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

TO: P-12 Education Committee

FROM: Beth Berlin Elizabeth R Berlin

SUBJECT: Tuition Rate Setting Methodology for Special Education Providers

DATE: September 9, 2013

AUTHORIZATION(S):

SUMMARY

Issue for Discussion

Initial review and consideration of the potential alternatives to the existing tuition rate setting methodology and funding mechanisms for Special Act School Districts, 853 Schools, and Approved Preschool Special Education Providers.

Reason(s) for Consideration

For Information

Proposed Handling

This item will come before the P-12 Education Committee for discussion at the September 2013 meeting.

Background Information

Special Act School Districts, approved private schools serving students with disabilities (also known as 853 schools), and preschool special education programs receive tuition reimbursement based on a rate methodology that is established by the Department and approved by the Division of Budget (DOB). The process for establishing reimbursement under the current system has several steps:

1. A *prospective rate* is established using each provider's historical costs and enrollment data from a base year to establish a rate two years subsequent. For example, the prospective rate of reimbursement for the 2013-14 year is based on the school's cost data from 2011-12.

2. Following the close of each school year, a final *reconciliation* rate is established based on the submission of a Consolidated Fiscal Report (CFR) reflecting actual expenses and enrollment. Reconciliation rates may be different than prospective rates if allowable costs are more or less than what was projected for the prospective rate.

3. *Waivers* may be granted for individual programs allowing costs to exceed the parameters of the rate methodology for certain reasons. Year-to-year growth in the tuition rate is limited to an annual amount determined through the methodology developed by the Department and approved by the DOB. A provider may be eligible for a waiver allowing for additional reimbursement in certain circumstances, which must be individually reviewed and approved by the Department and DOB.

Depending on whether the services are for school age or preschool children with disabilities, the provider's tuition reimbursement is shared among the state and local governments. For school age providers, the placing school district or local social services district pays the school's tuition rate. School districts are reimbursed by the state for a percentage of the tuition costs above a threshold the following year depending on a formula (private excess cost) which considers the school district's ability to pay. Preschool special education provider's tuition costs are paid by the counties initially and the state reimburses the counties for 59.5 percent of the costs.

Many special education providers and advocates have raised concerns with aspects of the existing rate setting methodology and individual providers have increasingly reported that they are facing fiscal distress. Some providers have closed programs or intend to close in the near future. Criticisms of the rate methodology include: a lack of recognition of cost growth, burdensome and time consuming reconciliation process, challenging tuition waiver process, rate volatility driven by changes in enrollment and limited ability to quickly respond to costs associated with changes in the intensity of student services.

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 is a first step to address the financial challenges of Special Act School Districts and 853 Schools as a measure of short-term relief.

At the November 2012 meeting, the Board of Regents directed the Department to:

- Create a Special Education Financial Advisory workgroup to consider:
    - Establishing tuition rates within the context of the New York State Budget, consistent with other similar state programs; and
    - Rate flexibility for minor fluctuations in enrollment or minor year end adjustments.

- Explore longer-term reforms such as regional rates adjusted for the intensity of the service needs.

On May 28th and 29th, the Special Education Financial Advisory Workgroup convened to discuss school age provider fiscal status and recommendations for reforms to the tuition reimbursement methodology. A second workgroup of preschool providers will meet on September 30th and October 1st in order to discuss reforms as it pertains to the preschool special education tuition reimbursement methodology.

Special Education Financial Advisory Workgroup – School Age Provider Meetings

The 117 853 schools and 10 Special Act School Districts serve students with disabilities who reside in an affiliated child care institution or who are placed in the school by the students' Committees of Special Education (CSE) because they cannot be appropriately educated in the home school district, a neighboring district or Board of Cooperative Educational Services (BOCES) special education program. In school year 2010-11, the 853 schools served approximately 13,930 students and the Special Act School Districts served approximately 1,615 students. It is important to note that the schools' costs vary significantly depending on the program configuration, staffing and services provided.

Overview of Expenditures and Students

Special Act and 853 Schools	**2007-08**	**2008-09**	**2009-10**	**2010-11**	**2011-12**
Total Expenditures	$492,903,653	$519,611,982	$537,069,546	$552,137,751	$563,943,636
Total Students	14,985	15,182	15,437	15,485	15,594

The school age Special Education Financial Advisory Workgroup members were surveyed to obtain stakeholder recommendations for how the existing rate setting methodology could be improved. Many of the workgroup's responses included the identification of alternative reimbursement structures used in other sectors. Some of the proposals would require legislative action and have been introduced by the legislature in the past.

