



New York State Comptroller  
**THOMAS P. DiNAPOLI**

# **Bilingual Care, Inc. - Compliance With the Reimbursable Cost Manual**

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State Education Department

Report 2018-S-51 | September 2019

Spotlight on Education



# Audit Highlights

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## Objective

To determine whether the costs reported by Bilingual Care, Inc. (Bilingual) on its Consolidated Fiscal Reports (CFR) 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 Bilingual's CFR for the fiscal year ended June 30, 2015 and included certain expenses claimed on its CFRs for the two fiscal years ended June 30, 2014.

## About the Program

Bilingual is a New York City-based for-profit 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, Bilingual served about 171 students in its SEIT program. In addition to the SEIT cost-based program, Bilingual operated one other SED-approved preschool special education program: Evaluations. Payments for services under the Evaluations program are based on fixed fees.

The New York City Department of Education refers students to Bilingual and pays for those services using rates established by SED. The rates are based on financial information that Bilingual reports to SED on its annual CFRs. To be eligible for reimbursement, reported costs must comply with RCM requirements. For the three fiscal years ended June 30, 2015, Bilingual reported approximately \$8.9 million in reimbursable costs for the SEIT cost-based program.

## Key Findings

For the three fiscal years ended June 30, 2015, we identified \$370,685 in reported costs that did not comply with the requirements in the RCM, as follows:

- \$236,117 in excess executive compensation costs;
- \$47,945 in unapproved rent costs;
- \$37,287 in ineligible other than personal service costs such as Evaluations expenses, personal vehicle expenses, non-reimbursable income taxes, and other miscellaneous expenses charged to the SEIT program;
- \$27,887 in ineligible bonus payments; and
- \$21,449 in non-allowable health insurance costs.

## Key Recommendations

To SED:

- Review the recommended disallowances resulting from our audit and make the

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appropriate adjustments to Bilingual's CFRs and tuition reimbursement rates, as warranted.

- Work with Bilingual officials to ensure their compliance with the provisions of the RCM.

**To Bilingual:**

- Ensure that all costs reported on future CFRs comply with SED's reimbursement requirements.



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

September 11, 2019

Ms. Elizabeth R. Berlin  
Acting Commissioner  
State Education Department  
State Education Building  
89 Washington Avenue  
Albany, NY 12234

Mr. Jose Ovalle  
Executive Director  
Bilingual Care, Inc.  
639 Edgecombe Avenue  
New York, NY 10032

Dear Ms. Berlin and Mr. Ovalle:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage their resources efficiently and effectively and by so doing, providing accountability for the 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 costs submitted by Bilingual Care, Inc. to the State Education Department for the purposes of establishing the 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

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<b>Glossary of Terms</b> .....	<b>6</b>
<b>Background</b> .....	<b>7</b>
<b>Audit Findings and Recommendations</b> .....	<b>8</b>
Personal Service Costs.....	<b>8</b>
Other Than Personal Service Costs.....	<b>10</b>
Recommendations.....	<b>12</b>
<b>Audit Scope, Objective, and Methodology</b> .....	<b>13</b>
<b>Statutory Requirements</b> .....	<b>14</b>
Authority.....	<b>14</b>
Reporting Requirements.....	<b>14</b>
<b>Exhibit</b> .....	<b>15</b>
<b>Notes to Exhibit</b> .....	<b>16</b>
<b>Agency Comments - State Education Department</b> .....	<b>18</b>
<b>Agency Comments - Bilingual Care, Inc.</b> .....	<b>20</b>
<b>State Comptroller's Comments</b> .....	<b>29</b>
<b>Contributors to Report</b> .....	<b>31</b>

# Glossary of Terms

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<b>Abbreviation</b>	<b>Description</b>	<b>Identifier</b>
Bilingual	Bilingual Care, Inc.	<i>Service Provider</i>
CFR	Consolidated Fiscal Report	<i>Key Term</i>
CFR Manual	Consolidated Fiscal Reporting and Claiming Manual	<i>Policy</i>
DOE	New York City Department of Education	<i>Agency</i>
OTPS	Other than personal services	<i>Key Term</i>
RCM	Reimbursable Cost Manual	<i>Policy</i>
Regulations	Regulations of the Commissioner of Education	<i>Law</i>
SED	State Education Department	<i>Auditee</i>
SEIT	Special Education Itinerant Teacher	<i>Key Term</i>

# Background

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Bilingual Care, Inc. (Bilingual) is a New York City-based for-profit organization authorized 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, Bilingual served about 171 students in its SEIT program. In addition to the SEIT cost-based program, Bilingual operates one other SED-approved preschool special education program: Evaluations. Payments for services under the Evaluations program are based on fixed fees.

The New York City Department of Education (DOE) refers students to Bilingual based on clinical evaluations and pays for those services using rates established by SED. These rates are based on the financial information Bilingual reports to SED on its annual Consolidated Fiscal Reports (CFRs). To qualify for reimbursement, Bilingual'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. The State reimburses DOE 59.5 percent of the statutory rate it pays to Bilingual.

For the three fiscal years ended June 30, 2015, Bilingual reported approximately \$8.9 million in reimbursable costs for the SEIT cost-based program.

