New York State Comptroller
THOMAS P. DiNAPOLI

Marie Pense Center, LLC – Compliance With the Reimbursable Cost Manual

State Education Department

Report 2019-S-36 | **December 2019**

Spotlight on Education

Audit Highlights

Objective

To determine whether the costs reported by Marie Pense Center, LLC (Marie Pense) 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). The audit focused primarily on expenses claimed on Marie Pense's CFR for the fiscal year ended June 30, 2015 and certain expenses claimed on its CFRs for the two fiscal years ended June 30, 2014.

About the Program

Marie Pense is a New York City-based proprietary organization authorized by SED to provide Preschool Special Education Itinerant Teacher (SEIT) services to children with disabilities who are between the ages of three and five years. During the 2014-15 school year, Marie Pense served approximately 280 students. In addition to the SEIT cost-based program, Marie Pense operated other non-SED programs including Special Education Teacher Support Services, non-public education of special needs children, and private case services. Payments for services under these programs come from private pay and the New York City Department of Education (DOE).

DOE refers students to Marie Pense and pays for its services using rates established by SED. The rates are based on the financial information Marie Pense reports to SED on its annual CFRs. For the three fiscal years ended June 30, 2015, Marie Pense reported approximately $8 million in reimbursable costs for the SEIT cost-based program.

Key Findings

For the three fiscal years ended June 30, 2015, we identified $152,967 in reported costs that did not comply with the requirements in the RCM and recommend that such costs be disallowed. These ineligible costs included $109,101 in personal service costs and $43,866 in other than personal service (OTPS) costs, as follows:

- $71,760 in pension costs that did not comply with the RCM's requirements;
- $29,519 in overallocated compensation costs associated with shared employees;
- $25,893 in miscellaneous OTPS costs, including $23,446 in unsupported costs and $2,447 in costs that were not eligible for reimbursement;
- $8,816 in non-allowable rent expenses;
- $7,822 in unsupported compensation expenses;
- $7,582 in unsupported depreciation expenses; and
- $1,575 in H1 visa costs that did not meet the requirements of the RCM.

Key Recommendations

To SED:

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

To Marie Pense:

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

Office of the State Comptroller
Division of State Government Accountability

December 31, 2019

Ms. Shannon Tahoe
Interim Commissioner
State Education Department
State Education Building - Room 125
89 Washington Avenue
Albany, NY 12234

Ms. Nadia Giannopoulos
Executive Director
Marie Pense Center, LLC
37 West 20th Street
New York, NY 10011

Dear Ms. Tahoe and Ms. Giannopoulos:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and, by so doing, providing accountability for tax dollars spent to support government-funded services and 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 Marie Pense Center, LLC to the State Education Department for the purposes of establishing tuition reimbursement rates. 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.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Division of State Government Accountability

Contents

Glossary of Terms

Term	Description	Identifier
CFR	Consolidated Fiscal Report	*Key Term*
CFR Manual	Consolidated Fiscal Reporting and Claiming Manual	*Policy*
DOE	New York City Department of Education	*Agency*
Marie Pense	Marie Pense Center, LLC	*Service Provider*
OTPS	Other than personal service	*Key Term*
RCM	Reimbursable Cost Manual	*Policy*
SED	State Education Department	*Auditee*
SEIT	Special Education Itinerant Teacher	*Key Term*

Background

Marie Pense Center, LLC (Marie Pense) is a New York City-based proprietary organization approved by the State Education Department (SED) to provide Preschool Special Education Itinerant Teacher (SEIT) services to children with disabilities who are between the ages of three and five years. During the 2014-15 school year, Marie Pense served approximately 280 students. Marie Pense also operated other non-SED programs, including Special Education Teacher Support Services, non-public education of special needs children, and private case services. Payments for services under these programs come from private pay and the New York City Department of Education (DOE).

DOE refers students to Marie Pense based on clinical evaluations and pays for its services using rates established by SED. These rates are based on the financial information Marie Pense reports to SED on its annual Consolidated Fiscal Reports (CFRs). To qualify for reimbursement, Marie Pense's expenses must comply with the criteria set forth in 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 percent of the statutory rate it pays to Marie Pense.

