



New York State Comptroller
THOMAS P. DiNAPOLI

Kids Unlimited, PT, OT & SLP, PLLC – Compliance With the Reimbursable Cost Manual

State Education Department

Report 2020-S-33 | December 2020

Spotlight on Education



Audit Highlights

Objective

To determine whether the costs reported by Kids Unlimited, PT, OT & SLP, PLLC (Kids Unlimited) 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 (RCM) and the Consolidated Fiscal Reporting and Claiming Manual (CFR Manual). The audit focused primarily on expenses claimed on Kids Unlimited's CFR for the fiscal year ended June 30, 2015 and certain expenses claimed on its CFRs for the two fiscal years ended June 30, 2014.

About the Program

Kids Unlimited is a New York City-based for-profit organization authorized by SED to provide Special Education Itinerant Teacher (SEIT) services to children with disabilities who are between the ages of three and five years. Kids Unlimited serves children in New York City's five boroughs. For the fiscal year ended June 30, 2015, Kids Unlimited served 143 children.

The New York City Department of Education refers students to Kids Unlimited and pays for its services using rates established by SED. The rates are based on the financial information Kids Unlimited reports to SED on its annual CFRs. For the three fiscal years ended June 30, 2015, Kids Unlimited reported approximately \$8.8 million in reimbursable costs for the SEIT preschool cost-based program.

Key Findings

For the three fiscal years ended June 30, 2015, we identified \$446,835 in reported costs that did not comply with the requirements in the RCM and recommend that such costs be disallowed. These ineligible costs included \$437,839 in personal service costs and \$8,996 in other than personal service costs, as follows:

- \$264,189 in compensation that exceeded the regional average;
- \$173,650 in over-reported health insurance benefits;
- \$6,281 in unsupported depreciation expenses; and
- \$2,715 in ineligible and unsupported cable television, internet, and telephone service costs.

Key Recommendations

To SED:

- Review the recommended disallowances identified by our audit and make the necessary adjustments to the costs reported on Kids Unlimited's CFRs and to Kids Unlimited's tuition reimbursement rates, as warranted.
- Remind Kids Unlimited officials of the pertinent SED requirements that relate to the deficiencies we identified.

To Kids Unlimited:

- 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 New York State Comptroller Division of State Government Accountability

December 31, 2020

Dr. Betty A. Rosa
Interim Commissioner
State Education Department
State Education Building – Room 125
89 Washington Avenue
Albany, NY 12234

Ms. Diana Ulis
Executive Director
Kids Unlimited, PT, OT & SLP, PLLC
2310 65th Street
Brooklyn, NY 11204

Dear Dr. Rosa and Ms. Ulis:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently. 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 Kids Unlimited, PT, OT & SLP, PLLC 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
BEDS	Basic Educational Data System	<i>Key Term</i>
CFR	Consolidated Fiscal Report	<i>Key Term</i>
CFR Manual	Consolidated Fiscal Reporting and Claiming Manual	<i>Key Term</i>
DOE	New York City Department of Education	<i>Agency</i>
Kids Unlimited	Kids Unlimited, PT, OT & SLP, PLLC	<i>Service Provider</i>
OTPS	Other than personal service	<i>Key Term</i>
PTC	Position Title Code	<i>Key Term</i>
RCM	Reimbursable Cost Manual	<i>Key Term</i>
SED	State Education Department	<i>Auditee</i>
SEIT	Special Education Itinerant Teacher	<i>Key Term</i>
TSA	Tax-sheltered annuity	<i>Key Term</i>

Background

Kids Unlimited, PT, OT & SLP, PLLC (Kids Unlimited) is a New York City-based for-profit organization authorized by the State Education Department's (SED) to provide Special Education Itinerant Teacher (SEIT) services to children with disabilities who are between the ages of three and five years. Kids Unlimited serves children in New York City's five boroughs. For the fiscal year ended June 30, 2015, Kids Unlimited served 143 children.

The New York City Department of Education (DOE) refers students to Kids Unlimited based on clinical evaluations and pays for its services using rates established by SED. These rates are based on the financial information Kids Unlimited reports to SED on its annual Consolidated Fiscal Reports (CFRs). To qualify for reimbursement, Kids Unlimited's expenses must comply with the criteria set forth in SED's Reimbursable Cost Manual (RCM) and the Consolidated Fiscal Reporting and Claiming Manual (CFR Manual), which provide guidance to special education providers on the eligibility of reimbursable costs, the documentation necessary to support these costs, and cost allocation requirements for expenses relating to multiple programs and entities. SED reimburses DOE 59.5 percent of the statutory rate it pays to Kids Unlimited.

For the three fiscal years ended June 30, 2015, Kids Unlimited reported approximately \$8.8 million in reimbursable costs for the SEIT preschool cost-based program. This audit focused primarily on expenses claimed on Kids Unlimited's CFR for the fiscal year ended June 30, 2015 and certain expenses claimed on its CFRs for the two fiscal years ended June 30, 2014.

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, 2015, we identified \$446,835 in reported costs that did not comply with SED's requirements for reimbursement. These ineligible costs included \$437,839 in personal service costs and \$8,996 in other than personal service (OTPS) costs (see Exhibit).

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 disallowances detailed in this report to weaknesses in Kids Unlimited's internal controls over its compliance with SED's requirements.

