



New York State Comptroller
THOMAS P. DiNAPOLI

Hebrew Academy for Special Children, Inc. - Compliance With the Reimbursable Cost Manual

State Education Department

Report 2018-S-68 | February 2020

Spotlight on Education



Audit Highlights

Objective

To determine whether the costs reported by the Hebrew Academy for Special Children, Inc. (Hebrew Academy) on its Consolidated Fiscal Reports (CFRs) were reasonable, necessary, directly related to the special education programs, and sufficiently documented pursuant to the State Education Department's (SED) Reimbursable Cost Manual (RCM). The audit focused primarily on expenses claimed on Hebrew Academy's CFR for the fiscal year ended June 30, 2017 and included certain expenses claimed on its CFRs for the two fiscal years ended June 30, 2016.

About the Program

Hebrew Academy is a New York City-based not-for-profit organization authorized by SED to provide preschool Special Education Itinerant Teacher (SEIT), full- and half-day Special Class (SC), and full- and half-day Special Class in an Integrated Setting (SCIS) programs to children with disabilities who are between the ages of three and five years. For purposes of this report, the SC and SCIS programs for the three years ended June 30, 2017 and the SEIT program for the year ended June 30, 2015 are collectively referred to as the SED preschool cost-based programs. Hebrew Academy also operated three other SED-approved preschool special education programs: Evaluations, Related Services, and 1:1 Aides. However, payments for services under these programs and under the SEIT program effective in the 2015-16 fiscal year are based on fixed fees. Hebrew Academy operated several other programs, including SED-approved school-age programs, an Early Intervention program administered by the Department of Health, programs funded through the Office for People With Developmental Disabilities, a camp, and a day care program.

During the 2016-17 school year, Hebrew Academy served approximately 539 students in its SED preschool cost-based programs. The New York City Department of Education (DOE) refers students to Hebrew Academy and pays for its services using rates established by SED. The rates are based on the financial information Hebrew Academy reports to SED on its annual CFRs. The State reimburses DOE 59.5 percent of the statutory rate it pays to Hebrew Academy. For the three fiscal years ended June 30, 2017, Hebrew Academy reported approximately \$52 million in reimbursable costs for its SED preschool cost-based programs.

Key Findings

For the three fiscal years ended June 30, 2017, we identified \$2,873,898 in reported costs that did not comply with the requirements in the RCM and the Consolidated Fiscal Reporting and Claiming Manual (CFR Manual), including:

- \$792,672 in compensation for 174 (145 1:1 aides and 29 agency administrative) employees whose services were incorrectly allocated to the SED preschool cost-based programs;
- \$766,955 in fringe benefit costs not directly related to the SED preschool cost-based programs;

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- \$479,596 in property costs incorrectly allocated to the SED preschool cost-based programs;
 - \$488,450 in other than personal service costs, including \$329,448 in related-party costs incorrectly charged to the SED preschool cost-based programs and \$159,002 in non-Program costs;
 - \$121,769 in inappropriate depreciation costs;
 - \$113,552 in excess executive compensation;
 - \$76,793 in unsupported other than personal service costs; and
 - \$34,111 in unsupported personal service costs.

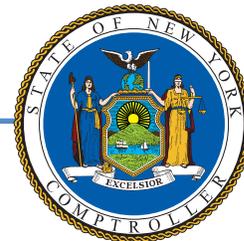
Key Recommendations

To SED:

- Review the disallowances identified by our audit and, if warranted, make the necessary adjustments to the costs reported on Hebrew Academy's CFRs and tuition reimbursement rates.
- Work with Hebrew Academy officials to help ensure their compliance with the provisions of the RCM and the CFR Manual.

To Hebrew Academy:

- 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

February 4, 2020

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

Mr. Bernard Kahn
Chief Executive Officer
Hebrew Academy for Special Children, Inc.
1318 60th Street
Brooklyn, NY 11219

Dear Ms. Tahoe and Mr. Kahn:

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 Hebrew Academy for Special Children, Inc. 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

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Glossary of Terms

Term	Description	Identifier
CFR	Consolidated Fiscal Report	<i>Key Term</i>
CFR Manual	Consolidated Fiscal Reporting and Claiming Manual	<i>Policy</i>
Commissioner	Commissioner of Education	<i>Key Term</i>
DOE	New York City Department of Education	<i>Agency</i>
Hebrew Academy	Hebrew Academy for Special Children, Inc.	<i>Service Provider</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>
SC	Special Class	<i>Key Term</i>
SCIS	Special Class in an Integrated Setting	<i>Key Term</i>
SED	State Education Department	<i>Auditee</i>
SEIT	Special Education Itinerant Teacher	<i>Key Term</i>

Background

Hebrew Academy for Special Children, Inc. (Hebrew Academy) is a New York City-based not-for-profit organization approved by the State Education Department (SED) to provide preschool Special Education Itinerant Teacher (SEIT), full- and half-day Special Class (SC), and full- and half-day Special Class in an Integrated Setting (SCIS) programs to children with disabilities between the ages of three and five years. For purposes of this report, the SC and SCIS programs for the three years ended June 30, 2017 and the SEIT program for the year ended June 30, 2015 are collectively referred to as the SED preschool cost-based programs. During the 2016-17 school year, Hebrew Academy served approximately 539 students at four sites: two in Brooklyn (Kings County), one in Woodmere (Nassau County), and one in Spring Valley (Rockland County).

In addition to the SED preschool cost-based programs, Hebrew Academy operated three other SED-approved preschool special education programs: Evaluations, Related Services, and 1:1 Aides. However, payments for services under these programs are based on fixed fees. Effective in the 2015-16 fiscal year, the SEIT program changed from a cost-based to a fixed-fee program. Hebrew Academy also operated an SED-approved school-age program, an Early Intervention program administered by the Department of Health, programs funded through the Office for People With Developmental Disabilities, and other programs such as camp and day care.

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

For the three fiscal years ended June 30, 2017, Hebrew Academy reported approximately \$52 million in reimbursable costs for the SED preschool cost-based programs. This audit focused primarily on expenses claimed on Hebrew Academy's CFR for the fiscal year ended June 30, 2017 and included certain expenses claimed on its CFRs for the two fiscal years ended June 30, 2016.

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, 2017, we identified \$2,873,898 in reported costs that did not comply with SED's requirements for reimbursement. These ineligible costs included \$1,707,290 in personal service costs and \$1,166,608 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 Hebrew Academy's internal controls over its compliance with SED's guidelines. Officials advised that Hebrew Academy had experienced management changes in the past, including certain employees involved in Hebrew Academy's fiscal operations. As a result, certain documents could not be found and the reasons for certain prior actions could not be explained.

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, 2017, Hebrew Academy reported approximately \$39.4 million in personal service costs for the SED preschool cost-based programs. We identified \$1,707,290 in personal service costs that did not comply with the reimbursement guidelines in the RCM and the CFR Manual. SED, pursuant to a desk review, previously disallowed some of these costs.

