



STATE OF OHIO
OFFICE OF THE AUDITOR
JIM PETRO, AUDITOR OF STATE

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**SYMBIONT NFP, INC.
REPORT ON AGREED-UPON PROCEDURES**

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**SYMBIONT NFP, INC.
SUPPLEMENT TO REPORT ON AGREED-UPON PROCEDURES**

**BOARD OF DIRECTORS
AND ADMINISTRATIVE PERSONNEL
AS OF DECEMBER 31, 1998**

NAME	TITLE	TERM
BOARD OF DIRECTORS		
Manuel R. Vela	President	1/1/96 - 12/31/99
Scott W. McElroy	Vice President	1/1/96 - 12/31/99
Judy Vela	Secretary/Treasurer	1/1/96 - 12/31/99
Melvin Lee Balser	Member	1/1/96 - 4/12/99 **
David Morris	Member	1/1/96 - 4/12/99 **
ADMINISTRATIVE PERSONNEL		
Manuel R. Vela	Administrator	1984 to Present
Judy Vela	Executive Director of Foster Care	1989 to Present
Dr. Jeff Christiansen	Director Fairfield Academy	2/1/98 to Present
John McElroy	Head of Maintenance	1992 to Present
David Morris	Director of Marketing	1998 to 2/28/99

Agency Address

Symbiont NFP, Inc.
29 W. Church Street
Newark, Ohio 43055

** - Action was taken at the April 12, 1999 Special Meeting to reduce the number of board members from five to three, thus eliminating Balser and Morris' positions on the board.

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STATE OF OHIO
OFFICE OF THE AUDITOR
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Independent Accountants' Report

Jacqueline Romer-Sensky, Director
Ohio Department of Job and Family Services
30 East Broad Street
Columbus, Ohio 43266-0423

Dear Director Sensky:

Pursuant to the memorandum of understanding signed July 6, 1999 between the Ohio Department of Job and Family Services¹ (ODJFS or Department), formerly known as the Ohio Department of Human Services (ODHS), and the Auditor of State (AOS), we have conducted a Child Protective Services/Special Title IV-E Review ("Review") and performed the procedures summarized below for Symbiont NFP, Inc.² (Placement Agency) for the period January 1, 1998 through December 31, 1998 ("the Period"). These procedures were performed solely to determine if the Placement Agency complied with the provisions of certain Federal and State laws and regulations applicable to a private noncustodial agency (PNA) and certain terms and conditions of its contract with Franklin County Children Services (FCCS). The applicable laws, regulations and the provisions of its contract are described in the attached *Supplement to Report on Agreed-upon Procedures under Legal Authority*.

This engagement to apply agreed-upon procedures was performed in accordance with standards established by the American Institute of Certified Public Accountants. The sufficiency of the procedures is solely the responsibility of the users of the report. The report on agreed-upon procedures is intended for the information of ODJFS, however, the report will be a matter of public record and its distribution will not be limited. Consequently, we make no representation regarding the sufficiency of the procedures discussed below for the purpose for which this report has been requested or for any other purpose. The procedures we performed are summarized as follows:

1. We performed procedures to determine whether the Placement Agency complied with the terms and conditions of its contractual agreements and provisions of applicable laws and regulations for expenditures during the Period.
2. We scanned all receipts and deposits from the applicable public children services agencies to Symbiont NFP, Inc. for the Period to determine whether receipts were properly deposited and recorded in the accounting records of the Placement Agency.
3. We compared the Placement Agency's per diem paid to the foster parents with the corresponding per diem it received from Franklin County Children Services Agency (FCCS) to determine the ratio of payments for administration and maintenance.

¹ The merger of the Ohio Department of Human Services and the Ohio Bureau of Employment Services to become the Ohio Department of Job and Family Services (ODJFS) took effect July 1, 2000.

² A Foster Care Placement Services Agreement was entered into between Symbiont Inc. and FCCS on 7/1/97. An amendment to this contract stating the contract should be with Symbiont NFP, Inc. was signed by Manuel R. Vela, CEO, Symbiont Inc. and Symbiont NFP, Inc. and John Saros, Executive Director of FCCS on 8/5/99.

4. We inquired, obtained, and documented corroborating information on the Placement Agency's internal control policies and procedures relating to: 1) cash disbursements and expenses; 2) revenues; 3) personnel and payroll; 4) accounts receivable; 5) inventories; and 6) fixed assets.
5. We performed procedures to confirm internal administrative controls over compliance with the requirements of the Title IV-E program and the Ohio Admin. Code Chapter 5101:2.

On February 12, 2001 we held an post-audit conference with the following:

<u>Name</u>	<u>Office/Position</u>
Manuel R. Vela	Symbiont NFP, Inc. Administrator
Jonathan A. Veley	Legal Counsel representing Symbiont NFP, Inc.
Daniel E. Schultz, Jr.	Auditor of State Chief Deputy Auditor
Gregory W. Kelly	Auditor of State Assistant Chief Deputy Auditor
D. Michael Grodhaus	Auditor of State Chief Legal Counsel
Patricia E. Snyder	Auditor of State Assistant Chief Legal Counsel
Jessie M. Tower	ODJFS Chief, Bureau of IV-E Plan Administration
Dan Shook	ODJFS Section Chief, Bureau of IV-E Plan Administration
Hal Whitehurst	ODJFS Auditor, Audit Supervisor
Angela Galuska	ODJFS Auditor

Our detailed procedures and the results of applying these procedures are contained in the attached *Supplement to Report on Agreed-upon Procedures*. Because these procedures do not constitute an examination conducted in accordance with generally accepted auditing standards, we do not express an opinion or limited assurance on any of the accounts or items referred to above. Also, we express no opinion on the Placement Agency's internal control system over financial reporting or any part thereof. Had we performed additional procedures, or had we conducted an audit of the financial statements in accordance with generally accepted auditing standards, other matters might have come to our attention that would have been reported to you. This report addresses transactions relating to the above procedures only and does not extend to the financial statements of the Placement Agency, taken as a whole.

This report is intended for the information of the officials of ODJFS and is not intended to and should not be used by anyone other than this specified party. However, this report is a public record, and is available upon specific request.

JIM PETRO
Auditor of State
January 19, 2001

SYMBIONT NFP, INC.
SUPPLEMENT TO REPORT ON AGREED-UPON PROCEDURES

BACKGROUND INFORMATION

The challenge of child welfare reform is formidable, and we commend ODJFS on its recent efforts to reform the child welfare system. The Department has invited a comprehensive group of stakeholders to participate in its child welfare reform initiative. On April 6, 1999, the Department Director requested that the Auditor of State assist the Department in its efforts to improve the child welfare system by conducting a performance audit of its child welfare program. In collaboration with ODJFS and the stakeholders group, the child welfare performance audit will identify issues that are preventing effective and efficient delivery of high quality services to children and families, and recommend methods to improve the Department's processes. ODJFS should consider the audit findings and recommendations presented in our report as it attempts to bring about needed improvements and reform. The report was released on February 9, 2001.

In response to concerns about a lack of fiscal accountability and questionable business practices, a memorandum of understanding was signed July 6, 1999, between ODJFS (formerly ODHS) and the Auditor of State (AOS). This memorandum formalized an agreement that ODJFS and AOS would perform investigations utilizing certain agreed-upon procedures under the supervision of the AOS. The agreement called for the AOS to supervise the engagement, issue the report and provide training to selected ODJFS staff members. The procedures are being performed at twenty-five private agencies for periods beginning January 1, 1998 and extending for a minimum of twelve months or a maximum of eighteen months. This was the 6th report released of the 25 reports to be issued.

LEGAL AUTHORITY

Administration of Title IV-E Funds

Title IV-E of the Social Security Act authorizes the payment of federal funds to states to provide foster care to children who have been removed from their homes through a voluntary placement agreement or judicial determination.³ The program is administered at the federal level by the Administration for Children and Families (ACF), United States Department of Health and Human Services.

In the State of Ohio, the Department of Job and Family Services acts as the single state agency to administer federal payments for foster care, and shall adopt rules to implement this authority.⁴ Within ODJFS, the program is administered by the Office of Child Care and Family Services.

At the local level, each county's public children services agencies (PCSA) or department of human services administer funds provided under Title IV-E of the Social Security Act in accordance with the rules adopted by the state Department of Human Services.⁵

³ 94 Stat. 501 (1980), 42 U.S.C. Section 671, as amended.

⁴ Ohio Rev. Code Section 5101.141 (A). Rules established pursuant to this authority are found at Ohio Admin. Code Chapter 5101:2-47.

⁵ Ohio Rev. Code Section 5153.16 (A) (14).

SYMBIONT NFP, INC.
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Public Children Services Agency Contractual Requirements

PCSA's are authorized to enter into contracts with PCPAs or PNAs to provide care and services which it deems to be in the best interest of any child who needs or is likely to need public care and services.⁶ PCPA/PNAs are licensed by ODJFS to act as a representative of ODJFS in recommending family foster homes for certification; accept temporary, permanent and legal custody of children; and place children for foster care or adoption. Franklin County Children Services (FCCS), a PCSA, entered into such an agreement with Symbiont NFP, Inc., a PNA.

Billing Process

The PCPA or PNA submits an invoice monthly to the PCSA. The invoice contains specific information on each child, his or her per diem rate and the number of days in placement. Each month, the PCSA pays the PCPAs and PNAs based on their previous month's invoice, and reports to ODJFS the amount paid for each child and for other services including, but not limited to, case management, transportation for the children, recruiting and training foster parents.⁷

Reports and Records

Not-for-profit PCPAs and PNAs that provide foster care services for children eligible under the Title IV-E program are required to submit cost reports annually to ODJFS.⁸ Costs reported are used to determine a maximum allowable reimbursement rate under the Title IV-E program for foster care maintenance payments and administrative costs. ODJFS requires that the governing body of the PCPA or PNA authorize and review an annual audit with an opinion of the organization's finances by an independent certified or registered public accountant, and asks that⁹ a copy of the last completed audit be submitted with the annual cost report.

"Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report..."¹⁰

⁶ Ohio Rev. Code Section 5153.16 (C)(2)(a)(v).

⁷ Ohio Admin. Code Section 5101:2-47-11(G). Prior to 5/1/98, these requirements were generally contained in Ohio Admin. Code Section 5101:2-47-65(E).

⁸ Form ODHS 2910 Purchased Family Foster Care Cost Report is applicable to PCPAs and PNAs. Annual filing requirement is found at Ohio Admin. Code Section 5101:2-47-24(D). Prior to 5/1/98, the annual filing requirement was contained in Ohio Admin. Code Section 5101:2-47-20(C)(1).

⁹ Ohio Admin. Code Section 5101:2-5-08(A)(5). Effective 7-1-00, after the audit period, ODJFS amended this rule to provide that for PCPAs and PNAs with an annual gross income of less than \$300,000, it would be sufficient to prepare a written annual financial statement of the PCPA or PNA finances in accordance with generally accepted accounting principles. In addition to having the governing board authorize and review the required financial statements and audits, the amended rule requires agencies to submit them to ODJFS.

¹⁰ Office of Management and Budget (OMB) Circular A-110 Uniform "Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations": Subpart C Paragraph 53 (b).

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Cost Principles

Title IV-E foster care maintenance payments are designed to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation.¹¹

Allowable and unallowable cost guidelines for use in completing the cost reports are contained in the Ohio Administrative Code and Office of Management and Budget Circular A-122 *Cost Principles for Non-Profit Organizations*.

In addition, because the PCPAs and PNAs enjoy federal tax-exempt status, they are directly precluded from assigning any part of their net earnings to the benefit of any private shareholder or individual...¹²

Office of Management and Budget (OMB) Circular A-133 *Audits of States, Local Governments, and Non-Profit Organizations*, establishes an audit requirement for federal funds (including Title IV-E funds) administered by state and local governments and non-profit entities, and authorizes auditors to question unallowed costs which appear to have resulted from a violation of law, regulation or other agreement governing the use of such funds, costs which are not supported by adequate documentation, or appear unreasonable.¹³

ODJFS codified the cost principles to which the PCPAs and PNAs are subject to by its promulgation of Ohio Admin. Code Sections 5101:2-47-11(C) and 5101:2-5-08 (G).

Ohio Admin. Code Section 5101:2-47-11(C), states: "Allowable and unallowable cost guidelines for use in completing the ODHS 2909 and ODHS 2910 are contained in rules 5101:2-47-25 and 5101:2-47-26 of the Administrative Code and the Office of Management and Budget (OMB) circulars A-87 and A-122." ¹⁴ Specifically, ODJFS considers certain costs to be unallowable for purposes of calculating the rate at which foster care maintenance costs can be reimbursed with federal Title IV-E funds including, but not limited to, contributions, donations, or any outlay of cash with no prospective benefit to the facility or program; entertainment costs for amusements, social activities, and related costs for staff only; and costs of activities prohibited under section 501(c)(3) of the Internal Revenue Code.¹⁵

Ohio Admin. Code Section 5101:2-5-08 (G) states, "A PCPA or PNA shall not permit public funds to be paid or committed to be paid to any corporation, firm, association or business in which any of the members of the governing body of the agency, the executive personnel or their immediate families have any direct or indirect financial interest, or in which any of these persons serve as an officer or employee, unless the services or goods involved are provided at a competitive costs or under terms favorable to the PCPA or PNA."

¹¹ 42 U.S.C. Section 675 (4) (A).

¹² 26 U.S.C. Section 501(c)(3).

¹³ Pursuant to her rulemaking authority under the Single Audit Act, 31 U.S.C. Section 7505, the Secretary of the Department of Health and Human Services has promulgated a regulation which provides that state and local governments, as well as recipients and subrecipients that are non-profit organizations, are subject to the audit requirements contained in the Single Audit Act, 31 U.S.C. Sections 7501 et seq., and OMB Circular A-133. See 45 C.F.R. Section 74.26(b) and (a) (1999), respectively.

¹⁴ Prior to 5/1/98, applicable cost guidelines were contained in Ohio Admin. Code Sections 5101:2-47-63 and 5101:2-47-64.

¹⁵ Ohio Admin. Code 5101:2-47-26. Prior to 5/1/98, these requirements were contained in Ohio Admin. Code Section 5101:2-47-64

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The PCPA or PNA shall make written disclosure, in the minutes of the board, of any financial transaction of the PCPA or PNA in which a member of the board or his/her immediate family is involved.”

The Office of Management and Budget Circular A-110 *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations* establishes standards for uniform administrative requirements for Federal grants and agreements with institutions of higher education, hospitals, and other nonprofit organizations. Subpart C of Circular A-110 set forth requirements regarding: financial and program management, property and procurement standards, reports and records and termination and enforcement.

Reimbursement Process

The reimbursement process begins early each fiscal year when ODJFS disburses funds to the counties under its state plan for foster care approved by the Secretary of the U.S. Department of Health and Human Services. ODJFS submits quarterly reports to the U.S. Department of Health and Human Services (HHS) for reimbursement of federal financial participation (FFP) in foster care payments¹⁶ made to the PCPAs and PNAs. In 1998, the FFP was 58% for maintenance payments¹⁷ made and 50% for administrative costs¹⁸ incurred under the Title IV-E program.

Each PCSA negotiates a foster care per diem rate (which includes maintenance and administrative costs) for each foster child placed with a PCPAs or PNAs. Maximum allowable federal reimbursement under Title IV-E for maintenance payments and administrative costs are set by ODJFS. The PCPA/PNA may contract with foster parents at a different foster care per diem rate for each foster child.

Child Welfare Demonstration Project (ProtectOhio)

In October 1997, ODJFS implemented a waiver received from the U.S. Department of Health and Human Services of certain Title IV-E requirements to conduct a Child Welfare Demonstration Project, known as ProtectOhio.¹⁹ The project allows ODJFS to expand the types of services provided and increase the number of children and families served in certain demonstration counties.²⁰ It is concerned with the flexible use of Title IV-E foster care maintenance payments, and the waiver is applied to funds which are used for that purpose, or would have been used in the absence of this project.²¹

¹⁶ Ohio Admin. Code Section 5101:2-47-11 recites the foregoing reporting and reimbursement requirements. Prior to 5/1/98, these provisions were recited in Ohio Admin. Code Sections 5101:2-47-20 and 5101:2-47-65.

¹⁷ 45 C.F.R. 1356.60(a)(2) (1999); ODHS Administrative Procedure Letter No. 245, dated 9/22/97; ODHS Family, Children & Adult Services Procedure Letter No. 61, dated 9/9/98.

¹⁸ 45 C.F.R. 1356.60(c) (1999); ODHS Administrative Procedure Letter No. 245, dated 9/22/97; ODHS Family, Children & Adult Services Procedure Letter No. 61, dated 9/9/98.

¹⁹ The authority for ODJFS to participate in this project is found in Ohio Rev. Code Section 5101.142.

²⁰ On 2/14/97, Laurence J. Love, Deputy Assistant Secretary for Children and Families, HHS, advised then ODHS Director Arnold R. Tompkins that ODHS' proposed waiver project had been approved, subject to its written acceptance of certain waiver terms. ODHS accepted the terms on March 20, 1997. Specifically waived for the project were the following provisions of the Social Security Act and Program Regulations: 42 U.S.C. Section 672(a), (c) and (e); 42 U.S.C. Section 671(A)(10); and 45 C.F.R. 1356.80(h) (thereby expanding eligibility for services); and 42 U.S.C. 674 Section (a)(3)(E) and 42 U.S.C. Section 677(e)(3) (thereby expanding services).

²¹ Department of Health and Human Services, Administration for Children and Families, Waiver Terms and Conditions, Ohio Child Welfare Waiver Demonstration Project, Section 2 "Implementation," Paragraph 2.6.

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To implement ProtectOhio, ODJFS entered into contracts with 14 counties, including an agreement on September 2, 1997, with the Franklin County Board of Commissioners and Franklin County Children Services.²² Sections III, IV and V of this agreement describe how Title IV-E funds are to be pre-allocated to Franklin County, rather than reimbursed according to the per diem rates described above. Our Review takes into consideration the change in federal funding methodology during the Period.

