New York State Office of the State Comptroller
Thomas P. DiNapoli
Division of State Government Accountability

Compliance With the Reimbursable Cost Manual

State Education Department
Programs For Little Learners

Report 2017-S-87

September 2018

Executive Summary

Purpose

To determine whether the costs reported by Programs For Little Learners (PFLL) on its Consolidated Fiscal Reports (CFR) were properly calculated, adequately documented, and allowable under the State Education Department's (SED) guidelines, including the Reimbursable Cost Manual (RCM). The audit covered the expenses reported on PFLL's CFR for the fiscal year ended June 30, 2015 and certain expenses reported on PFLL's CFRs for the two fiscal years ended June 30, 2014.

Background

PFLL is an SED-approved, for-profit special education provider located in Westchester County, New York. PFLL provides preschool special education services to children with learning disabilities who are between three and four years of age. PFLL is reimbursed for preschool special education services through rates set by SED. The reimbursement rates are based on financial information, including costs, that PFLL reports to SED on its annual CFR. To be eligible for reimbursement, reported costs must comply with RCM requirements. For the three fiscal years ended June 30, 2015, PFLL reported approximately $2.3 million in reimbursable costs on its CFRs for one rate-based preschool special education program (Program) that it operated.

Key Findings

For the three fiscal years ended June 30, 2015, we identified $66,597 in ineligible costs that PFLL reported on its CFRs for the Program. The ineligible costs included:

- $58,481 in personal service costs, which consisted of $41,298 in health insurance costs for salaried employees that were not proportionate to the health insurance costs for hourly employees, $11,917 in compensation that exceeded the regional median compensation for an Executive Director, $4,084 in unsupported salary costs, $749 in medical expenses that were not related to the Program, and $433 in agency administration costs for life insurance that were incorrectly reported as direct costs to the Program; and
- $8,116 in other than personal service costs, which consisted of $7,687 in unsupported credit card expenses and $429 in ineligible expenses related to the purchase of water for staff.

Key Recommendations

To SED:

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

To PFLL:

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

Other Related Audit/Report of Interest

School for Language and Communication Development: Compliance With the Reimbursable Cost Manual (2017-S-59)

State of New York
Office of the State Comptroller

Division of State Government Accountability

September 24, 2018

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

Ms. Jennifer Strazzeri
Executive Director
Programs For Little Learners
266 White Plains Road, Suite 2A
Eastchester, NY 10709

Dear Ms. Elia and Ms. Strazzeri:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and effectively and, by so doing, providing accountability for 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 of our audit of the expenses submitted by Programs For Little Learners 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, entitled *Compliance With the Reimbursable Cost Manual*. 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,

Office of the State Comptroller
Division of State Government Accountability

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110 State Street, 11th Floor
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This report is also available on our website at: www.osc.state.ny.us

Background

Programs For Little Learners (PFLL) is a for-profit organization located in Westchester County, New York. PFLL is authorized by the State Education Department (SED) to provide, among other programs, preschool special education services to children with learning disabilities who are between three and four years of age. During our audit period, PFLL operated one rate-based preschool special education program: Preschool Special Education Itinerant Teacher (SEIT) services (referred to as the Program). The Program served 73 children with special education needs from Westchester County. PFLL is managed by an Executive Director.

Any county that uses PFLL's preschool special education services pays tuition to PFLL using reimbursement rates set by SED. The State, in turn, reimburses the counties 59.5 percent of the tuition that the county pays. SED sets the special education tuition rates based on financial information, including costs, reported by PFLL on the annual Consolidated Fiscal Report (CFR) that it submits to SED. Costs reported on the CFR must comply fully with the guidelines in SED's Reimbursable Cost Manual (RCM) regarding the eligibility of costs and documentation requirements, and must meet the reporting requirements prescribed in the Consolidated Fiscal Reporting and Claiming Manual (CFR Manual). For the three fiscal years ended June 30, 2015, PFLL reported approximately $2.3 million in reimbursable costs for the Program on its CFRs.

Audit Findings and Recommendations

According to the RCM, costs reported on the CFR are considered for reimbursement if they are reasonable, necessary, directly related to the special education program, and adequately documented. For the three fiscal years ended June 30, 2015, we identified $66,597 in costs that did not comply with SED's requirements for reimbursement. The ineligible costs included $58,481 in personal service costs and $8,116 in other than personal service costs (see the Exhibit at the end of this report).

