

THOMAS P. DINAPOLI
COMPTROLLER



110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

October 26, 2016

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

Ms. Donna Ringholz
Executive Director
Bornhava
25 Chateau Terrace
Amherst, NY 14226

Re: Compliance With the Reimbursable
Cost Manual
Report 2016-S-23

Dear Ms. Elia and Ms. Ringholz:

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

Background

Bornhava, a not-for-profit organization located in Buffalo, New York, is an SED-approved provider of special education services. Bornhava offers a range of preschool special education services and programs to children with disabilities from birth to five years of age. During the period July 1, 2013 through June 30, 2014, Bornhava provided Preschool Special Class services, Preschool Special Education Itinerant Teacher (SEIT) services, and Preschool Integrated Special Class services (collectively referred to as the Programs) to about 150 students from school districts located in Erie and Niagara counties.

The counties that use Bornhava's preschool special education services pay tuition to Bornhava based on reimbursement rates set by SED. The State, in turn, reimburses the counties

59.5 percent of the tuition that counties pay. SED sets the special education tuition rates based on financial information, including costs, that Bornhava reports on the annual Consolidated Fiscal Reports (CFRs) that it submits to SED. Costs reported on the CFR must comply fully with the guidelines in SED's Reimbursable Cost Manual (RCM) regarding the eligibility of costs and documentation requirements, and must meet the reporting requirements prescribed in the Consolidated Fiscal Reporting and Claiming Manual (CFR Manual). For the fiscal year ended June 30, 2014, Bornhava reported about \$1.8 million in reimbursable costs on its CFR for the Programs.

Results of Audit

According to the RCM, costs reported on the CFR are considered for reimbursement if they are reasonable, necessary, directly related to the special education program, and sufficiently documented. For the fiscal year ended June 30, 2014, we identified \$14,237 in costs charged to the Programs that did not comply with SED's requirements for reimbursement. These costs included \$9,055 in personal service costs and \$5,182 in other than personal service (OTPS) costs.

Personal Service Costs

Per the RCM, an individual program's student-to-staff ratio is defined in the program's programmatic approval letter from SED's Office of Special Education-Special Education Quality Assurance. For the Programs we reviewed, direct care personnel in excess of, or not prescribed by, such ratios are not reimbursable.

For the fiscal year ended June 30, 2014, Bornhava exceeded the approved full-time equivalent ratios for teachers and teacher aides. We determined the non-reimbursable portion of salary and fringe benefit expenses reported on the CFR totaled \$9,055.

Other Than Personal Service Costs

For the fiscal year ended June 30, 2014, we identified \$5,182 in OTPS expenses on the CFR that were not allowable according to the RCM's requirements. The ineligible costs included the following:

- \$2,640 in non-auditing services (including tax preparation services and a year-end reimbursement review) that were performed by the same firm that completed Bornhava's financial audit. According to the RCM, costs associated with non-audit services provided by a registered public accounting 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.
- \$1,231 in depreciation costs that lacked supporting documentation. The RCM states that records and all related information for buildings and land owned by the entity must be maintained as long as the facility is used, even if that period exceeds seven years. Bornhava was unable to provide documentation to fully support the value of their building that was used for depreciation.
- \$485 in food provided to volunteers, at board meetings, and associated with attendance

at award dinners. According to the RCM, food for staff as well as the cost of food and beverages for meetings are non-reimbursable.

- \$375 in bank fees, bad debt, and administrative costs that were not reasonable, necessary, and/or directly related to the Programs. Further, the RCM states that bad debt expenses are non-reimbursable.
- \$347 in non-reimbursable charitable contributions.
- \$104 in non-reimbursable legal fees associated with an annual lobbying filing fee.

Recommendations

To SED:

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

To Bornhava:

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

Audit Scope, Objective, and Methodology

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

To accomplish our objective and assess internal controls related to our objective, we reviewed the RCM that applied to the year we examined as well as the CFR Manual and its related appendices. We became familiar with Bornhava's internal controls as they related to the costs Bornhava reported on the CFR. We also interviewed Bornhava management to obtain an understanding of their financial practices for reporting costs on the CFR. We reviewed Bornhava's CFR and relevant financial records for the audit period and obtained accounting records and supporting information to assess a judgmental sample of personal service and OTPS costs that were considered high risk and reimbursable in limited circumstances, such as food and accounting services.

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 governmental auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

Reporting Requirements

We provided a draft copy of this report to SED and Bornhava officials for their review and formal comment. We considered their comments in preparing this report and have included them in their entirety at the end of it. In their responses, SED and Bornhava officials agreed with the audit recommendations and indicated the actions they will take to address them.

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

Major contributors to this report were Ed Durocher, Chris Morris, Daniel Rossi, Jennifer Bordoni, and Bruce Brimmer.

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

Sincerely,

Andrea Inman
Audit Director

cc: Suzanne Bolling, Director of Special Education Fiscal Services, SED
Thalia Melendez, Director - Office of Audit Services, SED
Alan Galac, CFO - Bornhava

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

October 5, 2016

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

Dear Ms. Inman:

The following is the New York State Education Department's (Department) response to the draft audit report, 2016-S-23, Compliance with the Reimbursable Cost Manual: Bornhava.