Allowable Costs

In addition to the Ohio Administrative Code and Office of Management and Budget Circular A-122 *Cost Principles for Non-Profit Organizations*, the terms and conditions of the contract between FCCS and Symbiont NFP, Inc. formed the criteria to which we referred during our testing to determine if the expenditures at the Symbiont NFP, Inc. were used to provide only the administrative and direct service costs necessary to perform the services outlined in the contract.

On July 1, 1997 Symbiont NFP, Inc.²³ entered into a Foster Care Placement Services Agreement (Placement Services Agreement) with Franklin County Children Services. Purposes for which funds paid to Symbiont NFP, Inc. by FCCS may be used are outlined in the Placement Services Agreement.

Direct services and administrative cost services described below are costs deemed to be allowable under the FCCS Placement Services Agreement with the Symbiont NFP, Inc. and are presumed to be included in the services and rates contained in the Placement Services Agreement.²⁴ The Placement Services Agreement states that FCCS will reimburse Symbiont NFP, Inc. to provide direct services and for the incurred administrative costs associated with providing the necessary services to the foster children in its care.

Direct services are defined as services received by children in placement or foster parents, including, but not limited to: respite, foster parent training, foster parent support services, individual, group or family counseling, mentoring, arrangement for and transportation to and from physical and medical treatment, recreational activities, day care and transportation. It does not include day treatment and alcohol and other drug treatment services.²⁵

Administrative costs are defined as costs associated with the executive functions of the agency, including fiscal, information management and clerical operations and overhead and includes foster parent recruitment when applicable. It does not include direct services to clients or foster parents relating to care of the child(ren), e.g. foster parent training.²⁶

In its contract with FCCS, Symbiont NFP, Inc. agreed to “maintain such case, client, foster parent, service and financial records, books, payrolls, documents, accounting procedures and practices necessary to sufficiently and properly reflect all services provided and all direct and indirect costs of any nature expended in the performance of this Agreement.”

²² This agreement is effective by its terms from October 1, 1997, through September 30, 2002.

²³ A Foster Care Placement Services Agreement was entered into between Symbiont Inc. and FCCS on 7/1/97. An amendment to this contract stating the contract should be with Symbiont NFP, Inc. was signed by Manuel R. Vela, CEO Symbiont Inc. and Symbiont NFP, Inc. and John Saros, Executive Director of FCCS on 8/5/99.

²⁴ Placement Services Agreement, Article II, Section D, Part 4.

²⁵ Placement Services Agreement, Article I, Section D.

²⁶ Placement Services Agreement, Article I, Section A.

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The contract further provided: "Such records which are directly pertinent to this Agreement shall be subject to inspection, review, or audit by designated FCCS personnel, or agents."²⁷ In addition, Symbiont NFP, Inc. agreed that "(a)ll records relative to this Agreement including Service Plans, invoices, etc., as applicable, shall be retained for five (5) years...."²⁸

The contract also required Symbiont NFP, Inc. to "maintain certification for Title IV-E rates."²⁹

RESOLUTION OF QUESTIONED COSTS

Certain deficiencies identified in our Review may require us to report questioned costs to the U.S. Department of Health and Human Services and ODJFS.

OMB Circular A-133 defines questioned costs³⁰ as follows:

"Questioned costs means a cost that is questioned by the auditor because of an audit finding:

1. Which resulted from a violation or possible violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the use of Federal funds;
2. Where the costs, at the time of the audit, are not supported by adequate documentation; or
3. Where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances."

The foster care program in Ohio is funded by a combination of federal, state and local funds. Historically the percentage of funding has averaged approximately 37% federal, and 10% state reimbursement, and 53% local. During fiscal year 1998 the percentage of funding was 40% federal, and 10% state reimbursement and 50% local funds. These funds are commingled when paid to the Placement Agency to perform the program functions for which it is certified by ODJFS to perform. The accounting systems of the Placement Agencies, in general, are not designed to classify or track expenditures by the source of funds and it is difficult, if not impossible, to match expenditures that result in questioned costs with the corresponding source of funds. Therefore when reporting questioned costs in this report we did not attempt to allocate those costs among the entities that provided the funding.

We recommend that as part of the resolution of our audit findings ODJFS and the PCSAs contracting with Symbiont NFP, Inc. join together to ensure that Symbiont NFP, Inc. develops and implements a corrective action plan that will result in fiscal accountability and legal compliance in an expeditious manner. Based on the significance of our findings we recommend the following:

1. PCSAs contracting with Symbiont NFP, Inc. should determine whether the findings set forth in this report constitutes a breach of their contract, and if so seek appropriate remedy.
2. PCSAs should consider no additional placement of children with Symbiont NFP, Inc. until fiscal accountability and legal compliance is achieved through the corrective action plan.

²⁷ Monitoring and Records, Purchase of Services Agreement, Article III, Section B, Part 2.

²⁸ Monitoring and Records, Purchase of Services Agreement, Article III, Section B, Part 1.

²⁹ Payment, Purchase of Services Agreement, Article II, Section D, Part 6.

³⁰ Office of Management and Budget (OMB) Circular A-133, Subpart A, .105 Definitions

SYMBIONT NFP, INC.
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3. ODJFS should assist the contracting PCSAs in seeking recovery of misspent funds by providing administrative and technical support as needed.
4. Based on the relevant findings in our report ODJFS should assess whether Symbiont NFP, Inc. should maintain certification for its Title IV-E reimbursement rate.
5. Based on the relevant findings in our report ODJFS should perform an independent assessment of Symbiont NFP, Inc. to determine if it is suitable to be certified by ODJFS to perform foster care functions as set forth in Ohio Admin. Code Section 5101:2-5-03.

AGENCY INFORMATION

Symbiont NFP, Inc. is a private non-custodial agency (PNA) that was incorporated February 19, 1991³¹ as a nonprofit organization. Symbiont NFP, Inc. is exempt from federal income tax under Internal Revenue Service Section 501 (c)(3). The Placement Agency is licensed by ODJFS to operate a children's residential center, known as Fairfield Academy, to operate or provide independent living arrangements, recommend families to become foster families, and place children in foster homes. When a county children services agency needs a home for a foster child, it can contact agencies such as Symbiont NFP, Inc. to place the child. The group of family foster homes (private foster network) utilized by Symbiont NFP, Inc. has been in place since 1991. Symbiont NFP, Inc. places foster children primarily for FCCS. Symbiont NFP, Inc. has provided services to Franklin, Licking, Delaware, Lucas, Lake, Perry, Stark, Crawford-Marion, Lawrence, Ottawa, Fairfield County Cluster and Muskingum County children services agencies during the Period.

Related Party Transactions³² with Administrator and Affiliated For-Profit Organizations:

Symbiont NFP, Inc. (Agency) a nonprofit organization, was involved in a series of significant related party transactions with affiliated for-profit organizations, Ohio Treatment Alliance, Inc., Symbiont, Inc., and McVee Holdings LTD., in which Manuel R. Vela, Agency Administrator and his wife, Judy E. Vela, Executive Director of Foster Care, jointly held the majority ownership interest.

The organizations were located in a commercial property at 29 W. Church Street in Newark, Ohio. The property was owned by McVee Holdings, LTD., which also leased office space, furnishings and equipment to Symbiont NFP, Inc.

In addition Manuel and Judy Vela had ownership interest in two other for-profit organizations, Legends Holdings, LTD and LBJ Holdings, LTD. both located at 29 W. Church Street in Newark, Ohio. Additionally, Symbiont NFP, Inc. paid McVee \$3,000 per month for rent of the building and leased equipment used in the foster care operations.

³¹ Manuel R. Vela, along with Judy E. Vela and Charles R. Spurgeon were the initial trustees of Symbiont NFP, Inc. per the Articles of Incorporation.

³² Per FASB Statement of Standards, Appendix B, related party transactions are transactions between principal owners of the enterprise; its management; members of the immediate families of principal owners of the enterprise and its management; and other parties with which the enterprise may deal if one party controls or can significantly influence the management or operating policies of the other to an extent that one of the transacting parties might be prevented from fully pursuing its own separate interests.

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Ohio Treatment Alliance, Inc. (OTA) and Ohio Treatment, LTD.

Ohio Treatment Alliance, Inc. (OTA) is a for-profit company incorporated on January 20, 1993, by Manuel R. Vela, Judy E. Vela, Victoria Blubaugh³³ and Melvin Lee Balser, each holding 25, 26, 24 and 25 shares of common stock respectively. On December 31, 1995, 51 of the 100 shares of common stock issued were owned by Manuel and Judy Vela and were transferred to Ohio Treatment, LTD. per the Register of Transfers dated 12/31/1995, signed by Roger Sorey and provided during the course of the audit. Ohio Treatment, LTD. is a domestic limited liability for-profit company incorporated on September 29, 1995 by Manuel and Judy Vela and Roger Sorey who were listed as a majority of the members. The purpose listed in the articles of incorporation was to engage in any lawful enterprise(s) under current or future laws.

On October 1, 1996, OTA transferred the control and operation of Fairfield Academy, a children's residential center, to Symbiont NFP, Inc. This transaction and its impact on Symbiont NFP, Inc. is explained fully in Issue 1-2 Transfer of Fairfield Academy.

Symbiont NFP, Inc. reported in its audited financial statements accounts receivables balances from OTA at December 31, 1997, 1998 and 1999, in the amounts of \$4,832, \$2,132, and \$2,837 respectively. In 1996 there was an account payable for \$ 16,340 to OTA.³⁴

Symbiont Inc.

Symbiont, Inc. is a for-profit company incorporated on February 25, 1987 by [Manuel] Robert Vela. Manuel R. Vela owns 51% of Symbiont, Inc. and Judy Vela owns the remaining 49%. Symbiont, Inc. was formed to engage in all phases of foster care for children. Symbiont Inc. was certified by ODJFS and provided foster care services until 1991 when the foster care function was transferred to Symbiont NFP, Inc. (see Issue of 1-4 Expenditures For Unsupported Prior Period Liabilities to Related For-profit Organizations).

Symbiont, Inc. Board of Directors, February 12, 1991 minutes resolved "that the name Symbiont may be used by the incorporators and trustees of the organization seeking to incorporate in the state of Ohio as Symbiont NFP, Incorporated." The minutes certified the officers as Robert Vela, Administrator and Judy Vela, Secretary.

There were accounts payable to Symbiont, Inc. at December 31, 1996, 1997, 1998 and 1999 in amounts of \$161,190, \$101,229, \$33,351 and \$30,494 respectively. The accounts payable were the results of accrued expenses and cash advances.³⁵

McVee Holdings, LTD.

McVee Holdings, LTD. is a domestic limited liability for-profit company incorporated on September 29, 1995 by Manuel and Judy Vela and Roger Sorey who were listed as a majority of the members. Manuel R. Vela owns 98% of the McVee Holdings, LTD. and Judy Vela owns the remaining 2%. McVee Holdings, LTD. leased office space, furnishings, equipment, and vehicles to Symbiont NFP, Inc. In addition, McVee Holdings, LTD. provided maintenance services to Symbiont NFP, Inc. during the period.

³³ On 11/17/93 Ms. Blubaugh transferred her shares to Ohio Treatment Alliance to be held as Treasury Stock per the Register of Transfers signed by Roger Sorey and provided during the course of the audit.

³⁴ Audited Financial Statements, Symbiont NFP, Inc. Financial Report December 31, 1996, 1997, 1998, 1999, Notes to Financial Statements, Related Party Transactions.

³⁵ Audited Financial Statements, Symbiont NFP, Inc. Financial Report December 31, 1996, 1997, 1998, 1999, Notes to Financial Statements, Related Party Transactions.

**SYMBIONT NFP, INC.
SUPPLEMENT TO REPORT ON AGREED-UPON PROCEDURES**

The purpose listed in the articles of incorporation was to engage in any lawful enterprise(s) under current or future laws. A certificate of amendment to [the] articles of organization of a limited liability company dated March 25, 1998 showed the members of McVee Holdings, LTD. as Judy Vela and Manuel R. Vela.

There were accounts receivables resulting from expenses paid by Symbiont NFP, Inc. on behalf of McVee at December 31, 1997 and 1998 in the amounts of \$10,131, and \$14,619 respectively. In 1996 there was a demand note payable to McVee for \$2,800.³⁶

Legend Holdings, LTD.

Legend Holdings, LTD. is a domestic limited liability for-profit company incorporated on October 2, 1996 by Manuel and Judy Vela, Roger Sorey, Melvin Lee Balsler, David B. Morris, Jeffrey Crabill, and Thurman W. Freeman. The purpose listed in the articles of incorporation was acquisition, development, management, leasing and resale of real estate.

LBJ Holdings, LTD.

LBJ Holdings, LTD. is a domestic limited liability for-profit company incorporated on September 29, 1995 by Manuel and Judy Vela, and Roger Sorey. The purpose listed in the articles of incorporation was to engage in any lawful enterprise(s) under current or future laws. A certificate of amendment to [the] articles of organization of a limited liability company dated May 7, 1998 showed the members of LBJ Holdings, LTD. as Melvin Lee Balsler, Judy Vela and Manuel R. Vela.

The following table shows statistical information about the agency for 1998 taken from the ODHS 2910 Purchased Family Foster Care Cost Report and other documentation provided by the Placement Agency:

**Table I
Symbiont NFP, Inc.
Foster Care Statistics**

Characteristic	Statistic
Daily Average Number of Children in Placement	92
Number of Active Licensed Foster Homes	53
Average Per Diem Rate	\$45
Number of PCSA from Which Agency Receives Children	12
Required Training for Foster Caregiver Orientation	at least 36 hours
Required Annual Training for Foster Caregiver	Hours based on level of care
Expenditures Reported per the Title IV-E Purchased Family Foster Care Cost Report	\$1,885,863
Characteristics of Children Placed by Agency	Traditional to Intensive levels of care

³⁶ Audited Financial Statements, Symbiont NFP, Inc. Financial Report December 31, 1996, 1997, 1998, 1999, Notes to Financial Statements, Related Party Transactions.

SYMBIONT NFP, INC.
SUPPLEMENT TO REPORT ON AGREED-UPON PROCEDURES

During the Period, Symbiont NFP, Inc.'s staff consisted of 49 people, 27 of whom provided direct foster care services, including an administrator, foster care executive director, residential center director, and support staff to provide the needed counseling and case management services to the foster children and foster parents.

Symbiont NFP, Inc.'s revenues were comprised primarily of funds from Franklin County Children Services. The total revenue received by Symbiont NFP, Inc. from Franklin County Children Services for foster care services during the Period of January 1, 1998 to December 31, 1998 was \$1,574,053.

The following table shows the sources of revenue per the general ledger for the calendar year 1998 and the percentage of total revenue for each source.

Table II
Symbiont NFP, Inc.
Revenue by Source

	1998	Percent of Total Revenue
Franklin County	\$1,574,053	52%
Delaware County	89,905	3%
Licking County	53,003	1%
Muskingum County	55,871	1%
Lucas County	111,325	4%
West Virginia	254,472	8%
Michigan	121,205	4%
Schools	204,033	7%
Lake County	69,955	2%
Perry County	5,980	0%
Stark County	20,075	1%
Crawford-Marion County	380	0%
Buchanan County, VA.	46,251	2%
Lawrence County	8,540	0%
Ottawa County DHS	60,970	2%
Fairfield County Cluster	399	0%
Other Governmental Revenue ³⁷	388,658	13%
Total Revenue by Source	<u>\$3,065,075</u>	<u>100%</u>

³⁷

Sources included various county juvenile courts and school districts.

SYMBIONT NFP, INC.
SUPPLEMENT TO REPORT ON AGREED-UPON PROCEDURES

Relevant Individuals and Entities

Manuel R. Vela

Manuel R. Vela, also known as Robert or Bob, was one of three initial trustees of Symbiont NFP, Inc. along with Judy E. Vela and Charles R. Spurgeon. Mr. Vela has served as Administrator of Symbiont NFP, Inc. since its inception, in 1991 and was President for the Board of Directors of Symbiont NFP, Inc. during the Period. He also served as Director at McVee Holdings during the Period and as Administrator/CEO or Board Member of OTA since 1993.

Symbiont NFP, Inc. is a spin off from Symbiont, Inc. a for-profit organization owned by Mr. and Mrs. Vela. Together they also own or control the following for-profit organizations: Ohio Treatment Alliance, Inc., Ohio Treatment, LTD., Symbiont, Inc., McVee Holdings LTD., Legend Holdings, LTD., and LBJ Holdings, LTD. Manuel and Judy Vela make all final financial decisions for their for-profit and nonprofit organizations.

During the Period, several employees including Manuel Vela, provided similar duties to Symbiont NFP, Inc. and the for-profit organizations (see Issue 1-10 Shared Employees).

Judy Vela

Judy Vela, wife of Manuel R. Vela, was one of three initial trustees of Symbiont NFP, Inc. along with Manuel R. Vela and Charles R. Spurgeon. Mrs. Vela served as the Foster Care Executive Director, Secretary /Treasurer of the Board of Directors for Symbiont NFP, Inc. during the Period. She also has served as Secretary or Board Member of OTA since 1993. Together they also own or control the following for-profit organizations: Ohio Treatment Alliance, Inc., Ohio Treatment, LTD., Symbiont, Inc., McVee Holdings LTD., Legend Holdings, LTD., and LBJ Holdings, LTD. Together Manuel and Judy Vela control all final financial and management decisions for their for-profit and nonprofit organizations.

During the Period, several employees including Judy Vela, provided similar duties to Symbiont NFP, Inc. and the for-profit organizations (see Issue 1-10 Shared Employees).

Roger Sorey

Roger Sorey acted as legal counsel for Ohio Treatment Alliance, Inc. and Symbiont NFP, Inc. He also was acted as a board member of Ohio Treatment Alliance, Inc., Ohio Treatment, LTD., Symbiont NFP, Inc., McVee Holdings LTD., Legend Holdings, LTD. and LBJ Holdings, LTD at various times.

Scott W. McElroy

Scott W. McElroy is the father of Judy Vela, co-founder of Symbiont NFP, Inc. Mr. McElroy served as Vice President for the Board of Directors of Symbiont NFP, Inc. during the Period.

John McElroy

John McElroy was the head of the maintenance department at Symbiont NFP, Inc. and was employed by and performed similar duties at OTA. During the period Symbiont NFP, Inc. paid McVee Holdings, LTD for maintenance services. John McElroy is the brother of Judy Vela, co-founder of Symbiont NFP, Inc.

