New York State Office of the State Comptroller
Thomas P. DiNapoli

Division of State Government Accountability

Compliance With the Reimbursable Cost Manual

State Education Department
Advanced Therapeutic Concepts, Inc.

Report 2016-S-42 November 2017

Executive Summary

Purpose

To determine whether the costs reported by Advanced Therapeutic Concepts, Inc. (ATC) on its Consolidated Fiscal Reports (CFRs) were reasonable, necessary, directly related to the special education program, and sufficiently documented pursuant to the State Education Department's (SED) Reimbursable Cost Manual (Manual). The audit included expenses claimed on ATC's CFRs for the three fiscal years ended June 30, 2015.

Background

ATC was incorporated June 2000 in the State of New York as a for-profit organization, and is approved by SED to provide preschool special education services to children with disabilities who are between three and five years of age. ATC operates in New York City (excluding Staten Island) as well as Westchester and Rockland counties. We audited the Special Education Itinerant Teacher (SEIT) program. During the three fiscal years ended June 30, 2015, ATC served between 162 and 213 students.

ATC is paid for its services using rates established by SED. The rates are based on the financial information that ATC reports to SED on its annual CFR. To qualify for reimbursement, ATC's expenses must comply with the criteria set forth in SED's Manual, which provides guidance to special education providers on costs eligible for reimbursement, the documentation necessary to support these costs, and cost allocation requirements for expenses relating to multiple programs. Reimbursable costs must be reasonable, necessary, directly related to the special education program, and sufficiently documented pursuant to the Manual.

Section 4410-c of the Education Law requires the State Comptroller to audit the expenses reported to SED by special education providers for preschool children with disabilities. For the three fiscal years ended June 30, 2015, ATC reported approximately $5.5 million in reimbursable costs for the cost-based programs.

In addition to the SEIT cost-based preschool special education program, ATC operates two other SED-approved preschool special education programs: Evaluations and Related Services. ATC also operates an Early Intervention program approved by the Department of Health. Payments for services under these three programs are based on fixed fees, as opposed to reported costs on the CFR.

Key Findings

For the three fiscal years ended June 30, 2015, we identified $181,938 in reported costs that did not comply with the Manual's requirements and recommend such costs be disallowed. The ineligible costs consisted of $85,104 in personal service costs and $96,834 in other than personal service costs. Among the ineligible costs identified were:

- $53,569 in health insurance costs for which there was no documentation to support that the employees who were reimbursed actually incurred any cost or provided ATC any documentation to support the reimbursement.

- $31,535 paid to nine teachers at an hourly rate above the per-session rate stated in their contracts. ATC did not have an amended agreement with the new higher hourly rate, and in the absence of such an agreement, we recommend the difference between the original agreement and the new rate be disallowed.
- $70,992 for computer software for the three years ended June 31, 2015. ATC did not provide sufficient documentation to support the purchase of the software, such as original invoices, canceled checks, or evidence showing how the software was used in operations, such as reports.
- $25,842 for various other than personal service costs that are not allowed.

Key Recommendations

To SED:

- Review the recommended disallowances resulting from our audit and make the appropriate adjustments to the costs reported on ATC's CFRs and tuition reimbursement rates.
- Work with ATC officials to help ensure their compliance with the provisions in the Manual.

To ATC:

- Ensure that costs reported on future CFRs comply with the requirements in the Manual.

Other Related Audits/Reports of Interest

East River Child Development Center: Compliance With the Reimbursable Cost Manual (2016-S-3)
Lifeline Center for Child Development, Inc.: Compliance With the Reimbursable Cost Manual (2016-S-95)
Building Blocks Developmental Preschool, Inc.: Compliance With the Reimbursable Cost Manual (2017-S-1)

State of New York
Office of the State Comptroller

Division of State Government Accountability

November 28, 2017

Ms. MaryEllen Elia
Commissioner
State Education Department
State Education Building – Room 125
89 Washington Avenue
Albany, NY 12234

Ms. Blimi Lobl
Executive Director
Advanced Therapeutic Concepts, Inc.
501 Chestnut Ridge Road, Suite 205
Spring Valley, NY 10977

Dear Ms. Elia and Ms. Lobl:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage their resources efficiently and effectively. By so doing, it provides accountability for tax dollars spent to support government -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 Advanced Therapeutic Concepts, Inc. to the State Education Department for the purposes of establishing the tuition reimbursement rates. The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution; Article II, Section 8 of the State Finance Law; and Section 4410-c of the State Education Law.

