

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

Division of State Government Accountability

Compliance with the Reimbursable Cost Manual

Bilingual SEIT & Preschool, Inc.
State Education Department



Report 2011-S-13

July 2012

Executive Summary

Purpose

To determine whether the costs reported by Bilingual SEIT & Preschool, Inc. (Bilingual), on its Consolidated Fiscal Reports (CFRs) were properly calculated, documented, and allowable under the Reimbursable Cost Manual (Manual) issued by the State Education Department (SED).

Background

Bilingual, located in Flushing, New York, provides special education itinerant teacher services (SEIT) and preschool special class services to disabled pre-school children. The New York City Education Department (DoE) pays tuition to Bilingual using rates set by SED. SED sets these rates using financial information that Bilingual presents in an annual CFR filed with SED. For the two years ended June 30, 2009, Bilingual claimed approximately \$23.4 million in reimbursable costs.

Key Findings

We disallowed a total of \$1,474,924 in costs reported by Bilingual. We have referred our findings to the Queens County District Attorney's Office for its review and will assist that office in any further inquiry it deems appropriate. The disallowances included:

- \$471,050 in personal service costs. These costs included \$233,368 paid to 26 employees whose time and attendance could not be substantiated. They also included a portion of the salary paid to Bilingual's Assistant Executive Director who is the former wife of its Executive Director, and was paid \$369,081 for fiscal years 2007-08 and 2008-09. We determined that she actually performed the services of a payroll specialist rather than those of the Assistant Executive Director. Therefore, we reduced her salary by \$107,380.
- \$795,368 in other-than-personal-service costs, including \$327,033 in unrelated and inadequately-documented expenses, \$5,567 for children's bedroom furniture, and \$887 for cosmetics.
- \$208,506 in inadequately-documented and/or inappropriate contracted direct care costs.
- In addition, Bilingual officials may have deprived Federal, State, and local taxing authorities of a significant amount of tax revenues by treating top officials of the school, as well as certain other staff, as independent contractors rather than as employees.

Key Recommendations

- Encourage Bilingual's Board and senior management to attend ethics training on their fiduciary responsibilities, and advise them that personal expenses are not eligible for reimbursement.
- Recover all reimbursements made to Bilingual for inappropriate and unsupported expenses, and consider recouping payments for personal items directly from responsible Bilingual officials.

Other Related Audits/Reports of Interest

[Henry Viscardi School: Compliance with the Reimbursable Cost Manual \(2009-S-70\)](#)

[Integrated Treatment Services: Compliance with the Reimbursable Cost Manual \(2009-S-37\)](#)

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

Division of State Government Accountability

July 19, 2012

Dr. John B. King Jr.
Commissioner
State Education Department
State Education Building - Room 125
89 Washington Avenue
Albany, NY 12234

Mr. Cheon Park
Executive Director
Bilingual SEIT & Preschool, Inc.
150-07 Northern Blvd.
Flushing, New York 11354

Dear Dr. King and Mr. Park:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage government resources efficiently and effectively and, by so doing, providing 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 Bilingual SEIT & Preschool, Inc.: *Compliance with the Reimbursable Cost Manual*. This audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1, of the State Constitution and Article II, Section 8, of the State Finance Law.

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

Respectfully submitted,

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

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Background

Bilingual SEIT & Preschool, Inc. (Bilingual), located in Flushing, New York, is a for-profit organization that provides special education itinerant teacher services (program code 9135) and preschool special class (program code 9100) to about 700 disabled children between the ages of three and five years. The New York City Department of Education (DoE) pays tuition to Bilingual using rates set by the State Education Department (SED). SED sets these rates using financial information that Bilingual presents in its annual consolidated fiscal reports (CFRs) filed with SED. Costs reported on the CFR must comply fully with the guidelines in the Manual. SED issued the Reimbursable Cost Manual (Manual) to provide guidance on the eligibility of costs and documentation requirements that must be met for rate-setting purposes. DoE and the other local school districts use the SED rates to pay the schools providing these services, then they are partially reimbursed by SED. During the fiscal years ended June 30, 2008 and 2009, Bilingual claimed and received approximately \$23.4 million in reimbursable costs from the State.

