

## OFFICE OF AUDITOR GENERAL

The following is an outline of key contractual provisions that impact on the health and safety of students and that require Providers to maintain appropriate business records, allocate expenses and report their fiscal activities. Although Providers are strongly urged to access and read the *entire* UPK program contract and, without deviation, adhere to all provisions, this document is being sent under separate cover to allow the Department of Education (“DOE”) and Providers to get ahead of some of the contract compliance issues that, while not wide-spread, can complicate our contractual relationship. The DOE believes that clarification of contractual obligations and early intervention give Providers an opportunity to understand what is expected of them in a timely fashion and conform to contract standards that support optimal service to students.

### HEALTH AND SAFETY REQUIREMENTS

- **Health Clearance: All Providers’ staff must have a current medical form on file before they are permitted to be in contact with children, regardless whether that contact is direct or indirect.** Medical forms must be renewed annually as required by Department of Health (“DOH”) and providers licensed by DOH must follow that agency’s rules in this regard. No Permit Required (“NPR”) Providers must adhere to the terms of the contract, which mandate a tuberculin skin test, chest x-ray and clearance by a certified physician. Relevant medical clearance records must be maintained in each employee’s personnel file and be available for inspection.

- **Security Clearance: All Providers’ staff, including independent contractors, that have contact with students, are subject to security clearance that includes fingerprinting before they are permitted to have contact with students.** This applies even if staff have only occasional or indirect contact (*e.g.*, receptionist and other on-site clerical workers, administrators, custodial workers, and food preparation staff). Volunteers are included within the scope of those who must be security-cleared (except for parents of enrolled students and volunteers under the age of 18). When the NYC Department of Investigation or DOE fingerprints a potential employee, those fingerprints provide information about the individual’s prior criminal history. Additionally, since the fingerprints remain in a database, they are available for matching if the employee is arrested and charged with a crime after the employee is hired. To enable the DOH and DOE to make appropriate notifications to Providers upon an arrest of one of their employees, it is essential that Providers strictly adhere to the guidelines for fingerprinting and staff roster submissions. Providers are also reminded that it is in their best interests to ensure that staff is cleared before beginning work since Providers’ failure to adhere to required security clearance procedures may result in civil liability and loss of reputation within the community in the event of a problem. Finally, failure to adhere to security clearance

provisions exposes Providers to liquidated damages under the terms of the UPK contract.

**More detailed information on the subject of security clearance can be accessed using the “Security Clearance” link on this website. That information should be carefully reviewed and followed.**

- **Attendance:** In addition to recording daily attendance and contacting families each day a child is absent. Providers are obligated to report to the ROC in writing *and* by telephone a child’s 10<sup>th</sup> consecutive day of absence and absences totaling 20 days within a three-month period. ROCs have the authority under the contract to withhold \$300 from the Provider’s payment for failure to make the appropriate notifications within the required timeframes.

### **FISCAL ACTIVITIES**

It is recommended that Providers review the following with their financial adviser. (Costs associated with retainers for legal, accounting or consulting services are reimbursable if the fee represents payment for *actual documented services* rendered for the UPK program.)

- **Payment Terms: Budget & Rates:** Providers are advised that it is good business practice, and, that state and federal tax regulations require that they maintain **records of personnel and other than- personal-services expenditures** on behalf of their business.
  - Acceptable records include payroll rosters; cancelled checks; statements; invoices and itemized receipts that identify the payee and the items purchased. Checks should never be made payable to “Cash.” And, since salary and OTPS expenses paid in cash are inconsistent with Providers’ obligation to maintain accurate and transparent records of UPK fiscal transactions, Providers may face disallowances for any such cash expenditures.
  - UPK transactions should be recorded in a general ledger (hardcopy or software program) in a manner that is separate from other programs or personal transactions. Providers will be asked, upon audit, to produce records that support expenditures made with UPK funds and may face disallowances in the event records are missing or inadequate.
- **Payment Terms: Budget & Rates:** The UPK program as administered by the DOE is not a “fee for service” program. Rather, the Provider is held to spending within the cost categories contained in the work plan/budget, and must adhere to the guidelines established in the *Expenditure Guide for Programs Receiving UPK Funding*. These guidelines, which are accessible on-line at <http://www.nycenet.edu/Offices/DCP/ProfessionalServices/UniversalPreKInformation/Default.htm> will be applied in determining whether the DOE will reimburse UPK costs. If the Provider wishes to incur an expense not covered in the Expenditure Guide, the Provider is advised to consult, *in advance*, with the ROC and, if the expense is allowed, to obtain a written exception clearly stating the nature of the expense

and the approved cost. In any case where the expense is incurred outside the guidelines, and a written exception cannot be produced, the expense will be subject to disallowance.

- The DOE is concerned about appropriate **allocation of costs** among funding streams, including other City agency, federal and private sources. Therefore, where the Provider accepts funding for programs from non-DOE funding sources, or from the DOE for programs other than the UPK, the Provider must:

- establish an allocation methodology that fairly apportions costs;
- disclose that methodology to the DOE; and,
- maintain books, records, documents and other evidence, in sufficient detail to support all claims against the UPK program, including those that have been made on a cost allocation basis.

Auditors have been advised to identify those situations where cost allocation was required and include within their work plans tests to determine whether the Provider has developed and is using an appropriate cost allocation methodology for shared costs.

- **Reporting Requirements:** Providers are required to prepare and submit to the ROCs a Mid- Year Fiscal Report and an End-of-the-Year Fiscal Report for all costs associated with the UPK program (“Reports”). Both Reports must reflect *actual* expenditures within the categories that parallel the budget and work plan. Many Providers have not paid sufficient attention to this requirement. Therefore, all UPK Providers are now advised that:

- The Reports are essential deliverables. Providers that do not submit the Reports in a timely fashion risk disruption of payments.
- It is not acceptable for a Provider merely to refer to the budget, prorate the expenses by the number of months in the reporting period, and submit those numbers in the Mid-Year Report. Both the Mid-Year and End-of-the-Year Reports must state *actual* expenses. The ROCs will be looking at the Reports and rejecting those that do not reflect actual expenditures.

Providers can direct questions about the subject matter to:

Maxine Needle  
Universal Prekindergarten Supervisor  
Division of Contracts and Purchasing  
[mneedle@schools.nyc.gov](mailto:mneedle@schools.nyc.gov)

or

Marlene Malamy  
Deputy Auditor General  
Division of Financial Operations  
[mmalamy@schools.nyc.gov](mailto:mmalamy@schools.nyc.gov)