A REPORT BY THE NEW YORK STATE OFFICE OF THE STATE COMPTROLLER

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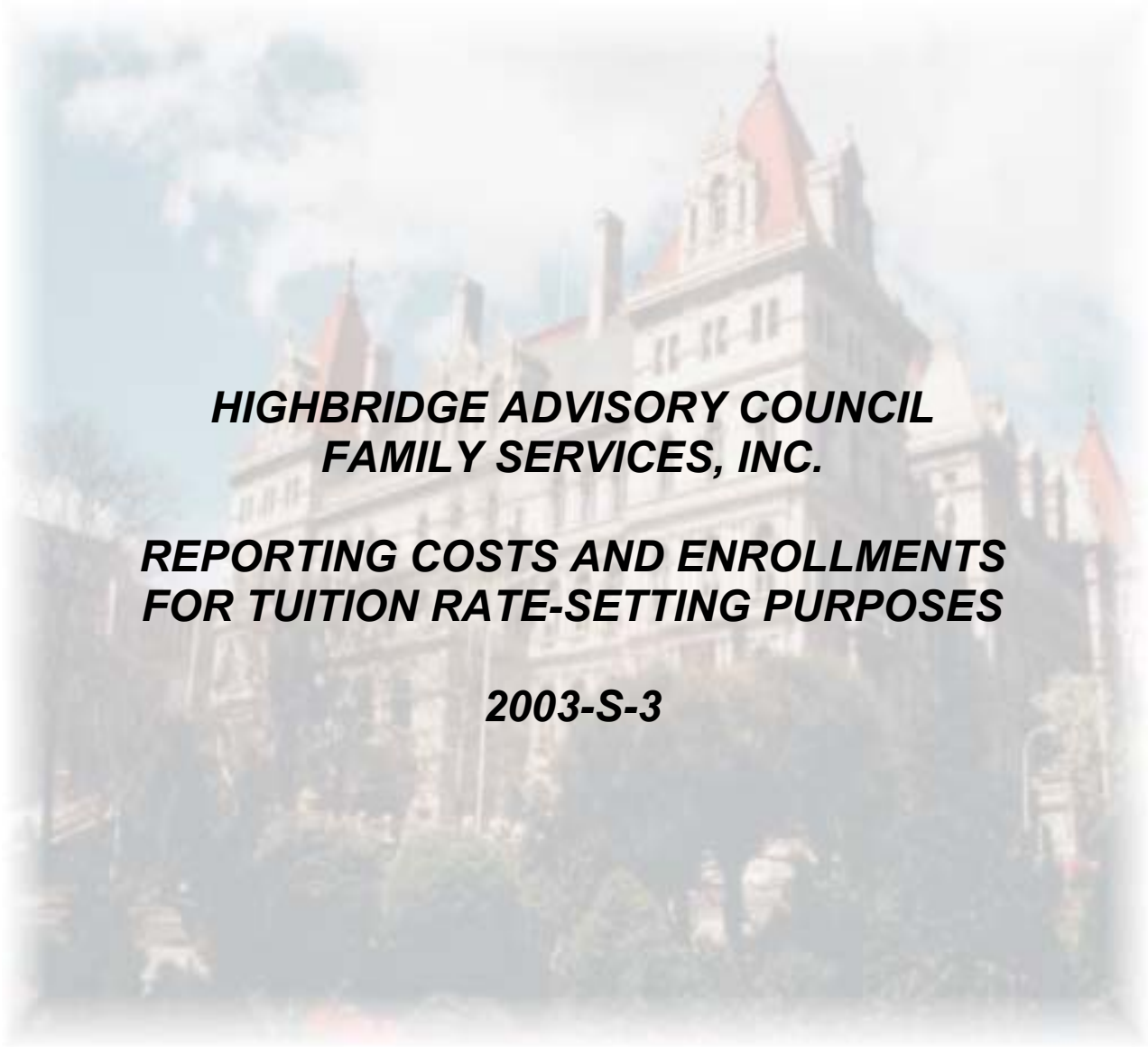

HIGHBRIDGE ADVISORY COUNCIL FAMILY SERVICES, INC.

REPORTING COSTS AND ENROLLMENTS FOR TUITION RATE-SETTING PURPOSES

2003-S-3

DIVISION OF STATE SERVICES

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Report 2003-S-3

Mr. Alexander Hunter, Chairman
Board of Directors
Highbridge Advisory Council Family Services, Inc.
880 River Avenue
Bronx, New York 10452

Mr. Richard P. Mills
Commissioner
New York State Education Department
State Education Building
Albany, New York 12234

Dear Mr. Hunter and Mr. Mills:

The following is a report from our audit of the program costs and enrollment data reported on the Consolidated Financial Report submitted to the State Education Department by the Highbridge Advisory Council Family Services, Inc. for the Center-Based and Integrated Special Education preschool programs for the period of July 1, 1999, through June 30, 2001. We also audited selected financial management practices.

This audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1, of the State Constitution; and Section 8 of the State Finance Law. Major contributors to this report are listed in Appendix A.

Office of the State Comptroller
Division of State Services

June 24, 2004

EXECUTIVE SUMMARY

HIGHBRIDGE ADVISORY COUNCIL FAMILY SERVICES, INC.

REPORTING COSTS AND ENROLLMENTS FOR TUITION RATE-SETTING PURPOSES

SCOPE OF AUDIT

The Highbridge Advisory Council Family Services, Inc. (Council), formerly known as the Highbridge Advisory Council, provides a range of community services, including preschool special education and daycare for Bronx residents. The Council operates two preschool special education programs: a Center-Based program (Program 9100) and an Integrated program (Program 9160) funded by the City of New York and the State Education Department (SED). Funding for the 9100 and 9160 programs are based on rates established by SED using program cost and enrollment data submitted by the Council on a Consolidated Financial Report (CFR). The Council bills the New York City Department of Education (Department) for the services it provides, and the Department pays the Council a rate for each eligible student. This arrangement allows the Council to recover all costs described as reimbursable by SED's Reimbursable Costs Manual (Manual). As of December 2002, enrollment in both programs totaled 222 students, all of whom were referred by the Department.

Our audit addressed the following questions relating to the expenditures and enrollments of the Council for the period of July 1, 1999, through June 30, 2001:

- Are the Council's reported costs reasonable, necessary, and consistent with provisions of the Manual?

- Did the Council use the correct methodology for calculating the full-time equivalent attendance it reported to SED?

AUDIT OBSERVATIONS AND CONCLUSIONS

We determined that about $2.5 million of the expenses the Council included on their CFR were not reported in compliance with the provisions of the Manual. This represented about 31 percent of the expenses the Council included on its CFR for these two programs. This consisted of $1,866,693 in

personal service expenditures (of which $940,738 must be reallocated among all of the Council's programs) and $658,298 of other than personal service expenses. We also determined that the methodology the Council used in calculating full-time equivalent enrollment was not consistent with the one prescribed by SED.

