



Hon. George Maragos
Nassau County Comptroller



OFFICE OF THE COMPTROLLER
240 Old Country Road
Mineola, New York 11501
Tel: (516) 571-2386
Fax: (516) 571-5900
nccomptroller@nassaucountyny.gov

Steven L. Labriola
Chief Deputy Comptroller

James A. Garner
*Deputy Comptroller for
Claims, Payroll & Health
Benefits*

Paul L. Meli
*Deputy Comptroller for
Leg. Affairs & Special
Projects*

VIA E-MAIL AND CERTIFIED MAIL

April 16, 2014

Maria Guzman, Director
New York State Education Department
Office of Audit Services, Room 524
Education Building
89 Washington Avenue
Albany, NY 12234

Dear Ms. Guzman:

Re: Review of the Mid-Island Therapy Associates, LLC, d/b/a All About Kids (“AAK”)

This letter is intended to advise that the Nassau County Comptroller’s Office is terminating its review of Mid-Island Therapy Associates, LLC, d/b/a All About Kids (“AAK”), an entity that provides Early Intervention Services and Special Education Itinerant Teacher Services¹ (“SEIT”) to children with disabilities. In compliance with Government Audit Standards², this letter details the reasons for terminating the review, which includes AAK’s lack of meaningful cooperation and troublesome preliminary findings. We further recommend that the New York State Education Department suspend AAK as an approved vendor and investigate the financial records of AAK to protect the interests of taxpayers and children.

¹ Special education itinerant teacher services include speech therapy, language therapy, occupational therapy, physical therapy and educational services.

² Government Audit Standards (2003 Revision Performance Audit Section 7.40) “If an audit is terminated before completed, auditors should communicate the reason for terminating it to management of the audited entity...preferably in writing.”

Government Audit Standards (2011 Revision Section 6.5) “Determining whether and how to communicate the reason for terminating the audit to those charged with governance, appropriate officials of the audited entity ... and other appropriate officials will depend on the facts and circumstances and, therefore, is a matter of professional judgment.”

This matter is also being referred to the New York State Comptroller's Office and the Nassau County Attorney's Office. Appendix A outlines the timeline of our attempted review and the various delay tactics utilized by AAK. Appendix B provides details of the scope limitations encountered and the five preliminary and troubling findings.

AAK generated total revenue of \$22.4 million and \$19.8 million for the fiscal years ending June 30, 2011 and June 30, 2010, respectively. A substantial portion of AAK's revenue is derived from contracts with local and state agencies. Nassau County, Suffolk County, Westchester County and New York City (five boroughs) contract with AAK to provide Pre-School Special Education and Early Intervention services to children living in their respective areas and are reimbursed by New York State for a portion of the eligible services performed by AAK. Nassau County paid an average of \$3.5 million per year to AAK from 2008 to 2012, which represents 16.3% of its average total revenue for 2010 and 2011.

The review of Nassau County's contract with AAK was initially commenced as a result of suggestions by the Nassau County Department of Health after New York State lowered the AAK reimbursement rate for the 2009-2010 session. Since July 2012, our Office has been attempting to conduct a limited review of the Preschool Special Education contract between Nassau County and AAK for the audit period July 1, 2010 to June 30, 2012.

The County's right to audit can be found in the portion of its contract with AAK that states, "...the contractor shall maintain accurate records... in accordance with generally accepted accounting principles [and] such records shall at all times be available for audit and inspection by the Comptroller." In addition, Article 8, Section 200.18(b)(1) of the New York Codes, Rules and Regulations states that, "each municipality may perform fiscal audits of approved preschool programs and services for which it bears fiscal responsibility."³

From the outset (entrance conference held September 14, 2012), AAK failed to meaningfully cooperate with the Comptroller's Office's review. For example, AAK delayed the review with the commencement of legal actions challenging the Comptroller's Office's right to audit, was slow in providing documents which the Comptroller's Office had the legal right to inspect, provided partial or incomplete information and severely limited access to staff to answer questions.

To illustrate briefly:

- The auditors were initially allowed to speak to the financial staff the first few days of fieldwork. During the brief times they were permitted access to AAK's premises, the Executive Director stopped in regularly to advise that both she and her staff were extremely busy and were not available for interviews or questions. They were then told

³⁸ NYCRR §200.18(b)(1)

all questions and contact should be with one of the AAK Executive Directors (the two owners of the Company).