# Audit Findings and Recommendations

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According to the RCM, costs will be considered for reimbursement provided they are reasonable, necessary, directly related to the special education program, and sufficiently documented. For the three fiscal years ended June 30, 2015, we identified \$370,685 in reported costs that did not comply with SED's requirements for reimbursement. These ineligible costs included \$285,453 in personal service costs and \$85,232 in other than personal service (OTPS) costs (see the Exhibit at the end of this report).

## 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, Bilingual reported approximately \$8.3 million in personal service costs for the SEIT program. We identified \$285,453 in personal service costs that did not comply with the RCM's guidelines for reimbursement.

## Excess Compensation

The RCM states that compensation paid to all individuals who have a financial interest in the program, including family members who are program employees, must be commensurate with actual services provided. Compensation shall not exceed the average regional levels paid by similar private providers to comparably qualified and appropriately certified personnel for similar work and hours of employment. According to the CFR Manual, entities are to report the position title code that best reflects the job responsibilities performed by an employee.

Bilingual has engaged a fiscal consultant to assist with accounting functions such as reviews, year-end closings, and payroll reconciliations. We questioned why it was necessary to engage a fiscal consultant when Bilingual has a Controller, whose duties include the work being performed by the consultant. Bilingual's Controller informed us that the fiscal consultant was hired to assist her because she did not have the accounting knowledge and skills necessary to fulfill the Controller duties. She added that the fiscal consultant reviews "everything she does." During the three fiscal years ended June 30, 2015, Bilingual reported a total of \$442,599 in salary expenses for the Controller on its CFRs submitted to SED. The Controller is Bilingual's Executive Director's spouse.

We compared the duties performed by Bilingual's Controller with a list of duties (provided to us by Bilingual) established for the position and concluded that the Controller was not performing many of the duties established for

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the position. Because the Controller does not possess the knowledge and technical skills to function in that position and had to engage a fiscal consultant to perform some of those duties, we adjusted her compensation to the next lower level: that of an accountant who is “responsible for the establishment and maintenance of the agency’s systematic fiscal transactions.” Using SED’s three-year regional average salary of \$206,866 for the accountant position, we determined that the salary paid to the spouse of the Executive Director was overstated by \$235,733 (\$442,599 - \$206,866). We recommend that SED disallow \$213,855 (the portion allocated to the SEIT program) of the \$235,733 in overstated salaries, plus \$22,262 in associated fringe benefits: a total of \$236,117 in excess compensation.

## Bonuses

According to the RCM, a merit award (or bonus compensation) is a non-recurring and non-accumulating (i.e., not included in base salary of subsequent years) lump sum payment in excess of regularly scheduled salary, which is not directly related to hours worked. A merit award may be reimbursed if it is based on merit, as measured and supported by employee performance evaluations.

During the three fiscal years ended June 30, 2015, Bilingual paid \$24,700 in additional salaries to its full-time and part-time teachers. Each of its full-time teachers received an additional \$250 in fiscal year 2012-13, and \$300 in both 2013-14 and 2014-15. Part-time teachers were each paid an additional \$150 in each of the three years. Bilingual classified these payments as “salary adjustments” and stated that the purpose of the additional payments was to retain staff due to competition from other entities. However, these non-recurring and non-accumulating lump sum payments in excess of regularly scheduled salaries were not included in the employees’ base salaries in subsequent years. Furthermore, they were not measured and supported by performance evaluations. We recommend that SED disallow \$27,887 (\$24,700 in salaries and \$3,187 in fringe benefits) because these payments did not comply with the requirements in the RCM.

## Health and Life Insurance Benefits

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. The RCM also allows the reimbursement of fringe benefit expenses when those 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.

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For the three fiscal years ended June 30, 2015, Bilingual claimed \$23,333 in ineligible health and life insurance benefits. We found that certain health and life insurance costs reported on the CFR as non-mandated fringe benefits did not comply with RCM requirements. For example, we found that Bilingual reported the employees' share of health insurance costs on the CFR for some employees, provided certain employees with greater insurance coverage than others, duplicated costs for other employees, and reported costs for individuals who were not on Bilingual's payroll at the time. We recommend that SED disallow \$21,449, the amount of ineligible fringe benefits allocated to the SEIT program.

## 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, Bilingual reported approximately \$622,000 in OTPS expenses for its SEIT program. We identified \$85,232 of these expenses that did not comply with SED's reimbursement requirements.

### Rent

According to the RCM, a move to a new location must be pre-approved by SED's program staff. On March 9, 2009, SED approved administrative space for Bilingual at 2035 East 2nd Avenue in Manhattan as well as space for multidisciplinary evaluations at 30 East 111th Street. According to staff in SED's Preschool Policy Unit and Special Education Quality Assurance New York City Regional Office, these were the only locations approved for Bilingual for the three years ended June 30, 2015. However, Bilingual also reported \$52,432 in lease costs on its CFRs for three other locations: 566 West 161st Street, 416 East 105th Street, and 639 Edgecombe Avenue in Manhattan. Bilingual's Executive Director was the landlord for the space at 566 West 161st Street. Bilingual officials claim that SED had approved these three locations. However, according to SED, although the 566 West 161st Street location was previously approved, it was subsequently replaced by the 2035 East 2nd Avenue location; the other two locations were approved after June 30, 2015. Consequently, we recommend that SED disallow \$47,945, the amount of unapproved lease costs that Bilingual allocated to the SEIT program before June 30, 2015.