For the three fiscal years ended June 30, 2015, Marie Pense reported approximately $8 million in reimbursable costs for the SEIT preschool cost-based program. This audit focused primarily on expenses claimed on Marie Pense's CFR for the fiscal year ended June 30, 2015 and certain expenses claimed on its CFRs for the two fiscal years ended June 30, 2014.

Audit Findings and Recommendations

According to the RCM, costs will be considered for reimbursement provided they are reasonable, necessary, directly related to the special education program, and sufficiently documented. For the three fiscal years ended June 30, 2015, we identified $152,967 in reported costs that did not comply with SED's requirements for reimbursement. These ineligible costs included $109,101 in personal service costs and $43,866 in other than personal service (OTPS) costs (see Exhibit at the end of the report).

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

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 three fiscal years ended June 30, 2015, Marie Pense reported approximately $7.7 million in personal service costs for the SEIT preschool cost-based program. We identified $109,101 in personal service costs that did not comply with the RCM's requirements for reimbursement.

Pension Expenses

According to the RCM, costs will be considered for reimbursement if they are reasonable, necessary, directly related to the education program, and sufficiently documented. Fringe benefits may include paid time off, such as vacation leave, sick leave, military leave, holidays, and training and educational costs, provided the benefit is established by written school policy. Payments into specific employee benefit packages, such as teachers' retirement and employees' retirement and pension plans, may also be included. Marie Pense has a defined contribution pension plan for its employees. To be eligible, Marie Pense requires that an employee complete one year of service, be at least 21 years old, and work 1,000 hours during the first year of employment. If the employee did not meet the hourly requirement during the first year of employment, eligibility is then based on the number of hours the employee was credited with within the plan year(s) after the date of hire. Once eligibility is established, an employee must work 500 hours in each successive plan year in order to receive contributions. According to the plan description, all employees who meet the eligibility requirements will be eligible to participate in the plan and are notified when they have completed the requirements necessary to become a participant. During the three fiscal years ended June 30, 2015, Marie Pense officials reported $772,191 in pension plan contributions to the SEIT preschool cost-based program.

We determined that nine employees, with contributions totaling $68,175, did not meet the 1,000-hour eligibility requirement. In addition, Marie Pense made contributions totaling $3,585 on behalf of two participants who worked less than the 500 hours required.

We recommend that SED disallow a total of $71,760 ($68,175 + $3,585) in reported pension costs that are not in compliance with the RCM's requirements.

Excessive Allocation of Shared Employees' Compensation

The RCM requires that salaries of employees who perform tasks for more than one program and/or entity must be allocated among all programs and/or entities for which they work. Actual hours of service are the preferred statistical basis upon which to allocate salaries and fringe benefits for shared staff who work on multiple programs. Entities must maintain appropriate documentation reflecting the hours used in this allocation. Appropriate documentation may include payroll records or time studies. If hours of service cannot be calculated or a time study cannot be completed, then alternative methods that are equitable and conform to generally accepted accounting principles may be utilized. Documentation for all allocation methods (bases and percentages) must be retained for a minimum of seven years.

During the three fiscal years ended June 30, 2015, Marie Pense reported $9,568,808 in compensation costs for teachers and program administrative employees, of which $7,724,809 was allocated to the SEIT preschool cost-based program. We reviewed supporting documentation and determined that $29,519 in compensation was overallocated to the SEIT preschool cost-based program, as follows:

- Shared Teachers: For the three fiscal years ended June 30, 2015, we compared the monthly invoices submitted by 13 shared teachers to student rosters maintained by Marie Pense to determine whether the correct amount of compensation was allocated to the SEIT preschool cost-based program. Our review determined that Marie Pense overallocated $12,655 in compensation costs to the SEIT preschool cost-based program.

