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**To:** Approved Special Education Providers                   **Date:** November 28, 2011  
**From:**   
Ann Marsh, Director  
**Subject:** July 2011 Reimbursable Cost Manual

The purpose of this memorandum is to clarify certain provisions included within the July 2011 Edition of the Reimbursable Cost Manual (RCM), which applies to reimbursable costs reported July 1, 2011 through June 30, 2012. The items below are referenced to the Reimbursable Cost Manual's section and number.

**4. Less-than-Arms-Length (LTAL) Relationship and Conflict of Interest**

The following language clarifies sections 4B., 4C. and 4G.

**4B.** In general, a conflict of interest exists when a person in a position of trust has a competing professional or personal interest. The existence of a conflict of interest does not mean that an unethical or improper act has occurred or will occur. However, care must be taken to ensure that such conflicts do not impair the employee's ability to perform his or her duties objectively and act in the best interest of the entity.

**4C.** Nepotism is favoritism granted to relatives or friends regardless of merit. Cronyism is partiality to long-standing friends, especially by appointing them to positions of authority regardless of their qualifications. While nepotism and cronyism are detrimental, business relationships with relatives or friends do not necessarily result in cronyism or nepotism.

**4G.** Generally, codes of ethics acknowledge that conflicts of interest exist and require that policies be developed to establish the protocols that must be followed when conflicts of interest arise.

**7. Full-Time Equivalent (FTE) Enrollment.**

**G. Full-Time Equivalent (FTE) Enrollment** does not apply to SEIT programs but Section 175.6 (a)(1) and (2) of Commissioner's Regulations does apply.

Section 175.6 (a)(1) Legally absent means to be absent for: personal illness, illness or death in the family, impassable roads or weather, religious observance, quarantine, required court appearances, attendance at health clinics, approved college visits, military obligations, disciplinary detention of an incarcerated youth, or for such other reasons as may be approved by the commissioner.

Section 175.6 (a)(2) Period of enrollment means that period commencing on the first day a pupil is enrolled in and is physically present at, or legally absent from, a special education program or service offered by a public school or by an approved private school or facility, or an approved educational program or service for incarcerated youth offered by a public school district or board of cooperative educational services, or an educational program or service provided directly or by contact to a homeless child by a public school district, and terminating on the last day such pupil is enrolled in and is physically present at, or legally absent from, such program or service.

## Section II. Cost Principles

The following language is added to (underlined) or deleted from ([bracketed]) from 14. Compensation for Personal Services.

### 14. Compensation for Personal Services

#### A. Salaries

- (4)b. For [any individual] non-direct care staff, owners or related parties who [is] are employed in any job title or combination of job titles by the entity operating the approved programs, compensation up to 1.0 FTE for that individual in total, will be considered in the calculation of the portion of 1.0 FTE reimbursable in the tuition rates, subject to the limitations defined in (4) a. above. Allocation of non-direct care compensation among various direct care job titles is not allowable. Staff should be reported in the job code title [for which they are hired and] supported by salary agreements and job descriptions. For example, an individual who fills the position and holds the responsibility and authority of Executive Director should be reported 100% as Executive Director.
- (4)d. For [any individual] non-direct care staff, owners or related parties who work[s] in more than one entity (including organizations that have a less-than-arm's-length relationship with the approved program), the FTE in total across entities cannot exceed 1.0. [t]The allocation of compensation must be supported by time and effort reports or equivalent documentation which meets the following standards:
- They must reflect contemporaneous time records of the actual activity of each employee.
  - They must account for the total activity for which each employee is compensated.
  - They must be prepared at least monthly and coincide with one or more pay periods.
  - They must be signed and dated by the employee and employee's supervisor.
  - Budget estimates or other allocation methods determined before the services are performed are not adequate documentation for use in completing annual financial reports but may be used for interim accounting purposes.

Compensation beyond 1.0 FTE for [any individual in total] non-direct care staff, owners or related parties will not be considered reimbursable in the calculation of tuition rates.

