



New York State Comptroller
THOMAS P. DiNAPOLI

Franziska Racker Centers, Inc.: Compliance With the Reimbursable Cost Manual

State Education Department

Report 2021-S-5 | February 2022

Spotlight on Education



Audit Highlights

Objective

To determine whether the costs reported by Franziska Racker Centers, Inc. dba Racker (Racker) on its Consolidated Fiscal Report (CFR) were properly calculated, adequately documented, and allowable under the State Education Department's (SED) guidelines, including the Reimbursable Cost Manual (RCM). The audit covered expenses reported on Racker's 2017 and 2018 CFRs for the fiscal year ended June 2018.

About the Program

Racker is an SED-approved, non-profit special education provider located in Tompkins County, serving students from nine counties in Central New York. Among other programs, Racker provides preschool special education services to children with disabilities who are 3 to 5 years of age. Racker is reimbursed for these services through rates set by SED. The reimbursement rates are based on financial information, including costs, that Racker reports to SED on its annual CFR. To be eligible for reimbursement, reported costs must comply with RCM requirements. For the fiscal year ended June 30, 2018, Racker reported approximately \$4.36 million in reimbursable costs on its CFR for the Preschool Integrated Special Class – over 2.5 hours per day (Program) that it operated.

Key Findings

For the fiscal year ended June 30, 2018, we identified \$199,372 in ineligible costs reported by Racker on its CFRs for the Program. The ineligible costs included:

- \$94,258 in personal service costs, consisting of \$69,538 in payments with inadequate time records, \$20,977 in costs that were not appropriately allocated to the Program, and \$3,743 in unallowable extra compensation payments.
- \$105,114 in other than personal service costs, consisting of \$87,304 in less-than-arm's-length lease transactions, \$7,035 in ineligible costs, \$7,055 in vehicle costs, \$2,813 in unsupported purchases, and \$907 in staff travel.

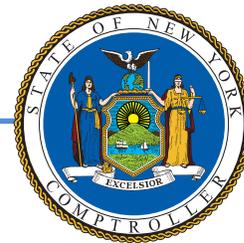
Key Recommendations

To SED:

- Review the disallowances identified by our audit and, if warranted, make the necessary adjustments to the costs reported on Racker's CFR and to Racker's tuition reimbursement rates.
- Make necessary changes to ensure proper calculation of tuition rates and recover overpayments.
- Remind Racker officials of the pertinent SED requirements that relate to the deficiencies we identified.

To Racker:

- 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

February 1, 2022

Betty A. Rosa, Ed.D.
Commissioner
State Education Department
State Education Building
8 Washington Avenue
Albany, NY 12234

Dan Brown
Executive Director
Franziska Racker Centers, Inc. dba Racker
3226 Wilkins Road
Ithaca, NY 14850

Dear Dr. Rosa and Mr. Brown:

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 the 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 costs submitted by Franziska Racker Centers, Inc. dba Racker to the State Education Department for the purpose of establishing the preschool special education tuition reimbursement rates used to bill public funding sources that are supported by State aid payments. This audit was performed pursuant to the State Comptroller's authority under 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.

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

Respectfully submitted,

Division of State Government Accountability

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Glossary of Terms

Term	Description	Identifier
CFR	Consolidated Fiscal Report	<i>Key Term</i>
CFR Manual	Consolidated Fiscal Reporting and Claiming Manual	<i>Policy</i>
LTAL	Less than arm's length	<i>Key Term</i>
OTPS	Other than personal service	<i>Key Term</i>
Program	Preschool Integrated Special Class – over 2.5 hours	<i>Key Term</i>
Racker	Franziska Racker Centers, Inc. dba Racker	<i>Service Provider</i>
RCM	Reimbursable Cost Manual	<i>Policy</i>
SED	State Education Department	<i>Auditee</i>

Background

Franziska Racker Centers, Inc. dba Racker (Racker) is a not-for-profit organization with administrative offices located in Tompkins County, serving students from nine upstate New York counties (Broome, Chemung, Cortland, Madison, Onondaga, Schuyler, Seneca, Tioga, and Tompkins). Racker is authorized by the State Education Department (SED) to provide, among other programs, preschool special education services to children with disabilities who are 3 to 5 years of age. During our audit period, Racker operated one rate-based preschool education program: Preschool Integrated Special Class – over 2.5 hours per day (Program). The Program operated 12 full-day classes providing special education services to about 151 children.