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

Respectfully submitted,

Office of the State Comptroller
Division of State Government Accountability

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Background

Advanced Therapeutic Concepts, Inc. (ATC) was incorporated June 2000 in the State of New York as a for-profit organization, and is approved by the State Education Department (SED) to provide preschool special education services to children with disabilities who are between the ages of three and five years in New York City (excluding Staten Island) as well as Westchester and Rockland counties. We audited the Special Education Itinerant Teacher (SEIT) program. During the three fiscal years ended June 30, 2015, ATC served between 162 and 213 students.

ATC is paid for its services using rates established by SED. The rates are based on the financial information that ATC reports to SED on its annual Consolidated Fiscal Report (CFR). To qualify for reimbursement, ATC's expenses must comply with the criteria set forth in SED's Reimbursable Cost Manual (Manual), which provides guidance to special education providers on costs eligible for reimbursement, the documentation necessary to support these costs, and cost allocation requirements for expenses relating to multiple programs. Reimbursable costs must be reasonable, necessary, directly related to the special education program, and sufficiently documented pursuant to the Manual.

Section 4410-c of the Education Law requires the State Comptroller to audit the expenses reported to SED by special education providers for preschool children with disabilities. For the three fiscal years ended June 30, 2015, ATC reported approximately $5.5 million in reimbursable costs for the cost-based programs.

In addition to the SEIT cost-based preschool special education program, ATC operates three other programs: Evaluations, Related Services, and Early Intervention. Payments for services under these three programs are based on fixed fees, as opposed to reported costs on the CFR.

Audit Findings and Recommendations

For the three fiscal years ended June 30, 2015, we identified $181,938 in reported costs that did not comply with the Manual's requirements for reimbursement. The ineligible costs included $85,104 in personal service costs and $96,834 in other than personal service (OTPS) costs (see Exhibit at the end of the report).

Personal Service Costs

According to the Manual, "personal service costs, which include all taxable and non-taxable salaries and fringe benefits paid or accrued to employees on the agency'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)." All claimed costs must comply with applicable provisions of the Manual. Further, the Manual states that costs will be "considered for reimbursement provided they are reasonable, necessary, directly related to the education programs, and sufficiently documented." We identified $85,104 in personal service costs that do not comply with the Manual's guidelines for reimbursement. The ineligible costs included $31,535 in overpayments to SEIT employees and $53,569 in fringe benefits.

Overpayments to Teachers

We examined payments to 117 teachers from July 1, 2012 to June 30, 2015, and identified payments to nine teachers totaling $31,535 that did not comply with the applicable provisions of the Manual for reimbursement.

ATC paid the nine teachers a higher per-session rate than stated in their contracts. This does not comply with the Manual's Section II.13.A(1), which states: "Reimbursement of salary expense shall be subject to the following principles: (1) Entities operating approved programs shall develop employer-employee agreements with written salary scales and issue them to employees." ATC did not have an amended agreement with the new salary, and in the absence of such an agreement, we recommend the difference between the original rate and the new rate be disallowed. For example, one teacher was paid $70 per hour instead of $51 as stated in the contract. In response to our preliminary finding, ATC provided an amended contract for one of the teachers; however, the original rate had been crossed out and the new rate written in by hand above it. This amended contract was not in the employee's file. The employee's file contained the original, unaltered contract with the original amount and no initial by the employee for the change. We could not accept the altered one as an amendment. ATC did not provide information for the other teachers.