During the Period, several employees including John McElroy, provided similar duties to Symbiont NFP, Inc. and the for-profit organizations (see Issue 1-10 Shared Employees).

**SYMBIONT NFP, INC.
SUPPLEMENT TO REPORT ON AGREED-UPON PROCEDURES**

David Morris

David Morris had been noted as a Member of the Board of Directors for Symbiont NFP, Inc. from 1995 through 1999. He also served as Marketing Director at Symbiont NFP, Inc., and was employed by and performed similar duties at OTA, from 1995 through February 28, 1999. Mr. Morris' position on the Board of Directors was eliminated during a special board meeting held April 12, 1999, in which Mr. Morris was not in attendance.

Mr. Morris participated in acquisition, development, management, leasing and resale of real estate with Mr. & Mrs. Vela and other individuals, under Legend Holdings, LTD. Symbiont NFP, Inc. and OTA have filed suit in Franklin County Pleas Court against Specialized Therapeutic Offender Programming (STOP) and Mr. Morris, Mr. Balser and a number of other former employees alleging that they unlawfully formed a competing company.

Melvin Lee Balser

Melvin Lee Balser has been noted as a Member of the Board of Directors for Symbiont NFP, Inc. from 1995 through 1999. He also served as Program Director at Fairfield Academy and later OTA from 1993 through 1998. Mr. Balser's position on the Symbiont NFP, Inc.'s Board of Directors was eliminated during a special board meeting held April 12, 1999, in which Mr. Balser was not in attendance.

Mr. Balser was a stockholder/owner of OTA and participated in acquisition, development, management, leasing and resale of real estate under Legend Holdings, LTD. He also was a member of the board of LBJ Holding, LTD. along with Mr. & Mrs. Vela. Symbiont NFP, Inc. and OTA have filed suit in Franklin County Pleas Court against Specialized Therapeutic Offender Programming (STOP) and Mr. Morris, Mr. Balser and a number of other former employees alleging that they unlawfully formed a competing company.

Symbiont NFP, Inc. had an account payable due to Mr. Balser at December 31, 1997, 1998 and 1999 in the amount of \$20,742, \$9,000 and \$9,000 respectively due to accrued expenses (see Issue 1-11 YAFGO Settlement).

During the Period, several employees including M. Lee Balser, provided similar duties to Symbiont NFP, Inc. and the for-profit organizations (see Issue 1-10 Shared Employees).

Plante and Moran, LLP

Plante and Moran, LLP conducted the 1998 audit for Symbiont NFP, Inc. The auditors working with Symbiont NFP, Inc. were Keith Buscher, CPA and David Holmes, CPA, Senior Manager.

ISSUE 1	TEST OF EXPENDITURES IN ACCORDANCE WITH TERMS OF AGREEMENTS AND APPLICABLE LAWS
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Objective:

To determine whether the Placement Agency's expenditures complied with the terms and conditions of its contractual agreements, provisions of applicable laws and regulations, and proper business purposes during the Period.

Procedures Performed:

1. We obtained all canceled checks for non-payroll disbursements made by Symbiont NFP, Inc. for each month during the Period (See Issue 5 for reconciliation of payroll disbursements).

SYMBIONT NFP, INC.
SUPPLEMENT TO REPORT ON AGREED-UPON PROCEDURES

2. We inspected the details of every canceled check returned by the bank during the Period including vendor, amount, authorizing signature and endorsement for compliance with the terms and conditions of its contractual agreements, provisions of applicable laws and regulations, and proper business purposes.
3. For selected disbursements which were not adequately documented and did not appear reasonable considering: the nature of business or the vendor; high dollar amounts; checks payable to the staff or foster parents or authorizations contrary to policy, we requested supporting documentation, such as invoices.
4. We examined the supporting document to determine compliance with program requirements for expenditures and for potential self-dealing transactions prohibited by Ohio Admin. Code Section 5101:2-5-08 (G).
5. We discussed with agency management all expenditures (check disbursements) that we found lacked adequate supporting documentation, were unallowable or unreasonable as defined in applicable rules, regulations and/or contract provisions.
6. We obtained all credit card statements paid by Symbiont NFP, Inc. for the Period and examined details of each charge including vendor, amount, and authorization for compliance with the terms and conditions of its contractual agreements, provisions of applicable laws and regulations, and proper business purposes.
7. For selected credit card expenditures which were not adequately documented and did not appear reasonable considering: the nature of business or the vendor; high dollar amounts; charges related to the staff or foster parents or authorizations contrary to policy, we requested supporting documentation, such as invoices.
8. We discussed with agency management all credit card expenditures that we found lacked adequate supporting documentation, were unallowable or unreasonable as defined by applicable rule regulations and/or contract provisions.
9. We read lease agreements and other documents supporting all car lease payments. We reviewed documentation supporting how the percentage of time the cars were used for business and personal use was determined and whether personal use was properly disclosed on the employees' W-2.
10. We read lease agreements and other documentation supporting all building lease or mortgage payments to determine property ownership, previous ownership and relationship between current and previous owners and Symbiont NFP, Inc.

SYMBIONT NFP, INC.
SUPPLEMENT TO REPORT ON AGREED-UPON PROCEDURES

ISSUE 1-1	CHECK AND CREDIT CARD DISBURSEMENTS NOT AUTHORIZED OR WHICH LACKED SUPPORTING DOCUMENTATION REQUIRED UNDER THE FCCS CONTRACT.
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Results:

Office of Management and Budget (OMB) Circular OMB Circular A-122 “Cost Principles of Non-Profit Organizations”, requires that for a cost to be allowable, it must, among other factors, be reasonable and adequately documented.³⁸ The Circular further provides: “...The question of reasonableness of specific costs must be scrutinized with particular care in connection with organizations or separate divisions which receive the preponderance of their support from awards. In determining the reasonableness of a given cost, consideration shall be given to: a) whether the cost is of a type generally recognized as ordinary and necessary for the operation of the organization or the performance of the award, b) the restraints or requirements imposed by such factors are generally accepted sound business practices, arms length bargaining.... c) whether the individuals concerned acted with prudence in the circumstances, considering their responsibilities to the organization, its members, employees, and clients, the public at large...”³⁹

Article III, Section B, Part 2 of the FCCS contract states in pertinent part that Symbiont NFP, Inc. “shall maintain such case, client, foster parent, service and financial records, books, payrolls, documents, accounting procedures and practices necessary to sufficiently and properly reflect all services provided and all direct and indirect costs of any nature expended in the performance of this Agreement...” Furthermore, Article II, Section D, Part 4 of the contract states that “all direct services and administrative cost services are presumed to be included in the services and rates contained in this Agreement.”⁴⁰

The two hundred forty-six (246) credit card expenditures examined represented \$70,414 in charges. We requested supporting documentation for these expenditures such as invoices, billing statements, calendar dates of the foster care related event, authorization by the board or responsible party, an explanation of how the expenditure provided a benefit to program or was necessary to the operation of the foster care program. Symbiont NFP, Inc. was unable to provide us with adequate supporting documentation for 75 transactions totaling \$14,475.

Of the 296 check disbursements tested representing \$456,382 in charges, Symbiont NFP, Inc. was unable to provide us with adequate supporting documentation for 8 transactions totaling \$2,548. Because the agency was unable to supply us with adequate documentation, these expenditures are not allowable under the FCCS contract and were in direct violation of OMB Circular A-122, Attachment A(2)(g).⁴¹ Undocumented expenditures totaled \$17,023.

³⁸ OMB Circular A-122, Attachment A, Paragraph (A)(2)(a) and (g).

³⁹ OMB Circular A-122, Attachment A, Paragraph (A)(3)(a) through (c).

⁴⁰ Administrative costs and Direct services are defined in the Placement Services Agreement in Article I, Sections A and D.

⁴¹ A-122, Attachment A, Paragraph (A)(2)(g) states in pertinent part, “To be allowable under an award, costs must meet the following general criteria:...Be adequately documented.”

**SYMBIONT NFP, INC.
SUPPLEMENT TO REPORT ON AGREED-UPON PROCEDURES**

**Table III
Symbiont NFP, Inc.
Questioned Costs**

Undocumented Expenditures	
Credit Card Expenditures	
Pleasure Break Vacation - SJO Travel	\$3,144
The Bachelors' Pad	837
Cherry Valley Restaurant/Lodge	168
All Wrapped Up	420
RJ Snappers	1,252
Travel 2000 - Luggage Leather Goods	190
Marshall Fields	104
Abercrombie & Fitch	147
Terra Cotta	253
Bunky's Bar and Grille	510
Fifty-Five on the Boulevard	2,834
Other Undocumented Credit Card Expenditures	<u>4,616</u>
Total Undocumented Credit Card Expenditures	<u>14,475</u>
 Check Disbursements	
Bob Vela	675
Dave Morris	351
Jean Lamp - Crackerjacks	75
March of Dimes	25
Riley's Bakery - Cake	22
Sports Etc.	300
Symbiont Inc.	<u>1,100</u>
Total Undocumented Check Disbursements	<u>2,548</u>
Total Undocumented Expenditures	<u><u>\$17,023</u></u>

Additionally, 30 credit card expenditures totaling \$7,048 and 91 check disbursements totaling \$39,499 were not an allowable direct services or administrative cost under the FCCS contract or OMB Circular A-122. These improper expenditures consisted of donations, Christmas gifts for staff, Staff Christmas party expenses, country club fees, IRS penalties, memorabilia and souvenirs, parking violations, Kiwanis Club dues, Ohio State University tickets, and a political contribution. They were as follows:

1. Five credit card transactions totaling \$2,534 and 11 check disbursements totaling \$9,847 which were unallowable under OMB Circular A-122, Attachment B, Paragraph 14 which states, "Costs of amusement, diversion, social activities, ceremonials, and costs relating thereto, such as meals, lodging, rentals, transportation, and gratuities are unallowable." Furthermore, entertainment costs for amusements, social activities and related costs for staff only are considered unallowable costs for use in completing ODHS 2910 Purchased Family Foster Care Cost Report.⁴² Unallowed entertainment costs totaled \$12,381.

⁴² Ohio Admin. Code Section 5101:2-47-26(A)(7)

SYMBIONT NFP, INC.
SUPPLEMENT TO REPORT ON AGREED-UPON PROCEDURES

2. Unallowable costs totaling \$4,514 for 25 credit card transactions and totaling \$7,040 for 16 check disbursements were in violation of OMB Circular A-122, Attachment B, Paragraph 18 which states, "Costs of goods or services for personal use of the organization's employees are unallowable regardless of whether the cost is reported as taxable income to the employees." Unallowed costs for personal use totaled \$11,554.
3. There were six check disbursements totaling \$11,831 which are considered unallowable under OMB Circular A-122, Attachment B, Paragraph 1(f), which states in pertinent part: "Unallowable advertising and public relations costs include the following:...(3)Costs of promotional items and memorabilia, including models, gifts, and souvenirs; (4)Costs of advertising and public relations designed to solely promote the organization." Public relations and advertising costs are unallowed because the federal government derives no benefit from such costs, unless used: to recruit personnel; acquire scarce items; dispose of scrap or surplus materials; to keep the public and financial community adequately informed.
4. Seventeen check disbursements totaling \$4,776 are unallowable under OMB Circular A-122, Attachment B, Paragraph 30 (e), which provides: "Costs of membership in any country club or social or dining club or organization are unallowable."
5. In addition, five check disbursements totaling \$719 are unallowable under OMB Circular A-122, Attachment B, Paragraph 30 (d), which states: "Costs of membership in any civic or community organization are allowable with prior approval by the Federal cognizant agency."
6. Seven check disbursements totaling \$1,130 are unallowable under OMB Circular A-122, Attachment B, Paragraph 9 which states, "Contributions and donations by the organization to others are unallowable."
7. Six check disbursements totaling \$3,351 are unallowable under OMB Circular A-122, Attachment B, Paragraph 16 which states, "Costs of fines and penalties resulting from violations of, or failure of the organization to comply with Federal, State, and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of an award or instructions in writing from the awarding agency."
8. Twenty-two check disbursements totaling \$534 are unallowable under OMB Circular A-122, Attachment B, Paragraph 23 (a), which states in pertinent part: "Costs incurred for interest on borrowed capital or temporary use of endowment funds, however represented, are unallowable..."
9. There was a purchase of alcohol, included in a check disbursement, totaling \$271 which is unallowable under OMB Circular A-122, Attachment B, Paragraph 2 which states, "Costs of alcoholic beverages are unallowable."

**SYMBIONT NFP, INC.
SUPPLEMENT TO REPORT ON AGREED-UPON PROCEDURES**

**Table IV
Symbiont NFP, Inc.
Questioned Costs**

Unallowed Expenditures	
Unallowed Entertainment Costs	
Credit Card Expenditures	
Carnival Cruise - Miami Florida	\$1,597
Cabelas, Inc. - Safari Shirts	72
Herrington Corp. - Golf Balls	48
Executive Limousine	325
Casa Lupita	492
Total Unallowed Entertainment Costs - Credit Card Expenditures	<u>2,534</u>
Check Disbursements	
The Anderson's	55
The Press Club	2,800
Dillinger's	1,000
Legendary and Famous	2,500
OSU Season Tickets	1,285
Rolling Stones Tickets	210
Champions On Ice Tickets	170
Other Entertainment Costs	1,827
Total Unallowed Entertainment Costs - Check Disbursements	<u>9,847</u>
Total Unallowed Entertainment Costs	12,381
Unallowed Costs for Personal Use	
Credit Card Expenditures	
BP Oil - Fuel for Mr. Vela's private plane	588
San Francisco Music Box Company	249
Hammacher Schlemmer - Casino Slot Machine	250
Minds Eye - Elvis Telephone and Batteries	146
Home Brew Pub	85
Stainless Steel Survivor Tools	114
Hartland America	362
Coldwater Creek, Inc.	108
Other Items Purchased for Personal Use	2,612
Total Unallowed Costs for Personal Use - Credit Card Expenditures	<u>4,514</u>
Check Disbursements	
Forever Flowers	4,157
Park Place Coffee House	2,560
Other Items Purchased for Personal Use	323
Total Unallowed Costs for Personal Use - Check Disbursements	<u>7,040</u>
Total Unallowed Costs for Personal Use	11,554
Unallowed Advertising/Public Relations Costs	
Kimble Enterprise	11,831
Unallowed Membership/Club Costs	
Mound Builders Country Club	4,776
Kiwanis Club	719
Total Unallowed Membership/Club Costs	<u>5,495</u>

**SYMBIONT NFP, INC.
SUPPLEMENT TO REPORT ON AGREED-UPON PROCEDURES**

**Table IV
Symbiont NFP, Inc.
Questioned Costs
(Continued)**

Unallowed Expenditures	
Unallowed Contributions/Donations	
Political Contribution	300
Other Donations	<u>830</u>
Total Unallowed Contributions/Donations	1,130
Unallowed Costs of Fines & Penalties	
IRS Penalties	3,311
Parking Violations	<u>40</u>
Total Unallowed Costs of Fines & Penalties	3,351
Unallowed Costs for Interest	
Late Fees	534
Unallowed Costs of Alcoholic Beverages	
The Anderson's	<u>271</u>
Total Unallowed Expenditures	<u>\$46,547</u>

During and subsequent to our fieldwork Symbiont NFP, Inc. attempted to respond and or provide documentation for the costs we questioned. However, for those costs listed in Table III, as undocumented expenditures, and in Table IV, as unallowed expenditures, Symbiont NFP, Inc. was unable to demonstrate its compliance with the relevant sections of the its contract with FCCS and OMB Circular A-122. We accepted signed statements by foster parents noting or corroborating an allowable purpose for an expenditure and accordingly reduced the federal questioned costs. Manuel and Judy Vela provided sworn affidavits regarding a number of expenditures. In some cases, however, facts provided in their affidavits supported the conclusion that the expenditures were unallowable. In other instances, their affidavits made assertions which on their face would seem to support the allowability of an expense, but were contrary to information they had previously provided in written or verbal statements or observations made by our auditors during the course of the audit. In those instances, if receipts or other corroborating evidence were not provided to support the affidavits, the expenditure was considered inadequately documented and/or unallowed, and the federal questioned costs was not reduced.

Federal Questioned Costs: \$63,570

Due to unallowed and inadequately documented expenditures reported on the cost report and charged against the foster care program, Symbiont NFP, Inc. was in violation of the Article III, Section B, Part 2 of its contract with FCCS and OMB Circular A-122⁴³ in the amount of \$17,023. Symbiont NFP, Inc. was also in violation of Ohio Admin. Code Section 5101:2-47-26(A)(6)and (7), and OMB Circular A-122 Attachment B, Paragraphs 1(f)(3), and (4) , 2, 9, 14, 16, 18, 23(a), and 30 (d), and (e) with respect to the unallowed expenditures in the amount \$46,547 as described above in numbered Paragraphs 1-9. The total federal questioned costs totaled \$63,570.

⁴³ Office of Management and Budget (OMB) Circular A-122 "Cost Principles of Non-Profit Organizations", Attachment A, Paragraph A (2)(g).

**SYMBIONT NFP, INC.
SUPPLEMENT TO REPORT ON AGREED-UPON PROCEDURES**

Management Comment:

Symbiont NFP, Inc. did not adhere to the FCCS contract regarding documentation of allowable direct and administrative costs requirements. Franklin County Children Services should require the agencies to obtain and submit to FCCS an annual financial audit performed in accordance with government auditing standards. In addition, to the financial statement opinion, professional standards would require the auditor to report on the Placement Agency's compliance with laws and regulations and on internal controls. FCCS should review these reports and follow up on any exceptions reported.