- Shared Administrative Employees: For the fiscal year ended June 30, 2015, Marie Pense employed five administrative assistants. We determined that three of the administrative assistants were charged directly to the SEIT preschool cost-based program and two were charged to agency administration. However, none of the administrative assistants were charged directly to the non-SED programs. We interviewed the Executive Director, who told us that the responsibilities of all administrative assistants include answering any telephone calls for both the SEIT preschool cost-based and non-SED programs. Additionally, we interviewed one administrative assistant (who was directly charged to the SEIT preschool cost-based program) and she confirmed that she was responsible for answering telephone calls pertaining to all matters. Additionally, we noted that the number of non-SED teacher hours reported on the CFR grew approximately 57 percent from fiscal year 2013-14 to 2014-15; however, the non-SED administrative support staff went from a 1.0 full-time equivalent to zero during this same time period. To be fair and reasonable, we allocated the compensation of all five administrative assistants using the ratio-value methodology – a methodology accepted by SED. We recommend that SED disallow $16,864, the amount of compensation that was overallocated to the SEIT preschool cost-based program.

Unsupported Compensation Expenses

The RCM stipulates that reimbursable compensation costs must be based on approved and documented payrolls. Payrolls must be supported by employee time and attendance records, which must be signed by both the employee and his/her supervisor and completed at least monthly.

For the fiscal year ended June 30, 2015, Marie Pense officials reported $19,554 in compensation costs (salary plus fringe benefits and bonus) for an administrative assistant while the corresponding payroll records supported only $11,732 – a difference of $7,822. We recommend that SED disallow the $7,822 in unsupported compensation expenses.

Other Than Personal Service Costs

According to the RCM, costs must be reasonable, necessary, directly related to the special education program, and sufficiently documented. For the three fiscal years ended June 30, 2015, Marie Pense reported approximately $313,000 in OTPS expenses for its SEIT preschool cost-based program. We identified $43,866 of these expenses that did not comply with SED's reimbursement requirements, as discussed next.

Miscellaneous Expenses

According to the RCM, costs will be considered for reimbursement provided such costs are reasonable, necessary, directly related to the special education program, and sufficiently documented. In addition, the RCM also states that consultant payments must be supported by itemized invoices that indicate the specific services actually provided. Further, for transportation expenses to be reimbursable, travel logs must be kept by each employee indicating dates of travel, destination, purpose, mileage, and related costs such as tolls, parking, and gasoline. The travel must be approved by a supervisor. The RCM also expressly states that certain costs, such as all personal expenses, fines and penalties, food and holiday parties provided to staff, and gift certificates to staff and vendors, are not reimbursable.

We identified $25,893 in reported costs that were ineligible for reimbursement because they did not comply with the requirements in RCM. These costs consisted of:

- • $23,446 in insufficiently documented expenses:
  - $6,132 in insufficiently documented transportation expenses, including $1,675 in Long Island Rail Road ticket expenses, MetroCards, taxi use, parking, and gasoline;
  - $4,744 in insufficiently documented professional fees, including $3,128 in legal fees and $1,616 in accounting fees;
  - $4,699 in telephone expenses;
  - $3,550 in supplies (e.g., paper, ink cartridges);
  - $1,878 in web development expenses;
  - $1,855 in miscellaneous office expenses (e.g., furniture); and
  - $588 in other miscellaneous expenses.
- $2,447 in ineligible expenses:
  - $1,250 in gifts to staff;
  - $499 related to holiday cards;
  - $470 in ineligible appraisal fees;
  - $163 for baby merchandise shipped to the home of a teacher; and
  - $65 in other miscellaneous expenses.

We recommend that SED disallow $25,893 in OTPS expenses that did not meet the requirements of the RCM.

Non-Allowable Occupancy Costs

The RCM states that rental agreements, including renewals, must be in writing, dated, and signed by the lessee and the lessor. We identified $8,816 in expenses that were not in compliance with the requirements in the RCM.

Marie Pense operated at 590 West End Avenue from January 2012 through August 2013. In January 2013, the monthly rent increased from $1,600 to $3,200 per month. However, the rental agreement stated that monthly rent shall be $1,600 during that time period. Because an increase in rental costs was not documented in the rental agreement, we recommend that SED disallow the January 2013 to August 2013 rent increase, totaling $8,816 – the amounted allocated to the SEIT preschool cost-based program.

