THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO: P-12 Education Committee

FROM: Beth Berlin

SUBJECT: Approval of Proposed Amendments to the Tuition Rate Setting Methodology for Special Act School Districts and Approved Private Schools Serving Students with Disabilities

DATE: November 13, 2013

AUTHORIZATION(S):

SUMMARY

Issue for Decision

Consideration and approval of proposed legislative and administrative reforms to the current special education tuition rate setting methodology for Special Act School Districts and Approved Private Schools Serving Students with Disabilities.

Reason(s) for Consideration

Board input and direction are sought in the approval of the Department's recommendations to amend the tuition rate setting methodology for the 2014-15 school year.

Proposed Handling

Discussion and decision.

Procedural History

At the November 2012 meeting, the Board of Regents directed the Department to create a Special Education Financial Advisory Workgroup to allow all interested stakeholders to provide input on the current tuition rate-setting structure for special education providers and discuss recommendations to maximize the efficient and effective use of state and local resources. On May 28th and 29th, two meetings of the Special Education Financial Advisory Workgroup were convened in order to discuss school age provider fiscal status and recommendations for reforms to the existing tuition reimbursement methodology. The recommendations that were presented and discussed by the stakeholders were summarized to the P-12 Committee at the September 2013 meeting of the Board and the proposed legislative and administrative reforms presented in this item derive from those recommendations.

Background Information

Tuition reimbursement for Special Act School Districts and Approved Private Schools Serving Students with Disabilities (853 Schools) is based on a rate methodology that is established by the Department and approved by the Division of Budget (DOB). Following four years of no growth in tuition reimbursement, the 2013-14 rate methodology included a three percent trend factor for direct care costs of school age providers as recommended by the Department. This increase provided short-term relief, but did not address many of the shortcomings of the current system.

Based on provider testimony at the Special Education Financial Advisory Workgroup meetings, and SED analysis of submitted cost data, a lack of predictable growth to fund increasing costs and many technical aspects of the current rate setting methodology have endangered the Special Act School District and 853 School's capacity to operate essential special education programs for the some of the most severely disabled school age children. Specifically:

- Facing multiple years of frozen reimbursement growth, providers have responded largely by constraining their gross program costs through actions such as limiting staff compensation or reducing overall staffing levels. Even so, by 2010-11, the gap between provider gross costs and allowable reimbursement had grown by nearly 36 percent – and, for the 123 Chapter 853 schools in operation since the beginning of the freeze, their allowable reimbursement remained more than $3 million below gross cost levels incurred in 2008-09.

- When final reported data for 2011-12 and 2012-13 becomes available, the gap between provider gross costs and allowable reimbursement is expected grow. Although a 3 percent direct care increase approved for 2013-14 will help reduce this shortfall, the effects of the four year reimbursement growth freeze on provider operations can be expected to last for years.

To assist in their financial recovery, Work Group representatives strongly endorsed the need for statutory changes - with particular emphasis on the establishment of an annual tuition rate growth factor to be provided in the context of the State Budget. The Work Group also argued that flaws in the current administrative rate setting process are further weakening the fiscal condition of the schools and threatening program viability by failing to reflect actual program costs and generating an inconsistent reimbursement stream.

Summarized below is a package of proposed statutory and administrative reforms intended to address these concerns by improving the timeliness, consistency and effectiveness of the current rate setting process for Special Act School Districts and 853 Schools.

Proposed Legislative Amendments to the Current Rate Setting Methodology

- **<u>Create a statutory index for establishing the growth in annual tuition rates.</u>** The current growth in tuition rates is established administratively and is not based on a predetermined index. A statutory growth index based on an average of state personal income growth would establish predicable and timely tuition increases and allow for improved budget planning. For the 2014-15 school year, a 3% increase would result in $20 million of revenue for Special Act School Districts and 853 school age programs.

- **<u>Authorize providers to establish a general reserve fund</u>**. Special Act School Districts and 853 Schools have historically relied on lines of credit to pay for unplanned or emergency expenditures until tuition revenue is received. Authorizing these schools to accumulate a small percentage of tuition revenue in a general reserve fund would reduce the reliance on private borrowing and enable schools to better respond to unanticipated events. Administrative parameters would be developed by the Department to specify the amount that may be deposited and to identify the allowable uses for the funds in addition to corresponding reporting requirements to ensure appropriate oversight.

