



**TO:** P-12 & Audits/Budget and Finance Committees

**FROM:** Beth Berlin *Eloise B Berlin*

**SUBJECT:** Update on Special Education Fiscal Oversight Actions

**DATE:** June 10, 2013

**AUTHORIZATION(S):** *J. B. G. G.*  
SUMMARY

**Issue for Discussion**

Summary of the actions taken by the Department to implement the Board of Regents recommendations to strengthen the fiscal oversight and accountability measures of special education providers.

**Reason(s) for Consideration**

For information

**Proposed Handling**

This item will come before the P-12 & Audits/Budget and Finance Committees for discussion at the June 17, 2013 meeting.

**Background Information**

At the September 6, 2012 meeting, the Board of Regents' Audits/Budget and Finance Committee reviewed the findings of several audits conducted by the Office of the State Comptroller of preschool and school age special education providers. A comprehensive examination of special education programs, services and costs was conducted and consequently, the Board of Regents directed Department staff to further explore and recommend specific measures to enhance existing private provider oversight and accountability. Following a review and analysis of the existing fiscal oversight and accountability provisions applicable to special education private providers, and to other providers in comparable sectors, a number of reform proposals were presented and adopted by the Board of Regents on November 5, 2012.

Coordinated efforts among several program offices within the Department have been undertaken in order to implement the recommendations of the Board of Regents. Below is a summary of actions taken to date:

### *Special Education Financial Advisory Workgroup*

#### Board of Regents Recommendation:

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.

#### Actions Taken:

On May 28<sup>th</sup> and 29<sup>th</sup>, 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. Participants included representatives from: approved private schools educating students with disabilities (853 schools), Special Act School Districts, United Cerebral Palsy, NYSARC, New York State (NYS) Alliance for Children with Special Needs, the Interagency Council of Developmental Disabilities Agencies, Inc., NYS Coalition for Children's Mental Health Services, New York State United Teachers, the New York State Association of Counties, New York State School Boards Association, School Administrators Association of New York, the New York City Department of Education, the Division of the Budget, and the Legislature. Regent Phillips represented the Board of Regents at both workgroup meetings.

The meetings opened with a discussion of the impact of the four year tuition rate freeze. The second day of the meetings focused on suggestions and comments submitted by workgroup participants to improve the current rate methodology in order to better align reimbursement rates with educational programming and services standards.

#### Next Steps:

- Department staff will analyze the recommendations discussed at the workgroup meetings to review the potential fiscal impacts and overall effect of the various individual reform components. This analysis will inform expected future rate reform proposals. It is also anticipated that the Special Education Financial Advisory Workgroup will meet in September of 2013 in order to discuss the tuition reimbursement methodology for preschool providers.
- On June 1st, the Division of Budget approved a three percent trend factor for 2013-14 on direct care costs of school age providers as recommended by the Department. This is an important step to address the financial challenges of Special Act School Districts and approved private schools educating students with disabilities and will assist in providing a measure of short-term relief as longer-term reforms to the tuition rate methodology are considered.

## *Enhanced Preschool Special Education Program Monitoring and New Program Reapproval Process*

### Board of Regents Recommendations:

- Create a monitoring plan for SED to review approved providers based on protocol that focuses on service delivery structures and models, and instructional effectiveness, as well as regulatory compliance.
- Request additional resources to support new staff dedicated to developing and implementing a rigorous program renewal process incorporating new measures of oversight and accountability (a cycle for implementation would be developed to begin with special education providers that exhibit specific risk-factors of concern).

### Actions Taken:

- In 2012-13, the Office of Special Education conducted 27 monitoring reviews of school age approved private school providers and Special Act School Districts.
- The monitoring review protocol used to conduct the program reviews of preschool providers was revised to add focus to preschool service delivery structures and models, efficient use of staff, resources and instructional effectiveness.
- The Office of Special Education redirected its resources for the 2012-13 school year from other monitoring responsibilities to enhance its monitoring of preschool providers using the new review protocol. Beginning in January 2013, the Office initiated 50 onsite preschool programs reviews to determine whether the programs under review provided quality services in a necessary and cost-efficient manner and in the least restrictive environment. The municipalities in which the programs under review are located, or for which the municipality bears fiscal responsibility, were given an opportunity to submit written comments concerning the program under review.
- The Department received approval from the Division of Budget to hire eight Associates to provide capacity to conduct at least 50 onsite preschool reviews annually and use these reviews to inform a cyclical program reapproval determination by the Department.