Unsupported Depreciation Expense

According to the RCM, inventory records, including relevant invoices, must be kept for all items purchased by the entity or donated to the entity for the benefit of approved programs. These records should list: the invoice number; a description of the item; the make, model, or serial number of the item; cost; date of purchase; date retired; if applicable, the program(s) using the asset; and the location. 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 programs the provider operates, if this period exceeds seven years. Further, Appendix O of the CFR Manual requires providers to maintain depreciation schedules that include the following minimum information: 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.

For the three fiscal years ended June 30, 2015, Marie Pense reported a total of $7,582 in depreciation expenses for the SEIT preschool cost-based program. We requested the description of the assets, vendor names, and records confirming the acquisition costs and date of the acquisition (i.e., canceled invoices). However, Marie Pense officials could not provide the supporting documentation for the reported depreciation expenses. Consequently, we recommend SED disallow $7,582 in unsupported depreciation expenses.

Visa Fees

According to the RCM, costs of recruiting personnel required to meet State program or fiscal mandates may be reimbursable. The costs associated with H1 visas are reimbursable under the following conditions:

- Significant domestic recruitment efforts to hire staff with similar credentials are documented and available upon request; and
- Staff requiring H1 visas possess the required credentials to perform in the position hired.

Further, H1 visa costs for staff who do not remain employed in the organization for at least a year will not be reimbursed.

In fiscal year 2014-15, Marie Pense reported $1,575 in H1 visa-related fees for the recruitment of a SEIT teacher. However, the SEIT teacher did not remain employed with the organization for at least a year, as required by the RCM. Consequently, we recommend that SED disallow $1,575 in H1 visa expenses that did not meet the requirements of the RCM.

Recommendations

To SED:

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

To Marie Pense:

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

Audit Scope, Objective, and Methodology

The objective of our audit was to determine whether the costs reported by Marie Pense on its CFRs were reasonable, necessary, directly related to the special education program, and sufficiently documented, pursuant to SED guidelines. The audit focused primarily on expenses claimed on Marie Pense's CFR for the fiscal year ended June 30, 2015 and certain expenses claimed on its CFRs for the two fiscal years ended June 30, 2014.

To accomplish our objective, we reviewed the RCM, the CFR Manual, the Regulations of the Commissioner of Education, Marie Pense's CFRs, and relevant financial and program records for the audited period. 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 also interviewed Marie Pense officials, staff, and its independent auditor to obtain an understanding of Marie Pense's financial and business practices. In addition, 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, rent expenses, and OTPS expenses. Our samples were based on the relative materiality of the various categories of costs reported and their associated levels of risk. Our samples were not designed to be projected to the entire population of reported costs.

Statutory Requirements

Authority

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

We conducted our performance audit in accordance with generally accepted government auditing standards. These 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 during our audit 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 management functions do not affect our ability to conduct independent audits of program performance.

Reporting Requirements

We provided draft copies of this report to SED and Marie Pense officials for their review and formal comment. Their comments were considered in preparing this final report and are included 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, Marie Pense officials generally accepted most of our conclusions, but disagreed with other proposed disallowances. Our responses to certain Marie Pense comments are included in the report's State Comptroller's Comments.

Within 180 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 where the recommendations were not implemented, the reasons why.

Exhibit

Marie Pense Center, LLC
Summary of Submitted and Disallowed Program Costs
for the 2012-13, 2013-14, and 2014-15 Fiscal Years

Program Costs	Amount Claimed on CFR	Amount Disallowed	Amount Remaining	Notes to Exhibit
Personal Services				
Direct Care	$7,045,116	$109,101	$6,936,015	A,B,G
Agency Administration	679,693	0	679,693	
Total Personal Services	**$7,724,809**	**$109,101**	**$7,615,708**	
Other Than Personal Services				
Direct Care	$51,593	$11,489	$40,104	A, C-F, H-K
Agency Administration	261,118	32,377	228,741	
Total Other Than Personal Services	**$312,711**	**$43,866**	**$268,845**	
Total Program Costs	**$8,037,520**	**$152,967**	**$7,884,553**	

Notes to Exhibit

The following Notes refer to specific sections of SED's RCM and the CFR Manual used to develop our recommended disallowances. We summarized the applicable sections to explain the basis for each disallowance. We provided the details supporting our recommended disallowances to SED and Marie Pense 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.B.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 and employees' retirement and pension plans, may also be included.