Personal Service Costs

For the three fiscal years ended June 30, 2015, we identified $58,481 in personal service costs that PFLL reported on its CFRs that were not allowable under SED's requirements.

Health Insurance Costs

According to the RCM, fringe benefit reimbursement is subject to the principle that the benefits for individual employees or officers must be proportionately similar to those received by other classes or groups of employees. PFLL covered the full cost of health insurance benefits for its three salaried employees and reported those costs on its CFR. PFLL also offered health insurance benefits to its hourly employees, but did not cover the cost as it did for its salaried employees. We conclude that the fringe benefit costs for health insurance for PFLL's hourly employees were not proportionately similar to the benefits for its salaried employees and, therefore, are not reimbursable. Consequently, PFLL reported $41,298 in non-reimbursable fringe benefit costs for health insurance on its CFRs for the three years ended June 30, 2015.

Excess Executive Compensation Costs

According to the RCM, reimbursement for the compensation (salaries and fringe benefits) of an Executive Director shall not exceed the median compensation of personnel in comparable job titles within the public school district of the region in which the entity is located. We determined PFLL reported $11,917 in compensation ($9,130 in salary and $2,787 in associated fringe benefits) for an employee reported as the Executive Director that exceeded the regional median compensation for a comparable position. SED had previously identified these costs as ineligible for reimbursement.

Other Non-Reimbursable Costs

According to the RCM, costs will be considered for reimbursement provided such costs are directly related to the special education programs and are adequately documented. Additionally, the RCM defines agency administration costs as those expenses that are not directly related to a specific program but are attributable to the overall operation of the agency. For the year ended June 30, 2015, we identified $5,266 in personal service costs that were ineligible for reimbursement because they were not in compliance with the RCM requirements. The ineligible costs included:

- $4,084 in unsupported salary for one employee;
- $749 in medical expenses that were not related to the Program; and
- $433 in agency administration fringe benefit costs for life insurance that were incorrectly reported as direct costs under the Program.

Other Than Personal Service Costs

According to the RCM, costs will be considered for reimbursement provided such costs are sufficiently documented. In addition, costs for food provided to any staff are not reimbursable. For the year ended June 30, 2015, we identified $8,116 in other than personal service costs that were ineligible for reimbursement because they were not in compliance with these RCM requirements. The ineligible costs included:

- $7,687 in unsupported credit card expenses; and
- $429 in costs for bottled water for staff.

Recommendations

To SED:

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

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

To PFLL:

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

Audit Scope, Objective, and Methodology

We audited the costs that PFLL reported on its CFR for the fiscal year ended June 30, 2015 and certain costs reported on its CFRs for the two fiscal years ended June 30, 2014. The objective of our audit was to determine whether the reported costs were allowable, properly calculated, and adequately documented in accordance with applicable SED requirements.

To accomplish our objective, we reviewed the RCMs that applied to the years we examined as well as the CFR Manuals and related appendices. We also evaluated the internal controls over the costs claimed on, and the schedules prepared in support of, the CFRs submitted to SED. We interviewed PFLL personnel to obtain an understanding of the practices for reporting costs on the CFR. We reviewed PFLL's CFRs for the three fiscal years ended June 30, 2015 and relevant financial records for the audit period. We obtained accounting records and supporting information to assess whether certain costs claimed by PFLL on the CFRs that were considered high risk and reimbursable under limited circumstances (such as health insurance benefits, executive compensation, and credit card expenses) were allowable, properly calculated, and documented.

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

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

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.

Reporting Requirements

We provided a draft copy of this report to SED and PFLL officials for their review and formal comment. We considered their comments in preparing this report and have included them in their entirety at the end of the report. In SED's response, officials agreed with the audit recommendations and indicated the actions they will take to address them. In PFLL's response, officials disagreed with our proposed audit disallowances related to health insurance costs. Our rejoinders to PFLL's comments are included in the report's State Comptroller's Comments.

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

Contributors to This Report

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Vision

A team of accountability experts respected for providing information that decision makers value.

Mission

To improve government operations by conducting independent audits, reviews, and evaluations of New York State and New York City taxpayer-financed programs.

Exhibit

Programs For Little Learners
Schedule of Submitted and Disallowed Program Costs
For the Three Fiscal Years Ended June 30, 2015

Program Costs	Amount Per CFR	Amount Disallowed	Amount Remaining	Notes to Exhibit
Personal Services	$2,114,921	$58,481	$2,056,440	A - C
Other Than Personal Services	188,233	8,116	180,117	C, D
Total Program Costs	**$2,303,154**	**$66,597**	**$2,236,557**	

Notes to Exhibit

The following Notes refer to specific sections of the RCM that we used as a basis for 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 PFLL officials during the course of the audit.