The counties that use Racker's preschool special education services pay tuition to Racker using reimbursement rates set by SED. The State, in turn, reimburses the counties for a portion of the tuition paid. SED sets the special education rates based on financial information, including costs, that Racker reports to SED on the annual Consolidated Fiscal Report (CFR). Costs reported on the CFR must comply fully with the guidelines in SED's Reimbursable Cost Manual (RCM) regarding eligibility and documentation requirements and must meet the reporting requirements prescribed in the Consolidated Fiscal Reporting and Claiming Manual (CFR Manual). For the fiscal year ended June 30, 2018, Racker reported approximately \$4.36 million in reimbursable costs for the Program.

Audit Findings and Recommendations

According to the RCM, costs reported on the CFR are considered for reimbursement provided they are reasonable, necessary, directly related to the special education program, and sufficiently documented. For the fiscal year ended June 30, 2018, we identified \$199,372 in costs that Racker reported on its CFR that did not comply with SED's requirements for reimbursement. The ineligible costs include \$94,258 in personal service costs and \$105,114 in other than personal service (OTPS) costs. A summary of ineligible costs is presented in the Exhibit at the end of this report.

Personal Service Costs

For the fiscal year ended June 30, 2018, Racker reported \$3.55 million in personal service costs charged to the Program. We selected a judgmental sample of various categories of personal service costs and title codes, and identified \$94,258 in expenses that were not allowable under SED's requirements.

Time Records

According to the RCM, 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. Further, employee time sheets must be signed by the employee and a supervisor, and must be completed at least monthly.

We found that Racker charged \$69,538 (\$55,853 in salaries and \$13,685 in fringe benefits) to the Program for compensation costs that were not appropriately approved or documented. These costs included \$58,058 (\$45,442 in salaries and \$12,616 in fringe benefits) for time records that were not approved by a supervisor and \$11,480 (\$10,411 salary and \$1,069 fringe) that were not supported by employee time records.

Program Salary Allocations

According to the RCM, 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.

We found Racker charged \$20,977 (\$18,578 in salaries and \$2,399 in fringe benefits) to the Program for staff who also worked in other programs. To allocate time for these staff, Racker used verbal estimations at the beginning of the year to allocate their time to the Program throughout the year. Salary allocations were not based on actual hours or time studies.

Extra Compensation

According to the RCM, overtime compensation for salaried direct care staff for extracurricular activities such as stipends is reimbursable when documented in the

employee's contract. A merit award (or bonus compensation) shall mean a non-recurring and non-accumulating (i.e., not included in base salary of subsequent years) lump sum payment in excess of regularly scheduled salary that is not directly related to hours worked. A merit award may be reimbursed if it is based on merit as measured and supported by employee performance evaluations that are completed prior to the determination and accrual of the merit award and within 1 year of such determination and accrual. A sign-on bonus shall mean a non-recurring and non-accumulating (i.e., not included in base salary of subsequent years) sum of money in excess of regularly scheduled salary provided as an incentive to accept employment at the entity. The sign-on bonus terms must be articulated in a written employer–employee agreement.

Racker reported \$3,743 (\$3,367 in salaries and \$376 in fringe benefits) for stipend salaries that were not written in an employee contract and bonus salaries that were not merit based. This included: biweekly stipends totaling \$2,842 (\$2,600 salary and \$242 fringe) for teacher mentoring; bonuses totaling \$505 (\$425 salary and \$80 fringe) to employees for referring an individual who is then hired into an open position; and \$396 (\$342 salary and \$54 fringe) for one-time bonus work completed on a payroll system implementation project.