- Documents were requested of AAK daily from March 1 to March 28, 2013 while the auditors were on the premises; however, very few of the requested documents were provided during that timeframe or in the months that followed. Further, the quantity of information AAK was willing to provide at any one time was minimal and, when provided, the content was incomplete.
- The Open Item Audit Request Log was again provided to AAK on September 11, 2013, September 19, 2013 and November 13, 2013, but no additional documents were received from AAK until 2014.
- On January 7, 2014, the Comptroller's Office received an e-mail from Park Strategies stating they represented AAK and that AAK sent an unsigned letter, via e-mail, to the Comptroller's Office on December 19, 2013 asking for clarification of the documents previously requested and questioning the audit scope (fiscal year versus calendar year). Neither the e-mail nor the letter attachment was previously received by the Comptroller's Office. Subsequent to the Park Strategies e-mail, AAK delivered five boxes of documents to the Comptroller's Office on February 4, 2014 as well as additional information via computer discs on February 6, 2014, allegedly in response to the auditors' request almost a year earlier at the time of the field work. These documents were not adequate and lacked additional supporting documents to complete the audit.

This ongoing lack of meaningful cooperation and transparency made it difficult to review and conclude on the adequacy and legitimacy of documents we have been given to date. However, our review of these documents has thus far revealed possible non-allowable salary expense allocations, an apparent inadequate segregation of business and personal transactions for legal and audit expenses, and a potential overstatement of the building rental payments included in the Consolidated Financial Report ("CFR"). We also noted individuals listed and paid as both employees and independent consultants during the same year.⁴ Additionally, AAK did not provide evidence that all employees and independent contractors were cleared through the New York State Central Register of Child Abuse and Maltreatment.

In light of the above delays and the troublesome preliminary findings, we suggest that New York State suspend AAK as an approved vendor and to investigate the financial records of AAK to protect the interests of taxpayers and children.

⁴ IRS Publication 15-A (2014) Employer's Supplemental Tax Guide, Page 7 Section 2, "Employee or Independent Contractor?"

Yours very truly,



JoAnn Greene
Director of Field Audit

Cc: Michael Grossfeld, Executive Director, All About Kids
John B. King, Jr., Commissioner, NYSED
Ann Marsh, Director, Rate Setting Unit, NYSED
Thomas DiNapoli, New York State Comptroller, Office of State Government
Accountability
Frank Patone, Audit Director, Office of the State Comptroller
Lawrence Eisenstein, Commissioner of Health, Nassau County Health Department
Linda, Rennie, Nassau County Health Department Pre-School Program
Carnell Foskey, Nassau County Attorney

Attachments

APPENDIX A – ALL ABOUT KIDS TIMELINE OF ATTEMPTED AUDIT

Date	Description
7/30/2012	Nassau County sends AAK engagement letter of intent to audit.
9/14/2012	Nassau County and AAK hold an entrance conference and Nassau County makes initial requests for documents.
9/28/2012	AAK provides some redacted legal invoices via e-mail.
10/18/2012	AAK responds to Nassau County inquiry about its right to see unredacted legal invoices with an attorney client privilege defense.
11/19/2012	AAK requests documentation of Nassau County's right to audit activity outside of Nassau County.
11/20/2012	Nassau County provides AAK with Title 8, Section 200.18(b)(1) of the New York Codes, Rules and Regulations (8 NYCRR §200.18(b)(1)), which authorizes Nassau County to review documentation outside Nassau County.
11/21/2012	First day of fieldwork. A brief meeting ensues to relay questions and request the documentation needed to perform the audit. AAK furnishes some of the salary documents previously requested; however, the information was incomplete and difficult to rely on for the purposes of coming to any definitive conclusions.
11/26/2012	AAK requests postponement of the audit until January 2, 2013.
1/3/2013	Nassau County contacts AAK to continue the audit.
1/4/2013	AAK responds to say AAK will call on January 7, 2013 to discuss the audit.
1/7/2013	AAK leaves a message with Nassau County to call back regarding the audit and indicates Nassau County can return to resume the audit on Wednesday, January 9, 2013. Nassau County attempts to contact AAK but AAK does not return e-mails or phone calls promptly.
1/8/2013	Nassau County again refers AAK to the provision of 8 NYCRR §200.18(b)(1) that provides Nassau County with the authority to review AAK's documentation and the County again requests that Nassau County's auditors return to AAK's place of business to resume the audit. AAK fails to allow the audit to resume on January 9, 2013 and advises that its attorneys are reviewing the regulations and will get back to Nassau County in a few days.
1/11/2013	AAK Attorney advises Nassau County that AAK is questioning the appropriateness of the audit and requests clarification about why Nassau County has chosen to audit at this time.

