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

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Division of State Government Accountability

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# **Compliance With the Reimbursable Cost Manual**

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**Westchester School  
for Special Children  
State Education Department**

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Report 2011-S-41

July 2013

# Executive Summary

## Purpose

To determine whether the costs reported by the Westchester School for Special Children (WSSC) on its Consolidated Fiscal Reports (CFRs) were properly calculated, adequately documented, and allowable per the State Education Department's (SED's) Reimbursable Cost Manual (Manual). The audit included the four fiscal years ended June 30, 2011.

## Background

WSSC, located in Yonkers, New York, provides special education services to school-age and pre-school children between 3 and 21 years of age. The New York City Department of Education (DoE) and other school districts pay tuition and fees to WSSC according to rates set by SED. These rates are based on financial information WSSC presents in an annual CFR filed with SED. SED reimburses DoE and the other school districts for a portion of its payments to WSSC. For the four years ended June 30, 2011, WSSC claimed approximately \$48.7 million in public support.

## Key Findings

- We disallowed \$802,912 in claimed costs (including \$610,507 in personal service costs and \$192,405 in other-than-personal-service costs) because they were ineligible per the Manual. The disallowances included:
  - \$254,868 for the compensation of nine employees who were neither certified nor qualified for their positions for which they were paid;
  - \$126,447 in compensation paid to the former Executive Director and Assistant Executive Director in excess of SED's median allowable compensation levels;
  - \$112,734 in reported vehicle expenses because the WSSC did not maintain the required vehicle logs or any other documentation to support the business use of the vehicles;
  - \$61,284 in tuition reimbursements to five employees. These reimbursements did not comply with the Manual;
  - \$48,000 in salary increases to an employee whose job tasks and responsibilities did not change, and therefore, justify such increases. The employee's salary increased by 126 percent, from \$38,000 to \$86,000, over a 22-month period; and
  - 40,638 in depreciation related to capital project work that was awarded on a less-than-arms-length basis.
- WSSC's Board failed to exercise due care and diligence in performing its fiduciary responsibilities. A company owned by WSSC's former Board Chairman received \$136,032 in sole source business from the school.
- The former Executive Director incurred \$17,072 in personal charges using a WSSC credit card and WSSC checks. Among the inappropriate charges, the Executive Director spent \$4,254 at a Harley Davidson dealer; \$1,723 for lodging at the Majestic View Lodge near Zion National Park; \$1,620 at a cigar store; and \$369 at Victoria's Secret. Although the former Executive Director eventually reimbursed WSSC for the personal expenses, he should not have used WSSC funds for such expenses in the first instance.
- WSSC paid \$97,870 for lobbying services to a firm that was owned by the brother of WSSC's

current Executive Director. Although these costs were not claimed on WSSC's CFRs, they represented a less-than-arms-length business arrangement.

### **Key Recommendations**

- SED should review the disallowances resulting from our audit and make the appropriate adjustments to costs reported on the CFRs and to WSSC's tuition reimbursement rates, as warranted.
- WSSC officials should ensure that costs reported on WSSC's CFRs are in full compliance with the Manual.

### **Other Related Audits/Reports of Interest**

[Bilingual SEIT & Preschool, Inc.: Compliance With the Reimbursable Cost Manual \(2011-S-13\)](#)

[IncludED Educational Services, Inc.: Compliance With the Reimbursable Cost Manual \(2010-S-59\)](#)

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**State of New York  
Office of the State Comptroller**

**Division of State Government Accountability**

July 2, 2013

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Mr. Leonard Spano  
Executive Director  
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Dear Dr. King and Mr. Spano:

The Office of the State Comptroller is committed to providing accountability for tax dollars spent to support government funded services and operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit of the State Education Department and Westchester School for Special Children entitled *Compliance With the Reimbursable Cost Manual*. This audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

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

Respectfully submitted,

*Office of the State Comptroller  
Division of State Government Accountability*

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This report is also available on our website at: [www.osc.state.ny.us](http://www.osc.state.ny.us)

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## Background

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The Westchester School for Special Children (WSSC), located in Yonkers, New York, is a private not-for-profit corporation that provides special education services to school-age and pre-school children between 3 and 21 years of age. The New York State Education Department (SED) approved the special education programs of WSSC under Section 853 of the State Education Law. WSSC's students are referred primarily by their local school and/or social service districts based on determinations that the students suffer from handicapping conditions or from parental neglect or abuse.

The New York City Department of Education (DoE) and other school districts pay tuition and fees to WSSC using rates set by SED. SED sets these rates using financial information that WSSC reports in annual Consolidated Fiscal Reports (CFRs) it files with SED. SED issued the Reimbursable Cost Manual (Manual) to provide guidance to providers on the eligibility of costs, documentation, and allocation requirements that must be met for rate-setting purposes. The DoE and other localities use the rates set by SED to pay for services provided by WSSC. Subsequently, SED reimburses the DoE and the localities for a portion of their costs for special education services. To qualify for reimbursement, costs reported on the CFR must fully comply with the Manual. For the four fiscal years ended June 30, 2011, WSSC claimed costs totaling about \$48.7 million.

