New York State Office of the State Comptroller
Thomas P. DiNapoli
Division of State Government Accountability

Compliance With the Consolidated Fiscal Reporting and Claiming Manual

Office for People With Developmental Disabilities
The Association of Neurologically Impaired Brain Injured Children, Inc.

Report 2013-S-60 December 2016

Executive Summary

Purpose

To determine whether the costs claimed by the Association for Neurologically Impaired Brain Injured Children, Inc. were valid and consistent with contract terms and were properly allocated among the various programs funded by New York City, New York State, and other sources. The audit primarily addressed the three fiscal years ended June 30, 2013. However, in certain instances we examined matters dating back to July 1, 2008 and extending through January 26, 2015.

Background

The Association for Neurologically Impaired Brain Injured Children, Inc. (ANIBIC), located in Queens, is a not-for-profit agency. For over 50 years, ANIBIC has provided a broad range of services to people with special needs, from ages five through adulthood.

Governed by a 16-member Board of Directors and an Executive Director, ANIBIC operates a Supervised/Supportive Residential Program, consisting of three freestanding residences and a cluster of apartments as well as two day habilitation programs, recreational and family support services, Medicaid and Non-Medicaid Service Coordination, and vocational training and support programs. Also, ANIBIC shared certain facility space with the Oakland Jewish Center (OJC). As of January 15, 2014, ANIBIC had 174 employees and 1,019 consumers, of whom 532 were receiving Medicaid Service Coordination services.

ANIBIC receives funding from three New York State agencies, including the Office for People With Developmental Disabilities (OPWDD), the State Education Department, and the Department of Health. ANIBIC also receives funding from the New York City Department of Health and Mental Hygiene. ANIBIC reported $25.42 million in expenditures during the audit period. Of that amount, $24.5 million (96 percent) was claimed for OPWDD programs.

The Consolidated Fiscal Reporting and Claiming Manual and its Appendices (Manual) provide guidance on the preparation of Consolidated Fiscal Reports (CFRs), which providers use to claim reimbursements from the State. Among a wide range of requirements, the Manual prescribes the eligibility of reimbursable costs, the documentation necessary to support those costs, and the cost-allocation requirements for indirect expenses.

Key Findings

For the three fiscal years ended June 30, 2013, we identified $493,172 in claimed costs that did not comply with Manual requirements and recommend such costs be disallowed. Among the ineligible charges we identified were:

- $208,063 in facility-related costs for space shared with the OJC. These costs were not allocated to OJC, but were charged as maintenance, repair, and utility expenses on ANIBIC's CFRs;
- $152,500 for unallowable payments for lobbyist services;
- $48,802 for unsupported and duplicate payments to a contractor;

- $9,270 for unsupported vehicle-related expenses; and
- $15,428 for ineligible personal commuting costs.

In addition, we identified ineligible lobbying costs ($124,000) and commuting costs ($4,948) that were claimed during periods prior to and following the primary audit period.

Also, from July 2008 to September 2012, ANIBIC paid $120,942 (mostly for light maintenance work) to a business owned by the spouse of an ANIBIC manager. This service was not competitively procured, and ANIBIC had its own maintenance staff who could have done the work in question. Although we did not recommend disallowance of these expenses, we questioned their propriety under these circumstances. OPWDD officials should formally assess the propriety of the $120,942 in claimed costs in question.

Key Recommendations

To OPWDD:

- Review the recommended disallowances identified in our audit and adjust ANIBIC's CFRs and reimbursements accordingly. Also, recover overpayments as appropriate.

To ANIBIC:

- Comply with the Manual's requirements for eligibility and documentation of program costs and make certain all costs reported are business related.

Other Related Audit/Report of Interest

New York City Department of Health and Mental Hygiene: Administration of the Contract With the Center for Urban Community Services (2014-N-5)

State of New York
Office of the State Comptroller

Division of State Government Accountability

December 9, 2016

Ms. Kerry Delaney
Acting Commissioner
Office for People With Developmental Disabilities
44 Holland Avenue
Albany, NY 12229

Mr. Michael Steward
President, Board of Directors
Association for Neurologically Impaired Brain Injured Children, Inc.
61-35 220th Street
Oakland Gardens, NY 11364

Dear Ms. Delaney and Mr. Steward:

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

Following is a report of our audit of the Office for People With Developmental Disabilities and the Association for Neurologically Impaired Brain Injured Children, Inc. entitled *Compliance With the Consolidated Fiscal Reporting and Claiming Manual*. This audit was performed pursuant to the State Comptroller's authority under 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 report, please feel free to contact us.

Respectfully submitted,

Office of the State Comptroller
Division of State Government Accountability

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Background

The Association for Neurologically Impaired Brain Injured Children, Inc. (ANIBIC) is a not-for-profit agency located in Queens, New York. For more than 50 years, ANIBIC has provided a broad range of services to people with special needs, from age five through adulthood.

Under the guidance of a 16-member Board of Directors and an Executive Director, ANIBIC operates a Supervised/Supportive Residential Program, consisting of three freestanding residences and a cluster of apartments. In addition, ANIBIC provides day habilitation programs, recreational and family support services, Medicaid and Non-Medicaid Service Coordination, and vocational training and support programs. As of January 15, 2014, ANIBIC had 174 employees and 1,019 consumers, of whom 532 received Medicaid Service Coordination services. ANIBIC receives funding from three New York State agencies, including the Office for People With Developmental Disabilities (OPWDD), the State Education Department, and the Department of Health. In addition, ANIBIC receives funding from the New York City Department of Health and Mental Hygiene.

ANIBIC is reimbursed for expenses based on the financial information it reports on its annual Consolidated Fiscal Reports (CFRs). The Consolidated Fiscal Reporting and Claiming Manual and Appendices (Manual) offers guidance to providers on how to prepare the CFRs, including the eligibility of reimbursable costs, the documentation necessary to support those costs, and the cost allocation requirements for indirect expenses. To be eligible for reimbursement, reported expenses must comply with Manual requirements. For the three years ended June 30, 2013 ANIBIC reported $25.42 million in expenses. Of this amount, $24.5 million (96 percent) was charged to OPWDD programs.

Also, during the audit period, ANIBIC shared certain facility space with the Oakland Jewish Center (OJC).

Audit Findings and Recommendations

For the three fiscal years ended June 30, 2013, we recommend the disallowance of $493,172 in claimed costs that were either unsupported, inappropriate, or otherwise ineligible for reimbursement (see Exhibit). In addition, ANIBIC improperly claimed $98,000 for lobbying fees from July 2008 through June 2010 and $26,000 for such fees from October 2013 through March 2014 (periods prior to and after the primary audit period). We concluded that these costs were ineligible for reimbursement and should be disallowed as well.

Also, from July 2008 to September 2012, ANIBIC paid $120,942 to a company, owned by the spouse of an ANIBIC manager, for various light maintenance work, such as lightbulb replacement. ANIBIC made payments without adequate documentation of the need for the services. In addition, the services were not competitively procured. Although we do not disallow these expenses, we question their propriety and conclude that they warrant further investigation and assessment.

Facility Expenses Allocable to the Oakland Jewish Center

According to the Manual Appendix I, when a provider occupies building space jointly with other tenants, expenses such as utilities, repairs, and maintenance must be allocated across all agencies or programs benefiting from those resources. The Manual recommends that providers use the "square footage" methodology to allocate these costs. In addition, all space lease transactions reported must be detailed by program/site and/or administration. The expenses claimed should reflect the related organization's actual costs to operate the building used by the service provider.

For the three fiscal years July 1, 2010 through June 30, 2013, ANIBIC reported utility, maintenance, and repair expenses totaling $462,362. During that same period, ANIBIC shared office space with OJC under a rent-free lease agreement that also provided OJC with maintenance and all utilities (except telephone) free of charge. Further, ANIBIC claimed reimbursement from OPWDD for these expenses, a portion of which should have been allocated to OJC. We reviewed the square footage plan attached to the lease agreement and determined that 45 percent of the building space was used solely by OJC, although ANIBIC did not allocate any of the costs in question to OJC. We therefore recommend a disallowance of $208,063 ($462,362 x 45 percent) for utilities, maintenance, and repair costs that should have been allocated to OJC (and should not have been claimed on ANIBIC's CFRs).