Personal Service Costs

Personal service costs, which include all salaries and fringe benefits paid or accrued to employees on the service provider's payroll, must be reported on the CFR as either direct care costs (e.g., teachers' salaries) or non-direct care costs (e.g., administrators' salaries). For the three fiscal years ended June 30, 2015, Kids Unlimited reported approximately \$8.3 million in personal service costs for the SEIT preschool cost-based program. We identified \$437,839 in personal service costs that did not comply with the RCM's requirements for reimbursement.

Compensation Exceeded Average Regional Levels

According to the RCM, compensation to all individuals who have a financial interest in the program, including shareholders, trustees, board members, officers, family members, or others, and who are also program employees must be commensurate to actual services provided as appropriately qualified program employees or consultants. Compensation shall not exceed the average regional levels paid by similar private providers to comparably qualified and appropriately certified personnel for similar work and hours of employment. The RCM states that compensation for personal services includes all salaries and wages, as well as fringe benefits and pension plan costs. Reimbursement of salary expense is subject to the principle that entities shall develop employer-employee agreements with written salary scales and issue them to employees. The CFR Manual instructs service providers to report individuals who have a financial interest (e.g., stockholders, partners) in both the service provider and in the related organization on their CFR-5.

Kids Unlimited has three board members who are also shareholders and officers: Executive Director (Position Title Code [PTC] 601), Controller (PTC 603), and Program Director (PTC 501). The Controller also worked in staff training (PTC 347) for fiscal year 2012-13 and quality assurance (PTC 521) positions for fiscal years 2013-14 and 2014-15. However, Kids Unlimited did not disclose these related parties on its CFR submissions as required by the CFR Manual.

For the three fiscal years ended June 30, 2015, compensation costs for the Program

Director, Staff Training, and Quality Assurance positions exceeded the average regional levels by \$264,189 as follows:

- \$132,215 (\$107,612 in salary and \$24,603 in fringe benefits) in compensation costs for the Program Director exceeded the regional averages. Kids Unlimited reported \$372,094 in salary for the Program Director for the three fiscal years ended June 30, 2015. However, the average regional salary for this period was \$264,482. Therefore, the total salary for the Program Director exceeded the average regional levels by \$107,612. The associated fringe benefit was \$24,603.
- \$32,658 (\$27,554 in salary and \$5,104 in fringe benefits) in compensation costs for the Staff Training position exceeded the regional averages. Kids Unlimited reported \$65,831 in salary for the Staff Training position in fiscal year 2012-13; however, the average regional salary for that fiscal year for Staff Training was \$38,277. Therefore, the total salary for Staff Training exceeded the average regional levels by \$27,554. The associated fringe benefit was \$5,104.
- \$99,316 (\$79,823 in salary and \$19,493 in fringe benefits) in compensation costs for Quality Assurance exceeded the regional averages. Kids Unlimited reported \$136,128 in salary for the Quality Assurance position for the two fiscal years ended June 30, 2015; however, the average regional salary for these two fiscal years for Quality Assurance was \$56,305. Therefore, the total salary for the Quality Assurance position exceeded the average regional levels by \$79,823. The associated fringe benefit was \$19,493.

Kids Unlimited officials asserted that the compensation for these individuals was below the median salary proposed by SED's Basic Educational Data System (BEDS). However, the RCM specifies the regional levels by calculating the average salary, not the median, for all individuals who have a financial interest in the program. Further, BEDS data did not differentiate the providers based on the types of programs (e.g., preschool and school age programs). Therefore, we compared the officers' salaries with the average salary of preschool special education providers in the region for similar PTCs.

We recommend that SED disallow the \$264,189 in compensation that was not in compliance with the RCM's requirements.

Over-claimed Health Insurance Benefits

According to the RCM, compensation for personal services includes all salaries and wages, as well as fringe benefits and pension plan costs. Reimbursement of salary expenses is subject to the principle that entities shall develop employer-employee agreements with written salary scales and issue them to employees. In addition, compensation costs must be based on approved, documented payrolls supported by employee time records prepared during, not after, the time period for which the employee was paid.

The RCM states that benefits including pensions, life insurance, and tax-sheltered annuities (TSAs) for individual employees or officers/directors be proportionately similar to those received by other classes or groups of employees.

The Kids Unlimited Employee Handbook states that medical insurance is available for employees who work 35 or more hours per week and their qualified dependents. Kids Unlimited may partially cover the cost of the plan for eligible employees, but not for their qualified dependents. Employees can choose to cover their dependents through a family health insurance plan; however, employees will be responsible for the added cost of the health benefit premiums. A review of the general ledger indicates the additional cost would be, on average, \$1,577 more per month for the three-year period.

We identified \$173,650 in over-claimed health insurance benefits that were not in compliance with the RCM requirements.