Audit Findings and Recommendations

Personal Service Costs

Personal service costs, which include all taxable salaries and fringe benefits paid or accrued to employees on the agency's payroll, must be reported on the CFR as either direct care costs (teachers' salaries) or non-direct care costs (administrators' salaries). Direct care costs should be charged to specific programs based on employees' work locations and functions. Non-direct care costs should be allocated among all programs operated by an entity based on a fair and reasonable method. According to the Manual, costs are considered for reimbursement if they are reasonable, necessary, directly related to the education program, and documented sufficiently.

We disallowed \$471,050 in personal service and fringe benefit costs that Bilingual claimed on its CFRs for the two-year period ended June 30, 2009. We have referred our findings to the Queens County District Attorney's Office for its review and will assist that office in any further inquiry it deems appropriate.

Unsupported Payroll Costs

The Manual requires that payrolls be supported by employee time and attendance records prepared during, not after, the period for which the employee was paid. In addition, employee time sheets are required to be signed by the employee and his/her supervisor, and must be completed at least monthly. We determined that certain employees were paid for services that were not sufficiently documented or were unallowable. Because Bilingual did not comply with the Manual requirements in this regard, we disallowed a total of \$423,995 in personal service costs, as follows:

- \$233,368 - Bilingual officials could not provide time records to show that 26 employees had actually worked the time for which they were paid. We disallowed the salaries of these employees.
- \$107,380 - the former wife of the Executive Director is listed as Bilingual's Assistant Executive Director on the CFRs. In this capacity, she was paid \$369,081 during fiscal years 2007-08 and 2008-09. We interviewed her and other employees and determined that during this period, she actually performed the tasks of a payroll specialist, rather than that of an Assistant Executive Director. We disallowed the difference between a payroll specialist's salary (\$211,385) for this two year period and that of an Assistant Executive Director.
- \$56,164 - We reviewed the salaries for 15 Bilingual employees and determined that they were overpaid because errors were made in calculating their salaries. We disallowed the overpayments.
- \$12,273 - Bilingual officials claimed that they employed an administrative assistant from March 2009 through June 2009. However, they did not provide us with documentation to show the work/services performed by this employee. It appears that Bilingual used an invalid Social Security number when recording and reporting this individual's salary. We

later determined that employee was the sister of the Assistant Executive Director.

- \$9,942 - The compensation paid to the Executive Director exceeded the median salary allowable by the Manual. We disallowed the excess salary.
- \$4,868 - Three SEIT teachers were paid as SEIT supervisors even though they were not qualified to be supervisors. We disallowed the supervisor differential paid to them.

Fringe Benefits

Mandated Fringe Benefits represent the costs of all employer contributions for Social Security, Workers Compensation, Unemployment Insurance, and New York State Disability that are mandated by Federal, State, or local laws. Non-Mandated Fringe Benefits represent the costs of all employer employment-related contributions that are not mandated by law, including health and dental insurance. We disallowed \$47,055 in fringe benefit costs related to the employees whose services were not sufficiently documented or were unallowable.

Other-Than-Personal-Service Costs (OTPS)

The Manual provides guidance on the eligibility for reimbursement of OTPS costs and the documentation that is required to properly support such costs when they are reported on the CFR. According to the Manual, reported costs should be reasonable, necessary, program-related, and documented properly. Moreover, all purchases must be supported with invoices that list the items purchased and the dates of purchase and payment, as well as with canceled checks. Personal costs and costs incurred for activities not related to the educational programs are not eligible for reimbursement.

For the two fiscal years ended June 30, 2009, we reviewed a judgmental sample of 1,016 transactions totaling \$909,123. The sample was selected from various OTPS accounts based on dollar amounts and costs that appeared questionable. The sample did not include Contracted Direct Care costs since these costs are reported separately. We disallowed \$795,368 in OTPS costs because Bilingual did not comply with Manual guidelines.