APPENDIX A – ALL ABOUT KIDS TIMELINE OF ATTEMPTED AUDIT

2/19/2013	Nassau County responds to AAK’s January 11, 2013 letter and advises AAK’s attorneys that the County Contract allows the County to audit, that the County is not required to explain why and that the County auditors will return on February 25, 2013.
2/25/2013	AAK permits Nassau County auditors to resume audit, but limits AAK's involvement to three hours per week. AAK begins to furnish data; however, the information provided is limited to Nassau County only, is redacted and is provided at an extremely slow pace and in a disorganized fashion.
3/6/2013	Nassau County Supreme Court denies AAK's request for a temporary restraining order that would have precluded Nassau County from auditing AAK.
3/13/2013	Nassau County sends letter to AAK’s counsel advising them of AAK's lack of meaningful cooperation and requests that AAK fully comply with the County's requests. The County also made AAK's counsel aware that the County Comptroller’s Office has the authority to subpoena AAK’s documents in the event AAK does not comply.
3/14/2013	AAK's attorneys express surprise about the County's plan to subpoena AAK records and claim that AAK has fully cooperated with the audit.
3/18/2013	AAK appeals the Supreme Court's decision denying AAK’s request for a temporary restraining order.
3/20/2013	AAK continues to furnish data at an extremely slow pace and in a disorganized fashion. AAK continues to neglect Nassau County’s questions, which limit the auditors’ ability to proceed with any momentum. Nassau County requests that AAK start providing more of the requested documents, that AAK address the questions that have accumulated and schedule a time to meet with the auditors. AAK responded that it did not have the time and could only spend three hours per week on the audit.
3/28/2013	Nassau County advises AAK that the County was temporarily reassigning its staff to work on a special project and would be returning shortly. Nassau County prepares a list of records to be included in the subpoena information request.
4/4/2013	The New York State Appellate Division, Second Department, denies AAK's request for a temporary restraining order.
4/10/2013	AAK places a call to Nassau County demanding payment for unpaid claims on the misrepresentation that “at the County's Request, the audit is being put on hold”.
9/3/2013	The Nassau County Supreme Court denies AAK’s preliminary injunction to prevent the Comptroller’s Office’s audit of AAK and dismisses the proceeding on the merits.

APPENDIX A – ALL ABOUT KIDS TIMELINE OF ATTEMPTED AUDIT

9/11/2013 & 9/19/2013	The Field Audit Director e-mailed AAK stating she would like the auditors to return to AAK to resume the fieldwork as soon as possible. A full list of requested documents was attached.
9/20/2013	AAK e-mailed the County stating that they were working on the submission of their Consolidated Fiscal Report (“CFR”) to the State Education Department, finishing an audit and beginning a new audit.
10/23/2013	Field Audit e-mailed AAK to ascertain if these outside audits were completed. AAK responded that the audit by the outside CPA was not completed.
11/13/2013	Nassau County again contacted AAK requesting certain documents and a date to resume the audit.
1/7/2014	Nassau County received an e-mail from Park Strategies stating that it represented AAK and that AAK had sent a letter, via e-mail, to Nassau County on December 19, 2013 asking for clarification of the documents previously requested and questioning the audit scope (fiscal year versus calendar year).
2/4/2014 & 2/6/14	AAK delivered five boxes of documents on February 4, 2014, consisting of information that the auditors had requested at the time of the fieldwork. On February 6, 2014, AAK hand delivered additional information via computer discs.
4/16/2014	The County Comptroller’s Office sends a letter to NYS and AAK terminating the audit due to lack of cooperation from AAK. The documents provided were not adequate and lacked additional supporting documents to complete the audit.

APPENDIX B - AAK SCOPE LIMITATIONS AND PRELIMINARY FINDINGS

Table of Contents

Background.....2

Scope, Objective and Methodology.....3

Introduction3

Scope Limitation 1 – Lengthy Postponements and Repeated Legal Proceedings Against the County to Prevent and Delay the Audit.....4

Scope Limitation 2 – Access to Information was Severely Restricted6

Scope Limitation 3 – Insufficient Time Was Allotted to Work with the County Auditors7

Scope Limitation 4 – Supporting Documentation to Confirm Amounts Reported on the Consolidated Fiscal Cost Reports was not Provided7

Preliminary Finding 18

Legal and Audit Expenses Revealed Potential Non-Allowable Charges and an Apparent Inadequate Segregation of Business and Personal Expenses8

Preliminary Finding 29

Allocation of Salary Expenses for the SEIT9

Preliminary Finding 310

The Legitimacy and Accuracy of Building Rental Expenses Reported in AAK’s Consolidated Fiscal Report is Not Adequately Substantiated10

Preliminary Finding 410

Certain Individuals Were Listed and Paid as Both Employees and Independent Consultants in the Same Year10

Preliminary Finding 511

Incomplete Documentation of Clearance of Employees and Independent Contractors through the New York State Central Register of Child Abuse and Maltreatment (“SCR”)11

APPENDIX B – AAK SCOPE LIMITATIONS AND PRELIMINARY FINDINGS

Background

Mid Island Therapy Associates, LLC, d/b/a All About Kids (“AAK”) is a for-profit limited liability company that provides early intervention, preschool, school-age, autism and behavioral services to children with disabilities in Nassau and Suffolk counties, Westchester County and the five boroughs of New York City. Specifically, AAK provides Special Education Itinerant Teacher (“SEIT”)⁵ services: occupational, physical and speech therapy; applied behavior analysis; psychological services; special instruction; family training; social work and evaluations.