ISSUE 1-2	TRANSFER OF FAIRFIELD ACADEMY
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Results

Office of Management and Budget (OMB) Circular OMB Circular A-122 "Cost Principles of Non-Profit Organizations", requires that for a cost to be allowable, it must, among other factors, be reasonable and adequately documented.⁴⁴ The Circular further provides: "...The question of reasonableness of specific costs must be scrutinized with particular care in connection with organizations or separate divisions which receive the preponderance of their support from awards. In determining the reasonableness of a given cost, consideration shall be given to: a) whether the cost is of a type generally recognized as ordinary and necessary for the operation of the organization or the performance of the award, b) the restraints or requirements imposed by such factors are generally accepted sound business practices, arms length bargaining.... c) whether the individuals concerned acted with prudence in the circumstances, considering their responsibilities to the organization, its members, employees, and clients, the public at large..."⁴⁵

In addition, the Ohio Administrative Code provides that when completing ODJFS cost reports, "(c)ontributions, donations, or any outlay of cash with no prospective benefit to the facility or program" are considered unallowable. (Emphasis added)⁴⁶

Specifically regarding related-party transactions, Ohio Admin. Code Section 5101:2-5-08(G) provides: "A PCPA or PNA shall not permit public funds to be paid or committed to be paid to any corporation, firm, association or business in which any of the members of the governing body of the agency, the executive personnel or their immediate families have any direct or indirect financial interest, or in which any of these persons serve as an officer or employee, unless the services or goods involved are provided at a competitive cost or under terms favorable to the PCPA or PNA."

Further, Ohio Admin. Code Section 5101:2-5-08(H) states: "A person who is employed by a PCPA or PNA certified under this chapter or any person who is a member of the governing body shall not be eligible to vote on or participate in the decision making process with respect to any matter or issue in which he/she could benefit financially or materially."

⁴⁴ OMB Circular A-122, Attachment A, Paragraph (A)(2)(a) and (g).

⁴⁵ OMB Circular A-122, Attachment A, Paragraph (A)(3)(a) through (c).

⁴⁶ Ohio Admin. Code Section 5101:2-47-26(A)(6).

SYMBIONT NFP, INC.
SUPPLEMENT TO REPORT ON AGREED-UPON PROCEDURES

In addition, Article II, Section D, Part 4 of the FCCS contract states: "All direct services and administrative cost services are presumed to be included in the services and rates contained in this Agreement."⁴⁷

During review of the Board minutes and the audited financial statements of Symbiont NFP, Inc., we noted the transfer of Fairfield Academy to Symbiont NFP, Inc. from the related for-profit company, OTA. OTA's minutes indicate that on May 30, 1996, a meeting of directors of OTA resolved the following: "Ohio Treatment Alliance, Inc. transfer all of its interest in the assets, leaseholds, personnel, programs, operations, trade name, receivables and contracts of or pertaining to Fairfield Academy to Symbiont NFP, Inc. in exchange for its assumption of any and all liabilities incurred at or by Fairfield Academy after the effective date of its acquisition of Fairfield Academy, to wit: the date upon which the Ohio Department of Human Services certifies Symbiont NFP, Inc. as a residential care provider." (Emphasis added). Likewise, minutes of Symbiont NFP, Inc., indicate that at a meeting May 30, 1996, its Board of Trustees accepted the transfer which OTA's Directors had authorized earlier that day.

OTA's minutes, which were signed by Roger L. Sorey, listed Manuel R. Vela, Judy Vela, and Mr. Sorey as being present and constituting a quorum, with Mr. Balsler absent from the meeting. Symbiont NFP, Inc.'s minutes, which were signed by M. Robert Vela as Chairman, listed himself as well as Judy Vela, Roger Sorey and David Morris as present. Manuel R. Vela and M. Robert Vela are the same individual.

ODJFS approved Symbiont NFP, Inc. as a residential care provider as of October 1, 1996. Upon the transfer, OTA continued to operate a MRDD-funded adult center, Mi Casa, as a for-profit entity.

Symbiont NFP, Inc. recorded a net deficit on its 1996 audited financial statements resulting from the transfer of Fairfield Academy from OTA to Symbiont NFP, Inc. Assets, liabilities, and the resulting net liability are as follows: Accounts Receivable \$138,192, and Net Fixed Assets \$115,198 for total assets of \$253,390; and Accounts Payable Trade (\$18,141); Accrued Payroll and Taxes (\$188,198); Accrued Back Taxes (\$73,664); Accrued Vacation (\$7,674); and Accrued Rent (\$61,800) for total liabilities of (\$349,477); resulting in a net liability of (\$96,087).⁴⁸ The accrued payroll and taxes of \$188,198 included accrued payroll from 1/20/93 to 9/30/96 for Robert and Judy Vela in the amount of \$181,770.

"The allowable costs to acquire facilities and equipment are limited to a fair market value available to the nonprofit organization from an unrelated ("arm's length") third party."⁴⁹

Symbiont NFP, Inc.'s response to our audit, submitted by Jonathan Veley, Counsel for Symbiont NFP, Inc. argued that the resolution intended that all OTA liabilities relating to Fairfield Academy would be assumed by Symbiont NFP, Inc. Furthermore, he stated that our auditors were in error by not considering goodwill as an asset which was transferred from OTA to Symbiont NFP, Inc.

⁴⁷ Administrative costs and Direct services are defined in the Placement Services Agreement in Article I, Sections A and D, respectively.

⁴⁸ According to the Symbiont NFP, Inc. 1996 Audited Financial Statements Note B, these assets and resulting net liability were recorded at the date ODHS licensed Symbiont NFP, Inc. to run Fairfield Academy, October 1, 1996.

⁴⁹ Office of Management and Budget (OMB) Circular A-122 "Cost Principles of Non-Profit Organizations", Attachment B, Paragraph 23(1)(f)(iv).

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His argument is, in spite of the fact that Symbiont NFP, Inc. did not record goodwill from the transfer in its 1996 audited financial statements, nor was there provided a calculation of OTA's prior operating results that would indicate that goodwill should result from the transfer.

Furthermore 48 CFR 31.205-49 (1998) states, "Goodwill, unidentifiable intangible asset, originates under the purchase method of accounting for a business combination when the price paid by the acquiring company exceeds the sum of the identifiable individual assets acquired less liabilities assumed, based upon their fair values. The excess is commonly referred to as goodwill. Goodwill may arise from the acquisition of a company as a whole or a portion thereof. Any costs for amortization, expensing, write-off, or write-down of goodwill (however represented) are unallowable."

Although we specifically requested that Symbiont NFP, Inc. provide a schedule detailing the financial transactions, such as accounts receivable and fixed assets, and other agreements or supporting documentation of the transfer, the only documentation provided during our fieldwork was a worksheet prepared by its accountant, which reported the total amount of receivables and listed general categories of assets, and accrued payable and payroll without detail or proof of an appraisal of the assets.

On January 17, 2001 we received an accounts receivable list totaling \$138,192, however there was no documentation included that would enable us to determine whether they were valid receivables owned by OTA at the date of the transfer, or that Symbiont NFP, Inc. collected and received the benefit from the receivables listed.

Therefore, Symbiont NFP, Inc.'s outlay of \$349,477 to discharge former OTA liabilities which provide no prospective benefit to the foster care program are unallowable.

Federal Questioned Costs: \$349,477

Reviewing this transaction in view of the standards set forth in OMB Circular A-122 Attachment A, Paragraph (A)(2)(a) and (g), Paragraph (A)(3)(a)-(c), and Attachment B, Paragraph 23(1)(f)(iv), 48 CFR 31.205-49 (1998) Ohio Admin. Code Sections 5101:2-47-26(A)(6), 5101:2-5-08(G) and 5101:2-5-08(H), and Article II, Section D, Part 4 of Symbiont NFP, Inc.'s contract with Franklin County Children's Services contract, we conclude that the liabilities transferred and OTA debts paid, contrary to the Board resolutions of Symbiont NFP, Inc. and Ohio Treatment Alliance, Inc. constitute federal questioned costs in the amount of \$ 349,477.

In concluding that this cost is not reasonable or adequately documented under the cited portions of OMB Circular A-122, we note that there is no persuasive documentation demonstrating that the payment of OTA's liabilities benefitted Symbiont NFP, Inc.'s foster care program by paying for any of its direct or administrative costs and that inconsistent with the cited administrative code provisions, the Velas personally participated and benefitted from the decision to transfer Fairfield Academy to Symbiont NFP, Inc., a decision which Symbiont NFP, Inc.'s own financial statements report as an assumption of a net liability.

In questioning the cost, we are also persuaded by the fact that Symbiont NFP, Inc. assumed substantial pre-existing liabilities from OTA, contrary to a common sense reading of the language contained in both organizations' Board minutes. However, even if we interpreted the Board minutes to authorize a transfer of Fairfield's pre-existing liabilities, we would still conclude that Symbiont NFP, Inc.'s assumption of this net liability constitutes a federal questioned cost.

Management Comment

We note that the transfer of Fairfield Academy to Symbiont NFP, Inc. also raises issues with respect to the agency's compliance with its federal tax-exempt status and Ohio laws governing nonprofit corporations.

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In its Articles of Incorporation, Symbiont NFP, Inc. declares its purpose to be solely charitable and educational.⁵⁰

Sections 501(a) and 501(c)(3) of the Internal Revenue code provide an exemption from federal income tax for an organization devoted to educational or charitable purposes if (1) the organization is organized and operated exclusively for education or charitable purposes or in conjunction with other exempt purposes; (2) no part of its net earnings inure to the benefit of any private shareholder or individual; and it does not devote a substantial part of its activities to political or lobbying activity.⁵¹

In defining inurement of benefit for tax-exempt purposes, 26 C.F.R. §1.501(c)(3)-1(d)(1)(ii)(2000) provides that an organization is not organized and operated for a tax-exempt purpose unless it can establish that it is “not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.”

We note that in reviewing the tax-exempt status of non-profit entities, the United States Tax Court scrutinizes transactions between related non-profit and for-profit entities, to determine the existence of private inurement. Anclote Psychiatric Center, Inc. v. Commissioner, 76 T.C.M. (CCH) 175 (1998); Hancock Academy of Savannah, Inc. v. Commissioner, 69 T.C. 488 (1977). Although such determinations are made on a case-by-case basis, the Fairfield Academy transfer raises issues of possible private inurement under the federal tax code.

We recommend that Symbiont NFP, Inc. monitor its transactions with related for-profit entities so as to ensure that its federal tax-exempt status is not jeopardized.

Related to federal tax code compliance, we also note that Ohio Admin. Code Section 5101:2-47-26(A)(14) provides that for purposes of ODJFS cost-reporting, “costs of prohibited activities for section 501(c)(3)” of the Internal Revenue Code are unallowable. Likewise, the Articles of Incorporation of Symbiont NFP, Inc. provide that it is not to carry on any activities not permitted to be conducted by a tax-exempt entity.⁵² Therefore, monitoring activities to assure tax-exempt status will help the agency to avoid incurring unallowable costs and will help ensure compliance with its own Articles of Incorporation.

Likewise, by definition, a nonprofit corporation in Ohio is generally one which is “not formed for the pecuniary gain or profit of, and whose net earnings or any part of them is not distributable to, its members, trustees, officers, or other private persons...”⁵³

Consistent with that definition, the Symbiont NFP, Inc. Articles, provide, in pertinent part: “No part of the net earnings of the corporation shall inure to the benefit of any member, trustee, officer of the corporation, or any private individual (except that reasonable compensation may be paid for services rendered to or for the corporation affecting one or more of its purposes)...”⁵⁴

⁵⁰ Articles of Incorporation of Symbiont NFP, Inc., dated February 12, 2991 , (hereafter, Symbiont NFP Articles), Paragraph 3(A).

⁵¹ 26 U.S.C. 501(a) and 501(c)(3).

⁵² Symbiont NFP Articles of Incorporation, Paragraph 3(l).

⁵³ Ohio Rev. Code Section 1702.01(C).

⁵⁴ Articles of Incorporation, Paragraph 3(C).

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Ohio Rev. Code Section 1702.30.1(A) also sets forth certain standards for good faith, disclosure and fairness which must generally be adhered to by an Ohio nonprofit corporation, if it is to enter a valid contract with another entity sharing one or more officers or trustees. The transaction which occurred here, as reflected on Symbiont NFP, Inc.'s financial statements, raises issues under this provision as well as Paragraphs 3(C) of the Symbiont NFP, Inc. Articles of Incorporation.

We recommend that Symbiont NFP, Inc. monitor its transactions with related for-profit entities so as to ensure its compliance with Ohio nonprofit laws and its own articles of incorporation.

In addition, the Board of Directors of Symbiont NFP, Inc. should develop policies and procedures to ensure related party transactions are in compliance with Ohio Admin. Code Sections 5101:2-5-08(G) and 5101:2-5-08(H) and thereby maximize the use of agency resources to benefit foster children. In such transactions, the facts supporting compliance with the Ohio Administrative Code and Board approval for these goods or services should be documented in the Board minutes.

Finally, we recommend an independent Board of Directors establish a policy which prohibits any benefit of private interests to designated individuals such as, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interest.

In addition, Symbiont NFP, Inc.'s financial statements noted a liability of \$194,271 for accrued officers' salary payable to Manuel and Judy Vela, we recommend the undocumented accrued officers' salary in the amount of \$194,271 not be paid from foster care revenue, due to the potential of a questioned costs.

ISSUE 1-3	LOANS MADE TO RELATED FOR-PROFIT ORGANIZATIONS
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Results:

Office of Management and Budget (OMB) Circular OMB Circular A-122 "Cost Principles of Non-Profit Organizations", requires that for a cost to be allowable, it must, among other factors, be reasonable and adequately documented.⁵⁵ The Circular further provides: "...The question of reasonableness of specific costs must be scrutinized with particular care in connection with organizations or separate divisions which receive the preponderance of their support from awards. In determining the reasonableness of a given cost, consideration shall be given to: a) whether the cost is of a type generally recognized as ordinary and necessary for the operation of the organization or the performance of the award, b) the restraints or requirements imposed by such factors are generally accepted sound business practices, arms length bargaining.... c) whether the individuals concerned acted with prudence in the circumstances, considering their responsibilities to the organization, its members, employees, and clients, the public at large..."⁵⁶

Specifically regarding related-party transactions, Ohio Admin. Code Section 5101:2-5-08(G) provides: "A PCPA or PNA shall not permit public funds to be paid or committed to be paid to any corporation, firm, association or business in which any of the members of the governing body of the agency, the executive personnel or their immediate families have any direct or indirect financial interest, or in which any of these persons serve as an officer or employee, unless the services or goods involved are provided at a competitive cost or under terms favorable to the PCPA or PNA."

⁵⁵ OMB Circular A-122, Attachment A, Paragraph (A)(2)(a) and (g).

⁵⁶ OMB Circular A-122, Attachment A, Paragraph (A)(3)(a) through (c).

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Further, Ohio Admin. Code Section 5101:2-5-08(H) states: "A person who is employed by a PCPA or PNA certified under this chapter or any person who is a member of the governing body shall not be eligible to vote on or participate in the decision making process with respect to any matter or issue in which he/she could benefit financially or materially."

Upon our inspection of Symbiont NFP, Inc. receipt and disbursement records including bank statements we found that during 1997, 1998, and 1999 Symbiont NFP, Inc. made loans totaling \$430,000 to affiliated for-profit organizations in which Manuel and Judy Vela had direct financial interest and served as officers or employees.

Of the \$430,000 in loans Symbiont NFP, Inc. borrowed \$223,750 against its line of credit with Park National Bank to obtain funds to loan its affiliated for-profit organizations.

We used Symbiont NFP, Inc. receipt and disbursement records including bank statements to match its loans to the affiliated for-profit organizations with their repayments. We found that Symbiont NFP, Inc. made loans to the Ohio Treatment Alliance totaling \$94,000 and received \$21,000 in repayments resulting in an outstanding balance of \$73,000 as of November 18, 1997. The \$73,000 balance due remained unpaid at the end of our audit.

Schedule of Symbiont NFP, Inc. Loans to OTA

Check/Transaction No.	Date	Loan (Repayment)
6912	1/10/97	\$10,000
7205	3/12/97	15,000
7641	6/11/97	21,000
3290	6/12/97	(21,000)
1304001355	11/12/97	25,000
8405	11/18/97	<u>23,000</u>
Total Unpaid Balance		<u>\$73,000</u>

In addition, we found that Symbiont NFP, Inc. paid \$5,188 in interest charges resulting from its borrowing against its line of credit to provide loans to its affiliated for-profit organizations. The \$5,188 in interest payments are attributable to Symbiont Inc. (\$2,186), OTA (\$2,310) and McVee Holdings, LTD (\$622).

Symbiont NFP, Inc. did not benefit from these loans to the affiliated for-profit organizations. Furthermore, we believe the \$73,000 balance due from OTA and the \$5,188 in interest paid by Symbiont NFP, Inc. was an outlay of funds which provided no prospective benefit to Symbiont NFP, Inc. or the foster care program.

Federal Questioned Costs: \$78,118

Reviewing this transaction pursuant to the previously-quoted standards set forth in OMB Circular A-122 Attachment A, Paragraph A (2)(a) and (g) and Paragraph A(3) (a)-(c), and Ohio Admin. Code Section 5101:2-05-08 (G) and (H), we conclude that the unpaid balance of the loans made and credit advanced by Symbiont NFP, Inc., to OTA, a related for-profit organization, constitutes federal questioned costs in the amount of \$73,000.

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We further conclude that interest paid on the loans and advances against its line of credit by Symbiont NFP, Inc., in the amount of \$5,118 is a federal questioned costs based upon the guideline stated in OMB Circular A-122, Attachment B, Paragraph 23(a), which disallows the cost of interest on borrowed capital.

In concluding that the loans made and credit advanced by Symbiont NFP, Inc. are neither reasonable nor adequately documented for purposes of the cited portions of OMB Circular A-122, we note that the agency is entirely funded by public sources, including Title IV-E, and that there is no documentation demonstrating that the payments it made to the related for-profit organizations benefitted Symbiont NFP, Inc.'s foster care program by paying for any of its direct or administrative costs as intended by its contract with Franklin County.

Management Comment

The Board of Directors should establish a policy which prohibits the diversion of funds intended for programs by extending loans. This policy will better ensure that funds are only spent for their intended program purposes. We recommend an independent Board of Directors establish a policy which prohibits any benefit of private interests to designated individuals such as, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interest.