Vehicle Expenses

Vehicle usage must be documented by individual vehicle logs that include, at a minimum: the date and time of travel, places of departure and destination, mileage, purpose of travel, and the name of the traveler. Costs associated with the personal use of vehicles are not reimbursable.

Bilingual reported lease payments, gas, insurance, parking, tolls, and maintenance costs for three vehicles (a 2007 Toyota Matrix, a 2007 Honda Odyssey with a rear entertainment system, and a 2008 Mercedes Benz) on its CFRs. The expenses associated with these vehicles, which were all registered to Bilingual's Executive Director, totaled \$71,169, not including depreciation.

We disallowed \$60,280 in claimed vehicle expenses because Bilingual did not maintain the required vehicle logs or any other documentation to support the business use of these vehicles,

as required. We also disallowed \$16,806 in depreciation expenses associated with these vehicles. Further, we disallowed another \$2,925 in personal vehicle expenses associated with parking fines and fees.

Rent Expense/Leasehold Improvements

According to the Manual, costs are considered for reimbursement if they are reasonable, necessary, directly related to the education program, and documented sufficiently. The Manual also states that costs incurred for the less-than-arms-length (LTAL) leasing of real property shall be reimbursed only with the written approval of the Commissioner upon the establishment of the cost-effectiveness of the transaction. This written approval must be obtained prior to the LTAL transaction.

During the two fiscal years ended June 30, 2009, Bilingual officials claimed \$607,757 in rental expenses associated with the SEIT program. We found that Bilingual had inappropriately claimed \$186,819 in rental expenses for two buildings that were unrelated to the SEIT program and a third building that was under construction. We determined that two of these buildings were owned by the former wife of the Executive Director. We also found that \$28,020 in misclassified rental expenses (\$21,347 in utility expenses and \$6,673 in renovation expenses) were not related to the SEIT program. Therefore, we disallowed a total of \$214,839 in rental expenses. In addition, we disallowed \$37,910 in amortization and leasehold improvement expenses that Bilingual improperly charged to the SEIT program. These expenses were related to a day-care business operated by Bilingual.

Children's Bedroom Furniture Expenses

The Manual states that expenditures of a personal nature are not reimbursable. We found that the Executive Director had purchased children's bedroom furniture and charged it to the State-supported programs. We could neither see the need for such "high end" furniture nor locate the items at any of Bilingual's business sites. Therefore, we disallowed expenditures of \$5,567 in children's bedroom furniture that had been allocated to the programs we audited because the costs were unreasonable and inappropriate. The furniture included:

- \$1,460 for four bedroom desk chairs,
- \$1,347 for two bookcases,
- \$1,150 for two doll chests,
- \$1,006 for two white antique-finished nightstands,
- \$343 for a bedroom bench,
- \$261 for two bedroom lamps with petite silk shades.

Miscellaneous OTPS Disallowances

According to the Manual, costs incurred for activities not related to the state funded educational programs are not eligible for reimbursement. We disallowed \$419,203 in miscellaneous OTPS

costs, as follows:

- \$190,505 in non-program-related expenses including \$22,347 in interest expense associated with loans to the former wife of the Executive Director,
- \$136,528 in inadequately-documented and/or various ineligible expenses, including \$19,044 in architectural fees,
- \$49,331 in expenses related to purchases that were not competitively bid, including \$41,859 for website design and services. The design of the website was outsourced to an entity in South Korea. We saw no cost benefit analysis showing that it was more reasonable to outsource this purchase to a company in a foreign country.
- \$23,217 in questionable purchases, including \$19,629 to purchase calendars, diaries, and custom mugs,
- \$12,104 in non-allowable staff meal expenses,
- \$6,901 in personal expenses including \$4,154 in fees that enabled certain employees to obtain non-immigrant H-1 Visas and \$887 for cosmetics,
- \$327 in cell phone expenses,
- \$290 in unsupported educational toy expenses.