C. RCM Section II.20.B – All personal expenses, such as personal travel expenses, laundry charges, beverage charges, gift certificates to staff and vendors, flowers or parties for staff, holiday parties, repairs on a personal vehicle, rental expenses for personal apartments, etc. are not reimbursable unless specified otherwise in the RCM.

D. RCM Section II.24 – Gifts of any kind are not reimbursable.

E. RCM Section II.40.C – H1 visa costs are reimbursable under the following conditions: (1) Significant domestic recruitment efforts to hire staff with similar credentials are documented and available upon request. (2) Staff requiring H1 visas possess the required credentials to perform in the position hired. (3) H1 visa costs for staff who do not remain employed in the organization for at least a year will not be reimbursed.

F. RCM Section II.41.A – Rental agreements, including renewals, must be in writing, dated, and signed by the lessee and the lessor.

G. RCM Section III.1.B – Actual hours of service are the preferred statistical basis upon which to allocate salaries and fringe benefits for shared staff who work on multiple programs. Entities must maintain appropriate documentation reflecting the hours used in this allocation. Acceptable documentation may include payroll records or time studies. If hours of service cannot be calculated or a time study cannot be completed, then alternative methods that are equitable and conform to generally accepted accounting principles may be utilized. Documentation for all allocation methods (bases and percentages) must be retained for a minimum of seven years. Guidelines for acceptable time studies for CFR filers are provided in Appendix L (Acceptable Time Studies) of the CFR Manual.

H. RCM Section III.1.C.2 – Adequate documentation includes, but is not limited to, the consultant's resume, a written contract that includes the nature of the services to be provided, the charge per day, and service dates. All payments must be supported by itemized invoices that indicate the specific services actually provided and, for each service, the date(s), number of hours provided, fee per hour, and total amount charged. In addition, when direct care services are provided, the documentation must indicate the names of students served, actual dates of service, and number of hours of service to each child on each date.

I. RCM Section III.1.E – Logs must be kept by each employee indicating the dates of travel, destination, purpose, mileage, and related costs such as tolls, parking, and gasoline. Logs must have supervisory approval for the associated travel expense to be reimbursable.

J. RCM Section III.1.I – Inventory records, including invoices, must be kept for all items purchased by the entity or donated to the entity for the benefit of approved programs. These records should list: the invoice number; a description of the item; the make, model, or serial number of the item; cost; date of purchase; date retired; if applicable, the program(s) using the asset; and the location. For donated items, inventory records should identify the item as donated, listing the date of donation and the fair market value of the item at the time of donation.

K. CFR Manual Appendix O, Section 48, 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.

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

DEPUTY COMMISSIONER
Office of Performance Improvement and Management Services
O: 518.473-4706
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December 26, 2019

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

Dear Mr. Sifontes:

The following is the New York State Education Department's (SED) response to the draft audit report, 2019-S-36, Marie Pense Center, LLC (Marie Pense) - 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 Marie Pense's CFRs and to Marie Pense'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.

Per SED and OSC agreement, for *Non-Allowable Occupancy Costs*, OSC will remove the following statement from the final audit report, as well as remove the language that the increase in rental costs was incurred without prior SED approval. "Additionally, the RCM states that program and fiscal issues that require prior written approval of the Commissioner of Education's (Commissioner) designees include education program expansion requiring additional property-related costs when the cost is expected to be reimbursed fully or partially through the tuition rate. In order to receive approval of the Commissioner, the entity must submit a written request to the Commissioner's designated representative with all supporting documents."

Recommendation 2:

"Remind Marie Pense 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 Marie Pense 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, Regulation and the Reimbursable Cost Manual (RCM). Furthermore, SED will alert Marie Pense of online CFR training that is available on SED's webpage. SED recommends that all individuals signing the CFR certification statements, namely the Executive Director and Certified Public Accountant, complete this training. This training is a requirement for preschool special education providers upon approval and reapproval.