Kids Unlimited offers both individual and family health insurance plans to its officers and employees. However, with the exception of the three officers – the Executive Director, Controller, and Program Director – all other employees were enrolled in the individual health insurance plan. Payroll records indicated that employees contribute \$100 monthly, through payroll deductions, to participate in the employer-provided individual health insurance plan. The Executive Director, Controller, and Program Director (who are also shareholders and board members) were enrolled in the family insurance plan. During the three fiscal years ended June 30, 2015, Kids Unlimited fully paid and reported \$247,854 in family health insurance expenses for the three officers. Based on their employment contracts and the Employee Handbook, Kids Unlimited should have paid only \$74,204 in individual health insurance premiums for the three officials, if they were treated the same as the other employees

Other Than Personal Service Costs

According to the RCM, costs must be reasonable, necessary, directly related to the special education program, and sufficiently documented. For the three fiscal years ended June 30, 2015, Kids Unlimited reported \$489,567 in OTPS expenses for its SEIT preschool cost-based program. To determine whether these expenses complied with SED's requirements for reimbursement, we judgmentally selected a sample totaling \$306,879 in OTPS expenses. We identified \$8,996 of these expenses that did not comply with SED's reimbursement requirements, as discussed next.

Unsupported Depreciation Expenses

The RCM states that costs must be reasonable, necessary, directly related to the special education program, and sufficiently documented.

The RCM also states that entities operating approved programs should 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. Moreover, costs will not be reimbursable on field audit without appropriate written documentation.

For the three fiscal years ended June 30, 2015, we identified \$6,281 in depreciation expenses for which Kids Unlimited could not provide sufficient supporting documentation such as invoices and canceled checks, as follows:

- \$6,029 in software depreciation expenses; and
- \$252 in furniture and fixtures depreciation expenses.

Kids Unlimited officials asserted that the requested documents are outside the seven-year documentation retention requirements. We maintain the expenses Kids Unlimited reported during the audit's scope are within the seven-year record retention period.

We recommend that SED disallow \$6,281 in expenses that did not comply with the RCM's requirements.

Ineligible Phone and Cable Television Costs

According to the RCM, costs will be considered for reimbursement provided they are reasonable, necessary, directly related to the special education program, and sufficiently documented. The RCM states that 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. Moreover, costs will not be reimbursable on field audit without appropriate written documentation of costs. Further, the RCM states that costs incurred for entertainment of officers or employees, or for activities not related to the program, or any related items such as meals, lodging rentals, transportation, and gratuities, are not reimbursable.

For the three fiscal years ended June 30, 2015, we identified a total of \$2,715 in ineligible cable television service expenses for Kids Unlimited's administrative office as follows:

- \$2,205 in internet and phone services for which Kids Unlimited was not able to provide any documentation such as invoices; and
- \$510 in cable television services that were not necessary or related to the SED cost-based program.

We recommend that SED disallow \$2,715 in phone and cable television costs because these costs were ineligible and/or undocumented.

Recommendations

To SED:

1. Review the recommended disallowances identified by our audit and make the necessary adjustments to the costs reported on Kids Unlimited's CFRs and to Kids Unlimited's tuition reimbursement rates, as warranted.
2. Remind Kids Unlimited officials of the pertinent SED requirements that relate to the deficiencies we identified.

To Kids Unlimited:

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, Objectives, and Methodology

The objective of our audit was to determine whether the costs reported by Kids Unlimited on its CFRs were reasonable, necessary, directly related to the special education program, and sufficiently documented, pursuant to SED guidelines. The audit focused primarily on expenses claimed on Kids Unlimited's CFR for the fiscal year ended June 30, 2015 and certain expenses claimed on its CFRs for the two fiscal years ended June 30, 2014.

To accomplish our objective, we reviewed the RCM, the CFR Manual, the Regulations of the Commissioner of Education, Kids Unlimited's Employee Handbook, Kids Unlimited'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 Kids Unlimited officials and staff to obtain an understanding of Kids Unlimited financial and business practices. We also conducted a virtual walkthrough of the office and reviewed the use of various software functions. 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 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. 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 a draft copy of this report to SED and Kids Unlimited officials for their review and formal comment. We considered their comments in preparing this report and have included them in their entirety at the end of the report. In SED's response, officials agreed with the audit recommendations and indicated the actions they will take to address them. Kids Unlimited officials generally agreed with our disallowances. However, they disagreed with the disallowances regarding health insurance, regional average salaries, and unsupported expenses. Our responses to certain Kids Unlimited comments are embedded within Kids Unlimited response. Attachments provided by Kids Unlimited are not included in this report. However, they were considered in preparing the report and are 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

Kids Unlimited
Summary of Submitted and Disallowed Program Costs
for the 2012-13, 2013-14, and 2014-15 Fiscal Years

Program Costs	Amount Claimed on CFR	Amount Disallowed	Amount Remaining	Notes to Exhibit
Personal Services				
Direct Care	\$7,377,129	\$418,063	\$6,959,066	A-E,H,I
Agency Administration	\$947,145	\$19,776	\$927,369	
Total Personal Services	\$8,324,274	\$437,839	\$7,886,435	
Other Than Personal Services				
Direct Care	\$150,443	\$4,262	\$146,181	A,F,G
Agency Administration	\$339,124	\$4,734	\$334,390	
Total Other Than Personal Services	\$489,567	\$8,996	\$480,571	
Total Program Costs	\$8,813,841	\$446,835	\$8,367,006	

Notes to Exhibit

The following Notes refer to specific sections of SED's RCM and the CFR Manual used to develop our recommended disallowances. Although we reviewed three years, the section numbers and requirements did not change from year to year. We summarized the applicable sections to explain the basis for each disallowance. We provided the details supporting our recommended disallowances to SED and Kids Unlimited officials during the course of our audit.