We found that the Council misreported salary costs on the CFR, thus inflating the true costs to operate the Center-Based and Integrated preschool programs. The Council improperly charged personal service costs totaling $925,955 for non-special education staff to the Center-Based and Integrated preschool programs. For example, we found that the salary costs for a teacher's aide working for another Council program was charged against the Center Based and Integrated programs on the CFR. We also found an additional $940,738 in personal service costs that were reported on the CFR as a direct program expense, when in fact, the personal service costs were for the salaries of administrative personnel that provided services to all Council programs. Such administrative costs must be charged equitably to all programs. (See pp. 13-17)

Some of these errors do not appear to be simply errors, but rather appear to be designed to mislead or conceal the correct costs of operating these programs. We believe this because of the nature and volume of the errors we found. For example, SED sets limits as to how much personal service costs can be allocated on the CFR for the Executive Director's compensation. Further, the Executive Director's compensation should be allocated across all of a particular agency's programs. We found that the Council reported compensation costs totaling $605,000 for the Executive Director for the two years ended June 30, 2001. The maximum amount that could have been allowable had the Council operated only these two programs was $352,731. However, the Council operates several other programs and should allocate the Executive Director's compensation among all the programs in a fair and equitable manner. In still another example, we found that a bookkeeper's compensation was reported on the CFR as a teacher's aide. (See pp. 13-17)

We have also disallowed $658,298 in other than personal service costs. We determined that $590,307 in consultant direct care costs had not been documented adequately. We found that consultant speech and occupational therapists had often submitted invoices to the Council that did not indicate the names of the students who received their services and/or the amount of time they had spent with each student. Therefore, we were forced to examine alternative documentation that only indirectly documented the services. This alternative documentation still did not support all the costs that the Council claimed. We also found an additional $67,991 in other OTPS expenses that had not been properly documented. (See pp. 18-21)

The effect of this misreporting of costs on the CFR is that the reimbursement rates set by SED may be higher than necessary and need to be adjusted downward. For example, the personal service and other than personal service

costs disallowed have inflated the amount of direct care costs the Council was reimbursed. These errors also had an effect on the non-direct costs allowed by SED. Under SED's rate setting process, a limit is set on the amount of non-direct (administrative and facility-related) care costs that will be allowed for rate setting purposes. In the 1999-2000 year, SED limited the amount of non-direct costs to .4285 times the direct costs. When the Council misreported non-direct costs as direct care costs, it not only inflated direct care costs but also inflated the non-direct care costs allowable because the base of direct costs was greater than actual. We estimated that for the Center Based program, the allowable non-direct costs were inflated by at least $82,350 for the 1999-2000 year alone. (See p. 21)

Our report contains detailed recommendations to the Council for practices that will help to assure management that its cost data are being reported accurately in the future, and will improve other Council operations as well.

COMMENTS OF COUNCIL AND SED OFFICIALS

The Council acknowledged that certain deficiencies existed in its past management, accounting systems and internal control structure that may have adversely impacted the Council's ability to record, process, summarize or report financial data during the period of the audit. The Council further indicated that corrective steps have been taken to strengthen control weaknesses identified by the audit. The Council did not dispute many of the report's findings (including the associated audit disallowances), but indicated that certain findings and disallowances should be reconsidered in light of further documentation provided and discussions which took place subsequent to the audit's exit conference. The Council also objected to the auditors' observation that some of the errors identified appear to have been designed to mislead officials at SED.

SED officials agreed with the four recommendations we addressed to them. In particular, SED agrees with our recommendation to consider the disallowances identified in this report and take appropriate action.

CONTENTS

INTRODUCTION

Background

The Highbridge Advisory Council Family Services, Inc. (Council), formerly known as the Highbridge Advisory Council, is a not for profit corporation formed in 1970 to provide a range of community services for Bronx residents, including preschool and daycare for children, evaluation and therapeutic services, family support, and senior citizens' programs. The Council is governed by a Board of Directors (Board). Its Executive Director is responsible for the day-to-day management of the Council, under the direction of the Board. During the period of our audit, the Council operated seven programs, including two preschool special education programs that were within the scope of our audit: the Center-Based program (Program 9100) and the Integrated program (Program 9160). Program 9100 consists of preschool students with similar or differing disabilities who have been grouped together because of similar individual educational needs. Program 9160 employs a special education teacher and at least one para-professional in a classroom consisting of disabled and non-disabled preschool students or separate non-disabled and disabled classes housed in the same physical space. All of the Council's special education students are referred by the New York City Department of Education (Department). As of December 2002, enrollment in both preschool programs totaled 222 students.

For each student placed in the Council's special education programs, the Department makes tuition payments to the Council based on rates established by the State Education Department (SED). The rates are designed to allow the Council to recover costs considered reimbursable under the provisions of SED's Reimbursable Costs Manual (Manual). The Council reports its fiscal information to SED in an annual Consolidated Financial Report (CFR). Tuition rates of the two programs vary, because they are based on the allowable costs incurred by each program. SED reimburses the Department for about 50 percent of the amount paid to the Council.

The Council reported the following total costs on the CFR submitted to SED for rate setting purposes for the fiscal years 1999-00 and 2000-01.

Fiscal Year	Total Costs of Program 9100	Total Costs of Program 9160	Totals
1999-00	$1,632,629	$1,797,323	$3,429,952
2000-01	$2,272,730	$2,246,203	$4,518,933
Totals	$3,905,359	$4,043,526	$7,948,885

We conducted our audit at the request of SED officials. In addition, SED officials advised us that they would not finalize the Council's tuition rates for the period of our audit pending the issuance of this final audit report.

Audit Scope, Objectives, and Methodology

We audited the expenditures and enrollments reported by the Council for the period of July 1, 1999, through June 30, 2001. The objectives of our financial-related audit were to determine whether the Council's reported costs had been reasonable, necessary, and consistent with provisions of the Manual; and to determine whether the Council had reported enrollments correctly. To accomplish our objectives, we reviewed financial records, student records, and other supporting documentation; and interviewed Council and SED personnel. To assess the Council's compliance with provisions of the Manual, we selected a judgmental sample of the reported expenditures for the two fiscal years that ended on June 30, 2001. Our sample took into account the materiality and relative risk of individual transactions. Our audit was limited to the Council's Center-Based and Integrated Special Education preschool programs, and did not include any of the other community service programs administered by the Council.

We conducted our audit in accordance with generally accepted government auditing standards. Such standards require that we plan and perform our audit to adequately assess those Council operations that are included within our audit scope. Further, these standards require that we understand the Council's internal control structure and compliance with those laws, rules and regulations that are relevant to the operations, which are included in our audit scope. An audit includes examining, on a test basis, evidence supporting transactions recorded in the accounting and operating records and applying such other auditing procedures, as we consider necessary in the

circumstances. An audit also includes assessing the estimates, judgments, and decisions made by management. We believe our audit provides a reasonable basis for our findings, conclusions and recommendations.

We use a risk-based approach to select activities for audit. We therefore focus our audit efforts on those activities we have identified through a preliminary survey as having the greatest probability of needing improvement. Consequently, by design, finite audit resources are used to identify where and how improvements can be made. Thus, little audit effort is devoted to reviewing operations that may be relatively efficient or effective. As a result, our audit reports are prepared on an "exception basis." This audit report, therefore, highlights those areas needing improvement and does not address activities that may be functioning properly.

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, several of which are performed by the Division of State Services. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under Generally Accepted Government Auditing Standards. In our opinion, these management functions do not affect our ability to conduct independent audits of program performance.

Internal Control and Compliance Summary

Our evaluation of the Council's internal control structure identified material weaknesses in its financial management practices and significant errors in the costs reported on the Consolidated Financial Report. Our audit found that the Council's reporting of expenditures had been misstated materially and that the expenditures the Council reported for rate-setting purposes probably were misreported intentionally. As a result, there is a significant risk that the tuition rates received by the Council are excessive. We also identified other weaknesses in certain areas that are discussed in various sections of this report.

Response of SED and Council Officials to Audit

We provided Council and SED officials with draft copies of this report for their review and formal comment. We considered the Council's and SED's comments in preparing this report and have included them as Appendices B and C, respectively. The Council's response included several exhibits that we did not append to this report. However, we have retained these exhibits on file for inspection at the Office of the State Comptroller. Our rejoinders to the Council's response are presented in Appendix D, State Comptroller's Notes.

Within 90 days after 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 in this report, and where recommendations were not implemented, the reasons why. We also request officials of the Council to provide comments within 90 days advising what steps were taken to implement the recommendations contained herein and where recommendations were not implemented the reasons why.