### Other Ineligible Costs

According to the Regulations of the Commissioner of Education (Regulations), evaluation costs and related statistical data for preschool

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students, as prescribed in the Education Law and the Regulations, must be reported in a separate cost center. According to the RCM, costs must be reasonable, necessary, directly related to the special education program, and sufficiently documented. Moreover, expenses related to the use of privately owned vehicles for business by employees are reimbursable provided such use is documented and necessary. Further, payments for federal, State, and local income taxes or any related penalties and interest are not reimbursable. In addition, inventory records, including invoices, must be kept for all items purchased by the entity. Also, costs for gifts and costs for non-audit services provided by a registered public accounting firm, or any person associated with that firm, during or within 365 days of required audit work are not reimbursable.

We identified \$40,142 in reported costs that were ineligible for reimbursement because they did not comply with the requirements in the Regulations and RCM. These costs consisted of:

- \$14,864 in Bilingual program costs allocated inappropriately to the SEIT program and agency administration cost centers;
- \$9,294 in costs for personal vehicle use for which Bilingual provided inadequate supporting documentation;
- \$8,192 in non-reimbursable federal and State income taxes, including \$5,650 in taxes for a different, for-profit company owned by Bilingual's Executive Director;
- \$3,812 for 12 iPads that Bilingual could not account for;
- \$2,380 for non-allowable consulting services performed by a certified public accounting firm within 365 days of required CFR audit work;
- \$1,032 for gift cards; and
- \$568 for insufficiently documented legal services and other miscellaneous ineligible costs.

Consequently, we recommend that SED disallow \$37,287, the amount that Bilingual allocated to the SEIT program.

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## Recommendations

### To SED:

1. Review the recommended disallowances resulting from our audit and make the appropriate adjustments to Bilingual's CFRs and tuition reimbursement rates, as warranted.
2. Work with Bilingual officials to ensure their compliance with the provisions of the RCM.

### To Bilingual:

3. Ensure that all costs reported on future CFRs comply with SED's reimbursement requirements.

# Audit Scope, Objective, and Methodology

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The objective of our audit was to determine whether the costs reported by Bilingual 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 Bilingual's CFRs for the fiscal year ended June 30, 2015, and included 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, Bilingual'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 Bilingual officials to obtain an understanding of their financial and business practices and their practices for reporting costs on the CFR. In addition, we selected a judgmental sample of reported costs to determine if 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, fringe benefits, rent expenses, and other OTPS expenses. Our sample selection was based on the relative materiality of the various categories of costs reported and their associated levels of risk. Our sample was not designed to be projected to the entire population of reported costs.

# Statutory Requirements

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## Authority

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

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

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. 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 Bilingual 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. However, in their response, Bilingual officials disagreed with most of our proposed disallowances. Our responses to certain Bilingual comments are included in the report's State Comptroller's Comments. Bilingual officials also included a lengthy set of attachments with their response. Those attachments are not included in this report. However, they have been retained on file at the Office of the State Comptroller.

Within 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 the recommendations were not implemented, the reasons why.

# Exhibit

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**Bilingual Care, Inc.**  
**Summary of Submitted and Disallowed Program Costs**  
**for the 2012-13, 2013-14, and 2014-15 Fiscal Years**

<b>Program Costs</b>	<b>Amount Claimed on CFR</b>	<b>Amount Disallowed</b>	<b>Amount Remaining</b>	<b>Notes to Exhibit</b>
<b>Personal Services</b>				
Direct Care	\$6,822,783	\$31,221	\$6,791,562	A-D, K-M
Agency Administration	1,494,841	254,232	1,240,609	
<b>Total Personal Services</b>	<b>\$8,317,624</b>	<b>\$285,453</b>	<b>\$8,032,171</b>	
<b>Other Than Personal Services</b>				
Direct Care	\$318,321	\$13,777	\$304,544	A, E-J, N
Agency Administration	303,310	71,455	231,855	
<b>Total Other Than Personal Services</b>	<b>\$621,631</b>	<b>\$85,232</b>	<b>\$536,399</b>	
<b>Total Program Costs</b>	<b>\$8,939,255</b>	<b>\$370,685</b>	<b>\$8,568,570</b>	

# Notes to Exhibit

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The following Notes refer to specific sections of SED's RCM, the CFR Manual, and Regulations 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 Bilingual officials during the course of our audit.