Reimbursement for Health Care Coverage

We reviewed ATC's health insurance and reimbursements for the three fiscal years ended June 30, 2015. In 2012-13, ATC reimbursement to all employees who paid for their own health insurance totaled $32,913. In 2012-13, ATC had a health insurance plan that did not include most employees. In 2013-14 and 2014-15, ATC health insurance reimbursement to employees for health insurance totaled $2,111 and $18,545, respectively. The total health insurance reimbursement for the three years was $53,569. ATC officials informed us that these reimbursements were for employees to obtain health insurance, as it was a less expensive option than covering employees under ATC's health insurance plan.

According to the Manual, Section II.13.B(2)(c), "Benefits including pensions, life insurance and Tax Sheltered Annuities (TSAs) for individual employees or officers/directors are to be proportionately similar to those received by other classes or groups of employees." In addition, the Manual states that costs will be considered for reimbursement provided they are documented. In this case, the Executive Director was reimbursed at a much higher rate than the rest of employees, and there was no evidence that all employees were reimbursed or that the coverage was proportionately similar.

In addition, ATC did not provide documentation, such as written declinations, to show that health insurance was offered to all administrative employees. In response to our inquiries about employees declining health insurance, an administrator approached employees and obtained from them declination forms signed on April 20, 2017. Because the documentation is not contemporaneous, it is not sufficient documentation to support ATC's claim that employees were actually offered and declined health insurance. ATC disagreed, noting that no costs were incurred, and that the Manual did not require such declinations or that such documentation be contemporaneous. However, we disagree, noting that the documents were created for the auditors and, as such, were unacceptable. In addition, there was no documentation to support that two of the three employees who were reimbursed actually incurred any cost or provided to ATC any documentation to support the reimbursement. We recommend SED disallow $53,569 in health insurance costs.

Other Than Personal Service Costs

According to the Manual, costs must be reasonable, necessary, directly related to the special education program, and sufficiently documented. For the three fiscal years ended June 30, 2015, ATC reported a total of $620,440 in OTPS expenses to the SED cost-based program. Chapter 474 of the Laws of 1996 amended Section 4410 of the Education Law to require SED to establish guidelines for advertising by preschool programs and evaluators. The guidelines were developed pursuant to the statute and corresponding amendments to the Regulations of the Commissioner of Education (Regulations). These amendments also require preschool programs and evaluators to submit, upon request, copies of advertising to SED for review. However, neither the statute nor the Regulations require approved programs to advertise. Advertising costs for the purpose of recruiting students into programs or soliciting fundraising monies or donations are not reimbursable, and remain non-allowable in the calculation of tuition rates. Promotional items of any type are not reimbursable (e.g., pens/pencils, notepads). Costs of food provided for any staff, including lunchroom monitors, are not reimbursable.

We identified $96,834 in various OTPS expenses (consisting of $25,842 in miscellaneous costs and $70,992 in software costs) reported for the three fiscal years ended June 30, 2015 that were not in compliance with the Manual. Among the miscellaneous expenses that were not allowed:

- $3,772 of depreciation expense related to leasehold improvements that were not sufficiently documented.
- $3,655 of interest expense that ATC officials stated related to a loan, but the loan was not sufficiently documented.
- $1,754 in promotional items, such as "MousePaper Calendars," which were not necessary for the special education program.
- $1,299 in food for staff and a gift ($1,066 + $233).
- $1,215 in credit card charges for items such as professional development and office supplies that were not documented.

ATC disagreed with some of the amounts disallowed. For example, in response to the preliminary findings, ATC asserted that two amounts totaling $886 were for employee recruitment. However, we found these amounts were paid to consultants who provided services that were not program-related. ATC also contested an amount of $1,000 paid to consultants. We reviewed the invoice provided and found the description for these services to be unrelated to the audited special education program.

According to the Manual, "software development and maintenance costs are reimbursable provided that costs do not exceed the prevailing rate for such services. Selection of software development vendors must be done through a formal request for proposal process. The school must maintain documentation of at least three bids to support its attempt to secure the most cost-effective vendor."