1:1 Aides

According to the RCM, salaries of employees who perform tasks for more than one program must be allocated among all programs for which they work. Entities must maintain appropriate documentation reflecting the hours used in this allocation. In addition, according to the CFR Manual, all 1:1 aide costs (salaries, fringe benefits of the aide, and allocated direct and indirect costs) should be reported in a separate cost center on the provider's financial reports.

For the three fiscal years ended June 30, 2017, Hebrew Academy claimed \$4,622,889 (\$3,981,536 in salaries and \$641,353 in fringe benefits) in compensation costs for 394 employees who were reported as teacher aide, teacher assistant, and teacher aide/assistant substitute SED preschool

cost-based program expenses on its CFRs. However, Hebrew Academy's accounting records indicated many of these employees also worked as 1:1 aides. Hebrew Academy did not provide adequate documentation to support its allocation of the compensation costs for 145 of the 394 employees to the SED preschool cost-based programs.

To determine whether Hebrew Academy appropriately reported compensation costs, we interviewed officials and reviewed accounting and other supporting program records indicating how individual employees' salaries were allocated among its programs. However, Hebrew Academy officials could not provide evidence to adequately support their allocations.

We recommend that SED disallow \$646,926 in compensation costs (\$520,873 in salaries and \$126,053 in fringe benefits) that were incorrectly charged to the SED preschool cost-based programs.

Non-Mandated Fringe Benefit Costs

For the three fiscal years ended June 30, 2017, Hebrew Academy reported \$5,616,412 (\$1,851,175 in fiscal year 2017, \$1,750,619 in fiscal year 2016, and \$2,014,618 in fiscal year 2015) in non-mandated fringe benefit costs (e.g., health and life insurance, pension contributions) for its SED preschool cost-based programs. We found that Hebrew Academy incorrectly allocated \$766,955 in non-mandated fringe benefit costs to the SED preschool cost-based programs for certain employees (SEIT teachers, teacher assistants, teacher aides, and office workers) because it did not actually provide these fringe benefits, including health insurance and a pension benefit, to these employees. (These costs should have been charged to other Hebrew Academy programs.)

We recommend that SED disallow \$766,955 in non-mandated fringe benefits that did not comply with the requirements in the RCM.

Non-Program Personal Service Costs

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, entities operating programs must use allocation methods that are fair and reasonable, as determined by the Commissioner of Education's (Commissioner) fiscal representatives.

In the three fiscal years ended June 30, 2017, Hebrew Academy reported \$5,454,460 in personal service agency administrative costs. We found that Hebrew Academy included on its CFRs personal service costs of \$294,766 for services it incurred on behalf of its wholly-owned subsidiary, MKSA.

Hebrew Academy officials stated that 29 agency administrative employees provided only incidental work for MKSA. However, we recommend that SED disallow \$145,746, the portion of MKSA personal service costs included in the CFRs attributable to the SED preschool cost-based programs, as these costs were not shown to be necessary for the preschool programs and/or were not allocated using a fair and reasonable methodology, as required.

Excess Executive Compensation

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

For the three fiscal years ended June 30, 2017, compensation costs for the Executive Director and Assistant Executive Director exceeded the regional median limit by \$240,709. Of this amount, \$113,552 was allocated to the SED preschool cost-based programs, as follows:

- \$112,007 in compensation costs for the Executive Director. Hebrew Academy officials reported \$1,088,431 (\$356,334 in 2014-15, \$415,086 in 2015-16 and \$317,011 in 2016-17) in compensation for the Executive Director position. The total regional median reimbursement limit for the three years for an Executive Director with comparable employment hours was \$851,210. Thus, the total compensation exceeded the regional median limit by \$237,221 (\$1,088,431 - \$851,210). Of the \$237,221 in excess compensation, Hebrew Academy allocated \$112,007 to the SED preschool cost-based programs.
- \$1,545 in compensation costs for the Assistant Executive Director. For 2015-16, Hebrew Academy officials reported \$204,942 in compensation costs for its 0.832 full-time equivalent Assistant Executive Director position. The total regional median reimbursement limit for that year for an Assistant Executive Director with comparable employment hours was \$201,453. Thus, compensation costs exceeded the regional median limit by \$3,489 (\$204,942 - \$201,453). Of the \$3,489 in excess compensation, Hebrew Academy allocated \$1,545 to the SED preschool cost-based programs.

We recommend that SED disallow \$113,552, the excess executive compensation allocated to SED preschool cost-based programs.

Undocumented Personal Service Costs

According to the RCM, costs will not be reimbursable on field audit without appropriate written documentation of costs. Moreover, compensation costs must be based on approved documented payrolls that are supported by employee time records prepared during, not after, the time period for which the employee was paid.

Hebrew Academy officials could not provide documentation to support \$36,042 in compensation costs recorded on the CFRs. We recommend that SED disallow \$34,111, the amount charged to the SED preschool cost-based programs for the three fiscal years ended June 30, 2017.

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, 2017, Hebrew Academy reported approximately \$12.5 million in OTPS expenses for its SED preschool cost-based programs. We identified \$1,166,608 of these expenses that did not comply with SED's reimbursement requirements.

Incorrectly Allocated Property Costs

The RCM states that borrowing transactions shall be evaluated on an overall level of reasonableness as they relate to interest costs and fees paid for professional services.

In 2013, Hebrew Academy consolidated its outstanding \$5.8 million debt by refinancing it with a ten-year, \$9.6 million loan at an annual interest rate of 4.75 percent. The refinanced debt included only \$1.2 million of principal related to the SED preschool cost-based programs.

During the three fiscal years ended June 30, 2017, Hebrew Academy reported \$1,297,635 in interest costs on its CFRs. However, we determined that \$1,132,319 was incorrectly reported as agency administration costs rather than program costs. We determined that \$425,819 of that amount was not interest on debt used to finance building space for the SED preschool cost-based programs and, therefore, should be disallowed.

During these same fiscal years, Hebrew Academy reported \$132,601 in mortgage-related costs, such as closing and loan origination fees, legal fees, and title insurance. However, we found that \$104,081 was incorrectly reported under agency administration costs. Of that amount, \$53,777 should not have been charged to the SED preschool cost-based programs.

We recommend that SED disallow \$479,596 (\$425,819 + \$53,777) in costs not directly related to the SED preschool cost-based programs.

Insufficiently Documented Related-Party Costs

The RCM states that costs will be considered for reimbursement provided such costs are reasonable, necessary, directly related to the special education program, and sufficiently documented.

For the fiscal year ended June 30, 2015, Hebrew Academy included on its CFR \$329,448 in costs incurred by its wholly-owned subsidiary, MKSA. According to Hebrew Academy officials, these OTPS costs were incurred by MKSA employees performing services on behalf of Hebrew Academy. We requested detailed records identifying the specific functions the MKSA employees performed for Hebrew Academy; however, Hebrew Academy officials could not provide adequate records to support these costs.

We recommend that SED disallow \$329,448 in insufficiently documented costs.

Non-Program Costs

According to the RCM, entities operating programs must use allocation methods that are fair and reasonable, as determined by the Commissioner's fiscal representatives.