DISALLOWED COSTS

According to the Manual, costs will be reimbursed (allowed) if they are reasonable and necessary, have been documented sufficiently, and are related directly to the educational program. Provisions in the Manual prescribe the costs that are reimbursable and the related record-keeping requirements (e.g., the use of vendor invoices, receipts, or time records). One provision states that costs will not be considered reimbursable upon field audit (by the Commissioner of Education, the State Comptroller, or other authorized agencies) without appropriate written documentation. Section 200.9 (d) of the Commissioner of Education's Regulations (Commissioner's Regulations) requires adjustments be made to any reported costs that cannot be substantiated, upon field audit, by adequate written documentation.

Our examinations of records for the 1999-2000 and 2000-01 fiscal years determined that about $2.5 million of the Council's expenses reported on the CFR were not in compliance with provisions in the Manual. This consisted of $1,866,693 in personal service expenditures, including $925,955 that is not eligible for reimbursement and $940,738 that must be removed from the direct program costs category and reallocated across all Council programs. We also disallowed $658,298 in other than personal service expenses.

Personal Service Costs

Funds used to pay for staff salaries and fringe benefits are classified as personal service costs in the Manual. All personal service costs must be based on payrolls that have been approved and documented. Appropriate documentation must be maintained to support the direct charge of an individual's salary to a program. The personal service costs for support functions and executive operations must be allocated across the various programs in an equitable manner, and appropriate support documentation must be maintained for the allocation method. Further, the Manual limits the amount of personal service costs that can be included on the CFR for rate-setting purposes. SED limits compensation eligible for reimbursement for some employees, such as an organization's

executive director, to the median amount paid to comparable personnel in public schools.

Over Charges for Staff Working on Other Programs

Our review of the personal service costs included on the CFR as a direct charge to the 9100 and 9160 programs found that a significant portion of the reported costs were not allowable. As summarized by the following table, personal service costs totaling $925,955 were charged to the Council's preschool special education programs, but should have been charged to other programs administered by the Council.

Summary of Disallowed Personal Service Costs					
	Fiscal Year 1999-2000		Fiscal Year 2000-01		
Category of Personal Service Cost	**Program 9100**	**Program 9160**	**Program 9100**	**Program 9160**	**Total Amount Disallowed**
Agency for Child Development (ACD)	$103,150	$98,932	$149,721	$66,057	$417,860
Early Intervention	$21,384	$34,687	$14,774	$26,420	$97,265
Family Support Services	$79,661	$45,276	$21,753	$0	$146,690
Pre-School Evaluations	$46,672	$11,519	$53,107	$29,868	$141,166
Satellite Program	$4,509	$15,122	$0	$0	$19,631
Universal Pre-Kindergarten	$2,923	$0	$5,201	$0	$8,124
Early Childhood Educators (ECE)	$18,245	$16,911	$3,895	$56,168	$95,219
Total	**$276,544**	**$222,447**	**$248,451**	**$178,513**	**$925,955**

We found that the Council had reported certain job titles (on the CFR) for some employees in a manner that was inconsistent with their actual duties. For example, part of the salary of the Director of Pre-School Evaluation, whose program has its own dedicated funding source, had been charged to the 9100 and 9160 programs under the titles of Supervisor of Social Services and Special Education Coordinator. However, the Director of Pre-School Evaluation advised us that she had never performed any work for those programs in either of these two positions. In addition, an Agency for Childhood Development (ACD)

teacher's aide had been listed as a special education nurse; and a music teacher who actually worked for all of the Council's programs had been listed as a special education teacher, with his salary charged to Program 9160.

We also found that, during the 1999-2000 and 2000-01 fiscal years, the Council had reported on the CFR salaries for Early Childhood Educators (ECEs) and charged them to the 9160 program. In fact, these individuals were teachers in the ACD program and not the 9100 and 9160 programs. Council officials explained that the former Executive Director had added the title to the payroll so that additional Integrated Preschool classes, which would require more ACD teachers, could be created. However, there were no available funds in the ACD budget for creating additional teaching positions; therefore, this job title was created so that special education programs could be charged for the extra ACD teachers. Our review confirmed that all of the ECE personnel were actually ACD teachers who provided services in the integrated classes to ACD students – not special education students. Therefore, the cost of the salaries of the ECE personnel ($95,219) is not eligible for reimbursement through the preschool special education programs.

Cost Allocations and Excess Costs Claimed for Executive Director

Administrative and facility-related costs are defined in the Manual as expenses that are not directly related to a specific program, but are attributable to the overall operation of the agency (non-direct care cost). Administrative costs include those for the overall direction of the organization as well as costs for general record-keeping and budget and fiscal management. Facility-related costs include those such as rent, building maintenance, and utilities. To prevent non-direct care costs from becoming excessive, the Department limits the portion of non-direct care costs as a percentage of direct costs that can be reimbursed through the tuition rates it has established. According to the Manual, the Council must allocate all non-direct care costs based on the Ratio Value Method (RVM) of allocation. This method is designed to ensure that non-direct care costs are fairly distributed over all of an agency's programs.

As detailed previously, some Council employees, whose salaries were reported as direct charges to the special

education programs, actually worked at the Council's main office, performing various support services that benefit all of the Council's programs. Under this incorrect method, the Council charged a total of $940,738 in administrative expenses directly to the special education programs instead of allocating them among all of the Council's programs. For example, we noted that an assistant bookkeeper's salary was reported as the salary for a special education assistant teacher. Her salary had been charged as a direct care expense to Program 9160. We have summarized the administrative costs in question by program and year in the following table.

Summary of Personal Service Costs that Should Be Reallocated					
	Fiscal Year 1999-2000		Fiscal Year 2000-01		
Category of Personal Service Cost	Program 9100	Program 9160	Program 9100	Program 9160	Total Amount To Be Reallocated
Council Administrative Expenses	$281,474	$156,925	$302,970	$199,369	$940,738

Moreover, one of the most egregious errors we noted was in the allocation of the compensation for the former Executive Director. The Manual limits the amount of compensation for the executive director that can be allocated on the CFR to the preschool special education programs, irrespective of the individual's actual compensation. The total allowable compensation allocations are limited to the median compensation that is paid to comparable positions in the public schools. (The Manual limited the total compensation to be allocated on the CFR to $175,810 in 1999-2000 and $176,921 in 2000-01.) When we reviewed the supporting schedules for the CFRs and totaled all of the Executive Director's compensation charged to all Council programs, we determined that the former Executive Director had included compensation of $316,278 in fiscal year 1999-2000 and $289,168 in fiscal year 2000-01 (a total of $605,446 for the two years on the CFR). Of this amount, $329,188 was charged directly to Programs 9100 and 9160 as follows:

Executive Director's Direct Compensation Charges to Special Education Programs					
	Fiscal Year 1999-2000		Fiscal Year 2000-01		
Position Title Code	Program 9100	Program 9160	Program 9100	Program 9160	Total Amount
501	$122,718	$44,123	$118,561	$43,786	$329,188

In addition, it appears that the Executive Director's compensation costs were incorrectly coded in an effort to hide the total amount reported. For example, of her total compensation of $316,278 in fiscal year 1999-2000 and $289,168 in fiscal year 2000-01, just $37,462 and $27,939, respectively, were reported properly (as non-direct care costs) on the CFRs financial statements submitted to SED. The remainder of the costs were incorrectly reported as direct care costs under an inappropriate job title code. We found that a portion of her compensation had also been charged directly to Program 9100 under the title of Chief Executive Officer, while another portion was charged to Program 9160 under the title of Program Director. Furthermore, in the same fiscal years, she was listed on the CFRs as the full-time director of one of the ACD day care centers, where she had previously worked. The salary of the actual director of that center was also misreported and charged partially to the preschool special education programs. We also noted other errors such as an assistant bookkeeper's salary shown on the CFR as a special education teacher's assistant.