Proposed Administrative Amendments to the Current Rate Setting Methodology

- **<u>Minimize the Impact of Unexpected Enrollment Declines</u>**: The current rate setting process negatively affects many providers who experience enrollment volatility. When an unexpected and substantial enrollment decline occurs, providers often cannot reduce their costs commensurate with the loss in tuition revenue.

  Similar to an approach long used by the Office of Children and Family Services (OCFS), the Department proposes to use a new enrollment adjustment factor as part of the rate reconciliation process. Under this approach, a provider whose care days have dropped more than 10 percent below their maximum reported care day capacity would receive reimbursement of at least 90 percent of capacity for a limited time period. This would provide additional time to increase enrollment or restructure programs.

  Approximately 30 percent of the 145 providers operating programs in 2009-10 would have benefited to some degree from this proposal.

- **<u>Address Negative Consequences of Short Term Enrollment Increases:</u>** Along with enrollment declines, short term growth in enrollment can also lead to negative long term reimbursement consequences. This occurs because an enrollment increase typically results in a lower tuition rate which is then applied to future years even as enrollment returns to prior levels. To mitigate the impact of short term enrollment volatility, the Department proposes to use the higher of two prior year actual care day levels in calculating provider rates. This effectively "smooths out" enrollment fluctuations by taking a two-year look at care day trends.

More than 10 percent of the 145 providers operating programs in 2009-10 would have received a reimbursement benefit of at least one percent as a result of this proposal.

- **Reform the Current Rate Reconciliation Process Through the Use of a New One Percent Corridor:** Providers, School Districts, and Counties have long argued that the existing rate reconciliation process is burdensome and creates undue delays and fiscal uncertainty. SED analysis confirms that most reconciliations result in small adjustments to reimbursement. In 2009-10, for example, more than two-thirds of all providers experienced a reimbursement change of less than one percent upon completion of the reconciliation process.

  Eliminating reconciliation for providers experiencing less than a one percent reimbursement change would substantially respond to provider calls for termination of the reconciliation process while still allowing reimbursement adjustments based on significant changes in final actual data.

  This proposal would have a small overall fiscal impact, although many providers would no longer be subjected to a protracted reconciliation rate process or be required to resubmit bills for reconciliation rate changes.

- **Streamline and Accelerate the Current Rate Waiver Process:** Providers continue to express concerns with the timeliness of the rate waiver process. Under the existing process all waivers must be approved by both SED and the Division of the Budget (DOB). As a first step toward addressing this issue, the Department is proposing to streamline the waiver protocol by affording SED the flexibility to sign off on all direct care waiver requests below a cost threshold. DOB approval would continue to be required on all significant direct care waivers and all waivers relating to non-direct care costs. The specific percentage threshold that would trigger DOB review would be established annually with the rate setting methodology.

- **Authorizie a Shared Services Pilot to Encourage Provider Efficiencies:** Providers indicate that they currently have little incentive to engage in shared services activities such as consolidated back-office operations since the existing reimbursement system captures all resulting savings. To encourage sharing services and ensure that savings are shared, the Department would undertake a limited pilot effort under which selected providers would implement and document proposed cost savings efforts. In return for participating, these providers would be allowed to retain at least 75 percent of any documented savings in the first year, with this percentage declining in subsequent years to a minimum of 50 percent.

Recommendation

It is recommended that the Board of Regents adopt the proposed legislative amendments to the current rate setting methodology as a 2014 state legislative priority and approve the proposed administrative amendments to the current rate setting methodology for the Special Act School Districts and 853 Schools for the 2014-15 school year. A follow-up report on the status on these recommendations would be provided to the Board at the April 2014 meeting.

Timetable for Implementation

If approved by the Board, the Department will commence negotiations with the Division of Budget on the administrative reforms and develop a Regents Priority bill to reflect the legislative recommendations in preparation for the Department's statutory requirement to submit tuition reimbursement rates to the Division of Budget no later than April 15^{th} of each year.