Improper and Unsupported Consultant Costs

Lobbying Services

According to the Manual, any dues – or portions thereof – paid to a professional association or parent agency whose primary function is of a political or lobbying nature and whose intent is to influence legislation or appropriation actions pending before local, State, or federal bodies are not reimbursable.

We reviewed ANIBIC's certified CFRs for the three fiscal years ended June 30, 2013 as well as its general ledgers, consultants' agreements, and related cash disbursements for the period July 1, 2010 through March 31, 2014. We found that ANIBIC paid a retainer of $4,000 per month and related amounts to a firm for lobbying services, totaling $152,500 for the three fiscal years ended June 30, 2013. ANIBIC improperly included these payments as non-direct costs on its CFRs. We recommend disallowance of all payments (totaling $152,500) made to the firm for lobbying services during the audit period.

Also, based on these findings, we expanded our review to include other time intervals prior to and after our primary audit period. As a result of this additional review, we determined that lobbying costs totaling $124,000 ($98,000 from July 2008 through June 2010 and $26,000 from October 2013 through March 2014 to the same firm) were claimed improperly, and we recommend the disallowance of these costs as well.

Contractor Services

Adequate documentation includes, but is not limited to, the consultant's resume, a written contract that includes the nature of the services to be provided, and the charge per day and service dates. All payments must be supported by itemized invoices that indicate the specific services actually provided; and for each service, the date(s), number of hours provided, and the fee per hour; and the total amount charged. Requests for proposals or other bidding documentation must be kept on file by the entities operating the program. The entity will need to justify that the consultant hired was the most economical and/or appropriate available for a particular service.

We reviewed two contracts for which ANIBIC made payments totaling $54,702. For one contract, we identified $48,802 in unsupported and improper payments that should be disallowed, as follows:

- $35,064 for change order items that were voided on the invoice;
- $12,738 for change order items that were double-billed; and
- $1,000 that was overpaid.

Furthermore, we determined that one of the two contracts was procured without required written or verbal bids. There is, therefore, limited assurance that the costs of contracted services were reasonable.

Legal Fees

According to the Manual, the annual agency-wide auditing costs for independent certified public accountants (such as the cost of completing the service provider's year-end audit), the cost of other accounting services, and legal fees should be included on line 6 of CFR-3. Agency-wide auditing and legal costs cannot be directly charged as program/site costs on Schedule CFR-1. Instead, these indirect expenses should be claimed on CFR-3. Also, indirect expenses should be allocated appropriately among the various programs operated by an agency. We determined that ANIBIC improperly claimed $41,812 in legal fees on its CFR-1 for the audit period. Such costs should have been claimed on CFR-3. Further, we determined that ANIBIC did not properly allocate these costs to the audited programs. In fact, only $6,885 of these costs should have been allocated to them (on CFR-3 - Agency Administration). We therefore recommend disallowance of $34,927 ($41,812-$6,885), which includes $7,012 for costs that ANIBIC officials indicated would be covered by its insurance company.

Ineligible Transportation-Related Costs

Vehicle Expenses

According to the Manual, vehicle costs are reimbursable provided they are business related and appropriately allocated. The basis for this allocation must be reasonable and documented and may include the number of trips or mileage. For this purpose, vehicle use logs must be maintained by each driver to record information supporting vehicle use. Specifically, the logs should include the name of the traveler, date and time of travel, destinations to and from, distance (mileage) traveled, and purpose of the trip, along with any related costs, such as tolls, parking, and gasoline. If vehicles were rented or leased, a copy of the rental agreements or leases should be retained.

From July 1, 2012 through June 30, 2013, ANIBIC owned and leased vehicles, and on its CFRs reported $76,202 in associated expenses, including lease payments, depreciation expenses, insurance premiums, repairs, and vehicle registration. We identified $9,270 in reported vehicle expenses for which ANIBIC did not have sufficient documentation supporting the vehicles' business use, and recommend disallowance of this amount.

Commuting Costs of the Executive Director

The Manual states that personal commuting costs, as defined by the Internal Revenue Service, are not eligible for reimbursement. Personal commuting costs include those incurred for travel from home to work and back home. Costs for business-related use of a personal vehicle, however, are eligible for reimbursement if they are ordinary and necessary (i.e., common and accepted by the industry and required by the agency for the benefit of the agency or people with disabilities and not individual staff or board members). Further, the portion of the cost of company-furnished vehicles that relates to an employee's personal use (including transportation to and from work) is not allowable, regardless of whether the cost is reported as taxable income to the employee.

In fiscal year 2009, ANIBIC's Board of Directors authorized an annual $5,000 gasoline allowance for the Executive Director to pay his personal commuting costs. On its CFRs, ANIBIC reported $15,428 in expenses related to the Executive Director's use of both personal and company vehicles. During the primary audit period, we determined that $15,428 was attributable to the Executive Director's personal use, and as such, did not comply with the Manual. We also identified an additional $4,948 in ineligible gasoline allowance charges from July 2013 through March 2014 (subsequent to the primary audit period).

According to ANIBIC's Board President, the $5,000 annual gas allowance for the Executive Director was in lieu of a salary increase of $15,000. However, this allowance was not formally approved by the Board (in the form of written meeting minutes or agency policy), nor was it reported as income on the Executive Director's W-2 form or on IRS Form 990, as otherwise required.

Other Ineligible or Unsupported Costs

Less-Than-Arm's-Length Business Arrangement

In general, a less-than-arm's-length (LTAL) relationship exists when there are related parties, and one party can exercise control or significant influence over the management or operating policies of another party, to the extent one of the parties is (or may be) prevented from pursuing its own separate interests. The Manual requires institutions to report on all transactions, including compensation, where an individual has significant authority and control in an organization with which the reporting entity may have business dealings. Further, LTAL relationships must also be disclosed in the notes to the financial statements.

All space lease/rental transactions reported in Section B of CFR-5 must be detailed by program/site and/or Administration in this section. The expenses detailed in this section should be the related organization's/individual's actual costs in operating the building used by the service provider and not the rental payments made to the related organization/individual. If a space lease/rental transaction relates to more than three program/sites and/or Administration, detail should be provided for the three most affected program/sites listed in Column 3 of Section B.

For fiscal year 2013, ANIBIC leased a two-bedroom apartment for two consumers (one of whom is the son of a longstanding Board member) at a monthly rate of $2,800, 66.6 percent more than the OPWDD-approved rate of $1,681 for the Queens neighborhood in question. For this period, ANIBIC incurred a total cost of $30,800 for this apartment, and was reimbursed $18,495 from the consumers' benefit payments. The difference ($12,305) should have been paid by the consumers; however, ANIBIC not only claimed this amount on its CFR, but also failed to disclose this LTAL transaction for the 2013 fiscal year. ANIBIC officials informed us that they had conversations with the Board member regarding reimbursement of a portion of the amounts above the approved rate and were awaiting payment. However, if ANIBIC reasonably expected the consumers to pay the additional cost of the apartment, we question why ANIBIC instead claimed this amount on the CFR and whether ANIBIC would have asked OPWDD to adjust the CFR for any payments received. As such, we recommend that the $12,305 be disallowed.

Improper Credit Card Related Costs

According to the Manual, personal costs and costs incurred for non-program-related activities are not eligible for reimbursement. During the audit period, ANIBIC claimed a total of $118,696 in company credit card charges as program-related costs. Of this amount, we identified $7,409 in inappropriate and disallowable expenses, as follows:

- $5,256 in charges for which ANIBIC did not provide documentation supporting the

business purpose;
- $1,768 for staff meals, including alcoholic beverages. According to the Manual, meals (excluding alcoholic beverages) are eligible for reimbursement only for business-related purposes; and
- $385 for traffic violations, including the failure of an ANIBIC transport van to stop at a red light. According to the Manual, such costs are not eligible for reimbursement.