- A. 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.
- B. RCM Section II.13.A.(5) - Compensation to all individuals who have a financial interest in the program including shareholders, trustees, board members, officers, family members, or others who are also program employees must be commensurate with actual services provided as appropriately qualified program employees or consultants and shall not include any distribution of earnings in excess of reimbursable compensation. Compensation shall not exceed the average regional levels paid by similar private providers to comparably qualified and appropriately certified personnel for similar work and hours of employment. Any compensation determined to be excessive will not be reimbursed in the tuition rate.
- C. RCM Section II.13.A.(10) - A merit award (or bonus compensation) shall mean a non-recurring and non-accumulating (i.e., not included in base salary of subsequent years) lump sum payment in excess of regularly scheduled salary, which is not directly related to hours worked. A merit award may be reimbursed if it is based on merit, as measured and supported by employee performance evaluations.
- D. RCM Section II.13.B.(2).c - Benefits including pensions, life insurance, and tax-sheltered annuities for individual employees or officers/directors are reimbursable provided they are proportionately similar to those received by other classes or groups of employees.
- E. RCM Section II.14.F - Costs associated with non-audit services provided by a registered public accounting firm, or any person associated with that firm, during or within 365 days of required audit work (prior to the beginning of the fiscal period being audited or after the date of the audit report issued for the audit period) are not reimbursable.
- F. RCM Section II.24 - Gifts of any kind are not reimbursable.
- G. RCM Section II.41.B.(1) - A move to a new location must be approved by SED's program staff.
- H. RCM Section II.56.B - Payments for federal, State, and local income taxes or any related penalties and interest are not reimbursable.
- I. RCM Section II.59.D.(3) - Use of privately owned vehicles for program business by employees is reimbursable, provided such use is documented and necessary.
- J. RCM Section III.1.(I) - Inventory records, including invoices, must be kept for all items

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purchased by the entity or donated to the entity for the benefit of approved programs.

- K. CFR Manual Section 2, Page 2.1 - Full CFRs must be certified by an independent certified public accountant.
- L. CFR Manual Section 16, Page 16.1 - Select the position title code in Appendix R that best reflects the job responsibilities being performed by the employee.
- M. CFR Manual Appendix R, Section 51, Page 51.12: Accountant - Responsible for the establishment and maintenance of the agency's systematic fiscal transactions.
- N. Regulations Part 200.9(e)(1)(i)(d) - Evaluation costs and related statistical data for preschool students, as prescribed in section 4410 of the Education Law and Sections 200.4 and 200.16 of this Part, must be reported in a separate cost center.

# Agency Comments - State Education Department

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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  
F: 518.474-5392

August 15, 2019

Mr. Kenrick Sifontes  
Audit Director  
Division of State Government Accountability  
NYS Office of the State Comptroller  
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, 2018-S-51, Bilingual Care Inc. (Bilingual) - Compliance With the Reimbursable Cost Manual.

Recommendation 1:

"Review the recommended disallowances resulting from our audit and make the appropriate adjustments to Bilingual's CFRs and 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.

Recommendation 2:

"Work with Bilingual officials to ensure their compliance with the provisions of the RCM."

We agree with this recommendation. SED will continue to provide technical assistance whenever requested and will strongly recommend the Bilingual 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 Bilingual 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

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

Yours truly,



Sharon Cates-Williams  
Deputy Commissioner

c: Phyllis Morris  
Christopher Suriano  
David Sears  
Suzanne Bolling  
Traci Coleman  
Brian Zawistowski  
James Kampf

# Agency Comments - Bilingual Care, Inc.

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Bilingual Care

August 15, 2019

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

## **Bilingual Care, Inc. - Response to Draft Audit Report - Audit 2018-S-51**

Dear Mr. Sifontes:

This report represents our response to the Draft Audit Report for which the Office of the State Comptroller ("OSC") presented to Bilingual Care, Inc. ("Bilingual").

Bilingual respects and understands the authority of the OSC to perform an audit. However, Bilingual takes great exception to the OSC Audit Finding in regards to Excess Compensation. The OSC finding, which amounts to \$236,117, constitutes 64% of the total OSC disallowed costs. The remainder of the OSC disallowed costs constitute less than 1.5% of the total program budget for the three audit years.

During a span of nine months, the OSC worked closely with the Controller. This included extensive requests for documentation for three years. Information was provided in a timely efficient manner to enable OSC to perform the audit with minimal disallowances.

Bilingual will detail how subjective determinations regarding qualifications of the Controller, to include what OSC is considering as adequate evidence, lacks regulatory basis and is not provided within either the Consolidated Fiscal Report Manual or the Reimbursable Cost Manual.

In addition, OSC has inserted a sentence in the Draft Audit Report, which was not included in the Preliminary Audit Report, in which OSC claims that the Controller admits that "*she did not have the accounting knowledge and skills necessary to fulfill the Controller duties*". According to the recollection of the controller, this is an inaccurate statement and Bilingual is strongly requesting that this be removed from the Final Audit Report.

[\\*Comment 1](#)

The balance of the response will further detail our positions.

Sincerely,



Jose Ovalle  
Executive Director  
Enc.

Main Office: 639 Edgecombe Ave New York, New York 10032  
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Personal Service Costs

**OSC Disallowance: Executive Compensation**

- \$236,117 in excess executive compensation costs

**Bilingual Response** – Bilingual is not in agreement with the above conclusion by the OSC considering that OSC must be in compliance with Government Auditing Standards: Obtaining Sufficient, Appropriate Evidence 6.56: “Auditors must obtain sufficient, appropriate evidence to provide a reasonable basis for their findings and conclusions.”

The “evidence” that the OSC appears to utilize is based on **five concluding determination factors** stated in the Draft Audit Report that were reviewed in order to conclude by OSC that the Controller “does not possess the knowledge and technical skills to function in that position”.

[\\*Comment 2](#)

**OSC Concluding Determination Factor 1**

OSC: “Bilingual’s Controller informed us that the fiscal consultant was hired to assist her because she did not have the accounting knowledge and skills necessary to fulfill the Controller duties.”