Other Than Personal Service Costs

For the fiscal year ended June 30, 2018, Racker reported \$813,185 in OTPS costs charged to the Program. Of this, we reviewed a judgmental sample of costs in various categories and identified \$105,114 in costs that did not meet SED's requirements for reimbursement.

Less-Than-Arm's-Length Lease Agreement

In general, a less-than-arm's-length (LTAL) relationship exists when there are related parties, and one party can exercise control or significant influence over the management or operating policies of another party, to the extent one of the parties is (or may be) prevented from pursuing its own separate interests. The CFR Manual requires providers to report (on the CFR-5) all transactions, including compensation, where an individual has significant authority and control in the organization with which the reporting entity may deal. Further, each provider must adopt a written conflict of interest policy that clearly sets forth the procedures to be followed in instances where a board member's personal or business interests may be advanced by an action of the board. Additionally, board members should not have any personal or business interest that may conflict with their responsibilities to the institution. A board member should avoid even the appearance of impropriety when conducting the institution's business.

During the fiscal year ended June 30, 2018, Racker reported \$87,304 in lease, improvement, and insurance payments to a company owned by an Associate Director who was previously a Director on the Board of Directors. Although Racker reported this relationship on its 2017 Internal Revenue Service Form 990 Schedule L, Racker did not report it to SED on its 2017 or 2018 CFR. Further, Racker's own

Conflict of Interest policy requires that all Board members must disclose conflicts of interest at the beginning of and throughout their association with the agency.

According to the RCM, costs incurred in a LTAL lease of real property shall be reimbursed based on the owner's actual costs or the fair market value, whichever is less. Racker officials were unable to provide either the actual costs or a fair market value analysis. Absent this information, we could not determine the reimbursable amount for this LTAL lease agreement, and recommend that SED disallow \$87,304 in rent expense for this lease.

In response, Racker officials stated that Associate Director Board members are not voting members; therefore, there was no LTAL relationship. The Associate Director may not be able to vote on issues before the Board; however, according to Racker's bylaws, such members' duties include serving on standing or special committees, as appointed by the President, and they would be full voting members of those committees. Racker did not report this relationship on its 2017 or 2018 CFRs because it did not think there was a conflict of interest related to the leased property at that time. However, both the RCM and Racker's Conflict of Interest policy apply to all Board members and do not differentiate between whether they can vote. Further, Racker reported this relationship to the Internal Revenue Service on its 2017 Form 990 Schedule L, which is for reporting transactions with interested persons.

Ineligible Costs

According to the RCM, costs must be reasonable, necessary, directly related to the special education programs, and sufficiently documented. The RCM states that, when determining the reasonableness of a given cost, consideration is to be given to, among other things, whether the cost is a type generally recognized as ordinary and necessary for the operation of a special education program approved under Article 89 of the Education Law. It also states that costs for staff, including clothing, food, beverages, entertainment, flowers, gifts, and other related costs for meetings, including board meetings, are not reimbursable. Additionally, promotional items of any type and charitable contributions and donations are not reimbursable. Further, expenses incurred solely to enhance income from investments are not reimbursable.

We found Racker reported \$7,035 in staff-related expenses that are ineligible for reimbursement, including: clothing, food, entertainment, flowers, gifts, promotional items, charitable donations, a non-Program-related podcast, a fundraising event, investment management fees, and merchant bank fees for the after-hours day care program.

Vehicle Costs

According to the RCM, vehicle use must be documented with individual vehicle logs that include, at a minimum, the date, time of travel, to and from destinations, mileage between each, purpose of travel, and name of traveler. The annual mileage for program purposes and repairs and maintenance costs for each vehicle should be summarized and maintained.

We identified \$7,055 in vehicle expenses that are ineligible for reimbursement because Racker did not maintain appropriate documentation to support business use of the vehicles. The ineligible costs included: \$2,361 for maintenance and repair; \$2,043 for fuel; \$1,857 for automotive insurance; and \$794 for vehicle depreciation.