For the three fiscal years ended June 30, 2017, Hebrew Academy reported \$5,872,884 in OTPS agency administrative costs. We found that Hebrew Academy included on its CFRs OTPS costs of \$330,018 incurred on behalf of its wholly-owned subsidiary, MKSA.

Hebrew Academy officials stated that the administrative employees who incurred those costs only performed incidental work for MKSA. However, we recommend that SED disallow \$159,002, the portion of MKSA's OTPS costs included in the CFRs attributable to the SED preschool cost-based programs, as these costs were not shown to be necessary for the preschool programs and/or were not allocated using a fair and reasonable methodology.

Depreciation Expense

According to the RCM, information relating to the acquisition of fixed assets, equipment, land or building improvements, and any related financing arrangements and grants must be retained as long as the facility is used by any education program the provider operates if this period exceeds seven years. Entities operating programs must use allocation methods that are fair

and reasonable, as determined by the Commissioner's fiscal representatives.

For the three years ended June 30, 2017, we identified \$121,769 in inappropriate depreciation costs on the CFRs, as follows:

- Hebrew Academy reported \$858,657 in equipment, building, and land improvement depreciation for the SED preschool cost-based programs. However, it could not provide sufficient documentation (i.e., invoices) for depreciation transactions totaling \$86,627.
- At some of its locations, program space is shared between the SED preschool cost-based programs and other Hebrew Academy programs. We visited these locations, measured space, examined provider schedules, and interviewed program personnel. We concluded that the SED preschool cost-based programs' allocated building depreciation expense was not fair and reasonable. We determined that \$35,142 in excessive building depreciation was allocated to the SED preschool cost-based programs.

We recommend that SED disallow \$121,769, the amount of depreciation costs inappropriately charged to the SED preschool cost-based programs.

Undocumented and/or Inadequately Documented OTPS Costs

Section 200.9(d) of the Regulations of the Commissioner of Education (Regulations) requires entities operating approved programs to retain all pertinent accounting, allocation, and enrollment/attendance records supporting reported data directly or indirectly related to the establishment of tuition rates for seven years following the end of each reporting year. Further, the RCM states costs will not be reimbursable on field audit without appropriate written documentation.

For the three fiscal years ended June 30, 2017, we identified \$92,294 in OTPS costs that did not comply with RCM requirements because Hebrew Academy did not have adequate supporting documentation, as follows:

- \$34,266 for the rental of a building for which Hebrew Academy could not explain how it was a necessary preschool special education cost;
- \$34,210 in unsupported fiscal consultant costs that were not allowable and/or were for another entity;
- \$22,658 in miscellaneous journal entries for which Hebrew Academy did not provide support; and

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- \$1,160 for miscellaneous unsupported OTPS costs.

We recommend that SED disallow \$76,793, the amount of undocumented OTPS costs charged to the SED preschool cost-based programs.

Recommendations

To SED:

1. Review the disallowances identified by our audit and, if warranted, make the necessary adjustments to the costs reported on Hebrew Academy's CFRs and tuition reimbursement rates.
2. Work with Hebrew Academy officials to help ensure their compliance with the provisions of the RCM and the CFR Manual.

To Hebrew Academy:

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 Hebrew Academy on its CFRs were reasonable, necessary, directly related to the SED preschool cost-based programs, and sufficiently documented pursuant to SED guidelines. The audit focused primarily on expenses claimed on Hebrew Academy's CFR for the fiscal year ended June 30, 2017 and included certain expenses claimed on its CFRs for the two fiscal years ended June 30, 2016.

To accomplish our objective, we reviewed the RCM, the CFR Manual, the Regulations, Hebrew Academy'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 Hebrew Academy officials and staff to obtain an understanding of Hebrew Academy'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 State 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 Hebrew Academy 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 Hebrew Academy's response, officials disagreed with most of our proposed disallowances. Our responses to certain comments are embedded within Hebrew Academy's response. Hebrew Academy 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 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

Hebrew Academy for Special Children, Inc. Summary of Submitted and Disallowed Program Costs for the 2014-15, 2015-16, and 2016-17 Fiscal Years

Program Costs	Amount Claimed on CFR	Amount Disallowed	Amount Remaining	Notes to Exhibit
Personal Services				
Direct Care	\$36,614,943	\$1,442,907	\$35,172,036	A, B, D-I
Agency Administration	2,792,840	264,383*	2,528,457	
Total Personal Services	\$39,407,783	\$1,707,290	\$37,700,493	
Other Than Personal Services				
Direct Care	\$9,562,179	\$501,240	\$9,060,939	A, C, D, H
Agency Administration	2,983,045	665,368	2,317,677	
Total Other Than Personal Services	\$12,545,224	\$1,166,608	\$11,378,616	
Total Program Costs	\$51,953,007	\$2,873,898*	\$49,079,109	

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

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 Hebrew Academy officials during the course of our audit.

- A. RCM Section II – Costs will be considered for reimbursement provided such costs are reasonable, necessary, directly related to the special education program, and sufficiently documented.
- B. RCM Section II.13.A.4.(a) – Compensation (i.e., salaries plus fringe benefits) for an entity's staff whose function is that of Executive Director, Assistant Executive Director, or Chief Financial Officer will be directly compared to the regional median compensation for comparable administration job titles of public school districts. Reimbursement of employee compensation for Executive Director, Assistant Executive Director, or Chief Financial Officer shall not exceed the median compensation paid to comparable personnel in public schools for similar work and hours of employment in the region in which the entity is located.
- C. RCM Section II.28 – Borrowing transactions shall be evaluated on an overall level of reasonableness as they relate to interest costs and fees paid for professional services.
- D. RCM Section III.1 – Section 200.9(d) of the Commissioner's Regulations requires entities operating approved programs to retain all pertinent accounting, allocation, and enrollment/attendance records supporting reported data directly or indirectly related to the establishment of tuition rates for seven years following the end of each reporting year. Information relating to the acquisition of fixed assets, equipment, land or building improvements and any related financing arrangements and grants must be retained as long as the facility is used by any education program the provider operates if this period exceeds seven years. Costs will not be reimbursable on field audit without appropriate written documentation.
- E. RCM Section III.1.A – Compensation costs must be based on approved, documented payrolls. Payrolls must be supported by employee time records prepared during, not after, the time period for which the employee was paid.
- F. 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.
- G. RCM Section III.1.M.1.(i) – Salaries of employees who perform tasks for more than one program must be allocated among all programs for which they work.
- H. RCM Section III.1.M.2 – Entities operating programs must use allocation methods that are fair and reasonable, as determined by the Commissioner's fiscal representatives.

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- I. CFR Manual Section 8.0 – Expenses and revenues and FTE enrollment for approved 1:1 teacher aides (preschool and school age) must be reported as a separate column (Program Code 9230).

Agency Comments - State Education Department



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

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, 2018-S-68, Hebrew Academy for Special Children, Inc. (Hebrew Academy) - Compliance With the Reimbursable Cost Manual.