As indicated in the cover letter, OSC has inserted a sentence in the Draft Audit Report, which was not included in the Preliminary Audit Report, in which OSC claims that the Controller admits that “she did not have the accounting knowledge and skills necessary to fulfill the Controller duties”. According to the recollection of the controller, this is an inaccurate statement and Bilingual is strongly requesting that this be removed from the Final Audit Report.

[\\*Comment 1](#)

**OSC Concluding Determination Factor 2**

OSC: “She added that the fiscal consultant reviews “everything she does.””

It is important to note the FTE for 14/15 for the fiscal consultant was .067 FTE, 13/14 for the fiscal consultant was .109 FTE and 12/13 for the fiscal consultant was .082 FTE. This is a reasonable amount of time incurred for the reasons below to strengthen internal controls following the Committee of Sponsoring Organizations (“COSO”) guidelines and NYSED regulatory guidance.

**Separation of duties**, known as **Segregation of Duties**, is the concept of having more than one person required to complete a task. In business the **separation** by sharing of more than one individual in one single task is an internal control intended to prevent fraud and error.

A requirement in the **RCM: Section 3: General Requirements 2. Accounting Requirements**

F. Entities operating programs must establish adequate systems of internal controls and to conduct annual risk assessments in accordance with guidelines of COSO.

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Bilingual is in accordance with the Reimbursable Cost Manual provision and furnished the OSC the Accounting and Financial Manual. It is important to note that Bilingual is a small agency with an accounting department consisting of one person, the Controller. The fiscal consultant is used by Bilingual for segregation of duties and for quality control as outlined as a cornerstone of COSO. As stated in the CFR report, Bilingual total CFR 3 staff only includes PTC 601, 603, 605 and 612.

[\\*Comment 3](#)

**OSC Concluding Determination Factor 3**

*OSC: "We compared the duties performed by Bilingual's Controller with a list of duties (provided to us by Bilingual) established for the position and concluded that the Controller was not performing many of the duties established for the position."*

Bilingual provided, during the audit and in the Preliminary Response, information which supports the duties. The OSC stated in the Preliminary Report: OSC: *"The Controller did not provide adequate evidence of having performed the aforementioned tasks"* (10 out of 25 in the PTC 603 description provided to OSC).

What constitutes adequate evidence by the OSC is not written or published in any regulatory guidance. In each of the 10 items cited, Bilingual provided reasonable documentation as indicated below. Bilingual is questioning if the items were reviewed. If reviewed, what regulatory guidance is cited to disqualify the individual as a Controller? To our knowledge this is the only written regulatory description available:

[\\*Comment 4](#)

The Consolidated Fiscal Reporting Manual Appendix R

**New York State Subject: Appendix R – Position Titles and Codes Section: 51.0 Page: 51.13  
Consolidated Fiscal Reporting and Claiming Manual Reporting Period: July 1, 2014 to June 30, 2015 Issued: 05/15**

603 Comptroller/Controller Responsible for overall fiscal management of the agency. Also includes Business Official, Director of Finance

*OSC: "We judgmentally selected the following 10 job duties which appeared to be both significant and verifiable and asked the Controller to provide evidence of performance:"*

[\\*Comment 5](#)

1. Develop and recommend policies and procedures for the effective and efficient use and control of all agency resources.

**Bilingual Response & Evidence Provided to OSC:** Bilingual did furnish to OSC a set of policies and procedures which are followed by our organization.

See Privileged and Confidential Attachment – Exhibit A - Bilingual Policies and Procedures (Accounting and Financial Manual)

2. Establish and maintain internal controls to support the financial structure.

**Bilingual Response & Evidence Provided to OSC:** Bilingual did follow the policies and procedures and built in adequate controls as evidenced in the CPA financial statements as adequate.

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See Privileged and Confidential Attachment – Exhibit A - Bilingual Policies and Procedures (Accounting and Financial Manual)

3. Ensure policies and procedures follow professional standards, State and Federal regulatory requirements.

**Bilingual Response & Evidence Provided to OSC:** The PTC 603 did follow published guidance and requested assistance in expertise of other individuals, when needed. Other than the OSC Audit, the agency was not sanctioned by any other government agency. We are not sure how OSC determined this was not met.

[\\*Comment 6](#)

4. Maintain a documented system of accounting policies and procedures.

**Bilingual Response & Evidence Provided to OSC:** Bilingual did furnish to OSC a set of policies and procedures which are followed by our organization.

5. Develop and maintain the Agency's financial accounting system to properly account for the receipt and expenditure of all the funds and to report operating results to administration and external agencies.

**Bilingual Response & Evidence Provided to OSC:** The PTC 603 maintains records in QuickBooks which details for each program the actual receipts and expenditure segregated by program. The report of operations is provided to administration and provided to CPA and firm to prepare the CFR report.

[\\*Comment 7](#)

Bilingual has printed from QuickBooks over 4,000 pages of Audit Trail Reports for FY 12/13, 13/14 and 14/15 which show the PTC 603, under user code Admin, is the main person working with QuickBooks. The PTC 603 is the only user for the Admin code. Bilingual continues to extend the offer to furnish the OSC with the 4,000 + pages of the audit trail for review.