Exhibit I below summarizes the amounts paid by Nassau County to AAK for providing Preschool Special Education and Early Intervention⁶ services to Nassau County residents for the period 2008 to December 2012.

Exhibit I

Nassau County Payments
to All About Kids
2008-2012

Year	Preschool	Early Intervention	Total
2008	\$ 4,356,183	\$ 753,872	\$ 5,110,055
2009	2,844,747	848,908	3,693,655
2010	2,339,769	1,019,810	3,359,579
2011	1,711,952	1,063,925	2,775,877
2012	1,292,659	1,030,400	2,323,059
	<u>\$ 12,545,310</u>	<u>\$ 4,716,915</u>	<u>\$17,262,225</u>

The most recent contract Nassau County has with AAK for Pre-School Special Education is for the period September 1, 2010 to August 31, 2015. Nassau County is reimbursed by New York State for 59.5% of the eligible cost of preschool services after Medicaid reimbursements and 49% of the eligible cost of Early Intervention services, after reimbursement from third party insurance and Medicaid.

In accordance with New York State regulations, all service providers are required to submit an annual Consolidated Fiscal Report (“CFR”) to New York State detailing all service expenses for each program. Based on discrepancies found by New York State with the SEIT units of service

⁵ Special education itinerant teacher services include speech therapy, language therapy, occupational therapy, physical therapy and educational services.

⁶ Beginning in April 2013, all County Early Intervention Contracts were terminated and are now with New York State.

APPENDIX B – AAK SCOPE LIMITATIONS AND PRELIMINARY FINDINGS

reported by AAK for the 2007/2008 program year and SEIT reimbursement rate deductions determined by the State for the 2008/2009 and 2009/2010 program years, AAK owed Nassau County a total of \$200,250, \$97,363 for the 2007/2008 year and \$102,887 for both the 2008/2009 and 2009/2010 years. Unfortunately, the County may never be able to recoup the \$97,363 associated with the 2007/2008 program year because it is considered a “closed year”. However, after being notified of the \$102,887 AAK owed the County as a result of SEIT rate decreases computed by the State for the 2008/2009 and 2009/2010 program years, AAK reimbursed the County for the full amount in 2013.

Scope, Objective and Methodology

The objective of the review was to determine that the expenses shown in the CFRs filed by AAK with New York State were accurately reported to the correct program and supported by the appropriate documents as is required by the New York State Consolidated Fiscal Reporting and Claiming Manual and New York State Education Department Reimbursable Cost Manual for Programs Receiving Funding Under Article 81 and/or Article 89 of the New York State Education Law. As part of our review, we planned to interview personnel; obtain written policies and procedures; examine expenses⁷ and the units of service for the period July 1, 2010 to June 30, 2012 to determine and evaluate that:

- expenses are properly reported in accordance with applicable guidelines and regulations;
- the reported full-time equivalent enrollments used in the calculation of tuition are accurate;
- all applicable revenue has been offset against reimbursable expenses as mandated by Section 4401 of the New York State Education Law;
- tuition is billed and the related revenue is accurately reported for all full-time equivalent students as determined by audit; and
- costs related to tuition rates are adequately supported and justified as allowable costs in accordance with the New York State Reimbursable Cost Manual.

Introduction

The AAK contract with the County requires that the Agency’s records be made available for audit and inspection by the County Comptroller.⁸ In addition, 8 NYCRR §200.18(b)(1) states that each municipality may perform fiscal audits of approved preschool programs and services for which it bears fiscal responsibility. Our standard practice is to meet with the Agency and its staff to obtain sufficient information to determine whether expenses reported on the CFR were properly allocated and supported with adequate documentation.

⁷ Examine support for salaries, contractor expenses, Federal Form W-2s and 1099s and legal/audit and rent expenses.

⁸ Contract for Services between Nassau County and All About Kids, Section 14, page 16.

APPENDIX B – AAK SCOPE LIMITATIONS AND PRELIMINARY FINDINGS

Scope Limitation 1 – Lengthy Postponements and Repeated Legal Proceedings Against the County to Prevent and Delay the Audit

Below is a brief narrative summarizing AAK's actions to postpone and prolong the audit (as outlined in the timeline in Appendix A).

On July 30, 2012, Nassau County sent an engagement letter to notify AAK about its intent to audit AAK's contract with the County. An entrance conference was held on September 14, 2012 to discuss the scope of the audit and request documents needed to perform our review. AAK began to provide some of the requested documents through e-mail; however, the documents were sometimes redacted. For example, AAK maintained it was allowed to redact legal invoices it provided to us in September 2012 under the guise of attorney-client privilege.