Among the rate setting methodology recommendations submitted to the Department by workgroup members were the following:

- Creating an "enrollment corridor" to provide rate stability following reasonable or necessary fluctuations in enrollment. Advocates have stated that the schools' student populations are continuously changing and the length of stay varies. The methodology used by the Office of Children and Family Services (OCFS) to establish rates for foster care programs (also known as Maximum State Aid Rates) allows for adjustments that maintain a provider's rate in situations where the student utilization is different from school's capacity. This approach offers greater consistency in the school's rate without having to provide the exact number of students each year.

- Reviewing multi-year program costs when determining the school's allowable budget growth. This approach is intended to address situations where a one year decrease in cost lowers the amount of the school's tuition rate going forward.

- Eliminating the aspect of re-billing for services if rate reconciliation would only yield a small change in the previously billed amount (actual expense and revenue data will continue to be submitted to the State Education Department (SED) for accountability purposes). This proposal is intended to provide administrative relief to providers and school districts/counties.

- Streamlining the tuition wavier process by establishing specific criteria to identify certain waivers that would not require DOB approval (for example, this approach could be used for low-cost waivers or for waivers that have previously been approved by DOB). This recommendation seeks to shorten the length of time of all waiver appeals by reducing DOB's administrative burden of reviewing each claim regardless of financial impact or prior review.

- Creating a shared services incentive to allow providers to retain a percentage of realized savings that result from consolidating administrative functions or shared service/staffing arraignments. Currently if a provider finds cost efficiencies, their rate is correspondingly reduced to reflect the savings. Advocates believe that authorizing providers to retain a portion of savings, phased out over time, could encourage more collaboration between providers as a mechanism to maximize resources. Also, Special Act School Districts that have merged in recent years commented that consolidation may be more of a desirable option if these districts were able to receive a financial incentive, such as the case with other public school districts and reorganization aid.

The following legislative proposals were also submitted to the Department:

- Establishing allowable increases in the annual tuition rates, based on a predictable index, within the context of the New York State Budget. Advocates have articulated the need for predicable and timely rate growth in order to reflect cost increases and to allow for improved budget planning. Currently, certain health and human service programs have a statutory cost-of-living increase to their annual rate reimbursement (it is important to note this growth adjustment has not been included in recent enacted state budgets) in addition to administrative options for growth. In 2007, the Legislature passed a bill that included a multi-year tuition rate setting methodology with a cost-of-living adjustment (A.8337A/S.5672A). The 2013-14 New York State Senate One-House Budget bills included an additional appropriation for special education providers and proposed that future tuition rates be subject to an allowable growth amount equal to the "personal income growth index" (S.2603C and S.2607C).

- Authorizing providers to establish reserve funds. Providers have articulated a need especially for a general reserve (that would enable them to reduce their reliance on tuition waivers or private financing) and for a capital/facility maintenance fund balance. In 2007, the Legislature passed a bill that authorized approved special education programs and Special Act School Districts to maintain surplus funds of up to 2 percent of their approved costs (A.8337A/S.5672A).

- Establishing a "revolving loan fund" to provide loans to providers in anticipation of the school's revenue from the state. Currently, if schools have immediate or emergency operational or capital expenditures, they must secure financing from commercial or private sources and wait two years before the costs may be incorporated into their reimbursement rate (or they may apply for a tuition waiver). Legislation for a revolving loan fund for special education providers has been introduced in both houses of the legislature in the 2013 session (A.28/S.5661). The proposed legislation is modeled after Chapter 166 of the Laws of 1991 which created the "Not-for-Profit Short-Term Revolving Loan Fund" and allows for interest free loans in situations where organizations have not been reimbursed for expenses, are otherwise not able to provide required contractual services without the loan, and where the state can reasonably expect repayment of the loan.

Special Education Financial Advisory Workgroup – Preschool Provider Meetings

For the 2009-10 school year, there were approximately 79,223 children with disabilities receiving preschool special education and related services. Counties have three years to verify services for payment and therefore 2009-10 is the most recent school year for which data is complete. Similar to the school age population, the costs per pupil vary significantly depending on the program and services provided. Preschool children with disabilities may be placed in a Special Class Program or Special Class in an Integrated Setting Program, receive related services only, or receive Special Education Itinerant Services (SEIS).

Preschool special education stakeholders will meet as part of the Department's Special Education Financial Advisory Workgroup on September 30th and October 1st. The Department does not approve related services only providers or establish the related service only rates and therefore the reimbursement methodology of these providers is not currently a discussion topic for the Special Education Financial Advisory Workgroup.[1] Similar to the school age group, members of the preschool workgroup will be surveyed regarding their recommendations for alternatives to the existing tuition rate reimbursement methodology as it pertains to special class, special class in an integrated setting, and SEIT providers.