- A. RCM Section II – Costs will be considered for reimbursement provided they are reasonable, necessary, directly related to the special education program, and sufficiently documented.
- B. RCM Section II.13 – Compensation for personal services includes all salaries and wages, as well as fringe benefits and pension plan costs.
- C. RCM Section II.13.A – Reimbursement of salary expenses shall be subject to the principle that entities shall develop employer-employee agreements with written salary scales and issue them to employees.
- D. RCM Section II.13.A.5 – Compensation to all individuals who have a financial interest in the program, including shareholders, trustees, board members, officers, family members, or others, and who are also program employees must be commensurate to actual services provided as appropriately qualified program employees or consultants. Compensation shall not exceed the average regional levels paid by similar private providers to comparably qualified and appropriately certified personnel for similar work and hours of employment.
- E. RCM Section II.13.B.2.(c) – Benefits, including pensions, life insurance, and tax-sheltered annuities (TSAs) for individual employees or officers/directors must be proportionately similar to those received by other classes or groups of employees.
- F. RCM Section II.20.A – Costs incurred for entertainment of officers or employees, for activities not related to the program, or for any related items such as meals, lodging rentals, transportation, and gratuities are not reimbursable.
- G. 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. Costs will not be reimbursable on field audit without appropriate written documentation.
- H. RCM 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.
- I. CFR-5 Section 18.0, Relationship Key – Types of related organization/individuals may include, but are not limited to, individuals who have financial interest (e.g., stockholders, partners) in both the service provider and in the related organization.

Agency Comments - State Education Department



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

SENIOR DEPUTY COMMISSIONER
Office of Performance Improvement and Management Services
O: 518.473-4706
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December 17, 2020

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, 2020-S-33, Kids Unlimited, PT, OT & SLP, PLLC (Kids Unlimited) - Compliance With the Reimbursable Cost Manual.

Recommendation 1:

"Review the recommended disallowances identified by our audit and make the necessary adjustments to the costs reported on Kids Unlimited's CFRs and to Kids Unlimited's tuition reimbursement rates, as warranted."

We agree with this recommendation. SED will review the recommended disallowances as noted in the report and make adjustments to the reported costs to recover any overpayments, as appropriate, by recalculating tuition rates.

Recommendation 2:

"Remind Kids Unlimited's officials of the pertinent SED requirements that relate to the deficiencies we identified."

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

Sharon Cates-Williams

Sharon Cates-Williams

c: Phyllis Morris
Christopher Suriano
Suzanne Bolling
Brian Zawistowski
James Kampf
Jerry Nestleroad

Agency Comments - Kids Unlimited and State Comptroller's Comments



Pamela A. Madeiros
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December 16, 2020

Kenrick Sifontes
Office of the State Comptroller
Division of State Government Accountability 59
Maiden Lane, 21st Floor
New York, NY 10038

Re: State Education Department
Compliance with the Reimbursable Cost Manual
Kids Unlimited, PT, OT & SLP, PPLC
Audit Report 2020-S-33
Draft Report

Dear Mr. Sifontes:

We have reviewed the above-referenced Draft Report relating to whether the costs reported by Kids Unlimited PT, OT & SLP, PPLC (Kids Unlimited) on its Consolidated Fiscal Reports (CFRs) for the fiscal year ending June 30, 2015 and certain expenses claimed for the two fiscal years ending June 30, 2014, were reasonable, necessary, directly related to the special education program, and sufficiently documented consistent with the State Education Department's Reimbursable Cost Manual (RCM) and the Consolidated Fiscal Reporting and Claiming Manual (CFR Manual). We appreciate the opportunity to provide comment on the Draft Report for thoughtful consideration in the development of the Final Report.

General Comments: Audit Findings and Recommendations

Kids Unlimited prides itself in the quality of its programming and the integrity of its internal protocols. We must, then, take exception to the auditors' attribution of the disallowances detailed in the Draft Report to weaknesses in our internal controls. In fact, to ensure the highest level of compliance with applicable requirements, Kids Unlimited management have attended each CFR training offered by NYSED, as well as compliance trainings offered by the Office of the State Comptroller. We believe strongly that challenges to certain of the auditors' findings as presented below are reflective of disparate interpretations of the Reimbursable Cost Manual requirements as informed by contracted accountant consultant advice, rather than any deficiency in operational controls or internal policies. Simply stated, expense related decisions were made by Kids Unlimited management based upon accountant advice, past practices and a rich history of communication with SED fiscal staff. We must also note that neither of the significant disallowances proposed by the auditors were identified by SED as problematic during the rate reconciliation process, nor through numerous communications between Kids Unlimited management and SED rate setting staff. While we appreciate the auditors' position that SED "desk audits" are not of the same depth as the OSC's own audit protocols, the undeniable consequence is that agencies, such as Kids Unlimited, which are committed to full compliance with reporting requirements, are severely disadvantaged by the application of the apparent disparate review approaches. This disadvantage is all the more troubling where, as here, an agency such as Kids Unlimited interacts with

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To: Kenrick Sifontes
From: Pamela A. Madeiros
Date: December 16, 2020

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SED rate setting staff at regular intervals to confirm its understanding of the reporting requirements and to ensure compliance.

