

City of New York

OFFICE OF THE COMPTROLLER

Scott M. Stringer
COMPTROLLER



FINANCIAL AUDIT

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Deputy Comptroller for Audit

Audit Report of Success Academy
Charter Schools-NYC's Oversight of
Financial Operations

FK15-092A

December 19, 2016

<http://comptroller.nyc.gov>



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
1 CENTRE STREET
NEW YORK, NY 10007

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December 19, 2016

To the Residents of the City of New York:

My office has audited Success Academy Charter Schools-NYC (Success Academy) to determine whether Success Academy exercised adequate oversight over its schools' fiscal affairs; maintained a system of internal controls sufficient to ensure that expenses were reasonable, appropriate, adequately supported, and authorized; that transactions were accurately recorded and reported; and that potential conflict of interest and related party transactions were monitored and prevented where necessary. The scope of this audit covered Fiscal Years 2013 through 2015 (July 1, 2012 through June 30, 2015). We audit charter schools to ensure transparency, accountability and that funds are used appropriately.

Our audit found that Success Academy did not adequately oversee its fiscal affairs during the period under review. Specifically, the audit found that Success Academy made duplicative payments under its Academic and Business Services Agreement (Management Agreement) with Success Academy Charter Schools, Inc. (the Network) totaling \$624,342 for services the Management Agreement required the Network to provide in exchange for its 15 percent management fee. Further, Success Academy incorrectly classified the management fee it paid to the Network in its Fiscal Year 2015 certified financial statements and in other documents submitted to its authorizer. As a result, Success Academy significantly understated its administrative expenses and overstated its program services expenses.

Additionally, Success Academy billed the Department of Education (DOE) for special education services that were not documented in Success Academy's records as having actually been provided and did not maintain adequate controls over \$24.8 million in inventory. Success Academy's records also did not show that the organization consistently met its standards of ensuring that purchasing expenses were reasonable, appropriate, adequately supported, and properly authorized; that it obtained appropriate proof of residency for students; that its employees always had required fingerprint and background checks completed and cleared before they began working in its schools; and that it properly documented and obtained approval for \$8.5 million in loans from the Network in accordance with applicable rules. Finally, the Success Academy Board of Trustees failed to adequately monitor aspects of the financial affairs of Success Academy and did not consistently follow the procedures for operation required by its bylaws.

The audit makes 28 recommendations, including that Success Academy should recoup \$624,342 paid to the Network for expenses charged to schools that should have been included in the Network's management fee; comply with its Charter Agreement, New York State Education Department guidelines, generally accepted accounting principles, and its own its policies and procedures; and reimburse DOE for any special education services that were not provided. Further, Success Academy should ensure that it maintains appropriate proof of residency for students, obtains required fingerprint and background checks for employees, and memorializes all past and future loan agreements between Success Academy and the Network in writing.

The results of this audit have been discussed with Success Academy officials and their comments have been considered in preparing this report. Their complete written response is attached to this report.

If you have any questions concerning this report, please email my Audit Bureau at audit@comptroller.nyc.gov.

Sincerely,


Scott M. Stringer

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THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER FINANCIAL AUDIT

Audit Report of Success Academy Charter Schools-NYC's Oversight of Financial Operations

FK15-092A

EXECUTIVE SUMMARY

Charter schools are independent public schools operated by not-for-profit corporations that are governed by boards of trustees and managed under contracts with government authorizers, also known as “charter agreements.” The authority to establish charter schools in New York stems from the Charter Schools Act of 1998, Article 56 of the New York State Education Law (the Charter Schools Act). Pursuant to the Charter Schools Act, in order for a charter school to be created in New York City, it must have been approved by one of three possible authorizing entities: the Board of Trustees of the State University of New York (SUNY); the New York State Education Department (NYSED); or the New York City (City) Department of Education (DOE). Pursuant to § 2853(1)(d) of the Charter Schools Act, “the powers granted to a charter school under [the Charter Schools Act] constitute the performance of essential public purposes and governmental purposes” of the State of New York.

Success Academy Charter Schools-NYC (Success Academy) is an educational corporation that is authorized by SUNY to operate multiple charter schools under its Third Amended and Restated Second Renewal Charter dated October 31, 2014 (the Charter Agreement).¹ Success Academy served 8,715 students enrolled in kindergarten through ninth grade at 24 different schools in Fiscal Year 2015.

During the audit period, Fiscal Years 2013 through 2015 (July 1, 2012, through June 30, 2015), Success Academy was party to an Academic and Business Services Agreement (Management Agreement) with Success Academy Charter Schools, Inc. (the Network), an educational service provider retained to manage the operations of Success Academy’s multiple schools. Although Success Academy (the entity that employs the teachers and operates the schools) and the Network (the entity that pursuant to contract oversees the operational and financial affairs of the schools) are both named “Success Academy” (Success Academy Charter Schools-NYC in the case of the educational corporation, and Success Academy Charter Schools, Inc. in the case of

¹ Success Academy is also referred to in official records as the “Educational Corporation” and “SACS-NYC.”

the Network), in order to distinguish between the two in this report, we refer to the educational corporation as “Success Academy” and the management company as “the Network.”

This audit is of Success Academy (the educational corporation). Based on a broad review of Success Academy’s financial practices and controls, Success Academy’s Harlem 3 charter school was chosen for certain detailed testing. Pursuant to the Management Agreement, the Network is responsible for most aspects of the management and operations of the schools. Accordingly, much of the information necessary to complete the audit was obtained from the Network. The Management Agreement authorized Success Academy to pay the Network 15 percent of the final adjusted expense per pupil. For Fiscal Year 2015, Success Academy reported that it paid the Network management fees of \$18.3 million. As required by Section 2.4 of the Charter Agreement, SUNY reserves the right to review and disapprove the Management Agreement and any amendments or renewals thereto.

Audit Findings and Conclusions

Success Academy made duplicative payments to the Network totaling \$624,342 for services the Management Agreement required the Network to provide in exchange for its 15 percent management fee. Further, Success Academy incorrectly classified some of its expenses—specifically the management fee it paid to the Network—in its Fiscal Year 2015 certified financial statements and in the Harlem 3 annual charter school report card submitted to SUNY. Through those incorrect classifications, Success Academy significantly understated its administrative expenses and overstated its program services expenses, which made it appear that a much greater percentage of Success Academy’s expenses went towards program services than was actually the case.

In addition, the audit found the following:

- Success Academy billed DOE \$50,825 for special education services for 6 out of 21 sampled students (28.6 percent) at Harlem 3 that were not documented in Success Academy’s records as having actually been provided.²
- Success Academy did not maintain adequate controls over \$24.8 million in inventory.
- Success Academy’s records did not show that the organization consistently met the following standards:
 - that purchasing expenses were reasonable, appropriate, adequately supported, and properly authorized;
 - that it obtained appropriate proof of residency for students;
 - that its employees always had required fingerprints and background checks completed and cleared before they began working in its schools; and
 - that it properly documented and obtained approval for \$8.5 million in loans from a related party in accordance with applicable rules.

Finally, the Success Academy Board of Trustees failed to adequately monitor some aspects of the financial affairs of Success Academy and did not consistently follow the procedures for operation required by its bylaws.

² On December 16, 2016, Success Academy provided additional documentation to support its special education billing. However, the new documents do not alter the report’s findings with regard to Success Academy’s billing records for special education. Although they contain records that arguably support the billing for special education services provided to one of the six students for which Success Academy invoiced DOE a total of \$10,390, we determined that we cannot adequately establish their reliability because they were specifically denied to us during the audit under a claim that they were “unavailable.”

Audit Recommendations

Based on our findings, we made 28 recommendations to Success Academy, including the following:

- Success Academy should recoup the \$624,342 paid to the Network for expenses charged to Harlem 3 and other Success Academy schools that should have been included in the Network's management fee.
- Success Academy should comply with generally accepted accounting principles and NYSED guidelines and develop, document, and utilize functional expense allocation methodologies that are fair and reasonable.
- Success Academy should reimburse DOE for special education services that were not provided at all or were not fully provided.
- Success Academy should employ key internal control practices for inventory as specified in the NYSED Fiscal Oversight Guidebook.
- Success Academy should ensure that Network and Success Academy employees comply with its policies and procedures related to purchasing; competitively procure goods and services or document the basis for sole source procurements; obtain required purchase authorizations and maintain procurement, contract, purchasing, and payment records.
- Success Academy should ensure that credit cardholders comply with its policies and procedures; purchase only goods and services that are budgeted, authorized, essential, and within spending limits; do not pay sales tax on exempt purchases; review purchases in a timely manner; and provide adequate supporting documentation for purchases.
- Success Academy should ensure that it maintains appropriate proof of residency for all students.
- Success Academy should ensure that it obtains required fingerprint and background clearances for employees before allowing them to work at its schools. If circumstances exist such that a person must be hired before a clearance is obtained, Success Academy should obtain a conditional or emergency conditional clearance for that person prior to the employee's start date.
- Success Academy should memorialize all past and future loan agreements between Success Academy and the Network in writing.
- Success Academy should comply with its Charter Agreement and submit proposed written agreements between Success Academy and the Network and associated legal opinions to SUNY not later than thirty (30) days prior to the proposed date of execution.

Auditee Response

On December 2, 2016, we requested that Success Academy formally respond to the audit's findings and recommendations by December 16, 2016. On December 16, 2016, we received a response to the audit accompanied by 982 pages of additional documents. Success Academy objected to the conduct of the audit, disagreed with most of the findings, and did not respond to any of the audit recommendations.

AUDIT REPORT

Background

Charter schools are independent public schools operated by not-for-profit corporations that are governed by boards of trustees and managed under contracts with government authorizers, also known as “charter agreements.” The authority to establish charter schools in New York stems from the Charter Schools Act. Pursuant to the Charter Schools Act, in order for a charter school to be created in New York City, it must have been approved by one of three possible authorizing entities: SUNY; NYSED; or the City DOE.³ As stated in § 2853(1)(d) of the Charter Schools Act, “the powers granted to a charter school under [the Charter Schools Act] constitute the performance of essential public purposes and governmental purposes” of the State of New York.

Charter agreements allow charter schools to receive government funding through local school districts but to operate independently from the school districts in many respects, including from most of the pedagogical mandates, oversight, and regulations that govern traditional public schools. A substantial portion of charter schools’ revenue comes from per pupil funding payments made by local school districts.⁴ DOE’s operating budget for the 2015-2016 school year includes \$1.5 billion for charter schools. Charter schools may also receive federal and State funding under various programs, as well as revenue from fundraising and other school activities.

At the start of the 2015-2016 school year, 205 charter schools were operating in the City, with 82 in Brooklyn, 59 in the Bronx, 45 in Manhattan, 15 in Queens, and 4 in Staten Island. Those schools collectively serve over 95,000 students, approximately 8.6 percent of the City’s 1.1 million public school students. Approximately 6 percent of charter school students are English Language Learners, and 16 percent receive special education services.⁵

To receive a charter, a school must be a tax-exempt, not-for-profit educational corporation under section 501(c)(3) of the U.S. Internal Revenue Code (the Tax Code). The Charter Schools Act imposes responsibility for oversight of the school’s fiscal and operational affairs on the school’s board of trustees. Approximately half of all New York City charter schools contract with separate management companies to perform the schools’ administrative and/or pedagogical functions.

³ The Charter School Act of 1998, which amended New York State’s Education Law, authorized several government bodies to be “chartering entities” or “authorizers” that can approve applications for charters and then oversee those charter schools: the NYS Board of Regents; the Board of Trustees of the State University of New York; and all local boards of education for their respective school districts (NYS Education Law, §2851(3)). Amendments to the Charter Schools Act in 2010 removed the authority of local boards of education to approve applications for new charters, but retained their authority to oversee the charter schools they had previously authorized. This change most directly affected the New York City and the Buffalo Boards of Education, the only local school districts that had exercised the option to approve charter schools in their districts. In 2015, the Charter School Act was further amended to restrict the issuance of charters to the State Board of Regents upon applications directly to the Board of Regents or on recommendations of the SUNY Trustees (NYS Education Law, §2852 (9-a)). However, schools chartered by local boards of education or the SUNY Trustees continued to have the monitoring authority over existing charter schools they authorized.

⁴ Charter schools receive per pupil funding based on the number of students enrolled in the school. The per pupil amount is calculated based on a rate determined by the NYSED and is based on a formula used for all traditional public school districts. Different rates are paid for special needs children than for those who do not require special services.

⁵ English Language Learners are students who speak a language other than English at home and score below proficient on English assessments. Special education services are provided to school-age students who meet the criteria for one or more of the 13 disability classifications listed in the Individuals with Disabilities Education Act, and for whom the disability affects the student’s education performance and/or ability to learn and benefit from the general education curriculum. District committees or subcommittees on special education evaluate charter school students to determine whether they need special education services and if so, develop Individualized Education Programs detailing the type, frequency, setting, and duration of mandated special education services.

Services provided by management companies vary from school to school and responsibilities range from having full operational control of the school's daily functions to providing administrative services only.

Success Academy is an educational corporation that is authorized by SUNY to operate multiple charter schools under its Charter Agreement.⁶ As of June 2015, Success Academy operated a total of 24 charter schools. The Charter Agreement sets forth numerous operational, organizational, academic, and regulatory requirements for Success Academy's schools. Among other things, the Charter Agreement requires Success Academy to maintain appropriate management and financial controls, including controls over budgeting, regulatory and financial compliance, and academic performance. Success Academy is also responsible for hiring and overseeing the work of the schools' principals and teachers.

Prior to the audit scope period of Fiscal Years 2013 through 2015 (July 1, 2012, through June 30, 2015), Success Academy entered into and renewed its Management Agreement with the Network, an educational service provider, to manage the operations of Success Academy's multiple schools. Under the Management Agreement between Success Academy and the Network, the Network had broad responsibility for schools, including providing education and instruction-related services, management and operation services, human resource and employment-related services, budgeting and financial reporting services, legal and compliance services, and procurement of insurance. Pursuant to the Management Agreement, the Network carried out most financial functions on behalf of Success Academy. In exchange, Success Academy agreed to pay the Network 15 percent of the final adjusted expense per pupil for charter schools in the New York City school district as calculated by NYSED annually. As required by the Charter Agreement Section 2.4, SUNY reserves the right to review and disapprove the Management Agreement and any amendments or renewals thereto. For Fiscal Year 2015, NYSED calculated this per pupil expense to be \$13,777. Consequently, Success Academy was obligated to pay the Network approximately \$2,067 per pupil for its work under the Management Agreement.

Success Academy served 8,715 students enrolled in kindergarten through ninth grade at 24 different schools in Fiscal Year 2015. This audit reviewed Success Academy's financial practices and controls applicable to all of its schools. Because of its role under the Management Agreement, we obtained much of our information from the Network. Based on broad review of Success Academy, we focused certain detailed testing on Success Academy's Harlem 3 charter school. During Fiscal Year 2015, Harlem 3 served 809 students enrolled in kindergarten through seventh grade at two sites. The first site is located on 100th Street in the East Harlem neighborhood of Manhattan and served students enrolled in kindergarten and first grade. The second site is located on 111th Street in the same neighborhood and served students enrolled in second through seventh grade. Revenues and expenses at Harlem 3 during Fiscal Years 2013 through 2015 are shown in Table 1, below:

⁶ Success Academy was issued its Second Renewal Charter on July 30, 2013. The Second Renewal Charter was amended and restated on November 1, 2013 (the Amended and Restated Second Renewal Charter), March 31, 2014 (the Second Amended and Restated Second Renewal Charter), and October 31, 2014 (the Third Amended and Restated Second Renewal Charter).

Table 1

Harlem 3 Revenues, Expenses, and
Operating Surpluses or Deficits for
Fiscal Years 2013 through 2015

	Fiscal Year 2013	Fiscal Year 2014	Fiscal Year 2015
Per Pupil Funding	\$7,777,376	\$10,211,267	\$11,469,407
Other Revenue	\$456,308	\$366,563	\$331,653
Total Revenues	\$8,233,684	\$10,577,830	\$11,801,060
Expenses	\$8,225,900	\$11,279,666	\$12,423,558
Operating Surplus/ (Deficit)	\$7,784	(\$701,836)	(\$622,498)

Objectives

The objectives of the audit were to determine whether Success Academy exercised adequate oversight over its schools' fiscal affairs and maintained a system of internal controls sufficient to ensure that expenses were reasonable, appropriate, adequately supported, and authorized; that transactions were accurately recorded and reported; and that potential conflict of interest and related party transactions were monitored and prevented where necessary.

Scope and Methodology Statement

We conducted this performance audit in accordance with generally accepted government auditing standards. Those 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. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit covers the period from Fiscal Year 2013 through Fiscal Year 2015 (July 1, 2012 to June 30, 2015). We performed detailed testing of the most recent year in our scope period, Fiscal Year 2015. Please refer to the Detailed Scope and Methodology at the end of this report for the specific procedures and tests that were conducted.

Discussion of Audit Results

The matters covered in this report were discussed with Success Academy during and at the conclusion of this audit on November 14, 2016. A preliminary draft report was sent to Success

Academy on November 23, 2016. An exit conference was scheduled on November 28, 2016 to provide Success Academy an additional opportunity to discuss the preliminary draft findings. Success Academy officials declined to meet on that date or on November 29, or 30, 2016, which were alternatively proposed. On December 2, 2016, we submitted a draft report to Success Academy with a request for written comments. On December 16, we received written comments from Success Academy, along with 982 pages of additional documents.

In its response, Success Academy objected that the audit was not conducted “in an impartial and objective manner,” based on our declining to agree to the prolonged postponement of an exit conference. However, the audit of Success Academy was in fact conducted in accordance with Generally Accepted Government Auditing Standards, which requires independence, objectivity and the exercise of auditors’ professional judgment. Accordingly, the auditors’ focus and findings were discussed extensively with Success Academy officials through the two years and one month it took to complete the audit, an unusual length of time that resulted, in large part, from Success Academy’s delays producing routine business records (from four months to produce a chart of accounts to 410 days to complete production of the Fiscal Year 2015 financial policies and procedures). Moreover, as part of the standard audit process, Success Academy officials were aware of every record reviewed by the audit team, including financial statements, expense records, student records, employment records, and board minutes, as well as every question we asked Success Academy officials about policies, procedures, and missing documentation. This process, followed in every audit, is the opposite of the “audit by ambush” claimed by Success Academy. Although we would have appreciated the opportunity to discuss the findings in our preliminary report with Success Academy at an exit conference on any of the three dates we proposed, Success Academy has had a full and fair opportunity to respond in writing to our draft report as is evidenced by the response that was submitted.

With regard to the substance of the audit, Success Academy did not respond to any of the audit recommendations and disagreed with most of the findings. A discussion of Success Academy’s specific responses is contained in the body of this audit report.

As noted above, on December 16, 2016, Success Academy provided us with 982 pages of additional documents. Since the newly provided documentation was not provided in a timely manner and was, in some cases, inconsistent with documentation that Success Academy provided to us during the course of the audit, we question the integrity and reliability of this documentation. Consequently, we did not alter the report’s findings. We have reviewed all of this documentation and to the extent relevant, our analysis is reported in the auditor comments sections of the report.

During the course of the audit, we repeatedly requested readily available documentation from Success Academy and informed Success Academy that delays and obstacles in production would make us question the integrity and reliability of documentation. Nevertheless, Success Academy failed to provide documentation in a timely manner. Further, documentation that was provided was deficient. Success Academy retrieved all of the documentation that we reviewed, including documentation related to sampled expenses, students, and employees. Consequently, Success Academy was aware of each and every record that we reviewed and was aware of what documentation it was able to provide us and what documentation was missing. Furthermore, we informed Success Academy of deficiencies in its documentation during the course of the audit. Although Success Academy had ample time to review its records and provide us with missing documentation, Success Academy did not do so until December 16, 2016 in connection with its formal, written response to the report.

The full text of Success Academy's response is included as an addendum to this report. The 982 pages of additional documents are available upon request.

FINDINGS AND RECOMMENDATIONS

Success Academy made duplicative payments to the Network totaling \$624,342 for services the Network was required by the Management Agreement to provide in exchange for its 15 percent management fee. Further, Success Academy incorrectly classified some of its expenses—specifically the management fee it paid to the Network—in its Fiscal Year 2015 financial statements and annual charter school report card submitted to SUNY for Harlem 3. Through those incorrect classifications, Success Academy significantly understated its administrative expenses and overstated its program services expenses, which made it appear that a much greater percentage of Success Academy’s expenses went towards program services than was actually the case.

In addition, Success Academy billed DOE \$50,825 for special education services for 6 out of 21 sampled students at Harlem 3 (28.6 percent) that were not documented as having actually been provided by Success Academy, and did not maintain adequate controls over \$24.8 million in inventory. Success Academy also did not maintain documentation to show consistently: that its expenses were reasonable, appropriate, adequately supported, and properly authorized; that it obtained appropriate proof of residency for students; and that its employees had required fingerprints or background checks completed and cleared before they began working in schools. In addition, Success Academy did not properly document or obtain approval for loans from a related party, the Network, valued at \$8.5 million. Finally, the Success Academy Board of Trustees failed to adequately monitor some aspects of the financial affairs of Success Academy and did not consistently follow the procedures for operation required by its bylaws.

These findings are discussed in the following sections of this report.

Success Academy Made Duplicate Payments to the Network Totaling \$624,342

In our review of Other Than Personal Service (OTPS) expenses, we found that \$67,055 of Harlem 3’s Fiscal Year 2015 expenses were paid to the Network for services that the Network was required by the Management Agreement to provide in exchange for a separate and larger payment—the Network’s \$1.6 million management fee paid by Harlem 3. Thus, the additional \$67,055 that Harlem 3 paid for those services was duplicative and unnecessary because the Network was already obligated to provide them at no additional cost, as explained below. Further, we found a total of \$624,342 paid to the Network on behalf of multiple Success Academy schools for activities that were the responsibility of the Network by virtue of the Management Agreement, and so payment for those services should have been included in the management fee paid to the Network.