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

With respect to disallowances for direct care instructional staff in excess of the approved staffing ratios, the Reimbursable Cost Manual states direct care personnel in excess of, or not prescribed by, approved staff-to-student ratios are not reimbursable "unless supported by the student's IEP requirements and the program generated summary data relating to those IEPs". In such cases, the Department would conduct a programmatic review of the excess staff to determine whether a disallowance is warranted under this standard or whether the excess staff may be supported by student IEPs. However, as Bornhava did not dispute this disallowance in their response to the draft audit report, we agree with this recommendation and will review these disallowances and the disallowances for Other Than Personal Service costs, as noted in the report, and make adjustments to the reported costs to recover any overpayments, as appropriate, by recalculating tuition rates.

Recommendation 2: Remind Bornhava officials of the pertinent SED guidelines that relate to the deficiencies we identified.

We agree with this recommendation. The Department will continue to provide technical assistance whenever requested and will strongly recommend that Bornhava officials take advantage of our availability to help them better understand the standards for reimbursement as presented in Regulation and the Reimbursable Cost Manual. In addition, Consolidated Fiscal Report (CFR) training is available at six locations across the State and online on the Department's webpage. The training is recommended for all individuals signing CFR certification statements, namely Executive Directors and Certified Public Accountants, and is required for preschool special education providers upon approval and reapproval. Furthermore, the Department intends to require that the training be mandatory for all providers.

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

Sincerely,

Sharon Cates-Williams

c: Christopher Suriano
Suzanne Bolling

Agency Comments - Bornhava



Donna M. Ringholz
Executive Director
25 Chateau Terrace
Amherst, New York 14226

September 19, 2016

Andrea Inman
Audit Director
Office of the State Comptroller
Division of Government Accountability
110 State Street – 11th Floor
Albany, New York 12236-0001

Re: Bornhava // 2016-S-23
Compliance with the Reimbursable Cost Manual
Draft Audit Report

Ms. Inman:

We have reviewed the Draft Audit Report related to the audit that was conducted during the spring and summer of 2016. It is our understanding that this audit reviewed Bornhava's expenses recorded on the 2013-2014 School Year Consolidated Fiscal Report (CFR) to determine compliance with the Reimbursable Cost Manual (RCM). We appreciate this opportunity to comment on the findings as part of this process.

After thorough review of the audit report, Bornhava does not challenge the details of the findings as outlined in the following comments. The 2013-2014 school year was a year of transition at Bornhava with the retirement of a founding Executive Director, placement of an interim Executive Director and finally, hiring of the current Executive Director. Since the hiring of the new executive director in September 2013 and subsequent hiring of a new Chief Financial Officer in September 2014, internal controls have been reviewed and policies put in place that will address some of the misinterpretation and lack of documentation that occurred in reporting of expenses on the 2013-2014 CFR. Bornhava's current management team and members of the board of directors have participated in New York State sponsored CFR trainings and are very cognizant of what are considered reimbursable costs and what costs need to be disallowed according to the stringent guidelines set forth in the RCM.

As stated in the Draft Audit Report, the RCM notes that costs reported on the CFR are considered for reimbursement if they are "reasonable, necessary, directly related to the special education program, and sufficiently documented." There continues to be debate in the proposed annual revisions of the RCM as to what are "reasonable and necessary" costs related to providing quality services for children with very individualized needs, which relates specifically to the Personal Service Costs that were considered non-reimbursable in the Audit.

Personal Service

We do not dispute the \$9,055 associated with teacher and aide pay and benefits that were found to be in excess of the specified program ratio. The expenses in question were related to staff and classroom preparation days prior to and during the school year which play a significant role in the quality of the services that are provided by Bornhava. It is now clear that as these duties were not completed as a part of direct care days with the children, they must be disallowed when reporting them on the CFR.

Other than Personal Service Costs**Non-auditing Services**

We do not dispute the \$2,640 in non-auditing fees which were non-reimbursable expenses. We are disappointed that our past auditing firm did not counsel us appropriately related to this expense and have recently interviewed and retained a new firm to obtain a new perspective on our internal controls and expenses that should be disallowed on the annual CFR.

Depreciation Costs

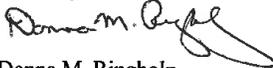
We acknowledge that there was insufficient documentation to support the reported depreciation costs in the 2002-2003 fiscal year which equated to \$1,231 for the 2013-2014 fiscal year. With changes in fiscal managers, moving of physical location, and re-construction of storage areas, it is likely that some documentation may have been misfiled or erroneously discarded. Thorough searching and reaching out to the past finance administrators for the documentation was completed, with no results.

Miscellaneous Costs and Fees

Bornhava does not challenge the \$1,311 in fees and expenses that were inadvertently reported on the CFR. Current management is aware that the noted expenses are considered non-reimbursable and make every effort to ensure that food for meetings (\$485), bank fees (\$375), charitable contributions (\$347) and legal fees (\$104) are disallowed costs on the CFR.

We are pleased to have the opportunity to reply to findings that were outlined in the Draft Audit Report and value the opportunity to use the input from the State Comptroller's Office to ensure that our internal fiscal procedures, controls and oversight meet the criteria set forth. Bornhava is aware of the recommendations made to the New York State Education Department to "review the disallowances" and "remind Bornhava officials of the pertinent SED guidelines that relate to the deficiencies identified." Bornhava will seek clarification from the State Education Department related to the RCM, CFR and specific expenses if needed. If you have any questions related to this response, please feel free to contact Donna M. Ringholz, Executive Director, or Alan Galac, Chief Financial Officer of Bornhava.

Sincerely,



Donna M. Ringholz
Executive Director

cc: File
Alan Galac, CFO
Finance Committee
Corporate Compliance Committee