On November 20, 2012, AAK permitted the County to start fieldwork at its premises. AAK met very briefly with the County auditors to provide some of the documents requested at the entrance conference. The auditors relayed some questions which AAK agreed to respond to at a later time and the auditors also requested additional documents. The auditors soon realized that the documents provided at this meeting were incomplete and difficult to rely on for the purpose of coming to any definitive conclusions. Follow-up questions were communicated to AAK but some questions went unanswered. On the second day of fieldwork, AAK suddenly requested the audit be postponed in order to meet its year-end deadline for filing its CFR with New York State. In the spirit of cooperation, the Nassau County Director of Field Audit agreed to accommodate AAK's request and postponed the review until January 2, 2013. Subsequent to granting the postponement, the Nassau County Director of Field Audit was advised by the State that all SEIT providers received extensions to the State's CFR filing deadline because of Hurricane Sandy.

Beginning on January 3, 2013, Nassau County repeatedly attempted to contact AAK to schedule a date to resume the audit. However, the County was notified on January 11, 2013 by AAK's attorneys that AAK was still questioning the appropriateness of the audit and had requested clarification about why the County had chosen to perform an audit at this time. The County advised AAK's attorneys that the County contract allows the County to audit and that the County is not required to explain why it had chosen to do the audit.

AAK permitted the Nassau County auditors to resume the audit on February 25, 2013, but limited AAK's involvement to three hours per week. Although AAK appeared to cooperate, it became clear that AAK was still limiting the scope to only Nassau County programs and they continued to redact the documents provided. Further, the pace at which the auditors were provided the documents was extremely slow and the documents were disorganized.

On March 6, 2013, AAK initiated legal action to prevent the audit. Until such court action could be fully heard and decided by the court on its merits, AAK also filed a motion for a temporary restraining order to stay the audit. AAK's request for the temporary restraining order was denied by the New York State Supreme Court as was its appeal to the New York State Appellate

APPENDIX B – AAK SCOPE LIMITATIONS AND PRELIMINARY FINDINGS

Division. Subsequently, AAK continued to claim that it had no time to work with the County auditors thereby limiting the County's ability to proceed with any momentum.

On March 21, 2013, Nassau County again requested that AAK start providing more of the requested documents and address the accumulated questions. When AAK again responded that it did not have the time, the County advised AAK that the auditors had been waiting for the additional requested documents from AAK to complete the audit. On March 28, 2013 the County informed AAK that it was temporarily reassigning its staff, but would return to resume the audit. On April 10, 2013, AAK demanded that the County make payment on its unpaid claims based on the misrepresentation that "at the County's Request, the audit is being put on hold".

On September 3, 2013, the Nassau County Supreme Court denied AAK's preliminary injunction to permanently halt the Comptroller's Office's audit and dismissed the proceeding on the merits. As a result of this ruling, our Office contacted AAK on September 11, 2013 and September 19, 2013 requesting certain documents and a convenient date to continue the audit. AAK responded on September 20, 2013 stating that they were working on the submission of their annual report to the State Education Department, finishing an audit, and beginning a new audit.

On October 23, 2013, our office contacted AAK to resume the audit and AAK stated that the audit by the outside CPA was not completed.

On November 13, 2013, the Comptroller's Office again contacted AAK to request certain documents and a date to resume the audit.

On February 4, 2014, AAK delivered five boxes of documents that the auditors had requested at the time of the fieldwork almost a year prior. On February 6, 2014, AAK provided additional requested information via computer discs. This information still did not provide the auditors with adequate data to complete the audit as summarized below:

- The worksheet for non-allowable audit insurance and leased vehicle expenses listed on the CFR did not contain sufficient details for the auditors to verify the allocation percentages.
- There were 25 Service Logs not provided to the auditors to support the legitimacy of services provided for the October 2010 and May 2011 claims paid. A service log records what therapist worked with what child for which time period.
- Auditors were provided with only four out of the five contracts requested to support the validity and appropriateness paid to five consultants totaling over \$890,000. Three of the contracts did not contain any rate information for the contractors (i.e. their hourly rates).
- AAK did not provide the general ledger detail balance sheets on a fiscal year basis for 2010, 2011 and 2012 and thus we were not able to perform this verification.