### Next Steps:

- The program reviews conducted by the Department will serve as the basis for an official program reapproval determination. Upon completion of the program reviews, and after review of each program's response to any findings by the Department that the program has failed to meet the criteria for reapproval, the Department will either reapprove the program or program component at issue, if sufficient evidence exists to establish that the program or component is in compliance; or place the program on a corrective action plan sufficient to correct and/or remedy each outstanding finding within a specified time. If placement of the program on a corrective action plan is not feasible because the nature of the findings precludes corrective or

remedial action, the Department will initiate actions to revoke the approval of the program.

- With the additional staff resources, the Office of Special Education will initiate a cyclical schedule for the review and reapproval of preschool providers. By statute, reapproval review of an approved program cannot be conducted more than once every three years, unless the Department determines on its own initiative or at the request of a municipality, that a reapproval review of a program is required earlier or more frequently.

### *Program Approval*

#### Board of Regents Recommendations:

- Impose a short-term moratorium on approval of new providers and program expansions while the enhanced approval process is adopted and implemented. The moratorium would be waived on a case by case basis if there is a compelling case that students would be unable to obtain necessary services from existing providers and programs.
- Revise the SED special education provider approval application to include an in-depth review of: services, staffing and methodologies necessary to ensure provision of high-quality programs; program environment to ensure the health and safety of students with disabilities; appropriate agency background and qualifications to provide sound fiscal practices; governance qualifications that will provide effective fiscal and program oversight.
- Require new special education providers to be not-for-profit only (existing for-profit providers would be authorized to continue under their corporate structure).

#### Actions Taken:

- In November 2012, the Department issued a field memorandum announcing a temporary administrative suspension of the approval of applications for initial approval and expansion of preschool and school age special education programs. Exceptions can be made, on a case-by-case basis, if there is a compelling case that students would otherwise be unable to obtain necessary services from existing providers and programs.
- A new unit was formed in the Office of Special Education to address preschool legislative and regulatory issues, policy guidance; to coordinate the provider application processes; and to liaison with other Department offices regarding preschool special education.
- A revised application for new preschool providers is under final review and is expected to be posted by the end of this school year. The new provider applications will be approved by the Department based on a revised team review process with established standardized criteria.

### Next Steps:

- Upon posting of the new provider preschool application, the suspension on approval of applications for initial approval of preschool (ages 3-5) special education programs will be lifted.
- The Department anticipates that revisions to the application for preschool provider modifications will be completed by August 2013 and that revisions to the application for new school age providers and school age modifications will be completed by September 2013.
- In order to effectuate the Board of Regent's recommendation, a legislative proposal will be developed to require new special education providers to be not-for-profit only with a grandfather provision for existing for-profit providers.

### *Consolidated Fiscal Report Training*

#### Board of Regents Recommendation:

Require special education providers to undergo annual fiscal training.

#### Actions Taken:

The program application process has been revised to require that the Executive Director and any individual who signs or certifies an organization's Consolidated Fiscal Report (CFR) completes, within one year of receipt of conditional approval, an in-person CFR training currently offered by the Interagency Consolidated Fiscal Report Committee as a condition of final approval.

### Next Steps:

For existing providers, on-line training modules are being developed by the Department's Rate Setting Unit in order to instruct providers on how to properly complete the CFR, in accordance with applicable reimbursement regulations and guidelines. The online training modules will include processes to ensure satisfactory understanding of the material presented and to verify the participation by those individuals required to take the training. It is anticipated that the on-line training modules will be completed and published on the Department's webpage with sufficient lead time to ensure that existing providers have sufficient time to take the training prior to submitting their CFR due in December of 2013.

### *Strengthening the Existing External Audit Requirement*

#### Board of Regents Recommendation:

Require special education providers to select a certified public accountant (CPA) from a State Education Department (SED) approved list for the purposes of certifying its CFR or financial statements. Develop a Request for Qualifications (RFQ) to approve CPAs that may certify the CFRs or financial statements. A CPA may be disqualified if found to

have certified a CFR or financial statement without following the SED required procedures.

#### Actions Taken:

- A draft RFQ to select CPA firms that may certify the CFR or financial statements of a private special education provider has been developed with the assistance of the Executive Deputy Commissioner's Office, Office of Audit Service, the Rate Setting Unit, Office of Financial Administration, and Office of Professions. Pursuant to the draft, a firm may be disqualified for failing to adhere to requirements contained within Commissioner's regulations, the Consolidated Fiscal Reporting and Claiming Manual, or Generally Accepted Accounting Principals.
- The Department has taken steps to enhance internal processes for referring CPAs to the Office of Professions for professional misconduct based on substantial errors that are contained in a provider's cost report that has been certified by a CPA and in cases where an audit of a provider contains findings of fraudulent spending or other intentional misuse of public funds. These steps include: adopting a process for coordinating communications between the Department's Office of Audit Services, Office of Special Education, and the Rate Setting Unit when circumstances arise that may indicate improper financial reporting; creating a uniform protocol for when a referral should be made; and establishing a centralized point of review and referral cataloguing within the Rate Setting Unit.

