

THOMAS P. DINAPOLI
COMPTROLLER



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ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

December 31, 2019

Ms. Shannon Tahoe
Interim Commissioner
State Education Department
State Education Building
89 Washington Avenue
Albany, NY 12234

Ms. Karen Fassbender
President
Minds in Motion, Inc.
7 Cold Spring Lane
Newburgh, NY 12550

Re: Compliance With the Reimbursable
Cost Manual
Report 2019-S-28

Dear Ms. Tahoe and Ms. Fassbender:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution; Article II, Section 8 of the State Finance Law; and Section 4410-c of the State Education Law, we conducted an audit of the expenses submitted by Minds in Motion, Inc. (MIM) to the State Education Department (SED) for purposes of establishing the preschool special education tuition reimbursement rates used to bill public funding sources that are supported by State aid payments.

Background

MIM is an SED-approved, for-profit special education provider located in Newburgh. MIM provides preschool special education services to children with disabilities who are between three and four years of age. For the fiscal year ended June 30, 2015, MIM provided preschool Special Education Itinerant Teacher services (referred to as the Program) to 84 children with special needs from Orange County.

Orange County pays tuition to MIM for special education services using reimbursement rates set by SED. The State, in turn, reimburses the county 59.5 percent of tuition paid. SED sets the special education tuition rates based on financial information, including costs, reported by MIM on its annual Consolidated Fiscal Report (CFR) that it

submits to SED. Costs reported on the CFR must comply fully with the guidelines in SED's Reimbursable Cost Manual (RCM) regarding the eligibility of costs and documentation requirements, and must meet the reporting requirements prescribed in the Consolidated Fiscal Reporting and Claiming Manual (CFR Manual). For the fiscal year ended June 30, 2015, MIM reported \$571,094 in reimbursable costs for the Program on its CFR.

Results of the Audit

According to the RCM, costs reported on the CFR are considered for reimbursement if they are reasonable, necessary, directly related to the special education program, and adequately documented. For the fiscal year ended June 30, 2015, we identified \$27,970 in costs that MIM reported on its CFR that did not comply with the RCM's requirements for reimbursement. The ineligible costs included \$25,412 in personal service costs and \$2,558 in other than personal service costs.

Personal Service Costs

Non-Reimbursable Expenses for Overage in Full-Time Equivalent

According to the RCM, for non-direct care staff under the 500 and 600 position title code series per Appendix R of the CFR Manual, the full-time equivalent (FTE) in total across entities cannot exceed 1.0. Compensation beyond 1.0 FTE for non-direct care staff, owners, or related parties will not be considered reimbursable in the calculation of tuition rates.

On its CFR for the fiscal year ended June 30, 2015, MIM reported \$21,997 (\$20,003 in salaries and \$1,994 in fringe benefits) in non-reimbursable costs (per the RCM) for the Executive Director, who also serves as bookkeeper and teacher. Based on payroll records, the employee's time spent teaching equated to an FTE of 0.363 and time spent as Executive Director equated to 0.858 FTE. Therefore, the total FTE for this employee was 1.22 for the fiscal year ended June 30, 2015. We adjusted compensation to 1.0 FTE, which resulted in \$21,997 that is not eligible for reimbursement.

Incorrectly Allocated Executive Salaries

According to the RCM, allocation of non-direct care compensation among various direct care job titles is not allowable. Staff should be reported in the job code title supported by salary agreements and job descriptions. For example, an individual who fills the position and holds the responsibility and authority of Executive Director should be reported 100 percent as Executive Director.

For the fiscal year ending June 30, 2015, MIM reported ineligible costs totaling \$3,415 (\$3,024 salaries and \$391 associated with fringe benefits) for the executives that were allocated directly to the Program.

Other Than Personal Service Costs

According to the RCM, costs will be considered for reimbursement if they are reasonable, necessary, directly related to the special education program, and adequately documented. Additionally, per the RCM, costs for meals, beverages, and other related costs for meetings are not reimbursable. Also, costs for food provided to staff, including lunchroom monitors, are not reimbursable. Lastly, as stated in the RCM, gifts of any kind are not reimbursable.

MIM reported \$2,558 in non-reimbursable costs on its CFR for the fiscal year ended June 30, 2015 that did not comply with the RCM requirements. The ineligible costs included:

- \$1,580 in expenses that lacked appropriate supporting documentation or were not program related;
- \$933 in costs for meals provided at meetings and for staff; and
- \$45 in gifts.

Recommendations

To SED:

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

To MIM:

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

Audit Scope, Objective, and Methodology

We audited the costs that MIM reported on its CFR for the fiscal year ended June 30, 2015. The objective of our audit was to determine whether the reported costs were allowable, properly calculated, and adequately documented in accordance with applicable SED requirements.