Consistent with our Management Comment related to Issues 1-2 (Transfer of Fairfield Academy), 1-3 (Loans Made to Related For-Profit Organizations), 1-4 (Expenditures for Unsupported Prior Period Liabilities to Related For-Profit Organizations), 1-5 (Vehicles Leased from a Related For-Profit Company), and 1-6 (BMW Leased on Behalf of Judy Vela), 1-7 (Ohio State University Seat Licenses), we note that the payments by Symbiont NFP, Inc. of employee costs for related for-profit organizations also raise issues with respect to the agency's compliance with its federal tax-exempt status and Ohio laws governing nonprofit corporations.

Judy Vela and Manual R. Vela, co-founders and directors of Symbiont NFP, Inc. are co-owners of the for-profit organizations OTA, McVee, and Symbiont, Inc. Accordingly, any advance of cash from the nonprofit to their for-profit entities raises issues of private inurement as defined in 26 C.F.R. §1.501(c)(3)-1(d)(1)(ii)(2000), which could be relevant in any consideration of continued tax exempt status by the Internal Revenue Service.

Likewise, for the reasons stated previously, any distribution by Symbiont NFP, Inc. of net earnings to related for-profit organizations, raises issues with respect to its status as a nonprofit corporation, as defined in Ohio Rev. Code Section 1702.01(C) and its compliance with Paragraph 3(C) of its Articles of Incorporation.

Accordingly, we recommend that Symbiont NFP, Inc. monitor its transactions with related for-profit entities, so as to ensure that its federal tax-exempt status is not jeopardized and that it is in compliance with Ohio's laws governing nonprofit corporations.

ISSUE 1-4	EXPENDITURES FOR UNSUPPORTED PRIOR PERIOD LIABILITIES TO RELATED FOR-PROFIT ORGANIZATIONS
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Results

Office of Management and Budget (OMB) Circular OMB Circular A-122 "Cost Principles of Non-Profit Organizations," requires that for a cost to be allowable, it must, among other factors, be reasonable and adequately documented.⁵⁷

⁵⁷ OMB Circular A-122, Attachment A, Paragraph (A)(2)(a) and (g).

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The Circular further provides: “. . . The question of reasonableness of specific costs must be scrutinized with particular care in connection with organizations or separate divisions which receive the preponderance of their support from awards. In determining the reasonableness of a given cost, consideration shall be given to: a) whether the cost is of a type generally recognized as ordinary and necessary for the operation of the organization or the performance of the award, b) the restraints or requirements imposed by such factors are generally accepted sound business practices, arms length bargaining. . . c) whether the individuals concerned acted with prudence in the circumstances, considering their responsibilities to the organization, its members, employees, and clients, the public at large. . .”⁵⁸

During 1996, 1997, and 1998 Symbiont NFP, Inc. made \$124,911 in expenditures on behalf of or to Manuel and Judy Vela for purposes that were not ordinary or necessary for the operation of the foster care program.

Symbiont NFP, Inc. charged the \$124,911 in expenditures to reduce a liability to an affiliated for-profit organization, Symbiont Inc. Symbiont NFP, Inc. reported the liability in its audited financial statements in the amounts of \$161,190, \$101,229, \$33,351, and \$30,464 for the years ended December 31, 1996, 1997, 1998, and 1999 respectively.⁵⁹

We made inquiries of Plante & Moran, LLP, the auditors for Symbiont NFP, Inc. and reviewed their relevant workpapers to determine whether the transactions that resulted in Symbiont NFP, Inc.'s, recorded liability to Symbiont Inc. benefitted the foster care program.

Neither Plante & Moran, LLP nor Symbiont NFP, Inc. were able to provide us with documentation explaining the nature of the transactions that made up Symbiont NFP, Inc.'s liability to Symbiont, Inc. nor could they demonstrate any benefit to the foster care program. Furthermore they could not demonstrate how the \$124,911 in expenditures charged against the liability benefitted the foster care program.

Unallowed Expenditures Used to Offset the Symbiont Inc. Payable

Furniture Purchases	\$ 6,511
Travel for Manuel and Judy Vela	6,328
Payment of a Note on behalf of Manuel and Judy Vela	9,081
Auto Service	588
Country Club for Manuel and Judy Vela	2,373
Sculptures	7,230
OSU Seat Licenses (Also See Issue 1-6)	12,800
Cash Payments to Manuel and Judy Vela	<u>80,000</u>
Total Unallowed Expenditures	<u>\$124,911</u>

The expenditures noted above were used to reduce an undocumented prior period payable to a related party are unallowed per OMB Circular A-122. In addition, they do not represent expenditures that are necessary or reasonable for the operation of the foster care program. Therefore, all expenditures made by Symbiont NFP, Inc. to reduce the payable are considered unallowable per OMB Circular A-122 and are considered questioned costs.

⁵⁸ OMB Circular A-122, Attachment A, Paragraph (A)(3)(a) through (c).

⁵⁹ Audited Financial Statements, Symbiont NFP, Inc. Financial Report, December 31, 1996, 1997, 1998, and 1999, Notes to Financial Statements, Related Party Transactions.

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Federal Questioned Costs: \$124,911

Upon reviewing the payments from Symbiont NFP, Inc. to Symbiont, Inc., and to Judy Vela and Manuel R. Vela pursuant to the previously-quoted standards set forth in OMB Circular A-122 Attachment A, Paragraph A (2)(a) and (g) and Paragraph A(3) (a)-(c), we conclude that they constitute federal questioned costs in the amount of \$124,911.

In concluding that the payments made by Symbiont NFP, Inc. are neither reasonable nor adequately documented for purposes of the cited portions of OMB Circular A-122, we note that the agency is entirely funded by public sources, including Title IV-E and that adequate documentation was not offered to establish that the payments constitute repayment of a pre-existing liability owed to Symbiont, Inc. We acknowledge that under its agreement with Franklin County Children's Services, Symbiont NFP, Inc. was required to retain records for a period of five years.⁶⁰

The agency suggests in its response that it is privileged under records retention not to retain records which support current expenses on the basis that the obligations were incurred and recorded prior to the retention period. We are not persuaded by this argument. To the extent that an agency is currently relying upon a pre-existing obligation for the current expenditure of funds, it must provide adequate documentation to meet federal cost guidelines. Neither the county nor a private agency is privileged to compromise federal cost guidelines by contract. For the reasons cited, we cannot conclude that these payments, to the for-profit corporation and the Velas personally, benefitted Symbiont NFP, Inc.'s foster care program by paying for any of its direct or administrative costs as anticipated by its contract with Franklin County.

Management Comment

We recommend the Board develop policies and procedures to ensure compliance with federal cost guidelines, the Ohio Administrative Code and the terms and conditions of its contracts.

Consistent with our Management Comment related to Issues 1-2 (Transfer of Fairfield Academy), 1-3 (Loans Made to Related For-Profit Organizations), 1-5 (Vehicles Leased from a Related For-Profit Company), and 1-6 (BMW Leased on Behalf of Judy Vela), 1-7 (Ohio State University Seat Licenses), we note that the payments to Symbiont, Inc. and the Velas personally also raise issues with respect to the agency's compliance with its federal tax-exempt status and Ohio laws governing nonprofit corporations.

Purchasing seat licenses for personal use by management and board members could raise issues of private inurement as defined in 26 C.F.R. §1.501(c)(3)-1(d)(1)(ii)(2000), which could be relevant in any consideration of continued tax exempt status by the Internal Revenue Service.

Likewise, for the reasons stated previously, any expenditure that could be construed as a distribution of Symbiont NFP, Inc.'s net earnings to private individuals, raises issues with respect to its status as a nonprofit corporation, as defined in Ohio Rev. Code Section 1702.01(C) and its compliance with Paragraph 3(C) of its Articles of Incorporation.

Accordingly, we recommend that Symbiont NFP, Inc. monitor its transactions with related for-profit entities, so as to ensure that its federal tax-exempt status is not jeopardized and that it is in compliance with Ohio's laws governing nonprofit corporations.

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Article III, Section B, Paragraph 1 of the FCCS contract provides: "All records relative to this Agreement including Service Plans, invoices, etc., as applicable, shall be retained for five (5) years."

SYMBIONT NFP, INC.
SUPPLEMENT TO REPORT ON AGREED-UPON PROCEDURES

ISSUE 1-5	VEHICLES LEASED FROM A RELATED FOR-PROFIT COMPANY
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Results:

Ohio Admin. Code Section 5101:2-5-08(G) states, "A PCPA or PNA shall not permit public funds to be paid or committed to be paid to any corporation, firm, association or business in which any of the members of the governing body of the agency, the executive personnel or their immediate families have any direct or indirect financial interest, or in which any of these persons serve as an officer or employee, unless the services or goods involved are provided at a competitive cost or under terms favorable to the PCPA or PNA. The PCPA or PNA shall make a written disclosure, in the minutes of the board, of any financial transaction of the PCPA or PNA in which a member of the board or his/her immediate family is involved. "

Furthermore, Ohio Admin. Code Section 5101:2-5-08(H) states "A person who is employed by a PCPA or PNA certified under this chapter or any person who is a member of the governing body shall not be eligible to vote on or participate in the decision making process with respect to any matter or issue in which he/she could benefit financially or materially."

During our review of Symbiont NFP, Inc.'s expenditures, we found Symbiont NFP, Inc. leased vehicles from McVee Holdings, LTD., a related for-profit company. In addition, we found no record of an agreement to lease vehicles from McVee Holdings, LTD. documented in Symbiont NFP, Inc.'s Board minutes. Furthermore, it was determined the vehicles leased from McVee Holdings, LTD. were not at competitive or under favorable terms for Symbiont NFP, Inc.

Upon further inquiry, Symbiont NFP, Inc. responded that it had checked with several (unnamed) leasing organizations and "none would lease to Symbiont NFP upon learning that the vehicles would be used to transport foster children and /or mentally retarded children, given the high level of risk involved." Symbiont NFP, Inc. did not provide documentation or third-party verification which supported this assertion. This was a less-than-arms-length transaction, in that the same individuals, Manuel and Judy Vela, controlled both sides of the transaction.

The payments made by Symbiont NFP, Inc. and the lease expense accrued on the 1998 audited financial statements included a total overpayment of \$6,605. The total amount of the leases were reported on the cost report. However, it should be noted that Symbiont NFP, Inc. has represented that McVee Holdings, LTD., has agreed to accept the lease payments received as full satisfaction of the obligation, however, documentation of the transactions were not provided.

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SUPPLEMENT TO REPORT ON AGREED-UPON PROCEDURES**

Vehicles:	McVee Value Per Lease:	Value Per Dealership for Same Year Vehicle:	McVee Rental Fee Per Lease:	Purchase Payments Per Dealership	Over-paid Per Month	Total ⁶¹ Amount Overpaid
1991 Plymouth Grand Voyager	\$ 9,615	\$ 7,000	\$414	\$235	\$179	\$2,148
1994 Dodge Caravan	\$15,000	\$10,450	\$440	\$350	\$ 90	\$ 900
1994 Dodge Ram Van	\$17,500	\$12,075	\$414	\$405	\$ 9	\$ 108
1992 Plymouth Grand Voyager	\$10,350	\$ 8,300	\$414	\$278	\$136	\$1,632
1989 Dodge Caravan	\$ 3,525	\$ 5,950	\$350	\$199	\$151	\$1,057
1992 Plymouth Voyager	\$ 10,500	\$ 7,475	\$440	\$250	\$190	<u>\$ 760</u>
Total Overpaid						<u><u>\$6,605</u></u>

Federal Questioned Costs: \$6,605

Reviewing this transaction pursuant to the previously-quoted standards set forth in OMB Circular A-122 Attachment A, Paragraph A (2)(a) and (g) and Paragraph A(3) (a)-(c), Ohio Admin. Code Sections 5101:2-47-26(A)(6), 5101:2-5-08(G) and 5101:2-5-08(H) and Article II, Section D, Part 4 of Symbiont NFP Inc.'s contract with Franklin County Children's Services, we conclude that the excess vehicle lease payments made by Symbiont NFP, Inc., to its related for-profit company, McVee Holdings, LTD. constitutes a federal questioned costs in the amount of \$6,605.

⁶¹

Note: Calculation for Federal Questioned Costs of Leased Vehicles from McVee Holdings, LTD. was determined by the monthly overpayment multiplied by the number of months the vehicle was in use: the 1991 Plymouth Grand Voyager was used 12 months (12*\$179=\$2,148); the 1994 Dodge Caravan was used 10 months (10*\$90=\$900); the 1994 Dodge Ram Van was used 12 months (12*\$9=\$108); the 1992 Plymouth Grand Voyager was used 12 months (12*\$136=\$1,632); the 1989 Dodge Caravan was used 7 months (7*\$151=\$1,057); and the 1992 Plymouth Voyager was used 4 months (4*\$190=\$760). (\$2,148+\$900+\$108+\$1,632+\$1,057 +\$760=\$6,605).

SYMBIONT NFP, INC.
SUPPLEMENT TO REPORT ON AGREED-UPON PROCEDURES

In concluding that the vehicle lease payments made by Symbiont NFP, Inc. are neither reasonable nor adequately documented for purposes of the cited portions of OMB Circular A-122. We note that the agency is entirely funded by public sources, including Title IV-E, and that there is no persuasive documentation demonstrating that the overages in payments it made to its related for-profit company to lease vehicles benefitted Symbiont NFP, Inc.'s foster care program by paying for any of its direct or administrative costs as anticipated by its contract with Franklin County, or that the leasing arrangement was favorable or competitive, as required by Ohio Admin. Code Section 5101:2-5-08(G), governing related party transactions by foster care agencies.

Furthermore, it is established by his own affidavit that Mr. Vela, a co-founder and director of Symbiont NFP, Inc. and co-owner of McVee, made the decision to lease the vehicles from McVee, contrary to Ohio Admin. Code Section 5101:2-5-08(H), which prohibits related parties from "participat(ing) in the decision making process with respect to any matter or issue in which he/she could benefit financially or materially."

Finally, although the amounts of principal and interest were reported on the cost reports, the agency filed with ODJFS, it has not demonstrated that the excess payments to a affiliated for-profit company, which resulted in the \$6,605 questioned costs, provided any prospective benefit to its foster care program or facility. Accordingly, they constitute unallowable costs pursuant to Ohio Admin. Code Section 5101:2-47-26(A)(6).

Management Comment:

Symbiont NFP, Inc. should obtain, document and maintain quotes or competitive bids from other vendors for services obtained from related parties to help ensure goods and services are provided at a competitive cost or under terms favorable to the agency. This procedure is critical when related party transactions are involved, to ensure compliance with Ohio Admin. Code Section 5101:2-5-08(G) and to help ensure that agency funds are fully utilized to benefit the foster care program. In such transactions, the facts supporting compliance with the Ohio Administrative Code and Board approval for these goods or services should be documented in the Board minutes.

It is further recommended that all expenditures be handled using the appropriate procedures as outlined in the board approved policies and procedures manual for purchases. This would help to ensure the proper authorization, approval and purpose of the expenditure and that transactions are clearly identified in the accounting system. In addition, we recommend an independent Board of Directors establish a policy which prohibits any benefit of private interests to designated individuals such as, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interest.

Consistent with our Management Comment related to Issues 1-2 (Transfer of Fairfield Academy), 1-3 (Loans Made to Related For-Profit Organizations), 1-4 (Expenditures for Unsupported Prior Period Liabilities to Related For-Profit Organizations), 1-5 (Vehicles Leased from a Related For-Profit Company), and 1-6 (BMW Leased on Behalf of Judy Vela), 1-7 (Ohio State University Seat Licenses), we note that the payments by Symbiont NFP, Inc. of employee costs for related for-profit organizations also raise issues with respect to the agency's compliance with its federal tax-exempt status and Ohio laws governing nonprofit corporations.

Judy Vela and Manual R. Vela, co-founders and directors of Symbiont NFP, Inc. are co-owners of the for-profit company McVee. Accordingly, entering vehicle leases which are not at fair market value could raise issues of private inurement as defined in 26 C.F.R. §1.501(c)(3)-1(d)(1)(ii)(2000), which could be relevant in any consideration of continued tax exempt status by the Internal Revenue Service.

**SYMBIONT NFP, INC.
SUPPLEMENT TO REPORT ON AGREED-UPON PROCEDURES**

Likewise, for the reasons stated previously, any distribution by Symbiont NFP Inc. of net earnings to related for-profit organizations, raises issues with respect to its status as a nonprofit corporation, as defined in Ohio Rev. Code Section 1702.01(C) and its compliance with Paragraph 3(C) of its Articles of Incorporation. Its contracts with related entities are also subject to scrutiny under the provisions of Ohio Rev. Code Section 1702.30.1(A).

Accordingly, we recommend that Symbiont NFP, Inc. monitor its transactions with related for-profit entities, so as to ensure that its federal tax-exempt status is not jeopardized and that it is in compliance with Ohio's laws governing nonprofit corporations.

ISSUE 1-6	BMW LEASED ON BEHALF OF JUDY VELA
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Results

During our review of the expenditures for Symbiont NFP, Inc., we noted payments made to BMW Financial Services NA, Inc. for a 1997 BMW 528. After further review, it was determined the new 1997 BMW 528, with a fair market value of \$43,400, was leased by Judy Vela for personal use with an option to purchase as indicated by the signed lease agreement. Symbiont NFP, Inc. made the initial payment of \$6,590 which includes down payment, first month lease payment, security deposit, license, title, registration fee, sales tax, and early termination fee. In addition, Symbiont NFP, Inc. made lease payments totaling \$7,244 less sales tax for a 16 month period. At this time, Judy Vela terminated her 1997 BMW 528 lease and signed a lease for a new luxury 1998 BMW 740IL, with a fair market value of \$63,550.

Upon further review, it was determined the 1998 BMW 740IL was again leased by Judy Vela marked for commercial use with an option to purchase as indicated by the signed lease agreement. Judy Vela paid the initial payment which includes down payment, first month lease payment, security deposit, license, title, registration fee, and sales tax. We reviewed 15 payments of \$830 less sales tax made by Symbiont NFP, Inc. from October 30, 1998 through December 31, 1999 for the 1998 BMW 740IL totaling \$12,447.

Because both the 1997 BMW 528 and the 1998 BMW 740IL were in Judy Vela's name and not Symbiont NFP, Inc. sales tax was due and paid with each monthly payment.