In addition, on its CFR for fiscal year 2011, ANIBIC claimed $2,468 in unreimbursed cruise expenses incurred by staff while chaperoning clients on their vacations. These expenses are over and above the amount clients paid ANIBIC to cover staff travel costs, and are not ordinary and necessary. We recommend disallowance of this amount.

Other Miscellaneous Ineligible Costs

We also identified $2,000 in other ineligible costs and we recommend that SED disallow this amount, which was reimbursed to an ANIBIC official for purchases that were unsupported. The claim was for household startup items on behalf of a consumer, including furniture, fixtures, small appliances, and tableware, receipts for which did not describe the items purchased, and for which there was no documentation on how the consumer benefitted from them.

Other Matter

Section 717 of the New York Not-for-Profit Corporation Law requires directors and officers to discharge the duties of their respective positions in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. According to the Manual, costs are subject to the “prudent buyer” concept (i.e., the maximum spent should be what a typical buyer would reasonably expect to pay). We identified procedural and control deficiencies which ANIBIC’s Board should properly address to ensure full compliance with the Manual.

Specifically, ANIBIC had a contract from 2005 with a company owned by the spouse of an ANIBIC manager, for various light maintenance work, such as lightbulb replacement. From July 2008 to September 2012, ANIBIC paid a total of $120,942 to this company. However, ANIBIC made payments without adequate documentation of the need for the services, and despite having two full-time maintenance employees capable of performing the tasks in question. In addition, the services were not competitively procured. Although we do not recommend disallowing these expenses, we question their propriety and conclude that they warrant further investigation and assessment by OPWDD officials.

Recommendations

To OPWDD:

1. Review the recommended disallowances identified in our audit and adjust ANIBIC’s CFRs and

reimbursements accordingly. Also, recover overpayments as appropriate.

To ANIBIC:

2. Comply with the Manual's requirements for eligibility and documentation of program costs and ensure all costs reported are business related.

3. Minimize the use of less-than-arm's-length business arrangements. Ensure that the explanation and justification of the need for such arrangements are adequately documented.

4. Comply with applicable policies and procedures for all procurements of goods and services.

Audit Scope and Methodology

Our audit determined whether the costs claimed by the Association for Neurologically Impaired Brain Injured Children, Inc. were valid and consistent with contract terms and were properly allocated among the various programs funded by New York City, New York State, and other sources. The audit primarily addressed the three fiscal years ended June 30, 2013. However, in certain instances we examined matters dating back to July 1, 2008 and extending through January 26, 2015.

To accomplish our audit objective and assess related internal controls, we met with pertinent managers and staff of ANIBIC and OPWDD. We also reviewed contracts between ANIBIC and the funding agencies. Additionally, we analyzed CFRs filed by ANIBIC, and reviewed its general ledgers, credit card statements, vehicle logs, and other supporting documents. Further, we performed physical observations of various ANIBIC residences. The scope of our audit work on internal controls focused on those controls over personal service and non-personal service expense transactions and those relating to CFR preparation.

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 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.

Authority

This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

Reporting Requirements

We provided draft copies of this report to OPWDD and ANIBIC officials for their review and formal comment. We considered OPWDD's and ANIBIC's comments in preparing this final report and have attached them in their entirety to it. In their response, OPWDD officials indicated that they would consider ANIBIC's response and obtain any additional information needed to determine the fiscal impact of this report. OPWDD will then adjust reimbursements and recover overpayments, as appropriate. In its response, ANIBIC disagreed with our findings and recommended disallowances. Our rejoinders to certain statements in ANIBIC's response are included in the report's State Comptroller's Comments.

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

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

The Association of
Neurologically Impaired Brain Injured Children, Inc.
Summary of Reported, Disallowed, and Allowed Costs
for the 2010-11, 2011-12, and 2012-13 Fiscal Years

Nature of Disallowed Cost	Amount per CFR	Amount Disallowed	Amount Allowed	Notes to Exhibit
Unallocated Costs	$462,362	$208,063	$254,299	A,I
Lobbying Fees	152,500	152,500	0	J
Contractor Services	428,351	48,802	379,549	B,C,I,M
Legal Fees	41,812	34,927	6,885	B,C,D,E
Vehicle Expenses*	76,202	9,270	66,932	F
Commuting Costs	15,428	15,428	0	G,K
Less-Than-Arm's-Length Transaction	30,800	12,305	18,495	B,C,H,M
Non-Program-Related Expenses	118,696	7,409	111,287	H,I,M
Additional Expenses for Cruise	7,793	2,468	5,325	H,I,L
Petty Cash	2,000	2,000	0	H,I,M
Totals	**$1,335,944**	**$493,172**	**$842,772**	

* Indicates Direct Care costs. All others were Indirect Care costs.

Notes to Exhibit

The following Notes refer to specific sections of the NYS Consolidated Fiscal Reporting and Claiming Manual used to develop our recommended disallowances. We summarized the applicable sections to explain the basis for each disallowance. We provided the details supporting our recommended disallowances to OPWDD and ANIBIC officials during the course of our audit.

A. Appendix A, Section C: All space lease/rental transactions reported in Section B must be detailed by program/site and/or Administration in this section. The expenses detailed in this section should be the related organization/individual's actual costs in operating the building used by the service provider and not the rental payments made to the related organization/individual. If a space lease/rental transaction relates to more than three program/sites and/or Administration, detail should be provided for the three most affected program/sites listed in Column 3 of Section B.
B. Appendix A, Glossary Section 34.0 - Arm's Length Transaction: A transaction entered into by unrelated parties, each acting in its own best interest. It is assumed that in this type of transaction, the prices used are the fair market values of the property or services being transferred in the transaction.
C. Appendix A, Glossary Section 34.0 - Related Party Transaction: A transaction between the reporting entity, its affiliates, principal owners, management and members of their immediate families and any other party with which the reporting entity may deal when one party has the ability to significantly influence management or operating policies of the other to the extent that one of the transacting parties might be prevented from fully pursuing its own separate interests.
D. Manual, CFR-3, Agency Administration, Section 15 - Other Than Personal Services (OTPS) 6. Audit/Legal: The annual agency-wide auditing costs for independent certified public accountants (such as the cost of completing the service provider's year-end audit), the cost of other accounting services, and the cost of legal services cannot be directly charged as program/site costs on CFR-1.
E. Manual, CFR-3, Agency Administration, Section 15: Management consulting should be included on line 14. Agency-wide auditing and legal costs cannot be directly charged as program/site costs on Schedule CFR-1.
F. Manual, CFR-1, Program/Site Data, Section 13: The costs related to site-based vehicles used for transporting students/clients (e.g., field trips) or transportation between multiple locations within a program/site. Include only expenses associated with the program/site such as vehicle fuel, repairs, and maintenance; not expenses associated with a transportation cost center. Any major repairs that extend the useful life of the vehicle should be capitalized (i.e., the cost should be added to the value of the vehicle and depreciated over the new estimated useful life, see Appendix O). Do not include vehicle lease costs, vehicle depreciation, vehicle interest costs, or vehicle insurance costs which are reported on lines 42, 44, 46, and 39, respectively. Do not include garaging costs for vehicles which are, as appropriate, reported on lines 49, 51, 52, or 55.
G. Appendix EE, OPWDD Reimbursement Principles (OPWDD Only), Section 64.0 - Personal Automobile Related: Personal commuting costs, as defined by the Internal Revenue

Service for tax purposes, are not eligible for reimbursement.

H. Appendix X: A cost must be reasonable and/or necessary for providing services in both its nature and amount. In determining the reasonableness of a given cost, consideration will be given to whether the cost is generally recognized as ordinary and necessary for the operation of the organization and the restraints or requirements imposed by federal and State laws and regulations. Unreasonable and or unnecessary costs are not allowable.

I. Appendix X: Except where otherwise indicated in the CFR Manual, costs determined not to be in accordance with U.S. generally accepted accounting principles are not allowable.