A. RCM Section II.13.B.2.c: Reimbursement of fringe benefit expenses shall be subject to the following principles: benefits including pensions, life insurance, and tax-sheltered annuities for individual employees or officers/directors are proportionately similar to those received by other classes or groups of employees.
B. RCM Section II.13.A.4.a: Compensation (salaries plus fringe benefits) for an entity's staff whose function is Executive Director, Assistant Executive Director, or Chief Financial Officer will be directly compared to the regional median salary compensation for comparable administrative 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 Assistant Executive Director and Chief Financial Officer will be compared to the median compensation for "Assistant Superintendent."
C. RCM Section II: Generally, costs will be considered for reimbursement provided such costs are reasonable, necessary, directly related to the special education program, and sufficiently documented.
D. RCM Section II.22.C: Costs of food provided to any staff are not reimbursable.

Agency Comments - State Education Department

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

DEPUTY COMMISSIONER
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September 6, 2018

Andrea Inman
Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street- 11th Floor
Albany, N.Y. 12236

Dear Ms. Inman:

The following is the New York State Education Department's (SED) response to the draft audit report, 2017-S-87, Compliance with the Reimbursable Cost Manual: Programs for Little Learners (PFLL).

Recommendation 1:

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

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.

Recommendation 2:

Remind PFLL 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 the PFLL officials take advantage of our availability to help them better understand the standards for reimbursement as presented in Regulation and the Reimbursable Cost Manual (RCM). Furthermore, CFR training is available online on SED's webpage. SED recommends that all individuals signing the CFR certification statements, namely Executive Directors and Certified Public

Accountants, 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 James Kampf, Supervising Accountant, at (518) 474-3227.

Yours truly,

Sharon Cates-Williams

Sharon Cates-Williams
Deputy Commissioner

c: Christopher Suriano
Harold Matott
James Kampf

Agency Comments - Programs For Little Learners

Programs For Little Learners ©

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September 7, 2018

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

Re: Audit 2017-S-87

Dear Ms. Inman,

This letter will serve as our response to the Draft Audit Report for the above referenced audit conducted by your office for Programs for Little Learners ("PFLL"). The Office of the State Comptroller ("OSC") indicated in the Draft Audit Report that the purpose of the audit was to determine whether costs reported on our Consolidated Fiscal Report ("CFR") were properly calculated, adequately documented, and allowable under State Education Department's ("SED") guidelines, including the Reimbursable Cost Manual ("RCM").

PFLL takes great pride in our adherence to the above regulatory compliance. This is evident when the OSC findings of $66,597 are categorized as follows:

Personal Service Costs:

1) Health Insurance Costs: 62% or $41,298 of the OSC findings, which constitute the majority of the findings, are based on subjective determinations by OSC which includes the OSC interpretation of two words in the RCM where the RCM is lacking a definition. *Comment 1
2) Excess Executive Compensation Costs: 18% or $11,917 of the OSC findings were previously identified and adjusted as a result of SED Methodology for median salary compensation.
3) Other Non-Reimbursable Costs: 6% or $4,084 of the OSC findings are PFLL self-reported findings to OSC and 2% or $1,182 were identified by OSC for benefits. *Comment 2

1

*See State Comptroller's Comments, Page 38.

Other Than Personal Service Costs:

4) OSC findings in this category total 12% or $8,116 of the OSC findings.

The above OSC findings, excluding the Health Insurance Costs, Excess Executive Compensation and PFLL self-reported findings, only represent less than .35% of the OSC audit expenditure scope of $2,303,154. PFLL takes great pride in the minimal .35% findings that OSC had concluded from the audit and will immediately implement a corrective action plan. This is indicative of the importance PFLL places on fiscal management, internal controls and respect for the guidance contained in the RCM and CFR Manuals.

Upon review of the RCM document, used by OSC during the audit of PFLL, it is stated in the RCM outline that Section II. Cost Principles, describes costs the Department considers reimbursable in the calculation of tuition rates for approved programs. PFLL will prove below that in the OSC Health Insurance Costs finding, that the RCM did not adequately describe costs due to the omission of a description and definition of the meaning of two key words that OSC is interpreting in order to base a significant finding.