Under the Management Agreement, the Network assumed responsibility—subject to the ultimate supervision of the Success Academy Board of Trustees (the Board)—for management and operation of each of Success Academy’s schools. Section 4 of the Management Agreement, titled “Duties and Obligations of the Network,” provides broad descriptions of the categories of services that Success Academy is entitled to receive from the Network. Among numerous other responsibilities, the Management Agreement says that the Network is responsible for:

- “Designing, implementing, and monitoring professional development activities” for both Success Academy’s “instructional personnel” and its “operational personnel;”

- “Designing . . . rules and requirements relating to . . . student testing” and “[c]reating internal assessments and conducting comparative data analysis of student assessment results;” and
- “Periodically providing . . . parents . . . with written School information or materials about their respective Schools. . . .”

Section 5.3 of the Management Agreement further provides that “all expenses incurred by the Network and its employees in the performance of [the Management Agreement] shall be included in the Network Fee and shall not be reimbursable to the Network.”

However, notwithstanding the abovementioned contractual provisions, when we reviewed the available supporting documentation for \$67,055 in Harlem 3 expenses, we saw that they were part of a larger group of expenses totaling \$624,342 paid to the Network on behalf of multiple Success Academy schools in exchange for professional development, student testing, and the provision of written materials for parents. All of those activities were the responsibility of the Network by virtue of the Management Agreement and as such were also paid for as part of the Network’s \$18.3 million 2015 fee (of which \$1.6 million was attributed to Harlem 3). A portion of the duplicative expenses, \$67,055, was allocated to Harlem 3, and the remaining \$557,287 was allocated to other Success Academy schools. Further, those payments were associated with contracts, invoices, and/or purchase orders totaling \$1,244,994. Consequently, Success Academy may have made additional improper payments to the Network beyond the \$624,342 of as much as \$620,652.⁷

As an example of duplicative expenses, the Network engaged a third-party vendor to provide “real time teacher training” to leaders at multiple Success Academy schools and on October 2, 2014, approved a purchase order for \$160,000 for that training. However, the training appears indistinguishable from the professional development services that the Network was obligated to provide in exchange for the management fee. Notwithstanding the Management Agreement, which expressly makes “implementing . . . professional development activities” a responsibility of the Network, on March 17, 2015, the Network paid the vendor \$45,500 with Success Academy funds, rather than Network funds. Of that amount, \$3,500 was charged to Harlem 3 and the remaining \$42,000 was charged to nine other Success Academy schools.

In addition to these being duplicate expenses, it appears that three of these expenses should not have been charged to Harlem 3 because they were for services provided to other Success Academy schools and one of these expenses was overstated because it was not properly allocated among schools in that some schools who received services were not charged.

A summary of these duplicative expenses is detailed in Table 2, below:

⁷ Based on our review of available contracts, invoices, and purchase orders, the duplicate Harlem 3 expenses were part of a larger group of purchases for as much as \$1,244,994. We saw that Success Academy made payments totaling \$624,342 on these contracts, invoices and purchase orders. Consequently, Success Academy may have made additional improper payments to the Network of up to \$620,652, i.e., the total contract, invoice and/or purchase order value of \$1,244,994 less the payments made on these contracts, invoices or purchase orders.

Table 2

Expenses Paid for by Harlem 3 and
Other Success Academy Schools
That Were Covered under
Management Agreement with the
Network during Fiscal Year 2015

Expense Category	Number of Improperly Billed Transactions	Total Amount Improperly Billed to Success Academy	Total Amount Improperly Billed to the Harlem 3	Total Amount Improperly Billed to Other Success Academy Schools
Professional Development	13	\$565,711	\$59,012	\$506,699
Student Assessments	1	\$56,540	\$5,952	\$50,588
Printing and Copying	1	\$2,091	\$2,091	\$0
Totals	15	\$624,342	\$67,055	\$557,287

The professional development payments listed above—which constitute the majority of Success Academy’s duplicate expenses—frequently involved the Network’s billing Success Academy for professional development instruction and activities that the Network functionally subcontracted to third parties, such as arranging for Success Academy employees “to participate in Touro College’s graduate programs and coursework in Education offered by Touro College online” and for the above-mentioned “real time teacher training” by outside consultants. Though Section 3.2 of the Management Agreement makes it clear that the Network had the authority to “subcontract any function or service it is obligated to provide,” it also states that “no such subcontract . . . shall relieve or discharge the Network from any obligation” under the Management Agreement, and no provision of the Management Agreement expressly authorizes the Network to pass the charges for professional development services it procured from third parties through to Success Academy.

In another example, Success Academy paid \$2,091 for printing and copy services for Harlem 3, specifically for printing family handbooks. However, the Management Agreement states that the Network is responsible for “providing students, parents, School personnel, and other School stakeholders of each of the Schools with written School information or materials about their respective Schools.”

A Network Finance Department official informed us that the Network is responsible for providing services, such as professional development directly, with Network staff, and that the management fee covers those costs. In addition, the official stated that the Network is responsible for paying third-party vendors that provide professional development services to *all* schools, which would

also be covered by the 15 percent management fee. However, the Network official stated that Success Academy was responsible for paying for expenses that were ancillary or “related to” the provision of professional development provided to *all* schools by third-party vendors, such as the rental of training facilities or food. In addition, according to the Network Finance Department official, Success Academy is responsible for paying for professional development provided to *individual* schools. However, the Finance Department official did not provide a citation to the Management Agreement or other support for charging the schools for ancillary services, or for the distinction between services provided to *all* schools and the same services provided one school at a time.

We were also informed that the Board did not review expenses that the Network billed to Success Academy to determine whether they were among the services covered by the management fee. Rather, the Board performed a “high level” review of each Success Academy school’s budget prior to the beginning of each academic year to determine whether any budget categories significantly deviated from prior year levels.

Success Academy Response: “The Comptroller claims Success Academy (‘Success Academy’ or the ‘Schools’) ‘made duplicate payments’ to its charter management organization Success Academy Charter Schools (the ‘Network’) because Success Academy paid for certain expenses that purportedly should have been covered by the management fee it paid to the Network. This is not correct.

The Comptroller is basing its conclusions on its own interpretation of the [Management Agreement]. That interpretation, however, is contrary to the actual terms of the Management Agreement and to the understanding of the parties to that contract, the Network and the Schools. The Comptroller is not entitled to rewrite the Management Agreement or to impose an understanding of the terms of the Management Agreement that is different than that of the parties thereto.

Moreover, for the past two years, including the year being examined by the Comptroller, Success Academy has been audited by BDO. As a regular part of its annual audits, BDO reviewed the propriety of expenses paid by Success Academy, as set forth in the Management Agreement between Success Academy and the Network, including those flagged by the Comptroller here. BDO has never raised an issue concerning these expenses. Neither has Success Academy’s authorizer, SUNY, which, as a part of the charter renewal and oversight process, rigorously reviews Success Academy’s financials every year

In fact, all of these expenditures were proper under the terms of the Management Agreement.”

Auditor Comment: Success Academy’s response mischaracterizes our finding and fails to establish the appropriateness of its schools’ payments to its management Network of an additional \$624,342 for services, such as professional development, that the Management Agreement expressly obligated the Network to provide in exchange for its \$18.3 million management fee. The audit findings are based on the plain language of the Management Agreement and Success Academy’s own classifications of the payments by the schools to the Network in its general ledger and reported in its certified financial statements and on the back-up documentation supplied to the auditors. These records reflect \$624,342 in payments by the schools to the Network for categories of expenses that are described in the Management Agreement as being covered in the Network’s fee.

Accordingly, where the Management Agreement makes the Network responsible for “[d]esigning, implementing, and monitoring professional development activities” for both Success Academy’s “instructional personnel” and “operational personnel,” the auditors identified \$565,711 paid to the Network on top of its management fee that was classified by Success Academy in its general ledger as “professional development services,” “professional development venue,” or “professional development materials.”

However, now that the audit has questioned the propriety of these payments to the Network, Success Academy wants to classify them differently. For example, in its response, Success Academy now claims that \$209,963 it paid to St. John’s University and classified in its general ledger as professional development, was actually payment for food and housing. Similarly, for \$172,500 paid to Touro College that Success Academy classified as “professional development,” Success Academy now claims was for teacher certification training and that this type of training came under an unstated but understood exemption from the definition of “professional development” covered by the Network fee. Thus, in making these claims, Success Academy justifies \$624,342 in Network payments with expense classifications that differ from those it reported in the financial records it notes were passed on by its accountants and State oversight entities.

In addition, the arguments now provided by Success Academy in its audit response are inconsistent with claims it has previously made about the function of the Network under its Management Agreement. Specifically, in a May 24, 2012 memorandum asking SUNY to approve an increase in the Network’s management fee, the Network (with Success Academy’s endorsement) represented that it and Success Academy had settled on an implementation of the Management Agreement that “involves relieving Schools of any tasks that are not directly focused on academic instruction and learning,” adding that the Network “has centralized these non-instructional tasks at the network level, enabling principals and teachers to focus solely on their critical task of educating students.” In accordance with Success Academy’s and the Network’s mutual interpretation, the Management Agreement thus obligated the Network to provide (or arrange for third-parties to provide) all of Success Academy’s professional development, student testing, and written school-to-parent communications services; as well as, in accordance with Section 5.3 of the Management Agreement, to pay for all costs associated with the provision of such services. Success Academy highlighted “professional development,” among other services, as a justification for a higher Network fee, noting that “the quantity and sophistication of Success Academy CMO’s respective teacher and principal training programs have significantly increased. . . . new School faculty members receive as much as four to five additional weeks of professional development during the summer than they would have received in 2007 (a 175% increase).”

Accordingly, after carefully reviewing Success Academy’s response, we find no basis to change our finding or our recommendation that Success Academy recoup the \$624,342 paid to the Network for expenses charged to Harlem 3 and other Success Academy schools that should have been included in the Network’s management fee.

Recommendations

Success Academy should:

1. Recoup the \$624,342 paid to the Network for expenses charged to Harlem 3 and other Success Academy schools that should have been included in the Network's management fee.

Success Academy Response: Success Academy rejected the audit-related findings and so did not address this recommendation.

2. Investigate other payments made on the contracts, invoices, and/or purchase orders totaling \$1,244,994, that were charged to Harlem 3 and other Success Academy schools, and recoup any additional payments that were made to the Network for expenses that should have been included in the Network's management fee.

Success Academy Response: Success Academy rejected the audit-related findings and so did not address this recommendation.

3. Compare the scope of services provided by the Network listed in the Management Agreement with the expense items in Success Academy school budgets during its annual budget reviews to ensure that it does not pay for goods and services that the Network is required to provide.

Success Academy Response: Success Academy rejected the audit-related findings and so did not address this recommendation.

Success Academy Classified Its Management Fee Expenses Inconsistently and Incorrectly

New York State Education Law § 2857(2) provides that,

[e]ach charter school shall submit to the charter entity and to the board of regents an annual report. Such [annual] report . . . shall be made publicly available. . . . and shall include . . . (a) a charter school report card, which shall include measures of the comparative academic and fiscal performance of the school. . . . Such measures shall include . . . total spending per pupil and administrative spending per pupil. [and] . . . (c) A certified financial statement setting forth, by appropriate categories, the revenues and expenditures for the preceding school year.

Charter school report cards must be submitted by August 1st, and certified financial statements must be submitted by November 1st for each year. The audit found that in connection with its annual report for 2015 (which includes both the certified financial statements and the charter school report card), Success Academy inconsistently and incorrectly classified certain expenses reported to SUNY, the Board of Regents, the public, and other stakeholders.

Success Academy's Fiscal Year 2015 Certified Financial Statements

In its Fiscal Year 2015 certified financial statements, Success Academy classified 8 percent of the management fee it paid to the Network as a "supporting services expense," notwithstanding that in the two preceding fiscal years it had classified the *entire* management fee (100 percent) as a "supporting services expense." As defined by applicable rules, "supporting services expenses" refers to activities other than program services, including management and general expenses, otherwise known as "administrative expenses." In its Fiscal Year 2015 certified financial statements, Success Academy reported supporting services expenses of \$10,701,909. However,

we determined that Success Academy understated its supporting services expenses by as much as \$16,857,189, or 61.2 percent.

The NYSED Fiscal Oversight Guidebook, *A Guide for Charter School Leaders, Employees, and Boards of Trustees* (the NYSED Fiscal Oversight Guidebook) states that charter schools “must follow generally accepted accounting principles for not-for-profit organizations. Charter schools should refer to FAS [Financial Accounting Standards] 117 which establishes standards for general purpose external financial statements provided by a not-for-profit organization.” In pertinent part, FAS 117 states,

[to] help donors, creditors, and others in assessing an organization's service efforts, including the costs of its services and how it uses resources, a statement of activities or notes to financial statements shall provide information about expenses reported by their functional classification such as major classes of program services and supporting activities. . . .

Program services are the activities that result in goods and services being distributed to beneficiaries, customers, or members that fulfill the purposes or mission for which the organization exists. . . .

Supporting activities are all activities of a not-for-profit organization other than program services. Generally, they include management and general, fund-raising, and membership-development activities. Management and general activities include oversight, business management, general recordkeeping, budgeting, financing, and related administrative activities, and all management and administration except for direct conduct of program services or fund-raising activities.

Further, the NYSED *Guidelines for Audits of the Financial Statements of Charter Schools* provides that,

[c]harter schools must use allocation methods that are fair and reasonable. . . . Such allocation methods, as well as the statistical basis used to calculate allocation percentages, should be documented and retained for review upon audit.

The audit found that Success Academy did not use allocation methods that were fair and reasonable, did not document its allocation methods in writing, and did not disclose changes in its allocation methods in its notes to its Fiscal Year 2015 certified financial statements. In Fiscal Year 2015, Success Academy significantly changed the way it allocated expenses in its certified financial statements from the methodology used in prior years. As noted, rather than allocating 100 percent of the management fee paid to the Network to supporting services as had been done in the prior two years, in Fiscal Year 2015, Success Academy allocated 8 percent of that fee to supporting services and allocated the balance—92 percent—to program services expenses. According to Success Academy, that allocation was based on an analysis of its payroll, which showed that 92 percent of Success Academy's payroll costs were for staff time devoted to program services and the remaining 8 percent was for staff time devoted to administrative services. Success Academy officials applied that payroll breakdown to *all* costs in certain other expense categories, including the management fee, which covers management and operation services, human resource and employment-related services, budgeting and financial reporting services, legal and compliance services, and procurement of insurance. However, the officials did not provide us with a basis for applying Success Academy's salary allocation percentages to the Network's management fee.

The management fees that Success Academy paid to the Network were paid in exchange for services that clearly constitute management and general activities as described in FAS 117, such as “oversight, business management, general recordkeeping, budgeting, financing, and related administrative activities, and all management and administration except for direct conduct of program services.” Therefore, the allocation methodology based on a payroll analysis employed by Success Academy in Fiscal Year 2015 did not result in allocations of its management fees that are consistent with FAS 117. Thus, that methodology did not result in an accurate statement of the way in which Success Academy spends its funds.

As detailed in Table 3 below, the allocation methodology employed by Success Academy for FY 2015 functioned to create the appearance that a greater proportion of Success Academy’s expenses were incurred for educational services than was actually the case.

Table 3

Comparative Analysis of Success
Academy Functional Expenses
Reported on Its Financial
Statements for Fiscal Years 2013,
2014, and 2015

Expenses	Fiscal Year 2013		Fiscal Year 2014		Fiscal Year 2015	
	Dollar Amount of Expense	Percentage of Total Expenses	Dollar Amount of Expense	Percentage of Total Expenses	Dollar Amount of Expense	Percentage of Total Expenses
General Education	30,095,202		47,634,229		117,611,180	
Special Education	7,447,352		6,495,579		16,037,881	
Program Services	37,542,554	81.6%	54,129,808	79.7%	133,649,061	92.6%
Management and General	8,442,962		13,754,498		10,701,909	
Supporting Services	8,442,962	18.4%	13,754,498	20.3%	10,701,909	7.4%
Total	45,985,516		67,884,306		144,350,970	

Had Success Academy not changed its allocation methodology in Fiscal Year 2015, it would have reported program services expenses of \$116,791,871, or 80.9 percent, and supporting services of \$27,599,099, or 19.1 percent, amounts consistent with earlier years. The 7.4 percent in supporting services reported for Fiscal Year 2015 based on the new methodology was neither fair nor reasonable. The inappropriate classification of expenses created the appearance that Success Academy was spending more money on program services and less on administrative costs than was actually the case. In addition, oversight agencies and other stakeholders would be unable to rely on Success Academy’s reports to accurately assess the fiscal performance of Success Academy and its individual schools and compare it with that of other educational corporations and charter schools.

Success Academy Response: “We, and our independent certified public accountants and auditors, BDO, disagree with the Comptroller’s conclusions, as well as his understanding and interpretation of FASB 117. . . . BDO conducted its audit in accordance

with generally accepted auditing standards and the New York State Charter School Audit Guide. BDO determined that Success Academy fulfilled its obligations with regard to its financial statements. BDO further reviewed Success Academy's allocation methodologies and found them to be fair, reasonable, and in accordance with generally accepted accounting principles. . . .

The decrease in the percentage of the Management Fee allocated to Management and General was the result of changes in the allocation methodology used and based upon management's review of the underlying facts. Both BDO and Success Academy agree that the services received by Success Academy schools from the Network go far beyond FASB 117's definition of Management and General, and, as such, a portion of the Management Fee should be allocated to the academic program at the schools."

Auditor Comment: Although Success Academy states that changes in its allocation methodology were "based upon management's review of the underlying facts," it does not state the relevant facts or provide documentation to support them. Thus in its response, Success Academy fails to provide the documentation that we sought throughout the audit to support the portion of the management fee that was allocated to the academic program. Success Academy states that Network services "go far beyond" management and general services. However, as far as can be discerned from the information provided to the auditors, Success Academy has not actually analyzed or measured what portion of the Network services are programmatic and what portion of the Network services are administrative by conducting periodic time and expense studies or by any other generally accepted methodology.

In its response, Success Academy stated that the "Network has a total of 291 employees" which "includes a pedagogical team of 57 employees who develop curriculum, oversee the Schools, and provide professional development." Those pedagogical employees constitute 19.6 percent of the Network's workforce. The remaining 234 Network employees provide administrative services including management and operation services (86 employees on its operations, information technology, and public relations teams); human resource and employment-related services (33 employees); budgeting and financial reporting services and procurement services (11 employees); and legal and compliance services (9 employees). (Success Academy did not specify the types of services that the remaining 95 Network employees provide; nor did it identify the amounts any of its employees was paid.) Based on an analysis of the Network's headcount information provided in Success Academy's response, Success Academy has not demonstrated that it is fair or reasonable for Success Academy to claim that 92 percent of Network management fees are for program services expenses.

Success Academy Response: "In addition, the Comptroller has no basis for his statement . . . that, 'In addition, oversight agencies and other stakeholders would be unable to rely on Success Academy's reports to accurately assess the fiscal performance of Success Academy and its individual schools and compare it with that of other educational corporations and charter schools.'

First, the Statement of Functional Expenses contained in our audited financial statements, clearly labels the Management Fees and clearly shows its allocation between Program Services (General Education and Special Services) and Management and General. As such, a reader of our financial statements could clearly ascertain the amounts expended.

Second, a review of other charter schools' financial statements shows that it is not uncommon for Management Fees to be allocated to both 'Program Services' and 'Management and General.'"

Auditor Comment: The fact that Success Academy separately reports its program services expenses and its management and general services expenses, as required, misses the point; the amounts reported are not fair and reasonable as detailed above. Therefore, oversight agencies and other stakeholders may not be able to rely on Success Academy's reports to accurately assess the fiscal performance of Success Academy and its individual schools and compare it with that of other educational corporations and charter schools. Similarly, the fact that other charter schools may allocate a portion of their management fees to both "Program Services" and "Management and General" also misses the point that Success Academy failed to provide any support for the percentages it applied based on the terms of its Management Agreement and the operations of its schools.

Harlem 3 Fiscal Year 2015 Annual Charter School Report Card

In its Fiscal Year 2015 annual charter school report card for Harlem 3 ("Report Card"), Success Academy classified half of its management fee (50 percent) as an administrative expense, which was inconsistent with both its Fiscal Year 2015 financial statements' allocation of 8 percent of its management fee as a supporting services expense and its certified financial statements for Fiscal Years 2013 and 2014, where 100 percent of the management fee was classified as supporting services. Success Academy could not explain why it used different methodologies and arrived at inconsistent allocations when reporting its administrative expenses to SUNY in these two different sets of reports, specifically its certified financial statements and its annual charter school Report Cards.

The Fiscal Year 2015 Report Card reported total administrative expenses of \$1,813,390 and administrative expenses per pupil of \$2,242. The Network Finance Director informed us that in reporting administrative expenses for the Report Card, Success Academy used a methodology that was developed by a former Network Controller and passed on to and used by the Network Finance Director since 2012. In the interim, Success Academy did not review that methodology to determine whether it was reasonable and appropriate. Further, Success Academy could not provide us with a basis for that methodology.

When reporting administrative expenses on the Harlem 3 annual school Report Card, Success Academy generally included all of the expenses reported in certain general ledger accounts which it identified as administrative in nature, such as insurance, equipment leases, and printing and copying. At the same time, Success Academy reported only half of the management fees paid to the Network as administrative expenses.

However, reporting only half of the management fee as administrative services appears inconsistent with NYSED Guidelines for cost allocation. Specifically, NYSED 2014-2015 Annual Report Guidelines for New York State Charter School expressly provides that,

[a]dministration and management of the charter school includes . . . those administrative and management services provided by other organizations or corporations on behalf of the charter school for which the charter school pays a fee or other compensation.

