

It is the policy of the New York City Department of Education (“NYCDOE”) Office of Auditor General (“OAG”) to keep Approved Special Education Programs (“ASEP”) administrators informed of rules and regulations against which claims for reimbursement will be tested and arm them with information sufficient to allow them to assess their agency’s compliance with that guidance and correct deficiencies as required. As such, the Deputy and Assistant Auditors General accepted an invitation to speak at the Annual New York State Alliance for Children with Special Needs One-Day Conference. The substance of the presentation, which highlighted the OAG’s field review program, and touched on other topics related to conducting business with the NYCDOE, is outlined below.

SECTION 4410 FIELD REVIEW PROGRAM

In addition to conducting full-scope audits of expenditures that had been reported in recently filed CFRs and that will result in a report of findings and recommendations for the New York State Education Department Rate Setting Unit’s (“RSU”) review and appropriate action, OAG may initiate a targeted review to test particular cost category expenses (e.g., reported expenditures related to the ASEP’s use of vehicles) or a field review. Field reviews, which track full-scope audits in certain respects, are not designed to test expenditures reported in a Consolidated Fiscal Report (“CFR”) that has already been submitted. Rather, they are intended to assess real-time operational conditions, including the soundness of internal controls, with the objective of identifying issues that may impact the preparation of the Consolidated Fiscal Report that will be filed for the reviewed year.

A field review is announced with a letter to the Executive Director requesting production of specified records that the ASEP should have on hand. An entrance conference is held; then field work is conducted, followed by an exit conference. The ASEP will be given a reasonable opportunity to comment on identified findings and submit additional pertinent documentation and information. Thereafter, OAG will issue a letter report of findings, which may be shared with the RSU for informational purposes.

If, in the course of conducting field work, it appears that systemic fiscal accountability issues exist which may have affected the reliability of information reported in a recent CFR, OAG may expand the field review into a full scope audit, among other actions that may be taken. As such, the prudent course is for ASEPs to conduct their own objective assessment of how well they might fare in the event of a field review. And, upon that assessment, if faring well is not likely to be the outcome upon audit, ASEPs are strongly encouraged to take all prudent steps to insulate the agency from those negative findings. To assist with that self-analysis, OAG has published the field review program on its website¹ and offers the following information and advice.

¹ <http://schools.nyc.gov/oag/4410/4410FieldReviewPgm.pdf>

Internal Controls. As non-existent or ineffective internal controls is a major operational weakness and, further, signals that there may be larger problems with agency management, Executive Directors are advised conduct a walk-through with responsible staff to assess:

- Whether there is a process in place to obtain accurate student enrollment information and route it timely to staff responsible for submitting Certified Monthly Rosters. (See “Certified Monthly Roster,” below).
- Whether the general ledger has program-specific sub-ledgers that capture cost data for cost centers and functional programs.²
- Whether decisions regarding the assignment of expenditures to appropriate cost categories are made in accordance with the New York State Education Department Reimbursable Costs Manual (“RCM”) and, whether the expenditures are recorded timely. OAG continues to find costs reported in the wrong categories or in the “Other” category of the CFR despite that the costs could readily have been assigned a specific category. These types of errors cast doubt on the reliability of reported costs and the agency’s internal controls.
- As appropriate, whether the agency maintains written cost allocation methodologies that track RCM guidance; whether those methodologies are reviewed annually; and, whether they are applied as written.
- Whether RCM-compliant records supporting purchases of goods and services are maintained for the required number of years (refer to contract) and in a manner that facilitates their production when required.
- Whether items that must be entered into written inventory in accordance with RCM guidelines³ are in fact entered timely and whether inventory records are reviewed and updated as the need arises.
- Whether internal control processes are memorialized.
- Whether internal controls processes are implemented. There is little value in a system of internal controls that are poorly implemented.

² The costs reported under agency administration in CFR-3 should be captured in the general ledger under a separate functional program.

³ The RCM applicable to this school year requires: “Inventory records, including the invoice, must be kept for all items purchased by the entity or donated to the entity for the benefit of approved programs. These records should list: the invoice number; a description of the item; the make; model; or serial number of the item; cost; date of purchase; date retired; if applicable, the program(s) using the asset; and the location. For donated items, inventory records should identify the item as donated, listing the date of donation and the fair market value of the item at the time of donation.”