Unsupported Purchases

According to the RCM, generally, costs will be considered for reimbursement provided such costs are reasonable, necessary, directly related to the special education program, and sufficiently documented. All purchases must be supported with canceled checks and invoices listing the items purchased, date of purchase, and date of payment. We identified \$2,813 in purchases that had no supporting documentation, including purchases at grocery stores, restaurants, and an events website and for parking.

Staff Travel

According to the RCM, travel costs include costs of transportation, lodging, and subsistence incurred by employees in travel status on official school business. Reimbursement for such travel costs shall be consistent with bulletins issued by the Division of the Budget and the Office of the State Comptroller. Logs must be kept by each employee indicating the dates of travel, destination, purpose, mileage, and related costs such as tolls, parking, and gasoline, and must have supervisory approval for the associated travel expense to be reimbursable. Reimbursement must comply with applicable per diem rates, and out-of-state travel costs are reimbursable to the extent they are critical to the success of the program and are for services or training that cannot be obtained in state.

We found Racker reported \$907 in costs related to staff travel that are ineligible for reimbursement. This included \$542 in hotel costs that exceeded the allowable per diem rate; \$229 in hotel costs not approved by a supervisor; \$83 in out-of-state travel costs for a conference not related to the Program; and \$52 in fuel charges without travel documentation.

Recommendations

To SED:

1. Review the disallowances identified by our audit and, if warranted, make the necessary adjustments to the costs reported on Racker's CFR and to Racker's tuition reimbursement rates.
2. Make necessary changes to ensure proper calculation of tuition rates and recover overpayments.
3. Remind Racker officials of the pertinent SED requirements that relate to the deficiencies we identified.

To Racker:

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

Audit Scope, Objective, and Methodology

The objective of the audit was to determine whether the costs reported by Racker on its CFR were properly calculated, adequately documented, and allowable under SED guidelines, including the RCM. The audit covered expenses reported on Racker's 2017 and 2018 CFRs for the fiscal year ended June 2018.

To accomplish our objective and assess internal controls related to our objective, we reviewed the RCM that applied to the fiscal year we examined and the 2017 and 2018 CFR Manuals and related appendices. We evaluated Racker's internal controls as they related to costs it reported on the CFRs. We reviewed Racker's CFRs for the 2 calendar years ended December 31, 2018 with a focus on select costs for the fiscal year ended June 30, 2018, as well as relevant financial records for the audit period. We determined that the data was sufficiently reliable for our use in accomplishing our audit objective. We interviewed Racker personnel and reviewed policies to obtain an understanding of their financial practices for reporting costs on the CFR. For some expenses, we selected a judgmental sample of costs claimed by Racker on the CFRs that were considered high risk (e.g., food, salary costs, and costs that appeared not to be relevant to the Program) to determine whether they were properly calculated, adequately documented, and allowable. Based on our sample design, we cannot project our results to the population as a whole.

Statutory Requirements

Authority

This 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. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our professional judgment, these duties do not affect our ability to conduct this independent performance audit of SED's oversight and administration of Racker's compliance with the RCM.

Reporting Requirements

We provided a draft copy of this report to SED and Racker 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. However, Racker officials disagreed with most of the proposed disallowances. Our responses to certain Racker comments are included in the report's State Comptroller's Comments.