The overall effect of such improper allocations is that special education programs were overcharged for the Council's general administrative expenses (non-direct care costs), likely resulting in higher than necessary tuition rates. Furthermore, the Council's reported administrative costs appear to be considerably lower than they actually were. For example, the Council reported administrative expenses of $490,554 on the CFR for the 1999-2000 fiscal year. However, we determined that such expenses exceeded $1.4 million; the difference had been charged as a direct expense to keep the total within SED's parameters that limit the amount of reimbursable administrative costs. By charging these expenses as direct costs to the programs, the Council may also have avoided the ceiling SED has set for non-direct care cost parameters. (See page 21 for additional information.)

We conclude that based on the payroll manipulations performed by Council employees, there is considerable risk that certain Council officials intended to mislead SED officials regarding the actual personal service expenses associated with the special education programs. As a result, special education programs were charged improperly for the expenses associated with other Council programs. We also believe that lax Board oversight contributed to the problems including the Executive Director's compensation. For example, the available minutes to the Board

of Directors meetings showed that financial matters were rarely discussed at the meetings. (See page 27 for additional details on this issue.)

Other Than Personal Service Costs

The costs of buying goods and services (or costs other than salaries and fringe benefits of employees) are classified as other than personal service (OTPS) costs. Based on our review of selected OTPS expenses, we identified $658,298 in OTPS costs that were either ineligible for reimbursement or inadequately documented. This amount includes $590,307 in contracted direct-care expenses, as well as $67,991 in other OTPS expenses.

Contracted Direct Care Consultants

Professional counseling services for the students are classified as OTPS costs. According to the Manual, if contracted professional counseling services are to be provided, the counselor must sign a written contract describing the nature of the services to be provided and the rate of compensation to be paid. In addition, the supporting documentation for paying claims for counseling services must include the names of the students receiving the services, the date(s) the services were provided, and the amount of time the contractor spent with each student.

During our audit, consultants consistently submitted bi-weekly invoices to the Council at rates ranging from $25 to $90 per hour. For the 1999-2000 and 2000-01 fiscal years, the Council reported $2,278,405 in contracted direct care expenses. We reviewed 100 percent of these direct care expenses in both fiscal years 1999-2000 and 2000-01 and determined that $590,307 in consultant costs had not been documented adequately nor supported. For example, we found that consultants such as Speech and Occupational Therapists often submitted invoices that did not indicate the names of the students who received the services and/or the amount of time they spent with each student. The invoices contained only the date of the services and the total number of hours worked by the consultants on that day. Therefore, in order to determine whether services were provided, we used corroborating evidence such as the student's attendance card, the related services card which identifies the date the student received services, as well as the time records maintained by the

consultants. As a result of our review, we determined that $590,307 in charges was not adequately supported by corroborating records.

One of the causes for this significant disallowance is that the Council was paying the consultants based upon the clock hours they were on-site rather than based upon the actual number of services performed. This method contradicts the Manual which requires consultants to be paid based on the number of services they provide – not on how many hours they were physically at a location. For example, if a consultant came in at 9:00 a.m. and left at 5:00 p.m., they would be paid by the Council for the total time spent at the program regardless of whether they provided any services. For example, one provider billed for 3,221 hours in fiscal year 1999-2000; however, we found support for only 2,132 hours – a 1,089-hour difference. At $90 per hour, the total payment not supported amounted to over $98,000 for this one consultant. Since provisions in the Manual specifically state that such costs are not eligible for reimbursement without adequate supporting documentation, including the student's name, the consultant costs summarized by program and by fiscal year in the following table are not reimbursable:

Direct Care Consultant Costs Not Adequately Documented			
Cost Center	**Fiscal Year 1999-2000**	**Fiscal Year 2000-01**	**Totals**
Program 9100	$201,757	$212,076	$413,833
Program 9160	$121,467	$55,007	$176,474
Totals	$323,224	$267,083	$590,307

(In response to our draft report, the Council indicated that information on related service cards and consultant invoices, in conjunction with the corresponding scheduling, session notation and recommendation documentation, provides substantiation sufficient to restore the disputed invoices totaling $686,719 in disallowed consultant services.)

Auditor's Comments: Based on the additional information the Council provided to us, we reduced the disallowance for the direct care consultants by $96,412 (from 686,719 in the draft report to $590,307 in the final report).

Other OTPS Expenses

During fiscal years 1999-2000 and 2000-01, the Council's records indicated approximately $1,231,491 in check disbursements – excluding the services provided by the direct care consultants discussed in the prior section. Of this amount, we reviewed a sample of approximately $388,905 in other costs claimed by the Council. We selected our sample using auditor judgment. We found that $67,991 of expenses were either ineligible for reimbursement according to the provisions of the Manual, or were inadequately documented. These disallowances are summarized by program and year in the following table:

Summary of Other Ineligible/Inadequately-documented OTPS Disallowances			
Cost Center	**Fiscal Year 1999-2000**	**Fiscal Year 2000-01**	**Totals**
Program 9100	$18,074	$15,663	$33,737
Program 9160	$3,718	$0	$3,718
Council Administrative	$13,965	$16,571	$30,536
Totals	$35,757	$32,234	$67,991

- We found $48,037 in expenditures that were not supported with vendor invoices and other supporting documentation. They included $12,063 in insurance expenses, $10,000 in renovation expenses, $5,463 in expenses to a credit corporation, $5,000 in security expenses, $3,563 in American Express charges, and $11,948 in other expenses.

- According to the Manual, retainer fees for legal services are not reimbursable unless the fees represent payment for actual documented reimbursable services rendered. However, we found no evidence that legal services had been provided. Therefore, we disallowed $12,000 in legal payments that did not correspond to descriptions of actual services rendered.

- The former Executive Director had been covered by more than one health insurance policy paid for by the Council. Consequently, we disallowed $4,220 in redundant (unnecessary) insurance premiums.

- According to the Manual, the cost of providing the staff with food may not be reimbursed. We disallowed $3,733 the Council had paid for office coffee supplies.

Accounting Reclassifications and Irregular Transactions

According to the Manual, entities that operate programs must maintain accounts according to generally-accepted accounting principles and Section 200.9 (d) of the Commissioner's Regulations. Subsidiary revenue and expenditure accounts shall be maintained for each approved program that requires a tuition rate for preschool evaluation costs and for each government grant administered by the Commissioner. Provisions in the Manual also require all costs to be classified as either direct or non-direct care costs. Direct care costs are those associated with the provision of instruction and related services to students with disabilities. Non-direct care costs are those attributable to the general administration of a special education program and the operation and maintenance of the program's facilities. In addition, eligible non-direct care costs are limited by parameters (a percentage of direct care costs).

Misclassifying non-direct costs as direct care costs can result in tuition reimbursement rates that are excessive. SED's tuition rate-setting process applies a maximum rate of non-direct care costs to direct care costs. For example, for the 1999-2000 fiscal year, the non-direct care costs eligible for inclusion for tuition rate setting purposes were limited to .4285 times the direct care costs. Because the Council reported $1,213,324 in direct care costs for Program 9100 for that year, its non-direct care costs were limited to $519,909 (direct care costs of $1,213,324 times .4285). If the direct care expenses had been classified correctly, the Council would have been allowed just $360,870 in non-direct care costs ([$1,213,324 - $371,154] x .4285) in the 1999-2000 fiscal year. However, the Council actually reported $443,220 in non-direct care costs for the 1999-2000 fiscal year, which exceeding the limit for non-direct care costs based on the audited direct costs by $82,350.