The preschool special education rate methodology has also been the subject of recent legislation proposed by the State Comptroller to address recent audit findings of fraud and abuse (S.5568-A/A.7302-A). As part of the legislation, the Department would be required to conduct a comprehensive study of alternative systems of reimbursement methodologies and monitoring protocols for preschool special education services and submit a report to the Governor, State Comptroller and Legislature. This legislation was passed by both houses of the legislature and if signed by the Governor, the Department's work regarding the Board's initiative to explore rate setting reforms and the discussions of the Special Education Financial Advisory Workgroup will serve as the basis for the required report.

[1] Reimbursement rates for related services only are determined at the County level, with each County setting the rate. Providers are reimbursed on a "fee for service" basis (meaning that providers are reimbursed per service provided).

Special Class and Special Class in an Integrated Setting Programs

Special class means a class consisting of students with disabilities who have been grouped together because of similar individual needs for the purpose of being provided specially designed instruction (instruction that is adapted to address the unique needs that result from the student's disability). Special class in an integrated setting (SCIS) means that preschool students with disabilities receive specially designed instruction from a special education teacher in a class that is housed in the same physical space as a preschool class of students without disabilities taught by a non-special education teacher. For preschool special class providers, the Department approves and establishes tuition rates for providers of Special Class and SCIS.

Overview of Expenditures and Students

Special and Integrated Class	**2005-06**	**2006-07**	**2007-08**	**2008-09**	**2009-10**
Total Expenditures	$630,843,522	$676,062,130	$710,982,681	$732,504,607	$749,341,660
Total Students	35,214	36,140	36,383	35,677	35,916

Similar to the discussions of the school age group, the Special Education Financial Advisory Workgroup comprised of preschool providers will be asked to identify specific areas in which the existing rate methodology may be improved in order to better support the provision of educational and related services to children with disabilities.

In addition to discussing the tuition rate methodology, the preschool Special Education Financial Advisory Workgroup meeting will offer an opportunity for Department staff to report on and discuss program trends that have been identified in recent onsite reapproval reviews conducted by the Office of Special Education. This discussion may include the methods used to evaluate student progress and educational program quality and a review of the service delivery methods utilized by the providers.

Special Education Itinerant Services

Special Education Itinerant Services (SEIS) are services provided by certified special education teachers of an approved preschool program on an itinerant basis to a preschool student with a disability, at a site determined by the board of education, including but not limited to an approved or licensed prekindergarten or head start program, the student’s home, a hospital, a State facility, or a child care location. SEIS services are offered: (1) as specialized individual or group instruction directly to the student; and/or (2) through consultation to the child’s early childhood program teacher regarding adjustments to the learning environment and/or modifications of instructional methods to meet the individual needs of the child. The Department approves and establishes tuition rates for SEIS providers.

Overview of Expenditures and Students

SEIS	2005-06	2006-07	2007-08	2008-09	2009-10
Total Expenditures	$141,540,117	$163,175,655	$186,301,224	$224,555,915	$237,144,035
Total Students	12,816	14,209	15,527	16,940	17,912

Currently, SEIS providers are reimbursed using the same methodology applicable to Special Class and SCIS providers, however several proposals have been advanced in the past to alter the manner in which SEIS providers are reimbursed. For example, the 2007 report of the Temporary Task Force on Preschool Special Education (created by chapter 57 of the Laws of 2007) recommended that the SEIS system be modified to create efficiencies which included revising billing rules regarding reimbursement for student and staff absences and the regionalization of SEIS rates where geographic differences in cost are documented. The 2009 Executive Budget proposed that SEIS providers be reimbursed based upon actual services rendered and the full-time equivalent attendance of preschool children receiving services (this proposal was not adopted in the enacted state budget). Also, the Legislature passed a bill in 2007 (A.8337A/S.5672A) that called for SEIS rates to be established on a regional basis.

In addition to allowing for the discussion of alternative reimbursement proposals, the preschool provider meetings of the Special Education Financial Advisory Workgroup will also allow the Department to revisit issues raised in the 2007 report of the Temporary Task Force on Preschool Special Education pertaining to the increased utilization of SEIS and the appropriate alternatives available to address children's needs.

Recommendation

It is recommended that the Department continue discussions with the Special Education Financial Advisory Workgroup, conduct analysis regarding alternatives to the existing tuition rate methodology and report findings and recommendations to the Board for consideration.

Timetable for Implementation

The Department staff will report findings and recommendations to the Board at the November 2013 meeting.