WSSC is managed by a six member Board of Directors (Board). In 2011, there was a significant change in the composition of the Board, including a new Board Chairman. In addition, a new Executive Director was appointed. This new executive management team advised us that they have initiated a series of changes that should improve the control environment at the school.

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## Audit Findings and Recommendations

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WSSC claimed costs totaling \$802,912 (including \$610,507 in personal service costs and \$192,405 in other-than-personal-service costs) that did not comply with the Manual, and therefore, they were not eligible for reimbursement (see Exhibit). In addition, WSSC had several organizational and procedural weaknesses that must be corrected.

### Personal Service Costs

Personal service costs are reported as either direct care costs (i.e., teachers' salaries) or non-direct care costs (i.e., administrators' salaries). Direct care costs should be charged to specific programs based on employees' work locations and functions. Non-direct care costs should be allocated among various school programs based on a fair and reasonable methodology. Costs are eligible for reimbursement if they are reasonable, necessary, sufficiently documented, and directly related to the educational program(s) offered.

WSSC reported \$610,507 in personal service costs that did not comply with the Manual. Specifically, WSSC claimed costs for: uncertified and/or unqualified employees, compensation which exceeded SED-prescribed limits, raises that were not justified, excessive severance payments, and inappropriate tuition reimbursements.

#### *Employees Lacking Required Certifications*

The Consolidated Fiscal Reporting and Claiming Manual (CFR Manual) lists codes and descriptions for various positions and titles listed on the CFR. The descriptions include the credentials and/or certifications required for each job title/position. For fiscal years 2007-08 through 2009-10, we judgmentally selected and reviewed personnel folders for 70 employees including teachers and therapists, to determine if they met the requirements for their respective jobs. We found that nine employees were neither qualified nor certified for the positions for which they were compensated. As a result, we disallowed \$254,868 in compensation that was allocated to the programs we audited, as follows:

- WSSC claimed excessive compensation costs totaling \$227,094 for eight uncertified special education teachers. WSSC officials told us they employed uncertified teachers because it was difficult to find certified teachers. Further, WSSC often compensated uncertified teachers at levels similar to those of certified teachers. Based on the applicable provisions of the CFR Manual, we adjusted the allowable compensation of the eight uncertified teachers to the average compensation of a Teacher's Assistant with similar years of experience.
- WSSC claimed excessive compensation costs totaling \$27,774 for an Individual Education Program (IEP) Coordinator. According to the CFR Manual, an IEP Coordinator is required to be certified or licensed in one of the following job titles: Special Education Teacher, School Psychologist, Social Worker, or an Administrator. However, WSSC's IEP Coordinator was not certified in any of these job titles. Therefore, we reduced her allowable compensation

to the level she received prior to her promotion to IEP Coordinator.

### *Compensation in Excess of Median Salary Limits*

The Manual states that compensation (including salaries and fringe benefits) for Executive Directors and Assistant Executive Directors should be consistent with the regional median compensation for comparable administration job titles of public school districts, as determined and published annually by SED. Reimbursement of employee compensation for these job titles shall not exceed the median salaries paid to comparable personnel in regional public schools for similar work and hours of employment. However, WSSC's compensation of the former Executive Director and Assistant Executive Director exceeded SED's median allowable compensation levels by \$102,355 and \$23,912, respectively. Thus, we disallowed a total of \$126,447 (\$102,355 + \$23,912) in executive compensation which exceeded the limits prescribed by the Manual.

### *Inappropriate Salary Increases*

WSSC gave certain employees raises totaling \$91,760 which were not in compliance with the Manual, as detailed by the following:

- During the 2007-08 year, WSSC promoted an employee from a secretary to a "coordinator" and increased the employee's annual salary from \$38,000 to \$43,000. About a year later, WSSC increased the employee's annual salary to \$80,000 - and six months after that to \$86,000. We reviewed this employee's work activities and determined there was little difference in the functions she performed as a secretary and as a coordinator. Consequently, the raises were not reasonable or necessary. Therefore, we disallowed \$77,948 in compensation for this employee charged improperly to the programs we audited.
- Salary increases (totaling \$13,812) for two administrative employees were not supported by pertinent human resource records. Specifically, WSSC compensated the employees at annual pay rates that were higher than those prescribed by their employment contracts. Also, there was no formal approval or other documentation to support the increases of the employees' salaries. Consequently, we disallowed the salary increases totaling \$13,812.

### *Excessive Severance Pay*

The Manual states that severance pay is reimbursable if it is required by law or by an employer-employee contract. In addition, the Manual limits severance payments to no more than two weeks of a full-time employee's normal compensation. WSSC paid its former Executive Director \$89,966 in severance compensation. However, per the Manual, WSSC could claim only \$13,818 (or two weeks of compensation) in severance compensation. Thus, we disallowed \$76,148 (\$89,966 - \$13,818) in severance costs which exceeded the Manual's prescribed limit.