To further validate our point, the OSC previously stated in the Audit 2012-S-103 of the State Education Department "*The CFR Claiming Manual, RCM and CFR are all complex documents that can be difficult to understand, particularly for providers with less experienced staff*". Ref: OSC Fiscal and Program Oversight of Special Education Providers: Report 2012-S-103.

* Comment 3

OSC Finding: Personal Service Costs

<u>Health Insurance Costs</u>

PFLL is not in agreement with this OSC finding to disallow 100% of the health insurance expense paid by PFLL for employees for the three years 12/13, 13/14 and 14/15. As indicated previously, this was the major finding in the audit (62%) and totals $41,298.

The defense for PFLL is simple. The only criteria OSC used to disallow all the payments for health insurance for the above three years is that PFLL did not pay for the health insurance expense for one group or classification: The Hourly Rate Employees. OSC supports and justifies their finding based on the interpretation of two words in the RCM "*Proportionately Similar*".

* Comment 1

This is a faulty, arbitrary and capricious decision and conclusion due to the fact that the RCM does not include what the two words "Proportionately Similar" mean or how they are defined or measured. As PFLL indicated earlier, OSC stated in the audit report, *"the purpose of the audit was to determine whether costs reported on our Consolidated Fiscal Report ("CFR") were properly calculated, adequately documented, and allowable under State Education Department's ("SED") guidelines, including the Reimbursable Cost Manual ("RCM")."*

2

In review of the entire guidelines in the RCM for 12/13 - 85 pages, 13/14 - 89 pages, and 14/15 - 90 pages, the definition of "proportionately similar" does not exist.

The RCM, the very own document cited in the OSC audit, does not include or provide a definition and detailed guidance for our agency. It is unclear how the OSC can decide that the two words are interpreted that PFLL must pay 100% for all employees, ignoring other important measurable characteristics of employment such as employee participation and access, eligibility criteria such as full or part time, salaried or hourly rate and/or other benefits one group receives over another. The measurable characteristics are an important part of evaluation and have to be considered to make a fair and equitable determination if PFLL policy was not proportionally similar among employee classes or groups of employees.

* Comment 4

Per the Reimbursable Cost Manuals ("RCM"): *Section II-C "Reimbursement of fringe benefit expenses shall be subject to the following principles: Benefits including pensions, life insurance and Tax Sheltered Annuities (TSAs) for individual employees or officers/directors are proportionately similar to those received by other classes or groups of employees.*" **Exhibit A**

* Comment 1

Once again, it is important to highlight in the RCM, the absence of the definition of "proportionately similar" in the above RCM passage. In order for the OSC finding to be correct, the RCM would have to indicate "same" or identical as opposed to "similar" which is defined as resembling without being the same.

It can be seen, from review of dictionary passages, the following definitions of proportional: "corresponding in size, degree, or other measurable characteristics" (Free Dictionary). Upon review of definitions of similar the following is found: "looking or being almost, but not exactly the same." (Cambridge Dictionary)

As PFLL indicated, the RCM does not provide a definition or clear distinction on how to define or measure "proportionately similar". PFLL reviewed the rules and guidance provided within the **Health Insurance Portability and Accountability Act as follows:**

"Similarly Situated Individuals:

While distinctions cannot be based on any of the health factors listed above, employers may provide different health benefits to different groups of employees, so long as the individuals are not "similarly situated individuals." Any employee classifications must be based on a bona fide employment-based classification consistent with the employer's usual business practice.

The following classifications may reflect distinct groups of similarly situated individuals: Full-time vs part-time employees"

* Comment 5

3

The above is exactly the practice that PFLL followed. The Hourly Rate Employees and Salaried Employees are clearly not "similarly situated individuals." PFLL employee classifications are based on a bona fide employment-based classification consistent with the PFLL and the industry usual business practice.

* Comment 5

Review of Measurable Characteristics of Hourly Rate Employees vs Salaried Employees Supports PFLL Policy

The OSC is ignoring all of the measurable characteristics of the two employee classifications: Hourly Rate Employees and Salaried Employees to include, among other documentation, NYS Labor Law regulatory notices and clear notification provided by PFLL to employees on the accessibility and eligibility requirements. OSC refused to review the facts that PFLL did provide for all employees meeting minimum workweek criteria, the ability to access health care coverage. The health care coverage and medical provisions offered in the policy were exactly the same and not disproportionate.

* Comment 6

PFLL provided to OSC at least six distinguishing factors which support the PFLL policy in the form of measurable characteristics to prove that the two classifications of employees are not similarly situated individuals. The PFLL policy is "proportionately similar" as defined in the dictionary sources and other references not provided through the RCM.