In May 2013, ATC indicated that they contracted with a vendor to acquire software to help ATC track and collect all students' and providers' data, progress, and files, including an invoicing system. ATC expensed a total of $73,500 on IEP Tracker for the three fiscal years from 2012 to 2015. ATC claimed $4,500 under administration in 2012-13; and $36,000 and $33,000 under the 9135 program in 2013-14 and 2014-15, respectively (see table below).

ATC did not provide sufficient documentation to support the purchase of the software, such as original invoices, canceled checks, or evidence of the software's use, such as reports. Furthermore, the selection of software development vendors must be done through a formal request for proposal process consisting of at least three bids and the provider must maintain documentation evidencing that the most cost-effective vendor was secured. ATC did not acquire three bids, did not have documentation to support selection of the most cost-effective vendor, and did not show that the request for proposal process was followed. As per ATC's Executive Director, the vendor was selected because another provider was using it and had approval from SED. The Executive Director explained that ATC had the software vendor customize the program to meet its needs. Because this software was developed further to meet ATC's needs, it was not an "off-the-shelf" product, and therefore bidding was required.

Furthermore, we requested documentation to demonstrate that the system was utilized. ATC's Executive Director provided six screenshots reportedly printed from the system. The screenshots showed that more customization of the software was needed, and again did not support the statement that it was an "off-the-shelf" product. Moreover, two of the names that appeared on the screenshots were not in the documents as ATC employees. We could not verify that these screenshots were taken when the software was actually in production at ATC. We recommend that SED disallow $70,992 because ATC did not provide sufficient documentation to support the software costs claimed.

Fiscal Year	Class	Amount Paid	Amount Disallowed
2012-2013	Administration	$4,500	$1,992*
2013-2014	9135	36,000	36,000
2014-2015	9135	33,000	33,000
Total		**$73,500**	**$70,992**

*44.28 percent allocation of this administrative expense to the 9135 program.

The total recommended disallowance for OTPS costs is $96,834 for expenses that were not in compliance with the Manual, primarily due to insufficient documentation to support that the expenses incurred were for the special education program and eligible for reimbursement.

Recommendations

To SED:

1. Review the recommended disallowances resulting from our audit and make the appropriate adjustments to ATC's CFRs and tuition reimbursement rates.

2. Work with ATC officials to help ensure their compliance with the provisions in the Manual.

To ATC:

3. Ensure that costs reported on future CFRs comply with the requirements in the Manual.

Audit Scope, Objective, and Methodology

The audit objective was to determine whether the costs reported by ATC on its CFRs were reasonable, necessary, directly related to the special education program, and sufficiently documented pursuant to SED's Manual. The audit included expenses claimed on ATC's CFRs for the three fiscal years ended June 30, 2015.

To accomplish our objective, we reviewed the Manual, the Consolidated Fiscal Reporting and Claiming Manual, ATC's CFRs, financial records, ATC's personnel files, students' files, and teachers' files for the audit period. We also visited schools and interviewed ATC officials and staff to obtain an understanding of their financial and business practices. In addition, we selected a judgmental sample of 205 transactions totaling $114,004 to determine whether they were supported, program-related, and reimbursable. The 205 transactions took into account the relative materiality and risk of the various costs reported by ATC. The sample was not designed to be projected to the entire population of reported costs. Also, our review of ATC's internal controls focused on the controls over ATC's CFR preparation process.

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.

Authority

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

Reporting Requirements

We provided a draft copy of this report to ATC and SED officials for their review and formal comment. Their comments were considered in preparing this final report and we have attached SED's response in its entirety. We did not include ATC's response in its entirety because in addition to a cover letter, there were 38 pages of documents that were reviewed during the fieldwork and a few new supporting documents that contain confidential information. The documents excluding confidential information are available for review in our office upon formal request.