During our review of the CFR's supporting documents for fiscal years 1999-2000 and 2000-01, we found that some costs had been transferred from one special education program to another without adequate explanation or reason. We found that the Council's firm of certified public accountants had subtracted $144,909 from Program 9100 accounts and added it to Program 9160's accounts for the 1999-2000 fiscal year. The same thing occurred in fiscal year 2000-01.

When we asked the Council's firm of certified public accountants about these transfers, they told us that the original number of classes and teachers provided by Council officials had seemed unreasonable, so they made the adjustment. However, we found that these adjustments were made without maintaining adequate supporting documentation to justify the transfers. Other similar adjustments were also made in other years and for other categories.

Recommendations

To the Council:

1. Report to the Department only costs that are allowable pursuant to provisions of the Manual. Report costs under the proper expense categories (direct/non-direct) on the CFRs.

   (Council officials agree with recommendation number 1.)

2. Verify that all bills for goods and services are supported, prior to payment, by adequate documentation that is consistent with the Manual's provisions.

   (Council officials did not challenge our determination that many OTPS expenses may not have been adequately documented. However, they believe that most of the expenses in question were appropriate.)

3. Verify that all direct care and non-direct care costs are being classified properly on the CFRs. Verify that all administrative costs are being allocated in compliance with the RVM.

   (Council officials agree with recommendation number 3.)

Recommendations (Cont'd)

4. Ensure that reported personal service costs are limited to employees, with appropriate job titles, who actually provide services for Program 9100 and Program 9160.

   (Council officials agree with recommendation number 4.)

5. Ensure that reported executive compensation costs do not exceed limits prescribed by the Manual.

   (Council officials did not challenge the disallowance of $60,138 relating to the salary of the former executive director. However, officials disagreed that the executive director's full compensation was not reported on the CFR. Officials also asserted that the disallowance of excessive compensation is the proper function of SED's rate setting process, not the Council's cost reporting function.)

   Auditor's Comments: Although the CFR reported the executive director's full compensation, the amounts allocated to the preschool special education programs were excessive. The Council should have allocated the correct amounts.

6. Prepare and maintain adequate supporting documentation for all journal transfers or other adjustments to financial records and reports.

   (Council officials agree with recommendation number 6.)

To the Department:

7. Evaluate the audit disallowances identified in this report and take appropriate action.

   (Department officials agree with recommendation number 7.)

8. Provide Council officials with training and updates on pertinent sections of the Manual.

Recommendations (Cont'd)

(Department officials agree with recommendation number 8 and state that Department staff are available to provide individual providers with technical assistance upon request.)

9. Perform follow up field site visits to verify that the Council is complying with provisions in the Manual and that it has implemented the recommendations presented in this report.

(Department officials agree with recommendation number 9 and will periodically visit the Council as staff resources permit.)

ENROLLMENT REPORTING

Section 175.6 of the Commissioner's Regulations prescribes the methodology to be used by the Council in calculating the number of full-time equivalent (FTE) students who are enrolled during the school year. It states that enrollment commences on the first day a pupil is enrolled in and is physically present at (or legally absent from) school and terminates on the last day the pupil is enrolled in and is physically present at (or legally absent from) school. For example, a student who is enrolled from September through June is deemed to be in attendance during that period and is calculated at 1 FTE. If a student is enrolled for less than the full duration of the program, then the student's FTE rating is determined by dividing the total weeks of enrollment by the total number of weeks the program operated − calculated to three decimal places without rounding. Furthermore, according to the Manual, no more than four weeks of enrollment are to be counted in any calendar month. Finally, enrollments must be counted separately for the regular school year and summer sessions.

The Department requires schools, such as the Council, to report the enrollments of the programs so that tuition reimbursement rates can be calculated. For each program, the Council's tuition rate is determined by dividing its reported eligible expenditures by the number of FTE students enrolled. For example, if total eligible costs were $100 and the number of FTE students enrolled was 25, the tuition rate would be $4 per student.

To determine whether the Council reported FTE enrollments accurately, we reviewed the methodology the Council used to calculate the figures it reported. We found that the Council's methodology used five weeks of enrollment data in a calendar month – although provisions in the Manual limit the time to no more than four weeks. The result is that incorrect data is being reported on the CFR. Because the Council did not use the method prescribed by the Department to calculate enrollment, inaccurate tuition rates may have been established for its programs. If the rates used were not accurate, the students' home districts (in this case, New York City) may have been over/under billed (likely by relatively small amounts) for each participant.

Recommendations (Cont'd)

To the Council:

10. Recalculate the FTE enrollments for fiscal years 1999-2000 and 2000-01 using the correct method prescribed by the Department.

    (Council officials agree with recommendation number 10.)

To the Department:

11. Take appropriate steps to verify that the Council is calculating its FTE enrollments correctly and accurately.

    (Department officials agree with recommendation number 11.)

OTHER MATTERS

Board of Directors' Oversight

The State Board of Regents (Regents) requires the Board members to act in good faith and exercise the degree of diligence, care, and skill that an ordinary prudent individual would use under similar circumstances in a like position. One of the most important responsibilities of a trustee or board member is to ensure that financial resources are being used efficiently and effectively toward meeting the institution's goals, and that its assets are safeguarded properly. In addition, the Regents caution board members about complete reliance on the guidance and judgment of an institution's CEO and management. Moreover, the Council's by-laws state that its Board members are to supervise all funds spent for the operation of its day care centers (Centers) to verify that they are being spent in a responsible fashion.

However, we concluded that the Council's Board did not adequately fulfill its fiduciary responsibilities. Specifically, when we reviewed the monthly Board minutes for the period of July 1, 1999, through June 30, 2001, we did not find one significant discussion of financial matters. Our interviews with Council officials and former Board members confirmed that the Board rarely discussed financial information. We believe that at least some of the problems detailed in this report could have been minimized if the Board's oversight, particularly as it pertained to financial matters, had been adequate.

Time and Attendance Records

Provisions in the Manual state that compensation costs must be based on payrolls that are approved and documented. In addition, employee time sheets must be signed by both the employee and a supervisor, and must be completed at least monthly. To determine if time records were in accordance with Manual guidelines, we randomly selected the month of October 2000 to review. Payroll records indicated that 75 persons worked for programs 9100 and 9160 during October 2000. We reviewed all of 75 time records and found that 2 of the records were missing. Furthermore, all of the records were missing the

required supervisory signature. Council management informed us that they were not aware of the Manual requirements. We determined that the Council did not monitor time records adequately, with the overall effect that its management has lessened assurances that employees worked the stated hours.

Services Authorized by Individualized Education Programs

Students in the program are provided with a variety of services, including those of clinicians, speech therapists, physical therapists, occupational therapists, and psychologists. According to the Manual, these health-related costs are reimbursable, provided the services are prescribed in a statement describing the student's Individualized Education Program (IEP).

To determine if the Council was paying clinicians (and thus charging the 9100 and 9160 programs) only for the types and numbers of services authorized in the student's IEP, we reviewed a sample of the billings submitted by 3 clinicians over a 2-month period for 70 students. (The invoices for these 3 clinicians were selected because their invoices were the only ones that properly included the names of the students on the invoice.)

Our audit determined that the Council was doing an inadequate job in reviewing the invoices submitted by the clinicians. For example, we found that the Council paid for services for 3 students where the IEP was missing. In another case, the Council paid for services to two students that had been ordered discontinued. In still another instance, billings for 9 students were for more services than authorized by the IEP.

Teacher Licenses and Certifications

Part 200 of the Commissioner's Regulations states that special education instruction shall be provided by individuals who have been certified or licensed. We reviewed the credentials at the New York State Department of Education of 48 teachers who were employed by the special education programs during our audit period to determine whether these teachers possessed a valid teaching license.

However, our review found that 14 of the 48 teachers (29 percent) did not possess a valid teaching license during various

periods in our audit scope. In fact, we found that six of the teachers had never possessed even a temporary teaching license. We determined that the Council was not actively monitoring the licensing status of teachers. As a result, special education students may have received substandard instructional services.