J. Appendix X, Section 1, Non-Allowable Cost - Lobbying: Dues or portions of dues paid to any professional association or parent agency whose primary function is of a political or lobbying nature and whose intent is to influence legislation or appropriate actions pending before local, State or federal bodies are not reimbursable.

K. Appendix X, Section 26: That portion of the cost of company-furnished automobiles that relates to personal use by employees (including transportation to and from work) is not allowable regardless of whether the cost is reported as taxable income to employees.

L. Appendix EE - Meals: The cost of meals is eligible for reimbursement when staff and/or board members are in business related travel status, meeting with outside parties, or when engaged in board related business. The cost of staff meals for those staff being honored at employee recognition events is eligible for reimbursement. In all cases, the expense of a meal includes the amount spent for food, non-alcoholic beverages, taxes, and tip only.

M. Appendix E: In order to be considered eligible for reimbursement, any cost is subject to the “prudent buyer” concept (i.e., the maximum spent should be what a typical buyer would reasonably expect to pay).

Agency Comments - OPWDD

NEW YORK STATE OF OPPORTUNITY. | Office for People With Developmental Disabilities

ANDREW M. CUOMO
Governor

KERRY A. DELANEY
Acting Commissioner

Transmitted via Email

May 23, 2016

Ms. Carmen Maldonado
Audit Director
Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, New York 12236

Re: Draft Report 2013-S-60

Dear Ms. Maldonado:

Thank you for the opportunity to respond to the Office of the State Comptroller (OSC)'s draft audit report (Draft Report No: 2013-S-60) entitled: Office for People With Developmental Disabilities/Association for Neurologically Impaired Brain Injured Children: *Compliance With the Consolidated Fiscal Reporting and Claiming Manual*. The following are our comments on the report.

Recommendation:

For the three fiscal years ended June 30, 2013, we recommend the disallowance of $565,621 in claimed costs that were either unsupported, inappropriate, or otherwise ineligible for reimbursement (see Exhibit). In addition, ANIBIC improperly claimed $96,000 for lobbying fees from July 2008 through June 2010 and $26,500 for such fees from October 2013 through March 2014 (periods prior to and after the primary audit period). We concluded that these costs were ineligible for reimbursement and should be disallowed as well.

Review the recommended disallowances identified in our audit and adjust ANIBIC's CFRs and reimbursements accordingly. Also, recover overpayments as appropriate.

Response:

OPWDD is reviewing the recommended disallowances. Any determination of appropriateness will need to take into consideration ANIBIC's response. Once this is received, OPWDD will work with OSC to obtain any additional information needed to determine the fiscal impact of the final audit findings and adjust reimbursements and recover overpayments as appropriate.

Executive Office
44 Holland Avenue, Albany, New York 12229-0001 | 866-946-9733 | www.opwdd.ny.gov

Thank you again for the opportunity to comment on this draft report. If you have any questions or concerns, please do not hesitate to contact me directly at 518-486-6455 or Mary.E.Peck@opwdd.ny.gov.

Sincerely,

MEPeck

Mary E. Peck
Director, Office of Internal Control

cc: Acting Commissioner Delaney
R. Beardon
H. DeSanto
J. Howard
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Agency Comments - ANIBIC

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May 23, 2016

BY E-MAIL AND REGULAR MAIL

Ms. Carmen Maldonado, Audit Director
New York State-Office of the State Comptroller
Division of State Government Accountability
59 Maiden Lane, 21st Floor
New York, NY 10038

Re: Audit of the Association for Neurological Impaired Brain Injured Children Inc. (ANIBIC)

Dear Ms. Maldonado:

Enclosed please find the response of the Association for Neurological Impaired Brain Injured Children Inc. ("ANIBIC") to the Draft Report of the Office of State Comptroller issued on April 8, 2016.

Very sincerely,

Pamela A. Mann

PAM:ewl
Enclosure

7804326.1

RESPONSE TO DRAFT AUDIT REPORT 2013-S-60

OF

ANIBIC

ALSO KNOWN AS THE ASSOCIATION OF NEUROLOGICALLY IMPAIRED BRAIN INJURED CHILDREN

Pamela A. Mann
Justin L. Peters
Carter Ledyard & Milburn LLP
Attorneys for ANIBIC
May 23, 2016

The Association of Neurologically Impaired Brain Injured Children, Inc., ("ANIBIC"), submits its Response to the Draft Report of the Office of State Comptroller ("OSC") entitled Compliance with the Consolidated Fiscal Reporting and Claiming Manual (Report 2013-S-60), sent to ANIBIC on April 8, 2016 (the "Draft Report").

As we show in this Response, the Draft Report contains numerous findings and conclusions that are factually erroneous, are not supported by the evidence, and/or suggest ANIBIC return public monies for expenditures where ANIBIC never sought reimbursement from the New York State Office for People with Developmental Disabilities ("OPWDD"). *Comment 1

PRELIMINARY OBSERVATIONS

OSC's Improper Procedures

Neither the procedures followed by OSC nor the process that produced the Draft Report are consistent with the national auditing standards OSC professes to follow in its audits, and these have caused significant and unwarranted prejudice to ANIBIC. *Comment 2

Disclosures to OPWDD

First, contrary to the Government Auditing Standards (the "Standards"), OSC shared all of its preliminary findings with OPWDD, the New York State government agency from which ANIBIC receives approximately 95% of its funding. Preliminary findings are solely the work product of the field staff and do not constitute OSC findings. The purpose of the preliminary findings is to help the audit team determine if they are factually correct in the issues they are addressing. Providing information to the funding agency that is not factually correct is prejudicial and unfair to ANIBIC. Only OSC's final reports are made public, and those reports are only issued after exhaustive consideration of the preliminary findings of the field staff, the adequacy of the field work, and the responses of the entity under audit in light of recognized auditing standards. *Comment 3

Moreover, under Government Auditing Standard 4.30, auditors should initially report deficiencies "directly to parties outside the audited entity" only after they have communicated these deficiencies to "the audited entity" and the "entity management fails to take timely and appropriate steps to respond … should the funding agency be apprised of the report." Thus, the Standards contemplate that only OSC's final report – not its preliminary findings– be communicated with the funding agency, and then only after the audited entity has failed to take corrective action. In violation of Standard 4.30, OSC's auditors sent their preliminary findings to OPWDD. Not only that, but OSC's auditors distributed these documents, which should not have been shared with OPWDD at the preliminary finding stage, to the agency at the same time they sent them to ANIBIC. During the almost two years since OSC's disclosure of its first preliminary audit report to OPWDD, ANIBIC's ability to operate and expand its program has been adversely affected as a direct result of these disclosures. *Comment 4

2

*See State Comptroller's Comments, page 40

Questionable Conduct by Field Staff

Second, the OSC field staff handling this audit engaged in a pattern of inappropriate conduct that casts doubt on the reliability of the audit itself. The field work took an extraordinary length of time and was replete with significant errors. ANIBIC submitted responses to each of OSC's twelve preliminary audit reports issued from June 27, 2014 to January 9, 2015. In many instances, the audit reports lacked sufficient detail and documentation for particular findings, limiting ANIBIC's ability to respond. Accordingly, ANIBIC requested additional information and documentation: in particular, those requests were made to the field staff in July 2014, September 2014, and February 2015, and April 17, 2015. Only after ANIBIC sought these documents from Tina Kim, Deputy Comptroller, on May 22, 2015 did it receive some, but not all, of the supporting documentation requested. Based on that additional documentation, ANIBIC made a further response on August 20, 2015. In fact, ANIBIC only received most, but <u>still</u> not all, of the field staff's work papers after making a further request for these papers in April 2016, after receiving the Draft Report. As a result of OSC's failure to provide this documentation promptly and completely, ANIBIC was deprived of the opportunity to assess whether the audit conclusions were consistent with the Government Auditing Standards requiring "… auditors [to] present sufficient, appropriate evidence to support the findings and conclusions in relation to the audit objectives" and to make all available arguments concerning the propriety of the preliminary findings.