ATC officials disagreed with our report findings. They stated they believe that "select findings are based upon errors in fact, misinterpretations of certain statements made by representatives of ATC during the audit process and the auditors misapplication of certain principles as set out in the Reimbursable Cost Manual." SED agreed with our recommendations and indicated it will continue to provide technical assistance and that ATC officials should take advantage of SED's availability to help them better understand the standards for reimbursement as presented in the Regulations and the Reimbursable Cost Manual. Our rejoinder to certain ATC comments that pertain to the recommended disallowances is included in the report's State Comptroller's Comments.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the State Education Department 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 if the recommendations were not implemented, the reasons why.

Contributors to This Report

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Division of State Government Accountability

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Vision

A team of accountability experts respected for providing information that decision makers value.

Mission

To improve government operations by conducting independent audits, reviews and evaluations of New York State and New York City taxpayer financed programs.

Exhibit

Advanced Therapeutic Concepts, Inc.
Summary of Submitted and Disallowed Costs
for the Three Fiscal Years Ended June 30, 2015

Program Costs	Amount per CFR	Amount Disallowed	Amount Remaining	Notes to Exhibit
Personal Services				
Direct Care	$3,765,023	$85,104	$3,679,919	A-C, F-I
Agency Administration	1,128,449	0	1,128,449	A, B, D, E
Total Personal Services	**$4,893,472**	**$85,104**	**$4,808,368**	
Other Than Personal Services				
Direct Care	$202,059	$71,103	$130,956	B, J, L
Agency Administration	418,381	25,731	392,650	B, I-K, M, N
Total Other Than Personal Services	**$620,440**	**$96,834**	**$523,606**	
Totals Program Costs	**$5,513,912**	**$181,938**	**$5,331,974**	

Notes to Exhibit

The following Notes refer to specific sections of SED's Reimbursable Cost 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 ATC officials during the course of our audit.

A. Section II.13.B(2)(c) - Cost for reimbursement of fringe benefit expenses shall be subject to the following principles: Benefits including pensions, life insurance and Tax Sheltered Annuities (TSAs) for individual employees or officers/directors are proportionately similar to those received by other classes or groups of employees.
B. Section II: Cost Principles - Generally, costs will be considered for reimbursement provided such costs are reasonable, necessary, directly related to the special education program and are sufficiently documented. Such reimbursable costs will be included in the calculation of tuition rates up to any limits or cost parameters approved annually in the rate setting methodology.
C. Section III.1.A - Compensation costs must be based on approved, documented payrolls. Payroll must be supported by employee time records prepared during, not after, the time period for which the employee was paid. Employee time sheets must be signed by the employee and a supervisor, and must be completed at least monthly.
D. Section II.13.A(4)(d) - For non-direct care staff under the 500 and 600 position title code series per Appendix R of the CFR Manual…compensation must be supported by time and effort reports or equivalent documentation.
E. Section II.13.A(5) - Compensation to all individuals who have a financial interest in the program, such as family member, compensation should be commensurate to actual services provided as appropriately qualified program employees.
F. Section III.1.M(1)(i) - Salaries of employees who perform tasks for more than one program and/or entity must be allocated among all programs and/or entities for which they work.
G. Section IV.2.F - All 1:1 aide costs (salaries, fringe benefits of the aide and allocated direct and indirect costs) should be reported in one separate cost center on the providers' financial reports.
H. 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. Such allocation methods, as well as the statistical basis used to calculate allocation percentages, must be documented and retained for each fiscal year for review upon audit for a minimum of seven (7) years. Allocation percentages should be reviewed on an annual basis and adjusted as necessary.
I. Section III.1.B - Actual hours of service are the preferred statistical basis upon which to allocate salaries and fringe benefits for shared staff who work on multiple programs. Entities must maintain appropriate documentation reflecting the hours used in this allocation. Acceptable documentation may include payroll records or time studies. If hours of service cannot be calculated or a time study cannot be completed, then alternative methods that are equitable and conform to generally accepted accounting principles may be utilized. Documentation for all allocation methods (bases and percentages) must be retained for a

minimum of seven years.