Recommendations

To the Council:

12. Develop and implement formal procedures the Board should follow when it executes its oversight responsibilities related to major Council functions and initiatives. These procedures should include steps for adequate monitoring of the Council's fiscal affairs such as reviews of the Council's status reports.

    (Council officials agree that the Board did not adequately fulfill its oversight responsibilities during the period of our audit. Officials further indicated that the current Board, including several new members and oversight processes, has already enhanced fiscal and program operations.)

13. Require supervisors to sign off on all employee timesheets.

    (Council officials agree with recommendation number 13.)

14. Ensure that IEPs are prepared and maintained for all special education students and provide only the authorized special education-related services for the period of time that is prescribed by the IEPs.

    (Council officials agree with recommendation number 14 and indicated that safeguards now in place will avoid future recurrences of the problems noted in the report.)

15. Ensure that all teachers are certified and that all certifications are current.

    (Council officials agree with recommendation number 15 and indicated that they will commence a complete review of hiring and retention practices to prevent future problems with this issue.)

MAJOR CONTRIBUTORS TO THIS REPORT

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

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February 23, 2004

Mr. Steven Sossei
Audit Director
Office of the State Comptroller
110 State Street
Albany, NY 12236

Dear Mr. Sossei:

The following are the New York State Education Department's comments to the draft audit report (2003-S-3) on the program costs and enrollment data submitted to the Department by the Highbridge Advisory Council Family Services, Inc. for the period July 1, 1999 through June 30, 2001. We are not commenting on Recommendations 1-6, 10, and 12-15 as they are addressed to Highbridge.

Recommendation 7: **Evaluate the audit disallowances identified in this report and take appropriate action.**

We agree with this recommendation.

Recommendation 8: **Provide Council officials with training and updates on pertinent sections of the Manual.**

We agree with the recommendation. The Department offers annual training on the Consolidated Fiscal Report and the rate setting methodology. Department staff are available to provide individual technical assistance to approved providers upon request. The Reimbursable Cost Manual is updated annually and made available to approved providers.

Recommendation 9: **Perform follow up field site visits to verify that the Council is complying with provisions in the Manual and that it has implemented the recommendations presented in this report.**

We agree with the recommendation and will periodically visit the school as staffing resources permit.

Recommendation 11: **Take appropriate steps to verify that the Council is calculating its FTE enrollments correctly and accurately.**

We agree with this recommendation.

The Department recognizes the severity of these draft findings. The concerns that were raised during our desk reviews of this school's cost reports were verified by the audit. Upon this audit becoming a final, the Department will review this school's approval status to determine if the school should remain on the listing of approved schools.

If you have any questions regarding this response, please contact Thomas Hamel at (518) 486-2991.

Sincerely,

Theresa E. Savo

Theresa E. Savo

c: Thomas Hamel

GREENBERG
ATTORNEYS AT LAW
TRAURIG

February 17, 2004

VIA HAND DELIVERY

Mr. Steven Sossei
Director
Office of the State Comptroller
110 State Street
Albany, New York 12236

Re: Highbridge Advisory Council Family Services, Inc. / Reporting Costs and Enrollments for Tuition Rate-Setting Purposes / Report 2003-S-33

Dear Mr. Sossei:

We are writing on behalf of Highbridge Advisory Council Family Services, Inc., (herein referred to as the "Council") in response to the Office's draft audit report 2003-S-33 (herein referred to as the "Report") on the program costs and enrollment data reported on the Consolidated Financial Report submitted to the state Education Department by the Council for the Center-Based and Integrated Special Education preschool programs for the period of July 1, 1999, through June 30, 2001, and on selected financial management practices. We have reviewed the Report and have found that there are many findings which we do not dispute at this time. Other findings, we believe, should be reconsidered in light of further documentation which has been, or is herein, provided, and further discussions which took place during the recent exit conference.

The Council acknowledges that there had existed certain deficiencies in the Council's management, accounting systems, procedures and internal control structure which may have adversely affected the Council's ability to record, process, summarize or report financial data in the audited years. These deficiencies have been addressed to the fullest extent possible, sufficient, we believe, to address the specific concerns outlined in the Report. The Council acknowledges the weaknesses which have existed and will herein substantiate the corrective steps taken to strengthen those weaknesses. As the enclosed report to Marlene Malamy, New York City, Office of Auditor General, reflects (See: Exhibit A), the Council has met head on the challenges associated with reconstituting its Board of Directors, severing long-standing relationships with management personnel, and, in effect, "righting" the Council's operations – both fiscal and programmatic – from the bottom up. The entire culture of the Council has, and continues, to improve, we believe, to better address the weaknesses and deficiencies identified in

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the Report. We urge the Office to consider the structural and programming redesign of the Council in presenting its final report findings and recommendations.

Executive Summary

The Council acknowledges that errors may have been made in the reporting of some costs for fiscal years 1999-2000 and 2000-01. In addition, weaknesses in internal controls and procedures may have lead to a lack of proper substantiation of accurately reported costs. It would appear, however, that many of the reporting errors were made with the involvement of the Council's then CPA firm, as determined by the Report.[1]

This observation, the Council acknowledges, does not lessen the Council's primary management accountability. The Council has recently engaged the firm Loeb & Troper to provide quality accounting services and guidance to address the deficiencies identified by the Council in advance of the Comptroller's Audit, nevertheless reflected in the Report for those prior fiscal years. As the above mentioned report to the NYC Department of Education, Office of Auditor General reflects, the Council had made dramatic improvements to the financial controls and operations which contributed to inaccurate reporting of costs and inadequate maintenance of substantiating documentation.

It is clear that many of the Report's findings reflect the Council's lack of accounting sophistication, exacerbated by an over-reliance on flawed advice by the then CPA firm. The apparent inadequacy of the former accounting services and weak internal controls and policies of the Council, we believe, are being successfully remediated on a moving forward basis.

Accordingly, the Council strenuously objects to the Report's assertion that "some . . . errors . . . appear to be designed to mislead or conceal the correct costs of operating . . . programs . . . (given) the nature and volume of the errors . . . found." [2] To the contrary, the extent and depth of the errors, we believe, supports our acknowledgement of extreme systemic weaknesses in accounting practices, document retention and internal controls. While the Council concedes

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1 "When we asked the Council's firm of certified public accountants about these transfers, they told us that the original number of classes and teachers provided by Council officials had seemed unreasonable, so they made the adjustment. However, we found that these adjustments were made without maintaining adequate supporting documentation to justify the transfers. Other similar adjustments were also made in other years and for other categories. **Although the Council's . . . accountants explained that they transferred the costs at the request of the Council, there was no supporting documentation for such requests.** (Emphasis Added: Report, page 12.)

2 Report Summary.

major deficiencies in management and procedures may have existed during the audited period, we challenge the Report's suggestion that the Council, as an educational program, may have engaged in any fraudulent conduct.

Disallowed Costs

Personal Service Costs

Overcharges for Staff Working on other Programs

The Council does not challenge the Report finding that some non-special education program employees' salaries were erroneously charged, in part, to the special education program as a result of the misapplication of job titles and allocation standards.

The Council accepts the Report finding that expenses associated with the "Early Childhood Educator (ECE)" were erroneously classified. While the services provided by the "ECE" staff were essential to the operation of the special class in an integrated setting (SC/IS) model under the "dual-teacher" programmatic approval held by the Council, the expenses for teachers under the "ECE" title should not have been charged to special education.