* Comment 7

PFLL is contending the policy, not to reimburse the Hourly Rate Employees, was "proportionately similar" when the significant un-similar characteristics of employment are reviewed. The following will detail and also document how the Hourly Rate Employees receive other benefits and have un-similar work schedules and tasks when compared to Salaried Employees.

The following is indicative of the extensive information provided to OSC to support the PFLL policy decision and point out the major factors and worker classification differences.

Supporting Documentation to Distinguish the Classes
PFLL is mandated to complete a Notice and Acknowledgement of Pay Rate and Payday Under Section 195.1 of the New York State Labor Law. The Notice for Multiple Hourly Rate Employees: Employee's rate (s) of pay for each type of work or shift. Each employee is clearly indicated according to class.

Hourly Rate Employees Workweek Not Defined
The Hourly Rate Employees in question are "itinerant". The hours actually worked and paid depend on the caseload with PFLL, children absences, therapist absences or other factors. Many therapists are also employed by other agencies similar to PFLL. Hourly Rate Employees get to choose other agencies and their schedule and do not have to report to the office for a standard workweek of 35 hours per week. The number of hours each week may vary and fluctuate based on the factors indicated.

4

Hourly Rate Employees Average Salary Far Exceeds that of an Salaried Employee
Upon review of the Notice for Multiple Hourly Rate Employees, the average hourly rates for the programs operated by PFLL far exceed those of Salaried Employees. Hourly Rate Employees are paid for each hour worked. Salaried Employees may be exempt from additional pay beyond workweek and/or overtime.

PFLL Provided Clear Notification of Policy to Hourly Rate Employees
PFLL provided to OSC notifications that were distributed to Hourly Rate Employees clearly outlining the policy and eligibility for health insurance participation.

PFLL Obtains New York Health Benefits Waiver of Coverage
For those Hourly Rate Employees that met the PFLL eligibility guidelines for access to health care coverage, PFLL obtained waivers from the employees who declined participation.

List of PFLL Teachers with Average Hours Per Week Proves Itinerant Classification
PFLL provided OSC with a list for each year, the employee status, hours, and average hours per week. As indicated below, few Hourly Rate Employees, per the policy, met the minimum hour designation required for participation. (PTC 218- Special Education Teacher)

For the 14/15 Year 10.26% of PTC 218 met eligibility for health coverage.
For the 13/14 Year 17.24% of PTC 218 met eligibility for health coverage.
For the 12/13 Year 17.3% of PTC 218 met eligibility for health coverage.

OSC Finding and Directive to PFLL violates the RCM Reasonable Cost Definition

The OSC concept and mandate that PFLL must provide payment for all employees, regardless of measurable characteristics, in fact contradicts the Reasonable Cost Definition included in RCM Definitions and is contrary to similar agency practice and clearly does not follow other guidance available. **Exhibit B**

* Comment 4

OSC is stating that PFLL should pay for all health benefits for all employees, whether they work for other agencies, regardless of class, hours worked, status, payrate or eligibility. This is a clear violation of Reasonable Cost.

Based on the above justifications, explanations and clarifications, PFLL is confident that our health benefits policy and practice did not violate the provisions of the RCM. Therefore, PFLL respectfully requests the elimination of this OSC finding which is based on incorrect assumptions, subjective determinations and conclusions that simply do not exist in the guidance OSC is utilizing to audit and the guidance available for PFLL to follow.

* Comment 8

Excess Executive Compensation Costs

PFLL objects to the caption above when describing the Median Salary Adjustment which is part of the methodology in Rate Setting. The State Education Department does not prohibit an individual reported as a PTC 601, PTC 602, PTC 603 from reporting or being paid a greater salary than that published in the methodology.

*
Comment
9

PFLL did not pay "Excess Executive Compensation Costs." The tuition rate for the program is cost based and based on the reported CFR expenses. In accordance with methodology, SED reduced the applicable share to the OSC audited program in the reconciliation rate. As noted by OSC, this was previously identified and factored in the final approved reconciliation rate.

Per the RCM: 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.

Other Non-Reimbursable Costs

As indicated earlier, $4,084 of the total $5,266 or 78% of the total finding in this category was self-reported to OSC and an error in reconciliation. PFLL is not disputing the $1,182 of the OSC other OSC fringe benefits finding.

*
Comment
2

OSC Finding: Other Than Personal Service Costs

This category includes OSC findings of $8,116 or 12% of the total OSC findings. PFLL is not disputing the above OSC findings.