Costs Reported Incorrectly on the CFR

Bilingual incorrectly reported certain employees as independent contractors on its CFRs. These costs, totaling \$37,838, should have been reported and claimed as personal service expenses. Instead, they were claimed and reported as OTPS other and contracted direct care. We disallowed the entire \$37,838.

Contracted Direct Care Costs

According to the Manual, all payments to contractors 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, as well as the total amount charged. In addition, when direct care services are provided, the documentation must indicate the names of students served, the actual dates of service, and the number of hours of service to each child on each date. Bonus compensation may be reimbursed if based on merit as measured and supported by employee performance evaluations. We disallowed a total of \$208,506 in contracted direct care costs where Bilingual did not comply with the Manual.

To determine whether payments to Direct Care providers were adequately supported, we selected a judgmental sample of 40 contractors for fiscal year 2007-08, and 40 contractors for fiscal year 2008-09. We found \$172,193 in unsupported contractor expenses:

- \$59,726 in inadequately-documented costs. The invoices to support these costs did not include the dates of service and the number of hours provided, as required.
- \$49,973 in payment rate increases that were not substantiated,
- \$31,063 in overstated work hours. The invoices indicated that individuals had worked

fewer hours than were actually charged to the programs.

- \$16,528 for supervisory services performed by contractors who were not supervisors,
- \$9,558 in invoice discrepancies—hours worked at specific pay rates did not reflect what was documented on the invoices,
- \$5,245 in billings by contractors for an excessive number of hours worked per day. For example, we found 12 instances in which teachers were paid for 16 or more hours per day. However, the actual time the teachers had worked were not recorded.
- \$100 for an unsubstantiated bonus. This bonus was not supported by any evaluation of, or contractual agreement with, the employee, as required.

We also found that Bilingual reported \$5,263,488 in SEIT teacher expenses on the 2007-08 CFR; however, its financial records support just \$5,227,175 in such expenses. We disallowed the difference of \$36,313.

Other Matters

Section II.A.3 of the Manual requires service providers to use information in government publications to determine whether individuals employed by the program should be treated as independent contractors or employees. Generally, an individual whose services are controlled by an employer is deemed to be an employee rather than an independent contractor. Wages earned as an employee are reported on IRS Form W-2 (W-2). Compensation earned as an independent contractor is reported on IRS Form 1099 (1099). An employer, such as Bilingual, is required to withhold certain taxes (such as Social Security, Medicare, and Unemployment) from an employee's wages and then remit these taxes to the appropriate taxing entity. Employers do not have to withhold taxes on payments to independent contractors.

We reviewed the W-2 and 1099 forms filed by Bilingual for calendar years 2007 through 2009 and found that Bilingual reported \$8,442,567 in W-2 wages and \$22,539,819 in 1099 compensation. We determined that the compensation paid to the Executive Director and the Assistant Executive Director was sometimes reported on W-2 forms and other times on 1099 forms during the same year, as follows:

- The Executive Director, who is an employee of Bilingual, received \$730,546 in total compensation for calendar years 2007 through 2009. Of this amount, just \$108,270 was reported on his W-2 forms. The remaining \$622,276 was paid to him as an independent contractor and was reported on the 1099 forms that were issued to him. Moreover, \$577,276 (93 percent) of the \$622,276 was issued to a separate corporation he formed.
- Similarly, just \$114,504 of the \$541,077 in compensation the Assistant Executive Director received for calendar years 2007 through 2009 was reported on her W-2 forms. The remaining \$426,573 paid to her as an independent contractor was reported on forms 1099. Again, \$234,573 (55 percent) of the \$426,573 was issued to a separate corporation she had formed.

The amounts paid to these two employees as independent contractors did not include any tax withholdings (Social Security or Medicare taxes) from their wages; nor were employer Social

Security, Medicare, or Unemployment taxes paid on those amounts. The Executive Director advised us that he had alternated between the two statuses because he needed fewer withholdings from his wages so he could have more disposable money to address his cash flow problems.

