

CEREBRAL PALSY ASSOCIATIONS OF NEW YORK STATE

**INTERAGENCY COUNCIL OF MENTAL RETARDATION &
DEVELOPMENTAL DISABILITIES AGENCIES**

**THE NEW YORK STATE ALLIANCE FOR CHILDREN
WITH SPECIAL NEEDS**

NYSARC, INC.

(TASK GROUP)

**Conceptual Framework
Education Program Tuition/Rate
Methodology Reform**

March 2, 2005

EXECUTIVE SUMMARY

The aforementioned organizations (Task Group) have collaborated to develop a conceptual framework to reform the methodology presently employed to establish tuition rates for education programs approved to serve the public placement of preschool and school-age children with disabilities pursuant to Education Law Articles 81 and 89 (approved programs). These non-public schools, referred to in regulation as "approved programs", educate children who are placed by public school districts unable to serve the children appropriately within the public school setting. The objective of this reform effort is to stabilize tuition rates and ensure they are in line with necessary and reasonable costs. The effort to reform the methodology is of particular importance given the NYS Court of Appeals decision in Campaign For Fiscal Equity, Inc. v. State of New York (the "CFE litigation"), regarding New York State's system of public education funding, specifically in New York City schools. The members of the Task Group believe that the ramifications of the Court's decision on approved programs' ability to remain viable in the education community will be of great consequence. The following summarizes the contents of this document.

- The current methodology evolved from a process used in the 1970's to develop tuition rates for the school-age population as part of the enactment of Chapter 853 of the Laws of 1976. The methodology uses historical costs and enrollment from a base year to establish a tuition rate two years subsequent to the base year. The methodology has become overly complex and untimely; it has placed approved programs at a high risk of not having adequate resources to finance their education programs and of seriously compromising their ability to fulfill the requirements of the Individualized Education Plan (IEP) as directed by federal law.
- The factors that contribute to the complexity include:
 - ✓ untimely rate establishment and certification making responsible financial planning virtually impossible;
 - ✓ inadequate accommodation of costs driven by market conditions;
 - ✓ inadequate resources to better align teachers' salaries in approved programs with the public education sector;
 - ✓ the inability of the system to respond to changes in intensity of children's service mandates from year to year, resulting in significant working capital requirements without assurance of recoupment;
 - ✓ fluctuations in enrollment which effect tuition rates;

- ✓ lack of a mechanism for demonstrating innovative ways to provide services without jeopardizing future finances;
 - ✓ lack of consistent and clear criteria for favorable consideration of a waiver from the methodology.
- The policy considerations that NYS Education Department (SED) and NYS Division of the Budget (DOB) need to address to have a more efficient and effective tuition financing system include:
 - ✓ implementing a multi-year rate-setting system, similar to the one passed by both houses of the NYS Legislature, as rates have not been set within the timeframes required by Education Law Articles 81 and 89 in more than a decade;
 - ✓ empowering approved programs to develop and propose innovative ways to provide education programs without being penalized fiscally or programmatically;
 - ✓ allowing savings in cost-per-care-day in one year without penalty in subsequent years;
 - ✓ ensuring adequate resources to finance costs controlled by market conditions;
 - ✓ accommodating reasonable and explainable fluctuations in enrollment;
 - ✓ allowing approved programs flexibility to align classroom ratios to the mandates of placed students, supported by certification of compliance with regulations governing class size;
 - ✓ defining the criteria for methodology waivers that can be approved by SED, and those that can be determined by the DOB; and
 - ✓ establishing a better alignment of salaries between approved programs and public school programs.

The Task Group believes this paper provides the foundation for developing a more efficient and effective methodology and will lead to discussions on how to strategically execute the policies and process required by this effort.

INTRODUCTION

The Cerebral Palsy Associations of New York State, Interagency Council of Mental Retardation and Developmental Disabilities Agencies, The New York State Alliance for Children with Special Needs and NYSARC, Inc. (Task Group) have collaborated to develop a conceptual framework to reform the methodology presently employed to establish tuition rates for education programs approved to serve the public placement of preschool and school-age children with disabilities pursuant to Education Law Articles 81 and 89 (approved programs). These non-public schools, referred to in regulation as "approved programs", educate children who are placed by public school districts unable to serve the children appropriately within the public school setting. The approved programs represented by the Task Group serve almost 80% of the State's §4410 preschool population, and more than 50% of the school-age students served in non-public settings. These approved programs are required to comply with the same programmatic standards as school districts in providing a free and appropriate public education.