State Comptroller's Comment – Kids Unlimited's management is responsible for implementing a system of good internal controls to ensure the accomplishment of the entity's goals and objectives, the provision of reliable financial reporting, and compliance with applicable laws, regulations, and guidelines. Our audit found weaknesses in Kids Unlimited's system of internal controls regarding its reporting of costs for reimbursement. Kids Unlimited's Executive Director has the ultimate responsibility for ensuring compliance with the RCM and CFR Manual and for the information reported on its CFRs.

Further exaggerating this disturbing result is the additional fact that the Office of the NYCDOE OAG had conducted a scope review of Kids Unlimited for the 2013-2014 year, as the auditors' are aware, and had found "compliant" with the Reimbursable Cost Manual requirements the very expenses the auditors here propose to disallow as non-compliant. While we appreciate OSC's often stated position that OAG and OSC protocols are dissimilar, the fact remains that the OSC's commitment to providing agencies such as Kids Unlimited with "resources... to use in effectively managing ... operations" is not well served where, as here, OSC findings are so dramatically disparate from other governmental audits, and apparently inconsistent with SED communications and oversight.

State Comptroller's Comment – The DOE Office of the Auditor General (OAG) conducted a limited review of Kids Unlimited for 2013-14. That review did not include the level of examination provided by OSC audits. Consequently, we may be aware of other issues and information that were not available to OAG and SED.

Personal Services

Kids Unlimited challenges the auditors' proposed finding that \$437,839 in personal services costs did not comply with the RCM's requirements for reimbursement.

Compensation - Average Regional Levels

Kids Unlimited challenges the auditors' finding that compensation awarded to the titled positions Program Director (2012-13, 2013-14, 2014-15), Staff Training (2012-13), and Quality Assurance (2013-14, 2014-15) were excessive. Kids Unlimited is fully aware of the RCM constraints on compensation to individuals who have a financial interest in the program, as clearly reflected in their compliance with relevant provisions governing high management staff (RCM, Section I, 13 (A)(4)). It was with this same commitment to compliance that Kids Unlimited awarded compensation to the lesser titled position identified by the auditors – each of which was significantly less than the median salaries posted for the "positions subject to median analysis", more specifically, ED, AED, and Controller (See Attachment #1).

The relevance of the highlighted phrase can not be understated – it is only the ED, AED, and Controller titled positions which are generally subject to the median analysis, as reflected in the attached NYSED guidance documents.

State Comptroller's Comment – We did not apply the median salary analysis criteria in the RCM. Therefore, we did not recommend disallowances for the ED, Assistant ED (AED), and Controller title positions. We applied the regional average (not median) salary analysis for

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Date: December 16, 2020

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Program Director, Staff Training, and Quality Assurance positions.

While we concede that the RCM further directs that “compensation (to all individuals who have a financial interest in the program) shall not exceed the average levels paid by similar private providers to comparably qualified and appropriately certified personnel for similar work and hours of employment” (RCM, Section I, 13 (A)(5), any analysis of comparability for lesser management titled positions such as identified by the auditors, is generally reserved by RSU for waiver requests and the consideration of proposed budgets and is, even within that limited context, understood to be fluid – “average levels” being identified and revised as more program data is submitted and processed. Accordingly, we believe the audit team has narrowly interpreted the RCM principle relating to the average salaries of lesser management positions without due consideration of Kids Unlimited’s well documented efforts to assure the appropriateness of the salaries.

State Comptroller’s Comment – We disagree. There is no misapplication regarding the RCM principle. The RCM emphasizes that compensation to all individuals who have a financial interest in the program, including shareholders, trustees, board members, officers, family members, or others, shall not exceed the average regional levels paid by similar private providers to comparably qualified and appropriately certified personnel for similar work and hours of employment.

It is important to note that under the auditors’ analysis, programs would be held to a standard which is not ascertainable in “real” time as it is subject to revision by SED as more data is collected over a span of years. Simply stated, the average is “unknowable” in current time, only ascertainable to NYSED as the managers of the data, and even then, often applied in very limited instances such as rate waiver requests.

As relevant is the fact that while the reported salaries of each of the subject titled positions was clearly known and analyzed by the rate setting unit during the rate setting process, no adjustments were made in any of the audit years for those reported salaries.

State Comptroller’s Comment – The average regional salary analysis for related parties is performed during SED’s rate setting calculation after programs submit their CFR for a fiscal year, not a span of years. We also point out that Kids Unlimited did not disclose these related parties on its CFR-5 submissions as required by the CFR Manual. Moreover, SED strongly encourages providers to seek its guidance when ambiguity and uncertainty arise. Further, the RCM states that designation of costs as allowable and/or reimbursable during the rate setting or reconciliation processes does not mean such costs will be reimbursed since all rates are subject to adjustment on field audits, such as OSC audits.

RSU was well aware of Kids Unlimited’s corporate structure as a “sub-S” corporation, as indicated by their reporting of “income tax expenses” on the CFR – reporting clearly not required of not-for-profit organizations. In addition, Kids Unlimited management discussed its management structure with rate setting staff on a number of occasions, with salary information disclosed during each such discussion. As the attached excerpt from an email communication between Kids Unlimited and rate setting staff reflects, SED was fully aware of the salary levels now challenged by OSC, requested further clarification and accepted the salary level as appropriate. (See: Attachment 2; Question 5)

State Comptroller’s Comment – We reviewed the cited attachment and found no evidence

ACTIVE 54180250v1

To: Kenrick Sifontes
From: Pamela A. Madeiros
Date: December 16, 2020

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that SED had accepted the salary level as appropriate in regard to the average regional levels. Rather, the attachment showed that SED requested clarification regarding reconciliation between CFR-4 and CFR-6 for the Controller. This was not an acceptance of the salary level as being appropriate.