Recommendation 1:

"Review the disallowances identified by our audit and, if warranted, make the necessary adjustments to the costs reported on Hebrew Academy's CFRs and 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:

"Work with Hebrew Academy officials to help ensure their compliance with the provisions of the RCM and the CFR Manual."

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



Deputy Commissioner

Sharon Cates-Williams

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



December 30, 2019

Kenrick Sifontes
Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street – 11th Floor
Albany, NY 12236-0001

Re: Response to Final Draft Audit Report 2018-S-68, Compliance with the Reimbursable Cost Manual, Hebrew Academy for Special Children, Inc.

Dear Mr. Sifontes:

On behalf of Hebrew Academy for Special Children, Inc. ("HASC"), the following is the agency's response to the OSC final draft audit report with respect to the three fiscal school years ended June 30, 2017.

Background

HASC is a New York based not-for-profit organization approved by the New York State Education Department ("SED") to provide full-day and half-day Special Class ("SC") preschool programs, full-day and half-day Special Class in an Integrated Setting ("SCIS"), preschool special education itinerant teacher ("SEIT") services, preschool evaluation, preschool related services, one-to-one aide services and Early Intervention services to children with disabilities ages birth to five. In addition, NYSED approved HASC to operate school-age special classes, and as a result, various salaried and hourly employees worked in multiple programs performing direct and non-direct care staffing activities.

During school year 2016-17, HASC served approximately 355 preschool children in its center/cost-based programs, approximately 191 children in its SEIT program and 32 preschool children in its one-to-one aide programs at four sites in Brooklyn, Woodmere, Spring Valley, and Parksville in school years 2014-15 and 2015-16.

HASC firmly believes that the OSC must revise the "Background" section of its report to include the fact that Parksville also operated its preschool program during school years 2014-15 and 2015-16, particularly given its relevancy with respect to the OSC's "Incorrectly Allocated Property Costs" finding.

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State Comptroller Comment – The draft report indicated the four locations at which Hebrew Academy operated SED preschool cost-based programs during the 2016-17 school year. Hebrew Academy did not operate an SED preschool cost-based program at Parksville in 2016-17.

Audit Findings and Responses

1:1 Aides Response

RCM Criteria:

Compensation

Salaries of employees who perform tasks for more than one program must be allocated among all programs for which they work.

Staffing Ratios

Staff-to-student ratios are defined in Part 200 of the Commissioner's Regulations. A specific approved program's student-to-staff ratio is also defined in that program's programmatic approval letter from Office of Special Education. Direct care personnel in excess of, or not prescribed by such ratios, are not reimbursable, unless supported by the student's IEP requirements and the program generated summary data relating to those IEPs. A Department programmatic review and approval of variations from these ratios is required for costs of additional staff to be reimbursable.

New York State Consolidated Fiscal Reporting Claiming Manual:

Subject: Appendix H – SED Program Types, Section: 41.0 Page: 41.6

9230 – Special Education 1:1 Aides

This cost column should include the additional revenue and expenses for child specific teacher aides/assistants for school age and preschool students recommended by the CSE/CPSE and included as part of the *student's Individualized Education Program*.

Full-Time Equivalent (FTE) Enrollment Section 175.6 of the Commissioner's Regulations provides the framework for calculating student enrollment for approved programs. The following specific standards apply to the calculation:

For preschool special class and special class in an integrated setting programs that operated for more than five hours per day, full-time equivalent enrollment shall not be prorated for the hours over five hours per day. For preschool special class and special class in integrated setting programs that operate for less than five hours per day, full-time equivalent enrollment shall be prorated as follows. For the following examples, assume a total non-prorated FTE enrollment for the program of 50.000 as calculated consistent with the previous subsections 7 A.- D. 2.5 hr. program: $50.000 \times 2.5 \text{ hr.} / 5.0 \text{ hr.} = 25.000$ prorated FTE 3.0 hr. program: $50.000 \times 3.0 \text{ hr.} / 5.0 \text{ hr.} = 30.000$ prorated FTE

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According to the OSC draft audit report, HASC did not provide adequate documentation to support its reporting of the compensation costs for 151 of the 394 employees to the SED cost-based programs. HASC disagrees. HASC's Fiscal Department provided the OSC with the following, as appropriate:

- One-to-one aide monthly reporting forms, including the names of the students receiving the one-to-one aide service and the staffing assigned;
- A Department of Education ("DOE") monthly attendance log, including the educational staffing (Teacher and Teacher Assistants), the program cost center, the classroom, the classroom ratio and site; and
- HASC's hiring approval form, which indicates among other items, the staff position, how the position would be utilized and how staff would be paid (hourly or salaried).

State Comptroller Comment – Hebrew Academy had not yet provided monthly attendance logs, 1:1 Aide monthly reporting forms, and hiring approval forms for the 2014-15 school year. Moreover, the documentation provided for 2015-16 and 2016-17 was insufficient as it pertained to some, not all, of the 394 shared employees.

In addition, HASC reviewed the OSC's supporting documentation regarding its decision to reclassify employees' hours and costs from HASC's cost-based program to the one-to-one aide program and found multiple reporting issues with these adjustments.

State Comptroller Comment – This statement is incorrect. According to the CFR Manual, expenses for the fixed-fee (fee for service) 1:1 Aide program must be reported in a separate cost center on the CFR. Consequently, such costs would be duplicative if reported in the SED preschool cost-based programs. Furthermore, we did not reclassify employee hours and costs. We disallowed costs that were unrelated to the SED preschool cost-based programs.

First, the OSC incorrectly utilized HASC's payroll register to calculate its finding rather than actual salaries reconciling to the Trial Balance and CFR. That method is inaccurate since it does not take into account the accruals. Attachment A demonstrates that the OSC's worksheet failed to include accruals for fiscal reporting period 2017, including the retroactive accrual, for four employees selected by the OSC who worked in the one-to-one aide and center-based program cost center (see **Attachments C, A and B**).

For example, the final annual salary reported on the position control for DA (a Teacher Assistant reported in PTC 232) amounted to \$20,088.43, while the OSC's calculation for that employee's annual salary totaled \$18,493 because due to the fact that the OSC based the salary on the payroll registry and failed to include the accruals. This error resulted in an underreporting of \$1,595 of salary costs and an erroneous finding of \$1,745 for that *one* employee on the OSC's spreadsheet (see **Attachment C**). Once the accruals are applied correctly to that employee, the OSC's disallowance reduces to \$150.

State Comptroller Comment – At the time the draft report was being prepared, documentation to support the accruals had not yet been provided by Hebrew Academy.

Subsequently, we received and reviewed documentation, including accruals, and modified the recommended disallowances for the final audit report.

Second, the OSC's worksheets indicate that the OSC incorrectly adjusted an employee's staffing time and costs. Specifically, the OSC arbitrarily decided to halve the staffing time and costs of JV during the ten-month school session, a one-to-one aide in the summer session and a teacher assistant in the classroom during the ten-month session in a 6:1:2 center/cost-based classroom (Program 9101) because two additional employees (KB and JS) were included on the DOE monthly attendance log during the ten-month school session (**see Attachment D**). By arbitrarily removing the reporting of JV from the remaining group of employees *who were all staffed to maintain program compliance*, and *not* calculating the hours for *all* of the employees included on the attendance log, the OSC failed to calculate the total hours collectively for these same employees, which amounted to 3,595 (**see Attachment E**).