As detailed in Table 4 below, by reporting only half of the management fees paid to the Network as administrative expenses without a determination that the methodology was reasonable and appropriate, Success Academy deviated from the applicable NYSED guidelines and may have understated its total administrative expenses by as much as \$819,736, and administrative expenses per pupil by \$1,013 (31.1 percent).

Table 4

Harlem 3 Administrative Expenses
Reported by Success Academy in Its
Annual Charter School Report Card
and Calculated by Auditors for Fiscal
Year 2015

	Harlem 3 Administrative Expenses Reported by Success Academy	Harlem 3 Administrative Expenses Calculated by Auditors	Maximum Possible Dollar Amount of Understatement
Management Fee	\$818,767	1,638,503	\$819,736
Other Administrative Expenses	\$994,623	\$994,623	
Total Administrative Expenses	\$1,813,390	\$2,633,126	\$819,736
Number of Pupils	809	809	
Administrative Expenses Per Pupil	\$2,242	\$3,255	\$1,013

Success Academy Response: “The Comptroller also notes that the Management Fees allocated to Program Services and Management and General in the Annual Report that Success Academy submits to SUNY, its charter authorizer, are based upon different percentages than the ones used in our audited financial statements. This is true and appropriate.

The Annual Report is due approximately four weeks after the end of our fiscal year, and prior to our finalizing the year’s accounts and determination of final allocation methodologies. The financial statements contained in the Annual Report are clearly marked “unaudited.” In this regard, and for several years, Success Academy has allocated 50% of the management fee as an administrative expense in its unaudited financial statements, while it is finalizing the allocations between Program Services and Management and General.”

Auditor Comment: In its response, Success Academy essentially states that it arbitrarily and repeatedly reports 50 percent of the management fees that it pays each year as administrative expenses in its report card which must be submitted by August 1st because it does not decide how to allocate prior fiscal year expenses until it completes its certified financial statements which must be submitted by November 1st. This is not fair, reasonable, or appropriate. As previously stated, reporting only half of the management fee as administrative services appears inconsistent with NYSED Guidelines for cost allocation. Specifically, NYSED 2014-2015 Annual Report Guidelines for New York State Charter School expressly provides that,

[a]dministration and management of the charter school includes . . . those administrative and management services provided by other organizations or corporations on behalf of the charter school for which the charter school pays a fee or other compensation.

The fact that the financial statements have not yet been audited does not preclude Success Academy from analyzing its expenditures and making a fair a reasonable estimation of what portion of its expenses should be reported as administrative expenses in its annual report card. As previously stated, the NYSED *Guidelines for Audits of the Financial Statements of Charter Schools* provides that “[c]harter schools must use allocation methods that are fair and reasonable. . . Such allocation methods, as well as the statistical basis used to calculate allocation percentages, should be documented and retained for review upon audit.”

Success Academy Response: “Success Academy’s authorizer and the New York State Education Department both receive the Annual Report and audited financial statements. As such, both are able to see differences between our unaudited and audited results of operations and allocation of expenses.”

Auditor Comment: The annual report charter school report card does not provide the same level of detail as the statement of functional expenses. The report card shows only the total amount of reported administrative expenses. It does not show the categories or percentages of expenses included in this total. Therefore, SUNY and NYSED would not necessarily be aware of the inconsistencies in Success Academy’s reporting.

Recommendations

Success Academy should:

4. Comply with generally accepted accounting principles and NYSED guidelines and develop, document, and utilize functional expense allocation methodologies that are fair and reasonable.

Success Academy Response: Success Academy rejected the audit-related findings and so did not address this recommendation.

5. Comply with NYSED guidelines and include all management fees paid to the Network in administrative expenses reported on its annual charter school report cards.

Success Academy Response: Success Academy rejected the audit-related findings and so did not address this recommendation.

Success Academy Billed DOE \$50,825 for Special Education Services at Harlem 3 That Were Not Supported by School Records as Having Been Provided by the School

Success Academy billed DOE for \$50,825 in mandated special education services for 6 of 21 of sampled special education students at Harlem 3 where such billings were not supported by Success Academy records. The 6 instances of apparently inaccurate billing account for 28.6

percent of the 21 sampled special education students and 24 percent of their associated special education costs which totaled \$216,000. As is discussed in more detail below, the \$50,825 in unsupported billing involved Success Academy's billing for greater levels or a greater duration of special education services than it documented were actually provided to students.

Success Academy submits invoices to DOE bi-monthly for per pupil funding for general and special education services that it provides to students who reside in New York City. For Fiscal Year 2015, Success Academy was entitled to receive \$13,777 per year for each of its students who reside in New York City. Further, Success Academy was entitled to receive an additional \$10,390 per year for each student that was mandated to receive and was provided special education services for between 20 to 60 percent of the school instructional week, and an additional \$19,049 per year for each student that was mandated to receive and was provided special education services for more than 60 percent of the school instructional week.⁸

New York State Education Law § 2853 (4)(a) states that,

[s]pecial education programs and services shall be provided to students with a disability attending a charter school in accordance with the individualized education program recommended by the committee or subcommittee on special education of the student's school district of residence. The charter school may arrange to have such services provided by such school district of residence or by the charter school directly or by contract with another provider.

Success Academy officials informed us that Success Academy provides counseling services to students directly with its own employees and that DOE provides students with all other related services either directly with DOE employees or indirectly with contracted providers who are engaged and paid by DOE. This means that Success Academy arranged to have DOE provide students with nearly all mandated related services, such as occupational therapy, speech therapy, and physical therapy, and that Success Academy would provide all other mandated special education services directly.

The federal Individuals with Disabilities Education Act Section 300.34(a) provides that,

[r]elated services means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools, and parent counseling and training.

DOE states in its Vendor Portal User Guide for Online Invoice Submission that each student's special education service category (i.e., less than 20 percent, between 20 and 60 percent, or

⁸ According to NYSED, the minimum time necessary for special education category classification purposes is as follows:

- 20 percent to 59 percent category - Special education services of not less than 5 hours per week at the elementary level and not less than 5.5 hours per week at the secondary level.
- 60 percent+ category - Special education services a minimum of 3 hours of each school day of each school week at the elementary level and a minimum of 3.5 hours of each school day of each school week at the secondary level.

more than 60 percent) and service dates should be “based on services provided by the school and mandated by the IEP.”

However, Success Academy did not provide documentation to support its calculation of the services categories or duration for 6 of 21 (28.6 percent) sampled Harlem 3 students and accordingly overbilled DOE by \$50,825. Specifically, Success Academy calculated service level categories based only on the type and level of special education services that students were mandated to receive rather than the documented type and level that the school actually provided. Based on a review of Individualized Education Programs (IEPs) and available Success Academy special education service provision records, Success Academy failed to maintain records that reflected that Success Academy had provided certain mandated special education services to 10 of 21 sampled Harlem 3 students (47.6 percent). The reduced level of services impacted the calculation of 5 of those 10 students’ special education categories (i.e., less than 20 percent, between 20 and 60 percent, or more than 60 percent) and consequently the per-student rate that Success Academy was entitled to charge DOE for serving those students. For those 5 students, Success Academy incorrectly billed DOE \$49,396 for mandated special education services that were not provided at all or were not fully provided.

Success Academy records reflected that it also improperly calculated the length of time that one student received special education services and overbilled DOE \$1,429.

Success Academy Response: “The Comptroller’s report reflects a profound misunderstanding of special education invoicing. For three seventh grade students, the Comptroller claims that Success Academy inflated the amount it was supposed to bill by \$2,598 because it incorrectly based its invoicing on a 25-hour instructional week rather than a 27.5-hour instructional week. But no charter school (including Success Academy) bases its special education billing on the number of hours in an instructional week because special education is not billed that way.

The Comptroller further alleges that Success Academy did not maintain records reflecting that certain mandated special education services were provided to 10 SA Harlem 3 students. Of those 10, he claims, Success Academy overbilled for 5 students by \$49,396 because it purportedly did not provide mandated special education services at all or in part. For another student, the Comptroller claims, Success Academy overbilled by \$1,429 because it purportedly miscalculated the length of time the student received special education services. The chart below evidences that Success Academy properly provided mandated special education services for all 10 special education students identified by the Comptroller, and billed appropriately.”

Auditor Comment: We obtained an understanding of special education invoicing from Network pedagogical and Finance personnel, who were identified to us by Success Academy as the individuals best able to provide us with information. Based that information as well as our review of relevant New York State Education laws and NYSED and DOE guidance, we evaluated whether Success Academy appropriately billed DOE.

In its response, Success Academy correctly noted that there is “a special minimum ‘180-minute/5-period-per-week’ subrule for grades 7-12.” Consequently, we modified the report and did not cite Success Academy’s billing DOE \$2,598 for one student.

During the course of the audit, we repeatedly requested that Success Academy provide us records to document that mandated special education services were provided. On September 9, 2016, Success Academy informed us that certain special education tracking

records were not available for our audit scope period. On December 16, 2016, more than three months later, Success Academy, in connection with its formal, written response to the report, provided us with some of the special education tracking records that we specifically requested and that it previously maintained were not available.

The newly provided documentation did not significantly alter the report's findings. The report cited Success Academy for billing DOE for \$50,825 in mandated special education services for 6 of 21 of sampled special education students at Harlem 3 where such billings were not supported by Success Academy records. On December 16, 2016, Success Academy provided us documentation that it contends supports the billing for special education services provided to one of those six students for which it invoiced DOE a total of \$10,390.

Further, the report cited Success Academy for failing to maintain records that reflected that Success Academy had provided certain mandated special education services to 10 of 21 sampled Harlem 3 students. On December 16, 2016, Success Academy provided us additional documentation. However, the documentation Success Academy provided was insufficient to alter the report's findings because it did not show that students received all of the special education services mandated by their IEPs.

We also note that although Success Academy's newly-produced documentation appears to support billing for one student, it is, in some cases, inconsistent with the records that Success Academy previously provided. This fact, along with inconsistencies we identified in records throughout the audit, raise independent concerns about the reliability of the newly produced information. Moreover, the maintenance of accurate and reliable records is a fundamental component of providing mandated special education services.

Recommendations

Success Academy should:

6. Periodically compare students' IEPs to special education service provision records to ensure that students are provided with all special education services as mandated by their IEPs.

Success Academy Response: Success Academy rejected the audit-related findings and so did not address this recommendation.

7. Reimburse DOE for special education services that were not provided at all or were not fully provided.

Success Academy Response: Success Academy rejected the audit-related findings and so did not address this recommendation.

8. Calculate special education service categories and bill DOE only for those special education services that are mandated by students' IEPs and that are provided by Success Academy.

Success Academy Response: Success Academy rejected the audit-related findings and so did not address this recommendation.

9. Ensure that it maintains copies of IEPs and other special education documentation for all special education students as required by its Charter Agreement.

Success Academy Response: Success Academy rejected the audit-related findings and so did not address this recommendation.

Success Academy Did Not Maintain Adequate Controls over Inventory Valued at \$24.8 Million

Success Academy did not maintain adequate controls over its fixed assets inventory as required by its Charter Agreement. Specifically, Success Academy did not maintain detailed records listing each individual asset of sufficient value and the asset's associated purchase date, purchase value, description (including make, model, and serial number), asset tag number, the individual to whom it was assigned, and its location. Rather, Success Academy had two separate inventory lists—one maintained by the Network's Technology Department and the other maintained by the Finance Department. However, the list maintained by the Technology Department recorded only Success Academy technology assets such as computers, smartphones, and cameras and did not record asset purchase dates and values, the individuals to whom assets were assigned, and detailed locations. Moreover, the list maintained by the Finance Department did not record assets individually, but instead recorded only bulk purchases of assets, and generalized asset descriptions and locations. For example, on August 8, 2011, Success Academy purchased office furniture for Harlem 3 at a cost of \$26,976. In its inventory record for that purchase, Success Academy did not list the individual items that were purchased, their tag numbers, the individual(s) to whom they were assigned, or the particular locations within the school where the items were located.

In its Fiscal Year 2015 certified financial statements, Success Academy reported that it had property and equipment valued at \$24.8 million (net of depreciation and amortization) comprised of renovations and improvements, software, equipment, and furniture and fixtures.

Success Academy's Charter Agreement Monitoring Plans states that it,

shall maintain . . . records in its offices for inspection by the Trustees and the Regents [including an] [i]nventory of all assets of the Education Corporation that have been purchased with public funds including grant funds.

Further, the NYSED Fiscal Oversight Guidebook states that charter schools must inventory all assets of the school and specifies several "key internal control practices that charter schools should practice" including:

- Maintaining "complete, up-to-date inventory records" which should include "an itemized description of each asset listing make, model, serial number, and asset class . . . ; purchase date and purchase value . . . ; accumulated depreciation and the amount of current year depreciation; and the funding or financing source(s) used to acquire the asset;"
- Conducting an "annual physical inspection . . . to verify that all school assets are present and accounted for in assigned areas, in usable condition, and accurately recorded on the school's financial statements;"
- Designating "an individual or individuals with explicit responsibility for maintaining a system of fixed assets inventory control;" and

- Marking or tagging “[a]ll fixed (physical) assets . . . with ownership identification decals or labels.”

For that reason, Success Academy’s *Financial Policies & Procedures* provides that,

At the time of acquisition, all technology equipment is identified, tagged and entered into the detailed inventory system. This database is managed in conjunction with the technology department. The tags are placed in a visible area and provide a clear method of tracing the asset to the inventory system.

However, as detailed above, Success Academy did not maintain inventory records in accordance with the above-mentioned standards; nor did it conduct annual inventory inspections, notwithstanding the mandates of the NYSED Fiscal Oversight Guidebook and Success Academy’s *Financial Policies and Procedures*. Thus, we were unable to determine whether Success Academy’s purchases were properly accounted for and being used only for allowed purposes.

Without an adequate inventory system, Success Academy lacks assurances that goods it purchases are utilized only for properly authorized purposes and that public funds are being spent appropriately. Moreover, inventory controls are essential to reduce the possibility of waste, misuse, and theft. Success Academy maintained that it was not cost-effective or feasible to employ these inventory controls.

Success Academy Response: “The Comptroller claims that Success Academy did not maintain adequate controls over its fixed assets. This is not correct.

The NYSED Guidebook is, by definition, just a guide. It is not a list of requirements or ‘mandates’ that must be complied with; rather, it is a resource charter schools can look to for guidance concerning their operations and controls. . . .

[T]he Guidebook states, ‘The purpose of this section is to provide charter schools with an understanding of key internal controls for which they will be accountable and a description of **recommended** practices for achieving those controls. ***This document is not intended to substitute for sound management's judgment nor should it be considered all-inclusive*** . . .’ (bold and italics added [by Success Academy]).

The NYSED Guidebook further states, ‘When considering the implementation of any internal control, charter school operators should take into consideration that the potential cost of establishing any specific internal control should not exceed its expected financial or operational benefits.’ We have determined that the inventorying of our fixed assets would exceed any financial or operational benefits, and falls squarely within the above Guidance. . . .

Software as of June 30, 2015 was \$9,303,508, or 37.5%, of our net fixed assets. Our software is used daily to operate our schools. As software by its very nature is an intangible asset, it too does not lend itself to a physical inventory.

Equipment represented \$2,660,814, or 10.7%, of our net fixed assets as of June 30, 2015, and consisted of SMART boards (which are affixed to the walls in our classrooms), laptop computers, iPads, smartphones, and other technology-related equipment. As the Comptroller has pointed out, we maintain a detailed listing of these assets in our technology department.

The last category of fixed assets is furniture and fixtures. As of June 30, 2016, furniture and fixtures was \$1,804,913, or 7.3%, of our net fixed assets. These assets represent classroom and office furniture (primarily desks, chairs, bookcases, rugs) for our scholars and staff, and are used daily. The cost of maintaining and monitoring a detailed physical fixed asset tracking system over thousands of scholars' chairs and desks, for example, where the average cost of a scholar chair and desk is approximately \$60 and \$105, respectively, would far outweigh any expected financial or operational benefit that could be derived from such a system.

Accordingly, we believe that we have adequate physical and internal controls over our fixed assets, and the cost to implement a detailed physical asset tagging and inventory system would far outweigh any financial and operational benefits.”

Auditor Comment: Success Academy’s response tacitly acknowledges the specific facts reported in our finding, including principally that it did not maintain detailed records listing each individual asset of sufficient value including the asset’s purchase date, value, the individual to whom it was assigned, and its location. Such assets include valuable technology purchased with public funds such as computers, smartphones, and cameras—portable items potentially susceptible to loss, misappropriation and theft. Records related to technology assets specifically did not include basic information such as purchase dates and values, the individuals to whom the assets were assigned, and the locations of the assets. Moreover, Success Academy does not dispute the fact that it did not conduct annual inventory inspections of those or of other valuable assets such as furniture, fixtures, and equipment valued at \$4.47 million, or its software valued at \$9.3 million.

Instead, Success Academy states that as a matter of management judgment and discretion it has chosen to disregard inventory practices recommended to charter schools by the NYSED Fiscal Oversight Guidebook because it has determined that “the cost to implement a detailed physical asset tagging and inventory system would far outweigh any financial and operational benefits.” It is not clear however that Success Academy has assessed the prospective cost of completing its existing inventory system. For example, Success Academy already physically tags its technology equipment, and it is not self-evident that the additional cost of recording basic information in its existing inventory records, such as the purchase date and value, location, and assigned user of each piece of new equipment, would exceed the value of the enhanced safeguarding of those assets. Accordingly, after carefully reviewing Success Academy’s response we find no basis to change our finding.

Recommendation:

Success Academy should:

10. Employ key internal control practices for inventory as specified in the NYSED Fiscal Oversight Guidebook.

Success Academy Response: Success Academy rejected the audit-related findings and so did not address this recommendation.

Success Academy Did Not Document That a Significant Portion of Its Expenses Were Reasonable, Appropriate, Adequately Supported, and Properly Authorized

Success Academy did not comply with its *Financial Policies and Procedures* and credit card procedures and ensure that it documented that all purchases made by Network and Success Academy employees on behalf of schools were reasonable, appropriate, adequately supported, and properly authorized. We found inadequate oversight to ensure that the established policies were consistently followed.

Other Than Personal Services Expenses

Success Academy procures goods and services for schools in two ways: through a central purchasing process or, under certain circumstances, with a credit card, and the audit found weakness with both methods. The Network Supply Chain Management Department is responsible for centrally purchasing goods and services that are supplied to all Success Academy schools. In addition, Success Academy school staff may be issued credit cards to purchase items that cost less than \$500 or to purchase items that cost more than \$500 and are not payable by check. Based on Success Academy's records, we estimate that during Fiscal Year 2015, Harlem 3's OTPS expenses totaled \$2,485,396, of which \$1,749,955 was purchased centrally and \$735,441 was purchased using credit cards. Of these, we sampled purchases totaling \$320,431, and questioned purchases totaling \$312,088 (97.4 percent) because we found that they lacked adequate documentation to establish that they were reasonable, appropriate, adequately supported, and/or properly authorized as detailed below.

Centralized Purchases

We reviewed a sample of 26 centralized purchases for Harlem 3 totaling \$217,987. Based on our review, 25 of these purchases (96.2 percent) totaling \$215,327 (98.8 percent) lacked adequate documentation to establish that they were reasonable, appropriate, adequately supported, and/or properly authorized.

The Success Academy *Financial Policies and Procedures* state,

[f]or all purchases/contracts where the total will be greater than \$25,000, a rationale for choosing the vendor must be provided. The Operations Associate or other network or school staff must obtain a minimum of three bids and choose what s/he esteems to be the best deal, taking into consideration both quality and cost. All bids must be submitted in writing and stored with the final contract once the decision has been made. For single-source providers, written documentation of a cost analysis must be provided along with the contract.

However, the Success Academy *Financial Policies and Procedures* also provide that,

[w]ith the approval of the Chief Financial Officer, the formal bidding process may be bypassed provided a prior business relationship with the specific vendor is already established and the vendor has previously provided similar goods/services as to what the purchaser is seeking.

Success Academy uses a third-party software system to process purchase requests, maintain purchase documents such as invoices and allocation methodologies, and document purchase approvals. The Success Academy *Financial Policies and Procedures* provide for varying levels of authorization based on the dollar amount of the purchases.

However, Success Academy did not ensure that Network employees complied with vendor selection rules. Although 16 of the 26 centralized purchases for Harlem 3 exceeded the competitive bidding and contracting threshold of \$25,000, Success Academy did not competitively procure any of these goods and services, did not maintain documentation required to bypass competitive procurement procedures (i.e., sole source justifications, cost analysis, or the Chief Financial Officer's approval), and did not maintain vendor contracts. These 16 purchases were related to 3 or more vendors that provided services including advertising, website design, software and computer support, and data warehousing.

Success Academy Response: "The Comptroller alleges that 16 centralized purposes over the threshold of \$25,000 lacked documentation showing that they were properly authorized. This is not true. The 16 cited purchases all relate to 4 vendors who provide critical services to Success Academy: CUNY Graduate School, Makeable LLC, CZ Solutions, and NYI-NJ LLC.

The expenditures for CUNY were based on a three-year contract entered into on March 13, 2013, and signed by the Network's Chief Operating Officer. The contract and payment secured space to conduct Summer Training programs in 2013, 2014, and 2015. This contract was reviewed and approved as part of Success Academy's annual budget process.

Makeable provided services for Success Academy's Scholar Recruitment campaign. Success Academy engaged Makeable after a thorough competitive bidding process. . . .

CZ Solutions Inc. provides technology services to Success Academy schools. The expenditures cited are covered by a contract, initially entered into on May 9, 2012, and renewed on April 15, 2015 (see Exhibit V-3). As a longtime provider of services to Success Academy, and a pre-existing vendor, CZ required no further documentation to support its selection.

