

# State Education Department

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## New York Institute for Special Education: Compliance With the Reimbursable Cost Manual

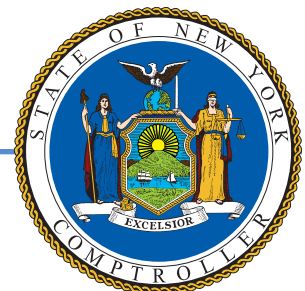
Report 2023-S-29 | December 2024

OFFICE OF THE NEW YORK STATE COMPTROLLER

Thomas P. DiNapoli, State Comptroller

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Division of State Government Accountability



# Audit Highlights

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## Objective

To determine whether the costs reported by the New York Institute for Special Education (Institute) 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 the Institute's CFR for the fiscal year ended June 30, 2020 and certain expenses claimed on its CFRs for the 2 fiscal years ended June 30, 2019.

## About the Program

The Institute 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. The Institute 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. The Institute also operated evaluation, education, and residential programs for students who are between the ages of 5 and 21 years and are blind or visually impaired. During the fiscal year ended June 30, 2020, the Institute served approximately 123 students in the SED preschool cost-based program.

The New York City Department of Education refers students to the Institute based on clinical evaluations and pays for its services using rates established by SED. The rates are based on the financial information that the Institute reports to SED on its annual CFRs. For the 3 fiscal years ended June 30, 2020, the Institute reported approximately \$17.5 million in reimbursable costs for the SED preschool cost-based program.

## Key Findings

For the 3 fiscal years ended June 30, 2020, we identified \$3,256,007 in reported costs that did not comply with the requirements in the RCM and the CFR Manual, as follows:

- \$3,132,751 in unsupported compensation costs. Institute officials could not provide time records to substantiate that 41 teacher assistants and substitute teacher assistants worked the hours for which they were paid. Officials initially informed us that sign-in sheets for these employees were accidentally shredded during our audit but later indicated this occurred before they were notified of the audit. We asked officials if they could provide other documentation to substantiate the employees' work time and activities, but the documentation they provided was insufficient.
- \$65,778 in insufficiently documented other than personal service costs, including \$57,250 in audit fees, \$5,585 in staff recruitment costs, \$2,428 in equipment depreciation costs, and \$515 in employee reimbursement for supplies and materials.

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- \$30,557 in non-allowable and non-program-related costs:
    - \$15,508 in non-program-related costs, including equipment depreciation, computers/monitors, staff recruitment, and E-ZPass replenishment used for non-SED preschool cost-based programs.
    - \$15,049 in non-allowable physician costs.
  - \$22,225 in executive compensation that exceeded SED's median allowable compensation limit.
  - \$4,696 in ineligible health code violation and tax payments.

## Key Recommendations

### To SED:

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

### To the Institute:

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



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

December 18, 2024

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

Bernadette M. Kappen, Ph.D.  
Executive Director  
New York Institute for Special Education  
999 Pelham Parkway  
Bronx, NY 10469

Dear Dr. Rosa and Dr. Kappen:

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 the New York Institute for Special Education 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

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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>
Institute	New York Institute for Special Education	<i>Service Provider</i>
OTPS	Other than personal service	<i>Key Term</i>
RCM	Reimbursable Cost Manual	<i>Policy</i>

# Background

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The New York Institute for Special Education (Institute) 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, 2020, the Institute served approximately 123 students with disabilities in the SED preschool cost-based program. In addition to the SED preschool cost-based program, the Institute 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 Institute also operated evaluation, education, and residential programs for students who are between the ages of 5 and 21 years and are blind or visually impaired.

The New York City Department of Education (DOE) refers students to the Institute based on clinical evaluations and pays for the Institute's services using rates established by SED. The rates are based on the financial information the Institute reports to SED on its annual CFRs. To qualify for reimbursement, the Institute'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 the Institute.

For the 3 fiscal years ended June 30, 2020, the Institute reported approximately \$17.5 million in reimbursable costs for the SED preschool cost-based program. This audit focused primarily on expenses that the Institute claimed on its CFR for the fiscal year ended June 30, 2020, and certain expenses reported on its CFRs for the 2 fiscal years ended June 30, 2019.