#### Next Steps:

- Internal review of the draft RFQ for CPA firms that may certify a CFR or financial statement of a private special education provider is close to complete and, following this review, the draft will be shared with outside stakeholders.

#### *Increasing Fiscal Audits of Special Education Providers*

#### Board of Regents Recommendation:

Increase audits of special education providers through the following actions:

- Continue SED support for Office of State Comptroller (OSC) audits and perform additional OAS audits;
- Support additional resources for further audits, including both random audits and audits targeted to providers with specific risk-factors associated with fraud;
- Increase the share in overpayments that may be recovered by a municipality conducting an audit of an special education provider (the state's share would be reduced proportionally);
- Remove a disincentive for municipalities to audit preschool special education providers by ending the state's recoupment of all of the disallowed funds from the

municipality if the provider ceases operation and, after diligent efforts, the municipality is unable to recover the funds.

#### Actions Taken:

- Continued support of the existing audit efforts undertaken by OSC and the provision of additional state resources to further the audit presence in the private special education provider community.
- The enacted state budget for the 2013-14 school year (Chapter 57 of the Laws of 2013) included several provisions relating to increasing audits of preschool special education providers:
  - Section 4410 of the Education Law was amended to authorize counties to retain 100 percent of recoveries that are identified following their fiscal audit of a preschool provider. This provision conforms with the Board of Regents' recommendations for both incentivizing municipal audits through increasing the share of recovered funds and removing the disincentive for municipal audits as the state will no longer recoup disallowed funds from the municipality.
  - Section 4410 of the Education Law was amended to direct the Department to create guidelines on standards and procedures to municipalities that choose to conduct fiscal audits of preschool providers. In response to the budget legislation, the Department has updated its guidance to municipalities regarding the process for conducting audits of preschool providers. In addition to the process, guidance has also been enhanced to provide municipalities with some basic information needed to begin audit planning. The updated guidance was issued to municipalities on May 28, 2013 and the Commissioner's regulations were also updated, and adopted as emergency regulations at the May meeting of the Board of Regents, in order to reflect the law's requirements.
  - Budget language directs the Department to: award grants to municipalities to enhance their oversight of preschool providers; support program and/or fiscal audits by an external audit firm; and develop a data collection and analysis system to improve the capacity of the state, school districts and municipalities' oversight of the provision of preschool special education services.

#### Next Steps:

- Develop Requests for Proposals to administer the grants as directed within the enacted state budget.
- Provide technical assistance and support to OSC and municipalities that choose to conduct fiscal audits of the private special education providers.

#### *Review of Provider's Approval Status Following Fiscal Audit*

#### Board of Regents Recommendation:

Refine the criteria for revocation of program approval for reasons related to inadequate or inappropriate fiscal management including noncompliance with new fiscal accountability and oversight provisions.

Actions Taken by the Department:

- Criteria for revocation of approval based on fiscal concerns and/or abuse have been enhanced and a process for cross-Department reviews of providers has been initiated where there have been findings of misuse of public funds, late submission of financial reports, fiscal distress indicators and cessation of operations for an extended period of time.
- Actions to terminate approval of four preschool providers were initiated. Additional actions are under review.

Next Steps:

Continue to review each provider's approval status upon a finding of fiscal concerns and/or abuses.

*Conflict of Interest Between Program Providers and Evaluators*

Board of Regents Recommendation:

- Remove the statutory requirement that the parent selects the preschool evaluator and replace it with the following:
  - Each board shall, within time limits established by the Commissioner, be responsible for providing the parent of a preschool child suspected of having a disability with a list of approved evaluators in the geographic area;
  - The school district must, after providing the parent with a list of approved preschool evaluators and obtaining parent consent to evaluate, arrange for an evaluation by the service provider selected by the district who can provide the evaluation of the student within the timeline required by the State;
  - In selecting the evaluator, the district must consider the parent's expressed preference, if any, for the evaluator.
- Establish that all school districts are automatically approved evaluators of preschool students suspected of having a disability without the need to submit an application to the Department.

Actions Taken:

The Department initiated a Regents Priority bill (S.5557/Flanagan and A.7060/Nolan) with proposed amendments to section 4410 of the Education Law as summarized above. The legislation is currently in the Senate Finance Committee and Assembly Education Committee respectively.

### **Recommendation**

It is recommended that the Department continue its actions to strengthen the fiscal oversight and accountability measures of special education providers and report to the Board regarding further actions taken as well as any legislative and/or regulatory proposals that may be necessary to effectuate the recommendations.

### **Timetable for Implementation**

The Department staff will provide the next status update to the Board of Regents in the fall of 2013.