Kids Unlimited's transparency is also reflected in the information reported on the CFR-6 relating to compensation of management. In addition, the very name Kids Unlimited PLLC alerted SED to the for-profit nature of the agency, and its owner/operator designation.

At no point upon review of each of the elements of disclosure did SED rate setting staff indicate any concern with the level of compensation, nor identify any "excessiveness." While we appreciate that the auditors are less inclined to accept the lack of RSU adjustment as determinative, we believe that the totality of the points raised here compel a reconsideration of each of the proposed disallowances totally \$264,189.

State Comptroller's Comment – We reviewed the cited attachment and found no evidence that SED had accepted the salary level as appropriate in regard to the average regional levels. Rather, the attachment showed that SED requested clarification regarding reconciliation between CFR-4 and CFR-6 for the Controller. This was not an acceptance of the salary level as being appropriate.

Over-claimed Health Insurance Benefits

Kids Unlimited must also challenge the auditors' proposed finding of alleged over-claimed health insurance benefits. While we agree with the audit team's assessment that the RCM provides guidance on the required "proportionality" of benefits including pensions, life insurance and (TSA's) (RCM: Section I, (13)(B)(2)(c)), we believe the "proportionality" applies to the availability of the benefit, and not to its realization. As the auditors' appropriately note, the family health insurance policy option was made available to all employees including those with a financial interest in the agency. That only certain individuals availed themselves of that option is not determinative. That other employees choose to enroll in individual health insurance plans and then pay separately for dependent coverage was again, the prerogative exercised by those employees and not determinative where, as here, the auditors' claim that such an individual choice is reflective of disproportionality. It is the availability of the option which must be proportionate, it may be argued.

State Comptroller's Comment – We stand by our findings. Although the family plan was made available to all employees, the actual application of the family plan was discriminatory as coverage for the three officers' dependents was fully reimbursed by Kids Unlimited, while coverage for other employees' dependents would have to be paid by the employees themselves at an additional monthly cost averaging \$1,577 over the three-year period.

We also believe that the issue presented may be an anomaly of the tax laws which direct the reporting of health insurance benefits as compensation for operations such as Kids Unlimited and prohibit an owner from contributing to health benefits on a pre-tax basis – a tax benefit which is enjoyed by employees. Accordingly, the "corporation" was the exclusive payor of the costs – as required under tax law. (See: Attachment #3)

State Comptroller's Comment – We stand by our findings. Kids Unlimited did not comply

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To: Kenrick Sifontes
From: Pamela A. Madeiros
Date: December 16, 2020

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with the RCM, which requires fringe benefits, including pensions for individual employees or officers/directors, to be proportionally similar to those received by other classes or groups of employees.

Accordingly, for all of the reasons set out above, we respectfully request the reconsideration of the proposed health insurance related disallowance in the amount of \$173,650.

As shared with audit team during the audit process, the auditors' proposed disallowances related to management salaries and health care benefits discussed above did not make adjustment to the fringe benefit factor associated with the disallowances, effectively duplicating the disallowance – once as a function of the salary/fringe disallowance and again as related to the health benefit disallowance. While we appreciate that the auditors' finding is only a recommendation to SED, and it is unclear whether SED will apply the recommendation in its rate setting process, we would request that SED be alerted to the issue within the Report.

State Comptroller's Comment – We report and recommend the disallowances based on each issue we found. SED is aware of the details and will make adjustments, as appropriate.

Other-Than-Personal Services

Unsupported Depreciation Expenses

Kids Unlimited has attempted to obtain duplicate invoices for the identified file cabinets, conference table, and shredder, each of which is properly reflected on the required Depreciation Schedule, but for which original invoices were maintained only through the standard seven-year document retention period since purchase. We note, however, that we were able to provide supporting documentation for all but these few items of the 100 items depreciated for which supporting documentation was requested – testament to the efficiency of our depreciation protocols. Unfortunately, we are unable to provide original invoices for either the conference table or shredder, and, as shared with the auditors, as the file cabinet was “pre-owned”, there is no purchase invoice beyond the “product” description on the delivery documentation.

Similarly, we had requested a duplicate vendor invoice for the computer software asset, the cost of which was depreciated, without success, however. Accordingly, we are unable to challenge these few items.

Ineligible Phone and Cable Television Costs

Regretfully, Kids Unlimited is unable to retrieve from its archived records invoices in support of the reported internet/phone services as such records are beyond the 7-year business record retention requirements. However, we believe that since the auditors have challenged Kids Unlimited in its ability to respond to the proposed disallowance by requesting the documentation beyond standard documentation retention periods, disallowances associated with 2012-2013 fiscal year should be restored.

State Comptroller's Comment – We disagree. We maintain that the expenses Kids Unlimited reported for the fiscal year ended June 30, 2013 are within the seven-year record retention period.

ACTIVE 54180250v1

To: Kenrick Sifontes
From: Pamela A. Madeiros
Date: December 16, 2020

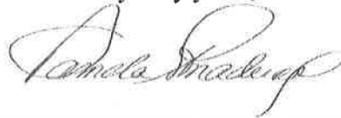
Page 6

Kids Unlimited does not challenge the auditors' proposed finding of \$510 of TV cable services.