Threat of Second Audit on Unknown Topics

Perhaps the most prejudicial of OSC's actions has been the agency's apparent intention, disclosed for the first time less than a week before ANIBIC's response to the Draft Report was due, to issue a second Draft Report concerning ANIBIC. Through counsel, ANIBIC conveyed its concern to Carmen Maldonado, the Audit Director for this audit, and to Tina Kim, Deputy Comptroller. Despite assurances from Ms. Maldonado that she would send written confirmation by May 18, 2016 of the topics that would be addressed in the second report, ANIBIC has never received any information concerning the scope of this second audit. On the contrary, ANIBIC had every reason to believe that it was the subject of one audit inquiry. OSC issued only one engagement letter to ANIBIC and has never given any indication that it had done or was doing two separate audits and would issue two separate reports. Also, a July 28, 2015 email from Deputy Comptroller Kim to counsel for ANIBIC stated: "We are currently in the process of drafting <u>our report</u>. If you intend on submitting further comments, we suggest that you do so as soon as possible so they may be considered as part of <u>the draft report</u>." [emphasis added]

* Comment 5

As a result of these developments, ANIBIC is now required to submit this response without knowing the contents, scope, or timing of a second report. One example of the unfairness of this state of affairs is that, with the threat of a second audit looming over it, ANIBIC has no way of knowing whether the omission of certain preliminary findings from the April 8 draft report is a result of OSC's determination that the preliminary findings were not supported by credible evidence (which was ANIBIC's contention as to many of the preliminary findings) or the result of a decision to cover a particular issue in a second audit.

3

Conclusions Unsupported by Evidence

As we discuss in detail, the findings of the Draft Report are not supported by the evidence. In many instances, the underlying "facts" relied upon in the Draft Report are simply inaccurate. In others, it is impossible to determine how OSC reached its conclusions: the numbers do not add up, OSC does not articulate its rationale for its conclusions, and/or OSC has not provided supporting documentation for its conclusions. In addition, the relief recommended by the Draft Report – generally, that certain expenses should be disallowed – often overlooks the fact that ANIBIC never sought or received payments from OPWDD for these expenses.

* Comment 6

Recognition of ANIBIC's Programmatic Work

Most importantly, completely omitted from the Draft Report is any recognition that ANIBIC has a longstanding record of providing exemplary services to a vulnerable population of people with developmental disabilities. Since its founding in 1975, its services and facilities have increased in number and scope, and it has continued to provide excellent services to its clients throughout the almost three years since OSC began its field work at ANIBIC's offices, with ANIBIC's full cooperation. Programmatic audits conducted by OPWDD confirm that ANIBIC has always met performance standards related to the care it provides to individuals receiving its services and using its facilities. Moreover, ANIBIC's administrative expenses are generally 10 percent or less of its total expenses, significantly below the 15% threshold recommended by state authorities.

RESPONSE TO AUDIT FINDINGS IN DRAFT REPORT

What follows is a detailed analysis of each finding in the Draft Report, presented in the order they appear in that document.

Facility Expenses Allocable to the Oakland Jewish Center

The auditors recommend a disallowance of $208,063 in facility expenses for the fiscal years from July 1, 2010 to June 30, 2013, 45 percent of the total facility expense of $462,362 reported during that period, on the grounds that ANIBIC overstated these expenses. It bases this finding on the fact that ANIBIC shared its offices at 220th Street with the Oakland Jewish Center ("OJC") during this time period and did not properly allocate to OJC the 45 percent of the 220th Street facility it says OJC used, with the result that ANIBIC was reimbursed for OJC's share of the utilities, maintenance and repair costs. OSC notes, however, that OJC did not pay rent, utilities, or maintenance costs.

* Comment 7

As ANIBIC pointed out in its response to OSC's preliminary findings, this disallowance ignores the reality that, while OJC was permitted to occupy 45 percent of the building, OJC used less than 10 percent of the building's total square footage of 31,403 sq. ft, as ANIBIC demonstrated in its response to the preliminary findings.[1] OJC's maximum usage of the building

[1] As set out in ANIBIC's response, on weekdays, OJC used only 965 square feet of the building for its activities, which consisted of a hallway, office, bathroom, and a study. On Saturdays and a limited number of holidays, OJC used additional space, such the Synagogue, additional bathrooms and hallways. In fact, between May 2013 and

4

was 9.83 percent of the building in FYs 2011 and 2012, and 8.51 percent of the building when OJC moved its services offsite in FY 2013. Moreover, OJC paid no rent, maintenance, or utilities, so ANIBIC paid for 100 percent of these charges, whatever the amount of OJC's usage. See **Exhibit A**.

An additional problem with this disallowance is that it relies on the mistaken notion that the "square footage" methodology of cost allocation is the only permissible method. On the contrary, Section 43.3 of Appendix J of the Manual permits any "reasonable method" to be used in order to "result in a fair allocation of costs." As OSC acknowledges in the Draft Report, the expenses claimed by the service provider should reflect the related organization's actual costs to operate the building. This is precisely the approach ANIBIC has taken. The propriety of this methodology is demonstrated by the fact that, after OJC vacated the premises in October 2013, toward the end of the audit period, the building's total utility, maintenance, and repair expenses remained the same. See **Exhibit B.**

Applying the actual usage methodology, the maximum disallowance for facility expenses allocable to the OJC is $43,695.[2]

Finally, since ANIBIC's reimbursement rates were never adjusted to reflect the expenses that were recorded on the CFR, ANIBIC was never actually reimbursed for these expenses.

Consultant Costs

Lobbying Services

The auditors recommend that a total of $164,750 in funds claimed by ANIBIC for fees paid to a lobbyist be disallowed and that ANIBIC refund this amount to OPWDD, on the grounds that ANIBIC sought reimbursement for these fees in violation of the Manual, which states that such fees are not reimbursable. This finding overlooks the fact that, as ANIBIC clearly stated in its response to the preliminary report on this topic, ANIBIC never received reimbursement for any lobbying fees. As indicated in that document, after learning of this error from OSC during the field audit, it submitted revised CFRs transferring the lobbying expenses from the CFR for reimbursable expenses to the CFR for non-reimbursable expenses, and the amounts received from OPWDD for reimbursable expenses never included any amounts for lobbying expense. Instead, ANIBIC paid for these expenses from unrestricted, non-government funds available to it as the result of its sale of a building.

* Comment 8

September 2013, OJC held its services offsite, and did not use the additional space on Saturdays and holidays during this period.

[2] As set out in ANIBIC's response to the preliminary findings, ANIBIC's actual usage was: $145,482 (90.17%) of the $161, 347 total utility, maintenance and repair expense for FY 6/30/11; $134,158 (90.17%) of the $148,788 total utility, maintenance and repair expense for FY 6/30/12; and $139,355 (91.49%) of the $152,317 total utility, maintenance and repair expense for FY 6/30/13. The facility expenses allocable to the OJC were: $15,854 for FY 6/30/11; $14,879 for FY 6/30/12; and $12,962 for FY 6/30/13, for a total of $43,695.

5

Because this section of the Draft Report recommends that ANIBIC return state funds it never received, it should be omitted from any final report issued by OSC.

Contractor Services

The Draft Report identified $48,802 in "unsupported and improper payments that should be disallowed." These payments, made in the context of a $500,000 renovation to ANIBIC's day rehabilitation center, fall into two categories: $35,064 in charges that "were voided on the invoice" and $12,738 and $1,000 in overpayments or double-billings.

As to the voided charges, ANIBIC has met with the architect (who was chosen by OPWDD), and he has indicated that all of the work related to the $35,064 in voided expenses identified in the Draft Report was necessary to the renovations and should never have been voided. The contractor who performed the work has executed an affidavit attesting to the fact that this work was performed. (See affidavit of Vincent Aliperti, attached as **Exhibit C**). Consequently, this disallowance should be omitted from any final report issued by OSC.