See Privileged and Confidential Attachment – Exhibit B - PTC 603 Example Audit Trail Reports from QuickBooks

6. Develop and administer the annual operating budget.

**Bilingual Response & Evidence Provided to OSC:** The PTC 603 maintains through QuickBooks a very detailed accounting of revenue and expenses to maintain adequate fiscal viability and budget. The budget was furnished to the OSC.

See Privileged and Confidential Attachment – Exhibit C - Example of PTC 603 Emailing Budget to NYSED

7. Provide financial analyses as needed.

**Bilingual Response & Evidence Provided to OSC:** The PTC 603 provides financial analysis as needed to parties requesting. For example, the PTC 603 communicates with NYSED and OSC providing requested documents. The external audit and CFR preparation also require financial analysis which was provided by the Controller.

See Privileged and Confidential Attachment – Exhibit D - PTC 603 Example of Items Provided to OSC

8. Implement operational best practices.

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**Bilingual Response & Evidence Provided to OSC:** This description is an overall goal and description. We are not sure how the OSC would measure or determine adequate evidence.

9. Oversee employee benefits plans.

**Bilingual Response & Evidence Provided to OSC:** The PTC 603 interfaces with the payroll and benefit companies and also communicates and maintains records for required documentation.

See Privileged and Confidential Attachment – Exhibit E - PTC 603 Example Correspondences with Benefit Plans

10. Develop financial business plans and forecasts

**Bilingual Response & Evidence Provided to OSC:** The PTC 603 maintains, through QuickBooks, a very detailed accounting of revenue and expenses to maintain adequate fiscal viability and budget.

See Privileged and Confidential Attachment – Exhibit F - PTC 603 Example of Budgets Created for FY during Audit Scope

In conclusion on the above, Bilingual has furnished extensive documentation and support to evidence the fulfillment of the job description outline of duties. The job description includes 25 duties. It appears the OSC was confident in the performance of the majority or 60% (15) of the listed duties. Many of the duties accepted by the OSC are interrelated within the 10 cited duties utilized as a basis for the **OSC Concluding Determination Factor 3.**

Included below are the majority of the job description duties which were not questioned and therefore accepted by the OSC which are interrelated with the 10 job duties cited by the OSC in the preliminary report issued.

**\*Comment 8**

- Coordinate the annual audit of the independent CPA firm.
- Control the Agency Teacher's invoicing/collection system and approves payment.
- Assume responsibility for all fiscal operations in absence of the Executive Director.
- Do banking reconciliation and maintain chart of accounts.
- Coordinate the preparation of annual CFR report.
- Ensure that periodic bank reconciliations are completed.
- Ensure that accounts payable are paid in a timely manner.
- Maintain an orderly accounting filing system.
- Manage any third parties to which accounting or finance functions have been outsourced.
- Oversee the company's transaction processing systems.
- Oversee cash flow planning and ensure availability of funds as needed.
- Participate in corporate policy development as a member of the executive management team.
- Ensure legal and regulatory compliance regarding all financial functions.
- Develop and utilize forward-looking, predictive models and activity-based financial analyses to provide insight into the organization's operations and business plans.
- Oversee financing strategies and activities, as well as banking relationships.

**OSC Concluding Determination Factor 4**

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OSC: "Because the Controller does not possess the knowledge and technical skills to function in that position and had to engage a fiscal consultant to perform some of those duties, we adjusted her compensation to the next lower level: that of an accountant who is "responsible for the establishment and maintenance of the agency's systematic fiscal transactions."

Additionally, the OSC appears to be basing their disallowance on the fact that PTC 603 utilizes the services of a fiscal consultant for limited quality control assistance, has their CFR completed by an outside firm and has a CPA firm to audit their CFR and Financial Statements. Neither the Reimbursable Cost Manual nor the Consolidated Fiscal Reporting Manual prohibits an agency from the utilization of consultants.

**\*Comment 9**

The fiscal consultant is utilized on an interim basis by the Controller, is covered under the Reasonable Cost Definition included within the Reimbursable Cost Manual. The agency does not employ an additional fiscal staff, unlike many other agencies.

#### OSC Concluding Determination Factor 5

OSC: "The RCM states that compensation paid to all individuals who have a financial interest in the program, including family members who are program employees, must be commensurate with actual services provided. Compensation shall not exceed the average regional levels paid by similar private providers to comparably qualified and appropriately certified personnel for similar work and hours of employment."

Bilingual is in compliance with the above Reimbursable Cost Manual citation. Bilingual's Controller is the spouse of the Executive Director and also functions in the role of Controller or PTC 603.

The Bilingual Controller's payment for services rendered was commensurate with actual services provided. Compensation as a PTC 603, according to regulatory information published (2012-13, 2013-14, 2014-15 Public School Salary Medians) and non-disallowance by NYSED in desk audits, did not exceed the average levels paid by similar private providers and was certified each year.

See Privileged and Confidential Attachment – Exhibit G - PTC 603 Correspondence with NYSED Showing PTC 603 is Under the Median

All regulatory recordkeeping requirements were audited by OSC and found to be in compliance for the Controller position.

However, the OSC in the subjective determination to demote the competency level of the Bilingual Controller, obtained from NYSED regional averages for three years (Unpublished) of an Accountant position utilizing Consolidated Fiscal Reports filed in Beds Region 1. Bilinguals has inquired to receive details to determine applicability and reliability as to "similar private providers to comparably qualified and appropriately certified personnel for similar work and hours of employment".