• • • • •

We appreciate the opportunity to provide comments on the Draft Report findings.

Very truly yours,



GREENBERG TRAURIG, LLP

PAM/maf
Enclosures

cc: Kenrick Sifontes, OSC
David Schaffer, OSC
Diane Gustard, OSC
Brian Zawistowski, NYSED
James Kampf, NYSED
Diana Ullis, Kids Unlimited

ACTIVE 54180250v1

Attachment
#1



NEW YORK STATE EDUCATION DEPARTMENT

Rate Setting Unit

2014-15 Public School Salary Medians

BEDS Median Salaries For Use With 2014-15 Prospective Tuition Rates

2014-15 Public School Salary Medians

BEDS Code	BEDS Region	Superintendent	Assistant Superintendent
1	NEW YORK CITY	\$186,889	\$148,639
2	NASSAU-SUFFOLK	\$192,441	\$150,518
3	MID-HUDSON	\$179,664	\$153,793
4	UPPER HUDSON	\$147,007	\$129,034
5	LAKE CHAMPLAIN-LAKE GEORGE	\$143,412	\$115,506
6	BLACK RIVER-ST. LAWRENCE	\$125,909	\$115,506
7	UPPER MOHAWK VALLEY	\$133,823	\$108,954
8	CENTRAL	\$152,011	\$119,529
9	SOUTHERN TIER-EAST	\$142,850	\$112,769
10	SOUTHERN TIER-CENTRAL	\$147,329	\$127,549
11	SOUTHERN TIER-WEST	\$128,475	\$101,736
12	GENESEE-FINGER LAKES	\$149,511	\$129,653
13	WESTERN	\$148,871	\$129,764

Statewide Public Fringe Benefit Rate =56.86%

Positions Subject to Median Analysis:

Median Title

Position Code and Title

Superintendent Median

601 Executive Director

Assistant Superintendent

602 Assistant Executive Director

603 Controller



NEW YORK STATE EDUCATION DEPARTMENT

Rate Setting Unit

2013-14 Public School Salary Medians

BEDS Median Salaries For Use With 2013-14 Prospective Tuition Rates

2013-14 Public School Salary Medians

BEDS Code	BEDS Region	Superintendent	Assistant Superintendent
1	NEW YORK CITY	\$180,047	\$143,198
2	NASSAU-SUFFOLK	\$185,396	\$145,008
3	MID-HUDSON	\$173,086	\$148,163
4	UPPER HUDSON	\$141,626	\$124,311
5	LAKE CHAMPLAIN-LAKE GEORGE	\$138,162	\$111,278
6	BLACK RIVER-ST. LAWRENCE	\$121,300	\$113,307
7	UPPER MOHAWK VALLEY	\$128,924	\$104,965
8	CENTRAL	\$146,446	\$115,153
9	SOUTHERN TIER-EAST	\$137,620	\$108,640
10	SOUTHERN TIER-CENTRAL	\$141,936	\$122,880
11	SOUTHERN TIER-WEST	\$123,771	\$98,011
12	GENESEE-FINGER LAKES	\$144,037	\$124,907
13	WESTERN	\$143,421	\$125,013

Statewide Public Fringe Benefit Rate = 55.48%

Positions Subject to Median Analysis:

Median Title

Position Code and Title

Superintendent Median

601 Executive Director

Assistant Superintendent

602 Assistant Executive Director

603 Controller



NEW YORK STATE EDUCATION DEPARTMENT

Rate Setting Unit

2012-13 Public School Salary Medians

BEDS Median Salaries For Use With 2012-13 Prospective Tuition Rates

2012-13 Public School Salary Medians

BEDS Code	BEDS Region	Superintendent	Assistant Superintendent
1	NEW YORK CITY	\$180,047	\$143,198
2	NASSAU-SUFFOLK	\$185,396	\$145,008
3	MID-HUDSON	\$173,086	\$148,163
4	UPPER HUDSON	\$141,626	\$124,311
5	LAKE CHAMPLAIN-LAKE GEORGE	\$138,162	\$111,278
6	BLACK RIVER-ST. LAWRENCE	\$121,300	\$113,307
7	UPPER MOHAWK VALLEY	\$128,924	\$104,965
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9	SOUTHERN TIER-EAST	\$137,620	\$108,640
10	SOUTHERN TIER-CENTRAL	\$141,936	\$122,880
11	SOUTHERN TIER-WEST	\$123,771	\$98,011
12	GENESEE-FINGER LAKES	\$144,037	\$124,907
13	WESTERN	\$143,421	\$125,013

Statewide Public Fringe Benefit Rate = 51.68%

Positions Subject to Median Analysis:

Median Title

Position Code and Title

Superintendent Median

601 Executive Director

Assistant Superintendent

602 Assistant Executive Director

603 Controller

Attachment
#2

Madeiras, Pamela (Shld-ALB-GovLP)

From: Madeiros, Pamela (Shld-ALB-GovLP)
Sent: Tuesday, December 15, 2020 10:29 AM
To: Madeiros, Pamela (Shld-ALB-GovLP)
Subject: FW: 12-13 CFR - Kids Unlimited

Excerpt...