### *Ineligible Tuition Reimbursements*

The Manual states that employer-provided educational assistance costs (limited to tuition and materials) are reimbursable only when the course or degree pursued is relevant to the field in which the employee is working. Moreover, the employee must complete and receive a passing grade for the course(s) and appropriate records of course completion must be maintained. For the 2008-09 and 2009-10 years, we reviewed supporting documents for certain employees who received tuition reimbursements that were reported as personal service costs. We disallowed \$61,284 in allocated costs as follows:

- WSSC paid \$53,140 to or on behalf of four employees whose courses were not relevant to their job titles and work activities. For example, a secretary was reimbursed \$17,775 for accounting and economics classes while pursuing an undergraduate degree.
- WSSC paid \$8,144 to or on behalf of an employee for whom WSSC officials could not provide grades or transcripts. Therefore, we were unable to determine if this employee obtained passing grades in the courses WSSC paid for, as required.

### **Other-Than-Personal-Service Costs**

The Manual prescribes what costs are eligible for reimbursement and the documentation required to properly support costs reported on the CFR. Reported costs should be reasonable, necessary, program-related and properly documented (including detailed invoices). The Manual states that personal costs and costs incurred for items and activities that are not related to the educational programs are not eligible for reimbursement.

We disallowed \$192,405 in other-than-personal-service costs that did not comply with the Manual. Specifically, WSSC claimed costs for: ineligible vehicle use, improperly procured public works contracts, and inadequately documented cell phone use.

#### *Ineligible Vehicle Costs*

Vehicle usage must be documented by individual vehicle logs that include, at a minimum: the date and time of travel, places of departure and destination, mileage, purpose of travel, and the name of the traveler. For fiscal years 2008 through 2010, WSSC reported lease payments, gas, insurance, parking, tolls, and maintenance costs for five vehicles (including a 2008 Chevrolet Tahoe, 2008 Ford Edge, 2008 Audi A-6, 2008 Lincoln Navigator, and a 2010 Lincoln MKS) on its CFRs. The expenses associated with these vehicles included loan interest and monthly lease payments, depreciation expenses, insurance premiums, repairs and maintenance costs, and fuel. We disallowed \$112,735 in reported vehicle expenses because WSSC did not maintain the required vehicle logs or any other documentation to support the business use of these vehicles.

#### *Ineligible Costs For Public Works Projects*

The Manual requires the use of competitive procurement practices, as prescribed by the School

Business Management Handbook (Handbook). Public works contracts apply to those items or projects involving labor and/or materials. Per the Handbook, competitive bidding was required on all public works valued at \$20,000 or more prior to November 12, 2009. After that date, bidding was required on projects of \$35,000 or more. Formal bidding with legal advertisement is required when the threshold is met. The Manual also states that all applications for capital projects must be submitted in writing to SED for their review and prior approval.

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 the another party to the extent that one of the parties is (or may be) prevented from pursuing its own separate interests. This includes relationships involving an entity's management and their immediate families. Further, LTAL relationships must be disclosed in the notes to a school's annual audited financial statements.

We determined that WSSC did not comply with bidding requirements and engaged in LTAL procurements of goods and services. In addition, WSSC officials did not submit the required capital project applications to SED for review and approval. Therefore, SED did not approve certain capital projects. Because WSSC did not comply with the applicable requirements, we disallowed \$40,638 in costs as follows:

- During fiscal years 2007-08 through 2010-2011, WSSC paid a relative of the current Executive Director \$245,659 for capital construction work at the school. We reviewed the bidding documents for the renovation of the front entrance of the school. The lowest bid obtained for this project was \$80,100, and a bid from a related party was \$83,000. WSSC accepted the bid (\$83,000) from the related party, although it was \$2,900 more than the lowest bid. There was no documentation explaining why the related party bid was selected over the lower bid. Moreover, the winning bid was submitted eight months after the bid submission deadline and after all other bids were opened. Because WSSC officials did not comply with requirements for SED approval and competitive procurement, we disallowed \$21,320 in depreciation costs related to this project.
- During fiscal years 2007-08 through 2010-11, a company owned by WSSC's former Board Chairman supplied and installed security equipment (including cameras) costing \$136,032 at the school. This LTAL procurement was not competitively bid, as otherwise required. Therefore, we disallowed \$19,318 in reported depreciation costs for this equipment.

### *Inadequately Documented Cell Phone Costs*

The Manual states that costs incurred for telephone service, local and long distance calls, and charges for cellular phones are reimbursable if they are directly related to the educational program and are sufficiently documented. We found that WSSC did not retain cell phone service records for fiscal year 2007-08. Further, detailed records were available for only 5 of the 24 months in fiscal years 2008-09 and 2009-10. Consequently, WSSC was unable to support a significant portion of the cell phone costs it reported on its CFRs. Therefore, we disallowed \$39,032 in cell phone costs allocated to the programs we audited.

## Organizational and Procedural Weaknesses

There were several organizational and procedural matters at WSSC which officials need to address to help ensure compliance with SED prescribed directives, including the Manual. These matters include governance and control environment, LTAL business arrangements, the hiring of a contractor, and equipment inventory controls. The inability or unwillingness to adequately address these matters could impact the eligibility of certain costs WSSC reports on its CFRs. (Note: The costs noted in this section of our report were either disallowed in prior report sections or were not claimed on WSSC's CFRs.)