# Audit Findings and Recommendations

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According to the RCM, costs will be considered for reimbursement provided they are reasonable, necessary, directly related to the special education program, and sufficiently documented. For the 3 fiscal years ended June 30, 2020, we identified \$3,256,007 in reported costs that did not comply with SED's requirements for reimbursement. These ineligible costs include \$3,154,976 in personal service costs and \$101,031 in other than personal service (OTPS) costs (see Exhibit at the end of this 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 the Institute's internal controls over its compliance with SED's guidelines.

## Personal Service Costs

Personal service costs, which include all salaries and fringe benefits paid or accrued to employees on the service provider's payroll, must be reported on the CFR as either direct care costs (e.g., teachers' salaries) or non-direct care costs (e.g., administrators' salaries). For the 3 fiscal years ended June 30, 2020, the Institute reported approximately \$16.5 million in personal service costs for the SED preschool cost-based programs. We identified \$3,154,976 in personal service costs that did not comply with the RCM's requirements for reimbursement.

## Unsupported Compensation Costs

According to the RCM, compensation costs must be based on approved, documented payrolls, which 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 or electronically approved and dated by the employee and employee's supervisor or personnel authorized to approve/date employee time sheets and must be completed at least monthly.

For the 3 fiscal years ended June 30, 2020, the Institute reported \$3,132,751 in compensation (\$2,170,475 in salaries and \$962,276 in fringe benefits for the SED preschool cost-based program) for 41 teacher assistants and substitute teacher assistants. However, Institute officials could not provide time records to substantiate that these employees worked the time for which they were paid. Officials initially informed us that sign-in sheets for these employees were accidentally shredded during our audit but later indicated this occurred before they were notified of the audit.

We asked Institute officials if they could provide other documentation to substantiate the employees' work time and activities; however, the documentation provided was insufficient. They provided documents such as payroll processing reports, leave notes, and email correspondence, but these records did not substantiate the employees' work dates, times/hours, and activities. Officials indicated that teacher



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assistants do not have the same responsibility to document their work as other Institute employees.

Consequently, we recommend that SED disallow \$3,132,751 in unsupported compensation costs. We also noted that the Institute reported additional compensation costs under the 1:1 Aides program column for seven of the 41 employees. However, because the CFR Manual requires that all compensation costs for 1:1 aides must be reported in a separate cost center on the provider's financial reports, we question why any compensation costs were claimed for these employees for the SED preschool cost-based program. Institute officials indicated that these employees were teacher assistants who also performed the function of 1:1 aides, as required by their students' Individualized Education Program.

## Excess Executive Compensation

According to the RCM, compensation (i.e., salaries plus fringe benefits) for an entity's staff whose function is that of Executive Director, Assistant Executive Director, or Chief Financial Officer will be directly compared to the regional median compensation for comparable administration job titles of public school districts. Reimbursement of employee compensation for these job titles shall not exceed the median compensation paid to comparable personnel in public schools for similar work and hours of employment in the region in which the entity is located.

For the fiscal year ended June 30, 2018, compensation costs for the Institute's Chief Financial Officer/Controller exceeded the regional median limit by \$102,436. Of this amount, \$22,225 was allocated to the SED preschool cost-based program.

Consequently, we recommend that SED disallow \$22,225 in executive compensation that did not comply with SED's requirements.

## Other Than Personal Service Costs

For the 3 fiscal years ended June 30, 2020, the Institute reported approximately \$1 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 \$413,432. We identified \$101,031 of these expenses that did not comply with SED's reimbursement requirements.

## 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

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services and/or deliverables actually provided and for each service and/or deliverable, the date provided and the total amount charged. For depreciation costs, the CFR Manual requires that service providers maintain schedules that include certain minimum information, such as descriptions of the assets.

For the 3 fiscal years ended June 30, 2020, we identified \$65,778 in insufficiently documented OTPS costs, as detailed below.