From: "Joshua Staples" <JSTAPLES@MAIL.NYSED.GOV>
Date: February 7, 2014 at 12:01:12 PM EST
To: "Igor Feldman" <igor@kunyc.com>
Subject: RE: 12-13 CFR - Kids Unlimited

Hi Igor,

Thank you for your response to my first set of questions. However, I have a few more questions that I need clarified:

- 1.) In regards to question 1 of the previous questions, can you please provide a breakdown of the costs of each item reported on line 36 "Supplies and Materials - Non-household" of the CFR-1. Please provide the dollar amount for each item.
- 2.) In regards to question 2 of the previous questions, can you please provide a breakdown of the costs of each item reported on line 10 "Office Supplies and Postage" of the CFR-3. Please provide the dollar amount for each item.
- 3.) Please provide the other job codes that the 323's were reported under.
- 4.) Please provide more details regarding the costs reported on schedule CFR-1 line 45 "Depreciation - Equipment" for \$53,024. Please explain what types of equipment are being depreciated and how much for each type.

Please let me know if you have any questions/comments.

Thanks,
Josh

Joshua Staples
Accountant, NYSED
(518) 474-0425 (Phone)
(518) 486-3606 (Fax)
jstaples@mail.nysed.gov (email)
RSU Website: www.oms.nysed.gov/rsu/
>>> "Igor Feldman" <igor@kunyc.com> 2/5/2014 3:35 PM >>>

Hello Joshua,

please read my answers in blue.

1.) Please provide a breakdown of the costs reported on schedule CFR-1 line 36 "Supplies and Materials - Non-Household" for \$6,712.

This the cost of supplies and materials SEIT teachers used for their session or reimbursement of SEIT teachers for supplies & materials they have purchased for their sessions. Major supplier is Discount School Supplies.

2.) Please provide a breakdown of the costs reported on schedule CFR-3 line 10 "Office Supplies and Postage" for \$10,033.

This is the cost of office supplies for the agency such as paper, toners, files, copies and etc. Major suppliers are Staples and W.B. Mason.

3.) Please provide a job description for job code 347(Staff Training).

See attached file.

4.) The number of "hours paid" for job code 218(Teacher - Special Educ.) appears to be excessively high compared to the number of sessions provided. Please explain why it was necessary for the 218's to work an excessive amount of hours.

These hours include both direct care hours and indirect care hours for SEIT teachers.

5.) The salary and FTE for the 603 position reported on the CFR-6 does not reconcile with the salary and FTE reported on the CFR-4. Please explain.

My position is equally broken between two different codes: 603 & 347. For the purposes of reporting highest paid employees: code 603 was included, as well as the box to indicate multiple position title codes. My overall FTE was 0.921 and half of it representing 0.461 was included for 603 and 347.

6.) The salary and FTE for the 323 positions reported on the CFR-6 do not reconcile with the salary and FTE reported on the CFR-4. Please explain.

CFR-4 shows cost of all 323 evaluators (seven evaluators in total) who performed psychological evaluations only. CFR 6 shows total compensation to evaluators listed. Their compensation included payments for both psychological evaluations as well as social history evaluations. The multiple positions box was marked off for these evaluators as well.

Attachment #3



October 6, 2020

Diane Gustard, Audit Supervisor
Office of the State Comptroller
59 Maiden Lane, 21st Floor
New York, NY 10038

Re: NY State Education Department
Kids Unlimited – Preliminary Audit Findings
Audit Report 2020-S-033

Dear Ms. Gustard:

I have reviewed your preliminary audit findings report for Kids Unlimited (hereinafter “KU”), as referenced above, regarding KU’s compliance with the provisions of the Reimbursable Cost Manual for the fiscal year ending June 30, 2015. In addition to the response prepared by management, I would like to provide commentary on the auditor’s disallowance of a portion of the officer’s health insurance. You state two principles upon which you disallow these costs:

- 1) That the benefit received by the officers was not proportionately similar to those received by other classes or groups of employees; and
- 2) That the Officer’s did not “pay” for the health benefits they received as outlined within the employee handbook for employees of KU.

Management has appropriately addressed the first of these in their response, and I would like to comment on the second.

KU is an LLC which has elected to be taxed as an S Corporation and as such there are special rules in relation to amounts paid for greater than 2% shareholders – in this case, this would be the officers of KU. Pursuant to IRC Section 125 and proposed regulation 1.125-1, a greater than 2% shareholder is not considered an employee (and therefore an eligible participant of a Section 125 plan) and cannot contribute to health benefits on a pre-tax basis; as such, any contribution by the owners would be with “post-tax” contributions. The amount withheld from compensation for these premiums is reflected in the underlying payroll records as S-Corp Dental, S-Corp Medical & S-Corp Vision and on their 2015 Form W-2 as “S-Corp MP”. This is tantamount to the officers paying for their health insurance as it is a component of their compensation, but they do not receive any check or direct deposit for this amount on which they are otherwise taxed.

As a result, we believe that the KU met both the standards the auditors have cited them for; the benefits were proportionately similar (all staff had the ability to obtain the same family coverage if they so chose to) and the officers paid for their coverage (via a post-tax deduction as required by IRS regulations and guidelines).

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As such, we echo management's sentiment that the finding should be removed from the OSC's report.

Sincerely,



Kenneth Cerini, CPA, CFP
Managing Partner

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