There was no record of Symbiont NFP, Inc.'s Board approval for lease or any payments made on behalf of Judy Vela for either the 1997 BMW 528 or the luxury 1998 BMW 740IL leased in her name. This was a less-than-arms-length transaction, in that the same individuals, Manuel and Judy Vela, controlled and benefitted from the transaction.

It should also be noted that per the Symbiont NFP, Inc. response, "Ms. Vela paid her own insurance on both vehicles and never sought reimbursement for the cost thereof." In addition, "Ms. Vela never sought reimbursement for mileage on either vehicle, and never sought reimbursement for maintenance or even washing either vehicle...She also personally paid the down payment." These statements suggest Ms. Vela considered the BMWs as her personal vehicles for which she would not seek reimbursement.

In addition, the lease payments for the BMWs do not represent expenditures that are necessary and reasonable for the operation of the foster care program. Therefore, all expenditures made by Symbiont NFP, Inc. for the BMW leases are considered unallowable per OMB Circular A-122 and are considered questioned costs.

SYMBIONT NFP, INC.
SUPPLEMENT TO REPORT ON AGREED-UPON PROCEDURES

Federal Questioned Costs: \$26,281

Reviewing this transaction pursuant to the previously-quoted standards set forth in OMB Circular A-122 Attachment A, Paragraph A (2)(a) and (g) and Paragraph A(3) (a)-(c), Ohio Admin. Code Section 5101:2-47-26(A)(6), and Article II, Section D, Part 4 of Symbiont NFP Inc.'s contract with Franklin County Children's Services, we conclude that the payments made by Symbiont NFP Inc. to lease a BMW for the personal use of Judy Vela constitute federal questioned costs in the amount of \$26,281.

In concluding that the BMW lease payments made by Symbiont NFP, Inc. were neither reasonable nor adequately documented for purposes of the cited portions of OMB Circular A-122, we noted the following: 1) that the agency is entirely funded by public sources, including Title IV-E, 2) the agency did not provide persuasive documentation demonstrating that the vehicle was utilized for agency business, 3) the lease of a luxury vehicle is not ordinary or necessary for the operation of a foster care agency, and therefore not a prudent business decision. We are also not persuaded that the cost of the BMW lease benefitted Symbiont NFP, Inc.'s foster care program nor was it the type of direct or administrative cost anticipated by its contract with Franklin County.

Management Comment:

The Board of Trustees should review, approve, and document in their minutes, equipment leased made on behalf of or by the executive personnel for foster care purposes. The criteria used should require that the equipment serves a clear business need and it is necessary and reasonable for the programmatic or operation of the foster care program and the agency. In addition, we recommend an independent Board of Directors establish a policy which prohibits any benefit of private interests to designated individuals such as, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interest. We further recommend the Board establish policies and procedures to ensure that all assets are in the name of the agency, and all benefits received by employees are properly recorded and taxed in accordance with IRS rules on wage reporting.

Consistent with our Management Comment related to Issues 1-2 (Transfer of Fairfield Academy), 1-3 (Loans Made to Related For-Profit Organizations), 1-4 (Expenditures for Unsupported Prior Period Liabilities to Related For-Profit Organizations), 1-5 (Vehicles Leased from a Related For-Profit Company), and 1-6 (BMW Leased on Behalf of Judy Vela), 1-7 (Ohio State University Seat Licenses), we note that the payments by Symbiont NFP, Inc. of employee costs for related for-profit organizations also raise issues with respect to the agency's compliance with its federal tax-exempt status and Ohio laws governing nonprofit corporations.

Judy Vela, a co-founder and director of Symbiont NFP, Inc. benefitted personally from the lease. Accordingly, the lease agreement could raise issues of private inurement as defined in 26 C.F.R. §1.501(c)(3)-1(d)(1)(ii)(2000), which could be relevant in any consideration of continued tax exempt status by the Internal Revenue Service.

Likewise, for the reasons stated previously, any expenditure that could be construed as a distribution by Symbiont NFP Inc. of net earnings to private individuals, raises issues with respect to its status as a nonprofit corporation, as defined in Ohio Rev. Code Section 1702.01(C) and its compliance with Paragraph 3(C) of its Articles of Incorporation.

Accordingly, we recommend that Symbiont NFP, Inc. monitor its transactions with related for-profit entities, so as to ensure that its federal tax-exempt status is not jeopardized and that it is in compliance with Ohio's laws governing nonprofit corporations.

**SYMBIONT NFP, INC.
SUPPLEMENT TO REPORT ON AGREED-UPON PROCEDURES**

ISSUE 1-7	OHIO STATE UNIVERSITY (OSU) SEAT LICENSE
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During our review of Symbiont NFP, Inc. expenditures, we determined that Symbiont NFP, Inc. spent \$15,200 towards the purchase of four seat licenses (\$4,000 each) at the Schottenstein Arena. The Ohio Treatment Alliance, Inc. (OTA) a related for-profit company paid \$800. The four licenses were issued to [Manuel] Robert Vela, Judy Vela, David B. Morris, and Symbiont NFP, Inc. The purchase of a seat license was not reasonable or necessary to purchase tickets to events at the Schottenstein Arena. Of the \$15,200 in questionable costs, \$12,800 was used to offset a prior period undocumented payable to Symbiont, Inc. (See Issue 1-4 Expenditures For Unsupported Prior Period Liabilities to Related For-profit Organizations).

Federal Questioned Costs: \$2,400

Reviewing this transaction pursuant to the previously-quoted standards set forth in OMB Circular A-122 Attachment A, Paragraph A (2)(a) and (g) and Paragraph A(3) (a)-(c), Ohio Admin. Code Section 5101:2-47-26(A)(6), and Article II, Section D, Part 4 of Symbiont NFP Inc.'s contract with Franklin County Children's Services, we conclude that the payments made by Symbiont NFP Inc. to purchase seat licenses in the name of Manuel R. Vela, Judy Vela, Dave Morris and Symbiont NFP, Inc. constitute federal questioned costs in the amount of \$2,400.

In concluding that the seat license purchases made by Symbiont NFP, Inc. are not reasonable for purposes of the cited portions of OMB Circular A-122, we note that the agency is entirely funded by public sources, including Title IV-E, and that documentation was offered to establish that children attended 4 games in total from all the tickets available for men and women's basketball and hockey, we are not persuaded that the purchase of seat licenses is ordinary or necessary for the operation of a foster care agency, or that the decision to spend funds in this manner was a prudent one. We are also not persuaded that the expenditure for seat licenses benefitted Symbiont's foster care program by paying for any of its direct or administrative costs as anticipated by its contract with Franklin County.

Management Comment

To help prevent the payment of unauthorized or unallowable expenditures, we recommend that the agency develop, and communicate to the staff, policies and procedures governing unallowed expenditures and activities. This policy should include the types of allowable and unallowable expenditures, required supporting documents, and procedures for demonstrating the proper authorization and purpose. These procedures will help ensure that all business expenditures are in accordance OMB Circular A-122, Ohio Administrative Code and contract requirements.

Consistent with our Management Comment related to Issues 1-2 (Transfer of Fairfield Academy), 1-3 (Loans Made to Related For-Profit Organizations), 1-4 (Expenditures for Unsupported Prior Period Liabilities to Related For-Profit Organizations), 1-5 (Vehicles Leased from a Related For-Profit Company), and 1-6 (BMW Leased on Behalf of Judy Vela), 1-7 (Ohio State University Seat Licenses), we note that the payments by Symbiont NFP, Inc. of employee costs for related for-profit organizations also raise issues with respect to the agency's compliance with its federal tax-exempt status and Ohio laws governing nonprofit corporations.

Purchasing seat licenses for private parties could raise issues of private inurement as defined in 26 C.F.R. §1.501(c)(3)-1(d)(1)(ii)(2000), which could be relevant in any consideration of continued tax exempt status by the Internal Revenue Service.

**SYMBIONT NFP, INC.
SUPPLEMENT TO REPORT ON AGREED-UPON PROCEDURES**

Likewise, for the reasons stated previously, any expenditure that could be construed as a distribution by Symbiont NFP Inc. of net earnings to private individuals, raises issues with respect to its status as a nonprofit corporation, as defined in Ohio Rev. Code Section 1702.01(C) and its compliance with Paragraph 3(C) of its Articles of Incorporation.

Accordingly, we recommend that Symbiont NFP, Inc. monitor its transactions with related for-profit entities, so as to ensure that its federal tax-exempt status is not jeopardized and that it is in compliance with Ohio's laws governing nonprofit corporations.

ISSUE 1-8	ATTORNEY FEES PAID BY SYMBIONT NFP, INC. ON BEHALF OF RELATED FOR-PROFIT COMPANIES
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Results

During our review of the expenditures for Symbiont NFP, Inc., we noted payments made to an attorney on behalf of related for-profit organizations.

According to Manuel R. Vela, Roger Sorey was the attorney for McVee Holdings, LTD. and Symbiont Inc. both of which are related for-profit organizations owned and operated by Manuel R. Vela and Judy Vela. Attorney fees in the amount of \$666 were paid by Symbiont NFP, Inc. on behalf of both McVee Holdings, LTD. and Symbiont Inc. for legal services provided by Roger Sorey.

In addition, attorney fees were paid by Symbiont NFP, Inc. for an employment contract with David Morris in the amount of \$230. According to Manuel R. Vela, David Morris spent 50% of his time working with Symbiont NFP, Inc. and 50% of his time working with OTA during the period. Therefore, OTA should have paid \$115 or 50% of the legal services for the employment contract.

During the course of the audit, Symbiont NFP, Inc. was reimbursed \$781 for the attorney fees paid on behalf of McVee Holdings, LTD., Symbiont, Inc. and OTA. On December 1, 2000, McVee Holdings, LTD. issued check number 9100 in the amount of \$333, Symbiont Inc. issued check number 10916 in the amount of \$333, and OTA issued check number 5712 in the amount of \$115. These amounts were deposited to the credit of Symbiont NFP, Inc. on December 1, 2000.

Management Comment

We recommend the agency establish accounting policies and procedures that ensure that cost are properly allocated.

ISSUE 1-9	DUPLICATE REIMBURSEMENT TO JUDY VELA
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Results

During our review of the expenditures of Symbiont NFP, Inc., we found Judy Vela was reimbursed twice for a credit card expenditure in the amount of \$565 Judy Vela received \$492 on both checks numbered 9318 and 9156. Furthermore, Judy Vela received \$73 on both checks numbered 9576 and 9466.

During the course of the audit, Judy Vela reimbursed Symbiont NFP, Inc. \$565 for the duplicate reimbursement. A total of \$565 was deposited to the credit of Symbiont NFP, Inc. on December 1 and 11, 2000.

**SYMBIONT NFP, INC.
SUPPLEMENT TO REPORT ON AGREED-UPON PROCEDURES**

Management Comment

We recommend the agency establish accounting policies and procedures that ensure that cost are properly allocated.

ISSUE 1-10	SHARED EMPLOYEES
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Results

Ohio Admin. Code Section 5101:2-47-25(J)⁶² defines salaries for allowable cost-reporting to include, “all remuneration, paid currently or accrued, for services rendered during the period of the cost report or budget.” It further provides, in pertinent part, “... Payroll must be further supported by time and attendance or equivalent records for individual employees. Salaries of employees chargeable to more than one program or cost centers will be supported by appropriate time distribution record. The method used should produce an equitable distribution of time and effort ... ”

Through discussion with employees, written documentation from Manuel R. Vela, and observation while conducting the audit we determined that several employees provided similar duties to Symbiont NFP, Inc. and the for-profit organizations owned by Manuel R. and Judy Vela (Symbiont, Inc., McVee Holdings LTD., and Ohio Treatment Alliance, Inc.). Neither Symbiont NFP, Inc. or its affiliated for-profit organizations were able to provide supporting documentation to determine the appropriate distribution of time and effort of their shared employees. We asked Manuel Vela about the appropriate distribution of time for the shared employees. He provided a memorandum dated, January 27, 2000, that listed all shared employees and the percent of their time worked between all the affiliated organizations, and verified all employees were shared by function. There was no effort on the part of the organizations to allocate employee cost properly.

The table below presents a reasonable allocation of the shared employees’ compensation based on a reasonable distribution of time and effort. This allocation indicates Symbiont NFP, Inc. charged wages against the foster care program which should have been allocated to the for-profit organizations owned by Manuel R. and Judy Vela. Therefore, Manuel R. and Judy Vela received economic benefit.

Shared Employee Name	Total Compensation from Affiliated Organizations ⁶³	% of Time Worked at Symbiont NFP, Inc.	Symbiont NFP, Inc.’s Share of Wages Based on % of Time Allocated	Wages Paid by Symbiont NFP, Inc. ⁶⁴	Amount Symbiont NFP, Inc. Over (Under) Paid Based on % of Time Allocated
Manuel R. Vela	\$104,358	75.00%	\$78,269	\$84,167	\$ 5,899
Judy Vela	\$88,205	80.00%	\$70,564	\$84,167	\$13,603
Sue Shade	\$27,000	50.00%	\$13,500	\$20,250	\$ 6,750
Tom McPeek	\$30,000	50.00%	\$15,000	\$15,000	\$ 0
John McElroy	\$30,000	67.00%	\$20,100	\$23,000	\$ 2,900
M. Lee Baiser	\$56,245	25.00%	\$14,061	\$13,167	\$ (894)
Total					\$28,258

⁶² Prior to 5/1/98, this provision appeared in Ohio Admin. Code Section 5101:2-47-63(J).

⁶³ Source: Employees's 1998 W-2 and IRS Schedules E and K-1.

⁶⁴ Traced to Symbiont NFP, Inc.'s 1998 ODHS 2910 - Purchased Family Foster Care Cost Report.

**SYMBIONT NFP, INC.
SUPPLEMENT TO REPORT ON AGREED-UPON PROCEDURES**

Federal Questioned Costs: \$28,258

Upon reviewing this transaction pursuant to the previously-quoted standards set forth in OMB Circular A-122 Attachment A, Paragraph A (2)(a) and (g) and Paragraph A(3) (a)-(c), Ohio Admin. Code Section 5101:2-47-26(A)(6), Ohio Admin. Code Section 5101:2-47-25(J), and Article II, Section D, Part 4 of Symbiont NFP Inc.'s contract with Franklin County Children's Services, we conclude that the employee costs paid by Symbiont NFP, Inc., for the benefit of the related for-profit Symbiont, Inc., OTA and McVee constitute federal questioned costs in the amount of \$28,258.

In concluding that the employee costs Symbiont NFP, Inc. paid for the related for-profit organizations, are neither reasonable nor adequately documented for purposes of the cited portions of OMB Circular A-122, we note that the agency is entirely funded by public sources, including Title IV-E, and that there is no documentation demonstrating that the payments it made on behalf of the related for-profit organizations benefitted the foster care program of Symbiont NFP, Inc., by paying for any of its direct or administrative costs as anticipated by its contract with Franklin County.

Management Comment

We recommend an independent Board of Directors establish a policy which prohibits any benefit of private interests to designated individuals such as, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interest. We further recommend the agency establish accounting policies and procedures that ensure that costs are properly allocated.

Consistent with our Management Comment related to Issues 1-2 (Transfer of Fairfield Academy), 1-3 (Loans Made to Related For-Profit Organizations), 1-4 (Expenditures for Unsupported Prior Period Liabilities to Related For-Profit Organizations), 1-5 (Vehicles Leased from a Related For-Profit Company), and 1-6 (BMW Leased on Behalf of Judy Vela), 1-7 (Ohio State University Seat Licenses), we note that the payments by Symbiont NFP, Inc. of employee costs for related for-profit organizations also raise issues with respect to the agency's compliance with its federal tax-exempt status and Ohio laws governing nonprofit corporations.

Paying employee costs on behalf of related for-profit entities could raise issues of private inurement as defined in 26 C.F.R. §1.501(c)(3)-1(d)(1)(ii)(2000), which could be relevant in any consideration of continued tax exempt status by the Internal Revenue Service.

Likewise, for the reasons stated previously, any expenditure that could be construed as a distribution of Symbiont NFP Inc.'s net earnings to private individuals, raises issues with respect to its status as a nonprofit corporation, as defined in Ohio Rev. Code Section 1702.01(C) and its compliance with Paragraph 3(C) of its Articles of Incorporation.

Accordingly, we recommend that Symbiont NFP, Inc. monitor its transactions with related for-profit entities, so as to ensure that its federal tax-exempt status is not jeopardized and that it is in compliance with Ohio's laws governing nonprofit corporations.

ISSUE 1-11	YAFGO SETTLEMENT
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Results

During our review of the 1998 audited financial statements, we found an account payable to M. Lee Balsler, a board member for both Symbiont NFP, Inc. and OTA. Upon further inquiry, we determined the loan payable was part of a settlement agreement for a release of claims between OTA and YAFGO, Inc. dba Clearview Clinic.

SYMBIONT NFP, INC.
SUPPLEMENT TO REPORT ON AGREED-UPON PROCEDURES

In June 1996, a stock sale and mutual release agreement was entered into by YAFGO, Inc. and its stockholders noting the corporation owed M. Lee Balser \$24,742 due to loans he made to the corporation for operating capital and other expenses. Also, the agreement noted the Corporation was owed \$50,000 by Ohio Treatment Alliance, Inc. (OTA) for services rendered to OTA which were delinquent and that Mr. Balser was a member of the Board of Directors of OTA. The agreement assigned and conveyed to Mr. Balser all rights, title and interest and claims of the Corporation against OTA and Mr. Balser accepted the assignment as payment in full for the loans and any debts of the Corporation to him.

The settlement dated November 7, 1996 was entered into between YAFGO and OTA. It acknowledged the June 1996 YAFGO release agreement, and OTA agreed to pay Balser \$24,742 which had been owed by YAFGO to Balser and YAFGO released OTA of all claims.

The payments made by Symbiont NFP, Inc. in the amount of \$15,742 and the accrued liability on Symbiont NFP, Inc.'s 1998 audited financial statements in the amount of \$9,000 are liabilities incurred by OTA. Their payment by Symbiont NFP, Inc., provided Manuel R. and Judy Vela a financial benefit through the reduction of liabilities for their for-profit company OTA.