J. Section III.1.C(2) - Adequate documentation includes, but is not limited to, the consultant's resume, a written contract which includes the nature of the services to be provided, the charge per day and service dates. All payments must be supported by itemized invoices which indicate the specific services actually provided; and for each service, the date(s), number of hours provided, the fee per hour; and the total amount charged.
K. Section III.1.C(3) - Request for proposal (RFP) or other bidding documentation must be kept on file by the entities operating the program. The entity will need to justify that the consultant hired was the most economical and/or appropriate available for a particular service.
L. Section II.22.C - Costs of food provided to any staff including lunchroom monitors are not reimbursable.
M. Section II.24 - Gifts of any kind are not reimbursable.
N. Chapter 474 of the Laws of 1996 amended Section 4410 of the Education Law to require the Department to establish guidelines for advertising by preschool programs and evaluators. The guidelines were developed pursuant to the Statute and corresponding amendments to the Regulations of the Commissioner of Education. These amendments also require preschool programs and evaluators to submit upon request copies of advertising to the Department for review. However, neither the Statute nor the Regulations require approved programs to advertise. Advertising costs for the purpose of recruiting students into programs or soliciting fund raising monies or donations are not reimbursable and remain non-allowable in the calculation of tuition rates. Promotional items of any type are not reimbursable. Examples include pens/pencils, notepads, etc.

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
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October 16, 2017

Ms. Carmen Maldonado
Audit Director
Division of State Government Accountability
NYS Office of the State Comptroller
59 Maiden Lane, 21st Floor
New York, NY10038

Dear Ms. Maldonado:

The following is the New York State Education Department's (SED) response to the draft audit report, 2016-S-42, Compliance with the Reimbursable Cost Manual: Advanced Therapeutic Concepts, Inc. (ATC).

In addition to the actions that will be taken in response to the specific recommendations described below, SED will closely examine the circumstances that led to the findings described in the audit report. This examination will include an assessment of the programmatic oversight and fiscal management employed at ATC and will be a factor in the consideration of the continued approval of this provider and the corrective action or enforcement actions that may be warranted.

Recommendation 1:

Review the recommended disallowances resulting from our audit and make the appropriate adjustments to ATC'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 ATC officials to help ensure their compliance with the provisions in the Manual.

We agree with this recommendation. SED will continue to provide technical assistance whenever requested and will strongly recommend the ATC officials take advantage of our availability to help them better understand the standards for reimbursement as presented in Regulation and the Reimbursable Cost Manual (RCM). Furthermore, Consolidated Fiscal Report (CFR) training is available online on SED's webpage. SED recommends that all individuals signing the CFR certification statements, namely Executive Directors and Certified Public Accountants, complete this training. At the direction of the Board of Regents, the Department intends to require that this training be mandatory and will require individuals to verify that they have completed the training.

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

Sincerely,

Sharon Cates-Williams

Sharon Cates-Williams

c: Christopher Suriano
Belinda Johnson
Suzanne Bolling

Agency Comments - Advanced Therapeutic Concepts, Inc.

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October 2, 2017

VIA E-MAIL

Carmen Maldonado
Audit Director
Office of the State Comptroller
Division of State Government Accountability
59 Maiden Lane, 21st Floor
New York, New York 10038

Re: Compliance with the Reimbursable Cost Manual
State Education Department
Advanced Therapeutic Concepts
Audit Report 2016-S-42

Dear Ms. Maldonado:

We have reviewed the above-referenced Draft Report and appreciate the opportunity to provide comment on the findings set out therein and the information presented in the several preliminary audit reports relating to expenses claimed on Advanced Therapeutic Concepts, Inc.'s (ATC's) Consolidated Fiscal Reports for the three fiscal years 2012-13, 2013-14 and 2014-15. We renew the challenges advanced in the written responses provided to the several preliminary reports as discussed in some detail at the exit conference. We believe that select findings are based upon errors in fact, misinterpretations of certain statements made by representatives of ATC during the audit process, and the misapplication of certain principles as set out in the Reimbursable Cost Manual. We respectfully request the Office's thoughtful consideration of these challenges.