If you have any questions regarding this response, please contact Brian Zawistowski, Assistant Director of the Rate Setting Unit, at (518) 474-3227.

Sincerely,

Sharon Cates-Williams

Deputy Commissioner

Sharon Cates-Williams

c: Phyllis Morris
Christopher Suriano
Suzanne Bolling
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December 5, 2019

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

Re: State Education Department
Compliance with the Reimbursement Cost Manual
Marie Pense Center, LLC
Draft Report 2019-S-36

Dear Mr. Sifontes:

We have reviewed the above-referenced Draft Report relating to expenses reported by Marie Pense Center, LLC (Marie Pense) on its Consolidated Fiscal Reports (CFRs) for the fiscal year ending June 30, 2015 and certain expenses claimed on its CFRs for the two fiscal years ending June 30, 2014. We appreciate the opportunity to correct potential errors of fact or misapplication of principles, and to further provide information and documentation. We welcome the opportunity to provide, prior to finalization of the report, certain documentation identified beyond that provided during the audit process as relevant and necessary to inform the auditors' determinations relative to certain specific proposed findings. We trust these additional documents will receive the same reasoned consideration as documents provided during the field work and immediately thereafter. We offer the following comments and clarifications:

Personal Service Costs

Pension Expenses

We appreciate the auditors' thoughtful consideration of the MPC's detailed explanation of certain features of its Pension Plan and the comprehensive documentation provided in support of our challenge to certain preliminary findings relating to eligibility for the Plan. We do not challenge the auditors' finding that two plan participants failed to meet the 500-hour eligibility requirement.

However, we reassert our claim that two of the identified eleven Plan participants did meet the 1,000-hour eligibility requirement. We understand and greatly appreciate that the auditors have reconsidered their finding as to one of the two individuals. Accordingly, while we do not challenge the finding that relates to 9 individuals, we reassert our challenge that the remaining individual (LP) was, in fact, active on the last day of the fiscal year, not the Plan year as the auditors have asserted. Thus, the individual was eligible for the reported Plan contribution upon having met the

Comment 1

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1000-hour requirement. We respectfully request the auditors reconsider their analysis and restore the proposed disallowances.

Shared Employees' Compensation

We must challenge portions of the auditors' proposed disallowance of $30,492 in compensation associated with shared teachers and program administrative employees, based upon careful review of the documentation provided to the audit team. While we identified certain errors in the information reported in the CFR, as highlighted in previously provided documentation, we reassert our challenges as follows:

- Shared Teachers:

We do not challenge the auditors' finding that $13,628 in teacher compensation costs had been inadvertently over-allocated to the preschool SEIT cost based program. MPC has strengthened its internal protocols to assure the appropriate allocation of compensation costs across multiple cost centers, as supported by detailed invoices and other documentation.

- Shared Administrative Employees:

We believe the auditors disallowed the salaries of three office workers based upon the flawed premise that the individuals were not program administration staff, chargeable directly to the CPSE program, but instead, should have been charged to program administration and allocated to all programs utilizing the ratio value method. While all three of these staff members have standard office worker contracts, their job responsibilities clearly identify them as CPSE support staff. In addition, per their personnel files, each was hired as CPSE administrative support staff. The level of time required to meet SED guidelines required under SEIT are significantly more intense (CPSE meetings, enhanced supervision, compliance, etc) than for services provided directly to the district. As a result, MPC hired dedicated office staff to attend to the program administration of the CPSE program. None of these staff performed any service that was not dedicated to the administration of the CPSE program. MPC maintained other staff who were responsible for the administration of the agency in general. The audit team suggests that since these individuals may occasionally engage in activities such as answering the phone, for example, that they should be classified as agency administration. The occasional answering of the phone does not change the nature of an individual's job responsibilities. We contend that these staff should be properly coded as program administration, fully chargeable to the CPSE program.

Comment 2

Unsupported Compensation Expenses

We do not challenge the auditors' claim that an error had been made in reporting a specific administrative assistant's salary.