APPENDIX B – AAK SCOPE LIMITATIONS AND PRELIMINARY FINDINGS

- The worksheet for the 2010-2011 SEIT Revenue of \$4,354,550 failed to include invoice numbers, names of students and length of weekly sessions. Therefore, the information on the worksheet could not be verified to the general ledger and to the service provider treatment logs.
- Leases for four locations listed Premier Care Networks as the tenant. The auditors asked and did not receive a response from AAK for clarification of the relationship between AAK and Premier Care Networks.
- There were nine questionable payments to American Express charged to the rent account for a total of \$2,800, to which AAK had not responded during our inquiries in March 2013.
- Employees and independent contractors having the potential for regular or substantial contact with children are required to be cleared through the NYS Central Register of Child Abuse and Maltreatment (“SCR”). Missing from the documents provided to the auditors were clearance letters for 29 employees and eight independent contractors. In addition, three clearance letters were undated or did not have an ID number. Additionally, there were clearance letters for 134 non-current employees and 728 non-current independent contractors dated prior to the contract date of September 1, 2010.

Scope Limitation 2 – Access to Information was Severely Restricted

- During fieldwork, auditors were provided with some documents but not permitted to retain or photocopy them. They were required to return the documents to an assigned AAK employee at lunchtime, pick them up upon their return from lunch and then return them at the end of the day. Even documents which were deemed to be “County copies” could not be retained by the auditors.
- AAK would not agree to furnish us with a complete set of W-2 and 1099 records (that included all of the locales in which it operates, including Suffolk and Westchester counties and the five boroughs of New York City) that would substantiate the CFR submitted to the NYS Education Department and used to set state reimbursement rates. AAK insisted that the County only had the right to see Nassau County data. AAK also asked if we were performing a fiscal or calendar year audit and why AAK had to provide W-2s and 1099s that were based on the calendar year. We explained to AAK on numerous occasions that in order to properly audit Nassau County expenses we needed to audit all programs that have expenses included in the NYS CFR since the CFR is used as the basis to set the SEIT rates for the whole state. For the audit period, fiscal CFR expenses for salaries and consulting require verification with external IRS documents such as the W-2’s and 1099’s, which are on a calendar basis. With respect to our request for W-2s and 1099s only, AAK eventually provided unorganized and redacted paper

APPENDIX B – AAK SCOPE LIMITATIONS AND PRELIMINARY FINDINGS

copies of W-2s and 1099s. We could not verify the completeness of the documents received because the summation of the paper copies revealed differences that AAK has not explained.

- The auditors were not given an opportunity to meet with any financial staff or the assigned liaison on a regular and interactive basis. Thus, the auditors were not provided with answers to their questions that would allow us to move forward in a meaningful way with the audit.
- The auditors requested support for non-allowable audit insurance and leased vehicle expenses. The worksheet provided by AAK did not contain sufficient details for the auditors to verify the allocation percentages.

Scope Limitation 3 – Insufficient Time Was Allotted to Work with the County Auditors

- AAK imposed a limit of approximately three hours per week of its staff's time to provide the information we requested. AAK often wasted these three hours by unnecessarily redacting and photocopying documents. We repeatedly requested that data be provided to us electronically, which was a more efficient use of AAK's allotted time and also allow the auditors the ability to organize and review the data more efficiently.
- We provided AAK with a daily list of required documents and questions resulting from our review of the documents we had been given. We were told repeatedly by the Executive Director that the staff was always "too busy" to interact with us on a daily basis or to answer our questions.

Scope Limitation 4 – Supporting Documentation to Confirm Amounts Reported on the Consolidated Fiscal Cost Reports was not Provided

We requested expense documentation to support amounts shown in the AAK 2011 CFR for salary, contractual, legal, audit and rent expenses. AAK provided documentation that was not adequate to complete the audit as is exemplified below:

- Service Treatment Logs are required to be prepared by the individual providers and signed by the parents to support the legitimacy of the salary and contractor services costs AAK reported on the CFR. Claims were received for October 2010 and May 2011 with backup. However, there were nine missing Treatment Logs for October and 16 missing for May.
- Auditors requested five outside contracts to support the validity and appropriateness of the amounts paid to five outside consultants totaling over \$890,000. AAK only provided

APPENDIX B – AAK SCOPE LIMITATIONS AND PRELIMINARY FINDINGS

four out of the five contracts requested and three did not contain any rate information for the contractors (i.e. their hourly rates).

- We noted that one contractor on the NYS CFR was listed by AAK as having been paid \$151,950 for July 1, 2010 to June 30, 2011. However, the two years of 1099s reported to the IRS added up to \$68,590 (\$54,370 for 2010 and \$14,220 for 2011). For another consultant that was listed on the CFR as being paid \$175,368, the auditors received no 1099s for either of the two years. The auditors also noted that one teacher who received a W-2 as an employee for both years of the audit period was also listed on the CFR as an outside contractor being paid \$133,187. Her teacher's salary was \$97,958 for 2010 and \$97,067 for 2011. The IRS does not allow individuals to be paid as both employees and contractors for the same time period.
- We requested the general ledgers for the 2010, 2011 and 2012 calendar and fiscal years to verify that the amounts reported as paid to employees and providers in the CFRs agreed to the amounts reported to the IRS. AAK did not provide the general ledger balance sheets on a fiscal year basis so we were not able to perform this verification.
- In March 2013, the auditors requested a SEIT Revenue worksheet in order to test that all applicable revenue has been offset against reimbursable expenses as mandated by Section 4401 of the New York State Education Law. The 2010-2011 SEIT Revenue worksheet provided by AAK in February 2014 totaled \$4,354,550 and failed to include invoice numbers, names of students and length of weekly sessions. As a result, the auditors were unable to verify the information on the worksheet to a general ledger account and the service provider treatment logs.