Audit Findings and Recommendations

Personal Service Costs

Payments to Teachers

While we are unable to locate salary documentation for three of the six identified individuals sufficient to challenge the auditors' finding that certain salary rate changes were not substantiated, we again share the supporting documentation for two salary rate increases challenged by the auditors, and give context to a third.

As the attached Employee Agreement reflects, one teacher's initial salary rate (as of 5/1/2012) was increased effective 12/17/2014. It is common practice to strike out an initial rate, replace it with an increased rate, and record the increased rate in the accounting system. These revisions are not "alterations", as suggested by the auditors, but are bona fide amendments to the initial Agreement – amendments which are not only noted on the Agreement, but are reflected in the

*
Comment 1

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*See State Comptroller's Comments, page 22.

Ms. Carmen Maldonado
October 2, 2017
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accounting system as of the effective date. (See: Attached Agreement Amendment; Accounting System entry "Updated Employee Agreement" screenshot.)

We have also attached for further review a second teacher's salary adjustment document, together with a screenshot reflecting entry into the accounting system, which we believe complies with the documentation requirements of the RCM governing salary increases. (See: Attached Agreement; Accounting System entry screenshot)

*
Comment 2

We also reaffirm our belief that the auditors have misread the invoice related to one last teacher which reflects sessions of service on 2-hour increments, thereby exaggerating the salary grade. The salary reported on the CFR was identical to the agreed upon salary level. There was, simply stated, no increase nor adjustment, and thus, no "excessiveness" which would have required substantiation.

Health Care Coverage

We take exception to the auditors' finding that ATC's health insurance reimbursement policies are inconsistent with the RCM provisions governing employee benefits.

To the contrary, as the Executive Director explained, and as set out in the Draft Report, while ATC provided employee health benefits in 2012-13, in the interest of containing costs in 2013-14, ATC offered to reimburse employees the cost of employee obtained health insurance as an alternative to ATC provided insurance. ATC management appropriately extended the offer to all employees, regardless of class or group, consistent with the RCM's requirement of "proportionate similarity". No one individual or group of individuals was either advantaged or disadvantaged by this approach. In fact, as the auditors note, this approach resulted in <u>fewer</u> reported costs, effectively saving state and municipal dollars. Moreover, the amount offered to employees towards employee obtained health insurance was a standard fixed amount for all such employees accessing that option, again, reflecting standardization and not disproportionality at all.

We also challenge the auditors' assertion that "there was no documentation to support that the employees who were reimbursed actually incurred any costs." Point of fact, the auditors did not request any such substantiation during their field work nor at the exit conference. We have attached the supporting documentation in response to this request just now made in the Draft Report (See: Attachment).

*
Comment 3

Lastly, the RCM is silent on how best to substantiate an agency's assertion that employees were offered, yet declined, health insurance or reimbursement. That these individuals signed attestations to the facts is highly probative and should not be disregarded lightly. These signed attestations are no less reliable if executed a short time from the attested fact of declination. The individual's recollection is not only clear, but the fact of the declination is irrefutable since there are no costs incurred!

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Comment 4

For all of these reasons, we request restoration of the full disallowance.

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In addition, we believe that the auditors have not disallowed the challenged costs consistent with the ratio value methodology of cost allocations. More specifically, the proportion of any disallowance attributable to the 9135 program by our calculations should be 44.28% (2012-13); 62.04% (2013-14); and 54.57% (2014-15). We request adjustment accordingly.

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Comment 5

Other than Personal Costs

While ATC does not challenge a number of the auditors' findings around certain miscellaneous expenses including food and gift costs for staff appreciation, we do, however, reassert our challenges to certain other findings; more specifically:

- ATC purchased lanyards which reflect the name of the agency for purposes of identifying our staff to our community partners. As the auditors are aware, ATC staff provides services to children located in community based organizations and early education settings. Immediate and proper identification of our staff is required by many of these settings which are regulated by state agencies such as the Office of Children and Family Services, thus making these costs as legitimately "program related" as the name tags themselves. Lanyards are mere devices by which name tags can be worn – they are no more "promotional" than the name tag itself. Moreover, the phrase "promotional items" generally refers to items which are "given away" to outside contacts to, in fact, "promote" the agency. Here, the lanyards are purely functional and are for the exclusive use of the staff – clearly limiting any purported "promotional value".