We found that another 24 individuals had also been paid as both employees and independent contractors during the same calendar year. As a result, many Bilingual workers had established their own corporations and performed services as separate entities rather than as employees. When asked why he permitted this, the Executive Director told us that he did whatever the employee asked. He agreed that this was not a correct compensatory procedure and stated that it would not happen in the future.

The NYS Department of Labor conducted an audit of Bilingual within our scope period. For 2007-08, this agency assessed Bilingual \$162,875 in Unemployment taxes, re-employment fund contributions, and interest due in accordance with the New York State Unemployment Insurance Law. We will refer the findings reported herein to the Department of Labor for its determination as to the propriety of Bilingual's treatment of its employees as independent contractors.

Recommendations

To SED:

1. Recover all reimbursements made to Bilingual for inappropriate and/or unsupported expenses included in Bilingual's CFRs. Consider recouping payments made for personal items, such as \$5,567 for bedroom furniture, \$2,925 for parking violations and \$887 for cosmetics, directly from responsible Bilingual officials.
2. Offer periodic training to Bilingual officials and other Providers on what costs are eligible for reimbursement; remind and instruct Bilingual officials that personal expenses are not eligible for State reimbursement; and revise, as appropriate, SED written guidance to ensure that this issue is clear therein.
3. Request that Bilingual's Board of Directors and senior management attend ethics training on their fiduciary responsibilities.

To Bilingual:

4. Ensure that your CFRs include only appropriate and allowable reimbursable expenses.
5. Ensure that any and all persons who work directly under the supervision of Bilingual officials are treated as employees and not independent contractors.

Audit Scope and Methodology

We audited the expenses reported by Bilingual on its CFRs for the two fiscal years ended June 30, 2008, and 2009. The objectives of our audit were to determine whether the costs reported by Bilingual were properly calculated, adequately documented, and allowable under SED's Manual.

To accomplish our objectives, we reviewed Bilingual's financial records, including audit documentation maintained by Bilingual's independent certified public accountants. We interviewed Bilingual officials and staff to obtain an understanding of their financial and business practices as well as those of Bilingual's certified public accountants. In addition, we interviewed SED officials to obtain an understanding of both the CFR and the policies and procedures contained in the Manual. To complete our audit work, we reviewed supporting documentation for all costs submitted for the three programs in our audit scope and made a determination of whether the costs complied with and were allowable by the rules established in the Manual. To complete our audit work, we selected a judgmental sample of costs reported by Bilingual for review. Our sample took into account the relative materiality and risk of the various costs reported by Bilingual. The scope of audit work on internal control focused on gaining an understanding of the procurement and disbursement procedures related to OTPS and personal service expenditures. We identified certain significant control deficiencies that were important to the audit's objectives. These are discussed in the appropriate sections of our audit report.

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

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members 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.

Authority

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

Reporting Requirements

We provided a draft copy of this report to SED and Bilingual officials for their review and comment. Their comments have been considered when preparing this final report and are attached in their entirety at the end of this report.

SED officials are in general agreement with our findings and recommendations and intend to implement them as appropriate. They have asked us for some additional information to assist them in this endeavor. They do not, however, believe they have the authority to seek direct recovery from Bilingual officials.

Bilingual officials, through their attorneys, also agreed with most of our report conclusions and recommendations. We address their remaining concerns in State Comptroller's Comments.

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

Bilingual SEIT & Preschool Inc.
Schedule of Submitted, Disallowed, and Allowed Program Costs
Fiscal Years 2007-08 and 2008-09