Summary

PFLL appreciates the courtesies extended throughout the audit. However, PFLL adamantly objects to the OSC finding related to the Health Insurance Costs. In the absence of an RCM definition of the words "Proportionally Similar" PFLL is not able to understand how the OSC can make an arbitrary and subjective conclusion which has the impact of a significant finding on our agency. PFLL, once again, respectfully requests elimination of this finding.

Sincerely,

Jennifer Strazzeri
Executive Director

Enc.

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Exhibits to
Programs for Little Learners Response to
Office of the State Comptroller's
Draft Audit Report, Audit 2017-S-87

Dated: September 7, 2018

EXHIBITS

Exhibit A

The University of the State of New York
New York State Education Department
Rate Setting Unit
Albany, New York 12234

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

This Manual applies to the July 2014 to June 2015 Tuition Rates and defines Reimbursable Costs for the July 2014 to June 2015 period.

Effective as of July 1, 2014

July 2014 Edition

d. Must be paid within the year awarded or no later than 2 ½ months after the entity's year end.

(11) Private schools shall submit to the Department upon request, proposed compensation packages of the owners/officers/partners whose annualized compensation exceed $75,000 or whose owners/officers/partners are employed in other businesses or are the owners/officers/partners of other businesses. Such arrangements shall include the proposed salary based on qualifications and actual documented hours worked (time sheets) and fringe benefits, as well as a list of the other jobs and/or businesses and the time devoted to each. The package will be approved or disapproved in writing by the Department within 30 days of receipt by the Department. Compensation will be subject to median analysis in the calculation of tuition rates as described in this Manual and the Commissioner's Regulations.

(12) Compensation paid to an employee(s) for their lunch period, is not reimbursable. **[It is acknowledged that for CFR reporting purposes, a full-time position's standard work week hours cannot be less than 35 hours/week. Staff paid for less than 35 hours/week when lunch is omitted from hours paid will have a FTE below 1.0. or .885]**

B. Fringe Benefits

(1) Fringe benefits may include paid time off, such as vacation leave, sick leave, military leave, holidays, training and educational costs, provided the benefit is established by written school policy. Payments into specific employee benefit packages, such as teachers' retirement, employees' retirement and pension plans, Social Security, health insurance, life insurance (to the extent the Internal Revenue Service does not require payment of such premiums to be included in the employee's income), unemployment insurance, disability insurance, union welfare funds or pension plan termination insurance premiums paid pursuant to the Employee Retirement Income Security Act of 1974, may also be included.

(2) Reimbursement of fringe benefit expenses shall be subject to the following principles:

a. Vacation and sick leave are reimbursable in the year actually paid and reported as a salary expense. Accrued vacation and sick leave expenses are not reimbursable until actually paid.

b. Costs of benefits for employees who provide services to more than one program and/or entity must be allocated to separate programs and/or entities in proportion to the salary expense allocated to each program.

c. Benefits including pensions, life insurance and Tax Sheltered Annuities (TSAs) for individual employees or officers/directors are proportionately similar to those received by other classes or groups of employees.

d. Sabbatical leave is not reimbursable.

e. Employer-provided educational assistance costs are reimbursable as compensation only when the course or degree pursued is relevant to the field in which the employee is

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receipt by_the Department. Compensation will be subject to median analysis in the calculation of tuition rates as described in this Manual and the Commissioner's Regulations.

(12) Compensation paid to an employee(s) for their lunch period, is not reimbursable. **[It is acknowledged that for CFR reporting purposes, a full-time position's standard work week hours cannot be less than 35 hours/week. Staff paid for less than 35 hours/week when lunch is omitted from hours paid will have a FTE below 1.0. or .885]**

B. Fringe Benefits

(1) Fringe benefits may include paid time off, such as vacation leave, sick leave, military leave, holidays, training and educational costs, provided the benefit is established by written school policy. Payments into specific employee benefit packages, such as teachers' retirement, employees' retirement and pension plans, Social Security, health insurance, life insurance (to the extent the Internal Revenue Service does not require payment of such premiums to be included in the employee's income), unemployment insurance, disability insurance, union welfare funds or pension plan termination insurance premiums paid pursuant to the Employee Retirement Income Security Act of 1974, may also be included.