NYI-NJ LLC provided co-location space and services related to the housing of our servers in their facility. The contract was entered into on April 16, 2012 and signed by the Network's then Chief Financial Officer."

Auditor Comment: In its response, Success Academy generally did not provide us with documentation to show that it followed its own procurement selection rules and did not provide us with copies of contracts that it purportedly entered into.

Success Academy did not state how it procured services from two vendors—CUNY and NYI-NJ LLC—or provide us with either documentation of a competitive bidding process or documentation to justify and authorize a single-source or prior-relationship procurement. Further, Success Academy did not provide us copies of the contracts that it purported to have entered into with those vendors.

For another vendor, Makeable, Success Academy provided us documentation to support that it complied with its procurement rules and selected the vendor through a formal bidding process. However, Success Academy did not state that it entered into a contract with the vendor or provide us a copy with a copy an executed contract.

Conversely, for the remaining vendor, CZ Solutions, Inc., Success Academy provided us with copies of contracts. However, Success Academy did not comply with its procurement rules because it did not provide us documentation to show that the Chief Financial Officer approved bypassing the formal bidding process.

Furthermore, based on our review of the 26 centralized purchases for Harlem 3, 25 purchases violated additional procurement rules. Specifically, in addition to the 16 purchases that violated vendor-selection rules, we identified the following exceptions:

- 2 purchases were not appropriate because it appears they were not related to the Harlem 3 operations. Rather, these purchases were for advertising to recruit students for other Success Academy schools;
- 21 purchases were not supported at all (7 purchases) or were not adequately supported (14 purchases) because they lacked invoices, allocation schedules detailing how costs were split among Success Academy schools or other entities, and/or proof of payment; and
- 23 purchases lacked documentation to show approvals (13 purchases) or lacked the appropriate level of approval (10 purchases).⁹

Success Academy Response: “The Comptroller alleges that SA Harlem 3 paid for two charges that were unrelated to SA Harlem 3 operations. Both charges relate to the 2014-15 Scholar Recruitment Campaign and stem from 29 invoices paid to our recruitment agency that were initially paid by the Network and subsequently allocated to SA Harlem 3 along with all other SA schools. This total allocation amounted to \$752,940. Upon our review of this list of transactions, we found only one charge which specifically referenced only one SA school, and that charge was for \$538.90. Thus, 99.93% of the transactions in this allocation were correctly identified and were correctly charged to SA Harlem 3. The portion of the \$538.90 charge that should have been allocated solely to SA Washington Heights applicable to SA Harlem 3 is \$34.77.”

Auditor Comment: Based on available documentation, it is not clear what portion of the \$752,940 is attributable to Harlem 3. The purchase order service descriptions for much of the \$752,940 indicate that these expenses should have been charged to the Network and to new charter schools. Purchase orders for expenses totaling \$226,000 state that the “total cost of the FY15 marketing expense is \$480,000 and will stay at the network.” Further, other purchase orders totaling \$51,013 state that purchase orders are for advertising for new public charters.

Success Academy Response: “While performing their on-site testing, the Comptroller's staff provided the Network with a list of over 100 transactions and requested that Network staff pull the files on-site. The Network was not allowed sufficient time to identify, compile, and review the documents requested. Further, these missing documents were not listed in subsequent meetings and correspondence as missing documents. Certainly, upon

⁹ Based on our review, 25 of 26 sampled Harlem 3 centralized purchases were not reasonable, appropriate, adequately supported, and/or properly authorized. These 25 purchases were cited because they violated one or more procurement rules. Therefore, the number of purchases cited for each individual infraction (i.e., the number of purchases that did not comply with procurement selection rules, were not appropriate, were not adequately supported, or were not properly authorized) does not add up to 25.

request and with a reasonable amount of notice and time, SA would have been able to provide the requested documents.”

Auditor Comment: As previously noted, we reviewed a sample of 26 centralized purchases for Harlem 3. From August 11, 2016 through September 19, 2016, the auditors repeatedly requested to review documentation to establish that Success Academy’s purchases were reasonable, appropriate, adequately supported, and/or properly authorized. Between September 23, 2016 and September 29, 2016, we met with Network Finance, Supply Chain, and Legal Advisory Department employees and identified the transactions that we wanted to review. Network personnel retrieved available documentation from Success Academy’s accounting and purchase order systems, and from vendor files. As of no later than September 29, 2016, Success Academy was aware of each and every transaction that we reviewed and was aware of what information it was able to provide us and what documentation was missing. Furthermore, on October 4, 2016, we emailed Success Academy to request missing supporting documentation for transactions “including invoices, purchase orders, receipts, proof of payment, and if applicable, approvals, contracts, and allocation schedules.”

Success Academy had ample time to review its records and provide us with missing documentation. However, Success Academy did not provide that documentation until December 16, 2016—two and a half months after the above-described events. Moreover, Success Academy’s records are still deficient and the newly provided documentation evidences that additional duplicative payments totaling \$1,117,886 were made by Success Academy to the Network for professional development services that should have been provided under the Management Agreement.

Based on our review of the newly provided documentation, Success Academy provided adequate supporting documentation and appropriate authorizations for some but not all cited purchases. Purchases were still deficient in that:

- 13 purchases were not supported at all (1 purchase) or were not adequately supported (12 purchases) because they lacked invoices, allocation schedules detailing how costs were split among Success Academy schools or other entities, and/or proof of payment; and
- 17 purchases lacked documentation to show approvals (7 purchases) or lacked the appropriate level of approval (10 purchases).

Credit Card Purchases

We reviewed a sample of 113 Harlem 3 credit card purchases totaling \$102,444. Based on our review, 87 of these purchases (77 percent) totaling \$96,761 (94.5 percent) were not appropriate based on the dollar amount of the expense, or because they lacked a description of the business purpose or adequate supporting documentation, or were not properly approved. In addition, employees improperly paid sales tax of \$2,034 on 42 purchases and did not review 38 purchases in a timely manner.

Success Academy’s *Credit Card Approver and User Responsibilities* document states that “credit cards should only be used for purchases that are budgeted, authorized, and essential.” Further, Success Academy’s *Financial Policies and Procedures* state that “credit cardholders must retain the original receipt for each transaction” and that a credit cardholder who fails to submit receipts, they “will be held personally liable for charges made to the card.” Success Academy uses a third-

party reporting software to track credit card expenses. At the end of each month, credit cardholders must review their purchases, upload receipts, and record the business purpose for which each expense was incurred. Afterwards, school Business Operations Managers review and approve school employees' purchases and School Leaders approve the Business Operations Managers' purchases.

However, Success Academy did not ensure that school employees complied with these procedures, which were designed to ensure that expenses were incurred only for legitimate business purposes. Specifically, 87 of the 113 sampled purchases were not appropriate, adequately supported, or properly approved as follows:

- 57 purchases were not appropriate because they exceeded the credit card purchase limit of \$500, without documentation establishing that they were not payable by check;
- 59 purchases were not adequately supported because their supporting documentation did not state an adequate description of the business purpose for these expenses or because they lacked adequate supporting documentation; and
- 1 purchase was not properly approved because an employee approved her own purchase.¹⁰

Success Academy Response: "The Comptroller alleges that certain credit cards purchases reviewed were not appropriate because they lack sufficient description, supporting documentation, or approval. This claim reflects form over substance. While there may be some discrepancy between day-to-day practice and rigid internal rules that Success Academy will update to reflect its increased size and complexity, every purchase cited was plainly in furtherance of school operations and mission.

The credit card program administered by Success Academy has evolved since it was adopted and memorialized in the FY2013 Financial Policies and Procedures manual. For example, the \$500 purchase limit was implemented when Success Academy had only 14 schools in its network. As the organization scaled, more purchasing responsibilities in higher amounts were deemed appropriate to be handled by the schools. We revised the policy in the credit card user agreement and removed the single transaction limit. Therefore, the 57 transactions that were flagged as exceeding a \$500 limit are not, in fact, a violation of SA policy. Additionally, as Success Academy utilizes ever more robust electronic tools, it no longer needs nor expects staff to manually enter the names of participants at meals or other events. SA intends to revise its Financial Policies and Procedures manual for FY2017 to be in line with all policies communicated to staff."

Auditor Comment: Success Academy developed fiscal policies and procedures and certified to SUNY that it had adequate financial controls. However, Success Academy did not ensure that these controls were consistently followed. Rather than acknowledge the deficiencies cited in this report and take corrective action to address them, Success Academy disavowed its "rigid internal rules" in favor of weaker controls which Success Academy maintains are necessitated by the growing number of schools. However,

¹⁰ Based on our review, 87 of 113 sampled Harlem 3 credit card purchases were not appropriate, adequately supported, and/or properly authorized. These 87 purchases were cited because they violated one or more credit card purchasing rules. Therefore, the number of purchases cited for each individual infraction (i.e., the number of inappropriate, inadequately supported, and improperly approved expenses) will not add up to 87.

Success Academy's logic is flawed. The growing number of schools increases rather than decreases the need for a reliable system of financial controls.

The importance of internal controls is embedded in the charter authorization and renewal process and contained in Success Academy's Charter Agreement. Section 5.1(a) of Success Academy's Charter Agreement requires it to "at all times maintain appropriate governance and managerial procedures and financial controls." Further, the SUNY Charter Renewal Benchmarks include maintaining appropriate internal controls and procedures. According to SUNY, "the following elements are generally present:

- the school follows a set of comprehensive written fiscal policies and procedures;
- the school accurately records and appropriately documents transactions in accordance with management's direction, laws, regulations, grants and contracts;
- the school safeguards its assets; . . .
- the school takes corrective action in a timely manner to address any internal control or compliance deficiencies identified by its external auditor, the Institute, and/or the State Education Department or the Comptroller, if needed."

These benchmarks are used "to determine whether the school has had fiscally responsible practices in place during the last charter period" so that SUNY can "determine with greater precision whether the school will operate in a fiscally sound manner during the next charter period, a finding that the New York Charter Schools Act requires the SUNY Trustees to make."

Recommendations

Success Academy should:

11. Ensure that Network and Success Academy employees comply with its policies and procedures related to purchasing; competitively procure goods and services or document the basis for sole source procurements; obtain required purchase authorizations; and maintain procurement, contract, purchasing, and payment records.

Success Academy Response: Success Academy rejected the audit-related findings and so did not address this recommendation.

12. Ensure that credit cardholders comply with its policies and procedures; purchase only goods and services that are budgeted, authorized, essential, and within spending limits; do not pay sales tax on exempt purchases; review purchases in a timely manner; and provide adequate supporting documentation for purchases.

Success Academy Response: Success Academy rejected the audit-related findings and so did not address this recommendation.

Personnel Services

Success Academy did not maintain documentation to support that employee salaries and bonuses were reasonable, appropriate, and authorized. Success Academy informed us that it establishes salary pay ranges for employees based on their titles and length of service. Further, Success

Academy informed us it sends new employees offer letters and returning employees placement letters each year which document each employee's name, title, work location, and authorized salary. These letters are supposed to be maintained in employee files.

However, Success Academy did not consistently maintain all of this documentation in its files. We found that Success Academy: (1) did not maintain any documentation to support bonuses totaling \$86,043 paid to 19 of out of 44 sampled employees reportedly assigned to Harlem 3; (2) did not maintain current offer or placement letters to establish that 7 employees (15.9 percent) were in fact employed at Harlem 3 during Fiscal Year 2015 and were thereby authorized to receive salaries totaling \$451,000, plus benefits; and (3) did not issue and maintain current offer or placement letters for another 16 employees (36.3 percent) that specified their work location so that we could not determine from the documentation provided whether those 16 employees worked at Harlem 3 or at another Success Academy school and therefore, whether their salaries totaling \$508,612 plus their benefits were properly reported as a Harlem 3 payroll expense.

In addition, Success Academy improperly reported as a Harlem 3 expense the salary and benefits of a Leadership Resident who worked at another Success Academy school in Fiscal Year 2015. During that year, this employee received a salary of \$78,466 plus benefits. Success Academy also paid one Harlem 3 employee a salary that exceeded the \$158,183 maximum salary for his title of Senior Leader and instead had a placement letter on file authorizing a salary of \$175,000, which is \$16,817 (10.6 percent) more than the maximum amount allowed for his title. Success Academy informed us that the salary ranges provided to us were "were general guidelines, and modifications were made in individual cases as appropriate." However, Success Academy did not maintain documentation to show that modifications to this employees' salary were justified and authorized.

These undocumented and/or improperly recorded payments totaled \$1,054,895. This represents 17.1 percent of Harlem 3's total Fiscal Year 2015 payroll costs of \$6,168,420.

Success Academy Response: "During FY2015, the 19 bonuses the Comptroller references were calculated based on clear, uniform criteria. . . . Operations staff at each school were notified of performance ratings and bonuses for their team by email (see Exhibit V-7). Thus the bonuses were supported by the compensation policy then in place, and were appropriately documented."

Auditor Comment: During the course of the audit, the Network Human Resources Director informed us that bonuses were awarded and approved annually by the Managing Director of Schools, the Chief Financial Officer, and the Chief Executive Officer. Further, the Network Human Resources Director informed us that she and the Finance Department maintained bonus records.

On September 1, 2016, Network personnel retrieved employee compensation records from employee personnel files. On October 4, 2016, we emailed Success Academy to inform them that employee files did not include documentation to support bonuses paid to Success Academy employees. On December 16, 2016, more than two months later, Success Academy provided us documentation related to bonuses in connection with its formal, written response to the report. Success Academy provided us with its bonus policy, a list of bonuses paid to employees, and email correspondence. However, Success Academy did not provide us any documentation to show that bonuses were approved by the Managing Director of Schools, the Chief Financial Officer, and the Chief Executive Officer. Further, no explanation was provided as to why these documents were not provided in response to our October 4, 2016 request.

Success Academy Response: "All 23 employees the Comptroller flagged have offer letters on file. . . . Success Academy is a single legal entity with multiple sites, and staff may move between sites. The Comptroller has not identified any law that requires employers to issue offer or placement letters specifying the sites at which employees work."

Auditor Comment: As previously stated, Success Academy did not in accordance with its own rules maintain current offer or placement letters to establish that 7 employees were in fact employed at Harlem 3 during Fiscal Year 2015 and were thereby authorized to receive salaries plus benefits and did not issue and maintain current offer or placement letters for another 16 employees that specified their work location so that we could not determine from the documentation provided whether those 16 employees worked at Harlem 3 or at another Success Academy school and therefore, whether their salaries plus their benefits were properly reported as a Harlem 3 payroll expense.

During the course of the audit, the Network Human Resources Director informed us that the Network Talent Recruitment personnel send written offer letters to prospective employees. These letters are signed by School Leaders and detail prospective employees' name, title, authorized salary, and work location. The report is merely citing Success Academy for failing to follow its own procedures, which are designed to ensure that employees' pay rates are properly documented and authorized.

On December 16, 2016, Success Academy provided us offer and placement letters for the 7 employees in the report for whom we cited Success Academy for not maintaining current offer or placement letters. However, these letters were not for Fiscal Year 2015.

Additionally, during the course of the audit and on December 16, 2016, Success Academy provided us with employee rosters to show that the 16 employees whose offer or placement letters did not specify their work location. However, Success Academy should maintain signed offer and placement letters that specify employees' name, title, authorized salary, and work location.

Success Academy Response: "The Comptroller alleges that one Senior Leader's salary exceeded the recommended salary range for his position, basing this allegation on a non-binding guideline document Success Academy exercised its discretion to adjust this employee's salary accordingly."

Auditor Comment: As previously stated, Success Academy did not maintain documentation to show that modifications to this employees' salary were justified and authorized. In its response, Success Academy provided us with only a copy of this employee's resume. However, Success Academy did not provide us with documentation to show that modifications to this employee's salary were authorized.

Success Academy Response: "The Comptroller further alleges that one Leadership Resident did not work at SA Harlem 3 during FY2015. This was based on a typographical error; the employee did, in fact, work at SA."

Auditor Comment: This employee's offer letter indicated that this individual was employed at another Success Academy school. Consequently, we concluded that Success Academy improperly reported this employee's salary and benefits as a Harlem 3 expense. In its response, Success Academy provided us with a class roster to show that this individual worked at Harlem 3.

Recommendations

Success Academy should:

13. Ensure that it maintains offer and placement letters which document employee name, title, work location, and authorized salary in employee personnel files.

Success Academy Response: Success Academy rejected the audit-related findings and so did not address this recommendation.

14. Document in writing the justification for paying employees' salaries which exceed their maximum salary ranges.

Success Academy Response: Success Academy rejected the audit-related findings and so did not address this recommendation.

15. Ensure that an appropriate level of authorization and is obtained for salary modifications.

Success Academy Response: Success Academy rejected the audit-related findings and so did not address this recommendation.

Success Academy Did Not Maintain Appropriate Proof of Residency for Students

Success Academy did not maintain appropriate proof of residency documentation for 18 percent of our sample of 71 students, which is needed to determine students' eligibility to attend New York State charter schools and to determine schools' eligibility to receive per pupil funding. New York State Education Law § 2856 (1)(a) and (b) state that a student's district of residence shall pay charter schools per pupil funding for general and special education services.

Success Academy's *Guide to Proofs of Residency* (the Guide) states that "[p]roof of New York State Residency is required to establish your child's eligibility to attend a Success Academy Charter School." The Guide states that acceptable proofs of residency include utility bills; documentation or letters from federal, state, or local government agencies showing the resident's name and address; an original lease, rent, or mortgage statement; a property tax or water bill; or official payroll documentation. Further, the Guide states that unacceptable proofs of residency include driver's licenses, non-utility bills, bank statements, non-payroll documentation from an employer, hospital or clinic forms, private health insurance mail, and Social Security Cards.

However, based on our review of Success Academy residency records for 71 sampled Harlem 3 students for whom Success Academy billed DOE for per pupil funding, Success Academy did not obtain appropriate proof of residency for 13 students (18.3 percent). Success Academy did not obtain any documentation for 4 of the 13 students and did not obtain appropriate documentation for the remaining 9 students. Consequently, the propriety of Success Academy's \$168,178 in general and special education services billing to DOE associated with these 13 students cannot be confirmed.

Success Academy Response: "The Comptroller alleges that Success Academy did not maintain appropriate proof of residency documentation for 13 students. This is not correct. . . .

For 2 of the 13 students the Comptroller references, Success Academy requested proof of residency documentation, but the students withdrew within five days of enrollment, before we were able to secure proof of residency. . . .

For the remaining 10 students, either the student produced documentation in accordance with Success Academy's Guide or Success Academy exercised its discretion under SED regulations to accept alternate satisfactory proof of New York residency."

Auditor Comment: On August 29, 2016, the auditors requested to review documentation to establish that students resided in New York State. On September 8, 2016 and September 26, 2016, we met with Network Legal Advisory Department employees and identified the students for whom we wanted to review residency records. Network personnel retrieved available residency documentation. As of no later than September 26, 2016, Success Academy was aware of each and every record that we reviewed and was aware of what information it was able to provide us and what documentation was missing. Furthermore, on November 17, 2016, we provided Success Academy with a list of students for whom Success Academy did not obtain appropriate proof of residency. No additional documentation was provided by Success Academy prior to the issuance of the Draft Report on December 2, 2016. On December 16, 2016, in connection with its formal, written response to the report, Success Academy provided us with additional documentation. Based on our review, Success Academy provided acceptable proof of residency for 5 of the 13 students cited in the report.

Recommendation

Success Academy should:

16. Ensure that it maintains appropriate proof of residency for all students.

Success Academy Response: Success Academy rejected the audit-related findings and so did not address this recommendation.

Success Academy Did Not Document That All Employees Had Required Fingerprint and Background Checks Completed

Success Academy did not maintain documentation reflecting that required fingerprint and education, employment, and criminal background checks and clearances were completed before 29 of 44 sampled Harlem 3 employees (65.9 percent) began working in schools. New York State Education Law § 2854(3)(a-2)(i) states that "[t]he board of trustees of a charter school shall require, for purposes of a criminal history record check, the fingerprinting of all prospective employees." Further, Success Academy performs background checks of prospective employees' previous employment, education, and criminal histories. Failure to perform these checks increases the risk that dangerous or inappropriate individuals could have contact with school children.

The SUNY Charter Schools Institute Guidelines for Conducting Employee Criminal Background Checks require that,

[c]harter school education corporations have an ongoing obligation to clear *all* employees *prior* to employment by means of a fingerprint-supported criminal

background check through the New York State Education Department's (SED's) Office of School Personnel Review and Accountability (OSPRA) The Institute, however, accepts either conditional or, in limited circumstances, emergency conditional appointments, for employees or contractors when Education Law § 2854(3)(a-2)(iii) is properly followed the Institute understands that SED grants conditional clearance only when the education corporation submits prints/LIVESCANs to SED and there is a delay or problem in processing, and SED can confirm state criminal history information.

New York State Education Law § 2854(3)(a-2)(ii) states that upon the recommendation of the charter school chief executive officer, the school's board of trustees may conditionally appoint a prospective employee. However, prior to such conditional appointment, the board must:

- Send a request to the commissioner along with the prospective employees' fingerprints;
- Obtain a signed statement from the prospective employee "indicating whether, to the best of his or her knowledge, he or she has a pending criminal charge or criminal conviction in any jurisdiction outside the state;" and
- Obtain the commissioner's approval.

Conditional appointments are valid for up to 45 days and may not be "extended or renewed unless . . . there was good cause for failing to obtain clearance within such period."

New York State Education Law § 2854(3)(a-2)(iii) states that emergency conditional appointments may be made only when an "unforeseen emergency vacancy has occurred" and generally follow the same procedures as conditional appointments. Emergency conditional appointments are valid for up to 20 business days.