For example, JV's reported teacher aide salary amounted to \$15,254, instead of \$15,337, not including an accrual adjustment error of \$80. In addition, the OSC's incorrect halving calculation results in JV's salary amounting to \$6,587 to the center-based program for the ten-month school session, and this is just one employee out of 185 employees. The OSC's mistake totaled \$6,670 overreporting of salary to the one-to-one program cost center (**see Attachment C**), which is part of the recommended disallowance totaling \$916,091.

State Comptroller Comment – These statements are misleading. We did not incorrectly adjust employees' staff times, nor did we arbitrarily decide to halve staff times and costs. Instead, in the absence of time studies and other allocation methodologies, we reviewed the attendance logs, 1:1 Aide monthly reporting forms, and other records provided by Hebrew Academy and calculated the appropriate costs that should have been reported to the SED preschool cost-based programs.

In addition, and contrary to the draft audit report, Educational (Special Education Teachers and Teacher Aides/Assistants) staffing during the three audited school years was in compliance with all staff to student teacher ratios in each of the preschool cost-based programs. HASC deployed its salaried and hourly employees efficiently and reported the appropriate number of teachers and teacher assistants in each of its aforementioned preschool programs based on the number of classes and types of classroom ratios approved in its program approval letter.

State Comptroller Comment – Our draft report did not opine on Hebrew Academy's compliance with staff-to-student ratios and whether Hebrew Academy deployed its salaried and hourly employees efficiently.

Moreover, the number of teacher aide/assistant/assistant sub staffing reported in its one-to-one program cost center complied with each student's Individualized Education Program ("IEP"), and also corresponded with the number of student FTE's reported on schedule SED-1 during each school session. That statistical information is significant because the OSC states that HASC "employees services were incorrectly allocated to the cost-based programs." Since the factual data reported on HASC'S CFR's proves differently, HASC disagrees with the OSC.

State Comptroller Comment – We audited Hebrew Academy's compliance with the requirements in the RCM and the CFR Manual as they pertain to the SED preschool cost-

based programs. We stand by our conclusion that these costs were incorrectly allocated to the SED preschool cost-based programs.

Further, not aggregating the actual staffing hours with the actual school days in session led the OSC to make inaccurate reclassifications to a non-cost-based program which resulted in an inaccurate finding.

State Comptroller Comment – This statement is incorrect. We did not reclassify costs to the “non-cost-based program.” Moreover, aggregating actual staffing hours and comparing them with actual school days in session in one non-cost-based program, as Hebrew Academy suggests, would not have provided evidence that excess hours were provided to the SED preschool cost-based programs. As we state in the audit report, Hebrew Academy offers many other non-cost-based programs. Therefore, an overage of teaching hours in one program does not mean those extra hours should be applied to the SED preschool cost-based programs.

After finding these accounting errors and arbitrary reclassifications on the OSC's documents, HASC prepared a staffing measurement table of the staffing hours of all employees who were hired to provide one-to-one aide services to the preschool and school-age population, and used that data to arrive at a reasonable outcome which includes the following:

- Total care days reported on schedule SED-1;
- Required hours to meet the IEP for the student FTE's reported on schedule SED-1 for the three years ending June 30, 2017 according to Section 175.6 of the Commissioner's Regulations, which provides the framework for calculating student enrollment (refer to RCM criteria included above in the one-to-one aide section); and
- The total amount of staffing hours reported on schedule CFR-4 in position title code 228 (Teacher Aides), 230 (Teacher Aides/assistant Sub) and 232 (Teacher Assistant). (**see Attachment F**).

Based on the foregoing, HASC's staffing measurement efficiency in meeting the IEP requirements for students receiving one-to-one service totaled 101% for the three years ending June 30, 2017. As a result, that measurement outcome demonstrates that HASC's supporting documentation adequately supports its allocations for the staffing reported in the one-to-one aide cost center. HASC employs many hourly employees on an as needed basis in its one-to-one aide program, and was able to utilize them efficiently in order to maintain program compliance.

Finally, according to the OSC's disallowance recommendation totaling \$916,091, that amount of staffing costs increases the annual preschool staffing hours by 67,174 for the three years ending June 30, 2017, which would then bring the staffing efficiency measurement to 133% (1.18 in SY 16-17, 1.29 in SY 15-16 and 1.50 in SY 14-15) or 1.3 staff for every one child (**see Attachment F**). That type of reclassification cannot be mathematically correct when the New York State Consolidated Fiscal Reporting and Claiming Manual, Section 8.0, provides that the maximum staffing ratio cannot exceed 1:1. Accepting the OSC's calculation would compromise Part 200

Regulations of the Commissioner of Education and the Regional Weighted Average Per Diem 1:1 Aide Tuition Rates approved by the NYSED Division of Budget and Rate Setting Unit Departments.

State Comptroller Comment – We disagree; our calculations did not compromise Part 200 Regulations of the Commissioner of Education and the Regional Weighted Average Per Diem 1:1 Aide Tuition Rate approved by SED and the Division of the Budget. Moreover, Hebrew Academy's staffing measurement table is flawed, as it pertains only to the fixed-fee 1:1 Aide program and does not support the cost Hebrew Academy reported for SED preschool cost-based programs. Further, as previously stated, we did not reclassify employee hours and costs.

Prior to the draft audit report being issued on November 27, 2019, and even during the final exit conference, HASC asked the OSC audit team how 185 employees employed at HASC, who were providing a sufficient amount of one-to-one aide staffing time to only 90 children, did not meet the staffing criteria during the three audited school years. According to the OSC's supporting documents, it was apparently because many of the one-to-one aide employees also worked in the center-based and one-to-one aide cost centers. Rather than the OSC reaching this conclusion, the one-to-one aide program should have been examined more carefully in terms of the amount of staffing hours reported on HASC's CFR's prior to the OSC's sample selection request for supporting documentation on 185 employees serving only 90 children.

State Comptroller Comment – Hebrew Academy employees worked in various programs, including the SED preschool cost-based and fixed-fee 1:1 Aide programs. We requested and reviewed documentation to support the cost allocated to the SED preschool cost-based programs and found that Hebrew Academy incorrectly allocated certain costs that should have been reported in the fixed-fee 1:1 Aide program cost center.

HASC firmly believes that the measurement of data reported by HASC in multiple program cost centers was fair and reasonable and most importantly, in accordance with each student's IEP. Instead, the OSC arbitrarily reclassified more staffing hours from the preschool center-based operation into the one-to-one aide program, which essentially forces HASC to be out of compliance in its cost-based program by understaffing its center-based programs and overstaffing the one-to-one aide program. The end result is an inaccurate finding.