Program Costs	Amount Per CFR	Amount Disallowed	Amount Allowed	Notes to Exhibit
Personal Services				
Direct Care	\$5,089,736	\$320,541	\$4,769,195	
Agency Administration	\$ 757,189	\$150,508	\$ 606,680	
Total Personal Services	\$5,846,925	\$471,050	\$5,375,875	A,E,F,K
Other-Than-Personal-Services				
Direct Care	\$4,866,489	\$605,871	\$4,260,618	
Agency Administration	\$1,732,639	\$189,496	\$1,543,142	
Total Other-Than-Personal-Services	\$6,599,128	\$795,368	\$5,803,760	A-D,G-J,L-N
Contracted Direct Care	<u>\$10,968,295</u>	<u>\$ 208,506</u>	<u>\$10,759,789</u>	A,L
Total Program Costs	<u>\$23,414,348</u>	<u>\$1,474,924</u>	<u>\$21,939,424</u>	

Notes to Exhibit

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

- A. Section I. Cost Principles - Costs must be reasonable, necessary, program-related and sufficiently documented.
- B. Section I.9 A (1) - Renovations of existing buildings: Costs of renovations, alterations, or major repairs must be approved by the District Board in accordance with the District's annual approved budget policy. Proposals for renovations, alterations, or major repairs must be submitted to the SED for review and comment.
- C. Section I.9 A (2) - Purchases of furniture, fixtures, or equipment: For proposed purchases of equipment, furniture, and fixtures, three estimates must be provided for items that cost more than \$1,000 and have a useful life of more than two years.
- D. Section I.3.D - Advertisements should not include: information that would indicate that services are "free," since services are paid through local and State funds.
- E. Section 1.14 A (4)(a) - Compensation (i.e., salaries plus fringe benefits) for the entity's Executive Director and Assistant Executive Director will be compared directly with the regional median compensation for comparable administration job titles of public school districts, as determined and published annually by SED's Basic Educational Data Systems (BEDS). Reimbursement of employee compensation for these job titles shall not exceed the median paid to comparable personnel in public schools for similar work and hours of employment in the region in which the entity is located.
- F. Section I.15 E - Fringe benefit costs for independent contractors or consultants are not reimbursable.
- G. Section 1.21.A - Costs incurred for entertainment of officers or employees, or for activities not related to the program, or any related items such as meals, lodging, rentals, transportation, and gratuities, are not reimbursable.
- H. Section 1.22 - Costs resulting from violations of, or failure by, the entity to comply with Federal, State, and/or local laws and regulations, are not reimbursable.
- I. Section 1.23.C - Costs of food provided to any staff, including lunchroom monitors, are not reimbursable.
- J. Section 1.57.D - Costs for the personal use of a program-owned or leased automobile are not reimbursable. The costs of vehicles used by program officials, employees, or Board members to commute to and from their homes are not reimbursable.
- K. Section II A (1) - Compensation costs must be based on approved, documented payrolls. Payroll must be supported by employee time records prepared during, not after, the time period for which the employee was paid. Employee time sheets must be signed by the employee and a supervisor, and must be completed at least monthly.
- L. Section II A (3) - All payments to contractors must be supported by itemized invoices that indicate the specific services actually provided; and for each service, the date(s), number of hours provided, the fee per hour; and the total amount charged. In addition, when direct care services are provided, the documentation must indicate the names of students served, the actual dates of service, and the number of hours of service to each child on each date.

- M. Section II A (4) - All purchases must be supported with invoices listing items purchased and indicating date of purchase and date of payment, as well as cancelled checks. Costs must be charged directly to specific programs whenever possible.
- N. Section II A (5) - Logs must be kept by each employee indicating dates of travel, destination, purpose, mileage, and related costs such as tolls, parking, and gasoline; and must be approved by a supervisor for reimbursement.

Agency Comments

SED Comments



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

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June 25, 2012

Mr. Frank Patone
Audit Director
Office of the State Comptroller
Division of State Government Accountability
123 William Street – 21st Floor
New York, NY 10038

Dear Mr. Patone:

The following is the New York State Education Department's (SED) response to the draft audit report (2011-S-13) of the State Education Department Bilingual SEIT & Preschool, Inc: Compliance with the Reimbursable Cost Manual.