Cost Allocations and Excess Costs Claimed for Executive Director

Cost Allocations

We believe some of the Report findings regarding certain charges are in error. With regard, specifically, to administrative expenses/non-direct care, the Council agrees with the Report's reclassification and allocation of the Council's central administrative expenses. However, the amount reclassified and subsequently allocated using ratio value should also include salaries for the positions charged directly to the Council's other non-4410 programs. This is necessary to properly distribute the expenses to all programs operated by the Council. This approach properly distributes the expenses to all of the programs operated by the agency. Exhibit B, attached, is a schedule of the salaries for the positions which were charged to the Council's non-special education programs.

In addition, the full salary for the Director of Personnel (Sherry Frazier) of $38,636 was charged to Agency Administration on the CFR and not allocated to the 9160 program, as indicated on the Report's schedule of Non-Special Education Employees Charges.

* Note 1

The Council disagrees with a portion of the disallowance for the following staff since these individuals did provide clerical services to <u>all</u> special education programs, not simply the preschool evaluation component:

Year	Program	Position Title	Employee Name	Amount Paid
2000	9100	Clerk	Brown, Patricia	$ 30,114.80
2000	9100	Clerk	Soto, Minerva	5,038.36
2001	9100	Clerk	Brown, Patricia	$ 30,170.15

The Council maintains that the costs of the staff listed above should not be solely reported as being associated with the evaluation component. Unfortunately, Council personnel from its so called "Evaluation Unit" created an erroneous perception during the thorough review by audit personnel. Lacking a sophisticated grasp of the intricacies of cost allocation and fiscal reporting requirements, these individuals identified their duties as being in furtherance of "evaluations". The Council's colloquial designation of an "Evaluation Unit" as an apparently distinct and solely-purposed entity only added to the imperfect understanding of the audit staff as to the actual duties of these individuals. The Council acknowledges that while these staff members did indeed perform some functions which should appropriately be charged to the 4410 evaluation cost center, they actually performed significant additional functions, primarily linked to "intake" - - a process best described as transitioning preschool students with disabilities into enrollment at the Council's approved 4410 programs. "Intake" activities include a variety of actions which are not evaluation related. "Intake" includes the processing students for program admission after the evaluation process is completed and once the Committee on Preschool Special Education (CPSE) has recommended and authorized 4410 placement. It also includes the many details and actions associated with processing and enrolling students not evaluated by the Council, but instead referred by a CPSE for placement at the Council. Regrettably, the Council failed to maintain contemporaneous time sheets and it did not perform periodic time studies of these employees. In lieu of that specific documentation, the Council is proposing a recognized alternative method for allocating the costs associated with these personnel. Since these individuals provided administrative functions to all special education services, the costs should be reallocated within the special education programs using the following Ratio Value allocation.

* Note 2

	2000		2001	
	RV %	Amount	RV %	Amount
9100	36.7%	$ 12,901	41.1%	$ 12,400
9160	40.7%	14,307	41.1%	12,400
9190	4.3%	1,512	4.3%	1,297
9200	1.6%	562	1.0%	302
9300	16.7%	5,871	12.5%	3,771
	100%	$ 35,153	100%	$ 30,170

* See State Comptroller's Notes, page 45

The Council also disagrees with the Report's allocated disallowance of the following Family Support Services staff. These individuals, with exception, did, in fact, work exclusively within the special education programs, and therefore, costs associated with these support services are appropriately allocated to such programs.

Year	Program	Position Title	Employee Name	Amount Paid
2000	9100	Case Manager	Ferguson, Sandra	$ 25,095.67
2000	9100	Case Manager	Perez, Kenia	25,095.67
2000	9100	Case Manager	Thomas, Theodore	25,095.67
2000	9100	CSW Director FSS	Golden, Kenneth	18,436.83
2000	9100	Case Manager	Mateo, Hecgrise	7,442.76
2000	9160	CSW Director FSS	Golden, Kenneth	18,436.83
2000	9160	Case Manager	Tavarez, Ana	23,658.90
2000	9160	Case Manager	Larke-Nicholas, Antonet	13,302.72
2001	9100	CSW Director FSS	Golden, Kenneth	21,693.54
2001	9100	Case Manager	Mateo, Hecgrise	6,727.11
2001	9100	Case Manager	Castro-Engel, Rosemary	2,773.52
2001	9100	Case Manager	Tavarez, Ana	1,293.10

With the exception of Kenneth Golden and Theodore Thomas, these individuals worked exclusively in the special education programs providing core educational services. Although not specifically listed as a mandated related service on the children's IEPs, these positions provide necessary supports to the children and families in order to accomplish and facilitate student goal attainment. As clarified by SED PERU, it is customary for special education programs to provide support services which include:

*
Note 3

- Preparing social histories
- Preparing intake package with parents including authorizations and release forms
- Maintaining case files
- Performing home visits
- Providing coordination between families and direct service staff including teachers and therapists
- Providing training/workshops for parents
- Performing classroom observation
- Preparing service delivery plans; and
- Taking referrals from district and other agencies

* See State Comptroller's Notes, page 45

While not documented on the IEP, these vital services are wholly reimbursable under the Reimbursable Cost Manual in support of direct clinical services.

*
Note
3

The Council does not, however, challenge the Report's assessment that the allocation of some reported costs lack substantial documentation. However, we believe that central administrative costs reconstituted herein provided (Exhibit B) should be reallocated by ratio value to all benefited programs. Exhibit B reflects the schedule of administrative staff salaries charged to the Council's non-special education programs for the FEY. We have also revised the original schedule for FEY to eliminate those positions identified at the exit conference as program administrative staff located at mixed use sites and allocated based on programs operated at those sites.

Executive Director Salary

*
Note
4

The Council does not challenge the disallowance of $60,138 relating to the salary compensation of the former executive director, as a non-reimburseable administrative expense. As the report to the NYC Department of Education, Office of Auditor General, clearly attests, significant changes had occurred in the operations and governance of the Council in advance of the Report to strengthen the internal controls and Board of Trustee oversight which "may have contributed to the problem".

However, the Council does take exception to the Report's assertion that the executive director's full compensation should not have been reported on the CFR since the salary was in excess of the median salary. On the contrary, CFR reporting requires the reporting of revenue and expenses in accordance with Generally Accepted Accounting Principles (GAAP"). Since under GAAP this expense was incurred and accrued in the audited financial statements, it was appropriate and, we believe, mandated that 100% of the salary be reported on the CFR regardless of its reasonableness or reimburseability. The disallowance of excessive compensation over the median salary amounts is the proper function of rate setting, not of cost reporting.

*
Note
5

The Council takes further exception to the Report's description of the reporting errors as "payroll manipulations intended to mislead Department officials . . ." We are unaware of any information or documentation to support such allegations of intent and object to the suggestion of misconduct.

*
Note
6

* See State Comptroller's Notes, pages 45 & 46

Other Than Personal Services Costs

Contracted Direct-Care Consultants

The Council does not challenge the Report's determination that many OTPS expenses may not have been adequately documented at the time of the audit review. However, the Council firmly believes that most of these OTPS expenses, most critically the contracted direct-care expenses, will be found appropriately reimburseable expenses following the auditor's continuing review of the large amount of documentation which has been made available at the Council's administrative offices, as indicated by partial reinstatements already made. This supporting material has been drawn from a wide range of contemporaneously maintained documentation: time cards for specific personnel; session notes authored by clinicians; progress reports; site-wide related service summaries which, on a student-by-student basis, delineate related service recommendations (type, frequency, duration and group size) and specify the assigned clinician(s); individualized student schedules which show the day of the week and specific session times for each related service to be provided by the specifically identified clinician(s); NYC Department of Education Related Service attendance cards. The Council is also prepared at the auditor's request to provide many of the "sign-in/sign-out" books which were maintained in each classroom and recorded the arrival of a clinician to deliver a mandated service and the return of each student to the classroom follow his/her therapy session.