Based on our review of employee personnel files, Success Academy did not ensure that 29 of 44 sampled Harlem 3 employees, 65.9 percent, were cleared for employment before they started working at schools. Of these 29 employees, 28 did not have fingerprint checks cleared before they started working in schools and Success Academy did not seek or obtain approval for conditional or emergency conditional appointments for these employees. These 28 employees were subsequently cleared for employment. However, they worked at schools for between one day and more than four years and eight months before they were cleared.

Moreover, Success Academy did not ensure that four employees—two operations staff and two teachers—were ever properly cleared for employment because education and employment issues were never resolved. These 4 employees worked in schools for between 11 and 35 months.

Failure to perform required background checks in a timely manner created a risk that persons who were ineligible to work at the school were nevertheless allowed to do so, creating a potentially unsafe environment for students.

Success Academy Response: "The Comptroller claims Success Academy did not clear fingerprint and background checks for 29 employees before they started working in schools. This is incorrect.

In strict keeping with charter authorizer requirements, Success Academy schools require that all school staff be fingerprinted before they start working with children. Sometimes the fingerprint check does not clear before an employee's first day of work with children.

In those rare cases, Success Academy has adopted the SUNY's procedures for emergency conditional appointments." [Citations omitted.]

Auditor Comment: Success Academy was not "[i]n strict keeping with charter authorizer requirements" in that it requires only that "school staff be fingerprinted before they start working with children." As previously stated, the SUNY Charter Schools Institute Guidelines for Conducting Employee Criminal Background Checks require charter schools "to clear all employees prior to employment."

Further, Success Academy did not comply with New York State Education Law requirements for conditional and emergency conditional appointments because it did not properly delegate the Board's responsibility to make such appointments. The SUNY Charter Schools Institute Guidelines for Conducting Employee Criminal Background Checks state,

[i]f an education corporation board does not meet regularly enough to appoint employees on an emergency conditional basis, or to review and renew those appointments, it may delegate its authority to individual board members, committees, employees, or other persons. To do so the board must pass a properly worded resolution that does the following:

- delegates the board chair's authority to recommend one or more employees for an emergency conditional clearance;
- delegates the education corporation board's authority to approve an emergency conditional appointment; and
- delegates the education corporation board's authority to renew the appointment for the specified employees every 20 business days as needed and after proper review."

In such cases, it is a best governance practice for the education corporation to receive specific updates on such employees at each subsequent board meeting until the employee is cleared or other employment action is taken.

On May 7, 2013, the Board passed a resolution stating only "that the Board of Trustees delegates authority to Success Academy Charter Schools to fulfill SA NYC's fingerprinting clearance responsibilities under New York State law." This resolution is not worded in accordance with the SUNY Charter Schools Institute Guidelines for Conducting Employee Criminal Background Checks because it does not clearly state which aspects of the Board's responsibilities were delegated. Further, Success Academy Board meeting minutes do not document that the Board received updates on employees' conditional and emergency conditional appointments as recommended. In addition, Success Academy did not document that it obtained the New York State Commissioner of Education's approval for conditional and emergency conditional appointments as required.

Success Academy Response: "Additionally, although not required by law or its authorizer, Success Academy schools also require that all school staff undergo a background check. . . . [A]lthough the background checks that Success Academy conducts are not required by law or by its authorizer, the Comptroller alleges that two operations staff, one soccer coach, and one assistant teacher were not cleared for employment because 'education and employment issues [in background checks] were

never resolved.’ This is incorrect. Success Academy cleared these individuals for employment.”

Auditor Comment: Success Academy did not document that education and employment issues were resolved for four employees. For three of the four employees, Success Academy verified only that employees were enrolled in college and did not verify that these employees graduated from college. In its response, Success Academy acknowledges that this occurred for two employees. In its response, Success Academy further acknowledges that it did not obtain legible documentation to resolve the remaining employee’s employment discrepancies.

Recommendations

Success Academy should:

17. Immediately ensure that the cited employees who are still working in Success Academy schools have background checks completed and cleared.

Success Academy Response: Success Academy rejected the audit-related findings and so did not address this recommendation.

18. Ensure that it obtains required fingerprint and background clearances for employees before allowing them to work at its schools. If circumstances exist such that a person must be hired before a clearance is obtained, Success Academy should obtain a conditional or emergency conditional clearance for that person prior to the employee’s start date.

Success Academy Response: Success Academy rejected the audit-related findings and so did not address this recommendation.

19. Ensure that all evidence of fingerprint and background checks and clearances are maintained in employees’ personnel files.

Success Academy Response: Success Academy rejected the audit-related findings and so did not address this recommendation.

Success Academy Failed to Document or Obtain Required Approvals for Loan Agreements with the Network Totaling \$8.5 Million

Success Academy borrowed \$8,500,000 from the Network, but failed to record written loan agreements for \$2,700,000 of those funds, failed to have legal counsel review any of the agreements to ensure that the loan terms were fair and reasonable, and failed to submit the agreements to its authorizer for its review and approval as required. The Success Academy Charter Agreement, as well as Success Academy’s preceding charter agreements, states,

contractual arrangements including . . . loan agreements, promissory notes, negotiable instruments and other debt instruments, that are contemplated between the Education Corporation [Success Academy] on the one hand and the Educational Service Provider [the Network] . . . shall be known . . . as ESP Contracts. . . .

The [SUNY] Trustees reserve the right to review and disapprove for good cause shown any and all ESP Contracts that the Education Corporation seeks to execute, amend or renew . . . To facilitate the [SUNY] Trustees' rights of review and disapproval, the Education Corporation shall provide the [SUNY] Trustees with any proposed ESP Contract . . . not later than thirty (30) days prior to the proposed date of execution When submitting an ESP Contract, the Education Corporation must include a written opinion of the Education Corporation Board's legal counsel stating that the ESP Contract has been reviewed by legal counsel to the Education Corporation Board

Upon the execution of an ESP Contract, and any extension or revision thereto, a copy of such contract or revised contract shall be promptly provided to the Trustees.

In its Fiscal Year 2015 certified financial statements, Success Academy stated, "[a]t various dates from July 2012 through June 2015, SACS–NYC [Success Academy] entered into borrowing arrangements with the Network totaling \$8,500,000 The proceeds were used to finance SACS–NYC's operations" at 15 schools including Harlem 3, and the Success Academy Educational Corporation.

To support this statement, Success Academy provided us with six agreements for loans with balances totaling \$5,800,000 that were signed by the then chairs of the boards of trustees of the charter school-borrowers.¹¹ However, Success Academy stated that it could not locate agreements for loans with balances totaling \$2,700,000 (of which \$250,000 was attributable to Harlem 3). Moreover, Success Academy stated that it believed that these agreements never existed in written form.

In the absence of written loan agreements, Success Academy has no formal record of the terms under which it borrowed money, such as the amount and duration of the loan, the rate of interest, when the principal and interest should be paid, or any record of what, if any, information was presented to the SUNY Board 30 days in advance of the date of execution of the loan agreements as is required by the Charter Agreement. In September 2015, the Success Academy Board voted to retroactively approve the previously undocumented loans totaling \$2,700,000, and to allow the Board Chair to execute a loan agreement. However, Success Academy did not provide us with a copy of such a loan agreement.

In addition to failing to reduce all the loan agreements to writing at the time they were entered into, despite our requests, Success Academy did not produce any documentation demonstrating that it provided SUNY with any of the loans in proposed form, or any letters from the Board's counsel, prior to executing the loans. Therefore, it appears that the loans were not entered into in accordance with the Charter Agreement and with the requisite oversight, approvals, and transparency. Consequently, Success Academy entered into loan agreements between two

¹¹ We received six loan agreements with a maximum combined value of \$7,050,000 and outstanding balances of \$5,800,000 as of June 30, 2015, between the Network and Success Academy as follows:

- An agreement dated June 30, 2011 for \$550,000 for Bronx 1 (balance of \$250,000);
- An undated agreement for \$1,300,000 for Upper West (balance of \$900,000);
- An undated agreement for \$1,300,000 for Bedford Stuyvesant #1 (formerly known as Brooklyn #1) (balance of \$1,150,000);
- An agreement dated May 8, 2012 for up to \$1,300,000 for Bedford Stuyvesant #2 (formerly known as Brooklyn #2) (balance of \$1,000,000);
- An agreement dated May 8, 2012 for up to \$1,300,000 for Cobble Hill (formerly known as Brooklyn #3) (balance of \$1,250,000); and
- An agreement dated May 8, 2012 for up to \$1,300,000 for Williamsburg (formerly known as Brooklyn #4) (balance of \$1,250,000).

posing a potential conflict of interest without taking appropriate, required steps to ensure that the terms of the loans were fair, reasonable, and in Success Academy's best interests.¹²

Success Academy Lacked Sufficient Documentation to Be Assured That the Network Passed on All Beneficial Loan Terms

The Network informed us that, to pay for school startup costs, the Network secured loan funds from a private foundation, which the Network then passed through to Success Academy. The Network stated that the loan agreements between the Network and Success Academy mirrored the terms of the loan agreements between the Network and the private foundation.

We requested all loan agreements between the Network and the private foundation. However, we received only three loan agreements and one amendment to another loan agreement between the Network and the private foundation, which together total \$6,450,000.¹³

A comparison of the available agreements between the Network and the private foundation totaling \$6,450,000 with the available agreements between the Network and Success Academy totaling \$5,800,000, does not establish that the Network passed on the loan forgiveness terms it received from the private foundation into the Network's loan agreements with Success Academy. We also determined that although the Network charged Success Academy the same interest rates that it was obligated to pay its lender, the loan agreements between the Network and Success Academy would allow the Network to charge higher interest rates.

Loan Forgiveness

One of the loan agreements between the Network and the private foundation for \$4,500,000 provided for potential forgiveness of loan principal of up to \$1,000,000; \$500,000 of that amount could have been forgiven in September 2015 and an additional \$500,000 could have been forgiven in September 2016. The potential loan forgiveness was contingent on the Network meeting stated milestones related to measures of Success Academy's academic and fiscal performance. We requested that the Network provide us with documentation to show whether and to what extent the private foundation forgave loan principal, and documentation to show that the Network passed loan forgiveness on to Success Academy. To date, the Network has not provided us with such documentation.

In the absence of written agreements and requested loan documentation, we cannot confirm the Network's representation that it passed loan forgiveness terms on to Success Academy. In the event the Network did not pass on any loan forgiveness it received from its lender, it would

¹² As defined under NYS Not-For-Profit Corporation Law § 102(a)(23), a "related party" means, among other things, "any director, officer or key employee of the corporation or any affiliate of the corporation, or any other person who exercises the powers of directors, officers or key employees over the affairs of the corporation or any affiliate of the corporation."

¹³ We received three school startup loan agreements totaling \$1,950,000 between the Network and the private foundation as follows:

- An agreement dated June 6, 2012 for \$250,000 for the Harlem Central Middle School;
- An agreement dated April 17, 2013 for \$1,200,000 for Bronx 3, Fort Greene (formerly known as Brooklyn 5), Prospect Heights (formerly known as Brooklyn 6), Crown Heights (formerly known as Brooklyn 6), Hell's Kitchen (formerly known as Manhattan 2), and Union Square (formerly known as Manhattan 1); and
- An agreement dated July 30, 2013 for \$500,000 for the Harlem East Middle School and the Harlem North Central Middle School.

In addition, we received an amendment dated October 2, 2012 to a loan agreement dated November 3, 2010. This agreement set the loan principal to \$4,500,000. The amendment did not specify for what purpose or for what schools loan proceeds should be used.

potentially have been in a position to gain revenue from the loans it made to Success Academy, if the Network required Success Academy to repay a portion of the loan principal that the Network was not required to repay to its lender.

Loan Interest Rates

The Network provided us with three loan agreements and one amendment to another loan agreement totaling \$6,450,000 between the Network and a private foundation. Each of these four agreements provide for an annual interest rate of one percent. Based on our review, the Network charged Success Academy the same interest rate that it received i.e., one percent.

However, the six available loan agreements between the Network and Success Academy would allow the Network to charge higher interest rates. Three of the six agreements provide for an annual interest rate of 3.25 percent and the remaining three agreements provide for “an annual interest rate equal to the prevailing interest rate available to the Lender as of the date of such Advance.” Since we were informed by the Network that the loans were “pass through” loans in which all the terms would be passed on to Success Academy, we question the inclusion of provisions in the six available loan agreements that would allow the Network to charge higher rates than it was charged by the private foundation.

Success Academy Response: “The Comptroller raises hypothetical concerns that some of the loans could have been administered by the Network to Success Academy on less favorable loan forgiveness and interest terms than the Network received. This concern is entirely unfounded. The Comptroller himself notes that ‘the Network charged Success Academy the same interest rate that it received i.e., one percent.’ Furthermore, the Network has repeatedly affirmed that it applies the exact same loan forgiveness terms that the Network received from the private foundation. (No loans were forgiven by the private foundation until FY2016, and the Network will be forgiving those particular loans to the Schools.)”

Auditor Comment: The report’s concerns are not “hypothetical” or “unfounded.” In its response, Success Academy acknowledges that the private foundation forgave certain unspecified loans to the Network at some unspecified point during Fiscal Year 2016 (which ended on June 30, 2016) and that the Network did not pass that loan forgiveness benefit on to Success Academy. Success Academy stated that the Network “*will be* forgiving those particular loans to the Schools.” [Emphasis added.] Success Academy did not state why the Network had not yet passed loan forgiveness on to Success Academy, and did not state when or how much of the loans will be forgiven in the future.

Further, as previously stated, based on available loan agreements, the loan agreements between the Network and Success Academy would allow the Network to charge Success Academy higher interest rates. In its response, Success Academy contends that the Network charged Success Academy the same interest rate that it was charged by the private foundation—one percent. However, the available agreements provided by Success Academy during the course of the audit clearly demonstrate that this is not true.

In addition, we note that Success Academy did not refute that it failed to put \$2.7 million in loan agreements in writing, failed to have legal counsel review loan agreements to ensure that loan terms were fair, reasonable, and in Success Academy’s best interest, and failed to submit loan agreements to SUNY for its review and approval as required.

Recommendations

Success Academy should:

20. Memorialize all past and future loan agreements between Success Academy and the Network in writing.

Success Academy Response: Success Academy rejected the audit-related findings and so did not address this recommendation.

21. Have independent legal counsel review and provide written legal opinions on proposed agreements between Success Academy and the Network to ensure that agreements are in Success Academy's best interest.

Success Academy Response: Success Academy rejected the audit-related findings and so did not address this recommendation.

22. Comply with its Charter Agreement and submit proposed written agreements between Success Academy and the Network and associated legal opinions to SUNY not later than thirty (30) days prior to the proposed date of execution.

Success Academy Response: Success Academy rejected the audit-related findings and so did not address this recommendation.

23. Comply with its Charter Agreement and submit executed agreements between Success Academy and the Network to SUNY.

Success Academy Response: Success Academy rejected the audit-related findings and so did not address this recommendation.

24. Retain copies of executed agreements between Success Academy and the Network and associated legal opinions for the term of agreements.

Success Academy Response: Success Academy rejected the audit-related findings and so did not address this recommendation.

25. Review all loan agreements between the Network and the private foundation, and the Network and Success Academy to ensure that loan terms are mirrored.

Success Academy Response: Success Academy rejected the audit-related findings and so did not address this recommendation.

26. Ensure that loan forgiveness is passed from the Network to Success Academy.

Success Academy Response: Success Academy rejected the audit-related findings and so did not address this recommendation.

The Board Did Not Provide Sufficient Oversight of Some Aspects of Success Academy's Financial Operations

Article III(A) of the Board's bylaws states,

[t]he Board may delegate the management of the activities of the Corporation to others, so long as the affairs of the Corporation are managed, and its powers are exercised, under the Board's ultimate jurisdiction.

Similarly, the SUNY Charter Schools Institute Renewal Handbook for Replicated Schools states, “the board is also ultimately responsible for the education corporation’s fiscal soundness and legal compliance.”

We were informed that the members of the Board were not directly involved in the actions that contributed to the issues discussed above in this report concerning Network expenses charged to Success Academy resulting in duplicate payments, inappropriate expense classifications, background checks, and non-compliant loans. These actions were taken by Network personnel pursuant to authority delegated by the Board. However, the Board is responsible for overseeing the Network and the Board is ultimately responsible for the Network’s actions.

Separate from these deficiencies, however, our audit identified several additional areas where either the Board failed to provide required oversight or Success Academy failed to maintain records demonstrating that such oversight had in fact been provided. Specifically, Success Academy’s records do not reflect that the Board held the minimum required number of board meetings during two of the three years in our audit scope period. In addition, Success Academy did not provide documentation substantiating that the Board appropriately considered the financial implications of Success Academy’s merger with seven other schools managed by the Network, or that the Board’s committees met and discussed issues within their respective purviews. These issues are discussed in turn below.

Minimum Number of Board Meetings

During Fiscal Years 2013 and 2015, Board records do not reflect that the minimum number of Board meetings required under Success Academy’s bylaws were held. At Article V(C) of the bylaws states that “[a]t a minimum, Board meetings shall be held six (6) times per year.”¹⁴ Mirroring the definition found in the NYS Not-For-Profit Corporation Law, Success Academy’s bylaws, at Article VI(A), define a “quorum” as meaning “a majority of the entire Board.” As explained in SUNY’s 2015 *Guide to Board Governance*, the “entire board” is, in turn, defined as “the total number of trustees entitled to vote if there were no current board vacancies,” i.e., the total number of board seats, even if the actual number of individuals elected to the board is fewer.

In Fiscal Years 2013 and 2015, though Success Academy scheduled six Board meetings each year, it only successfully held five lawfully qualifying “meetings” under the terms of the NYS Not-For-Profit Corporation Law and Success Academy’s Charter. Specifically, as of the Board’s meeting on March 20, 2013, though at that time the number of Board seats was fixed at ten, only five members of the Board were present, one short of the six needed to constitute a quorum. Similarly, as of the Board’s meeting on November 13, 2014, though the number of Board seats was set at fourteen, only four Board members were present. In each of these years, Success Academy only held five other lawfully qualifying “meetings” featuring a majority of the entire Success Academy Board. As such, in both of these years the Board failed to hold the minimum number of meetings required by Success Academy’s bylaws. Beyond the lack of oversight reflected in the Board’s failure to meet regularly throughout the year, we note that at its March 20, 2013 meeting, the Board voted on corporate business; but because these votes were cast in the absence of a quorum, it is not clear that the actions taken were effective as a matter of law.

¹⁴ Under §2854(1)(e) of the Charter Schools Act, all NYS charter schools are subject to the NYS Freedom of Information Law and the NYS Open Meetings Law. Under § 102(1) of the NYS Open Meetings Law, a “meeting” is defined as “the official convening of a public body for the purpose of conducting public business;” § 102(2) of the Open Meetings Law, in turn, defines a “public body” as “any entity for which a quorum is required in order to conduct public business.” In conjunction with Success Academy’s Charter Agreement, Success Academy is thus obligated to convene a quorum of its Board members no fewer than six times per year.

Success Academy Response: “The Comptroller alleges that Success Academy’s Board did not hold the required minimum number of board meetings for FY2013 and FY 2015. This allegation is incorrect and misleading. As the Comptroller concedes, for both of those years, the Board held the required minimum 6 meetings. In two instances over the course of those two years, quorum was not met. But Success Academy bylaws make clear that there can be a meeting without quorum and that Trustees may (but are not required to) adjourn a meeting until there is quorum: ‘If at any meeting of the Board there shall be less than a quorum present, the Trustees present may adjourn the meeting until a quorum is obtained.’ NYC Not-For-Profit Corporation Law similarly provides that “The members present may adjourn the meeting despite the absence of a quorum.” N.Y. NOT-FOR-PROFIT-CORP. LAW § 608(d) (2016).”

Auditor Comment: While Success Academy’s bylaws permit the Board members present to adjourn a meeting “until a quorum is obtained,” the Board cannot take any other official action in the absence of a quorum. Article VI (B)(2) states in pertinent part, “[i]n all events, a quorum of Trustees must be present to lawfully conduct a Board Meeting of the Corporation at which a vote is taken.” Accordingly, we question whether a meeting in which the Board cannot act as a board qualifies as a Board meeting for purposes of complying with the provision of Success Academy’s bylaws requiring a certain number of Board meetings each year. After careful consideration of Success Academy’s response, we find no basis to change our finding.

Consideration of Merger

The Board records do not reflect that it fully considered whether the Success Academy’s merger with seven other autonomous charter schools managed by the Network was in Success Academy’s best interest. The Board resolution related to the merger states that the Board was provided sufficient information by the Network regarding,

the benefits and efficiencies that may result from the Merger, including, but not limited to, (i) a reduction in administrative inefficiencies that currently exist due to the separate legal structures, (ii) the ability of SA NYC’s students to feed into middle schools and/or high schools that serve one or more other schools within the Success Academy network, thereby addressing and ameliorating significant space and financial constraints, (iii) the promotion of the charter schools currently operated by SA NYC as financially self-sustaining charter schools as they extend into the middle school and/or high school grades, and (iv) the ability to offer additional special education programming not otherwise programmatically or economically feasible.

The Board resolution also states that the Board “sought advice from such other professionals and advisors that it deemed appropriate, discussed the potential benefits of the Merger and the likelihood of achieving such benefits,” and asked the Network questions “concerning various issues relating to the Merger.” However, despite specific requests, Success Academy did not provide us with documents reflecting the substance of any financial analysis related to the merger.