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

Franziska Racker Centers, Inc. dba Racker
Schedule of Submitted and Disallowed Program Costs
for Fiscal Year Ended June 30, 3018

Program Costs	Amount Reported on CFR	Amount Disallowed	Amount Remaining	Notes to Exhibit
Personal Services	\$3,549,555	\$94,258	\$3,455,297	A-F
Other Than Personal Services	813,185	105,114	708,071	A,G-AA
Total Program Costs	\$4,362,740	\$199,372	\$4,163,368	

Notes to Exhibit

The following Notes refer to specific sections of the RCM and the CFR Manual that we used as a basis for 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 Racker officials during the course of the 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. 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.
- B. 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. Employee time sheets must be signed by the employee and a supervisor and must be completed at least monthly.
- C. RCM Section III.1.B – Actual hours of service are the preferred statistical basis upon which to allocate salaries and fringe benefits for shared staff who work on multiple programs. Entities must maintain appropriate documentation reflecting the hours used in this allocation.
- D. RCM Section II.13.A.(9) – Overtime compensation for salaried direct care staff for extracurricular activities such as coaching stipends, extra period coverage, plays, etc. are reimbursable when documented in the employee's contract and if they do not exceed local school district compensation for such activities.
- E. RCM section II.13.A.(10) – A merit award (or bonus compensation) shall mean a non-recurring and non-accumulating (i.e., not included in base salary of subsequent years) lump sum payment in excess of regularly scheduled salary that is not directly related to hours worked. A merit award may be reimbursed if it is based on merit as measured and supported by employee performance evaluations that are completed prior to the determination and accrual of the merit award and within 1 year of such determination and accrual.
- F. RCM Section II.13.A.(13) – A sign-on bonus shall mean a non-recurring and non-accumulating (i.e., not included in base salary of subsequent years) sum of money in excess of regularly scheduled salary provided as an incentive to accept employment at the entity.
- G. RCM Section I.4.A – In general, a LTAL relationship exists when there are related parties and one party can exercise control or significant influence over the management or operating policies of another party, to the extent that one of the parties is or may be prevented from fully pursuing its own separate interests.
- H. CFR Manual Section 18 – The CFR-5 schedule is used to report all transactions, including compensation, between the reporting entity, its affiliates, principal owners, management, and members of their immediate families and any other party (including an organization) with which the reporting entity may deal when one party has the ability to significantly influence management or operating policies of the other to the extent that one of the transacting parties might be prevented from fully pursuing its own separate interests.
- I. RCM Section I.4.B – In general, a conflict of interest exists when a person in a position of trust has a competing professional or personal interest. The existence of a conflict of interest does

not mean that an unethical or improper act has occurred or will occur. However, care must be taken to ensure that such conflicts do not impair the employee's ability to perform his or her duties objectively and act in the best interest of the entity. Each provider must adopt a written conflict of interest policy that clearly sets forth the procedures to be followed in the instance where a member of the governing entity of the provider (e.g., the provider's board or person in a management position) has personal or business interests that may be advanced by an action of the board, including a provision that such member may not participate in any decision to approve any transaction where such conflicting interests may be advanced. The policy must also include a requirement and process for identifying and fully disclosing all LTAL relationships and transactions on an ongoing basis as well as on the CFR. The policy should be reviewed and discussed with the provider's attorneys and auditors prior to its adoption.

- J. RCM Appendix F – Trustees/board members should not have any personal or business interest that may conflict with their responsibilities to the institution. A trustee/board member should avoid even the appearance of impropriety when conducting the institution's business.
- K. RCM Section II.41.B.(4) – Costs incurred in less-than-arm's-length lease of real property transactions shall be reimbursed based on the owner's actual cost or the fair market value, whichever is less.
- L. RCM Section I.10.A – In determining reasonableness of a given cost, consideration shall be given to whether the cost is of a type generally recognized as ordinary and necessary for the operation of the approved special education program. Public special education funding shall be used in accordance with Article 89 of Education Law Section 4401 and Section 4410 10.(e).
- M. RCM Section II.11 – Ordinary living expenses, such as the cost of clothing and uniforms that are normally assumed by parents or legal guardians of students attending day care centers or public day schools, are not reimbursable. Clothing expenses for staff, excluding Security (Position Title Code 105) and Housekeeping and Maintenance (Position Title Code 102), such as uniforms, even if required by school policy, are not reimbursable and are considered to be personal expenses.
- N. RCM Section II.22.C – Costs of food provided to any staff, including lunchroom monitors, are not reimbursable.
- O. RCM Section II.30.C – Costs for food, beverages, and entertainment and other related costs for meetings, including board meetings, are not reimbursable.
- P. RCM Section II.20.A – Costs incurred for the 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.
- Q. RCM Section II.20.B – All personal expenses, such as personal travel expenses, laundry charges, beverage charges, gift certificates to staff and vendors, flowers or parties for staff, holiday parties, repairs on a personal vehicle, and rental expenses for personal apartments, are not reimbursable unless specified otherwise in the RCM.
- R. RCM Section II.24 – Gifts of any kind are not reimbursable.
- S. RCM Section II.3.A – Promotional items of any type are not reimbursable.