### *Poor Control Environment*

Control environment is the attitude toward internal controls and control consciousness established and maintained by the management of an organization and its employees. It is a product of management's philosophy, style, and supportive attitude, as well as the competence, ethical values, integrity, and morale of the people in the organization. Organization structure and accountability relationships are key factors in the control environment. WSSC's six-member Board is responsible for the overall direction of WSSC, and it has a fiduciary responsibility to exercise due care and diligence in safeguarding the school's assets. In addition, Board members must avoid conflicts of interest and acts of self-dealing.

We determined that WSSC's Board failed to exercise due care and diligence in performing its fiduciary responsibilities. The former Board Chairman advised us that he was not aware of his duties and responsibilities. As detailed previously in this report, a company owned by the former Board Chairman had \$136,032 in sole source business with the school. Further, the Chairman told us that he took a "hands off approach" to school oversight because he trusted the former Executive Director. Moreover, the Chairman also acknowledged that he routinely approved and certified credit card charges without actually reviewing them.

We found that many credit card and other charges were inappropriate and unrelated to WSSC's programs. In particular, the former Executive Director incurred \$17,072 in personal charges using a WSSC credit card and WSSC checks. Among the inappropriate charges, the Executive Director spent \$4,254 at a Harley Davidson dealer; \$2,405 for a dermatologist to remove tattoos from the coordinator's skin; \$1,723 for lodging at the Majestic View Lodge near Zion National Park; \$1,620 at a cigar store; and \$369 at Victoria's Secret. These charges were not claimed on WSSC's CFRs. However, they were paid from WSSC's main bank account, with balances derived primarily from public funding and limited private funding. Further, as a result of an internal investigation initiated by the Board Chairman, the Executive Director eventually reimbursed WSSC for the \$17,072 in personal expenses. Nonetheless, the Executive Director should not have used WSSC funds for such expenses in the first instance.

In addition, the former Executive Director was the sole signatory on the WSSC's checking account, and he issued WSSC checks to himself and others without Board approval. For example, on June 13, 2008, the Executive Director issued a check for \$29,757 to himself. According to the Executive Director, the check was for a retroactive salary increase. However, there was no written evidence

that the Board approved this increase. Moreover, WSSC's Board Chairman (at that time) did not recall approving a retroactive salary increase for the Executive Director.

### *LTAL Payments for Lobbying*

WSSC paid \$97,870 for lobbying services to a firm that was owned by the brother of WSSC's current Executive Director. (Note: These costs were not claimed on WSSC's CFRs, but were paid from WSSC's main bank account.) At the time WSSC chose the lobbyist, the current Executive Director was the Assistant Executive Director. Also, the owner of the lobbying firm was a former member of WSSC's Board. Thus, this was a LTAL business arrangement. The use of this firm, which began in 2008, was to support legislation to allow WSSC's administrators and teachers to join the New York State and Local Employees Retirement System. This LTAL relationship was not disclosed in the notes to WSSC's audited financial statements, as otherwise required. The Executive Director advised us that he terminated this business arrangement soon after he was appointed Acting Executive Director.

### *Questionable Hiring of a Contractor*

SED and the New York City Department of Education require criminal background checks and finger printing of employees, consultants and contractors who work at WSSC when students are present. Based on the results of such checks, school officials should assess the propriety of employing or contracting with someone having a criminal record. WSSC contracted with the coordinator's brother, who was convicted of criminal possession of a controlled substance (a felony), to help maintain the school's computer systems. Further, the former Executive Director was aware of the contractor's criminal history prior to his work at WSSC, and WSSC had no evidence that this contractor had the skills and/or experience necessary to maintain computer systems. Nevertheless, this contractor worked at WSSC for 71 days and earned \$14,025.

### *Lack of Equipment Inventory Control System*

SED requires special education providers to maintain inventory records for equipment purchased by or donated to them. Furthermore, the School Business Management Handbook (referenced by the Manual) recommends the performance of periodic physical inventories of equipment. As of June 30, 2010, WSSC had nearly \$1.7 million in equipment. This included significant amounts of furniture and building, transportation, instructional, and computer equipment. WSSC officials, however, did not maintain an equipment inventory control system. Consequently, they could not perform periodic physical inventories of their equipment.

Although officials purchased a bar coding system (costing \$8,275) for inventory control in 2009, they did not use it. Officials stated that use of the bar coding system would have been cost prohibitive. Specifically, it would have cost as much as \$2,000 to hire a vendor to set up the system and scan all of WSSC's equipment. WSSC officials should have considered such costs prior to purchasing the system. Moreover, to comply with the Manual, officials must implement some form of an equipment inventory control system, whether they employ the bar coding system or another system.

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## Recommendations

### To SED:

1. Review the disallowances resulting from our audit and make the appropriate adjustments to the costs reported on WSSC's CFRs. Adjust WSSC's tuition reimbursement rates, as appropriate.
2. Direct WSSC officials to fully comply with the provisions of the Manual and ensure that all reported costs are allowable per the Manual.