Other Shared Personal Service Costs Through Over-Accrual

Miscellaneous Expenses

While we do not challenge the auditors' finding that we were unable to obtain itemized invoices for certain miscellaneous expenses, nor travel logs in support of specific travel expenses, related to staff supervisory activities, we must state unequivocally that each of the itemized expenses and costs were incurred exclusively for the benefit of the program. Travel expenses lacking supporting logs are not, as the auditors allege, "personal expenses" but rather expenses insufficiently documented. We respectfully request that the phraseology of the report around $23,446 in costs be revised to avoid salacious references and to more appropriately describe the expenses as lacking sufficient documentation.

Comment 3

We likewise do not challenge the auditors' proposed disallowance of $2,447 in expenses for items such as appreciation gifts to employees, including a gift sent a staff's residence, and holiday cards to families and staff, as having been misreported as an allowable expense, although clearly program related. However, each of these expenses was incurred to the benefit of the staff or program operations, such as the appraiser fees the auditors mischaracterize as "personal." Accordingly, we request that the phraseology presenting these findings be revised to more appropriately represent the expenses as "ineligible."

Comment 4

Non-Allowable Occupancy Costs

We believe the auditors' have misinterpreted portions of the RCM governing prior written approval of the Commissioner in determine that certain increases in rental payments were ineligible for reimbursement. Section I, item 41 of the RCM clearly states, in part, that "entities operating approved programs *may* (italics added) submit copies of new or renegotiated leases to RSO staff for review..., to allow the Commissioner's designated fiscal representatives to determine whether the costs of rental agreements are within the limitations of the program's non-direct care cost parameter". Should the cost--necessary and reasonable governed by market rate--offend the cost parameters, a waiver is generally requested to recognize the costs as eligible for reimbursement. No such waiver was necessary here because the rental increase was within the limitation of the cost parameter. Accordingly, no prior approval was required. We respectfully request the proposed disallowance be reconsidered.

Comment 5

We also challenge the auditors' assertion that the increase in rental cost was not documented in the rental agreement. Documentation provided to the auditors included a duly executed rental agreement reflecting the rental cost increase. We recognize that an error had been made by the landlord indicating the date of the document. However, the terms of the agreement were nonetheless binding on both parties. Accordingly, the proposed disallowance of $8,816 must be restored since, contrary to the auditors' assertions, no prior approval was required and the increase was properly documented.

Comment 6

Unsupported Depreciation Expenses

We do not challenge the auditors' proposed disallowance of $7,582 in depreciation expenses for which we were unable to provide sufficiently supportive documentation.

H1 Visa Fees

We do not challenge the auditors' finding that expenses associated with obtaining an H1 Visa for a prospective employee who did not remain on MPC's employment for the requested full year should have been reported as a non-reimbursable cost.

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We appreciate the opportunity to provide comment on the auditors' draft report.

Very truly yours,

GREENBERG TRAURIG, LLP

Pamela A. Madeiros

PAM/mjf
Enclosures
cc: Kenrick Sifontes, OSC
Jeremy Mack OSC
Steve Lynch, OSC
Salvatore D'Amato, OSC
Nadia Giannopoulos, MP

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State Comptroller’s Comments

1. We revised our report to remove the disallowances associated with the two employees.
2. We stand by our finding. There is no documentation to support where the administrative assistants spent their time working. Moreover, as stated on page 10 of our report, the number of non-SED teacher hours reported on the CFR grew approximately 57 percent from fiscal year 2013-14 to 2014-15; however, the non-SED administrative support staff decreased – going from a 1.0 full-time equivalent to zero during this same time period. With an increased workload in the non-SED programs, it is not reasonable that administrative support staffing needs would decrease.
3. Our report does not indicate that the travel expenses were personal expenses. As detailed in the report, the travel expenses were reported as insufficiently documented expenses.
4. We revised our report to indicate the appraisal fees were not personal expenses.
5. We revised our report to delete the reference that the Commissioner’s approval was required.
6. We disagree. The RCM specifically requires that rental agreements, including renewals, be in writing, dated, and signed by the lessee and the lessor. The lease provided by Marie Pense officials was not properly dated.

Contributors to Report

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Ken Shulman - *Assistant Comptroller*

Audit Team

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