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- T. RCM Section II.16 – Political and charitable contributions and donations made by the program are not reimbursable.
 - U. RCM Section II.29 – Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are not reimbursable.
 - V. RCM Section III.1.J.(2) – Vehicle use must be documented with individual vehicle logs that include, at a minimum, the date, time of travel, to and from destinations, mileage between each, purpose of travel, and name of traveler.
 - W. RCM Section III.1.D – All purchases must be supported with canceled checks and invoices listing the items purchased, date of purchase, and date of payment. Costs must be charged directly to specific programs whenever possible.
 - X. RCM Section II.59 – Travel costs include costs of transportation, lodging, and subsistence incurred by employees in travel status on official school business. Reimbursement for such travel costs shall be consistent with bulletins issued by the Division of the Budget and the Office of the State Comptroller.
 - Y. RCM Section III.1.E – Logs must be kept by each employee indicating the dates of travel, destination, purpose, mileage, and related costs such as tolls, parking, and gasoline. Logs must have supervisory approval for the associated travel expense to be reimbursable.
 - Z. RCM Section VI Appendix C – In-state and out-of-state meal and lodging allowances and per diem rates are available on the Office of the State Comptroller’s website at: <http://www.osc.state.ny.us/agencies/> under “New York State Travel Guidelines.”
 - AA. RCM Section II.59.B – Out-of-state travel should be severely restricted and should be on an exception basis only. Out-of-state travel costs are reimbursable to the extent they are critical to the success of the program and are for services or training that cannot be obtained in state.

Agency Comments - State Education Department



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

EXECUTIVE DEPUTY COMMISSIONER
(518) 473-8381
E-mail: Sharon.Cates-Williams@nysed.gov

December 28, 2021

Mr. Brian Reilly
Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State St, 11th Floor
Albany, NY 12236

Dear Mr. Reilly:

The following is the New York State Education Department's (SED) response to the draft audit report, 2021-S-5, *Franziska Racker Centers, Inc. dba Racker (Racker) - Compliance with the Reimbursable Cost Manual*.

Recommendation 1:

"Review the disallowances identified by our audit and, if warranted, make the necessary adjustments to the costs reported on the Racker's CFR and to the Racker's 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. NYSED will further review the less-than-arm's-length lease agreement recommendation to determine if the adjustment is appropriate.

Recommendation 2:

"Make necessary changes to ensure proper calculation of tuition rates and recover overpayments."

We agree with this. 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 3:

"Remind Racker 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 Racker's 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, Regulations, and the Reimbursable Cost Manual (RCM). Furthermore, SED will alert Racker 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

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

Agency Comments - Franziska Racker Centers, Inc.



Dan Brown, Executive Director
Jeffrey S. Lewis, M.D., D.M.D., Medical Director

Tompkins County Sites

□ Administrative Bldg., Clinic,
Early Childhood, Residential and
Community Services

3226 Wilkins Rd.
Ithaca, NY 14850
Tel: 607.272.5891
Fax: 607.272.0188

□ Audiology Clinic
619 W. State St. Ste. C
Ithaca, NY 14850
Tel: 607.882.9047
Fax: 607.882.9048

□ Counseling Programs
at TST BOCES
Smith School
555 Warren Rd.
Ithaca, NY 14850
Tel: 607.257.2353
Fax: 607.257.2510