- \$57,250 in audit fees. Invoices did not include the dates when services were provided and the total amount charged for each service.
- \$5,585 for inadequately documented staff recruitment services performed by a consultant. This included \$5,208 that was not supported by a contract and \$377 that was not supported by invoices.
- \$2,428 in equipment depreciation costs. The depreciation schedule did not include descriptions of the assets.
- \$515 to reimburse an employee for purchasing supplies and materials. Invoices/receipts provided did not reconcile with the reimbursement amount. In addition, the vendor name listed on the Institute's general ledger was different than the vendor names listed on the invoices/receipts.

Consequently, we recommend that SED disallow \$65,778 for these insufficiently documented costs. Institute officials disagreed that the audit fees were inadequately documented. They provided spreadsheets they claimed detailed the dates when the services were provided and the fee for each service. However, the information listed on the spreadsheets did not reconcile with the information on the invoices. Therefore, there is no assurance that the additional information officials provided correlated with the expenses in question. Moreover, non-audit services described in the spreadsheet, such as tax form preparation, are not reimbursable when provided by the auditing firm within 365 days of required audit work. Officials also disagreed that a contract is required to support the staff recruitment services because invoices and canceled checks were available. However, neither the invoices nor the canceled checks describe the specific services actually provided and for each service, the date(s), number of hours provided, and the fee per hour. The invoice simply describes the services as "consulting services" and the amount charged as the fee value of "temp-to-perm recruitment." Because officials did not provide a supporting contract, the agreed-upon services, dates of service, and charges are also unclear.

## **Non-Allowable and Non-Program-Related Expenses**

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. Costs must be charged directly to specific programs whenever possible.

According to the CFR Manual, all attempts should be made to directly charge an expense to the appropriate cost center. In addition, expenses associated with a physician are non-allowable for SED reimbursement purposes, except for the

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Evaluations program. This is further supported by Part 200.1(ee) of the Regulations of the Commissioner of Education, which defines medical services as evaluative and diagnostic services to determine whether a student has a medical-related disability that may result in the student's need for special education and related services.

For the 3 fiscal years ended June 30, 2020, we identified \$15,049 in contracted direct care costs that did not comply with the CFR Manual's guidance. We found that the Institute contracted with a hospital to provide physician services, including annual medical record review, physical assessment, and prescription refilling. We find these services to be inconsistent with SED's guidance for reimbursement for medical services performed by a licensed physician for the SED preschool cost-based program. Moreover, the Institute's general ledgers indicated that at least \$13,545 of the \$15,049 was for services provided to students in non-preschool programs. Institute officials indicated that many of these services supported Institute staff and management and, therefore, were appropriate agency administration costs. However, for the reasons stated above, we found that these services were not related to the SED preschool cost-based program.

We also found the following additional non-program-related expenses, totaling \$15,508.

- \$9,110 in depreciation of equipment used for non-preschool programs.
- \$3,284 for computers and monitors used for non-preschool programs.
- \$2,312 in costs to recruit employees to non-preschool programs.
- \$802 to replenish an Institute employee's E-ZPass account. Although Institute officials did not document the associated travel (e.g., travel purpose, mileage), they advised that the E-ZPass was used for van travel for a non-preschool program.

Consequently, we recommend that SED disallow \$30,557 (\$15,049 + \$15,508) for these non-allowable and non-program-related expenses. We attribute many of the disallowances to Institute officials' failure to directly charge expenses to the appropriate program. Further, officials often used previous years' allocation methodologies and percentages without reviewing them to determine if they were fair and reasonable. Although the RCM states that allocation percentages should be reviewed on an annual basis and adjusted as necessary, officials did not recall the last time this was done.

## Other Non-Reimbursable Expenses

According to the RCM, payments for federal, State, and local income taxes or any related penalties and interest are not reimbursable. In addition, 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.

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We identified \$4,696 in other non-allowable expenses, as follows.

- \$3,796, including payments to the Oregon Department of Revenue (\$3,287), New York State Department of Taxation and Finance (\$466, including \$51 in interest and penalties), and Oklahoma Tax Commission (\$43). Institute officials advised that they have an investment in a limited partnership and, due to their investment, are required to file tax returns to certain state taxation authorities.
- \$900 in penalties for New York City Health Code violations.