Cost Allocation. When it is clear that an expenditure is allowable as defined by the RCM and that only one program derives its benefit, the cost must be assigned to that program. However, an allowable expenditure that benefits not only the ASEP, but another program or party, must be allocated using a reasonable and fair methodology that is documented. Further, the methodology has to make sense for use in the cost category to which it is applied. For example, it would not be sensible for the allocation of facility costs to be based on program revenue when the more appropriate, SED-recommended basis is square footage of space used. (See Appendix J of the CFR manual).⁴

Journal Entries. During the school year, sound practice would have responsible staff enter fiscal transactions in the agency's general ledger and sub ledgers within particular cost categories. Journal entries (also referred to as adjusting journal entries, year-end journal entries, reversing journal entries) generally are used at the end of the year or other cycle to adjust account balances to reflect the transaction more accurately than had originally been recorded, to redistribute costs and/or to zero out a particular account.

This is what ASEPs should know about journal entries:

- Management should obtain a clear understanding of the reason a journal entry is recommended before it is posted to the ledger.
- A detailed explanation of the purpose of the journal entry must be kept on file.
- The transaction that is the subject of the journal entry must be documented with the same type of records as would have been required for the original transaction.
- Journal entries that are used to allocate or re-allocate costs should identify the allocation methodology used.

Facility Costs. While it may seem simplistic to suggest that the agency must obtain SED's approval of the location before incurring facility-related costs that will be charged to the year in which the costs accrued, this basic rule has not been followed to the letter in all cases causing ASEPs to have the unfortunate experience of facing recommendations for disallowance of costs tied to improvements, equipment installation and staffing in unauthorized facilities.

And, it further appears that in too many instances lease agreements/sublease agreements are not sufficiently detailed. This is of particular concern where the property is leased or subleased from a related party and worse if the related party shares the facility and costs are allocated. At the very least, OAG expects to see in a lease agreement clearly identified parties to the arrangement, the term of the lease and a clear indication of the space assigned to the ASEP, including the square footage. The latter is particularly important as it provides a sound basis for testing the reasonableness of the costs and, where the space is shared, the reasonableness of the allocation methodology.

⁴ http://www.oms.nysed.gov/rsu/Manuals_Forms/Manuals/CFRManual/CurrentYear/Cal2014/123114CFRAPPEND.pdf

Consultants. On audit, a consulting arrangement will be tested to determine whether the relationship meets the following criteria:

- Selection of professional services must be done at a minimum of every five years through solicitation of competitive bids.
- If the same services can be performed by an appropriately certified school officer or employee who possesses the necessary technical skills, the agency should not be engaging a consultant to perform them.
- The consultant’s credentials must be reviewed before the engagement and maintained on file.
- There must be a written agreement between the ASEP and consultant. That agreement should, among other terms:
 - cover the school year in which expenses are incurred
 - detail the work to be performed and identify deliverables, if any
 - specify the hourly rates
 - state that payment will be made only for work actually performed
- Consulting fees should be reasonable when viewed in the context of the consultant’s qualifications, but should not exceed the prevailing rate for such services.
- Retainer fees are not reimbursable.
- The consultant’s invoice must tie to the written agreement. Therefore, it is best to insist that the consultant provide a detailed invoice. Disallowances may result when payments are made on a lump sum or “installment” basis without regard to work actually performed. On audit, the agency will be asked to produce invoices which will be tested for compliance with the agreement and regulations.

Loans. The money ASEPs receive from the NYCDOE for operating their program(s) cannot be loaned to any other program, third party or individual. It is public money. Therefore, if the ASEP receives payment in error (this rarely, but sometimes, happens), the ASEP must immediately notify the NYCDOE’s Bureau of Non Public School Payables and take direction from that office regarding return of the funds. In the case of an ASEP that finds that it does not require the entire funding provided by the NYCDOE to meet its operational needs, the excess funds are to be safeguarded and returned upon demand when the rate for that year is adjusted by the Rate Setting Unit.