Success Academy Response: “The Comptroller alleges a lack of documentation showing that the Board fully considered the financial implications of Success Academy’s 2013 merger with seven schools managed by the Network. Yet, as the Comptroller concedes, the Board resolution concerning the 2013 merger makes clear that the Board ‘sought advice from such other professionals and advisors that it deemed appropriate,

discussed the potential benefits of the Merger and the likelihood of achieving such benefits,” and asked the Network questions ‘concerning various issues relating to the Merger’ — all of which was confirmed by the Board members whom the Comptroller’s Office interviewed. There is no requirement in Success Academy’s bylaws or NYC Not-For-Profit Corporation Law that materials reviewed and discussed in connection with this merger additionally be retained three years after-the-fact for substantiation purposes.”

Auditor Comment: Though Success Academy personnel asserted that the Board had reviewed multiple written documents containing analysis of the financial considerations and expected benefits of proceeding with the merger, Success Academy did not produce any documents containing such analysis, despite our multiple requests that it do so. Neither did we ever receive a written statement identifying documents related to the merger considerations that the Board reviewed but that were not in Success Academy’s possession and so could not be produced in response to our requests. Thus, after careful consideration of Success Academy’s response, we find no basis to change our finding.

Board Committees

In violation of the NYS Open Meetings Law and its own bylaws, Success Academy’s Board did not record meeting minutes at any Committee meetings held during Fiscal Years 2013 through 2015. Success Academy’s bylaws, at Article VI(C)(1), states that “[t]he Board may create committees for any purpose.” According to the Board Chair and the Board Treasurer, the Board created an Executive Committee, which was responsible for, among other things, setting Board meeting agendas; a Finance and Audit Committee, which was responsible for, among other things, reviewing school budgets and financial statements; and an Academic, Culture, and Talent Committee, which was responsible for periodically meeting with teachers and parents to hear their perspective on Network operations.

Success Academy’s bylaws state that “[t]he Secretary shall: (a) keep or cause to be kept . . . a book of minutes of all meetings of the Board and Board Committees, noting the time and place of the meeting, whether it was regular or special (and if special, how authorized), the notice given, the names of those present, and the proceedings.” However, Success Academy did not record minutes at any Committee meetings held throughout our audit scope period. Moreover, Success Academy also did not enact any policies or procedures for its Committees. Though enactment of such policies and procedures is not mandatory, their absence, along with the Board’s failure to record required minutes of committee meetings, resulted in Success Academy not having an authoritative record of the functions, responsibilities, or actions of the Board’s Committees, or documentation that demonstrated the degree to which the Board’s Committees had overseen matters within each Committee’s purview.

Success Academy Response: “The Comptroller alleges that Success Academy’s bylaws and New York State Open Meetings Law require that committee meeting minutes be kept. This is incorrect. NYS Open Meetings Law provides that “Minutes shall be taken at all open meetings of a public body which shall consist of a record or summary of all motions, proposals, resolutions and any other matter formally voted upon and the vote thereon.” N.Y. PUB. OFF. LAW § 106(1) (2016). As no motions, proposals, resolutions, or other matters were voted on at any Board committee meeting in fiscal years 2013, 2014, and 2015, no committee meeting minutes were required under either NYS Open Meetings Law or Success Academy’s bylaws.”

Auditor Comment: Success Academy’s response does not refute—other than by an unsupported and incorrect assertion—that its own bylaws, at Article VII(A)(3), require the Board’s Secretary to “keep or cause to be kept. . . a book of minutes of all meetings of the Board *and Board Committees*, noting the time and place of the meeting, whether it was regular or special (and if special, how authorized, the notice given, the names of those present, and the proceedings.” [Emphasis added.] Success Academy’s failure to keep minutes of the meetings of its Board Committees thus violated its own rules. Accordingly, after careful consideration of Success Academy’s response, we see no basis to modify that portion of our finding that states that in violation of its own bylaws, Success Academy’s Board did not record meeting minutes at any Committee meetings held during Fiscal Years 2013 through 2015. However, Success Academy represents that during the three-year period at issue above, its Board committees did not vote on any motions, proposals, resolutions, or other matters. We acknowledge that based on this representation, Success Academy’s interpretation—that the NYS Open Meetings Law did not require that minutes be taken at those meetings since none of the required actions were taken—may be correct, and we modified our finding accordingly.

Recommendations

The Success Academy Board should:

27. Adequately oversee the Network to ensure that it acts in Success Academy’s best interest, complies with fiscal and legal requirements for charter schools, and properly manages Success Academy schools.

Success Academy Response: Success Academy rejected the audit-related findings and so did not address this recommendation.

28. Review and comply with applicable rules, laws, and regulations, including but not limited to Success Academy’s Charter Agreement and the NYS Not-For-Profit Corporation Law.

Success Academy Response: Success Academy rejected the audit-related findings and so did not address this recommendation.

DETAILED SCOPE AND METHODOLOGY

We conducted this performance audit in accordance with generally accepted government auditing standards. Those 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. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit covers the period from Fiscal Year 2013 through Fiscal Year 2015 (July 1, 2012 to June 30, 2015). We performed detailed testing of the most recent year in our scope period, Fiscal Year 2015.

To obtain an understanding of the laws, rules, and agreements which govern charter schools, we reviewed the Charter Schools Act, NYSED Charter School Office procedures and guidance documents, the Charter Agreement, and the Management Agreement.

Our review of financial practices and controls pertained to all Success Academy schools. As previously mentioned, all 24 Success Academy schools are governed by a single Board and share common management—the Network. We reviewed financial statement and compliance reporting, loan agreements, and purchasing, inventory, and per pupil invoicing practices and controls for all schools. Further, we interviewed Board members and reviewed Board minutes to obtain operational and organizational information and to assess Board oversight for all schools.

We then performed detailed tests of expenses, per pupil invoicing, and background checks for a single Success Academy school—Harlem 3. As these functions are performed directly by or are under the supervision of centralized Network employees, the results of our tests for Harlem 3 are an indicator of the Network's management and administration of Success Academy schools.

To determine which of Success Academy's schools to select for further review, we conducted a five-year trend analysis of the functional expenses for the five Success Academy schools with a significant operating history. Those schools were Harlem 1, Harlem 2, Harlem 3, Harlem 4, and Harlem 5. Based on its significant operating history, its relatively high revenues, the largest operating deficit increase between Fiscal Years 2013 and Fiscal Year 2015, and disproportionate increase in expenses relative to the other four schools, we selected Harlem 3 for further analysis.

To gain an understanding of Success Academy's financial practices, we reviewed Success Academy *Financial Policies and Procedures*, credit card policies and procedures, and credit card user agreements. We also interviewed the following Network personnel: the Controller; the Chief Financial Officer; the Associate Director of Finance; the Director of Human Resources; the Managing Director of Enrollment; the Associate Director of Enrollment; the Managing Director of Data Science and Information Systems; the Assistant Director of Data Support; a Senior Data Analyst; and a Program Manager. We also interviewed school personnel including a Business Operations Manager, an Education Manager, and a teacher.

Finally, to gain an understanding of the Board's oversight role, we reviewed Boards bylaws and Board minutes, and interviewed the Board Chair and Treasurer.

Fiscal Soundness and Financial Reporting

To assess the fiscal soundness of Success Academy and its individual charter schools, we reviewed and performed trend analysis of Success Academy's certified financial statements for Fiscal Years 2011 through 2015, and reviewed allocation methodologies for Fiscal Years 2013 through 2015.

To determine whether Success Academy submitted required tax filings, annual reports and disclosures, we reviewed the Fiscal Year 2015 annual charter school report card for Harlem 3, and reviewed Fiscal Year 2015 federal tax forms.

Compliance Reporting

To determine whether Success Academy complied with its Charter Agreement requirements for related party agreements, we requested copies of proposed and executed pass-through loan agreements between the Network and Success Academy, underlying loan agreements between the Network and a private foundation, legal opinions on loans, and correspondence with SUNY.

Other Than Personal Services Expenses and Procurement Practices at Harlem 3

To determine whether Other Than Personal Expenses at Harlem 3 were appropriate, authorized, valid, and reasonable, we reviewed Harlem 3's general ledger for Fiscal Year 2015 to determine if any expenditures made by Harlem 3 were in categories that the Charter Agreement described as included in the management fee paid to the Network by the Education Corporation. In Harlem 3's general ledger, we were able to locate journal entries describing expenses in nine categories: Professional Development Services; Professional Development Venue, Professional Development Materials; Community Outreach and Engagement; Student Recruitment; Student Assessment Services; Student Assessment Materials; IT Outsource Services; and Printing and Copying (Non-Credit Card Expenses). We made a targeted selection of these expenses from 52 journal entries in Harlem 3's general ledger that covered \$313,806 of the \$384,664 of expenses at Harlem 3 in the nine categories. Based on our review of the available supporting documentation, 15 of the 52 transactions were for goods and services that the Network should have provided under the Management Agreement. Consequently, we reviewed these 15 transactions separately. In addition, 11 of the 52 transactions were for credit card purchases. Since we selected a separate sample of credit card transactions for review, we removed these 11 transactions from our sample.

For the remaining 26 transactions totaling \$217,987, we reviewed available supporting documentation to determine whether the sampled journal entries represented expenses that were reasonable, appropriate, adequately supported, and properly authorized. We determined whether expenses were appropriate for a school; procured in accordance with Success Academy's *Financial Policies and Procedures*; supported by contracts, invoices, and/or receipts, and allocations; and approved by the appropriate school or Network officials in accordance with the Success Academy's *Financial Policies and Procedures*.

Credit Card Expenditures at Harlem 3

To determine whether the \$735,441 in credit card expenditures during Fiscal Year 2015 at Harlem 3 were reasonable, appropriate, adequately supported, and properly authorized, we selected the highest two months of spending at each of Harlem 3's sites. At Harlem 3, the highest months of credit card spending were April 2015 (\$76,600) and June 2015 (\$62,456), at Harlem 3 100th Street, the highest two months of credit card spending were September 2014 (\$37,804) and February 2015 (\$39,969). From these four months, we identified the three highest spending categories as

coded in Harlem 3's general ledger, and selected the highest 10 percent of transactions with a minimum of 10 transactions. This resulted in a sample of 115 of 611 transactions totaling \$103,329. Two of the 115 sampled transactions were related to refunded purchases. Therefore, we removed these two transactions from our sample. For each selected transaction, we traced the transaction to the general ledger to ensure codification of the expense was correct, confirmed that appropriate receipts were attached to the transaction, and confirmed that appropriate levels of authorization were noted within Smart Data, the Education Corporation's credit card expense tracking system.

Personnel Testing at Harlem 3

To determine whether Harlem 3 Payroll expenses were appropriate, authorized, valid, and reasonable, and payroll transactions were accurately recorded and reported, we selected a sample of 44 of the 107 (41 percent) of employees on Harlem 3's payroll at the end of Fiscal Year 2015. To determine if the staffing levels at Harlem 3 were reasonable, we compared the number of employees in each staffing category at Harlem 3 to the staffing structure and numbers reflected in the Terms of Operation of its Charter Agreement with SUNY. We checked sampled employee files to ensure that required background checks were performed before each sampled employee's start date.

While the results of our tests on Harlem 3's sampled revenue and expense items that were sampled cannot be projected to the items that were not sampled, it does provide sufficient and appropriate evidence for our conclusions involving Harlem 3's revenues and expenses.

Per Pupil Funding at the Education Corporation and Harlem 3

To determine whether the Education Corporation submitted per pupil funding invoices to DOE for the proper number of students, for the correct time periods and at the correct rates, we randomly selected 50 general education students at Harlem 3 and made a targeted selection of 21 special education students case files out of 819 and reviewed certain documents such as proof of residency and discharge forms (where applicable) to determine the accuracy of the enrollment data reported to DOE.

Introduction

It has become increasingly clear that the Comptroller is not conducting this investigation in an impartial and objective matter. The Comptroller's standard operating procedure is to share a Preliminary Draft Report with the entity being audited and then conduct an Exit Conference at which the entity may propose corrections and provide additional documentation. In every single case over the last six months in which the Comptroller has issued an audit report indicating the date of the Preliminary Draft Report and Exit Conference, the Comptroller has allowed the entity being audited at least 10 business days to prepare for the Exit Conference after issuing its Preliminary Draft Report. In the case of the sole charter school with such information to be audited during this period, the exit conference did not take place until 21 business days after the Preliminary Draft Report:

Auditee	Preliminary Draft Report	Exit Conference	Intervening Business Days
Bed Stuy New Beginnings Charter School	4/7/16	5/5/16	21
Dept of Buildings	5/11/16	6/1/16	16
34th St Partnership	5/24/16	6/8/16	12
Bryant Park Corporation	5/24/16	6/8/16	12
Urban Space Holdings, Inc.	5/17/16	5/31/16	11
MTA (Access-a-Ride program)	3/23/16	4/6/16	11
Dept of Transportation	5/4/16	5/17/16	10
Business Integrity Commission	5/20/16	6/2/16	10

However, with respect to Success Academy, the Comptroller issued a 31-page Preliminary Draft Report on the afternoon of November 23, the day before Thanksgiving, and then insisted that the Exit Conference be held on one of the next two business days, Monday, November 28th or Tuesday, November 29th. Success requested that it be given 10 business days to prepare for the Exit Conference, the same amount of time that the Comptroller has afforded to all other entities. This request was particularly reasonable given the enormous scope of the audit that took the Comptroller over two years to complete. Nonetheless, this request was denied. The Comptroller was only willing to give Success Academy until the morning of Wednesday, November 30, which meant that Success Academy would have had only two business days – Monday and Tuesday – to review a report that took the Comptroller two years to prepare and

obtain relevant documentation. Incredibly, however, the Comptroller claimed that this afforded Success Academy ample time to prepare because the Exit Conference would be a “full week” after the issuance of the Preliminary Draft Report, although this “full week” included the Thanksgiving holidays. When Success Academy stated that it was unable to comply with this timeframe, the Comptroller denied Success Academy an opportunity to have an Exit Conference.

The Comptroller provided no rational basis whatsoever for denying Success adequate time to prepare for the Exit Conference. Having taken over two years to complete its audit, giving Success Academy a few more days to prepare for the Exit Conference would not have materially affected the overall timing of the report. One can only conclude, therefore, that the Comptroller’s real interest was not the timing of the report but rather a desire to limit Success Academy’s ability to correct the many errors in its report. This audit by ambush clearly indicates bias.

Success Academy has fully cooperated with the overwhelming requests for information from the Comptroller. Over the course of the past two years, Success Academy has made 35 document productions to the Comptroller, totaling over 34,000 pieces of paper, and has made available more than 30 Success Academy staff and board members, who have collectively spent nearly 100 hours with the Comptroller.

Success Academy is arguably the best managed network of charter schools in the country. Since its founding 10 years ago, Success Academy has established an unrivaled reputation for helping disadvantaged students achieve academic results that are often superior to those of the most envied suburban school districts that spend far more money and whose students from affluent, well-educated families. Success has achieved its remarkable results through the effective and efficient use of its resources.

Success Academy’s board members and supporters are among the most sophisticated and highly respected business men and women in the world. They are founders, partners, principals, and CEOs of some of New York’s most successful, well-respected firms and non-profits. Collectively, they have earned 10 undergraduate and graduate degrees in finance and 14 MBA degrees from Harvard, University of Chicago, Stanford, MIT’s Sloan School of Management, and the Wharton School of the University of Pennsylvania, among others. Among them are lawyers and a former law professor, assistant U.S. attorney, management consultant, as well as film producers and media executives. Eight board members are currently CEOs, seven have founded non-profits, and 11 have founded companies. Collectively, they manage more than \$103 billion in assets. In addition to their commitment to Success Academy and providing the children of New York with high-quality education, our board members have also served as trustees for such institutions as Princeton, Stanford, and Tufts universities; Mt. Sinai Hospital, Carnegie Hall, United States Olympic Committee, the Museum of Contemporary Art in Los Angeles, Students First New York, and Democrats for Education Reform.

Success Academy’s auditor, BDO, is the fifth-largest accounting firm in the world and serves as auditor to scores of Fortune 500 companies. In addition, Success Academy’s authorizer, the Charter Schools Institute of the State University of New York (“SUNY”), is nationally recognized

for its rigorous oversight and evaluation process. Both BDO and SUNY have consistently given Success Academy a clean bill of health with respect to its financial practices.

In two years of investigations, the Comptroller has not found a single case in which Success Academy's funds were spent on anything else than advancing then the education of children. There were no cases of funds being stolen or spent on vacations, of kickbacks or sweetheart deals for relatives. In the absence of such revelations, the Comptroller has stretched to make a series of critiques of Success Academy's practices, nearly all of which critiques are subjective and lacking in merit. In the few instances where they have any merit, they concern isolated instances in which Success Academy failed to dot all of its I's and cross all of its T's but in which there was no demonstrable harm as a result of these procedural errors.

I. Success Academy's Payments to the Network Were Appropriate and Not Duplicative.

The Comptroller claims Success Academy ("Success Academy" or the "Schools") "made duplicate payments" to its charter management organization Success Academy Charter Schools (the "Network") because Success Academy paid for certain expenses that purportedly should have been covered by the management fee it paid to the Network. This is not correct.

The Comptroller is basing its conclusions on its own interpretation of the Academic and Business Services Agreement (the "Management Agreement," see Exhibit I-1). That interpretation, however, is contrary to the actual terms of the Management Agreement and to the understanding of the parties to that contract, the Network and the Schools. The Comptroller is not entitled to rewrite the Management Agreement or to impose an understanding of the terms of the Management Agreement that is different than that of the parties thereto.

Moreover, for the past two years, including the year being examined by the Comptroller, Success Academy has been audited by BDO. As a regular part of its annual audits, BDO reviewed the propriety of expenses paid by Success Academy, as set forth in the Management Agreement between Success Academy and the Network, including those flagged by the Comptroller here. BDO has never raised an issue concerning these expenses. Neither has Success Academy's authorizer, SUNY, which, as a part of the charter renewal and oversight process, rigorously reviews Success Academy's financials every year.

The Network, like the Schools it manages, is a nonprofit entity. Its mission is to run world-class schools and to develop and disseminate best practices through efforts such as its best practices website for educators (<http://www.successacademies.org/tours-events-educational-partner/>). While the Comptroller claims that the Schools are paying the Network too much, the Comptroller has not suggested that the funds the schools pay to the Network are spent on anything improper. To the contrary, these funds are all spent on advancing the educational mission of the Schools.

The Network has a total of 291 employees who provide critical support to the dozens of schools the Network manages. This includes a pedagogical team of 57 employees who develop curriculum, oversee the Schools, and provide professional development; a recruiting team of 33 employees who recruits educators for the schools; an information technology team of 36 employees who provide technological support for all of the students; an operations team of 42 employees who oversee the operations of the schools; a legal team of 9 employees who ensure that the schools are in compliance with the law; a finance team of 11 employees to ensure that the Schools' resources are spent efficiently and effectively; a public relations team of 8 employees who handle the considerable press and public interest focused on the schools given their remarkable results.

Every single Success Academy school achieves results that are superior to almost every other public school in New York City because of the consistent high quality of the services provided by the Network. These services are provided at less than actual cost because they are subsidized. Last year, the Network raised \$38M in private philanthropy. If not for the private philanthropy raised by the Network, the Schools would either have to pay more to the Network or the Network would have had to provide less robust services to the Schools.

The Comptroller nonetheless claims that the the Schools have paid \$624,342 too much for the Network services. In fact, all of these expenditures were proper under the terms of the Management Agreement:

Vendor	Amount	Why the Expense Was Appropriate
St. John's University	\$209,963	This amount covered food and lodging for 1,000 SA staff members at a two-day summer training conference. Section 4.2(c) makes clear that the Network may "arrang[e] for the contracting of services required by the Schools which shall include, but are not limited to . . . food services." Section 4.2(f) further provides that the Network may "arrang[e] for the contracting on behalf of the Education Corporation for the provision of any other services . . . that the Network reasonably deems necessary for the attainment of the educational goals of the Schools." Thus the Network is only required to arrange for such services. The Management Agreement does not state that the Network is required to provide food and housing to teachers.
Touro College	\$172,500	Touro College is an accredited institution with the power to grant state teacher certification to its

		<p>Masters students, and a certain number of certified teachers in each SA school is required by law. N.Y. Educ. Law § 2854(3)(a-1). The Network cannot grant certification, and it appropriately arranged for Touro to provide this service to the Schools. While the Management Agreement requires that Success provide “professional development activities” to school personnel, it does not require that the Network provide uncertified teachers with certification or graduate degrees. Thus, the Network arranged for Touro to provide these services pursuant to Section 4.2(f) of the Management Agreement, which provides that the Network may “arrang[e] for the contracting on behalf of the Education Corporation for the provision of any other services . . . that the Network reasonably deems necessary for the attainment of the educational goals of the Schools.”</p>
Center for Transformative Teacher Training	\$136,500	<p>The Schools opted to pay for additional one-on-one coaching sessions with an outside agency. The Schools are entitled to supplement the services they receive from the Network; nothing in the Management Agreement prevents them from doing so. Thus, the Network arranged for these services pursuant to Section 4.2(f), which provides that the Network may “arrang[e] for the contracting on behalf of the Education Corporation for the provision of any other services . . . that the Network reasonably deems necessary for the attainment of the educational goals of the Schools.”</p>
SSRS	\$56,540	<p>The Schools hired independent auditors to review and certify their state examination procedures. Section 4.2(c) explicitly provides that the Network may “arrang[e] for the contracting of services required by the Schools, which shall include, but are not limited to . . . auditing.” Thus the Network is only required to arrange for such services, not to pay for them.</p>
Indigo Productions	\$18,000	<p>Professional videographers created videos for teacher training. Section 4.2(f) makes clear that the Network may “arrang[e] for the contracting on behalf of the Education Corporation for the provision of any other services . . . that the Network reasonably deems necessary for the attainment of the</p>

		educational goals of the Schools.” The videos are further reimbursable expenses incurred for the benefit of Success Academy, permitted by Section 5.4(a).
Bank Street Bookstore	\$25,108	Schools desired additional instructional and development materials. These are reimbursable “books, curriculum, furniture, technology, supplies, or other property that is delivered to the Schools” permitted by Section 5.4(a).
NYC Charter Center	\$3,640	The NYC Charter Center provided teacher certification services to individual teachers. The Management Agreement does not require the Network to provide such services. Thus, the Network arranged for these services pursuant to Section 4.2(f), which provides that the Network may “arrang[e] for the contracting on behalf of the Education Corporation for the provision of any other services . . . that the Network reasonably deems necessary for the attainment of the educational goals of the Schools.”
Rosemont Press	\$2,091	Professional printing services were used to prepare family handbooks for middle schools. Section 4.2(f) makes clear that the Network may “arrang[e] for the contracting on behalf of the Education Corporation for the provision of any other services . . . that the Network reasonably deems necessary for the attainment of the educational goals of the Schools.” The supplies are further reimbursable “books, curriculum, furniture, technology, supplies, or other property that is delivered to the Schools” permitted by Section 5.4(a).