State Comptroller Comment – The measurement of data reported by Hebrew Academy was not accurate. The cost reported under the SED preschool cost-based programs should have been reported to the fixed-fee 1:1 Aide program.

For the foregoing reasons, HASC disagrees with the OSC's recommended disallowance totaling \$916,091.

State Comptroller Comment – Based on the review of additional documentation provided by Hebrew Academy, we reduced the disallowance from \$916,091 to \$646,926.

Non-Program Personal Service Costs Response

RCM Criteria

Charges from Parent or Related Organizations Charges to programs receiving administrative services, insurance, supplies, technical consultants, etc. from a parent or related organization are reimbursable provided they are not duplicative in nature, provide a direct benefit to subsidiary charged and based on actual direct and indirect costs, allocated to all programs on a consistent basis and defined as reimbursable in the Regulations of the Commissioner of Education, the CFR Manual or this Manual.

HASC disagrees with the OSC's analysis regarding the \$145,796 disallowance resulting from a portion of HASC agency administrative services which were deemed not necessary to HASC's preschool cost-based programs. HASC disagrees that *all* 29 agency administrative employees should have been charged to MKSA because there were only 12 agency administrative employees who were actually providing non-duplicative agency administrative services to MKSA during the audited school years.

HASC provided agency administrative services to its affiliate, MKSA, which operated independently as an approved provider of Early Intervention and SEIT services prior to its affiliation with HASC in school year 2014-15. When HASC and MKSA became affiliated, MKSA still maintained the majority of its agency and program administrative staff it had employed while operating independently in previous years; therefore, only a portion of HASC's executive team oversaw that site's operation in order to avoid duplicating services and to make effective management decisions relative to the agency's fiscal viability.

In fact, at the final exit conference, HASC communicated to the OSC that MKSA operated as a separate site, provided primarily Early Intervention and SEIT home-based services and were managed by its own agency administrative staff, including 12 of HASC's non-duplicative employees. HASC provided the OSC with several supporting documents, which demonstrated how MKSA operated independently with many of its staff to avoid duplication. MKSA maintained relatively the same number of agency and program administrative staffing with the exception of removing its Executive Director. MKSA operated differently compared with other HASC programmatic sites by employing an accountant, bookkeepers, billing clerks, billing supervisors, insurance claim billers, director of services who provided business management services, a program director who provided compliance services and an office worker who assisted with technology support. HASC did not employ any of these types of positions at any of its programmatic sites as supported by the data on HASC's position control and on the CFR's in schedule CFR-4 in its 500 position title codes which included only Program Directors, Assistant Program Directors, Supervisors of Social Services, Education Department Coordinators and Receptionists.

HASC agency administrative employees provided many of these duties for *all* HASC sites but did not provide those same services for MKSA to avoid duplication. For additional supporting evidence, HASC has prepared Attachment F, which demonstrates the job positions and agency administrative duties provided by both HASC and MKSA for each employee (see **Attachment G**); that attachment fully explains the infrastructure and supports HASC's claim that the \$145,796 added by the OSC to MKSA are duplicative.

For the foregoing reasons, HASC disagrees with the OSC's recommended disallowance totaling \$145,796.

State Comptroller Comment – The recommended disallowance remains. Based on our review of the management service agreement between Hebrew Academy and MKSA and other documentation and interviews with Hebrew Academy's agency administration employees, we determined that Hebrew Academy's employees provided services to MKSA. Therefore, the \$145,796 should have been allocated to MKSA rather than to the SED preschool cost-based programs.

Non-Mandated Fringe Benefit Costs Response

HASC Employee Handbook

HASC utilized the criteria in its Employee Handbook, which was given to the auditors during HASC's audit, to reasonably allocate non-mandated fringe benefit costs across the various programs according to the employee's status (salaried or hourly) during the two ending school years June 30, 2017. The following includes the relevant criteria:

Salaried Regular Full-Time Employee:

You are considered a salaried full-time employee if your workschedule is 30 hours per week or more (27.5 paid hours or more per week) and, as per your most recent employee hire or status change form, you have been notified that you are considered a salaried employee. *Salaried regular full-time employees are generally eligible for all of HASC's benefit programs subject to the terms and conditions of the applicable plans.*

Salaried Regular Part-Time Employee:

You are considered a salaried part-time employee if your work schedule is at least 20 but less than 30 hours per week (at least 17.5 but less than 27.5 hours paid hours per week) and, as per your most recent employee hire or status change form, you have been notified that you are considered a salaried employee. Salaried regular part-time employees whose regularly work schedule is at least 20 hours per week (17.5 paid hours) are generally eligible for all of the HASC's benefit programs subject to the terms and conditions of the applicable plans. While they do receive all legally mandated benefits (such as Social Security and workers' compensation insurance), salaried regular part-time employees who regularly work less than 20 hours per week (17.5 paid hours) are generally ineligible for all of HASC's other benefits programs unless otherwise noted in this handbook.

Health Insurance:

HASC offers eligible salaried regular full-time (30+ hours) and salaried regular part-time (20+ hours) employees the opportunity to enroll in the group medical, dental, and life insurance programs after 90 days of employment. In order to participate in these plans an employee must be continuously employed in a salaried regular full-time (30+ hours) or salaried regular part-time (20+ hours) position for 90 days or have a change of status to salaried regular full-time or part-time and have worked daily for the past 90 days. Upon becoming eligible to participate in these plans, you will receive SPDs describing the benefits in greater detail. If an employee does not

enroll when initially eligible, enrollment is not possible until the next open enrollment (except under certain circumstances).

All hourly employees who work 30 hours or more per week (or 130 hours per month over a 12-month period) are eligible for medical benefits only.

Defined Contribution Plan:

HASC offers a retirement plan to all employees as long as you meet the plans' requirements. You are eligible to participate in the plan on either January 1st or July 1st following your completion of 1 year of service in which you have been paid for at least 1000 hours of work and have attained age 21. Hours of paid time include hours you actually worked, paid vacation time used, paid sick time used, paid personal time used, paid holidays and paid school breaks. Lunch time is not paid time.

Earned benefit depends on a number of factors and is fully funded by HASC. *After 2 plan years (July 1 – June 30) during which you have been paid for at least 1000 hours you are 20% vested.* For each additional plan year that you are paid for at least 1000 hours you will earn an additional 20% vesting to a maximum of 100%.

Hourly Regular Employee:

You are considered an hourly employee if, as per your most recent employee hire or status change form, you have been notified that you are considered an hourly employee. An hourly regular employee may be full-time or part-time. While they do receive all legally mandated benefits (such as Social Security and workers' compensation insurance), *hourly regular employees are generally ineligible for most of HASC's other benefits programs.* Hourly employees work on an as needed basis only and, therefore, are ineligible to accrue personal, holiday and vacation time.

RCM Criteria

Entities operating programs must use allocation methods that are fair and reasonable, as determined by the Commissioner's fiscal representatives.