### To WSSC:

3. Ensure that costs reported on the CFR comply fully with the requirements of the Manual.
4. Remediate the organizational and procedural weaknesses related to WSSC's control environment (including Board governance), LTAL business arrangements, hiring of contractors, and equipment inventory controls.

## Audit Scope and Methodology

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We audited the expenses reported by the School on its CFR for the four fiscal years ended June 30, 2011. The objectives of our audit were to determine whether the costs reported by the WSSC were properly calculated, adequately documented and allowable under SED's Manual.

To accomplish our objectives, we reviewed WSSC's financial records, including audit documentation maintained by WSSC's independent certified public accountants. We interviewed WSSC officials and staff to obtain an understanding of their financial and business practices as well as WSSC's certified public accountants. In addition, we interviewed SED officials to obtain an understanding of the CFR as well as the policies and procedures contained in the Manual. To complete our audit work, we reviewed supporting documentation for all costs submitted for the two programs in our audit scope and made a determination of whether the costs complied with and were allowable by the rules established in the Manual.

We also selected a judgmental sample of costs reported by WSSC for review. Our sample took into account the relative materiality and risk of the various costs reported by the school. The scope of audit work on internal control focused on gaining an understanding of the procurement and disbursement procedures related to non-personal service expenditures and personal service expenditures. We identified certain significant control deficiencies that were significant to the audit's objectives. These deficiencies are detailed in this report.

We conducted our compliance 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 objectives. We believe that the evidence obtained provides a reasonable basis for our

findings and conclusions based on our audit objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members (some of whom have minority voting rights) to certain boards, commissions, and public authorities. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these management functions do not affect our ability to conduct independent audits of program performance.

## Authority

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

## Reporting Requirements

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We provided draft copies of this report to WSSC and SED officials for their review and formal comment. We considered the comments of WSSC and SED in preparing this report and have included them at the end of it. Our rejoinders to WSSC's comments are included in the report's State Comptroller's Comments. Also, in its response to our draft report, WSSC submitted attachments which we have not appended to the final report. We will, however, retain those attachments on file at the Office of the State Comptroller.

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

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## Contributors to This Report

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### Vision

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

### Mission

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

## Exhibit

**Westchester School for Special Children  
Schedule of Submitted, Disallowed, and Allowed Program Costs  
Fiscal Years 2007-08, 2008-09, 2009-10 and 2010-11**

<b>Program Costs</b>	<b>Amount Per CFR</b>	<b>Amount Disallowed</b>	<b>Amount Allowed</b>	<b>Notes to Exhibit</b>
<b>Personal Services</b>				
<b>Direct Care</b>	\$32,714,400	\$268,680	\$32,445,720	A,G
<b>Administrative</b>	\$5,660,095	\$341,827	\$5,318,268	A-C,D
<b>Total Personal Services</b>	\$38,374,495	\$610,507	\$37,763,988	
<b>Other-Than-Personal-Services</b>				
<b>Direct Care</b>	\$8,167,226	\$65,741	\$8,101,485	A,E,F,H-J
<b>Administrative</b>	\$1,240,625	\$126,664	\$1,113,961	A,E,F,H-J
<b>Total Other-Than-Personal Services</b>	\$9,407,851	\$192,405	\$9,215,446	
<b>Total Program Costs</b>	<b>\$47,782,346</b>	<b>\$802,912</b>	<b>\$46,979,434</b>	

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## Notes to Exhibit

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The Notes shown below refer to specific sections of the Reimbursable Cost Manual upon which we have based our adjustment. We have summarized the applicable section to explain the basis for the disallowance. Details of the transactions in question were provided to SED and WSSC officials during the course of our audit.

- A. Section II - Costs must be reasonable, necessary, program related and sufficiently documented.
- B. Section II.14.A (4) - Compensation (i.e. salaries plus fringe benefits) for any entity's staff whose function is that of Executive Director, Assistant Director or Chief Financial Officer will be directly compared to the regional median compensation for comparable administration job titles of the public school districts.
- C. Section II.14(B)2(E) - Employer-provided educational assistance costs are reimbursable as compensation only when the course or degree pursued is relevant to the field in which the employee is working.
- D. Section II. 46(B) - The cost of severance pay is reimbursable provided that: Such payment is required by law or by employer employee agreement and the cost of the severance pay does not exceed two weeks pay for a full time employee.
- E. Section II.55.A - Costs incurred for telephone service, local and long distance telephone calls, electronic facsimiles (FAX) and charges for cellular telephones, etc., are reimbursable provided that: 1) They pertain to the special education program; and 2) Long distant telephone or message charges are documented by monthly bills and proof of payment are directly attributable to the Article 81 and Article 89 funded programs.
- F. Section II.57.D - Costs of personal use of a program-owned or leased automobile are not reimbursable. The costs of vehicles used by program officials, employees or Board members to commute to and from their homes are not reimbursable.
- G. Section III.A(1) - Compensation 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.
- H. Section III.D - All purchases must be supported with invoices listing items purchased and indicating date of purchase and date of payment, as well as canceled checks. Costs must be charged directly to specific programs whenever possible. The particular program(s) must be identified on invoices or associated documents.
- I. Section III.E - Logs must be kept by each employee indicating dates of travel, destination, purpose, mileage, and related costs such as tolls, parking and gasoline and approved by supervisor to be reimbursable.
- J. Section III.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. If the vehicle was assigned to an employee, also list the name of the employee to whom it was assigned.