## Recommendations

### To SED:

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

### To the Institute:

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

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The objective of our audit was to determine whether the costs reported by the Institute 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 the Institute's CFR for the fiscal year ended June 30, 2020 and certain expenses claimed on its CFRs for the 2 fiscal years ended June 30, 2019.

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

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## Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution; Article II, Section 8 of the State Finance Law; and Section 4410-c of the State Education Law.

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 the Institute's compliance with the RCM and CFR Manual.

## Reporting Requirements

We provided a draft copy of this report to both SED and Institute 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. In their response, Institute officials disagreed with many of the proposed disallowances. Our responses to certain Institute comments are embedded within the Institute's response as State Comptroller's Comments.

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

**New York Institute for Special Education  
Summary of Reported and Disallowed Program Costs  
for the 2017-18, 2018-19, and 2019-20 Fiscal Years**

Program Costs	Amount Reported on CFR	Amount Disallowed	Amount Remaining	Notes to Exhibit
Personal Services				
Direct Care	\$15,592,300	\$3,132,751	\$12,459,549	A, B, F, G, J-L
Agency Administration	869,069	22,225*	846,844	
<b>Total Personal Services</b>	<b>\$16,461,369</b>	<b>\$3,154,976</b>	<b>\$13,306,393</b>	
Other Than Personal Services				
Direct Care	\$739,217	\$21,847	\$717,370	A, C-F, H-J, L-N
Agency Administration	261,602	79,184	182,418	
<b>Total Other Than Personal Services</b>	<b>\$1,000,819</b>	<b>\$101,031</b>	<b>\$899,788</b>	
<b>Total Program Costs</b>	<b>\$17,462,188</b>	<b>\$3,256,007</b>	<b>\$14,206,181</b>	

\*SED, pursuant to a desk review, previously disallowed these costs.

# Notes to Exhibit

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The following Notes refer to specific sections of the RCM and 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 Institute 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.A.4.(a) – Compensation (i.e., salaries plus fringe benefits) for an entity’s staff whose function is that of Executive Director, Assistant Executive Director, or Chief Financial Officer will be directly compared to the regional median compensation for comparable administration job titles of public school districts, as determined and published annually by SED’s Basic Educational Data Systems. Reimbursement of employee compensation for these job titles shall not exceed the median compensation paid to comparable personnel in public schools for similar work and hours of employment in the region in which the entity is located. Compensation for an “Executive Director” providing services to an Article 81- and/or Article 89-funded program will be compared to the median “Superintendent-Independent” compensation for the region in which the entity is located, and compensation for an Assistant Executive Director and Chief Financial Officer will be compared to the median compensation for “Assistant Superintendent.”
- C. RCM Section II.14.E – Costs associated with non-audit services provided by a registered public accounting firm or any person associated with that firm, during or within 365 days of required audit work (prior to the beginning of the fiscal period being audited or after the date of the audit report issued for the audit period), are not reimbursable.
- D. RCM Section II.21 – Fines and penalties from violations of or failure by the entity to comply with federal, State, and/or local laws and regulations, are not reimbursable.
- E. RCM Section II.57.B – Payments for federal, State, and local income taxes or any related penalties and interest are not reimbursable. Penalties and interest on late payments or non-payment of payroll withholding taxes are not reimbursable.
- F. RCM Section III.1 – Section 200.9(d) of the Commissioner’s Regulations requires entities operating approved programs to retain all pertinent accounting, allocation, and enrollment/attendance records supporting reported data directly or indirectly related to the establishment of tuition rates for 7 years following the end of each reporting year. Information relating to the acquisition of fixed assets, equipment, land or building improvements, and any related financing arrangements and grants must be retained as long as the facility is used by any education program the provider operates if this period exceeds 7 years. Costs will not be reimbursable on field audit without appropriate written documentation of costs.
- G. 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 or electronically approved and dated by the employee and employee’s supervisor or personnel authorized to approve/date employee time sheets and must be completed at least monthly.
- H. RCM Section III.1.C.2 – For consultants, 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



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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. In addition, when direct care services are provided, the documentation must indicate the names of students served, the actual dates of service, and the number of hours of service to each child on each date.