Recommendation 1:

Recover all reimbursements made to Bilingual for inappropriate and/or unsupported expenses included in Bilingual's CFRS. Consider recouping payments made for personal items, such as \$5,567 for bedroom furniture, \$2,925 for parking violations and \$887 for cosmetics, directly from responsible Bilingual officials.

We agree with this recommendation in part. The Department will review and make adjustments to the CFR for inappropriate and/or unsupported expenses included in Bilingual's CFR as noted in the report and recover any overpayments as appropriate by recalculating tuition rates. The Department will need additional documentation from Office of the State Comptroller (OSC) that provides a detail breakout by year and program of the specific inappropriate and/or unsupported expenses. The Department does not have the authority to recover payments directly from the Bilingual officials. The Department does have the authority to adjust tuition rates based on field audits which will enable the State and municipalities to recoup inappropriate payments made to the entity. The Department will also review and consider additional information Bilingual SEIT officials may submit in response to this report.

Recommendation 2:

Offer periodic training to Bilingual officials and other Providers on what costs are eligible for reimbursement; remind and instruct Bilingual officials that personal expenses are not eligible for State reimbursement; and revise, as appropriate, SED written guidance to ensure that this issue is clear therein.

We agree with this recommendation. SED will continue to provide technical assistance whenever requested and will strongly recommend to Bilingual SEIT officials that they take advantage of our availability to help them better understand the standards for reimbursement as presented in Regulation and the Reimbursable Cost Manual (RCM). We will encourage all administrators to meet with representatives from the Rate-Setting Unit to go over any questions they have on reimbursement and information contained in the RCM.

The RCM is updated annually and audit findings are a prime source for identifying areas in need of further guidance. In order for a cost to be considered for reimbursement in a tuition rate, the RCM states in the opening paragraphs that it must be among other things, reasonable, necessary, and directly related to the education program. Personal expenditures do not meet any of those criteria.

Recommendation 3:

Request that Bilingual's Board of Directors and senior management attend ethics training on their fiduciary responsibilities.

We agree with this recommendation. We will encourage senior management at Bilingual SEIT & Preschool to develop and submit an Ethics policy and to adhere to and enforce those principles and policies.

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

Sincerely,



Sharon Cates-Williams

c: Ann Marsh

Bilingual SEIT & Preschool, Inc. Comments



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June 20, 2012

VIA ELECTRONIC MAIL

Frank Patone
Audit Director
New York State Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, New York 12126

Ms. Tania Zino
Examiner-in-Charge
New York State Office of the State Comptroller
123 William Street, 21st Floor
New York, New York 10035

Re: Bilingual SEIT & Preschool, Inc.
State Education Department
Compliance with the Reimbursable Cost Manual // 2011-S-13

Dear Mr. Patone and Ms. Zino:

We have reviewed the Draft Audit Report dated May, 2012 as referenced above. We appreciated the opportunity to discuss the material contained in the preliminary drafts with OSC staff and to confirm your receipt of certain clarifying documents used in the preparation of this, the Draft Report. Our response to the Draft Report is set out below.

Executive Summary

We take objection to the inclusion of the section entitled "Other Related Audits/Reports of Interest" within the Executive Summary. The Audit under consideration was an audit of Bilingual SEIT & Preschool, Inc.. Accordingly, the Audit Report should contain information relative only to the subject audit and no other audits or reports, consistent with the protocols set out in the OSC's own guidance document, "Understanding the Audit Process". We respectfully request the deletion of the identified section as inappropriate and unauthorized.

* Comment 1

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* See State Comptroller's Comments, page 22.

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Background

We request correction of the misstatement that “other school districts pay tuition and fees to Bilingual”. Bilingual provides service through contract with the New York City Board of Education, exclusively.

Additionally, Bilingual does not receive “fees...using rates set by the State Education Department.” The State Education Department sets tuition rates only.

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Audit Findings and Recommendations

Personal Service Costs

We do not challenge Audit disallowances based on the finding that certain personal service costs were not sufficiently documented in compliance with the RCM.

Other-Than-Personal Service Costs

We do not challenge Audit disallowances based on the finding that certain other-than-personal service costs were not sufficiently documented, in compliance with the RCM.