Preliminary Finding 1

Legal and Audit Expenses Revealed Potential Non-Allowable Charges and an Apparent Inadequate Segregation of Business and Personal Expenses

Our review of the documents we were given revealed that legal and audit expenses included expenses for retainers, personal tax returns, non-related business expenses and auditing services that are potentially non-allowable according to the State's Reimbursable Cost Manual ("NYS Manual"). When we requested additional clarification and support for these items, AAK did not cooperate. It was not until February 4, 2014 that AAK provided explanations on these questionable items as follows:

- AAK agreed that legal charges related to the Articles of Organization do not directly relate to AAK and are non-allowable.

APPENDIX B – AAK SCOPE LIMITATIONS AND PRELIMINARY FINDINGS

- AAK stated that the audit charges to prepare the owner's individual Federal and State Tax return were incorrectly charged to the CFR. This are non-allowable because they are considered personal expenses.
- A legal charge for the cost of a seminar on employment law would only be allowable when supported by proof of the seminar being directly related to AAK and with proof of attendance.

AAK disagreed stating that this expense was properly allocated using the NYS approved ratio value method to the SEIT program per the NYS manual.

- Audit services performed for the audit of AAK's financial statements are allowable if directly related to the audit of AAK. However, the cost for the auditor to perform any day-to-day accounting work is non-allowable.

AAK disagreed stating that this expense was properly allocated using the NYS approved ratio value method to the SEIT program per the NYS manual.

- Audit charges to review the owner's draw were questioned by the auditors.

AAK disagreed stating that this expense was properly allocated using the NYS approved ratio value method to the SEIT program per the NYS manual.

- The auditors requested the detail of the non-allowable bad debt expense shown on the CFR but were only provided with a descriptive explanation of how it was calculated; no numerical detail accompanied this explanation.

Preliminary Finding 2

Allocation of Salary Expenses for the SEIT

Pursuant to the NYS CFR and Claiming Manual, salary allocations should be based on actual time and attendance records or the agency must complete a time study for employees. A minimally acceptable time study must encompass at least two weeks per quarter of the cost reporting period for a total of four quarters of data. AAK only provided us with this data for the two quarters. Also, in accordance with state regulations, vacation time should not be part of a time study. The auditors noted an instance where vacation was apparently used in a time study.

In some cases, we found that AAK also allocated salary costs based on units of service, which conflicts with the above stated manual. The schedule that was provided to the auditors by AAK indicated that \$191,091 of SEIT costs were charged using this unacceptable revenue/unit method.

APPENDIX B – AAK SCOPE LIMITATIONS AND PRELIMINARY FINDINGS

Auditors also noted that 44.25 hours of Early Intervention services appeared to have been incorrectly charged as SEIT time for the period tested.

Preliminary Finding 3

The Legitimacy and Accuracy of Building Rental Expenses Reported in AAK's Consolidated Fiscal Report is Not Adequately Substantiated

We were unable to confirm that the \$750,000 building rental cost allocated to the programs on the 2011 CFR⁹ was a justifiable expense.

We obtained copies of all leases pertaining to the CFR. These leases list different tenant names. AAK is the named tenant for only the New Rochelle office and a portion of the Bronx offices. Otherwise, Premier Care Networks Inc. is the named tenant for the Astoria office and the Brooklyn, Plainview locations and the majority of the Bronx. The auditors asked for clarification of the relationship between AAK, Mid Island Therapy and Premier Care Networks. AAK has not responded to this March 2013 inquiry.

AAK provided a virtual office agreement for Suffolk County. The agreement is with All About Kids; however, the invoices are addressed to All About Kids-Premier Care.

In order to verify the lease allocation per program that is listed in the CFR, we would need to obtain their methodology support on how they allocated the rent. The methodology would be required to be on a square footage basis or another one of the acceptable state methods. The auditors would need to see the detailed allocation plan to verify these costs. AAK did not provide us with this allocation methodology detail.

We also noted that nine questionable payments totaling \$2,800 to American Express were charged to the general ledger rent account;. AAK did not respond to our inquiries regarding these charges while we were on the premises in March 2013, or at any other subsequent time.