- I. 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.
- J. RCM Section III.1.M.2 – Entities operating programs must use allocation methods that are fair and reasonable, as determined by the Commissioner’s fiscal representatives. Such allocation methods, as well as the statistical basis used to calculate allocation percentages, must be documented and retained for each fiscal year for review upon audit for a minimum of 7 years. Allocation percentages should be reviewed on an annual basis and adjusted, as necessary.
- K. 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).
- L. CFR Manual Appendix I (Page 42.2) – Service providers should note that all attempts should be made to directly charge an expense to the appropriate cost center.
- M. CFR Manual Appendix O (Page 48.1) – The service provider is required to maintain depreciation schedules that include the following minimum information: description of asset, date of acquisition, cost at acquisition, State/federal funding for items, salvage value, depreciation method, useful life used for depreciation purposes, annual depreciation amount, and accumulated depreciation.
- N. CFR Manual Appendix R (Page 51.8) – Position title Physician-M.D. is unallowable for SED with the exception of the 9190 program (Evaluations).

# Agency Comments - State Education Department

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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, 21<sup>st</sup> 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-29, *New York Institute for Special Education (Institute) - 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 Institute's CFRs and to Institute's tuition reimbursement rates, as warranted."

We agree with this recommendation. SED will review the recommended disallowances as noted in the report and make adjustments to the reported costs to recover any overpayments, as appropriate, by recalculating tuition rates. NYSED will further review the staffing recommendations to determine if the adjustments are appropriate.

Recommendation 2:

"Remind Institute 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 Institute 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 Institute 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

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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  
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William Meissner  
Rebecca Jones  
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# Agency Comments - NY Institute and State Comptroller's Comments

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August 28, 2024

**VIA U.S. MAIL AND EMAIL**

Mr. Kenrick Sifontes  
Audit Director  
Office of the New York State Comptroller  
Division of State Government Accountability  
110 State Street, 11<sup>th</sup> Floor  
Albany, New York 12236

Re: Report No. 2023-S-29, State Education Department  
New York Institute for Special Education: Compliance with the Reimbursement Cost  
Manual  
New York Institute for Special Education's Response to Draft Audit Report

Dear Mr. Sifontes:

We represent New York Institute for Special Education (the "Institute") with respect to this matter. I write on behalf of the Institute to respond to the above-referenced draft audit report.

By way of background, the Institute is a not-for-profit educational institution that has been serving students with special needs since 1831. As relevant to this audit, the Institute operates the Readiness Program, a full-day, center-based program for approximately 120 children in The Bronx, ages 3-5, who have been referred by their local Committee on Preschool Education. The Readiness Program has been approved by the State Education Department ("SED") to provide services under Section 4410 of the Education Law. The program is monitored by SED. The Institute is permitted to operate as a preschool by the New York City Department of Health and Mental Hygiene ("NYCDOHMH"). It is frequently inspected by that agency. The Readiness Program is also periodically inspected and is subject to audit by the New York City Department of Education ("DOE").

**State Comptroller's Comment** – The objectives of NYCDOHMH and DOE inspections differ from that of our audit, which was to determine whether the costs reported by the Institute 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 Institute is proud of the high quality services provided to its preschool students. The “Special Class” services that were the subject of the audit are provided through full-day preschool classes with a maximum enrollment of 12 students. Each class is led by a licensed teacher, with the assistance of two paraprofessionals.<sup>1</sup> Each student has an individualized education program (“IEP”) developed by a multidisciplinary team. The student’s parent or guardian may participate in the development of the IEP. According to the Institute’s data, during this time period, students had achieved or were making sufficient progress towards achieving at least 74% of the annual goals in their IEP. The Institute’s students have been able to reach these exceptional levels of growth because of the dedication and consistent work of the teachers and paraprofessionals.

For the “Special Class” services provided by the Readiness Program, Education Law § 4410 (10) (a) (i) (A) provides that the “tuition rate for approved services or programs provided to preschool children” is “determined” annually by SED “in conformance with the methodology established” under Education Law § 4405 (4). Section 4405 (4) provides for the use of a “reimbursement methodology for tuition which shall be based upon appropriate educational standards” determined by SED. Education Law § 4410 (11) (c) (i) instructs SED to “provide guidelines on standards and procedures” for “fiscal audits of services and programs pursuant to this section.”

