

THOMAS P. DINAPOLI
COMPTROLLER



110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

May 31, 2017

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

Ms. Janice Friedman
Chief Executive Officer
Variety Child Learning Center
47 Humphrey Drive
Syosset, NY 11791

Re: Compliance With the Reimbursable Cost
Manual
Report 2016-S-77

Dear Ms. Elia and Ms. Friedman:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution; Article II, Section 8 of the State Finance Law; and Section 4410-c of the State Education Law, we conducted an audit of the expenses submitted by Variety Child Learning Center (Variety) to the State Education Department (SED) for purposes of establishing the preschool special education tuition reimbursement rates used to bill public funding sources that are supported by State aid payments.

Background

Variety, a not-for-profit organization located in Syosset, New York, is an SED-approved provider of special education services. Variety offers a range of special education services and programs to children with disabilities from birth to 8 years of age. During the period July 1, 2013 through June 30, 2014, Variety provided the following SED rate-based preschool special education services: Preschool Special Class – over 2.5 hours per day, Preschool Special Class – 2.5 hours per day, and Preschool Special Education Itinerant Teacher services (collectively referred to as the Programs). Variety provided these services to about 420 students from school districts located in Nassau and Suffolk counties and New York City.

The counties that use Variety's preschool special education services pay tuition to Variety based on reimbursement rates set by SED. The State, in turn, reimburses the counties 59.5 percent of the tuition that the counties pay. SED sets the special education tuition rates based on financial information, including costs, that Variety reports 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 fiscal year ended June 30, 2014, Variety reported approximately \$9.35 million in reimbursable costs on its CFR for the Programs.

Results of Audit

According to the RCM, costs reported on the CFR are eligible for reimbursement if they are reasonable, necessary, directly related to the special education programs, and adequately documented. Based on our testing of costs that Variety charged to the Programs for the fiscal year ended June 30, 2014, we identified \$6,719 in other than personal service (OTPS) costs that did not comply with the RCM's requirements for reimbursement. The ineligible costs included:

- \$6,313 in non-reimbursable advertising costs;
- \$294 in non-reimbursable food costs; and
- \$112 in improperly charged training costs.

Details of these ineligible charges are presented below.

According to the RCM, advertising costs for the purpose of recruiting students into programs or soliciting fundraising monies or donations are not reimbursable. Advertisements should not include information that would mislead parents to believe their child can receive, at no cost to them, day care services or any and all services the agency has to offer. Advertisements should include a statement that parents are responsible for arranging for and paying the costs of any child care. We identified \$6,313 in advertising costs that were reported on the CFR that did not meet these guidelines. According to Variety officials, subsequent to our audit period of July 1, 2013 through June 30, 2014, Variety strengthened its advertising requirements to comply with the RCM.

According to the RCM, costs are reimbursable provided such costs are directly related to the special education program. We identified \$294 in food costs claimed on the CFR that were not related to the Programs.

According to the RCM, agency administration costs are defined as expenses that are not directly related to a specific program, but rather are attributable to the overall operations of the agency. We identified costs for crisis prevention and intervention training that were improperly charged directly to the Programs. If the training expenses (\$751) were allocated as administrative costs rather than charged directly to the Programs, the Programs would have been charged lower amounts for the training costs (\$639). As a result, we identified \$112 (\$751 - \$639) in non-reimbursable costs for these improperly allocated administrative expenses.

Recommendations

To SED:

1. Review the disallowances identified by our audit and, if warranted, make the necessary adjustments to the costs reported on Variety's CFR and to Variety's tuition reimbursement rates.
2. Remind Variety officials of the pertinent SED guidelines that relate to the deficiencies we identified.

To Variety:

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 costs that Variety reported on its CFR for the fiscal year ended June 30, 2014. The objective of our audit was to determine whether Variety's reported costs were allowable, properly calculated, and adequately documented in accordance with applicable SED guidelines, including the RCM.

To accomplish our objective and assess internal controls related to our objective, we reviewed the RCM as well as the CFR Manual and related appendices. We interviewed SED officials to obtain an understanding of the CFR, as well as the policies and procedures contained in the RCM and the CFR Manual. We became familiar with Variety's internal controls as they related to the costs Variety reported on the CFR. We also interviewed Variety management to obtain an understanding of their financial practices for reporting costs on the CFR. We reviewed Variety's CFR and relevant financial records for the audit period and obtained accounting records and supporting information for a judgmental sample of the Programs' costs that were considered high risk and reimbursable in limited circumstances, such as advertising and technology-related expenses.

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.

Reporting Requirements

We provided a draft copy of this report to SED and Variety 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 Variety's response, officials disputed the findings related to training costs and membership dues. Based on additional information we received subsequent to the issuance of the draft report, we removed the disallowance pertaining to the membership dues. Our rejoinders to Variety'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 where recommendations were not implemented, the reasons why.

Major contributors to this report were David Fleming, Christopher Morris, Claudia Christodoulou, Lauren Bizzarro, Anthony Calabrese, and Brindetta Cook.

We would like to thank SED and Variety management and staff for the courtesies and cooperation extended to our auditors during this review.

Sincerely,

Andrea Inman
Audit Director

cc: Suzanne Bolling, Director of Special Education Fiscal Services, SED
Thalia Melendez, Director of Audit Services, SED

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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May 4, 2017

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

Dear Ms. Inman:

The following is the New York State Education Department's (Department) response to the draft audit report, 2016-S-77, Compliance with the Reimbursable Cost Manual: Variety Child Learning Center (Variety).

Recommendation 1: Review the disallowances identified by our audit and, if warranted, make the necessary adjustments to the costs reported on Variety's CFR and to Variety'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 Variety officials of the pertinent SED guidelines 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 Variety 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, Consolidated Fiscal Report (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. At the direction of the Board of Regents, the Department intends to require that this training be mandatory and will require individuals to verify that they have completed the training.