However, we respectfully recall for the auditors that the Manual does not “state...that personal expenditures are not reimbursable”. Rather, the Manual provides that “final costs...will be considered for reimbursement provided that such costs are reasonable, necessary and directly related to the education program”. We are unaware of any reference in the Manual to personal expenditures, a decidedly undefined term.

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Accordingly, we request the deletion of the opening sentence in the third paragraph beginning with “The Manual...” and any subjective reference to costs being “personal”.

Miscellaneous OTPS Disallowances

We challenge the disallowance of \$ 41,859 for website design and services and more specifically, auditors claim that they “saw no cost benefit analysis”.

As noted in our response to the preliminary audit report, Bilingual provided the auditors with documentation comparing solicited prices and information, in full compliance with the RCM.

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Contracted Direct Care Costs

We challenge the following select disallowances:

- \$ 49, 973 in payment rate increases that were not substantiated

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Bilingual provided the auditors with copies of staff contracts and agreements reflecting each rate increase, in support of the claimed costs. All "rate increases" were reflected in the invoices submitted by staff and authorized for payment.

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- \$ 16,528 for supervisory services performed by contractors who were not supervisors

As also set out in our prior response, we note auditors acknowledgement that "supervisory services were performed by actual supervisors" contradicting the assertion to the contrary above. While personnel documentation may not have provided the detail of service dates, all other salient elements including identified service responsibilities, number of hours of service provided, rates of pay and total compensation were maintained (and provided to auditors).

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Recommendations

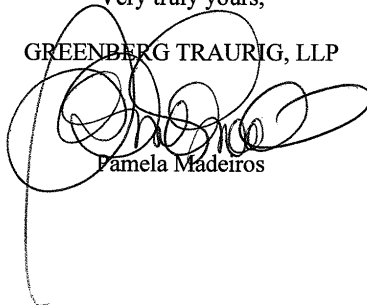
To Bilingual

Bilingual does not challenge the assertion that "persons who work directly under...supervision" should be "treated as employees" but requests OSC support in recommending that SED offer clear guidance as to which relationships with which clinicians and staff, by their nature, constitute an employment engagement. Only as recently as 2011-12 did SED direct that by the nature of their responsibilities, teachers must be employees and not independent contractors. We would welcome that clarity of guidance relative to other clinical staff.

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Very truly yours,

GREENBERG TRAUIG, LLP



Pamela Madeiros

PAM/kac

- cc: Cheon Park
Seung Chun Hong
Joyce Glassman
Dr. John King, Commissioner, NYSED
Kenrick Siftones, OSC Audit Manager

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* See State Comptroller's Comments, page 22.

State Comptroller's Comments

1. The inclusion of the report section entitled "Other Related Audits/Reports of Interest" is a standard component of OSC audit reports. It informs readers of similar final reports that may be of interest to them. As such, that section remains in the report.
2. We modified our report to reflect Bilingual's comment.
3. Section I.21.B of the Manual (Entertainment Costs and Personal Expenditures) states, "all personal expenses, such as personal travel expenses, laundry charges, beverage charges, gift certificates to staff and vendors, flowers or parties for staff, holiday parties, repairs on a personal vehicle, rental expenses for personal apartments, etc., are not reimbursable unless specified otherwise in this Manual." As such, no report revision is necessary.
4. The documentation (i.e., copies of invoices and web pages) provided by Bilingual in this regard does not indicate that a competitive procurement process was performed, as required by the Manual. As such, no report revision is necessary.
5. The documentation provided to us during the audit did not support the payment rate increases claimed by Bilingual. As such, no report revision is necessary.
6. We dispute Bilingual's assertion that the auditors acknowledged that "supervisory services were performed by actual supervisors". We maintain that actual supervisory services were performed by contractors who were not supervisors. As such no report revision is necessary.
7. In their response to our Draft report, SED officials offer their support to Bilingual officials to help clarify Manual requirements.