II. Success Academy’s Management Fees Were Classified Appropriately and Correctly.

The Comptroller alleges that Success Academy incorrectly allocated a portion of the Management Fee to Program Services versus Management and General in the Statement of Functional Expenses, and did not follow the requirements of FASB 117. In addition, the Comptroller alleges that the method used to allocate such expenses was not fair and reasonable. We, and our independent certified public accountants and auditors, BDO, disagree with the Comptroller’s conclusions, as well as his understanding and interpretation of FASB 117.

The Statement of Functional Expenses is one of the required financial statements under FASB 117. As such, it is subject to review and audit by Success Academy’s auditors, BDO.

BDO conducted its audit in accordance with generally accepted auditing standards and the New York State Charter School Audit Guide. BDO determined that Success Academy fulfilled its obligations with regard to its financial statements. BDO further reviewed Success Academy's allocation methodologies and found them to be fair, reasonable, and in accordance with generally accepted accounting principles. Based upon the results of its audit procedures and review, BDO issued an "unmodified opinion" ("Clean") on our financial statements, which included the Statement of Functional Expenses, for the year ended June 30, 2015. Specifically, BDO's opinion states, "In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Success Academy Charter School – NYC as of June 30, 2015, and the changes in its net assets and its cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America." (See Exhibit II-1).

The decrease in the percentage of the Management Fee allocated to Management and General was the result of changes in the allocation methodology used and based upon management's review of the underlying facts. Both BDO and Success Academy agree that the services received by Success Academy schools from the Network go far beyond FASB 117's definition of Management and General, and, as such, a portion of the Management Fee should be allocated to the academic program at the schools.

In addition, the Comptroller has no basis for his statement on page 14 of the Draft Report that, "In addition, oversight agencies and other stakeholders would be unable to rely on Success Academy's reports to accurately assess the fiscal performance of Success Academy and its individual schools and compare it with that of other educational corporations and charter schools."

First, the Statement of Functional Expenses contained in our audited financial statements, clearly labels the Management Fees and clearly shows its allocation between Program Services (General Education and Special Services) and Management and General. As such, a reader of our financial statements could clearly ascertain the amounts expended.

Second, a review of other charter schools' financial statements shows that it is not uncommon for Management Fees to be allocated to both "Program Services" and "Management and General." The exact division of management fees between these two categories is a matter of judgment and therefore varies widely between Networks:

Achievement First: \$935,906 out of \$1,215,462 in 2013 (77%); \$832,335 out of \$1,109,781 in 2014 (75%)

Explore Empower: \$503,661 out of \$767,913 in 2015 (66%)

Girls Preparatory Charter Schools: \$1,374,763 out of \$1,544,678 in 2015 (89%)

Excellence Boys Charter Schools: \$1,496,999 out of \$1,770,854 in 2015 (84%)

Excellence Girls Charter Schools: \$538,828 out of \$633,915 in 2014 (85%)

Bushwick Ascend Charter Schools: \$489,429 out of \$1,223,573 in 2015 (40%)

Community Partnership Charter Schools: \$769,531 out of \$1,099,329 in 2015 (70%)

Accordingly, the Comptroller is wrong in his assertion that our financial statements would not be comparable with that of other educational corporations. Accordingly, we believe, as do our auditors BDO, that the Statement of Functional Expenses contained in our audited financial statements is fairly stated in all material respects.

The Comptroller also notes that the Management Fees allocated to Program Services and Management and General in the Annual Report that Success Academy submits to SUNY, its charter authorizer, are based upon different percentages than the ones used in our audited financial statements. This is true and appropriate.

The Annual Report is due approximately four weeks after the end of our fiscal year, and prior to our finalizing the year's accounts and determination of final allocation methodologies. The financial statements contained in the Annual Report are clearly marked "unaudited." In this regard, and for several years, Success Academy has allocated 50% of the management fee as an administrative expense in its unaudited financial statements, while it is finalizing the allocations between Program Services and Management and General. Success Academy's authorizer and the New York State Education Department both receive the Annual Report and audited financial statements. As such, both are able to see differences between our unaudited and audited results of operations and allocation of expenses.

III. Success Academy Correctly Billed DOE for All Special Education Services at SA Harlem 3.

The Comptroller claims Success Academy billed for 7 special education students at SA Harlem 3 where the invoices were not supported by school records. This is not correct.


The Comptroller's report reflects a profound misunderstanding of special education invoicing. For three seventh grade students, the Comptroller claims that Success Academy inflated the amount it was supposed to bill by \$2,598 because it incorrectly based its invoicing on a 25-hour instructional week rather than a 27.5-hour instructional week. But no charter school (including Success Academy) bases its special education billing on the number of hours in an instructional week because special education is not billed that way. Special education billing is based on three categories for elementary and middle schools:

- 0-20% Category: Schools must bill in this category for students receiving special education services less than 5 hours per week in elementary school and less than 5.5 hours per week in middle school.

- 20-60% Category: Schools must bill in this category for students receiving special education services 5 or more hours per week in elementary school and 5.5 or more hours per week in middle school.
 - This category also has a special minimum “180-minute/5-period-per-week” sub-rule for grades 7-12, and also for grades 4-6 when students change classes like in a high school setting.
- 60%-and-up Category: Schools must bill in this category for students receiving special education services at least 3 hours per day in elementary school and at least 3.5 hours per day in middle school.

See [NYSED guidance](#)¹ and [NYC Charter Center guidance](#).² Because the categories above are defined with set minimum time requirements, the percentages and the number of instructional hours in a week are entirely irrelevant. Therefore, Success Academy does not base its invoicing on a 25-hour instructional week (but rather on the definitions described above), and it would not matter for invoicing purposes even if Success Academy did. The only relevant question is whether the set minimum time requirements for each category were met. In the case of the seventh graders identified by the Comptroller, all are billed in the 20-60% category, and all meet the relevant hourly and period requirements. See first three rows in the chart below, which reflect the three seventh graders on the list.

The Comptroller further alleges that Success Academy did not maintain records reflecting that certain mandated special education services were provided to 10 SA Harlem 3 students. Of those 10, he claims, Success Academy overbilled for 5 students by \$49,396 because it purportedly did not provide mandated special education services at all or in part. For another student, the Comptroller claims, Success Academy overbilled by \$1,429 because it purportedly miscalculated the length of time the student received special education services. The chart below evidences that Success Academy properly provided mandated special education services for all 10 special education students identified by the Comptroller, and billed appropriately.

	Student Initials and OSIS No.	Special Education Services Mandated on IEP	Were Special Education Services Provided?	Evidence that Services Were Provided	Billing Category %
S1		SETSS (ELA) - 10 / wk Counseling (Group) - 1 / wk SLT (Group) - 2 / wk	Yes	See Exhibit III-S1 (SETSS and service provider schedules, teacher	20-60

¹ See Ex. III-1 (“Common Issues for Reporting on School Age Students with Disabilities.” NYSED.gov. New York State Education Department, Oct. 1, 2010.)



<http://www.oms.nysed.gov/stac/schoolage/policy/school-age_reporting.html>.

² See Ex. III-2 (“Special Education Funding and Billing.” New York City Charter Center. Jan. 29, 2012.)

		After 5/15: 12:1 setting ³		and provider notes, and emails from school staff, [REDACTED] teachers and providers showing that services were provided--see circled information)	
S2	[REDACTED]	SETSS 5 / wk SLT (Group) - 1 / wk SLT (Indiv) - 1 / wk	Yes	See Exhibit III-S2 (containing SETSS and service providers schedules, and goals prepared by [REDACTED] SETSS teacher, emails from [REDACTED] SETSS teacher, and language in [REDACTED] IEP showing that services were provided--see circled information).	20-60
S3	[REDACTED]	SETSS 5 / wk SLT (Group) - 1 / wk Counseling (Indiv) - 1 / wk	Yes	See Exhibit III-S3 (containing SETSS and service providers schedules, emails from [REDACTED] SETSS teacher, progress reports, and goals prepared by [REDACTED] SETSS teacher showing that services were provided--see circled information).	20-60
S4	[REDACTED]	Through 5/14/15: SETSS - 5 / wk	Yes	See Exhibit III-S4 (containing an ICT class roster, SETSS/tutoring schedules, and an IEP evaluation	20-60
		After 5/15/15: SETSS - 3 / wk ⁴			<20

³ In May 2015, at the student's annual IEP meeting, the New York City Department of Education's Committee for Special Education ("DOE") revised the student's IEP to recommend a 12:1 setting. Success Academy ("SA") Harlem 3 did not have a 12:1 classroom at the time. Accordingly, SA continued to provide and bill for SETSS for the remainder of the academic year (which bills at a lower rate than 12:1).

⁴ This student was in an ICT classroom all year. Though the student was provided with a higher level of service than that required by the IEP, SA billed for the service on the IEP (SETSS, which bills at a lower rate). Thus, the student obtained a higher and more expensive level of support than Success Academy

				showing that services were provided--see circled information, and services schedules).	
S5		Through 5/8/15: ICT - 25 / wk	Yes	See Exhibit III-S5 (containing an ICT class roster, SETSS/tutoring schedule and IEP meeting notes showing that services were provided--see circled information services schedules).	>60
		After 5/8/15: SETSS - 5 / wk ⁵			20-60
S6		Through 1/29/15: ⁶ ICT - 25 / wk Counseling (Group) - 1 / wk Counseling (Indiv) - 1 / wk OT (Group) - 2 / wk	Yes	See Exhibit III-S6 (containing an ICT class roster, SETSS/tutoring and service provider class roster, services schedules, and IEP materials showing that services were provided and clarifying IEP meeting and service change dates--see circled information).	>60
		After 1/29/15: ⁷ SETSS - 3 / wk (ELA) ⁸ Counseling (Group) - 1 / wk OT (Group) - 2 / wk			<20





billed for. In addition to the services in the ICT classroom, the student received pull-out tutoring services from a SETSS teacher.

⁵ In May 2015, at the student's annual IEP meeting, the DOE revised the student's IEP to recommend SETSS in anticipation of the 2015-16 school year. Though the student continued in an ICT classroom for the remainder of the school year, starting May 2015, SA only billed for SETSS (which bills at a lower rate) through the end of the academic year. Thus, the student obtained a higher and more expensive level of support than SA billed for. In addition to the services in the ICT classroom, the student received pull-out tutoring services from a SETSTS teacher.

⁶ We have provided IEP meeting materials confirming that the meeting date was January 29, 2015.

⁷ Although the IEP was updated in January, the CSE did not issue the final placement notice until after the end of the school year.

⁸ In January 2015, at the student's annual IEP meeting, the DOE revised the student's IEP to recommend SETSS. Though the student continued in an ICT classroom for the remainder of the 2014-15 school year, starting February 2015, SA only billed for SETSS (which bills at a lower rate) through the end of the academic year. Thus, the student obtained a higher and more expensive level of support than SA billed for.

S7		ICT - 25 / wk Counseling (Group) - 1 / wk SLT (Group) - 2 / wk	Yes	See Exhibit III-S7 (containing an ICT class roster, services provider schedules, and progress reports and IEP materials showing that services were provided--see circled information).	>60
S8		Through 3/19/15: ⁹ ICT - 29 / wk ¹⁰ OT (Group) - 2 / wk (year-round) SLT (Group) - 2 / wk (year-round)	Yes	See Exhibit III-S8 (containing progress reports, SETSS and services provider schedules, and provider notes showing that services were provided--see circled information).	20-60
		After 3/19/15: SETSS - 2 / wk (Math) OT (Group) - 2 / wk (year-round) SLT (Group) - 2 / wk (year-round)			<20
S9		Through 3/12/15: ICT - 35 / wk ¹¹ Counseling (Group) - 1 / wk SLT (Group) - 2 / wk	Yes	See Exhibit III-S9 (progress reports, SETSS and services provider schedules, and provider notes showing that services were provided--see circled information) containing progress reports, services schedules, and provider notes).	20-60
		After 3/12/15: SETSS - 4 / wk Counseling (Group) - 1 / wk SLT (Group) - 2 / wk			<20
S10		Through 5/29/15: SLT (Group) - 2 / wk	Yes	See Exhibit III-S10 (containing an ICT	<20

⁹ We have provided IEP meeting materials confirming that the meeting date was March 25, 2015.

¹⁰ SA Harlem 3 does not have a Kindergarten ICT classroom. The student's family wanted nevertheless to try the setting and services that SA could provide. Accordingly, SA provided and billed for SETSS (which bills at a lower rate than ICT).

¹¹ SA Harlem 3 does not have a Kindergarten ICT classroom. The student's family wanted nevertheless to try the setting and services that SA could provide. Accordingly, SA provided and billed for SETSS (which bills at a lower rate than ICT).

		After 5/29/15: ICT - 25 / wk SLT (Group) - 1 / wk SLT (Indiv) - 1 / wk		class roster, tutoring and related service provider schedules, progress reports and IEP materials-- see circled information and services schedules).	>60
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As the above chart reflects, Success Academy appropriately provided all required services for the special education students the Comptroller identified.

IV. Success Academy Maintains Adequate Controls Over Its Inventory.

The Comptroller claims that Success Academy did not maintain adequate controls over its fixed assets. This is not correct.

The NYSED Guidebook is, by definition, just a guide. It is not a list of requirements or “mandates” that must be complied with; rather, it is a resource charter schools can look to for guidance concerning their operations and controls.

Specifically, page 42 of the Guidebook is titled “Recommended Internal Control Practices for Charter Schools.” This Section of the Guidebook states, “The purpose of this section is to provide charter schools with an understanding of key internal controls for which they will be accountable and a description of **recommended** practices for achieving those controls. ***This document is not intended to substitute for sound management's judgment nor should it be considered all-inclusive.*** The practices identified in this document are indicators of an effective system of internal controls. Charter school operators are urged to compare the practices contained in this document to practices currently in place at your school or school network as a way to determine if your internal controls can or should be improved” (bold and italics added).

The NYSED Guidebook further states, “When considering the implementation of any internal control, charter school operators should take into consideration that the potential cost of establishing any specific internal control should not exceed its expected financial or operational benefits.” We have determined that the inventorying of our fixed assets would exceed any financial or operational benefits, and falls squarely within the above Guidance. The following are some of the reasons why we came to this conclusion.

As noted earlier, our financial statements are audited annually by an independent certified public accounting firm. As a fundamental basis, and as a foundation of its audit, our auditors perform an assessment of our internal controls to ascertain whether we have adequate controls

over the assets we have acquired. In addition, were our auditors to determine that we have a material weakness in our internal controls, they would be required to disclose that weakness in a "Management Letter," together with recommended procedures and practices we would need to implement to eliminate such weakness. We have never received, and there has never been a need for, such a Management Letter to be issued.

Additionally, our fixed assets, as of June 30, 2015, were comprised of the following:

RENOVATIONS AND IMPROVEMENTS	\$ 9,515,814
ASSETS NOT PLACED IN SERVICE (All are building renovations)	\$ 1,533,565
SOFTWARE	\$ 9,303,508
EQUIPMENT	\$ 2,660,814
FURNITURE AND FIXTURES	\$ 1,804,913
NET BOOK VALUE OF FIXED ASSETS	\$ 24,818,614

As reflected above, the majority (82%) of our fixed assets fell into one of two categories: (1) Renovations and Improvements and (2) Software. Renovations and improvements, including Assets not placed in service, totaled \$11,049,379, or 44.5%, of our net fixed assets as of June 30, 2015. These assets represent improvements to DOE buildings where our schools are co-located, and include expenditures for items such as flooring, doors, structural renovations, windows, painting, electrical wiring, air conditioners, and similar improvements to prepare the DOE building for our scholars. In addition, prior to expending funds, we are required to go through a lengthy and detailed process of permitting and approval by the DOE to make the renovations and improvements requested. As these renovations and improvements become part of, and are attached to, the physical DOE building, they do not lend themselves to a physical inventory by their very nature.

Software as of June 30, 2015 was \$9,303,508, or 37.5%, of our net fixed assets. Our software is used daily to operate our schools. As software by its very nature is an intangible asset, it too does not lend itself to a physical inventory.

Equipment represented \$2,660,814, or 10.7%, of our net fixed assets as of June 30, 2015, and consisted of SMART boards (which are affixed to the walls in our classrooms), laptop computers, iPads, smartphones, and other technology-related equipment. As the Comptroller has pointed out, we maintain a detailed listing of these assets in our technology department.

The last category of fixed assets is furniture and fixtures. As of June 30, 2016, furniture and fixtures was \$1,804,913, or 7.3%, of our net fixed assets. These assets represent classroom and office furniture (primarily desks, chairs, bookcases, rugs) for our scholars and staff, and are used daily. The cost of maintaining and monitoring a detailed physical fixed asset tracking

system over thousands of scholars' chairs and desks, for example, where the average cost of a scholar chair and desk is approximately \$60 and \$105, respectively, would far outweigh any expected financial or operational benefit that could be derived from such a system.

Accordingly, we believe that we have adequate physical and internal controls over our fixed assets, and the cost to implement a detailed physical asset tagging and inventory system would far outweigh any financial and operational benefits.

V. Success Academy Properly Documented, Adequately Supported, and Properly Authorized its Expenses.

The Comptroller alleges that Success Academy did not document that all purchases made by employees on behalf of schools were reasonable, appropriate, adequately supported, and properly authorized. This is incorrect, and any gaps in documentation were nonmaterial.

A. Non-Personnel Services Expenses, Centralized Purchases, Credit Card Purchases

Expenditures Greater than \$25,000

The Comptroller alleges that 16 centralized purposes over the threshold of \$25,000 lacked documentation showing that they were properly authorized. This is not true. The 16 cited purchases all relate to 4 vendors who provide critical services to Success Academy: CUNY Graduate School, Makeable LLC, CZ Solutions, and NYI-NJ LLC.

The expenditures for CUNY were based on a three-year contract entered into on March 13, 2013, and signed by the Network's Chief Operating Officer. The contract and payment secured space to conduct Summer Training programs in 2013, 2014, and 2015. This contract was reviewed and approved as part of Success Academy's annual budget process.

Makeable provided services for Success Academy's Scholar Recruitment campaign. Success Academy engaged Makeable after a thorough competitive bidding process. Success Academy delivered a Request for Proposal dated February 15, 2013 (see Exhibit V-1) to 12 agencies and received four proposals in response (see Exhibit V-2, a summary of the agencies considered). Success Academy then reviewed and considered each proposal and chose Makeable (then known as Poke Advertising) as the agency to provide these services.

CZ Solutions Inc. provides technology services to Success Academy schools. The expenditures cited are covered by a contract, initially entered into on May 9, 2012, and renewed on April 15, 2015 (see Exhibit V-3). As a longtime provider of services to Success Academy, and a pre-existing vendor, CZ required no further documentation to support its selection.

NYI-NJ LLC provided co-location space and services related to the housing of our servers in their facility. The contract was entered into on April 16, 2012 and signed by the Network's then Chief Financial Officer.

OTPS (Other Than Personnel Services) Transactions for Other SA Schools

The Comptroller alleges that SA Harlem 3 paid for two charges that were unrelated to SA Harlem 3 operations. Both charges relate to the 2014-15 Scholar Recruitment Campaign and stem from 29 invoices paid to our recruitment agency that were initially paid by the Network and subsequently allocated to SA Harlem 3 along with all other SA schools. This total allocation amounted to \$752,940. Upon our review of this list of transactions, we found only one charge which specifically referenced only one SA school, and that charge was for for \$538.90. Thus, 99.93% of the transactions in this allocation were correctly identified and were correctly charged to SA Harlem 3. The portion of the \$538.90 charge that should have been allocated solely to SA Washington Heights applicable to SA Harlem 3 is \$34.77.

OTPS Missing Documentation

While performing their on-site testing, the Comptroller's staff provided the Network with a list of over 100 transactions and requested that Network staff pull the files on-site. The Network was not allowed sufficient time to identify, compile, and review the documents requested. Further, these missing documents were not listed in subsequent meetings and correspondence as missing documents. Certainly, upon request and with a reasonable amount of notice and time, SA would have been able to provide the requested documents. The following table describes the additional documents that the Comptroller claims to be missing:

Count #	Vendor	Description
1	Touro College	Signed contract provided to comptroller. Complete procurement documentation is available. (See Exhibit V-P1)
2	Touro College	Signed contract provided to comptroller. Complete procurement documentation is available. (See Exhibit V-P2)
3 and 4	Various Vendors	We have a package compiled of all transactions relating to this allocation. (See Exhibit V-P3)
5	Various Vendors	We have a package compiled of all transactions relating to this allocation. (See Exhibit V-P4)
6 and 7	CUNY Graduate Center	Signed contract provided to comptroller. Complete procurement documentation is available. (See Exhibit V-P5)

10 and 11	Makeable	Complete procurement documentation is available. (See Exhibit V-P6)
12	New York City Charter School Center	Complete procurement documentation is available. (See Exhibit V-P7)
13 and 14	CZ Solutions	Complete procurement documentation is available. (See Exhibit V-P8)

Credit Cards

The Comptroller alleges that certain credit cards purchases reviewed were not appropriate because they lack sufficient description, supporting documentation, or approval. This claim reflects form over substance. While there may be some discrepancy between day-to-day practice and rigid internal rules that Success Academy will update to reflect its increased size and complexity, every purchase cited was plainly in furtherance of school operations and mission.