Pensions. The RCM provides guidance regarding employee pension plans, which include retirement accounts, such as IRAs⁵, and the more common 403(b) and 401(K) plans that may have three components:

- Employee contributions
- Employer matching contributions
- Employer discretionary contributions (referred to as “profit sharing”)

⁵ Under the RCM, contributions to IRAs are not considered fringe benefits, but may be part of employee compensation.

Contributions to the 403(b) and 401(K) plans must conform to the agency's employee manual, the pension plan and IRS rules. Costs should be accounted for under generally accepted accounting principles.

Further, upon audit, employer matching contributions and discretionary contributions will be tested to determine whether they comply with RCM guidelines including the standard of reasonableness.

Bonuses. There is a benefit to be derived from bonuses used as incentives to retain employees who have performed meritoriously in the year in which the bonus is awarded. Because bonus payments have lately been subject to audit disallowances, it is worth pointing out the critical points contained in the most recent RCM:

- Bonuses are lump sum payments in excess of salary that may be paid only to direct care employees and those in the 100 position title code series and position title codes 505 and 605. By now, all ASEPs should know that bonuses are definitely not to be awarded to consultants.
- They cannot be directly related to hours worked.
- They must be based on *merit* as measured and supported by employee performance evaluations. As in many other real life situations, timing is everything. Although the RCM does not specifically direct when the evaluation must be written, logic dictates that since the decision to extend a bonus in a particular sum must be supported by a performance evaluation, that evaluation must precede the bonus.
- Straight from the RCM: “[T]he provider’s governing entity must adopt a written employee performance evaluation policy and form that contains sufficient detail as to the criteria and methods used to determine each employee’s final evaluation rating. The written employee performance evaluation policy must also describe how the final evaluation rating will directly correlate to any amount of a merit award should funds be available for such an award.”
- A relatively new requirement is that the bonus “must be paid within the year awarded or no later than 2 ½ months after the entity’s year end.”
- Although not explicitly stated in the RCM section pertaining to bonuses, it is clear that the amount of the bonus must be reasonable, particularly when viewed as a percentage of the employee’s salary.

DOING BUSINESS WITH THE NYCDOE

Security Clearance. On December 1, 2014, the NYCDOE’s 4410 Oversight Office sent the appended email message to ASEPs reminding them of their contractual obligations with respect to security clearance. Since then, we have received a request for guidance under the following scenario: A 4410 provider partners with a community based organization (“CBO”) day care program to offer SCIS. Would any of the host CBO's staff need to be cleared through PETS since they are already cleared through the New York City Department of Health security protocols under the host site's day care permit?

The NYCDOE's policy with respect to that scenario is that 4410 programs are required to have day care staff having direct contact with 4410 program students in SCIS classrooms fingerprinted and cleared by the NYCDOE and entered into PETS. The day care director is required to be security cleared if (s)he is also in the classroom and has direct contact with 4410 program students, *e.g.*, provides coverage for an absent teacher or interacts with students daily in the classroom.

Certified Monthly Roster ("CMR"). The monthly invoicing system was designed to provide ASEPs with a convenient way to bill the NYCDOE for service provided to authorized students during their period of enrollment. As ASEPs are aware, many CMR fields are populated automatically, including those that contain enrollment start and end default dates. It was not intended that ASEPs ignore each student's actual start and end date⁶ and merely submit the CMR using the pre-populated default dates. ASEPs are required to certify the accuracy of the information submitted. As such, it should occur to agency administrators that the NYCDOE does not expect a lax attitude toward providing accurate enrollment information.⁷ (See "Internal Controls," above).

As a final point, SEIT programs should be very careful about extending 10-month services into the summer if the student is not authorized for two-month services.

IDEA. We are pleased to report that budget/narrative submissions and NYCDOE's review process proceeded relatively smoothly this year. That is largely attributable to the ASEP's submission of more clearly stated project goals.

Regarding implementation of the approved IDEA budgets we offer the following:

- Since acting without the NYCDOE's approval likely will result in a disallowance even if the expenditure would have been authorized had approval been sought, it is in the ASEP's best interests to seek approval (using the ASEP 10-A form)⁸ if any of the following changes to the approved budget are contemplated:
 - Number of personnel positions increased or decreased
 - Type of personnel position changed, *e.g.*, a change from art to music instructor

⁶ The OAG's audit and field review programs include tests of enrollment start and end dates. If an enrollment period starts or ends with a legally excused absence, OAG expects to see appropriate documentation.