Mr. Vela stated the payments made by Symbiont NFP, Inc. to Mr. Balser were the results of a claim Symbiont NFP, Inc. inherited from OTA, when Fairfield Academy was transferred on October 1, 1996.

Federal Questioned Costs: \$15,742

Inasmuch as the payment of \$15,742 by Symbiont NFP, Inc. to M. Lee Balser, was pursuant to Symbiont NFP, Inc.'s assumption of OTA liabilities with the Fairfield Academy, we are questioning this cost for the reasons stated in Issue 1-2 (Transfer of Fairfield Academy).

Management Comment:

See Management Comment to Issue 1-2 (Transfer of Fairfield Academy). We further recommend that OTA's liability of \$9,000 be removed from Symbiont NFP, Inc.'s audited financial statements.

ISSUE 1-12	SALES TAX PAID BY SYMBIONT NFP, INC., A NONPROFIT ORGANIZATION
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Results

Taxes from which exemptions are available to the organization directly or which are available to the organization based on an exemption afforded the federal government and in the latter case when the awarding agency makes available the necessary exemption certificates are considered unallowable.⁶⁵

During our review of Symbiont NFP, Inc.'s expenditures, we found Symbiont NFP, Inc. improperly paid sales tax during the period in the amount of \$4,580. Symbiont NFP, Inc. paid sales taxes of \$1,642, on miscellaneous expenditures. Symbiont NFP, Inc. also paid the following sales taxes to the benefit of Manuel and Judy Vela or a related for-profit company:

1. \$1,182 to BMW Financial, included in the lease payments for the BMWs leased for Judy Vela (see Issue 1-6 BMW Leased on Behalf of Judy Vela).

⁶⁵ Office of Management and Budget (OMB) Circular A-122 "Cost Principles of Non-Profit Organizations", Attachment B, Paragraph 51(a)(i).

**SYMBIONT NFP, INC.
SUPPLEMENT TO REPORT ON AGREED-UPON PROCEDURES**

2. \$1,429 to Lease Acceptance Corporation, included in the lease payments for leased modular school building for which Manuel R. Vela personally retained the title when Symbiont NFP, Inc. made a buyout payment. (See Issue 4-2 Fixed Asset Policy).
3. \$329 to GE Modular included in the lease payments for a trailer at Fairfield Academy on behalf of Ohio Treatment Alliance, Inc.

In accordance with Symbiont NFP, Inc.'s Articles of Incorporation Section A, the agency is organized as a nonprofit foster care provider and is exempt from the payment of sales tax.

Federal Questioned Costs: \$4,580

Upon reviewing this transaction pursuant to the previously-quoted standards set forth in OMB Circular A-122 Attachment A, Paragraph A (2)(a) and Paragraph A(3) (a)-(c), Ohio Admin. Code Section 5101:2-47-26(A)(6), and Article II, Section D, Part 4 of Symbiont NFP Inc.'s contract with Franklin County Children's Services, we conclude that the sales tax paid by Symbiont NFP, Inc., constitutes a federal questioned costs in the amount of \$4,580.

In concluding that the sales tax payments were not reasonable for purposes of the cited portions of OMB Circular A-122, we note that the agency is entirely funded by public sources, including Title IV-E, and that the payment of sales tax by a tax-exempt entity is not a sound business practice or a prudent act. Moreover, we cannot conclude that under the circumstances, the payment benefitted the foster care program of Symbiont NFP, Inc., by paying for any of its direct or administrative costs as anticipated by its contract with Franklin County. Moreover, inasmuch as we have concluded that the payment provided no prospective benefit to the agency, we find it an unallowable cost pursuant to Ohio Admin. Code Section 5101:2-47-26(A)(6).

Management Comment

We recommend the accounts payable clerk review all invoices and reduce the total by the sales tax amount prior to making payment.

ISSUE 2	TEST OF FUNDING RECEIVED FROM PUBLIC SOURCES
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Objective:

To determine whether all receipts and deposits from the applicable public children services agencies to Symbiont NFP, Inc. for the Period were properly deposited and recorded in the accounting records of the Placement Agency.

Procedures Performed:

1. We determined the types of revenue that Symbiont NFP, Inc. received during the Period by scanning the audited financial statements and the supporting general ledger.
2. We identified the sources of receipts received from bank statements and other related records.
3. We tested a sample of 10% of the monthly billings by the Placement Agency to FCCS for foster care placements to determine whether the amounts billed were received, and the receipts were deposited and recorded in the Placement Agency's financial records.

SYMBIONT NFP, INC.
SUPPLEMENT TO REPORT ON AGREED-UPON PROCEDURES

4. We scanned all revenue remittances and the general ledger to determine whether revenue had been recorded in the accounting records of the Placement Agency.

Results:

We documented the types of revenue that Symbiont NFP, Inc. received as program service fees from various counties and investment income. They did not receive Medicaid payments during the Period. We obtained documentation from FCCS to determine the completeness of the receipts to Symbiont NFP, Inc.

Furthermore, we determined that all FCCS disbursements to Symbiont NFP, Inc. were receipted, deposited and recorded in its accounting records.

ISSUE 3	TEST OF PAYMENTS TO FOSTER PARENTS
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Objectives:

1. To determine whether Symbiont NFP, Inc.'s per diem payments to the foster parents were in accordance with the authorized schedule of per diem rates.
2. To determine the ratio of the per diem payments used for administration and maintenance.

Procedures Performed:

1. We obtained the monthly billing invoices submitted by Symbiont NFP, Inc. for foster care services from FCCS during 1998 and traced them to the 1998 FCCS Vendor Payment History report for Symbiont NFP, Inc. detailing FCCS payments.
2. We selected a representative sample of children identified by FCCS as being serviced by Symbiont NFP, Inc. some of which were Title IV-E eligible.
3. We found the child's name on the appropriate month's FCCS vendor payment history report. We computed the amount of maintenance that would have been paid for each child.
4. We compared payments received by Symbiont NFP, Inc. from FCCS to the corresponding Symbiont NFP, Inc. billing in the month selected for each child in the sample.
5. We obtained the contracts or per diem agreements between Symbiont NFP, Inc. and the foster parent for each child in the sample.
6. We obtained and compared the authorized schedule of per diem rates to rates paid per the agreements between Symbiont NFP, Inc. and FCCS and between Symbiont NFP, Inc. and foster caregivers.
7. We compared the Symbiont NFP, Inc.'s per diem paid to the foster parents with the corresponding per diem it received from FCCS to determine the ratio of payments for administration and maintenance.

ISSUE 3-1	RATIO OF PAYMENT FOR ADMINISTRATION AND MAINTENANCE
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Results:

We tested the payments from Franklin County Children's Services (FCCS) to Symbiont NFP, Inc. for a sample of 91 foster children. Of the 91 children tested, 54 were eligible for Title IV-E reimbursement. The payments to the Placement Agency for the 54 children totaled \$75,303. We noted that the Placement Agency received the correct per diem rates noted in the FCCS contract.

The foster parents in the sample (54) received \$34,150. We noted that these foster parents received the correct per diem rates in accordance with the Board approved rates. Of the \$75,303 received from FCCS, the agency made direct maintenance purchases of \$435 and the foster parents received \$34,150 or 46% of the total funds paid to the Placement Agency by FCCS.

The remaining \$40,718 or 54% was retained by Symbiont NFP, Inc. and used for administrative costs, other direct services to children, or other purposes.

Management Comment:

ODJFS should establish by administrative rule a cap on the percentage of the private agency's allowable administrative cost. This administrative cost cap should be structured in a manner that maximizes the amounts expended for maintenance and other direct services to children, while allowing a reasonable percentage for necessary administrative costs.

ISSUE 3-2	MANAGING CHANGES TO RATES AND PER DIEM AGREEMENTS
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Results

The Placement Agency should ensure the proper authorization and timely updating of rate changes and other changes in the per diem agreement between the Placement Agency and the foster caregiver.

Per diem agreements between a Placement Agency and foster parents should represent the agreement of both parties to the terms of the foster care relationship. The Placement Agency should update their per diem agreements with the foster parents when changes occur (increases or decreases in the assessed level of care rate which effects the amount paid to foster parents).

During our review of the family foster files, we noted foster parents working with Symbiont NFP, Inc. received a per diem agreement at the initial placement of a child in their home. While changes in the per diem agreements were recorded in the foster parent files, no per diem agreement amendments were prepared for approval by Symbiont NFP, Inc. or the individual foster parent. During our testing it appeared that the foster parents were receiving one rate for the care of the child for the entire duration of the child's placement, when in fact there could have been several rate changes during the period.

Management Comment:

We recommend that amendments or new per diem agreements with foster parents should be completed for each subsequent rate change. This would provide assurance, to both the agency and the foster parents that the properly authorized and documented rate would be paid.

SYMBIONT NFP, INC.
SUPPLEMENT TO REPORT ON AGREED-UPON PROCEDURES

ISSUE 4	TEST OF INTERNAL CONTROLS
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Objectives:

1. To identify significant internal control weaknesses in the policies and procedures in place at the Placement Agency.
2. To recommend improvements in the internal control system in efforts to eliminate significant noncompliance, and increase fiscal accountability.

Procedures Performed:

1. We read the Board of Directors' minutes, personnel records, and organizational chart, to identify potential conflicts of interest and self dealing transactions that could result in noncompliance with Ohio Admin. Code Section 5101:2-5-08.
2. We completed an internal control questionnaire and identified weaknesses that existed in the accounting cycle.
3. We inquired, documented and obtained corroborating information on the Placement Agency's internal control policies and procedures relating to: 1) cash disbursements and expenses; 2) revenues; 3) personnel and payroll; 4) accounts receivable; 5) inventories; and 6) fixed assets.

ISSUE 4-1	BOARD INDEPENDENCE
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Results:

Ohio Admin. Code Section 5101:2-5-08 (G) states, "A PCPA or PNA shall not permit public funds to be paid or committed to be paid to any corporation, firm, association or business in which any of the members of the governing body of the agency, the executive personnel or their immediate families have any direct or indirect financial interest, or in which any of these persons serve as an officer or employee, unless the services or goods involved are provided at a competitive cost or under terms favorable to the PCPA or PNA. The PCPA or PNA shall make written disclosure, in the minutes of the board, of any financial transaction of the PCPA or PNA in which a member of the board or his/her immediate family is involved."

In addition, Ohio Admin. Code Section 5101:2-5-08(H) which states that "A person who is employed by a PCPA or PNA certified under this chapter or any person who is a member of the governing body shall not be eligible to vote on or participate in the decision making process with respect to any matter or issue in which he/she could benefit financially or materially."

In evaluating the makeup of Symbiont NFP, Inc.'s Board of Directors, we identified:

1. Three persons on the Board of Directors are closely related parties (Manuel R. Vela, Board President, administrator and co-founder; his wife Judy Vela, Board Treasurer/Secretary, Foster Care Director, and co-founder; and her father, Scott McElroy, Vice-President, and part of the maintenance department at Symbiont NFP, Inc.).

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SUPPLEMENT TO REPORT ON AGREED-UPON PROCEDURES

2. The other two members of the Board were David Morris, former Director of Marketing and Melvin Lee Balsler, former Director of Fairfield Academy for part of 1998 who were employed by the agency; therefore, they had a direct financial interest in the agency. Symbiont NFP, Inc. had an account payable due to Mr. Balsler at December 31, 1997, 1998 and 1999 in the amount of \$20,742, \$9,000 and \$9,000 respectively due to accrued expenses (see Issue 1-11 YAFGO Settlement).
3. Symbiont NFP, Inc. a nonprofit organization, as well as the for-profit organizations, Ohio Treatment Alliance, Inc., Ohio Treatment, LTD., Symbiont, Inc., McVee Holdings LTD., Legend Holdings, LTD. and LBJ Holdings, LTD. were owned or controlled by these board members, which made up 100% of the Symbiont NFP, Inc. Board of Directors. Several of the for-profits organizations provided goods or services or had other financial transactions with Symbiont NFP, Inc. during the Period (See Agency Information - Related Party Transactions with Administrator and Affiliated For-Profit Organizations).

All five board members had a direct or indirect financial interest or business or personal relationship which could impair the board member's objectivity.

4. Furthermore, on April 12, 1999 a Symbiont NFP, Inc. special board meeting attended by Manuel Robert Vela, Judy Vela and Scott W. McElroy, reduced the number of board members from five to three. Also, in this meeting nominations for board members were made and approved naming the new members as Manuel (Bob) Vela, Judy Vela and Scott McElroy.

Thus all related party transactions could be questionable due to Ohio Admin. Code Section 5101:2-5-08 (G) and (H) as well as raise issues of private inurement as defined in 26 C.F.R. §1.501(c)(3)-1(d)(1)(ii)(2000), which could be relevant in any consideration of continued tax exempt status by the Internal Revenue Service.

In order to effectively execute oversight of agency management, members of the board of directors should be independent of the management team it appoints. To be independent, board members should not be involved in the day to day management of the entity, have a direct or indirect financial interest in the entity, nor have a business or personal relationship which could impair the member's objectivity when making decisions.

Management Comment:

We recommend Symbiont NFP, Inc. increase the organizational independence of its board of directors. The Board of Directors could include professionals knowledgeable in the area of foster care, and a cross section of business professionals in the community that do not have a direct or indirect financial interest in the agency. Furthermore, ODJFS should revise its administrative rules by including policies and procedures that would result in a higher level of board independence and financial accountability.

**SYMBIONT NFP, INC.
SUPPLEMENT TO REPORT ON AGREED-UPON PROCEDURES**

ISSUE 4-2	AUDIT COMMITTEE
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Results:

The Audit Committee is essential to enhancing the credibility of the Placement Agency's financial reporting by ensuring the reliability of the audit. Generally accepted auditing standards require that auditors communicate the following information to an audit committee:

- The auditors' professional responsibility under generally accepted auditing standards;
- Selections of accounting standards;
- Sensitive accounting estimates;
- Significant audit adjustments;
- Disagreements with management;
- Difficulties encountered in performing the audit.

Symbiont NFP, Inc. did not have an audit committee. A well functioning audit committee would better ensure the independence and objectivity of the independent public accountant in addition to making sure the Board of directors is aware of significant deficiencies in internal control and noncompliance with laws and regulations.

Management Comment:

We recommend that Symbiont NFP, Inc. establish an audit committee. An audit committee could strengthen board oversight by performing the following functions:

- Periodically review the process used to prepare interim financial information submitted to the Board of Directors;
- Review and evaluate audit results;
- Assure that audit recommendations are appropriately addressed;
- Assure auditors' independence from management; and
- Serve as liaison between management and independent auditors.

The audit committee should include persons knowledgeable of the Placement Agency's operations and in finance and management. The audit committee should meet regularly (perhaps quarterly) to monitor the Placement Agency's financial reporting and internal control activities, and should meet with its independent auditors before and after each audit.

ISSUE 4-3	SAFEGUARDING OF CHECKS
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Results

An agency's assets should be safeguarded from unauthorized use or theft. Furthermore, an agency should establish a policy on use of its assets and procedures to safeguard and account for them.

During our review of Symbiont NFP, Inc.'s expenditures, we determined upon inquiry and observation that manually written pre-signed blank checks were handed out to employees for certain purchases. The payee and amount were then handwritten by the employees at the time of the purchase.

Failure to adequately control all checks exposes the Agency to the risk that theft, unauthorized or unallowable expenditures could occur and go undetected and the reduction of risk would help maximize the use of the agency's resources to benefit foster children.

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SUPPLEMENT TO REPORT ON AGREED-UPON PROCEDURES

Management Comment:

We recommend Symbiont NFP, Inc. develop a policy on the safeguarding and accountability of assets, such as checks. Development and communication of this policy will reduce the risk of unauthorized or unallowable use or theft of agency assets. The policy should establish that agency assets be kept secure and regularly accounted for.

ISSUE 4-4	SEGREGATION OF DUTIES
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Results

An entity's internal control structure is placed in operation and maintained by management to prevent or detect misstatements in the accounting records; to safeguard the entity's assets against loss; to help ensure compliance with laws and regulations; and to provide a basis for measuring whether operations are achieving management's objectives. An effective internal control structure requires segregation between the authorization, recording, and custody of assets. It is management's responsibility to implement procedures and devise control activities that effectively segregate employees' job functions and promote the reliability of data through the performance of internal account reconciliations.

During our review of Symbiont NFP, Inc.'s expenditures, we found a check made payable to McVee Holdings, LTD., a related for-profit company. Upon further review, it was noted that the check was endorsed for deposit only into Symbiont NFP, Inc.'s bank account. However, the check was correctly deposited into McVee Holdings, LTD.'s bank account. The endorsement error was due to an employee of Symbiont NFP, Inc. having custody of the endorsement stamps for Symbiont NFP, Inc., as well as two other related for-profit organizations, Ohio Treatment Alliance and McVee Holdings, LTD.

Checks could errantly be deposited into the wrong bank account and lead to the possible misappropriation of assets or errors in the accounting system.

Management Comment:

We recommend that Symbiont NFP, Inc. segregate cash handling and accounting activities in order to eliminate conflicting duties being performed by one person. This will improve the effectiveness of the internal controls.

ISSUE 4-5	FIXED ASSET POLICY
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Results

A comprehensive written fixed asset policy would increase the Placement Agency's ability to properly account for its fixed assets, and ensure they are adequately safeguarded from loss, theft or unauthorized use.

Through inquiry and observation we found the Placement Agency did not have a written fixed asset policy or procedures for the treatment of capital expenditures and repairs, nor did they perform an annual fixed asset inventory. The Placement Agency relied upon its external auditors to calculate the fixed asset balances, related depreciation expense, and accumulated depreciation reported in the financial statements.

SYMBIONT NFP, INC.
SUPPLEMENT TO REPORT ON AGREED-UPON PROCEDURES

Failure to complete an annual physical inventory and keep accurate accounting records increases the risk that lost, stolen, or improperly used assets would go undetected. This could over/under state the fixed assets reported on the entity's financial statements. For example, Symbiont NFP, Inc. recorded a leased modular school building from Lease Acceptance Corporation valued at \$20,504 as a fixed asset. Manuel R. Vela personally retained the title for the modular in 1999 when Symbiont NFP, Inc. made a buyout payment of \$2,921.