# Agency Comments - State Education Department



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

DEPUTY COMMISSIONER  
Office of Performance Improvement and Management Services  
O: 518.473-4706  
F: 518.474-5392

April 24, 2013

Mr. Brian Mason  
Audit Director  
Office of the State Comptroller  
Division of State Government Accountability  
110 State Street – 11<sup>th</sup> Floor  
Albany, NY 12236

Dear Mr. Mason:

The following is the New York State Education Department's (Department) response to the draft audit report (2011-S-41) of the State Education Department Westchester School for Special Children (WSSC): Compliance with the Reimbursable Cost Manual.

**Recommendation 1:**

**Review the disallowances resulting from our audit and make the appropriate adjustments to the costs reported on WSSC's CFR's. Adjust WSSC's tuition reimbursement rates, as appropriate.**

We agree with this recommendation. The Department will review and make adjustments to the CFRs as noted in the report and recover any overpayments as appropriate by recalculating tuition rates. We will also review and consider additional information WSSC may submit in response to this report.

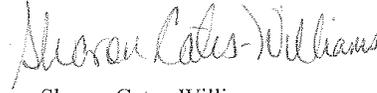
**Recommendation 2:**

**Direct WSSC officials to fully comply with the provisions of the Manual and ensure that all reported costs are allowable per the Manual.**

We agree with this recommendation. The Department will continue to provide technical assistance whenever requested and will strongly recommend WSSC officials take advantage of our availability to help them better understand the standards for reimbursement as presented in Regulation and the Reimbursable Cost Manual (RCM). It should be noted, however, that the Department may be undertaking other actions relative to WSSC based upon the nature of the findings contained within the audit report.

If you have any questions regarding this response, please contact Ann Marsh, Director of the Rate-Setting Unit at (518) 473-2020.

Sincerely,



Sharon Cates-Williams

c: Commissioner King  
Beth Berlin  
James Delorenzo  
Suzanne Bolling  
Joseph Conroy  
James Conway  
Ann Marsh  
Mary Kogelman

# Agency Comments - Westchester School for Special Children



Pamela A. Madeiros  
Tel (518) 689-1412  
Fax (518) 689-1499  
madeirop@gtlaw.com

April 19, 2013

## VIA HAND DELIVERY

Brian E. Mason  
Audit Director  
Office of the State Comptroller  
Division of State Government Accountability  
110 State Street, 11<sup>th</sup> Floor  
Albany, New York 12236-0001

Re: Westchester School for Special Children // 2011-S-41  
Compliance with the Reimbursable Cost Manual

Dear Mr. Mason:

We have reviewed the "Draft Report" dated March, 2013 as referenced above, and appreciate the opportunity to provide comment. We maintain that in certain limited instances, select principles contained within the Reimbursable Cost Manual (RCM) have been misconstrued or misapplied.

### **Key Findings**

While challenges to specific findings will be made in greater detail below, the Westchester School is compelled to restate that it recognizes certain weaknesses in its Board oversight existed in the audit years. However, dramatic changes had been made in the year immediately succeeding the audit years including a reconstitution of the Board, heightened awareness by new Board members of their fiduciary responsibilities and replacement by the Board of certain "key officers" within the School organization as acknowledged in the Report Background. Committed mid-management staff remained at the School to assist in "reshaping" School management and to assure enhanced accountability and sustainability.

### **Personal Service Costs**

#### *"Employees Lacking Required Certifications"*

The School provides the following clarifications around certain disallowances made based upon employee qualifications, challenging the validity of the findings as indicated:

Mr. Brian E. Mason  
 April 19, 2013  
 2

- “\$227,094 for eight uncertified special education teachers”

The Westchester School challenges the Report finding that “WSSC officials told (OSC) they (WSSC) paid these teachers at higher rates because it was difficult to find certified teachers”, as misrepresenting the clarification WSSC provided around these personnel costs. The teachers in question were not paid “at a higher rate” than colleague teachers, as suggested. The salary scale was in fact comparable. WSSC clarified, however, that the uncertified teachers were employed as a result of the unavailability of certified teachers - - not “paid at a higher rate.” NYSED and NYCDOE were keenly aware of the lack of available special education teachers which challenged all public and non-public special education programs, especially during the audit years. Guidance from NYSED and the rate setting unit to the field recognized alternative pathways towards certification (student internships; transition B certificates) and acknowledged a significant shortage of available teachers. Departmental guidance directed Schools to perform due diligence in the search for qualified teachers - - a search Westchester conducted in good-faith as supported by the attached advertisement invoices (See: Attachment B). NYSED recognized, however, that classroom instruction must proceed even in the absence of fully certified personnel - - a challenge which persisted, incidentally, for the period of the audit years and has only recently been met.