The Council believes that the related service attendance cards confirms the actual provision of the invoiced IEP-mandated related services (speech therapy, physical therapy, occupational therapy, counseling, etc.) on specific dates by the contracted related service personnel. The required coding system in use on the cards reflects the outcome for each session anticipated by the student-specific schedule. Therefore, a student mandated and scheduled for twice weekly thirty minute individual sessions of speech therapy has a related service attendance card specific to both that therapy mandate and the professional assigned to deliver it. The related service attendance cards were and are separately maintained by each clinician for every IEP-driven related service's specific recommendation. Clinicians must personally make an entry on each date of scheduled service which variously reflects: session held; student absent/unavailable; provider absent/unavailable; school closed; provider vacancy. The related service cards are the source document for the development of the "RS-2" supporting schedule to CFRs in years subsequent to those currently under review.

The Council believes review of related service cards and consultant invoices, in conjunction with the corresponding scheduling, session notation and recommendation documentation in accordance with the "cross-walk" procedures agreed upon by the auditors, provides substantiation sufficient to restore the disputed invoices totaling $686,719 in disallowed consultant expenses.

* Note 7

* See State Comptroller's Notes, page 46

Other OPTS Expenses

The Council does not dispute the findings of the Report that approximately $60,000 of expenses were insufficiently documented or substantiated.

Accounting Reclassifications and Irregular Transactions

The Council accepts the Report's recommendations related to strengthening the accuracy of its reporting and has, as indicated herein, already implemented and operationalized much of the suggested guidance.

Enrollment Reporting

The Council accepts the Report's recommendation that the FTE enrollment for fiscal years 1999-00 and 2000-01 should be recalculated to assure accuracy.

Importantly, the New York City Department of Education (NYCDOE) reconciles student enrollment information and, by extension, FTEs, on an annual basis. This protection guards against the threat of overpayment and works to validate the actual student enrollment information. Furthermore, the Council's involved staff members have now been full re-trained in the proper calculation of student FTEs. They have also received direction as to the proper maintenance of all the material which is essential to documenting the enrollment periods of students. Since September, 2002, through participation in the NYCDOE "Voucher Detail Report" (VDR) correction process, the Executive Director of the Council certifies student enrollment information on a monthly basis. That on-going and contemporaneous process provides yet another safeguard as to the accuracy of student FTE information as the Council moves forward.

Other Matters

Board of Directors' Oversight

The Council accepts the Report's conclusion that its previously constituted Board did not adequately fulfill its responsibilities of oversight. However, as reflected in the attached correspondence to the Office of Auditor General, (Exhibit A) the Councils' dramatic reconfiguration in governance and administration -- a priority even before the initiation of the subject review -- has already produced enhanced fiscal health and improved program operations.

Time and Attendance Records

The Council accepts the Report's recommendations to strengthen procedures regarding time and attendance records.

Services Authorized by Individualized Educational Programs

The Council remains committed to fulfilling both the spirit and the letter of every child's IEP. However, occasionally in the past, services may have been increased, decreased, initiated or even discontinued through the CPSE process without the IEP document itself and the associated authorization form immediately provided by the CPSE to our special education program. In these instances, the Council believes it is bound to provide the services anticipated by the parent and as discussed at the CPSE meeting, even while the IEP document is formally revised to reflect that expectation. The Council has put into effect a policy to review new IEPs both to insure their accuracy and completeness upon receipt and to strengthen protocols within the agency to couple scheduling and actual service provision to newly received IEP recommendations and mandates. In a few past instances, the Council also acknowledges that the CPSE's misdirection of a new IEP directly to one of its sites, as opposed to its central offices, resulted in the Counsel's failure to promptly implement changes directed by the IEP. Aware of that problem long before the issuance of the audit report, the Council acted swiftly to communicate with all CPSEs that IEPs needed to be forwarded directly to its administrative offices; more recent experiences, coupled with the new procedures, have proven effective in this critical aspect of program management and compliant service provision. The Council agrees with the Report's recommendation that such strengthened monitoring of IEPs will significantly lessen the likelihood of these occurrences and believes that the safeguards now in place will avoid any future recurrences of the problem.

Teacher Licenses and Certifications

The Council recognizes its serious responsibility to utilize only appropriately licensed and/or certified personnel to provide mandated special education services. To meet the needs of its students, the Council has worked diligently to obtain and retain qualified professionals, even as the pool of appropriate applicants has reached crisis shortage levels in many disciplines. The Council regrets any past lapse in administrative oversight which resulted in the finding by the audit team that any personnel provided special education services when not appropriately licensed or certified for any amount time during their service with the agency. The Council will intensify its efforts to constantly monitor the certification and licensures of its personnel. Recent changes at NYSED which have increased the ability of all programs to verify and track the qualifications of personnel via the internet will be crucial in that effort. The Council has been working very closely with personnel over the past months as the State has further increased the requirements for professional practice and certification. The Council is fully committed to

undeviating compliance with regard to staff qualifications and will commence a complete review of hiring and retention practices which will prevent any future problems in this regard.

Conclusion

The Council respectfully accepts the Report's recommendations, many of which had been implemented even in advance of the audit review but subsequent to the fiscal years under review. We believe the Council has, and continues to, improve its fiscal and programmatic operations for the betterment of the community it serves.

Very truly yours,

GREENBERG TRAURIG, LLP

Pamela A. Madeiros

PAM/mdw
Enclosures
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State Comptroller's Notes

1. Contrary to the Council's assertion, the salary of the Director of Personnel was charged on the CFR as a direct care cost to the 9160 program. Because this is an administrative support cost, it should have been included in the non-direct care cost pool and allocated across the Council's various programs as prescribed by the Manual.

2. Our audit determined that the Council incorrectly charged the costs in question as direct care costs to the special education programs. Consequently, we disallowed these costs. Furthermore, the Council acknowledges that it did not maintain contemporaneous time distribution sheets or perform periodic time studies for the employees in question that could be used to allocate costs appropriately to programs. Nonetheless, if the Council can satisfy SED that a portion of the costs in question (specifically those the Council relates to "administrative functions") should be included in the non-direct care cost pool, we would agree with the Council's position on this issue.

3. The Council provided us with this information in its response to our preliminary findings that we issued during our audit fieldwork. Based on our analysis of this information, we reduced the disallowance for Family Support Services staff by $97,969 (from $244,659 in the preliminary findings to $146,690 in the draft and final audit reports).

4. The $60,138 of excessive compensation for the former executive director (allocable to the 9100 and 9160 programs) was referenced in our preliminary audit findings provided to the Council during our audit fieldwork. However, we did not note this specific amount ($60,138) in the draft audit report, but it is encompassed within the broader issues addressed on pages 15 through 17 of this final report.

5. The Council is correct that the Executive Director's total annual compensation was noted on the CFR's it submitted to SED. Moreover, it was within the Council's discretion to compensate the Executive Director more than the limit established by SED. However, the Council should have limited the amounts of the Executive Director's compensation, allocated to the 9100 and 9160 programs, to the limits established by SED. Consequently, the Council's assertion that the adjustment for excessive compensation is the proper function of SED's rate setting unit (and not the Council's cost reporting mechanism) is not correct. In addition, we have amended the language in our report to more accurately reflect the requirements for reporting and allocating the compensation for the executive Director among the Council's special education programs on the CFR.

6. Because of the frequency and materiality of the errors in question on the Council's CFR's, we maintain that there is considerable risk that certain Council officials intended to mislead SED with regard to the costs of the Council's special education programs.

7. Based on information provided to us by the Council pursuant to the audit's closing conference, we reduced the disallowance for the contracted direct care consultants from $1,452,473 in the preliminary findings to $686,719 in the draft audit report. Based on additional information the Council provided to us more recently, we have further reduced the disallowance (by $96,412) for direct care consultants to $590,307 in this final audit report.