To accomplish our objective and assess internal controls related to our objective, we reviewed the RCM that applied to the fiscal year we examined as well as the CFR Manual and its related appendices. We evaluated MIM's internal controls as they related to costs it reported on the CFR. We also interviewed MIM personnel to obtain an understanding of their practices for reporting costs on the CFR. We reviewed MIM's CFR

for the fiscal year ended June 30, 2015 and relevant financial records for the audit period. We obtained accounting records and supporting information to assess whether certain costs claimed by MIM on the CFR that were considered high risk and reimbursable in limited circumstances were properly calculated, adequately documented, and allowable.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. 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 functions do not affect our ability to conduct independent audits of program performance.

Reporting Requirements

We provided a draft copy of this report to SED and MIM officials for their review and formal comment. We considered their comments in preparing this report and included them in their entirety at the end of it. In SED's response, officials agreed with the audit recommendations and indicated the actions they will take to address them. However, in their response, MIM officials disagreed with most of the proposed disallowances. Our responses to certain MIM comments are included in the State Comptroller's Comments.

Within 180 days of the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of Education shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

Major contributors to this report were Ed Durocher, Amanda Eveleth, Robert Horn, Innocentia Freeman, Jacqueline Keeys-Holston, and Erin Maloney.

We would like to thank the management and staff of SED and MIM for the courtesies and cooperation extended to our auditors during this review.

Sincerely,

Brian Reilly
Audit Director

cc: Sharon Cates-Williams, State Education Department
Traci Coleman, State Education Department
Brian Zawistowski, State Education Department
Phyllis Morris, State Education Department
James Kampf, State Education Department

Agency Comments - State Education Department



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

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December 20, 2019

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

Dear Mr. Reilly:

The following is the New York State Education Department's (SED) response to the draft audit report, 2019-S-28, Minds In Motion, Inc. (MIM) - Compliance With the Reimbursable Cost Manual.

Recommendation 1:

"Review the disallowances identified by our audit and, if warranted, make the necessary adjustments to the costs reported on MIM's CFR and to MIM's tuition reimbursement rates."

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

Recommendation 2:

"Remind MIM officials of the pertinent SED requirements that relate to the deficiencies we identified."

We agree with this recommendation. SED will continue to provide technical assistance whenever requested and will strongly recommend the MIM's officials avail themselves of our assistance to help them better understand the rules for cost reporting and criteria for cost reimbursement as presented in the CFR, Regulation and the Reimbursable Cost Manual (RCM). Furthermore, SED will alert MIM of online CFR training that is available on SED's webpage. SED recommends that all individuals signing the CFR certification statements, namely the Executive Director and Certified Public Accountant, complete

this training. This training is a requirement for preschool special education providers upon approval and reapproval.

Please be informed that on page 2 of the draft audit report under Personal Services Costs, Non-Reimbursable Expenses for Overage in Full Time Equivalent, the stated FTE for the Executive Director's (ED) total duties of 1.22 does not equal the sum of the stated FTE for the employee's duties as ED of .858 plus the duties as Teacher of .636. Please review and make any updates to the report, including any adjustment amounts, accordingly.

[Comment 1](#)

If you have any questions regarding this response, please contact Brian Zawistowski, Assistant Director of the Rate Setting Unit, at (518) 474-3227.

Sincerely,



Sharon Cates-Williams
Deputy Commissioner

c: Phyllis Morris
Christopher Suriano
Suzanne Bolling
Traci Coleman
Brian Zawistowski
James Kampf

INCORRECTLY ALLOCATED EXECUTIVE SALARIES

\$3,415 of salaries and fringe for executives

Even though the RCM states allocation of non-direct care compensation among various direct care job titles is not allowable, that for a small company like MIM, many duties are performed by each of Directors of the company. It just is not realistic nor fair that all their wages be shown as admin when they teach and perform duties that are directly related to the students.

[Comment 5](#)

State Comptroller's Comments

1. We modified our report.
2. We redacted personally identifiable information that was provided in MIM's response.
3. MIM is incorrect. We did not disallow \$1,230 for utilities. We only disallowed \$366 of these costs. Nevertheless, according to the RCM, costs will be considered for reimbursement provided that such costs are reasonable, necessary, and directly related to the education program. Costs must also have adequate substantiating documentation. MIM did not provide adequate documentation for the costs in question. Furthermore, these costs were associated with a location that was not approved for Program use by SED. As such, we maintain the reported utility costs of \$366 are ineligible for reimbursement.
4. For non-direct care staff, the FTE cannot exceed 1.0. The MIM Executive Director held multiple positions within the organization, and collectively these positions totaled 1.22 FTE for the fiscal year ended June 30, 2015. In response, MIM officials acknowledge that an error was made and they wish to amend their CFR to correct these errors. However, we audited expenses as they were submitted on the CFR, which SED used to calculate MIM's reimbursement rates. Therefore, we maintain that the \$21,997 in salaries and fringe benefits are ineligible for reimbursement.
5. As MIM stated in its response, the RCM states the allocation of non-direct care compensation among various direct care job titles is not allowable. For this reason, we maintain the \$3,415 in salaries and fringe benefits are non-reimbursable.