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Point of fact, the New York State Budget has provided funding to NYSED “for grants to ensure appropriately certified teachers in schools providing special education services and programs...with a demonstrated need to increase the number of certified teachers to comply with state and federal requirements. Such funds shall be made available for such activities as certification preparation, training, assisting schools with personnel shortages...”(Aid to Localities Budget 2013-14; 2012-13; 2011-12; et. al.).

It is, therefore, wholly inappropriate to disallow costs associated with certain “uncertified special education teachers” when the shortage of certified teachers was well recognized by the Executive, the Legislature and NYSED to the point of providing funding relief to schools unable to attract certified personnel. Accordingly, the disallowance should be restored.

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*“Compensation in Excess of Median Salary Limits”*

The School does not challenge the Report Finding that compensation of the former Executive Director and Assistant Executive Director “exceeded SED’s median allowable compensation levels”. However, a disallowance is unwarranted where, as here, the SED reimbursement methodology as applied in the audit years has already calculated reimbursable compensation and “screened out” any excesses. Accordingly, no disallowance is warranted where no “allowance” was provided. We recommend the Report include a separate section for items clearly identified on the CFR as “non-reimbursable”, much like the Organizational and Procedural section which includes “observations” without recommendation of disallowance.

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Mr. Brian E. Mason  
 April 19, 2013  
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*“Ineligible Tuition Reimbursement”*

While the School does not challenge the Report finding that certain staff attended classes while pursuing an undergraduate degree, we challenge the Report’s narrow construction of the RCM requirements governing the reimbursability of employer-provided educational assistance costs. The RCM authorizes such costs when the “course or degree pursued is relevant to the field in which the employee is working” (RCM, Section 11.14(B)2(E)). Four employees of the School, including an office worker, did pursue college credit coursework for personal and professional advancement and improvement in preparation for the assumption of greater responsibilities within the institution. We challenge, however, that college coursework is not “relevant to the field” especially, as the Report indicates, the “field” is office work and the coursework is in accounting and economics - - clearly related to administrative support staff responsibilities. Moreover, it would seem inconsistent with SED policies encouraging college and career readiness to deny reimbursement for employer-provided educational assistance costs associated with the award of a college degree.

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**Other-Than-Personal Service Costs**

*“Ineligible Costs for Public Works Projects”*

While the School does not challenge the Report’s assertion that competitive bidding requirements apply to specific school projects, we do challenge the apparent application of a “lowest-bid” standard in assessing the propriety of the transaction. The School applied a “best value” approach in its assessment of submitted bids which resulted in the selection of a vendor which was not the “lowest” bid, but presented the best value.

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**Organizational and Procedural Weaknesses**

As reflected in our prefatory comments to the Key Findings section of the Report above, the newly constituted and committed Board of WSSC recognizes prior weaknesses in control and management and has, since its reconstitution, worked tirelessly to strengthen weaknesses in internal controls and to assure a quality control environment. Rigorous protocols have been implemented to prevent the misuses of management authority exercised by the prior Executive Director through clear policy directives and enhanced accountability to the fully engaged Board.

*“LTAL Payments for Lobbying”*

The School is compelled to clarify that the current Executive Director did not hold that position during the audit period, and therefore no LTAL disclosure was required as the Report otherwise would suggest. Again, to avoid even the appearance of impropriety, the current Executive Director terminated the contract upon his appointment and the costs associated with the government affairs efforts were never reported on the CFR, nor was the reimbursement for such costs ever claimed, as the Report acknowledges.

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Mr. Brian E. Mason  
April 19, 2013  
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*"Lack of Inventory Control System"*

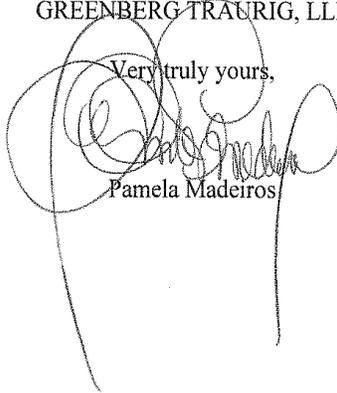
Westchester School has recently initiated an inventory data input systems.

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We appreciate the opportunity to share our concerns and challenges.

GREENBERG TRAURIG, LLP

Very truly yours,

A handwritten signature in black ink, appearing to read 'Pamela Madeiros', is written over the typed name. The signature is fluid and cursive, with a long vertical line extending downwards from the end of the name.

Pamela Madeiros

PAM/kac  
Enclosures

ALB 1683774v2



WESTCHESTER SCHOOL FOR SPECIAL CHILDREN  
45 Park Avenue  
Yonkers, NY 10703

April 19, 2013

Dr. John B. King, Jr.  
Commissioner  
State Education Department  
State Education Department Building – Room 125  
89 Washington Avenue  
Albany, New York 12234

Brian E. Mason  
Audit Director  
Office of State Comptroller  
Division of State Government Accountability  
110 State Street, 11<sup>th</sup> Floor  
Albany, New York 12236-0001

Re: Office of State Comptroller, Division of State Government Accountability  
Westchester School for Special Children  
Report 2011-S-41: Four Fiscal Years Ended June 30, 2011

Dear Commissioner King and Audit Director Mason:

The Board of Directors of the Westchester School for Special Children wishes to take this opportunity to address your offices regarding the above-captioned report.