New York State Consolidated Fiscal Reporting and Claiming Manual

New York State Subject: CFR-1 – Program/Site Data Section: 13.0 Page: 13.6 Consolidated Fiscal Reporting and Claiming Manual Reporting Period: July 1, 2014 to June 30, 2015 and 2015 Issued: 05/15 Section B: Expenses Personal Services)

New York State Subject: CFR-1 – Program/Site Data Section: 13.0 Page: 13.6 Consolidated Fiscal Reporting and Claiming Manual Reporting Period: July 1, 2015 to June 30, 2016 Issued: 05/16 Section B: Expenses Personal Services)

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New York State Subject: CFR-1 – Program/Site Data Section: 13.0 Page: 13.6 Consolidated Fiscal Reporting and Claiming Manual Reporting Period: July 1, 2016 to June 30, 2017 Issued: 07/17 Section B: Expenses Personal Services)

Service providers may use actual fringe benefits or a fringe benefit percentage derived from actual costs on an agency wide or program specific basis.

Appendix J – Allocating Expenses for Shared Programs/Site Section 43.0 Page 43.4:
If the recommended allocation method is not reasonable, the Agency Provider may determine a more reasonable method of allocation.

To begin, HASC communicated to the OSC audit team that HASC used two fringe allocation methodologies in the three audited school years ending June 30, 2017; one allocation methodology which was used by HASC in previous fiscal reporting periods and which remained in effect through school year 2014-15; the other methodology was developed because the NYSED Rate Setting Unit and Division of Budget approved a new rate methodology for the SEIT program beginning in school year 2015-16. Consequently, HASC's new methodology was developed in order to comply with RCM criteria included in Section I marked "Fiscal Viability."

According to the RCM, "[t]o be considered fiscally viable, the provider's balance sheet should show a positive fund balance or net assets, an acceptable current ratio (current assets divided by current liabilities) of 1:1 or greater and sufficient working capital (current assets minus current liabilities) to demonstrate solvency." HASC complied with that criteria and modified its fringe methodology based upon generally eligible and ineligible non-mandated benefits for two groups of employees, salaried and hourly, in accordance with its Employee Handbook.

HASC disagrees with the OSC's disallowance of \$766,955 for the following reasons:

First, the fringe methodology utilized by HASC in school year 2014-15 is similar to what other providers located in various regions across New York State reported on their CFR's, who were previously audited by the OSC, and whose methodology was accepted by the OSC. HASC has included supporting attachments of five agencies who were previously audited by the OSC, that applied a similar methodology as HASC did in school year 2014-15 (**see Attachment H**). The OSC did not recommend a disallowance based on the fringe methodology for any of these agencies and, more importantly, no revision was made to the methodology used by these five agencies. Moreover, four of these agencies operated SEIT and used salaried and hourly employees, which is also similar with how HASC conducted in its operations. In addition, we included the actual data reported by each of these agencies from past CFR schedules (CFR-1 and CFR-4) to demonstrate how the fringe percentage for each of these agencies, including HASC distributed costs equitably across each program cost center.

State Comptroller Comment – It is incorrect to state that we treated other providers differently. In each audit, our decisions are based on applying SED's requirements to our review of documentation. Hebrew Academy's methodology for calculating non-mandated fringe benefits was flawed, as it included employees who did not receive non-mandated

fringe benefits. Our recommended disallowance was based on a fair and reasonable allocation of cost to the SED preschool cost-based programs for those employees who received non-mandated fringe benefits.

Second, the OSC arbitrarily decided to apply HASC's updated fringe allocation methodology, which was developed for school years 2015-16 and 2016-17, to a prior school year (2014-15), when the methodology applied during that school year was reasonable and acceptable and only changed because of NYSED's rate methodology change to the SEIT program effective school year 2015-16.

Third, for school years 2015-16 and 2016-17, the OSC disregarded HASC's new and reasonable allocation methodology which was based on the information contained in HASC's Employee Handbook and created its own methodology. HASC believes its methodology should be applied. The Consolidated Fiscal Reporting and Claiming Manual provides that "[e]ntities operating programs must use allocation methods that are fair and reasonable" and "[s]ervice providers may use actual fringe benefits or a fringe benefit percentage derived from actual costs on an agency wide or program specific basis." And HASC did that.

State Comptroller Comment – We did not disregard Hebrew Academy's methodology, nor did we arbitrarily apply the 2015-16 and 2016-17 fringe benefit allocation methodology to the 2014-15 school year. For the three years, we determined that Hebrew Academy did not provide non-mandated fringe benefits to certain employees. Those employees were excluded from the calculation of non-mandated fringe benefits, resulting in a lower non-mandated fringe benefit cost for the SED preschool cost-based programs.

HASC's allocation methodology includes two significant components for eligible employees: health insurance and a defined contribution plan.

According to HASC's Employee Handbook an employee is "*eligible to participate in the [Defined Contribution Plan] plan on either January 1st or July 1st following...completion of 1 year of service in which [the employee has] been paid for at least 1000 hours of work and [has] attained age 21.*" Therefore, it is evident that *hourly employees are generally ineligible for most of HASC's other benefits programs.* Moreover, according to the supporting attachments used by HASC in its allocation methodology, approximately 70% of hourly employees worked in the SEIT and one-to-one aide program, 15% of worked in the camp and fee for service programs and only approximately 15% worked in the cost-based programs (see Attachment I).

Therefore, in order to apply a fair and reasonable allocation method, HASC removed ineligible hourly employees who did not receive a pension, and allocated eligible employees pension costs back to their respective programs. In addition, HASC equitably allocated eligible salaried employees' medical costs back to the program cost center in which they worked and any excess medical costs were proportionately redistributed back to the eligible preschool and school-age programs to arrive at the final non-mandated fringe benefit reporting. Based on the foregoing, the disallowance should amount to \$3,926 in school year 2016-17 (see Attachment I).

State Comptroller Comment – Hebrew Academy's Employee Handbook simply established eligibility for receiving fringe benefits. It was not used to fairly, reasonably, and

consistently allocate non-mandated fringe benefit costs in 2014-15 and was only partially applied in 2015-16 and 2016-17. This resulted in overallocating non-mandated fringe benefit costs to the SED preschool cost-based programs.

Finally, according to the fringe recalculation spreadsheet prepared by the OSC, HASC found a serious flaw in the OSC's revised allocation methodology. For example, we found that *zero* adjustments were made for employees who didn't receive healthcare or pension benefits in the school-age cost-based programs but found that adjustments were made to the preschool cost-based programs in its 2017 supporting document. Specifically, HASC knows that there were approximately \$549,605.55 in ineligible salary expenses for employees who did *not* receive a pension in the school age program and also knows that there were no adjustments made for several ineligible employees who did not receive medical benefits (see **Attachment J**). Based on the foregoing, the OSC did *not* use fair and reasonable allocation methods. Therefore, the allocation methodology was not distributed correctly to the preschool education programs.

State Comptroller Comment – OSC's methodology was not flawed. We requested and reviewed Hebrew Academy's allocation methodologies and their basis, applied them to the preschool costs reported on the CFRs, and disallowed excess costs. Because we only audited Hebrew Academy's SED preschool cost-based programs, we did not opine on ineligible salary expenses and adjustments for the school-age programs.

