutions during the audit scope:

- Network management on site and remote;
- Printer Maintenance and Repair on site and remote;
- Client Site Maintenance on site and remote;
- Server Maintenance on site and remote;
- Daily/Backup to server on site/Remote;
- Install and configure software on site and remote;
- Diagnose and trouble shoot computer issues on site and remote;
- Provide technical support on site and remote;
- Monitor and upgrade security on site and remote; and
- Maintain office hardware on site and remote.

Based on the foregoing, all of the relevant information and data included in all of the supporting documents (Retainer and other invoices and supporting logs) were available to calculate an hourly rate which satisfies the remaining criteria to meet RCM guidelines, “Fees do not exceed the prevailing rate for such services” by providing previous Arm’s length contracts for maintenance services which also commensurate with other providers hiring staff and/or vendors providing similar services in the same geographic region.

State Comptroller’s Comment – We stand by our findings. The RCM requires payments to be supported by itemized invoices. The invoices provided by Adaptive Solutions (for the services provided by this related-party vendor) were not itemized and lacked pertinent information such as dates of service, fee per hour, and number of hours provided.

Regarding additional RCM requirements, attached herein are supporting documents containing email correspondences, which refer to three bids that Adaptive Solutions attempted that were emailed by Adaptive Solutions to the following vendors:

1. Apex Tech Services;
2. B4 Computers; and
3. Persatech (Family Member)

Based on the foregoing, Adaptive Solutions Multi Services did comply with the RCM and met each of these criteria regarding the specific type of services, and deliverable actually provided, the date (s), number of hours provided, the calculated fee per hour and the total amount charged for that period of work.

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For these reasons, these costs are allowable and we believe Adaptive Solutions should be reimbursed for these expenses.

State Comptroller's Comment – We revised our report to remove the references regarding bidding.

Response to Failing to Disclose LTAL and Conflicts of Interest

Reimbursable Cost Manual

SECTION I DEFINITIONS

Less-Than-Arm's-Length (LTAL) Relationship and Conflicts of Interest

4A. In general, a LTAL relationship exists when there are related parties and one party can exercise control or significant influence over the management or operating policies of another party, to the extent that one of the parties is or may be prevented from fully pursuing its own separate interests. **These relationships must be disclosed in the notes to the audited financial statements, which Adaptive Solutions did.**

Adaptive Solutions Multi Services did disclose its LTAL relationships as required under the RCM in its financial statements and this note can be found under note 12 of the financial statements in fiscal period 2017-18, which is the primary year of the audit and was also documented on its 2016-17 financials; that documentation did not appear in the 2015-16 because a typo occurred in the financial and that is apparently noticeable because note 11 jumped to note 13. Note 12 (Non-Allowable and Conflict of Interest) was inadvertently missing which is where the disclosure to LTAL relationships was written in Adaptive Solutions subsequent financials. Since the CFR and financials are the primary documents submitted and reviewed by state agency departments, it is evident that one of the primary documents contained full disclosure during the audit scope.

State Comptroller's Comment – We stand by our findings. The CFR Manual requires that LTAL relationships be reported on CFR Schedule 5 (Transactions with Related Organizations/Individuals). Adaptive Solutions officials failed to disclose their related-party transactions with both vendors on the 2015-16 CFR and did not disclose the related-party transactions with one of these vendors on the 2016-17 CFR.

12. Non allowable and conflict of interest

Non-Allowable Cost Policy

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In accordance with the Reimbursable Cost Manual, Section 11, Cost Principles, the Agency considers costs reimbursable when proved to be reasonable, necessary and directly related to the special education program and sufficiently documented. Costs that do not meet the foregoing are defined specifically throughout the Reimbursable Cost Manual, Section II, and when identified, are reallocated to schedules CFR-1 Line 66 and/or CFR-3 Line 41 "Adjustments/Non-Allowable Costs", where deemed appropriate.

Compliance and Conflict of Interest Policy

In accordance with the Reimbursable Cost Manual, Section I, Definitions, Item (4)(A) "Less Than Arm's Length Relationship and Conflicts of Interest" will be disclosed on both the Financial Statements and Schedule CFR-5 of the Consolidated Fiscal Report. Adaptive Solutions is fully aware that Cronyism and Nepotism are discouraged.

Adaptive Solutions Multi-Services PLLC (Adaptive) and its Executive Management Team established criteria to ensure that such a relationship will not affect the management decisions or operating policies of the agency. For school year 2016-17, Adaptive reported various services provided by employees and contractors on schedule CFR-5, including direct and non-direct work-related activities and **IT and Maintenance contracted services.**

As you are aware, Adaptive Solutions did disclose its LTAL relationships on its 2017-18 financial statements in note 12 as required by the RCM; the OSC representatives are in possession of the financial statements based on documents requested by them at the onset of the audit. The organization included that documentation on its 2017-18 CFR in schedule CFR-5. Because of these disclosures, Adaptive Solutions demonstrated it complied with RCM requirements by fully disclosing LTAL relationships in all instances.

For all of these reasons, we believe no findings should be assessed.

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State Comptroller's Comment – We stand by our findings. As previously stated, the CFR Manual requires that LTAL relationships be reported on CFR Schedule 5 (Transactions with Related Organizations/Individuals). Adaptive Solutions officials failed to disclose their related-party transactions with both vendors on the 2015-16 CFR and did not disclose the related-party transactions with one of these vendors on the 2016-17 CFR. Moreover, we did not recommend the disallowance of costs for these two vendors because the related-party transactions were not disclosed in certain years. The recommended disallowance is because Adaptive Solutions did not follow the RCM requirements that payments are to be supported by itemized invoices. The invoices provided by Adaptive Solutions for the services provided by this related-party vendor were not itemized and lacked pertinent information such as dates of service, fee per hour, and number of hours provided.

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