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Bilingual was told this information is not available by the above criteria by NYSED:

NYSED: *"The average salary information that was recently shared with you was derived from reports that were generated using certified CFR data submitted to the Department from special education providers located in BEDS Region 1 – NYC for the 2012-13, 2013-14 and 2014-15 rate years who reported data under the following range of program codes: 9000-9011, 9020, 9021, 9030, 9031, 9100-9110, 9115-9119, 9135-9139, 9160-9163, 9165-9169. Unfortunately, the specific reports that were generated only displayed the aggregate (total) hours paid, FTE and amount paid by Position Title Code and BEDS Region and did not include the provider specific detail you requested."*

NYSED: *"To obtain the provider specific information you have requested, I recommend that you submit an Online FOIL Submission Form to [FOIL@nysed.gov](mailto:FOIL@nysed.gov) and request copies of all 2012-13, 2013-14 and 2014-15 CFRs corresponding to special education providers located in BEDS Region 1 – NYC who reported data under the following range of program codes: 9000-9011, 9020, 9021, 9030, 9031, 9100-9110, 9115-9119, 9135-9139, 9160-9163, 9165-9169. Please use the following link to access the Department's Online FOIL Submission Form."*

The Consolidated Fiscal Reports, however, if Bilingual was to request under the FOIL submission, would total about 140 agencies reports, with a calculated minimum CFR schedules of over 2,800 pages to be requested. However, this exercise would not produce the information necessary to provide the required level of detail to review as required by the Reimbursable Cost Manual provision *"similar private providers to comparably qualified and appropriately certified personnel for similar work and hours of employment"*.

The information does not provide the required elements per the Reimbursable Cost Manual. OSC did not obtain adequate evidence that the average salary utilized to generate the finding is in accordance with the following regulatory directive:

*"comparably qualified and appropriately certified personnel for similar work and hours of employment."*

In summary:

The PTC 603 has performed the function of a Controller. The role of Controller, as outlined in the job description furnished to OSC, includes extensive communication with the NYSED Rate Setting Unit through the years in reviewing questions and requesting from NYSED answers on allowability of expenses as directed in the Reimbursable Cost Manual.

The NYSED Rate Setting Unit has never questioned the competency of the Controller, inquired or proposed a disallowance based on the PTC 603 category in all of the time the corporation has been in operation. To base a finding on inadequate evidence gathered by OSC and to put forward a definition that does not exist in regulatory guidance is arbitrary and capricious.

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The three-years of average salaries obtained from NYSED does not constitute sufficient, appropriate evidence to provide a reasonable basis for findings and conclusion.

The PTC 603 had all the required elements in the Reimbursable Cost Manual, job description and time records to evidence work and function. The Controller has appropriate credentials and education for the position.

Based on the above, Bilingual objects and is in strong disagreement with the underlying basis for the proposed OSCs disallowance. The OSC has been auditing our agency for the past 9 months and was provided with records, invoices and documentation in order to perform the function.

Bilingual has experienced very limited desk reviews or concerns from the NYSED through the years. This is due to the fact that PTC 603 or Controller is competent under published regulatory guidance, acted in accordance with the outlined duties in the job description and is responsible for overall fiscal management of the agency.

Bilingual is respectfully requesting this OSC finding and disallowance to be removed.

[\\*Comment 10](#)

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**OSC Disallowance: Bonuses**

- \$27,887 in ineligible bonus payments

**Bilingual Response** - The agency does not agree that the amounts paid meet the definition of bonus as they are recurring in each of the three years audited. The amount of the salary adjustment was adjusted each year consistently. In our original response, it was noted that the modest salary adjustments were made to compete in the expensive employment market with other providers as well as the DOE.

[\\*Comment 11](#)

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**OSC Disallowance: Health and Life Insurance Benefits**

- \$21,449 in non-allowable health insurance costs

**Bilingual Response** – Bilingual will not contest the above charges.

**Other Than Personal Service Costs**

**OSC Disallowance: Rent**

- \$47,945 in unapproved rent costs

**Bilingual Response** – Bilingual disagrees with the OSC disallowance. The OSC is stating their disallowance is based on Bilingual not having approval to operate at various sites. Bilingual did receive approval from SED to operate their programs at the sites listed by OSC for disallowance.

[\\*Comment 12](#)

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During the time of the site changes, Bilingual was in contact with NYSED Rate Setting Unit and was provided, to the best of our knowledge, verbal approval to find a more cost-efficient site which was in line with reasonable standards.

Bilingual sent a letter to SED on 3/25/13 notifying them formally of the address changes. Additionally, Bilingual sent out another letter on 6/11/13, along with an Approved Preschool Special Education Program Modification Requests form, correcting the agencies main address.

Bilingual awaited formal confirmation from SED and inquired to receive formal approval for the sites. A revised approval letter from SED with the new addresses was received on 10/26/15. All of which Bilingual provided to the OSC.

For FY 2012-13, the OSC is also listing the site at 566 W. 161 St. as one of the sites without approval. We had approval to operate this site for Administration for SEIS purposes with SED dating back to 2007. This written documentation and approval documentation were previously forwarded to OSC. We are respectfully requesting that this disallowance be removed.