* Comment 9

Since OSC identified the $13,738 in double-billings, ANIBIC has investigated the facts and determined that these double payments were the result of the project architect's erroneous approval of duplicate invoices. The contractor that received the $13,738 is now out of business, and, although ANIBIC hired counsel to recover these amounts, it has determined that the costs of legal action would exceed any actual recovery. While it does not dispute this disallowance, ANIBIC would point out that it has not actually received OPWDD reimbursement for these over-payments, costs for this project are being reimbursed over a 15-year period, of which only 5 years have elapsed. Under those circumstances, it would seem appropriate for any disallowed portion of these overpayments to be equally attributed to each fiscal year of OPWDD's 15-year reimbursement period for renovation expenses.

* Comment 10

Legal Fees

The Draft Report asserts that ANIBIC made a reimbursement claim for $54,558 in legal fees on CFR-1, the CFR for direct costs, when the Manual requires instead that such costs be claimed on CFR-3, the CFR for agency administrative costs. Based on this assertion and related calculations, the Draft Report recommends disallowance of $45,866.

This finding is defective for two reasons. First, OSC's worksheets for this finding, produced to ANIBIC only in April 2016, approximately 18 months after they were first requested, state that, for the fiscal year ended 6/30/13, ANIBIC claimed $54,558 in legal expenses on CFR-1 and $53,084 in legal expenses on CFR-3, for a total of $107,642. In fact, ANIBIC did not claim $54,558 in legal expenses on CFR-1 and $53,084 in legal expenses on CFR-3. Rather, it claimed all but $4,447 on CFR-3, as required by the Manual, and the $4,447 claimed in error on CFR-1 was never reimbursed by OPWDD. In addition, ANIBIC's general ledger shows that the total legal expense on OSC's worksheets is simply wrong.

* Comment 11

6

Because this finding of the Draft Report is based on factual errors, it should be omitted from any final report issued by OSC.

Transportation-Related Costs

Vehicle Expenses

The Draft Report recommends disallowance of $42,629 in vehicle expenses and $8,188 in gasoline purchases that ANIBIC did not properly document in vehicle use logs. Although the Draft Report cites the Manual's general requirement that vehicle costs "must be reasonable and documented," it bases its disallowance conclusions on the fact that ANIBIC did not, in all instances, use a particular type of documentation – a vehicle log – to establish the business purpose for which each of its 16 vehicles were used.

* Comment 11

In fact, ANIBIC has procedures that capture all data required to support the business use of its vehicles, and these vehicles were consistently used for programmatic purposes. ANIBIC vehicles are used to transport members from their homes to ANIBIC and returns from ANIBIC to their homes. Vehicles are also used give members access to the larger community and to facilitate their integration into the community. These trips are documented in various ways, including, but not limited to, the general van log and a daily trip roster. In addition to the logs, ANIBIC maintains sign-in sheets and daily attestations of service delivery; these demonstrate the business use of a vehicle (see **Exhibit D**, an example of a participant sign-in sheet). Also, ANIBIC maintains a "to/from" report on which its reimbursement claims are based.

With regard to the purchase of gasoline; ANIBIC uses a service that tracks all gasoline purchases made by any of its drivers and provides ANIBIC with a report that captures the following:

* Comment 11

- Location of gas purchase
- Date of purchase
- Time of purchase
- Purchaser
- Odometer reading
- Product purchased
- Gallons of product purchased
- Price per gallon of product purchased
- Cost per mile
- Miles per gallon
- Gross cost

In reaching its disallowance recommendation, the auditors fail to consider these other methods of record-keeping, which were disclosed to OSC in ANIBIC's response to the

7

preliminary findings on this topic. Moreover, the Draft Report also makes the unwarranted assumption that any gaps in the log show that vehicles not accounted for in this manner were being used for non-business purposes.

ANIBIC vehicles were always used for business purposes, and OSC cites no examples of vehicles being unavailable to consumers when they needed transportation. Indeed, OSC's audit inquiry on this topic began and ended with review of the logs: it made no effort to determine, through interviews, inspection of related records, or other means, whether the vehicles were, in fact, ever used for other than business purposes. For example, vehicles were periodically serviced, and some missing log entries were probably due to the fact that ANIBIC vehicles were being serviced or repaired on those dates.

Because this finding of the Draft Report is based on the erroneous assumption that only one method of record-keeping – the log – can be used to establish business use of vehicles and because, in fact, ANIBIC's vehicles were used appropriately, this section of the Draft Report should be omitted from any final report issued by OSC.

Commuting Costs of the Executive Director

ANIBIC does not contest this finding that transportation costs paid to ANIBIC's Executive Director be disallowed, although we note that, despite numerous requests, OSC never produced the documentation it relied upon in reaching its conclusions.

Other Contested Costs

Less-Than-Arm's-Length Business Arrangement

The Draft Report recommends that $23, 213 in reimbursement for rental charges be disallowed, on the grounds that ANIBIC received this sum in connection with an apartment lease for two consumers, one of whom was the son of an ANIBIC board member, and that this figure represents a rental cost that exceeds the OPWDD approved rate. The Draft Report claims that this rental amounts to a Less-than-Arm's-Length (LTAL) Business Arrangement that ANIBIC should have disclosed.

ANIBIC became aware of this situation before the OSC audit and, as indicated in its response to OSC's preliminary finding on this issue, had disclosed it on its Form 990 and pursued efforts to recover the excess rent from the board member whose son lived in the apartment. Whether or not this was technically a LTAL transaction, it was fully disclosed. In addition, ANIBIC subsequently received $15,872 from the board member as repayment of the difference between the rent paid on the apartment and the consumers' Social Security benefits and relocated the consumers to an appropriately priced apartment.

*
Comment
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The disallowance recommended in the Draft Report ignores two important facts. It ignores the board member's payment, cited above. It also ignores the fact that the balance of $7,341[3] remaining after accounting for social security benefits and the board member repayment is attributable to the consumer in the apartment not related to any ANIBIC Board Member and was never reimbursed by OPWDD.

ANIBIC recognizes that rental of apartments to relatives of board members under circumstances like those presented in this transaction is inappropriate, and it has taken measures to assure that such situations cannot recur. Because ANIBIC has recovered the overpayment from the board member involved, has disclosed the transaction, because it has only sought OPWDD reimbursement for the portion of the apartment cost allocable to the consumer who is not related to the board member, and because it never received reimbursement for this amount, this section of the Draft Report should be omitted from any final report issued by OSC.

Disallowed Credit Card Costs

The Draft Report recommends that, of $296,549 in credit card charges claimed by ANIBIC as program-related costs, $16,282 (5 percent of the total charges) be disallowed as inappropriate and/or undocumented. Despite repeated requests, OSC has not provided ANIBIC with its work papers supporting its findings, and, as a result, ANIBIC is unable to contest the accuracy of these charges.

Withholding its work papers is particularly problematic in this instance because, when OSC provided other work papers relating to its preliminary findings concerning improper credit card charges, ANIBIC was able to demonstrate to OSC that most of the charges were, in fact, business related. Note that, in its preliminary findings, OSC identified $51,598 in improper credit card charges -- $35,316 more than it cites in the Draft Report, a reduction evidently made in response to ANIBIC's response to the preliminary findings.

* Comment 12

Other Miscellaneous Disallowed Costs

The Draft Report recommends that $2,182 in "other ineligible costs" be disallowed. In reaching this conclusion, OSC has simply ignored facts ANIBIC has proffered to establish the business purpose of these charges. In its response to OSC's preliminary report, ANIBIC demonstrated that $2,000 paid to an ANIBIC employee was for the purpose of reimbursing her for purchase of furniture, appliances, linens, and other household items for Apartment 6J at 99-44 67th Road, Apt. 6J, Forest Hills, NY 11375. As to the $89 "in Christmas card purchases that we determined were for the official's personal use," ANIBIC demonstrated that, in fact, the Christmas cards were provided to program members as part of ANIBIC's program activities. The

* Comment 6

[3] $70,350	Rent
($47,137)	Less: SS Benefits
$23,213	OSC Finding
($15,872)	Less: Amount Reimbursed by Board Member
$7,341	Amount paid by the Agency

9

petty cash purchase of $93 at Fortunoff was demonstrated to be for an award that was given out at an ANIBIC fundraising event.