If you have any questions regarding this response, please contact Suzanne Bolling, Director of Special Education Fiscal Services at 518/474-3227.

Sincerely,

Sharon Cates-Williams

c: Christopher Suriano
Suzanne Bolling

Agency Comments - Variety Child Learning Center



Pamela A. Madeiros
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madeirosp@gtlaw.com

April 18, 2017

VIA ELECTRONIC MAIL

Andrea Inman, Audit Director
Office of the State Comptroller
110 State Street, 11th Floor
Albany, New York 12236

**Re: State Education Department
Compliance with the Reimbursable Cost Manual
Variety Child Learning Center
Report 2016-S-77**

Dear Ms. Inman:

We have reviewed the aforementioned Draft Report concerning the expenses submitted by Variety Child Learning Center (Variety) on its Consolidated Fiscal Report for the fiscal year 2013-14 to the State Education Department (SED) for purposes of establishing the preschool special education tuition reimbursement rates.

Variety acknowledges and appreciates the auditors' thoughtful consideration of the comments provided to the previous preliminary reports, and the adjustments made accordingly. While Variety does not challenge a good number of the auditors' determinations, we renew our challenges of select findings as presented below, and correct, in the interest of accuracy, certain descriptive statements as set out in the Report background narrative.

Background

To clarify, Variety offers special education services and programs to children with disabilities from birth to 8 years of age (not 16 years of age). In addition, while approved to operate a Preschool Integrated Special Class program in the audited year, Variety did not operate a Special Class in an Integrated Setting (SCIS) until the subsequent year.

We appreciate your consideration of these minor corrections.

* Comment 1

Results of Audit

Food Costs

Variety does not challenge the auditors' finding that certain food expenses had been incorrectly classified as reimbursable expenses (\$294). Variety has strengthened its internal controls to assure that non-program food costs are appropriately identified at the point of purchase to avoid inadvertent reporting.

Training Costs

Variety renews its challenge of the auditors' determination that certain training expenses should have been classified as administrative costs and allocated accordingly, rather than classified as Program-specific and allocated exclusively to Program.

We reassert our position that participation in the Crisis Prevention Institute, Nonviolent Crisis Intervention one-day seminar satisfied certain daycare and special education operational and professional licensure requirements and is made available to staff in furtherance of our professional development programming. Accordingly, these professional development/training costs were incurred for the benefit of the students served in Program and, we would argue, appropriately reported in their entirety as Program costs.

We appreciate the auditors' acknowledgement that these costs were eligible for reimbursement, based upon thoughtful review of the supporting materials provided. Our remaining challenge, then, is to the auditors' classification of these costs as administrative and the limited allocation associated with an administrative cost.

Advertising

Variety does not challenge the auditors' finding that certain advertisement materials did not fully comply with the requirements governing reimbursable advertising expenses. Variety had already strengthened its protocols for monitoring advertisement expenses to assure compliance with the Reimbursable Cost Manual.

Membership Dues

Variety reasserts its challenge to the auditors' finding that certain Coalition membership fees were ineligible for reimbursement. To further clarify, there exist two discrete fees associated with the Long Island Coalition for Children with Special Needs: one fee imposed specifically for lobbying services; a second discrete fee imposed as membership dues. As we shared previously, Variety recognizes the distinction between lobbying activities which are non-reimbursable expenses and organization membership dues which are allowable expenses. Membership in the Coalition, supported by the associated fee, serves to advance Variety's preschool special education programming

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Andrea Inman
April 18, 2017
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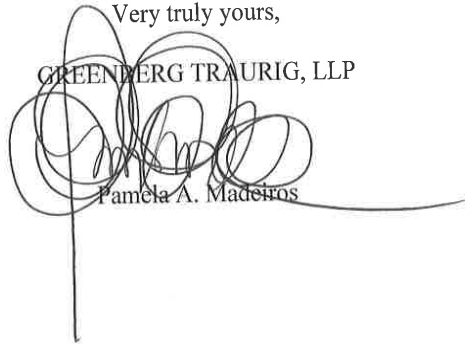
through informational activities and resource sharing, collegial interactions with stakeholders of the preschool special education system and furthering communication, understanding and support for the children and families Variety serves. We would respectfully request, then, that the auditors reconsider their assessment of the Coalition, its function, and the reimbursement of its membership fees.

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Variety is grateful for the professionalism of the audit teams and the courtesies extended during the audit process.

Very truly yours,

GREENBERG TRAURIG, LLP

A handwritten signature in black ink, appearing to read 'Pamela A. Madenos', is written over the typed name. The signature is highly stylized and cursive.

Pamela A. Madenos

PAM/hae
Enclosure
ALB 2014490v1

cc: Lauren Bizzarro, OSC
Suzanne Bolling, NYSED
Thalia Melendez, NYSED
Janice Friedman, Variety

State Comptroller's Comments

1. We amended the report to clarify the age of children with disabilities served by Variety and the programs offered by Variety during the audit period.
2. According to Variety officials, their student population includes preschool and school-age students with severe behavior problems. The Crisis Prevention Institute, Nonviolent Crisis Intervention training seminar was provided to an individual who served as both the Supervisor of the Family Center and the Transportation Coordinator for the school. Further, the training provided instruction on the prevention and management of behavior issues of both preschool and school-age children. Therefore, the training costs did not exclusively benefit the Programs, and should not have been charged entirely to the Programs. Variety should have allocated these costs across all programs that benefited from the training. Therefore, we maintain that the \$112 in improperly allocated training costs is not reimbursable.
3. Based on additional information we received subsequent to the issuance of the draft audit report, we removed this disallowance from the final audit report.