The relevant SED regulation—8 NYCRR 200.9 (d)—requires only that the Institute “retain all pertinent accounting, allocation and enrollment/attendance records for a period of seven years following the end of each reporting year.” The regulation does not specify which accounting records for employee wages or other payments are “pertinent”. The regulation further provides that, upon field audit, reported costs be supported by “adequate written documentation. Adequate documentation shall include but not be limited to: payroll records, allocation records, canceled checks, invoices, and depreciation schedules” (8 NYCRR 200.9 [f] [iv] [b]).

**State Comptroller’s Comment** – The RCM clearly states that payroll must be supported by employee time records prepared during, not after, the time period for which the employee was paid. Further, time sheets must be signed or electronically approved and dated by the employee and employee’s supervisor or personnel authorized to do so.

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<sup>1</sup> These are minimum staffing ratios for Readiness Program classes. NYCDOHMH conducts unannounced visits regularly to monitor compliance. During the audit period, the Institute was always in compliance with these ratios when it was inspected.

**State Comptroller’s Comment** – The objectives of NYCDOHMH and DOE inspections differ from that of our audit, which was to determine whether the costs reported by the Institute 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.

In the draft audit report, OSC imposes documentation requirements on the Institute that are not present in SED’s regulations or its Reimbursable Cost Manual (“RCM”) for special education programs. In particular, OSC adopts a cramped reading of the phrase “payroll records” that is not appropriate in the context of preschool special education services.

**State Comptroller’s Comment** – Our report cites specific sections of the RCM used to support the recommended disallowances. Moreover, officials acknowledged during the audit that they do not have the documentation listed in the RCM to demonstrate that these employees reported to work. Initially, they informed us that sign-in sheets for these employees were accidentally shredded during our audit, later indicating this occurred before the Institute was notified of the audit. We requested other documentation that could support the employees’ work time and activities. However, the additional documentation was insufficient to support the employees’ work time and activities.

The Institute’s response to the specific findings in the draft audit follows.

#### **Personal Services:**

##### **Unsupported Compensation Costs**

The Institute maintains that OSC’s conclusions regarding the adequacy of the documentary support for its paraprofessional compensation are erroneous.

**State Comptroller’s Comment** – Our conclusions are consistent with the requirements in the RCM.

As relevant to this audit, Section III. I.A of the RCM states that “payroll” documentation “includes but is not limited” as follows:

“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 or electronically approved and dated by the employee and employee’s supervisor or personnel authorized to approve/date employee timesheets and must be completed at least monthly.”

It is the Institute’s understanding, based upon conversations and interactions with SED, that the examples of “adequate documentation” identified in the regulation were not intended to be an exhaustive list. Nor do these examples limit the types of documentation that might be adequate under the regulations. On the contrary, Section III.A of the RCM indicates that an audit should accept any “appropriate written documentation of costs”.

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**State Comptroller's Comment** – Institute officials did not provide adequate or appropriate documentation to substantiate that these employees worked the hours for which they were paid. Moreover, they acknowledged during the audit that they do not have the documentation listed in the RCM to demonstrate that these employees reported to work.

Prior to notice of the audit, a former Institute employee erroneously disposed of the paper sign-in sheets for these individuals.

**State Comptroller's Comment** – Institute officials informed us that sign-in sheets for these individuals were accidentally shredded during our audit.

OSC rejected all other documentation the Institute provided.

**State Comptroller's Comment** – This statement is inaccurate. We reviewed all documentation Institute officials provided. However, the documentation did not support that these employees worked the hours for which they were paid.

As you may be aware, during the audit, the Institute furnished OSC with its actual payroll records, which are electronic and maintained for at least seven years as required by SED.

**State Comptroller's Comment** – Institute officials provided ADP payroll registers rather than time sheets or work product for these employees, acknowledging, during the audit, that they do not have the documentation listed in the RCM to demonstrate that these employees reported to work.