Preliminarily, the Board wishes to commend you, Audit Director Mason, and all the Division personnel who worked on the subject audit report. The School's interaction with these people was at all times professional and respectful of the unique mission of the School to help those most in need.

The School's attorney, Pamela Madeiros of Greenberg Traurig, LLP, by separate letter to you, Audit Director Mason, sets forth the particulars of the School's response to the Report. With this letter, the School's Board of Directors acknowledges past deficiencies identified in the audit process and confirms this new administration's commitment to continue its efforts to keep the School fully compliant with all governing statutes, rules and regulations.

• 914-376-4300 •  
• 914-965-7059 Fax •

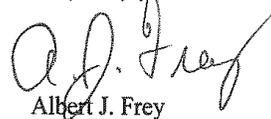
However, this commitment can only be successful if the fiscal operations of the School remain viable going forward. I am informed by Richard Devlin, the School's Director of Finance, that the OSC recommended disallowances in aggregate, if implemented, would substantially reduce the School's tuition rate. It is our view that the School currently provides superior services to our special children on a very reasonable cost basis when compared to other similarly missioned schools in the downstate region serving children of similar needs. (see attached rate comparison) Reduction in funding may render this accomplishment all the more difficult to achieve, especially in the context of five years with no increase in State funding.

Despite funding constraints, the School has been praised for the quality of services provided. As stated in the February 27, 2012 SED School Age Special Education Quality Assurance Report:

"Districts including New York City and Yonkers Public Schools were interviewed about WSSC's effectiveness for students with disabilities. Most students who attend the school age program are from New York City. Each of the Districts had positive comments regarding the services provided to students. Students who had been exhibiting behavioral concerns in the home school districts were receiving appropriate behavioral supports in order to make academic progress at WSSC. Staff from Yonkers and New York City indicated that WSSC is a unique program that allows for students with disabilities to realize academic, behavioral and social success. WSSC is viewed as a program that effectively addresses the unique needs of the students with disabilities who attend the program. There was positive perception regarding programs, and services, academic instruction and communication between staff, parents and Districts."

As OSC recognized, we are a new Board with a new executive management team constituted to remediate the pre-existing control environment at the School. We have dedicated ourselves to this mission in the service of our special needs children. The Board and its executive management team respectfully requests that the State Education Department take into account the sentiments expressed in this letter in reviewing and reacting to the recommendations contained in the State Comptroller's Report.

Very truly yours,



Albert J. Frey  
Chairperson

enc.

* Comment 8
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\* See State Comptroller's Comments, page 25.

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## State Comptroller's Comments

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1. We revised our report to note that WSSC employed uncertified teachers because it was difficult to find certified teachers. We also acknowledge that WSSC did not pay uncertified teachers more than it paid certified teachers. Further, we clarified our report to note that WSSC claimed excessive compensation costs for uncertified teachers.
2. We did not question whether or not WSSC made good-faith efforts to fill available teaching positions with certified teachers. As noted in our report, WSSC claimed costs for the compensation of uncertified teachers at levels normally paid to its certified teachers. This is contrary to the provisions of the CFR Manual.
3. The funding relief provided by the State did not obviate WSSC from complying with the applicable provisions of the CFR Manual. As noted in our report, WSSC claimed costs for the compensation of uncertified teachers at levels normally paid to its certified teachers. This is contrary to the CFR Manual. Thus, we disallowed the amounts corresponding to the differences between the pay rates of certified teachers and the average pay rates of teaching assistants with experience similar to the uncertified teachers in question.
4. Although CFR data is used in SED's rate-setting process, CFRs are separate and distinct from the process (including its cost screen limits). Our audit was limited to the WSSC's CFRs. As such, our disallowance of the excessive compensation of the former Executive Director and Assistant Executive Director, as presented in our report, is correct. We acknowledge that the disallowed costs may or may not have a monetary impact if the disallowed spending still leaves overall costs above the SED cost thresholds.
5. The Manual states that educational assistance costs are reimbursable only when the course or degree pursued is relevant to the field in which the employee is working. The courses in question did not correspond with the WSSC work-related activities of the employees who received educational assistance funding.
6. Our report does not state that WSSC was required to select the lowest bidder. In fact, the School Business Management Handbook permits a contract award to other than the lowest bidder if the rationale for the award is adequately documented. However, WSSC officials provided us with no documentation of the "best value" approach they applied in this instance.
7. The current Executive Director was WSSC's Assistant Director at the time the lobbying firm was selected, and we amended our report to note this. Moreover, an Assistant Executive Director can influence significant management actions. Thus, we maintain that LTAL disclosure was appropriate in this instance.
8. Our audit was limited to WSSC's CFRs, related financial management practices, and their compliance with the Manual. The programmatic quality of the educational services provided by WSSC was not within the scope of our audit.