(10) Bonus compensation shall mean a non-recurring and non-accumulating (i.e., not included in base salary of subsequent years) lump sum payment(s) in excess of regularly scheduled salary which is not directly related to hours worked. Bonus compensation is restricted to direct care titles/employees [only and] as defined by the Reimbursable Cost Manual's Appendix A-1 and those in the 100 job code series as defined by the Consolidated Fiscal Report's Appendix R. Bonus compensation will not be reimbursed if paid to subcontractors and/or independent consultants. Bonus compensation may be reimbursed if based on merit as measured and supported by employee performance evaluations and does not exceed five percent of salary for any direct care employee. Bonus compensation shall be subject to all aspects, constraints and cost parameters contained in the methodology.

[(12) Compensation paid to an employee(s) for lunch, with the exception of providing services in an instructional lunch program, is not reimbursable.]

The following language is added to (underlined) or deleted from ([bracketed]) from 15. Consultants.

### 15. Consultants

A. Costs of consultants' services are reimbursable provided that:

- 1) Fees do not exceed the prevailing rate for such services. The school will maintain documentation to support the regional prevailing rate at the time such costs are incurred. Bonuses paid to consultants are not reimbursable. Selection of professional services must be done through [a formal request for proposal process] solicitation of competitive bids at a minimum of every five years. (Refer to Section III 1.C.(2).)

The following language is added to (underlined) or deleted from ([bracketed]) from 29. Interest Costs.

### 29. Interest Costs

Debt for capital expenditures including capital projects, operations, equipment purchases, etc., shall be used only when financing from current revenue sources is not available unless otherwise approved by the Commissioner's designated representative for fiscal issues. Lending transactions shall be evaluated on an overall level of reasonableness as [it] they relate[s] to interest costs and fees paid for professional services.

A. Arm's-Length – Interest expense on capital indebtedness and working capital is reimbursable provided the interest rate is not in excess of the prime rate plus one percent of the lending institution at the time the loan was made. Interest expense will be reimbursed on loans in excess of the prime rate plus one percent in cases where the entity can establish that it was unable to secure a rate of prime plus one percent or lower despite its good faith efforts to do so. Good faith efforts shall be that an entity can demonstrate by documentation it has attempted within the last year to obtain the

most competitive rate available [through a competitive bidding process] by requesting quotes from at least three lending institutions. Loan procurement fees are not reimbursable.

C. Reimbursement of interest expense on capital indebtedness shall be subject to the following conditions:

- (5) Generally, [I]interest expense on the above is reimbursable only when there is a corresponding amortization of principal on the capital indebtedness and there are no loans/notes receivable from related parties at any time during the entity's loan repayment period. Payments, which represent "interest only", are not reimbursable unless otherwise approved by the Commissioner's designated representative for fiscal issues.
- (6) Unless otherwise approved by the Commissioner's designated representative for fiscal issues, debt [shall] can only be refinanced for the purpose of interest rate savings [under limited circumstances and in all cases never to extend the original principal's final maturity. In order to justify a refinancing transaction, the provider] which must be demonstrated by [a] net present value savings from the refinancing, after factoring in all transaction costs.

The following text is deleted ([bracketed]) from C. of 56. Taxes.

## 56. Taxes

C. Payments for Metropolitan Commuter Transportation Mobility Tax under Chapter 25 of the Laws of 2009 are reimbursable within the parameters of the tuition rate setting methodology. [These expenses are subject to the non-direct care cost parameter.] Guidance regarding payment of this tax may be found at the following website address: [http://www.nystax.gov/pdf/memos/mta\\_mobility/m09!mctme.pdf](http://www.nystax.gov/pdf/memos/mta_mobility/m09!mctme.pdf)

Section 57. Telephone/Communication Equipment is not effective for the 2011-12 School Year.

The following language is added to (underlined) or deleted from ([bracketed]) from D. of 2. Accounting Requirements of SECTION III GENERAL REQUIREMENTS.

## 2. Accounting Requirements

D. As established in Section 200.9(e)(ii)(a) of the Commissioner's Regulations, the financial statements must be certified by a licensed or certified public accountant independent of the program. The certified public accountant or lead and reviewing audit partner of a CPA firm [must] are encouraged to be rotated after five consecutive years on an engagement. In instances where a program retains a licensed or certified public accountant or accounting entity to certify the programs' financial statements and the CPA also provides other non-audit services such as management consulting, automation consulting or bookkeeping services, the provision of these services should be fully disclosed via explanatory notes to the audited financial statements. See Section II. 15. Consultants, for other examples of non-audit services.