The Institute also provided OSC with the paraprofessional staff schedules and a paper log of staff absences kept by the relevant supervisor. The Institute monitors staff attendance because, if a paraprofessional is absent, substitute staff is provided to ensure students receive adequate instructional support. The absence log supports the Institute's electronic payroll records.

**State Comptroller's Comment** – Institute officials provided ADP payroll registers rather than time sheets or work product for these employees, acknowledging, during the audit, that they do not have the documentation listed in the RCM to demonstrate that these employees reported to work. Additionally, the logs and schedules Institute officials provided were not signed or dated and did not contain the names of the individuals who wrote the notes. Moreover, they did not indicate the dates, times, or hours that employees worked. Further, officials informed us that sign-in sheets for these employees were accidentally shredded.

It is not clear to us if the auditors reviewed the staff attendance log.

**State Comptroller's Comment** – We reviewed the paper logs of staff absences that were provided. However, these logs were not consistent with the requirements in the RCM. Further, staff attendance logs for these employees were not provided and sign-in sheets were destroyed.

Had they done so, they would have seen that, on days when a paraprofessional is recorded as absent, the payroll records will show payment via sick leave, or not at all. The Institute had understood this to be sufficient under the SED regulations and RCM. These documents are time records that support the Institute's payroll.

**State Comptroller's Comment** – These documents did not substantiate that the employees worked the hours for which they were paid.

The draft audit report further states that Institute "officials acknowledged that they do not have the documentation the RCM requires." That is not accurate.

**State Comptroller's Comment** – Institute officials indicated during the audit that they do not have the documentation listed in the RCM to demonstrate that these employees reported to work.

The Institute's leadership acknowledged only that the sign-in sheets had been destroyed (contrary to agency policy and without approval). The Institute provided OSC with paper documentation supporting the payroll that is maintained separately from the sign-in sheets.

**State Comptroller's Comment** – Institute officials provided ADP payroll registers rather than time sheets or work product for these employees, acknowledging, during the audit, that they do not have the documentation listed in the RCM to demonstrate that these employees reported to work. Additionally, the logs and schedules Institute officials provided were not signed or dated and did not contain the names of the individuals who wrote the notes. Moreover, they did not indicate the dates, times, or hours that employees worked. Further, officials informed us that sign-in sheets for these employees were accidentally shredded.

The reason the Institute maintained those records is because they are also "pertinent" to accounting for employee wage payments. Accordingly, the Institute does have the documentation required by the RCM.

**State Comptroller's Comment** – Institute officials did not provide adequate or appropriate documentation to substantiate that these employees worked the hours for which they were paid. Moreover, they acknowledged during the audit that they do not have the documentation listed in the RCM to demonstrate that these employees reported to work.

It has never stated otherwise.

**State Comptroller's Comment** – Institute officials indicated during the audit that they do not have the documentation listed in the RCM to demonstrate that these employees reported to work.



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### **Excessive Executive Compensation**

The Institute does not dispute OSC's conclusion concerning the executive compensation discussed in the draft audit report.

### **Other Than Personal Services:**

#### **Insufficiently Documented Costs**

The Institute does not dispute the disallowance of equipment depreciation costs of \$13,680, purchasing supplies and materials costs, and \$377 in staff recruitment services costs that were not supported by invoice documentation.

The Institute respectfully disagrees with the finding that audit fees of \$57,250 were insufficiently documented. My client presented a detailed accounting from its external independent auditors, which detailed that for each service provided, the dates, number of hours provided, and the fee per hour that was in excess of the expensed invoice amounts. It is our understanding that this detail is all that is required by the RCM.

**State Comptroller's Comment** – Institute officials provided spreadsheets they claimed detailed the dates when the services were provided and the fee for each service. However, the information listed on the spreadsheets did not reconcile with the information listed on the invoices. Therefore, there is no assurance that the additional information officials provided correlated with the expenses in question. Moreover, non-audit services described in the spreadsheet, such as tax form preparation, are not reimbursable when provided by the auditing firm within 365 days of required audit work.