The credit card program administered by Success Academy has evolved since it was adopted and memorialized in the FY2013 Financial Policies and Procedures manual. For example, the \$500 purchase limit was implemented when Success Academy had only 14 schools in its network. As the organization scaled, more purchasing responsibilities in higher amounts were deemed appropriate to be handled by the schools. We revised the policy in the credit card user agreement and removed the single transaction limit. Therefore, the 57 transactions that were flagged as exceeding a \$500 limit are not, in fact, a violation of SA policy. Additionally, as Success Academy utilizes ever more robust electronic tools, it no longer needs nor expects staff to manually enter the names of participants at meals or other events. SA intends to revise its Financial Policies and Procedures manual for FY2017 to be in line with all policies communicated to staff.

B. Personnel Services

The Comptroller alleges that, during Fiscal Year 2015: 19 employee bonuses were unsupported, 23 employees did not have required offer or placement letters, the salary for one Senior Leader was unsupported, and one Leadership Resident's compensation was reported as a SA Harlem 3 expense when that employee worked at a different SA school, resulting in \$1,054,895 of undocumented and/or improperly recorded payments. These allegations are incorrect. In each case, the employee's salary and bonus was reasonable, appropriate, and authorized, and documentation for each was appropriately maintained.

Bonuses

During FY2015, the 19 bonuses the Comptroller references were calculated based on clear, uniform criteria. For school leaders (11 of the 19), the bonuses were calculated according to a formula based on Academics (student performance data), School Culture (student attendance, tardiness, homework completion data), and Leadership (detailed rubrics assessing leader effectiveness in creating a safe, successful school). (See Exhibit V-4, 2014-2015 school leader bonus policy and metrics, and Exhibit V-5, calculation of 2014-2015 bonuses.) For school operations staff (8 of the 19), the bonuses were calculated based on the employee's performance measured against a rubric designed for operational excellence (see Exhibit V-6, the Qualities of Excellent Operations document). Operations staff at each school were notified of performance ratings and bonuses for their team by email (see Exhibit V-7). Thus the bonuses were supported by the compensation policy then in place, and were appropriately documented.

Current Offer Letters

The Comptroller complains that Success Academy "did not maintain current offer or placement letters to establish that . . . [the] employees . . . were in fact employed at Harlem 3" or at other Success schools. All 23 employees the Comptroller flagged have offer letters on file. (See Exhibit V-8, all 23 offer letters.) Success Academy is a single legal entity with multiple sites, and staff may move between sites. The Comptroller has not identified any law that requires employers to issue offer or placement letters specifying the sites at which employees work.¹² In any event, all 23 referenced employees were in fact employed at Harlem 3 (See Exhibit V-9, staff rosters from all SA Harlem 3 sites as of June 2015.)

Senior Leader Salary, Leadership Resident Site

The Comptroller alleges that one Senior Leader's salary exceeded the recommended salary range for his position, basing this allegation on a non-binding guideline document. See Exhibit V-10, 2014-2015 salary guideline document. Because the document, by its terms, merely establishes guidelines, salaries could go outside a relevant range if appropriate. In this case, the employee served as a Success Academy Managing Director of Schools for over one year before accepting a Principal position. Given his past experience, including 1 year as Managing Director of Schools at the Network, 2 years as English Department chair at a traditional public school, 4 years as a teacher at a traditional public school and a charter school, a law degree from Yale Law School, Success Academy exercised its discretion to adjust this employee's salary accordingly. (See Exhibit V-11, the employee's resume.)

¹² New York Labor Law requires that employees receive a pay notice at the time of hire with information regarding the employee's pay rate, pay basis (e.g., salary, commission, hourly), and certain other information. See NY Labor Law Section 195. The Comptroller does not question whether the employees in question received this required information, which they did.

The Comptroller further alleges that one Leadership Resident did not work at SA Harlem 3 during FY2015. This was based on a typographical error; the employee did, in fact, work at SA Harlem 3 for the entire FY2015. (See Exhibit V-9 above, staff rosters as of June 2015, and Exhibit V-12, the SA Harlem 3 staff roster as of September 2014.)

Accordingly, the referenced payments for the above personnel services totaling \$1,054,895 were appropriately made and documented.

VI. Success Academy Maintained Appropriate Proof of New York Residency for Students.

The Comptroller alleges that Success Academy did not maintain appropriate proof of residency documentation for 13 students. This is not correct.

Success Academy serves a primarily minority, low-income student population. Many of our families are in transitional circumstances. While we aim for every family to produce the residency documentation specified in Success Academy's Guide to Proofs of Residency document (see Exhibit VI-1), which the Comptroller cites, in certain circumstances, some families are not able to produce such documentation. In those cases, Success Academy carefully reviews the documentation these families are able to produce in order to make a residency determination. This practice is permitted under the New York State Education Department's ("SED's") regulations.¹³

For 2 of the 13 students the Comptroller references, Success Academy requested proof of residency documentation, but the students withdrew within five days of enrollment, before we were able to secure proof of residency. (See Exhibits VI-2 and VI-3 (containing screenshots showing these students' first and last days enrolled).)

For the remaining 10 students, either the student produced documentation in accordance with Success Academy's Guide or Success Academy exercised its discretion under SED regulations to accept alternate satisfactory proof of New York residency.

Student Initials and OSIS Number	Evidence of New York Residency
██████████	ConEd electric bill - complies with SA Guide (see Exhibit VI-S1)
██████████	Bank statement (family unable to produce other documentation) (see Exhibit VI-S2)
██████████	ConEd electric bill - complies with SA Guide (see Exhibit VI-S3)
██████████	Student in transitional housing; per SA Guide, no proof of address required (see Exhibit VI-S4)
██████████	Despite repeated attempts, we were unable to obtain proof of residency

¹³ N.Y. COMP. CODES R. & REGS. tit. 8, § 100.2(y) (2016).

	from the family. However, the school did not expel the student because the DOE's Committee on Special Education confirmed the family's address to us (see Exhibit VI-S5).
██████████	Landline phone bill - complies with SA Guide (see Exhibit VI-S6)
██████████	Loan statement - complies with SA Guide, which does not list as unacceptable (see Exhibit VI-S7)
██████████	Notice from Mt. Sinai Medical Center - complies with SA guide, which does not list as unacceptable (see Exhibit VI-S8)
██████████	Loan statement - complies with SA Guide, which does not list as unacceptable (see Exhibit VI-S9)
██████████	Bank statement (family unable to produce other documentation because transient - SA determined acceptable under the circumstances) (see Exhibit VI-S10)
██████████	Rent statement - complies with SA Guide (see Exhibit VI-S11)

VII. Success Academy Ensured that All Employees Completed Fingerprint and Background Checks.

The Comptroller claims Success Academy did not clear fingerprint and background checks for 29 employees before they started working in schools. This is incorrect.

In strict keeping with charter authorizer requirements,¹⁴ Success Academy schools require that all school staff be fingerprinted before they start working with children.¹⁵ Sometimes the fingerprint check does not clear before an employee's first day of work with children. In those rare cases, Success Academy has adopted the SUNY's procedures for emergency conditional appointments, which are as follows:

1. Each employee must get fingerprinted, and the prints are submitted to the New York State Education Department's (SED's) Office of School Personnel Review and Accountability (OSPRA) system;
2. The employee must provide a signed statement attesting that he or she has no criminal record;
3. The school's board of trustees must either pass a resolution to appoint the employee in question on a conditional or emergency conditional basis or delegate its authority to do so to someone else; and
4. The board of trustees must also approve a written supervision policy for employees who have a conditional or emergency conditional appointment. The supervision policy restricts the employee's direct access to students.

¹⁴ See Ex. VII-1, The State University of New York Charter Schools Institute Guidelines for Conducting Employee Criminal Background Checks for Charter Schools Authorized by the Board of Trustees of the State University of New York, Feb. 2013 ("SUNY Guidelines").

¹⁵ See, e.g., Ex. VII-2, an example of an email sent to new employees.

Emergency appointments are valid for 20 business days.¹⁶

Success Academy followed the above procedures:

1. Each employee was fingerprinted, with prints submitted to OSPRA;
2. Employees provided a signed statement attesting that he or she has no criminal record in any jurisdiction;
3. The schools' boards of trustees passed a resolution that delegated to Success Academy Charter Schools the boards' responsibilities with respect to conditional or emergency conditional clearance for employees requiring such clearances;¹⁷ and
4. The schools' boards of trustees also approved a written supervision policy for employees with a conditional or emergency conditional appointment, restricting their direct access to students.¹⁸

Additionally, although not required by law or its authorizer, Success Academy schools also require that all school staff undergo a background check. This information is reflected in the below chart:

¹⁶ SUNY Guidelines at 4.

¹⁷ See Ex. VII-3, containing Board resolutions, supervision policies, and minutes confirming that the resolutions were approved.

¹⁸ See Ex. VII-3, containing Board resolutions, supervision policies, and minutes confirming that the resolutions were approved.

Personnel	Start Date	First Date in Schools ¹⁹	Date of Fingerprinting Clearance	Fingerprints Submitted to OSPRA for Clearance	SA Located Signed Statement of No Criminal Record ²⁰	Fingerprinting Clearance within 20 Days of First Date in Schools	Background Check Cleared
F.A.	7/25/2014	8/18/2014*	7/29/2014	X	X	X	X
I.A.	11/24/2014	11/24/2014	12/5/2014	X	X	X	X
L.B.	12/8/2014	12/8/2014	12/12/2014	X	X	X	X
N.C.	5/19/2014	5/19/2014	5/21/2014	X	X	X	X
M.D.	8/6/2012	8/22/2012*	9/12/2012	X	***	X	X
L.D.	8/18/2014	8/18/2014	9/11/2014	X	***	X	X
C.D.	7/7/2014	8/18/2014*	8/4/2014	X	X	X	X
V.E.	9/22/2014	9/22/2014	9/23/2014	X	X	X	X
K.F.	7/16/2014	8/18/2014*	7/29/2014	X	X	X	X
S.G.	10/28/2013	10/28/2013	11/1/2013	X	X	X	X
K.H.	8/6/2010	8/18/2010*	8/9/2010	X	***	X	X
J.D.	6/1/2010	6/1/2010	6/9/2010	X	***	X	X
F.J.	7/30/2012	8/22/2012*	9/12/2012	X	X	X	X
S.M.	7/1/2013	8/19/2013*	7/1/2013	X	X	X	X
R.M.	11/24/2014	11/24/2014	1/29/2015	X	X	****	X
D.N.**	2/6/2012	8/19/2013	3/20/2012	X	X	X	X
C.P.	7/25/2011	8/17/2011*	8/1/2011	X	X	X	X
A.P.	10/27/2014	10/27/2014	10/28/2014	X	X	X	X
S.P.	2/2/2015	2/2/2015	2/11/2015	X	X	X	X
C.R.	7/15/2013	8/19/2013*	7/16/2013	X	X	X	X
Z.R.B.	7/30/2012	8/22/2012*	11/14/2012	X	X		X
P.R.	1/3/2012	1/3/2012	9/10/2012	X	***		X
M.E.S.	7/30/2012	8/22/2012*	9/7/2012	X	X	X	X
M.P.S.	3/18/2013	3/18/2013	4/8/2013	X	X	X	X
T.S.	8/3/2009	8/20/2009*	8/25/2009	X	***	X	X
A.T.	6/8/2015	6/8/2015	6/19/2015	X	X	X	X
J.T.	11/4/2013	11/4/2013	11/22/2013	X	X	X	X
H.U.	7/21/2014	8/18/2014*	7/25/2014	X	X	X	X
T.W.	6/3/2013	8/19/2013*	6/11/2013	X	X	X	X

¹⁹ See Ex. VII-4, setting forth the first day of schools for years 2009 through 2014.

²⁰ See Ex. VII-5, containing signed emergency conditional forms.

* The Comptroller incorrectly assumed that the employee's start date was his or her first day in schools. Many Success Academy employees start over the summer.

** The Comptroller incorrectly assumed that D.N.'s start date was his first day in schools. D.N. started on February 6, 2012 as a Network employee. His first day in schools as principal of Success Academy Harlem East was August 19, 2013. See Exhibit VII-6, containing D.N.'s original offer letter and his transfer letter. The Comptroller also incorrectly listed D.N.'s fingerprinting clearance date. See Exhibit VII-7, containing D.N.'s fingerprinting clearance dated March 20, 2012.

*** In these instances, we have been unable to find the written statements that employees are required to sign when they receive emergency temporary certification stating that they did not have criminal records. We believe the employees did sign such statements but that we have misplaced them. In any event, the employees did not in fact have criminal records.

**** This employee was formerly a Miami Dade public school teacher and had already been fingerprinted and cleared. (See Exhibit VII-8, containing the teacher's OSPRA Form 104 requesting that his records from an earlier fingerprinting clearance be released.) The DOE persistently delayed in releasing his clearance, and after unsuccessful repeated phone calls and faxes to the DOE, Success Academy decided to have the employee re-fingerprinted.

As noted above, although the background checks that Success Academy conducts are not required by law or by its authorizer, the Comptroller alleges that two operations staff, one soccer coach, and one assistant teacher were not cleared for employment because “education and employment issues [in background checks] were never resolved.” This is incorrect. Success Academy cleared these individuals for employment. The following chart reflects the findings of those background checks:

Employee	Background Check Finding
Z.R.B., Assistant Teacher	No criminal history. Prior employment not verified because employee mistakenly listed Success Academy as previous place of employment (Success Academy was his first employer post-college). College enrollment at Dartmouth College was verified, but graduation not yet verified (likely because too recent to be on permanent record, as report was run in Sept. 2012). This individual subsequently received a Master’s Degree from the Relay Graduation School of Education and is currently enrolled at Yale Law school (both institutions require bachelor’s degree). ²¹ Success Academy had no concerns with this background check.
F.A., Soccer Coach	No criminal history. Report says the check “meets company standards.” Employee mistakenly listed start date at Long Island University in 2005 when it was 2007; he confirmed with background check company that this was a mistake. Employee also listed that he was a soccer coach at John Jay College of Criminal Justice, whereas John Jay College confirmed his formal title was Adjunct Lecturer. Success Academy had no concerns with this background check.
S.M., Business Operations Manager	No criminal history. College enrollment at New York University was verified, but graduation was not yet verified (likely because too recent to be on permanent record, as report was run mid-June 2013). This individual listed that she had started college in August 2009, and National Student Clearinghouse listed the start as September 2009. Success Academy had no concerns with this background check.
N.C., Office Coordinator	No criminal history. Report says the check “meets company standards.” Employee listed that she worked for the Gap. This employment was verified, but there were date discrepancies. The employee confirmed she wasn’t sure about the

²¹ See Ex. VII-9 (ZRB’s LinkedIn page, Dec. 6, 2016.) and Ex. VII-10 (Yale Food Law Society, Dec. 6, 2016.)

	exact dates, and she had worked for the Gap through a temp agency. She also listed that she had worked at Ralph Lauren, but this employer was not in the database that the background check company used. The employee further listed that she worked for Jimmy's. W-2s and other Jimmy's documentation were obtained but were not entirely legible. Success Academy had no concerns with this background check.
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VIII. The Network Appropriately Offered and Administered Loans With Favorable Terms to Success Academy.

The Comptroller objects to certain loans the Network provided to Success Academy on the basis that they "pos[ed] a potential conflict of interest without taking appropriate, required steps to ensure that the terms of the loans were fair, reasonable, and in Success Academy's best interests." To the contrary, the terms of the referenced loans were entirely fair, reasonable, and in Success Academy's best interests.

During the relevant time period, the Network applied to and received 5 loans²² from the referenced private foundation on behalf of Success Academy. These loans had significantly more favorable terms than market standards, and the Network disbursed the loans to the Schools on a pass-through basis. The Comptroller raises hypothetical concerns that some of the loans could have been administered by the Network to Success Academy on less favorable loan forgiveness and interest terms than the Network received. This concern is entirely unfounded. The Comptroller himself notes that "the Network charged Success Academy the same interest rate that it received i.e., one percent." Furthermore, the Network has repeatedly affirmed that it applies the exact same loan forgiveness terms that the Network received from the private foundation. (No loans were forgiven by the private foundation until FY2016, and the Network will be forgiving those particular loans to the Schools.)

The below chart reflects the referenced loans and relevant loan terms.

Date of Agmt or First Distribution	Lender	Borrower	Amount	Interest
6/30/11	Network	SA Bed-Stuy 1	\$1,300,000	3.25% pre-October 2012 (same favorable interest as Network received from private foundation);

²² The Comptroller states that Success Academy only provided loan agreements between the Network and the private foundation covering a total of \$6,450,000 under 4 loans. In fact, Success Academy also provided a loan agreement dated as of January 20, 2015 for \$2,050,000 (Bates SA-NYC032964 through SA-NYC032984).

				1% post-October 2012 (same favorable interest as Network received from private foundation)
6/13/11	Network	SA Upper West	\$1,300,000	3.25% pre-October 2012; 1% post-October 2012 (same)
6/30/11	Network	SA Bronx 1	\$550,000	3.25% pre-October 2012; 1% post-October 2012 (same)
8/31/12	Network	SA Harlem 4	\$200,000	3.25% pre-October 2012; 1% post-October 2012 (same)
5/8/13	Network	SA Bed-Stuy 2	\$1,300,000	1% (same)
5/8/13	Network	SA Cobble Hill	\$1,300,000	1% (same)
5/8/13	Network	SA Williamsburg	\$1,300,000	1% (same)
6/5/13	Network	SA NYC (for the benefit of SA Bronx 3, SA Crown Heights, SA Fort Greene, SA Hell's Kitchen, SA Prospect Heights, and SA Union Square)	\$4,900,000	1% (same)
8/23/13	Network	SA NYC (for the benefit of SA Harlem 3 and SA Harlem 5)	\$1,900,000	1% (same)
1/28/14	Network	SA NYC	\$250,000	1% (same)

IX. Success Academy's Board Provided Appropriate Oversight of Success Academy's Financial Operations.

The Comptroller claims that Success Academy's Board did not provide sufficient oversight of some aspects of Success Academy's financial operations. The Comptroller bases this allegation broadly on the above alleged deficiencies, as well as on three specific areas (minimum number of board meetings, consideration of 2013 merger, board committee minutes). The Comptroller is incorrect; Success Academy's Board has exercised diligent oversight of Success Academy's operations, as explained below.

Success Academy's authorizer, SUNY, conducts regular and rigorous reviews of Success Academy's Board. New Board members must complete detailed questionnaires and conflict of interest disclosures, and Success Academy discloses Board membership, procedures, and

actions with each annual report. Before significant actions like charter renewals, SUNY conducts deeper evaluations, reviewing minutes and materials and conducting interviews with Board members. At the most recent charter renewal review in 2016, SUNY's Charter Schools Institute (the SUNY office responsible for directly monitoring schools authorized by SUNY) determined that "The SACS-NYC board of trustees (the "board") is deeply knowledgeable about school governance and provides rigorous oversight regarding schools' academic outcomes, financial standing, enrollment levels, and facilities planning." See Exhibit IX-1 (Renewal Recommendation Report for SA Harlem 3, October 11, 2016). SUNY's Charter Schools Institute further found that "[t]he board has a deep understanding of the SACS-NYC finances and monitors the fiscal condition of each school."

The Comptroller alleges that Success Academy's Board did not hold the required minimum number of board meetings for FY2013 and FY 2015. This allegation is incorrect and misleading. As the Comptroller concedes, for both of those years, the Board held the required minimum 6 meetings. In two instances over the course of those two years, quorum was not met. But Success Academy bylaws make clear that there can be a meeting without quorum and that Trustees may (but are not required to) adjourn a meeting until there is quorum: "If at any meeting of the Board there shall be less than a quorum present, the Trustees present may adjourn the meeting until a quorum is obtained." NYC Not-For-Profit Corporation Law similarly provides that "The members present may adjourn the meeting despite the absence of a quorum." N.Y. NOT-FOR-PROFIT-CORP. LAW § 608(d) (2016).

The Comptroller alleges a lack of documentation showing that the Board fully considered the financial implications of Success Academy's 2013 merger with seven schools managed by the Network. Yet, as the Comptroller concedes, the Board resolution concerning the 2013 merger makes clear that the Board "sought advice from such other professionals and advisors that it deemed appropriate, discussed the potential benefits of the Merger and the likelihood of achieving such benefits," and asked the Network questions "concerning various issues relating to the Merger" — all of which was confirmed by the Board members whom the Comptroller's Office interviewed. There is no requirement in Success Academy's bylaws or NYC Not-For-Profit Corporation Law that materials reviewed and discussed in connection with this merger additionally be retained three years after-the-fact for substantiation purposes.

The Comptroller alleges that Success Academy's bylaws and New York State Open Meetings Law require that committee meeting minutes be kept. This is incorrect. NYS Open Meetings Law provides that "Minutes shall be taken at all open meetings of a public body which shall consist of a record or summary of all motions, proposals, resolutions and any other matter formally voted upon and the vote thereon." N.Y. PUB. OFF. LAW § 106(1) (2016). As no motions, proposals, resolutions, or other matters were voted on at any Board committee meeting in fiscal years 2013, 2014, and 2015, no committee meeting minutes were required under either NYS Open Meetings Law or Success Academy's bylaws.