For the foregoing reasons, HASC disagrees with the OSC's disallowance.

State Comptroller Comment – We stand by our recommended disallowance.

Incorrectly Allocated Property Costs Response

RCM Criteria

Mortgage interest expense will be reimbursed, as part of occupancy costs effective with the actual date of occupancy in the new location. Occupancy refers to the site where the students are physically located and receiving services as prescribed on their IEPs. Occupancy costs of the prior location are reimbursable up to the actual date of occupancy in the new location.

HASC reviewed the interest on debt reported on its CFR's during the three years ending June 30, 2017, and found that the agency provided records of checks disbursed at the closing, which demonstrate that the refinancing related to HASC's Woodmere, Remsen, Parksville and 14th Avenue building locations (see **Attachment K**). *All* of these sites were approved to operate cost-based preschool and school-age programs. However, 14th avenue only operated school-age.

According to the OSC supporting documents, the OSC claims that the Parksville and Remsen sites should be considered non-allowable because the building space was not utilized by HASC for its preschool cost-based programs. That statement is false.

State Comptroller Comment – We did not claim that the Parksville and Remsen sites had no SED preschool cost-based programs. We requested documentation to support the costs of the preschool summer class at the Parksville location. We recommended that these costs be disallowed because Hebrew Academy could not provide the documentation.

HASC has included in Attachment K the following supporting documents, which serve as justification that the interest on debt was used to finance building space for both its preschool and school-age cost-based programs at all of its sites:

- Program Approval Letter, which includes preschool program codes, preschool student to teacher ratio, the number of preschool classes and children approved to receive special education programs at all approved sites, *including Parksville*;
- A detailed listing of the debt and properties associated with the majority of the \$9,577,000 debt refinancing in note 4 in school years 2012 and 2013 financial statements by all of the approved sites; and
- School year's 2015 financial statements and notes, which detail how a portion of the mortgage proceeds (\$861,000) were used to purchase a new building in Rockland (Spring Valley, NY).

State Comptroller Comment – We reviewed the documentation and found it was insufficient to support the interest cost reported for the SED preschool cost-based programs.

The OSC mistakenly reported the existing mortgage totaling \$1,576,403 to the Remsen site, when in fact that mortgage was for Woodmere. The payee information marked Stewart Title Insurance Company totaling \$2 million was related to the Remsen site. HASC has attached supporting documentation (**see Attachment K**).

State Comptroller Comment – Initially, Hebrew Academy advised that the mortgage was for the Remsen site. However, in a November 12, 2019 email, officials acknowledged they had made a mistake and the mortgage was for the Woodmere site.

The program approval letter issued by the NYSED proves that the interest on debt was used to finance building space for HASC's cost-based programs in the following counties:

- Kings (Brooklyn);
- Nassau (Long Island);
- Rockland; and
- Sullivan (Parksville).

State Comptroller Comment – The approval letter issued by SED makes no reference to mortgage documents, property costs, and associated interest on debt.

HASC has included a revised breakdown by site of how the proceeds were allocated to each of the buildings utilizing space for the preschool and school-age cost-based programs for the three ending school years June 30, 2017 (**see Attachment L**).

With respect to the data being reported incorrectly as agency administration costs rather than program costs, HASC believes that the costs distributed to each program cost center was fair and reasonable given that all of the sites enrolled preschool and school-age students with the exception of two: the 14th Avenue site, which enrolled *only* school-age students and Rockland, which enrolled *only* preschool children. However, given that the mortgage amounts totaled

\$719,022 for 14th Avenue and \$861,000 for Rockland, the 14th Avenue mortgage costs should also be distributed to all programs in order to be fair and reasonable since the OSC had no issue with accepting the ratio value cost distribution from Rockland, which serves only preschool. Moreover, since the school-age students only accounted for 15% of the population in Woodmere and 25% in Remsen, and the total operating costs for all of the school-age and Parksville cost center/sites amounted to 30%, the cost allocation overall is fair and reasonable (**see Attachment M**).

State Comptroller Comment – Hebrew Academy asserts that reporting interest cost as agency administration cost rather than as direct program cost is fair and reasonable. We disagree. The interest cost in question should, according to the RCM, be reported as direct program cost on the CFR-1. It was not. In addition, a population ratio is not synonymous with ratio value.

For the foregoing reasons, HASC disagrees with the OSC's disallowance.

State Comptroller Comment – We reviewed additional documentation provided by Hebrew Academy and reduced the recommended disallowance for incorrectly allocated property costs to \$479,596.

Insufficiently Documented Related Party Costs Response

HASC has already provided supporting documentation, including the data for the allocation methodology, employee hiring approval forms, job descriptions and time and payroll records for school year 2014-15 as support for the SEIT program for which MKSA staff provided services. *In fact, the OSC already approved similar costs for the same group of employees reported in school year 2015-16 totaling \$292,975.*

For the foregoing reasons, HASC disagrees with the OSC's disallowance of \$329,488 of the \$488,450 disallowance.

State Comptroller Comment – The disallowance remains. We reviewed the documentation for the MKSA employees whose costs were reported to Hebrew Academy's SED preschool cost-based programs and determined it was insufficient to show that these employees provided services to Hebrew Academy. Moreover, we did not approve \$292,975 in related-party costs allocated to Hebrew Academy for the same employees in 2015-16.

Other Item of Note

Our official response to the OSC was due on Friday, December 27. We requested a one-week extension in order to respond completely and appropriately due to the holiday season and staffing issues in addition to filing the 2018-19 CFR, which needed to be transmitted to the NYSEDRSU prior to December 31st. The OSC extended the deadline by only one hour to Monday December 30 at 10AM. Therefore, our aforementioned responses do not include all of our responses to all of the findings with which we do not agree.

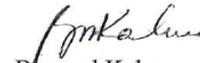
State Comptroller Comment – According to the RCM, Hebrew Academy is required to retain documents for at least seven years. Despite repeated requests throughout the audit,

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Hebrew Academy officials had difficulty providing documentation to support some of the expenses claimed on the CFRs they filed with SED and often asked OSC for more time to provide the requested documentation. In fact, in an email dated April 2, 2019, Hebrew Academy's controller stated there were only "scanty" work documents for the 2014-15 and 2015-16 fiscal years and part of 2016-17, "many of which are not clear, and some contradict each other." Further, on September 5 and September 23, 2019, Hebrew Academy's executive director requested additional time to respond to preliminary audit findings. In addition, the response to OSC's draft report was due on December 26, 2019. It seems disingenuous that, more than 12 months after the beginning of the audit, Hebrew Academy officials claim that they did not have enough time to provide all appropriate documentation and to respond to our audit findings.

Thank you for your consideration of our responses.

Respectfully submitted,


Bernard Kahn,
Chief Executive Officer

c.c. Ms. Shannon Tahoe, Acting Commissioner
Gene Berenson, Audit Manager
Sheila Jones, Audit Supervisor
Traci Coleman, Director New York State Education Department (RSU)
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