(2) Reimbursement of fringe benefit expenses shall be subject to the following principles:

a. Vacation and sick leave are reimbursable in the year actually paid and reported as a salary expense. Accrued vacation and sick leave expenses are not reimbursable until actually paid.

b. Costs of benefits for employees who provide services to more than one program and/or entity must be allocated to separate programs and/or entities in proportion to the salary expense allocated to each program.

c. Benefits including pensions, life insurance and Tax Sheltered Annuities (TSAs) for individual employees or officers/directors are proportionately similar to those received by other classes or groups of employees.

d. Sabbatical leave is not reimbursable.

e. Employer-provided educational assistance costs are reimbursable as compensation only when the course or degree pursued is relevant to the field in which the employee is working and the employer has exhausted all Federal and other grant funds available to cover the education costs. The employee must complete and receive a passing grade for the course(s) for which the employer/provider paid. Appropriate records of course completion must be maintained by the employer/provider. Such costs are limited to tuition charged by the educational institution, textbooks, fees and training materials. Reasonable costs of specialized programs specifically designed to enhance the effectiveness of executives or managers are reimbursable. Employer-provided educational assistance costs will be considered compensation to the individual. Costs of education or training necessary for an employee to meet minimum qualifications for the position for which he/she was hired are not reimbursable.

C. Pensions

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C. Pensions

(1) Costs of employer funded pension plans which are approved by the Internal Revenue Service and accounted for under generally accepted accounting principles (GAAP) are reimbursable subject to the following exceptions and limitations:

a. Payments in lieu of pensions made to or for the benefit of school officers, directors, presidents, etc. are not reimbursable as a fringe benefit but will be considered as salary expense.

b. Individual Retirement Account (IRA) or Keogh plan payments made by an entity for employees or officers are not reimbursable as a fringe benefit as they are individual in nature, however, they will be considered as salary expense.

c. Employer funded plans such as 403(b) plans are reimbursable if they qualify under Internal Revenue Service (IRS) Guidelines. Employees' contributions to such pension plans may be reimbursable expenses as part of reported gross salaries.

d. Self-Employed Retirement Plans (Partnerships and Sole Proprietorships) that are qualified and non-discriminatory, and which include 70% or more of the employees, are reimbursable. Costs of plans that do not include anyone other than the owner or owner's relatives will not be reimbursed. In instances where sole proprietors or partners are not offered plans, the Department will allow the Self Employment Tax deduction allowed as

Exhibit B

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a public school district, and terminating on the last day such pupil is enrolled in and is physically present at, or excused (legally absent) from, such program or service.

(2) Approved programs are authorized to bill for SEIT services if the child is absent. Make-up sessions are encouraged but are not billable.

(3) Approved programs are authorized to bill for scheduled SEIT services when the student is enrolled and present to receive the service and the SEIT teacher is absent. However, programs are encouraged to use substitute SEIT teachers in such instances. The cost of substitute SEIT teachers is reimbursable.

(4) A SEIT student's FTE enrollment is counted for reporting purposes only as a 1.0 FTE when the student is enrolled for the entire 10 month program or 1.0 when enrolled for the entire July –August program. The FTE is prorated for both the 10 month and 2 month programs if the student is enrolled for less than the full 10 month instructional school calendar or less than the full July-August instructional calendar.

8. Close Down

Close down, as defined in Section 200.7 (e) and 200.9 (g) of the Commissioner's Regulations, is the period during which an entity operating an approved program plans to cease operation, transfer ownership, voluntarily or non-voluntarily terminate its status as an approved private residential or non-residential program for students with disabilities that receives public funds pursuant to Article 81 and/or Article 89 of the Education Law. The close-down period means the period of time beginning with the date of the Commissioner's receipt of notice and ending on the date of the program's cessation of operations, transfer of ownership, voluntary or non-voluntary termination of its status as an approved program. Reimbursement shall be determined in accordance with the provisions set forth in Section 200.9 (g) of the Commissioner's Regulations and this Manual. Financial reports and financial statements as required pursuant to Section 200.9 (e) of the Commissioner's Regulations must be submitted to the Commissioner no later than 90 days following close down. The entity is required to transfer student records back to the public school district of origin's Committee on Special Education (CSE) or Committee on Preschool Special Education (CPSE). Financial and other records must be maintained by the entity for seven years. The entity must provide the Department with the name, address and phone number of the contact person for these records. See Section IV. 3. Close-Down Policy and Procedures.

9. Agency Administration

Agency administration is defined as those expenses which are not directly related to a specific program but are attributable to the overall operation of the agency. These costs include: costs for the overall direction of the organization; costs for general recordkeeping, budget and fiscal management; costs for public relations (non-fundraising); and costs for parent agency expenditures.