⁷ In addition to availing itself of other available actions, the NYCDOE will refer instances of false certifications to law enforcement agencies as it deems appropriate.

⁸ The link to the FY2015 ASEP 10A (requested amendment) form will be made available by late December 2014 on the NYCDOE website located here:

<http://schools.nyc.gov/Offices/EnterpriseOperations/ChiefFinancialOfficer/DFO/PayableOperations/KeyDocuments/ideagrant.htm>

- Addition of a new project, even if approved total costs are not impacted
- Addition/deletion of equipment items having a unit value of \$5,000 or more
- Increase/decrease in any budget category subtotal by 10 percent or more of the original approved budget or \$1,000, whichever is greater
- Expenditures must be supported in the same manner as other reported costs, *i.e.*, according to RCM guidelines.
- Expenditures reported in IDEA must not be reported in tuition as well. (One might think we would not have to say this).
- IDEA cannot be used to pay teachers and/or related service clinicians who provide services directly to students. (The prohibition does not apply to retention bonuses for employees in those categories as bonuses are not part of salary).
- IDEA funds can be used only for costs incurred during the grant year.

EasyTrac. It is understandable that ASEPs think of EasyTrac as the system that supports the NYCDOE's Medicaid billing efforts. It certainly does that. However, now that EasyTrac is operational, the NYCDOE is relying on that system for providing information that enables it to monitor implementation of IEP related service recommendations. Therefore, those ASEPs that have not availed themselves of the many opportunities offered for training and/or technical assistance, many of which have not entered related service information, are strongly encouraged to do so. Visit the [Medicaid Operations](#) website for more information.

Contracts. As ASEPs may be aware, the school-age and preschool contracts with the NYCDOE run on different five-year cycles. At the end of this school year, the school-age contract will expire; the preschool contract would end two years later. However, because there are changes in the works in Albany that will impact SEIT payment methodology, and thus will require modification to the current preschool contract, we will take this opportunity to align the contract periods and make changes to terms as appropriate.

Security Clearance Guidance

From: 4410 Oversight
Sent: Monday, December 01, 2014 10:37 AM
To: 4410 Oversight
Subject: NYCDOE Fingerprinting Requirements
Importance: High

Dear Director,

Please review the fingerprinting requirements below for newly hired and existing staff members at your program as per the security clearance procedures outlined in the 2012-2017 Non-Exclusive Requirements Agreement for the Provision of Services for Preschool Students with Disabilities.

1. All **existing staff members** providing direct services to students and all supervisory and executive staff in your program are required to be fingerprinted and cleared by the NYC Department of Education regardless if the staff was fingerprinted by the NYC Department of Investigation (DOI).
2. By Tuesday, December 9, 2014, all remaining **existing staff members** must present to the NYCDOE for security clearance regardless if the staff was fingerprinted by the NYC Department of Investigation (DOI).
3. All **newly hired staff members** are required to be background cleared by the NYCDOE before providing service to NYCDOE students.

“Staff” includes any and all of your employees, officers, directors, members, partners, agents, volunteers or consultants who, at any time:

- have direct contact with students; or
- work in or visit a location during times that students are present unless such contact is only on an incidental and supervised basis; or
- have regular access to students’ confidential information.

As an existing provider, you have access to the Personnel Eligibility Tracking System (PETS), the NYCDOE online database located at <https://schools.nyc.gov/offices/dhr/pets>. The NYCDOE will provide a PETS user name and password.

- All staff members need to be entered into an electronic roster in this database in order to monitor background clearance of each staff member.
- The required information for all staff, includes each staff member’s full name, social security number/tax identification number, title or functional description, work address,

email address and telephone number. PETS will provide notification if a staff member is ineligible or becomes ineligible to render services due to security reasons.

- The PETS Staff roster must be reviewed and maintained so that all information is current.
- **Information must be updated when hiring new staff, removing staff, and/or identifying new PETS contact information.**

If at any time, the NYCDOE notifies a provider and individual that they are ineligible, the individual must be removed from providing any services to NYCDOE students (unless and until the decision is reversed or modified).

If you have any questions, please contact the NYCDOE at 4410Oversight@schools.nyc.gov.

Thanking you in advance.