OSC declined to provide most of the documents ANIBIC requested to contest this finding. However, based on the proof previously submitted by ANIBIC, these charges are related to ANIBIC's programs, and this section of the Draft Report should be omitted from any final report issued by OSC.

Other Matter

This section of the Draft Report questions the propriety of ANIBIC's business transactions with a contractor, Bob's Painting, though it does not seek reimbursement of ANIBIC's payments for this work. As ANIBIC has previously demonstrated in its responses to OSC's preliminary findings, ANIBIC's transactions with Bob's Painting complied with all relevant provisions of New York law, regulations, and internal policies and the Manual.

* Comment 13

OSC suggests that ANIBIC contracted for unnecessary services from Bob's Painting because of the marital relationship between one of ANIBIC's program directors and the owner of Bob's Painting. As ANIBIC indicated in response to the preliminary findings, the ANIBIC manager is neither a Director nor an Officer of ANIBIC and had no involvement in the decision to hire this contractor. ANIBIC's leadership was fully informed about the potential conflict and the decision to retain Bob's Painting was made by ANIBIC's disinterested Directors and Officers.

OSC also claims that some of the work contracted to Bob's Painting should have been performed by ANIBIC's maintenance staff. However, OSC's review period for these transactions date as far back as July 2007, over 2 years before ANIBIC established a maintenance department in October 2009, at which time ANIBIC's in-house maintenance staff assumed the bulk of its necessary repairs. On only one occasion, referenced in the Draft Report, ANIBIC used Bob's Painting to replace light bulbs on the 20 foot ceilings in ANIBIC's office due to concerns for the maintenance staff's safety in changing bulbs at such an unsafe height.

Finally, OSC suggests that ANIBIC failed to follow proper bidding procedures for the work done by this firm. This is not the case. The vast majority of projects outsourced to Bob's Painting fell under the minimum bidding threshold and did not necessitate competitive procurement. Several of Bob's Painting's other projects were awarded under an OPWDD Preservation Funds grant under a competitive bidding process. In another instance, ANIBIC contracted with Bob's Painting to fix errors in and complete the project of a previous contractor, completing the work under the same bid price secured through a competitive bidding process. Moreover, this particular project was financed with the proceeds from the sale of ANIBIC's administrative building and was not supported with government funds.

Given these facts, this section of the Draft Report should be omitted from any final report issued by OSC.

CONCLUSION

Of the ten topics and hundreds of thousands of dollars in proposed disallowances addressed in the Draft Report, ANIBIC has demonstrated in this response that the lion's share of these lack merit and should be omitted from any final report issued by OSC. The methodology and conclusions of the auditors in this Draft Report contain factual errors, misinterpretations of the Claiming Manual, and a repeated failure to consider all of the relevant facts. Moreover, the Draft Report advocates disallowance of many expenses for which ANIBIC neither sought nor received OPWDD reimbursement.

ANIBIC calls on OSC to put an end to its investigation of ANIBIC's financial practices and allow ANIBIC to return its full attention to providing essential services to the vulnerable population of neurologically impaired individuals it serves. As demonstrated in this response, OSC's disclosure of its preliminary findings with OPWDD, its protracted field work and delay in issuing this Draft Report, its failure to provide back-up materials in a timely manner, its recent threat to commence a second audit concerning unknown subject areas, and its refusal to apprise ANIBIC of the scope of that audit prior to submission of this response have prejudiced ANIBIC and interfered significantly with its ability to carry out its vital charitable mission.

EXHIBIT A

Exhibit A
Utility, Maintenance, and Repair Cost Allocations

6/30/2011				
Total Building Square Footage	31,403	11,462,095		
OJC @ 45%	14,131	5,157,943		
Total Building Utility/R&M Expenses	$161,347			
OJC @ 45%	$72,606			
Amount Per Square Foot		$0.014		
OJC Utilized - Monday to Friday	965	250,900	$3,531.81	
OJC Utilized - Saturdays	14,131	734,812	$10,343.63	
OJC Utilized - Holidays (10 Holidays)	14,131	141,310	$1,989.16	
			$15,864.61	9.83%
ANIBIC			$145,482.39	90.17%
6/30/2012				
Total Building Square Footage	31,403	11,462,095		
OJC @ 45%	14,131	5,157,943		
Total Building Utility/R&M Expenses	$148,788			
OJC @ 45%	$66,955			
Amount Per Square Foot		$0.013		
OJC Utilized - Monday to Friday	965	250,900	$3,256.90	
OJC Utilized - Saturdays	14,131	734,812	$9,538.50	
OJC Utilized - Holidays (10 Holidays)	14,131	141,310	$1,834.33	
			$14,629.73	9.83%
ANIBIC			$134,158.27	90.17%
6/30/2013				
Total Building Square Footage	31,403	11,462,095		
OJC @ 45%	14,131	5,157,943		
Total Building Utility/R&M Expenses	$152,317			
OJC @ 45%	$68,543			
Amount Per Square Foot		$0.013		
OJC Utilized - Monday to Friday	965	212,300	$2,821.20	
OJC Utilized - Saturdays	14,131	621,764	$8,262.47	
OJC Utilized - Holidays (10 Holidays)	14,131	141,310	$1,877.83	
			$12,961.51	8.51%
ANIBIC			$139,355.49	91.49%

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EXHIBIT B

Exhibit B
Utility Costs With and Without OJC

Without OJC			
		Therms	KWH
8/26/2013	10/24/2013	47	21,277
10/24/2013	11/25/2013		8,748
11/25/2013	12/26/2013	2,342	8,800
12/26/2013	1/28/2014	3,685	10,311
1/28/2014	2/27/2014		10,476
2/27/2014	4/28/2014		18,746
4/28/2014	5/28/2014		9,121
5/28/2014	6/26/2014		13,440
6/26/2014	7/28/2014	46	20,659
7/28/2014	8/26/2014		16,803
8/26/2014	9/25/2014	48	15,524
9/25/2014	10/24/2014	176	9,440
	Total	6,344	163,345

With OJC			
		Therms	KWH
10/24/2012	11/27/2012		8,519
11/27/2012	12/26/2012		8,610
12/26/2012	1/28/2013		10,969
1/28/2013	2/27/2013		9,684
2/27/2013	3/28/2013		8,721
3/28/2013	4/26/2013		7,525
4/26/2013	5/28/2013		8,842
5/28/2013	6/26/2013		12,514
6/26/2013	8/26/2013		41,041
8/26/2013	9/25/2013		14,769
	Total		131,194

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Comment
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EXHIBIT C

AFFIDAVIT

STATE OF NEW YORK):
): ss
COUNTY OF Queens):

VINCENT ALIPERTI, being duly sworn, deposes and says:

1. I am a former member of GVA LLC, hired by the Association for Neurologically Brain Injured Children, Inc. (hereinafter, "ANIBIC") as general contractor for the construction project on the building known as 224-20 Grand Central Parkway, Queens, New York (the "Building").

2. I submit this affidavit with regard to certain work performed by GVA LLC on the Building; particularly, with regard to work performed in or about April 2011 on radiator valves installed throughout the Building.

3. Upon information and belief, on April 7, 2011, ANIBIC's architect recommended that radiator valves be installed throughout the Building, and not just in program areas, because the system would not operate properly if the valves were not uniform throughout the Building.

4. Thus, in accordance with its instruction from members of ANIBIC, GVA LLC installed such radiator valves throughout the Building.

5. By check number 6647, dated April 15, 2011, ANIBIC paid GVA LLC $35,064.00 for the installation of these radiator valves.

6. While such valves are listed on Change Orders 8 and 9 for the project, which Change Orders were voided, these valves were, in fact, installed throughout the Building by GVA LLC and ANIBIC rightfully paid GVA LLC for such installation.

7. The Change Orders were voided in error because it was the intention that the cost of the valves in the areas of the Building where programs were conducted was to be paid by the Office for Persons With Developmental Disabilities and the balance was to be paid by ANIBIC. ANIBIC, however, paid the full cost of the installation of the valves.