10. Reasonable Cost

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. In determining reasonableness of a given cost, consideration shall be given to:

A. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the approved special education program. Public special education funding shall be used in accordance with Article 89 of Education Law Section 4401 and Section 4410 10.(e.)

B. The restraints or requirements imposed by such factors as: sound business practices; arm's length bargaining; Federal, State or local laws and regulations.

C. Prices for comparable goods or services determined by reviewing similar entities.

D. Whether the individuals concerned acted with prudence given their responsibilities to the entity's Board of Directors, its employees, the public at large and the State government.

E. Significant deviations from the established practices of the entity or similar entities which may unjustifiably increase the cost of the approved program.

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E. Significant deviations from the established practices of the entity or similar entities which may unjustifiably increase the cost of the approved program.

State Comptroller's Comments

1. Per the RCM, "Reimbursement of fringe benefit expenses shall be subject to the following principles: Benefits, including pensions, life insurance, and Tax Sheltered Annuities (TSAs) for individual employees or officers/directors are proportionately similar to those received by other classes or groups of employees." This section of the RCM is clear, and our audit conclusions were not based on subjective determinations as suggested by PFLL. Further, we consulted with SED as publisher of the RCM, and they affirmed our conclusions in this area.

   Our audit conclusions were based on a thorough examination of PFLL's records related to health insurance costs reported on its CFRs. As we reported, and as is its prerogative, PFLL covered the full cost of health insurance benefits offered to its three salaried employees (the executive director, office administrator, and a supervisor), and did not cover the cost of health insurance benefits offered to its hourly employees (direct care teachers). PFLL did not report any costs (0 percent) for health insurance for the hourly class of employees on its CFRs. PFLL, however, reported 100 percent of the cost of the health insurance for the salaried class of employees on its CFRs. We maintain that reimbursement of 100 percent of costs for one class of employees is not proportionate to 0 percent of costs for another class of employees and, therefore, the health insurance costs for the salaried employees were ineligible for reimbursement.

2. PFLL acknowledged the $4,084 in unsupported salary costs only after our auditors identified and made inquiries into these non-reimbursable costs.

3. The RCM and CFR can be complex for providers with less experienced staff. However, PFLL chose to contract with an external, experienced professional firm to prepare its CFRs.

4. Nowhere in our report do we claim that PFLL must pay 100 percent of the health insurance costs of all employees, as suggested by PFLL in its response. It is the prerogative of PFLL to determine what benefits it will offer its employees and what share of the costs of those benefits to cover. However, for the costs of those benefits to be reimbursable, they must meet the RCM requirements.

5. The RCM requirement relating to fringe benefit reimbursement does not define groups or classes of employees. Rather, it states that reimbursement of fringe benefit expenses for individual employees or officers/directors shall be proportionately similar to other classes or groups of employees. We relied on PFLL's own classification of employees into salaried and hourly employees. PFLL determined what health insurance coverage to make available to each group and how much of the cost it would cover. The RCM criteria determine whether those costs are reimbursable (see State Comptroller's Comment 1).

6. We did not refuse or ignore information pertinent to the cost of health insurance reported by PFLL on its CFRs. Our audit conclusions were based on a thorough examination of all

records provided by PFLL related to health insurance costs reported on its CFRs. While the health care coverage offered by PFLL may have been the same for all employees, the costs of the coverage reported on PFLL's CFRs were not proportionately similar among PFLL's classes of employees. The basis we used to determine whether these health insurance costs were reimbursable was the RCM (see State Comptroller's Comment 1).

7. Our report does not comment on factors that went into PFLL's benefit policy decisions or how it classified its employees. As previously noted, PFLL has the right to define its classes of employees, determine the benefits available for those employees, and determine how much of the cost it will cover for those benefits as it chooses. However, the RCM criteria determine whether the costs of those benefits are reimbursable (see State Comptroller's Comment 1).

8. Our report does not comment on PFLL's health benefits policy or practices. Rather, our report addresses whether the costs of health benefits, as presented on PFLL's CFRs, were reimbursable under the requirements in the RCM (see State Comptroller's Comment 1).

9. According to the RCM, reimbursement of employee compensation for someone in an Executive Director title shall not exceed the median compensation paid to comparable personnel in public schools for similar work and hours of employment in the region the entity is located. On its CFR, PFLL reported compensation costs in excess of the median compensation costs allowed for its region. Those excess costs were identified and adjusted by SED, which we acknowledge in our report.