In addition, some items on Symbiont NFP, Inc.'s fixed assets ledger were actually leases or rentals with other outside organizations (i.e. The director's trailer leased from GE Modular, the copier leased from GFC, and the rental of a forklift truck).

Significant variances were noted between the fixed assets ledger and the items actually on hand. Many of the items listed on the fixed assets ledger of Symbiont NFP, Inc. were also on the lease with McVee Holdings LTD. Additionally, items on the equipment lease agreement with McVee Holdings LTD., were unable to be located and were said to have been removed or disposed of; however, they were still on the lease equipment agreement. Furthermore, items on the equipment lease agreement with McVee Holdings LTD. were in storage and not currently being used by Symbiont NFP, Inc. but were included on the equipment lease agreement.

Management Comment:

We recommend that Symbiont NFP, Inc. develop and implement a fixed asset policy that, at a minimum, provides guidance on the following:

1. The types of fixed asset records to maintain, such as a detailed listing of plant, property and equipment or a current professional appraisal of assets. The list should include beginning balances, additions, deletions (including gains or losses on sales), transfers, ending balances and depreciation expense and accumulated depreciation (where applicable).
2. Categories of fixed asset include land, land improvements, buildings and structures, machinery, equipment, furniture, tools, donated assets and leasehold and leasehold improvements.
3. Basis for valuing assets at either the cost or estimated historical cost and capitalization thresholds which establishes the criteria for when expenditures should be capitalized excluding repairs and maintenance.
4. Depreciation and amortization method, such as straight line over the useful lives of the assets and salvage values, procedures for the depreciation of additions and retirements, and the accounting for fully depreciated assets.
5. Annual fixed asset inventory by visually comparing the asset and the information on the detailed fixed asset listing.
6. Authorized use of its assets, such as a log noting date, person, purpose and location for the use of the asset.

This would promote the consistent treatment of similar assets, safeguard them from theft or misuse and improper and accurate reporting of the fixed assets and related depreciation on the financial statements.

We further recommend Symbiont NFP, Inc. immediately conduct a physical inventory of all assets which should include a breakdown between what is owned by Symbiont NFP, Inc. and what is leased from McVee Holdings, LTD.

**SYMBIONT NFP, INC.
SUPPLEMENT TO REPORT ON AGREED-UPON PROCEDURES**

ISSUE 4-6	PLAN OF ACTION FOR MULTI-PURPOSE BUILDING AT FAIRFIELD ACADEMY
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Results

After review of Symbiont NFP, Inc.'s expenditures, we determined the agency constructed a multi-purpose building located on McVee Holdings, LTD.'s property, a related for-profit entity.

During the course of the audit, on December 12, 2000 all the members, Manuel R. Vela and Judy E. Vela, of McVee Holdings, LTD. resolved in the event that Fairfield Academy is relocated and chooses to move the multi-purpose building the following action would be taken concerning the concrete pad:

1. "The concrete pad shall be appraised by a competent commercial appraiser.
2. The depreciated value of the pad shall be provided by the Symbiont NFP, Inc. independent auditors,
3. McVee Holdings Limited may elect (a) to purchase the pad for the depreciated value or the appraised value which ever is greater, or (b) may have the premises restored to their original condition and the cost billed to Symbiont NFP, Inc."

Management Comment:

In the event of that Fairfield Academy is relocated and chooses to move the multi-purpose building, the McVee Holdings and Symbiont NFP, Inc. governing boards should consider OMB Circular A-122 and any potential tax consequences prior to making a decision concerning the concrete pad constructed with public funds.

ISSUE 4-7	USE OF TAX EXEMPT STATUS TO BENEFIT RELATED FOR-PROFIT COMPANIES
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Results

Ohio Rev. Code Section 5739.13(A) states, in pertinent part: "...If any vendor fails to collect tax or if any consumer fails to pay the tax imposed by Section 5739.02... of the Revised Code, on any transaction subject to tax, the vendor or consumer shall be personally liable for the amount of the tax applicable to the transaction."

After review of expenditures paid by Symbiont NFP, Inc. during 1998, we found an invoice from Staples for miscellaneous goods that were purchased tax-free in accordance with its tax exempt status. Symbiont NFP, Inc. had used its tax exempt status to circumvent the statutory requirement that related for-profit organizations pay sales tax. They provided private benefit to the company as well as the Vela's. They benefitted personally from the circumvention of sales tax. Accordingly, issues could be raised concerning private inurement as defined in 26 C.F.R. §1.501(c)(3)-1(d)(1)(ii)(2000), which could be relevant in any consideration of continued tax exempt status by the Internal Revenue Service. Symbiont NFP, Inc. then gave 50% of the items purchased tax free to McVee Holdings, LTD., a related for-profit entity, as a reduction of rent in arrears. Therefore, McVee Holdings, LTD. gained tax-free goods.

Upon further review, these items then became part of the leased equipment agreement between Symbiont NFP, Inc. and McVee Holdings, LTD. Manuel R. Vela and Judy Vela received personal benefit by having a related for-profit company not pay sales tax.

**SYMBIONT NFP, INC.
SUPPLEMENT TO REPORT ON AGREED-UPON PROCEDURES**

Management Comment:

We recommend an independent Board of Directors establish a policy which prohibits any benefit of private interests to designated individuals such as, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interest.

Symbiont NFP, Inc. should be aware of and avoid transactions which may affect its tax-exempt status.

ISSUE 5	TEST OF INTERNAL ADMINISTRATIVE CONTROLS OVER COMPLIANCE WITH REQUIREMENTS OF THE TITLE IV-E PROGRAM AND THE OHIO ADMINISTRATIVE CODE CHAPTER 5101:2
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Objectives:

1. To identify the administrative compliance requirements of the foster care program.
2. To identify significant administrative noncompliance with the provisions of the foster care program.
3. To determine if the Family Foster Home Records, completed and maintained by the PCPA/PNA, were in compliance with applicable sections of the Ohio Administrative Code.
4. To determine whether Title IV-E maintenance funds received by Symbiont NFP, Inc. were used in accordance with Social Security Act.
5. To determine whether the cost reports submitted to ODJFS by Symbiont NFP, Inc. were accurate and completed in accordance with ODJFS regulations.

Procedures Performed:

1. We read the Board of Directors' minutes, personnel records and organizational chart to identify potential conflicts of interest and self dealing transactions that could result in non-compliance with Ohio Admin. Code Section 5101:2-5-08.
2. We determined whether the family foster home files were maintained in compliance with the applicable rules prescribed in Ohio Admin. Code Chapter 5101:2.
3. We determined whether the PCPA/PNA established a policy on: respite care, alternative care arrangement, residency, training, and verification of income and prior childcare experience and if a policy was authorized and documented.
4. We compared wages paid as identified on the ODHS 2910 cost report to wages paid as identified in the payroll records.
5. We traced potential questioned costs to the cost report.

SYMBIONT NFP, INC.
SUPPLEMENT TO REPORT ON AGREED-UPON PROCEDURES

ISSUE 5-1	MONITORING OF THE BUDGET
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Results:

Budgeting is an essential element of the financial planning, control, and evaluation process of the agency. Failure to monitor the budget could impair the governing body's ability to properly allocate resources as needed and manage costs to ensure services are provided in an efficient and effective manner.

Ohio Admin. Code Section 5101:2-5-08 (A), states in pertinent part, "A PCPA or PNA shall have an identifiable governing body responsible for establishing policies and assuring the effectiveness and efficiency of the PCPA or PNA in achieving its purposes. The duties of the governing body shall include, but are not limited to the following: ..(4) Reviewing, approving and monitoring a written annual budget for the PCPA or PNA. Such budget shall ensure funding to provide services relevant to all certified functions and detail anticipated income and expenditures." The Board of Directors should monitor the budget and compare budget to actual results throughout the year. Monitoring the budget throughout the year provides the governing board a basis for measuring whether operations are achieving management's objectives and goals.

Symbiont NFP, Inc.'s Board of Directors approved an annual budget, but they did not provide evidence the budget was monitored during the year.

By not monitoring the actual revenue and expenditures against the budget, the Board of Directors may not be able to make effective governing decisions based on the current financial status of the agency.

Management Comment:

We recommend that the Board of Directors review, monitor and compare the budget with the actual revenue and expenditures on a regular basis throughout the year to be in compliance with Ohio Admin. Code Section 5101:2-5-08. This will help ensure the governing body has a basis for measuring whether operations are achieving management's objectives and goals. We further recommend review and monitoring of the budget be noted in the minutes of the Board.

ISSUE 5-2	COMPLETE AND ACCURATE INFORMATION ON APPLICATIONS
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Results:

Ohio Admin. Code Section 5101:2-5-20 (C)(1) provides: "An agency shall not accept an application for a family foster home certificate and approval for adoptive placement which does not contain complete and accurate information." The Placement Agency must take steps to assure the completeness and accuracy of information on the application.

Our Review found that Symbiont NFP, Inc. did not have supporting documentation for income in six out of ten foster parent files tested. Furthermore, Symbiont NFP, Inc. did not have supporting documentation for employment in five out of ten foster parent files tested.

Failure to verify the completeness and accuracy of information on the Family Foster Home Application increases the risk that unsuitable applicants may be recommended and approved. In addition ODJFS had not established guidelines and standards for Placement Agencies to document their compliance with this requirement.

**SYMBIONT NFP, INC.
SUPPLEMENT TO REPORT ON AGREED-UPON PROCEDURES**

Management Comment:

We recommend that ODJFS establish guidelines and standards for Placement Agencies to document their compliance with the administrative rules governing the licensing of family foster homes.

ISSUE 5-3	INITIATION OF THE HOMESTUDY PRIOR TO THE RECEIPT OF A COMPLETED APPLICATION
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Results:

Ohio Admin. Code Section 5101:2-5-20 (C) provides in pertinent part: "An agency shall use ODHS 1691 for all initial family foster home applications and for the simultaneous approval of an applicant for adoptive placement.

1. An agency shall not accept an application for a family foster home certificate and approval for adoptive placement which does not contain complete and accurate information.
2. An agency shall require that an application be made in the full name of each adult member of a couple, a single person, or each co-parent.
3. An agency shall not accept more than one application per household.
4. An agency shall not begin a family foster home homestudy prior to the receipt of a completed ODHS 1691."

The criminal record check is a required part of the homestudy process, which should not be started until the completion of a ODHS 1691, the application for a family foster home certificate.

Five out of ten foster home files reviewed began the homestudy prior to receipt of the completed ODHS 1691.

Management Comment

Symbiont NFP, Inc. should comply with ODJFS rules intended to ensure a thorough foster home homestudy is completed prior to licensing. We further recommend that the ODJFS licensing specialists follow up on this issue and take steps to ensure continuous compliance.

ISSUE 5-4	AGREED UPON PLACEMENTS
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Results:

Ohio Admin. Code Section 5101:2-7-13(C) states: "The determination of the specific number, age, and sex of children to be placed in a particular family foster home is a joint responsibility of the foster caregiver and the recommending agency based on the agency's assessment of the foster caregiver's capability and physical facilities as required by this chapter."

One out of 10 foster parent files tested did not comply with the agreed upon placements between the agency and the foster home such as the sex and the number of children placed in the home. Also, there was no documentation in the files which would indicate any change of the agreement took place between the agency and the foster parents for the placement date in question.

**SYMBIONT NFP, INC.
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Failure to comply with Ohio Administrative Code regulations that govern foster parent placements could potentially result in a child being placed in an unsuitable environment, thereby, putting the child at risk.

Management Comment:

We recommend the agency ensure all placements are in accordance with the agreement between the agency and the foster home.

ISSUE 5-5	RE-CERTIFICATION OF FOSTER HOMES
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Results:

Ohio Admin. Code Section 5101:2-7-14(I)⁶⁶ states: "Failure of a foster caregiver to submit the reapplication form prior to the expiration date of the current family foster home certificate shall cause the family foster home certificate to expire."

One out of ten family foster home files tested failed to submit the re-application licensure form prior to the expiration date of the current family foster home certificate.

Failure to comply with Ohio Administrative Code regulations that govern foster parent placements could potentially result in a child being placed in an unsuitable environment, thereby, putting the child at risk.

Management Comment:

We recommend the agency keep a checklist of all rules and regulations in regards to licensing and re-application to ensure all Ohio Administrative Code rules and regulations are followed.

ISSUE 5-6	IMPROPER REPORTING OF WAGES ON THE COST REPORT
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Results:

Ohio Admin. Code Section 5101:2-47-25(J)⁶⁷ defines salaries for allowable cost-reporting to include, "all remuneration, paid currently or accrued, for services rendered during the period of the cost report or budget, it further provides, in pertinent part:... Payroll must be further supported by time and attendance or equivalent records for individual employees. Salaries of employees chargeable to more than one program or cost centers will be supported by appropriate time distribution record. The method used should produce an equitable distribution of time and effort ..."

During our review we compared wages paid as identified on the ODHS 2910 Purchased Family Foster Care Report to wages paid as identified on the payroll records for our audit period. The Agency's Administrator Manuel R. Vela's time worked was allocated between more than one program, such as foster care and residential treatment.

We discovered that 100% the Administrator's salary was reported on the ODHS 2910 Purchased Family Foster Care Cost Report and an additional \$8,324 of the same salary was also reported on the ODHS 2909 Residential Center Cost Report.

⁶⁶ Prior to 7-1-00, this provision was stated at Ohio Administrative Code Section 5101:2-7-14 (H).

⁶⁷ Ohio Admin. Code 5101:2-47-25. Prior to 5/1/98, this provision appeared at Ohio Admin. Code Section 5101:2-47-63.

**SYMBIONT NFP, INC.
SUPPLEMENT TO REPORT ON AGREED-UPON PROCEDURES**

Federal Questioned Costs: \$ 8,324

The overstatement of the costs is in violation of Ohio Admin. Code Section 5101:2-47-25 (J) and could adversely affect the Title IV-E rate setting process and resulted in federal questioned costs of \$8,324 ODJFS should adjust the reported cost by the amount overstated, recalculate the Title IV-E reimbursement rate and determine if the cost resulted in an over reimbursement.

Management Comment

We recommend the agency establish accounting policies and procedures that ensure that program costs are properly allocated, as well as take measures to ensure the accuracy of the information reported on the Title IV-E foster care cost reports.

ISSUE 5-7	TITLE IV-E COST REPORT
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Results:

\$187,275 classified as federal questioned costs in Issues 1-1, 1-3, 1-5, 1-7, 1-10, and 5-6 of this report, was charged against the foster care program, and reported as allowable costs on the 1998 ODHS 2910 Purchased Family Foster Care Cost Report and ODHS 2909 Residential Center Cost Report.

\$520,991 classified as federal questioned costs in Issue 1-2, 1-4, 1-6, 1-11, and 1-12 of this report, was charged against the foster care program.

ODJFS must determine the amount of over reporting by the Symbiont NFP, Inc. and re-compute the Title IV-E per diem reimbursement rate that should have been paid to Symbiont NFP, Inc. during the Period and reimburse HHS, ODJFS or the PCSA for any over reimbursement resulting from the overstated costs.⁶⁸ Failure to properly classify program costs could result in federal questioned costs and have an adverse effect on the Title IV-E rate setting process.

The 1998 audited financial statements were submitted along with the 1998 cost reports. ODJFS' failure to implement comprehensive desk reviews and field audits resulted in an unacceptable level of risk that ineligible costs could be reported and the Title IV-E reimbursement overstated.

Management Comment

ODJFS should develop and implement an effective process to detect ineligible costs reported for Title IV-E reimbursement. At a minimum, ODJFS should consider a comprehensive review of all cost reports and comparison of those cost reports to audited financial statements. Controls could be further enhanced by conducting field audits selected on a sample basis using a risked-based approach.

⁶⁸

Pursuant to Ohio Admin. Code Section 5101:2-47-01(L).

**SYMBIONT NFP, INC.
SUPPLEMENT TO REPORT ON AGREED-UPON PROCEDURES**

SUMMARY OF FEDERAL QUESTIONED COSTS

JANUARY 1, 1998 - DECEMBER 31, 1998

QUESTIONED COSTS	ISSUE NUMBER	PAGE NUMBER	AMOUNT
Undocumented Expenditures - Credit Card	1-1	17	\$ 14,475
Undocumented Documented Expenditures - Checks	1-1	17	<u>2,548</u>
Total Undocumented Expenditures	1-1	17	17,023
Unallowed Entertainment Costs	1-1	19	12,381
Unallowed Costs for Personal Use	1-1	19	11,554
Unallowed Advertising/Public Relations Costs	1-1	19	11,831
Unallowed Membership/Club Costs	1-1	19	5,495
Unallowed Contributions/Donations	1-1	20	1,130
Unallowed Costs of Fines & Penalties	1-1	20	3,351
Unallowed Costs for Interest	1-1	20	534
Unallowed Costs of Alcoholic Beverages	1-1	20	<u>271</u>
Total Unallowed Expenditures	1-1	20	<u>46,547</u>
Total Undocumented or Unallowed Expenditures	1-1	20	63,570
Transfer of Fairfield Academy	1-2	21	349,477
Loans Made to Related For-profit Organizations	1-3	25	78,118
Expenditures for Unsupported Prior Period Liabilities to Related For-profit Organizations	1-4	27	124,911
Vehicles Leased from a Related For-profit Company	1-5	30	6,605
BMW Lease on Behalf of Judy Vela	1-6	33	26,281
OSU Seat License	1-7	35	2,400
Shared Employees	1-10	37	28,258
YAFGO Settlement	1-11	38	15,742
Sales Tax Paid by a Nonprofit	1-12	39	4,580
Improper Reporting of Wages on Cost Report	5-6	52	<u>8,324</u>
TOTAL FEDERAL QUESTIONED COSTS			<u>\$ 708,266</u>



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Facsimile 614-466-4490

SYMBIONT NFP, INC.

LICKING COUNTY

CLERK'S CERTIFICATION

This is a true and correct copy of the report which is required to be filed in the Office of the Auditor of State pursuant to Section 117.26, Revised Code, and which is filed in Columbus, Ohio.

Susan Babbitt

CLERK OF THE BUREAU

**CERTIFIED
FEBRUARY 26, 2001**