Preliminary Finding 4

Certain Individuals Were Listed and Paid as Both Employees and Independent Consultants in the Same Year

Our review of the paper copies provided by AAK of the IRS Forms 1099 and 1096 for 2010 and 2011 revealed differences that AAK has not explained. The IRS 1096 is the summary form of all the individual IRS 1099's. The auditors requested an exact copy of the file given to the IRS. Instead they were given hard copies in no apparent order, with some redactions. Therefore, the auditors could not determine the completeness and accuracy of the 1099's that they were given.

⁹ The Consolidated Annual Report period from July 1, 2010 to June 30, 2011.

APPENDIX B – AAK SCOPE LIMITATIONS AND PRELIMINARY FINDINGS

Further, based on our review of AAK’s year-end payroll data and the unredacted information on the W-2s and 1099s, we found that seven individuals appeared to have been paid as both employees and independent contractors in 2010 and nine individuals appeared to have been paid both as employees and independent contractors in 2011. The NYS Reimbursable Cost Manual¹⁰ provides guidelines to service providers 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. In addition, an individual is generally either an employee or an independent contractor, but cannot be both at the same time.¹¹

Individuals being paid as both employees and independent contractors at the same time raise the question of whether AAK workers performed services as separate entities rather than as employees or both. If both, there is a potential for duplicate billing. In addition, it is also possible that AAK is not in compliance with the federal and NYS employer withholding tax requirements¹² or the NYS Department of Labor unemployment regulations. The auditors were never given the opportunity to have a discussion with AAK as to why these individuals were paid in this manner.

Preliminary Finding 5

Incomplete Documentation of Clearance of Employees and Independent Contractors through the New York State Central Register of Child Abuse and Maltreatment (“SCR”)

The State and County both have various regulations for those working with children¹³. The Pre-school contract AAK has with Nassau County commencing September 1, 2010 through August 31, 2015 specifically states that, *“All Contractors are required to complete, at the commencement of this Agreement, SCR clearance on any person who is currently employed with the Contractor and/or is being actively considered for employment, their employees or subcontractors, that meet the standard of having the potential for regular and substantial contact with the Child. The SCR clearance must be current. Prior approvals must not be considered.”*

The auditors requested evidence that all employees and independent contractors were cleared through the SCR. On February 4, 2014, AAK provided the auditors with a box of clearance

¹⁰ Section III, General Requirements, Item 1.C. Consultants.

¹¹ IRS Publication 15-A (2014) Employer’s Supplemental Tax Guide, Page 7 Section 2, “Employee or Independent Contractor?”

¹² Wages earned as an employee are reported on IRS Form W-2. Compensation earned as an independent contractor is reported on IRS Form 1099. An employer, such as AAK, 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.

¹³ Pursuant to Section 424-a of the New York Social Services Law, persons working in child care programs licensed or registered by the New York State Office of Children and Family Services (“OCFS”) require SCR clearance.

APPENDIX B – AAK SCOPE LIMITATIONS AND PRELIMINARY FINDINGS

documents. Our review found that the evidence AAK provided indicated possible noncompliance with the County contract as follows:

Employees:

AAK provided a list of 202 employees (for 2010 and 2011).

- For the 202 employees, clearance letters were not provided for 29 (15 were listed as Teacher Assistants, Teacher Aides, Program Director, and other similar titles); and
- The auditors noted 134 names were screened prior to September 1, 2010.

Independent Contractors:

AAK provided a list of 855 independent contractors (for 2010 and 2011):

- The contract specifically states that, “The SCR clearance must be current (2010). Prior approvals must not be considered.” In that regard, the auditors noted that 728 names were screened prior to September 1, 2010, that 131 of those were screened prior to 2005, and that 37 of those were screened as far back as 2000-2002;
- 8 names on the list did not have a clearance letter;
- 11 clearance letters provided were for individuals not on the list; and
- 3 of the letters provided were not dated or did not contain an ID number.

Agency Owners/Directors:

The Nassau County Department of Health (“NCDOH”) Pre-School Unit obtains clearance for the top person in an agency (i.e., owner/director) and the agency subsequently obtains all other clearances. However, two AAK employees presented themselves to the auditors with business cards that stated they were both Executive Directors. NCDOH provided us with a clearance letter for only one of the employees, who NCDOH considered to be the top person in the agency. Our review of the clearance letters provided by AAK revealed no letter for the other employee. The employee without the clearance letter was the single signatory to the County contract and three contract appendices. The auditors could not verify whether the agency is in compliance with regard to the owners/directors.

Overall Recommendation:

Due to the aforementioned scope limitations and preliminary findings, we recommend that the New York State Education Department remove AAK from the New York State list of approved SEIT vendors until such time that a full review of AAK’s books and records can be performed to ensure proper management and use of public funds paid to them.