Further, my client respectfully disagrees with the finding that \$5,208 of staff recruitment services fees were insufficiently documented. These were fees for the permanent placement for two employees who originally worked for a temporary agency. The fees were supported by invoices. The RCM states that adequate documentation for consultant services includes, but is not limited to, a written contract. A contract is not always required, and we believe the invoices and cancelled checks provided are sufficient documentation of allowable expenses.

**State Comptroller's Comment** – Neither the invoices nor the canceled checks describe the specific services actually provided; and for each service, the date(s), number of hours provided, and the fee per hour. The invoice simply describes the services as "consulting services" and the amount charged as the fee value of "temp-to-perm recruitment." Because officials did not provide a supporting contract, the agreed-upon services, dates of service, and charges are also unclear.

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### **Non-Allowable and Non-Program-Related Expenses**

The Institute does not dispute the disallowance of recruiting costs of \$2,312, nor does it dispute the disallowance of travel expenses of \$802.

My client respectfully disagrees with the finding that contracted direct care costs of \$15,049 were non-allowable. While these costs may not fit squarely within CFR-4, job code 320, the services were provided to support staff and management and, therefore, may be reported on CFR-3, line 14.

**State Comptroller's Comment** – We disagree that these costs may be reported as agency administration expenses on CFR-3. According to the CFR Manual, all attempts should be made to directly charge an expense to the appropriate cost center. Expenses associated with a physician are non-allowable for SED reimbursement purposes—except for the Evaluations program. This is further supported by Part 200.1(ee) of the Regulations of the Commissioner of Education, which defines medical services as evaluative and diagnostic services to determine whether a student has a medical-related disability that may result in the student's need for special education and related services.

These costs were reasonable, necessary, and directly related to the Institute's special education program. We note that the Institute provided all contracts, made available for interview the pediatrician and health services department staff, and provided a letter signed by the pediatrician documenting of all work the pediatrician did during the Fiscal Year 2019-2020 year. This work included more than just refilling prescriptions for related services of students. Accordingly, these costs should not be disallowed.

**State Comptroller's Comment** – As stated in our report, the physician services included annual medical record review, physical assessment, and prescription refilling. We find these services to be inconsistent with SED's guidance for reimbursement for medical services performed by a licensed physician for the SED preschool cost-based program. Moreover, the Institute's general ledgers indicated that at least \$13,545 of the \$15,049 was for services provided to students in non-preschool programs.

Finally, the Institute respectfully disagrees with the conclusion that \$8,443 of computers and monitors were used for non-preschool programs. As noted by documentation received from the auditors, out of \$10,058 of computer and monitor expenses tested and charged related to Fiscal Year 2019-2020 to the audited program, \$6,774 were found to be for the audited program. Also as noted by documentation received from OSC, out of \$416 of computer and monitor expenses tested and charged related to Fiscal Year 2017-2018 to the audited program, \$639 were found to be for the audited program. Accordingly, my client respectfully submits that the disallowance is incorrect.

**State Comptroller's Comment** – We modified the final report to reflect the reduced recommended disallowance.

For the foregoing reasons, the Institute respectfully requests that OSC modify the draft audit report to remove the findings disputed above. The conclusions in the draft audit report are not consistent with SED regulations or the RCM.

**State Comptroller's Comment** – Our report cites specific sections of the RCM used to support the recommended disallowances.

Finally, OSC's draft audit report recommends to the Institute that it ensure costs reported to SED comply with SED's requirements and communicate with SED to obtain clarification as needed. The Institute appreciates OSC's recommendation. The Institute maintains that, with the exception of the executive compensation identified in the draft audit report, its costs were reported consistent with SED's requirements.

**State Comptroller's Comment** – As indicated in our report, certain costs claimed by Institute officials are inconsistent with the requirements in SED's RCM and the CFR Manual.

The Institute has addressed the executive compensation issue going forward. It will continue to communicate with SED to obtain clarification as needed.

On behalf of the Institute, we thank OSC for its recommendations and its consideration of our comments. If you wish to discuss the Institute's comments, please contact us at your convenience.

Respectfully submitted,



David B. Morgen

DBM:anp

cc: New York Institute for Special Education  
4861-0694-2685, v. 2

# Contributors to Report

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