Cortland County Sites

□ Early Childhood, Residential
and Community Services
882 NYS Rt. 13
Cortland, NY 13045
Tel: 607.753.9375
Fax: 607.758.9287

□ Counseling Programs
at OCM BOCES
1710 NYS Route 13
Cortland, NY 13045
Tel: 607.758.5100
Fax: 607.758.5146

Tioga County Sites

□ Early Childhood, Residential
and Community Services
1277 Taylor Rd.
Owego, NY 13827
Tel: 607.687.8929
Fax: 607.687.8153

January 13, 2022

Brian Reilly, Audit Director
Office of the State Comptroller
110 State Street 11th Floor
Albany, NY

Re: Franziska Racker Centers: Compliance with the RCM Report 2021-S-5

Dear Mr. Reilly,

The purpose of this audit was to test the compliance with the SED Reimbursable Cost Manual. I would like to point out that Racker is a large, diverse agency with programs regulated by OPWDD, OMH, OCFS, DOH and SED. Each agency can have different cost reporting requirements that makes universal compliance very difficult.

Racker's policies and procedures strive to accommodate our funding agencies and other legal and regulatory requirements while balancing administrative efficiencies.

Below are our responses to the audit findings.

Time Records:

First, it is important to note that most of this disallowance is related to salaried, exempt staff. Per the DOL, exempt staff are not required to complete timesheets, so we were in compliance with DOL requirements.

Most of the disallowances were related to 2017 when we were using a manual timekeeping and approval system for exempt salaried staff. In January 2018, we greatly improved our compliance when we invested in an electronic timekeeping system. Our new system captures supervisor approval and signatures electronically which provides greater enforcement of the RCM requirements.

It is important to note that, although some of the paper documentation and approvals were incomplete, we have no doubt that the employees' time was authorized and approved by their supervisors.

[Comment 1](#)

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Dan Brown, Executive Director
Jeffrey S. Lewis, M.D., D.M.D., Medical Director

Program Salary Allocations:

Tompkins County Sites

☐ Administrative Bldg., Clinic,
Early Childhood, Residential and
Community Services
3226 Wilkins Rd.
Ithaca, NY 14850
Tel: 607.272.5891
Fax: 607.272.0188

The two specific exempt staff related to this disallowance were the Facility Director and a Program Director. We are confident that the self-reported estimate created an accurate salary allocation for these staff without creating an unnecessary administrative burden of time tracking. Also, we feel that periodic time studies are not necessarily an accurate measure for this type of program.

[Comment 2](#)

☐ Audiology Clinic
619 W. State St. Ste. C
Ithaca, NY 14850
Tel: 607.882.9047
Fax: 607.882.9048

Extra Compensation:

We disagree the specific disallowance of \$2,842 for the teacher mentoring stipend. We feel that this mentoring agreement with a senior Special Education Teacher is adequately documented in the employee's record. We are reviewing our procedures to ensure that other non-recurring payments and bonuses are reported correctly to meet RCM guidelines.

[Comment 3](#)

☐ Counseling Programs
at TST BOCES
Smith School
555 Warren Rd.
Ithaca, NY 14850
Tel: 607.257.2353
Fax: 607.257.2510

Less-Than-Arm's-Length Lease Agreement:

We continue to disagree with this disallowance because we determined there was not a LTAL relationship.

Per the CFR manual:

CFR-5 is used to report all transactions, including compensation, between the reporting entity its affiliates, principal owners, management and members of their immediate families and any other party (including an organization) with which the reporting entity may deal **when one party has the ability to significantly influence management or operating policies of the other to the extent that one of the transacting parties might be prevented from fully pursuing its own separate interests.**

Cortland County Sites

☐ Early Childhood, Residential
and Community Services
882 NYS Rt. 13
Cortland, NY 13045
Tel: 607.753.9375
Fax: 607.758.9287

Management reviewed this transaction and determined that a LTAL relationship did not exist. Racker determined that, while Racker does have transactions (rental payments) with a corporation whose principal is a former board member, neither party has the ability to significantly influence management or operating policies of the other.