See Privileged and Confidential Attachment – Exhibit H - Site Approval for 566 West 161 St.

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**OSC Disallowance: Other Ineligible Costs - \$37,287**

- \$14,864 in Bilingual program costs allocated inappropriately to the SEIT program and agency administration cost centers

**Bilingual Response** – Bilingual does track the revenue and expenses of the programs in separate cost centers and maintains separate revenue and expense accounts. The error on the part of Bilingual for FY 12/13 was when the CFR report was prepared some of the expenses were aggregated and reported on the CFR Schedule 3, which was allocated using the CFR approved methodology of ratio value.

- \$8,192 in non-reimbursable federal and state income taxes

**Bilingual Response** – Bilingual does track the revenue and expenses of the programs in separate cost centers and maintains separate revenue and expense accounts. The error on the part of Bilingual for FY 12/13 was when the CFR report was prepared some of the expenses were aggregated and reported on the CFR Schedule 3, which was allocated using the CFR approved methodology of ratio value.

- \$1,032 for gift cards

**Bilingual Response** – Bilingual does track the revenue and expenses of the programs in separate cost centers and maintains separate revenue and expense accounts. The error on the part of Bilingual for FY 12/13 was when the CFR report was prepared some of the expenses were aggregated and reported on the CFR Schedule 3, which was allocated using the CFR approved methodology of ratio value.

**\*Comment 13**

**Bilingual Response** – Bilingual will not contest the charges for the remaining items and will strive to improve and implement the OSC recommendations.

# State Comptroller's Comments

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1. We stand by our statement. The audit process is not complete until the final audit report is issued. It is standard audit procedure and practice to amend preliminary audit findings and the draft report based on additional information provided by an agency. The closing (exit) conference, which generally occurs after preliminary findings are issued, was held on June 4, 2019. During the conference, we asked the Controller why it was necessary to engage the services of a fiscal consultant. In response, she stated that the fiscal consultant was hired to assist her because she did not have the accounting knowledge and skills necessary to fulfill the Controller's duties. She added that the fiscal consultant reviews "everything she does."
2. We conducted our audit in accordance with generally accepted government auditing standards, which require us to plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions. The evidence obtained during the audit provided a reasonable basis for our findings and conclusions. Moreover, the Controller admitted that she did not have the accounting knowledge and skills necessary to fulfill the Controller's duties.
3. We are aware of the importance of an adequate internal control system and of separation of duties, and have noted the size of Bilingual. We reiterate the Controller's statement that the fiscal consultant was hired to assist her because she did not have the accounting knowledge and skills necessary to fulfill the Controller's duties, thus requiring the fiscal consultant to review everything she did.
4. We reviewed the information provided by Bilingual to support the Controller's performance of the duties established for that position. The information was insufficient to show that the Controller performed many of the duties listed.
5. This statement was not included in our draft audit report.
6. We have limited assurance that the Controller prepared, established, maintained, and followed the policies, procedures, and internal controls provided to us by Bilingual.
7. We have limited assurance that the Controller developed and maintained Bilingual's financial system. In addition, our audit is independent of SED's desk review and reviews by other government agencies. SED's desk reviews do not include the level of examination provided by OSC's on-site audits. Consequently, we may be aware of other issues and information that was unavailable to SED and other government agencies. The RCM states that the "designation of a cost as reimbursable during the initial rate setting process or during the reconciliation process does not mean that the cost will be reimbursed through the final audit rate since all rates are subject to adjustment on field audit, in accordance with Section 200.18 of the Commissioner's Regulations and this Manual." Therefore, SED's rate changes, based on SED's desk reviews of reported CFR data, are not considered the final determination of a cost's reimbursement.
8. According to the CFR Manual, which is followed by SED and special education providers,

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an accountant (PTC 606) is “responsible for the establishment and maintenance of the agency’s systematic fiscal transactions and preparation of financial statements for the agency.” Many of the listed tasks are what would be expected of an agency accountant, not a Controller.

9. We agree that the RCM and the CFR Manual do not prohibit an agency from using consultants. However, both the RCM and CFR Manual emphasize the importance of reasonable and necessary costs. It was unreasonable for Bilingual to employ an individual – a family member, no less – to perform tasks she stated she did not have the accounting knowledge and skills necessary to fulfill. Additionally, Bilingual engaged an outside firm to complete its CFRs and a CPA firm to audit its CFRs and financial statements.
10. The disallowance remains.
11. The disallowance remains. These costs were disallowed because they were lump sum payments that were not included in the base pay of subsequent years, not related to the number of hours worked, and not based on merit.
12. Again, we disagree with Bilingual officials. Bilingual provided no SED approvals covering the audit period for the East 105th Street and Edgecombe Avenue locations. Bilingual referred to a 2007 SED approval for space at West 161st Street; however, as stated in the report, in 2009, SED approved space on East 2nd Avenue replacing the West 161st Street location. Thus, the West 161st Street location was not approved during the audit period.
13. Bilingual officials admit that errors were made in preparing the CFR report. This statement is consistent with the Controller admitting that she did not have the accounting knowledge and skills necessary to fulfill the Controller’s duties.

# Contributors to Report

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**Ken Shulman** - *Assistant Comptroller*

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