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Comment 6

- ATC provided substantiating documentation in support of claimed depreciation expenses reflected on the Form 4562, which the auditors appear to have disregarded out of hand (See: Attached).

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Comment 7

- ATC likewise provided substantiating documentation in support of certain loan interest expenses, including certain "line of credit" statements which clearly reflect the propriety of the transaction and the associated interest, again which the auditors appear to have disregarded out of hand. Point in fact, the claimed interest was associated with the line of credit extended to the Agency to meet expenses, as the Executive Director shared with the auditors during their field work. The "line of credit" statements provided to the auditors "sufficiently document" the line of credit/loan, contrary to the auditors' assertion otherwise.

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Comment 8

- ATC provided substantiating documentation in support of costs associated with the purchase of software (See: Attached: Duplicate copies of invoices/cancelled checks), together with a well-reasoned explanation of why competitive bidding of the contract was unnecessary; more specifically, that the vendor had recently been accepted by NYSED as a responsible bidder in another agency's purchase of software; and that the product was tantamount to an "off-the-shelf" program which required little to no customization. We believe the auditors have misunderstood the Executive Director's description of the product, and have mistakenly characterized minor interfacing activities to be "customization".

The auditors also imply that the software was not "utilized" by ATC, even while multiple screenshots reflecting its utilization have been provided, including screenshots reflecting the names of vendor personnel who were assisting in the installation and upload of the software.

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Comment 9

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The auditors appear to have disregarded each substantiation of the transaction from the description of the software to proof of its utilization and replaced the common sense explanation with its own.

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We appreciate the opportunity to reaffirm our challenge of certain findings and request the auditors reexamine the documentation and explanations provided.

Very truly yours,

GREENBERG TRAURIG, LLP

Pamela A. Madeiros

PAM/hae
Enclosures
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cc: Suzanne Bolling, NYSED via e-mail w/encl.
Thalia Melendez, NYSED via e-mail w/encl.
Blimi Lobl, ATC via e-mail w/encl.

State Comptroller's Comments

1. When we reviewed the file for this employee, we copied the employee's agreement. The agreement that is part of this employee's permanent file and was copied by our audit team does not include the revisions that ATC is now using as support for this change in salary. We find that troubling and cannot accept the amended document that is being offered. The issue is not that the document was changed but when it was changed.
2. Based on our review of the documentation provided following the exit conference, this teacher's salary adjustment was accepted. The salary adjustment for this teacher is thus not part of the recommended disallowance.
3. The lack of documentation was raised in preliminary finding 4 issued April 25, 2017. The agency responded on May 9, 2017 and did not provide the necessary support. Attachment 3 that was provided in response to the draft report is not adequate. It supports that only one of the three employees incurred any expense for health benefits.
4. Signing an attestation stating that they declined coverage two to four years after the fact does not adequately support that the agency offered the coverage to all employees for the three fiscal years ended June 30, 2015, which is the audit scope period.
5. The health care costs were not charged on CFR-3, Administration. They were charged as direct care costs for program 9135, and therefore, the ratio value methodology should not be used.
6. The cost of the lanyards was disallowed because it was not documented, not because it was promotional.
7. The audit team did not "disregard out of hand" the "substantiating documentation." An email was sent to the Executive Director, Assistant Executive Director, and Legal Counsel on July 10, 2017 stating that the documentation was insufficient, and that we required backup for the numbers on Form 4562.
8. The documentation provided was not sufficient to substantiate the interest amount claimed. The statements provided show amounts circled without explanation, which the agency claims support the interest amount. However, when these amounts are totaled, they do not match the amount claimed.
9. Attachment 5 is a check for $3,000 for IEP Tracker. The attachment does not provide any information to support that the software was directly related to the preschool special education program or used for the program. Thus, we have not changed the report.