☐ Counseling Programs
at OCM BOCES
1710 NYS Route 13
Cortland, NY 13045
Tel: 607.758.5100
Fax: 607.758.5146

The McNeils were not voting board members so they did not have authority to affect policies and both parties were freely able to pursue separate interests.

Tioga County Sites

☐ Early Childhood, Residential
and Community Services
1277 Taylor Rd.
Owego, NY 13827
Tel: 607.687.8929
Fax: 607.687.8153

We updated our Conflict of Interest Policy in December 2021 to more clearly address the procedures when there is a potential for a LTAL relationship or a process for identifying and disclosing one.

For the noted property, Racker reported total space costs of \$87,304 which equates to \$8.45/sq. ft. We feel that this is a reasonable, market cost for a very specific/multi-use building.

[Comment 4](#)

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Owego, NY 13827
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Ineligible Costs:

Our policy has always been to exclude ineligible costs and we will continue to improve our accounting and reporting procedures to ensure ineligible costs are excluded.

We continue to disagree with the specific disallowance of the investment management fees. The fees reported are not for investment counsel or advice. Racker's Investment Committee provides the investment guidance for our investment portfolio. The fee we pay is simply to process the transactions to rebalance the portfolio according to the guidelines set by the Investment Committee.

Vehicle Costs:

Racker has a fleet of over 60 vehicles at an annual cost of over \$500,000. The vehicles are almost exclusively used by our OPWDD Residential program and our Facility Dept.

\$6,300 of the \$7,055 disallowance is a result of the automated administrative allocation calculated by the CFR that charges SED a pro-rated share of this administrative cost. In the specific case of vehicles costs, that allocation is not representative of the Program's usage.

We are reviewing our procedures to determine how or if to incorporate the specific RCM requirements for the Program's infrequent use of the vehicles, while at the same time not adding significant administrative burden.

Unsupported Purchases:

Our policy has always been that purchases must be supported with appropriate documentation. We will continue review our procedures and technologies to improve the enforcement of this policy.

I would like to thank the audit team led by Jessica Kirk for their professionalism and help through this audit.

Sincerely,

Dan Brown
Executive Director

[Comment 5](#)

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State Comptroller's Comments

1. We are pleased Racker made improvements to its timekeeping system to enforce RCM requirements. Although timekeeping requirements for the Department of Labor may not include exempt staff, the RCM does not make this differentiation. According to the RCM, payroll must be supported by employee time sheets signed by a supervisor. During the audit period, for certain employees, Racker did not provide adequate time records or documentation that time worked was approved by a supervisor.
2. The RCM and the CFR Manual require salary allocations to a program be supported by payroll records or time studies. Because Racker's salary allocations for the Facility Director and Program Director were not based on payroll records or time studies but rather on the employees' self-reported estimates, they are not eligible for reimbursement.
3. While Racker provided us with an email approving the stipend, the teacher mentoring stipend was not documented in the employee's contract, as required by the RCM for reimbursement.
4. We appreciate that Racker updated its Conflict of Interest policy. The CFR Manual requires that transactions with related individuals, including members of the board of directors, be reported on the CFR Schedule 5. Further, the RCM states that boards should avoid any conflict of interest or even the appearance of a conflict. As such, related-party transactions – including lease, improvement, and insurance payments by Racker to a company owned by the Associate Director of its Board of Directors – should be reported on the CFR. In addition, according to the RCM, costs incurred in a LTAL lease of real property shall be reimbursed based on the owner's actual costs or the fair market value, whichever is less. Racker could not provide documentation of either fair market value or owner costs; therefore, the costs are not reimbursable.
5. According to the RCM, investment management fees are not reimbursable. By definition, investment management fees include the cost of investment counsel and staff services, as well as any administrative costs. The transaction fee Racker is referencing is an administrative cost.

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