8. Indeed, the valves were installed throughout the Building and the payment in the amount of $35,064.00 was paid to GVA LLC by ANIBIC in exchange for said installation.

9. GVA LLC did not receive any other payment for this work.

Vincent Aliperti
Member
GVA LLC (Dissolved) EJM

Sworn to before me
this 6 day of May 2016

Notary Public

EDWARD JOSEPH MUCCINI
Notary Public, State of New York
No. 02MU6224019
Qualified in Queens County
Commission Expires June 20, ~~2014~~ 2018

2

EXHIBIT D

Date: [illegible] Day Hab Attendance Sheet

		TIME IN	TIME OUT
[redacted], [redacted]	M [redacted] B [redacted]	[illegible]	[illegible]
[redacted], D[redacted]	[redacted]		
B[redacted], J[redacted]	[redacted]	[illegible]	[illegible]
B[redacted], H[redacted]	[redacted]	[illegible]	[illegible]
C[redacted], Z[redacted]	Z[redacted] C[redacted]	9:30	2:45
C[redacted], A[redacted]	A[redacted] C[redacted]	9:00	2:45
D[redacted], T[redacted]	T[redacted] D[redacted]	9:00	2:45
E[redacted], T[redacted]	T[redacted] E[redacted]	9:00	2:45
E[redacted], S[redacted]	S[redacted] E[redacted]	[illegible]	[illegible]
G[redacted], M[redacted]	M[redacted] K[redacted]	9:07	2:45
G[redacted], N[redacted]	[redacted]		
H[redacted], D[redacted]	absent	—	—
H[redacted], G[redacted]	XG[redacted] H[redacted]	9:49	2:45
H[redacted], K[redacted]	K[redacted] H[redacted]	9:50	2:45
J[redacted], A[redacted]	[redacted]	9:00	2:45
L[redacted], T[redacted]	T[redacted] L[redacted]	9:19	2:45
M[redacted], M[redacted]	M[redacted]	[illegible]	[illegible]
P[redacted], E[redacted]	M[redacted] P[redacted]	9:28	2:45
P[redacted], R[redacted]	R[redacted] P[redacted]	9:00	2:45
P[redacted], K[redacted]	[redacted] P[redacted]	9:00	2:45
R[redacted], F[redacted]	absent	—	—
S[redacted], J[redacted]	X J[redacted] [redacted]	[illegible]	[illegible]
S[redacted], J[redacted]	X [redacted]	9:00	2:45
T[redacted], C[redacted]	XC[redacted] T[redacted]	9:15	2:45
T[redacted], E[redacted]	E[redacted] T[redacted]	9:00	2:45
T[redacted], D[redacted]	D[redacted] T[redacted]	A.M. 8:47	P.M. 2:45
V[redacted], W[redacted]	[redacted]	[illegible]	[illegible]
V[redacted], D[redacted]	absent	—	—
CONSUMER NAME	ABSENCE CALLS		

[redacted]	Spoke with [illegible]	Staff Initials [illegible]
[redacted]	Spoke with [illegible]	Staff Initials [illegible]
[redacted]	Spoke with [illegible]	Staff Initials [illegible]
	Spoke with	Staff Initials
	Spoke with	Staff Initials
	Spoke with	Staff Initials

State Comptroller's Comments

1. The objective of this audit was to determine whether the costs claimed by the Association for Neurologically Impaired Brain Injured Children, Inc. (ANIBIC) were valid and consistent with contract terms and were properly allocated among the various programs funded by New York City, New York State, and other sources. As ANIBIC itself acknowledged in its own financial statements, "ANIBIC received substantially all of its revenue for services provided to approved consumers from third-party reimbursement agencies, primarily Medicaid and OPWDD. These revenues are based on a predetermined rates based on cost reimbursement principles and **are subject to audit and retroactive adjustment by the respective third-party fiscal intermediary**."
2. Our performance audit was conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS). As such, we believe the evidence obtained provides reasonable assurance for our findings and conclusions based on our audit objective. The audit was performed by professional auditors and without any prejudice to ANIBIC.
3. Both OPWDD and ANIBIC were engaged for the audit, and as such, sharing our preliminary findings or any other information with OPWDD during the audit is appropriate and is not contrary to government auditing standards.
4. The section of GAGAS cited by ANIBIC is incorrect. Paragraph 4.30 applies to financial audits – and not to performance audits. The correct citation is 7.24. Moreover, as previously noted, OPWDD was engaged for this audit and therefore is not an outside entity. The objective of this audit was to determine whether the costs claimed by ANIBIC were valid and consistent with contract terms and were properly allocated among the various programs funded by New York City, New York State (including OPWDD), and other sources. Government auditing standards were not violated. The Office of the State Comptroller is responsible for auditing all State funds, and ANIBIC claimed $24.5 million (96 percent) of the $25.42 million in reported expenditures for OPWDD programs.
5. OSC does not plan to issue a second audit report. The matter referenced is being handled through a separate process. Per GAGAS, in such circumstances, we may therefore limit our public comments.
6. ANIBIC's assertions are incorrect. In fact, OSC provided ANIBIC officials with information that was sufficiently detailed to support each of the audit's findings. Further, in certain instances, ANIBIC officials made multiple requests for information that auditors previously provided to them.
7. The response is incorrect. We provided ANIBIC with support for our preliminary findings and thoroughly reviewed its response, and changed our audit results when ANIBIC provided documentation to support the eligibility of claimed expenses. During our audit field work, we met with ANIBIC officials on multiple occasions to obtain clarifications and to express concerns pertaining to the lack of required supporting documentation. We reviewed the information ANIBIC provided in its response to our draft audit report and made adjustments, as appropriate. We issued preliminary findings to ANIBIC on December 24, 2014 regarding "Cost Allocation." ANIBIC replied to the preliminary on February 27, 2015. Based on information provided in that response, we reduced the disallowance from $308,133 to $208,063. However, ANIBIC's response to the draft report did not include

any information that had not been provided previously and was not already reflected in the amounts in the draft report. Furthermore, we did not allocate any expenses to OJC for the 2013-14 year because OJC moved out of the premises in question in September 2013. Therefore, Exhibit B in ANIBIC's response to the draft report has no effect on the audit results.

8. ANIBIC officials did not provide documentation to support that a revised CFR excluded the lobbying expenses from reimbursable costs and transferred such costs to non-reimbursable expense categories. As a result, we made no adjustment to this issue for the final report.
9. ANIBIC's response to the draft report included an affidavit from the contractor stating that, although the work order was originally for valves in ANIBIC's program areas, the valves were actually installed throughout the building (including non-ANIBIC program areas). Nevertheless, ANIBIC paid the contractor for the total amount of such charges. Because some of the costs were not related to the ANIBIC program, such costs are not eligible for reimbursement by OPWDD. Thus, ANIBIC should have identified the non-OPWDD portion of the valve costs and subtracted them from the total amount paid to determine the amount to be charged to the OPWDD program.
10. Because ANIBIC acknowledged that it made an error that resulted in an overpayment to the contractor, it should also have determined the portion of that overpayment that should have been excluded from the related amount claimed on the CFR.
11. The report was also revised based on further review of the information provided during our field work. The revisions included: changing the number of contracts without bids from three to two; removing the "Wex" gas purchases; and changing the amounts for Less Than Arm's Length Transaction and Petty Cash. We also revised the recommended disallowances based on the information in the response to the draft report. Specifically, we reduced the disallowance for Unsupported Vehicle Related Expense from $42,629 to $9,270 and the disallowance for Legal Fees from $45,806 to $34,927.
12. ANIBIC officials were provided with all supporting working papers they requested. Schedules containing the questionable credit card purchases were reviewed by ANIBIC, and as the response to the draft report states, the audit results were revised where ANIBIC was able to support the expenses. However, no further documentation was provided, and therefore, the disallowance in question remains in the final report.
13. Based on the information for the work completed and billed on the invoices, we maintain that the work was general maintenance, such as installing signs, changing "ballast and bulbs – day hab gym," and fixing the drain in the men's room. As stated in our report, this practice should be reviewed.