The objective of this reform effort is to stabilize tuition rates and ensure they are in line with necessary and reasonable costs. The Task Group supported the passage of a bill that provided for a triennial tuition methodology that, among other measures, would have reformed the methodology. Although the Governor vetoed the legislation, the veto message did recognize the bill as a laudable goal of simplifying the methodology for reimbursing approved programs. The Task Group believes this goal is still attainable through existing administrative processes.

The effort to reform the methodology is of particular importance given the NYS Court of Appeals decision in Campaign For Fiscal Equity, Inc. v. State of New York (the "CFE litigation"), regarding New York State's (NYS) system of public education funding, specifically in New York City (NYC) schools. The Court held that NYC students have not been provided with a sound basic education, and that an additional \$6.5 billion over four years must be invested in NYC schools alone, to achieve the Court's mandate. In all likelihood, all school districts will be affected by the Court's decision. The members of the Task Group believe that the ramifications of the Court's decision on approved programs' ability to remain viable in the education community will be of great consequence. For example, the infusion of billions of dollars into the public education system will place additional stress on approved programs' ability to recruit and retain certified teachers and clinicians at their current rates of reimbursement. Reform of the rate-setting methodology is not only timely but critical to the viability of approved programs to provide a free and appropriate education program to children with disabilities within a nonpublic environment when such an environment has been called for by the public school district.

The purpose of this document is to define how the existing methodology works, identify the factors that contribute to the complexity of the methodology and present the policy considerations that State officials need to address toward a more efficient and effective methodology with the expectation this will lead to discussions on how to strategically execute the policies and process required by this effort.

THE CURRENT METHODOLOGY

The current methodology evolved from a process used in the 1970's to develop tuition rates for the school-age population as part of the enactment of Chapter 853 of the Laws of 1976. The methodology uses historical costs and enrollment from a base year to establish a tuition rate two years subsequent to the base year. For example, the tuition rates for the 2004-05 school year are based on costs and enrollment experienced in the 2002-03 school year. The methodology uses various mechanisms to adjust base year costs for things such as economies of scale, inflation, increases in administrative costs, school building operation and maintenance costs, and growth in total costs. These adjustments are made to base year costs to project a tuition rate for the school year which is referred to as the "prospective rate."

Base year costs are also subject to a reconciliation process whereby actual cost and enrollment are used to develop "adjustment factors" or a "reconciliation rate". School-age programs have reconciliation factors added to, or subtracted from, the calculation of the prospective rate. Preschool programs receive a reconciliation rate for the completed school year, which is then used to re-bill tuition to reflect adjustment upward or downward. Each year the NYS State Education Department (SED) recommends the methodology and the NYS Division of the Budget (DOB) approves the rate-setting principles, including the "growth factors" and "screens" that are used to make the base year adjustments.

In 1989, the enactment of Education Law §4410 (Preschool Program for Children with Disabilities), in response to the requirements of the federal Individuals with Disabilities Education Act (IDEA), resulted in SED assuming responsibility for the provision of education programs to children with disabilities ages three and four. Presently, there are almost 1,900 programs operated by over 800 providers that require rates each year to finance education programs for preschool and school-age children with disabilities.

As noted above, rate-setting principles are established each year to prescribe a reconciliation process for the base year and set a prospective rate for the coming school year. Since 1989, certain dynamics have occurred with rate-setting principles which modified or eliminated certain safeguards. For example, the principle that tied the "total cost screen" to the per pupil expenditure growth in the public sector of the region in which the school is located was eliminated, thereby

disconnecting approved programs' reimbursement from the marketplace conditions within which they must compete. Additionally, a hold-harmless provision designed to protect against unwarranted sporadic declines in rates, was eliminated in the mid-1990. Presently, if any growth factor is provided at all, it is unrelated to education marketplace experiences and it is applied without regard to regional differences; and drastic reductions in rates are at risk of occurring regardless of foundation or cause.

Furthermore, the limitation on non-instructional costs (non-direct care costs) was reduced from 35% to 30% beginning with the 1996-97 school year. These non-direct care costs include such expense items as capital costs, electricity, gas/oil and other similar utility items, telephone, insurance, repairs, maintenance and certain administrative costs, all of which are influenced by market price increases completely outside an approved program's control. The reduction came without warning or cost justification, and severely disrupted responsible fiscal planning and capital commitments which approved programs had made in good faith reliance on printed rules of reimbursement.

Finally, approved programs were not given a cost-of-living adjustment for four consecutive years beginning with 1995-96, and have never been provided with adjustments to redress those years. This time period coincided with a time of extremely high growth in public education expenditures. As a result, approved programs continue to fall behind programs in the public education sector and will continue to experience difficulties with staff turnover, maintaining adequately trained/experienced teachers, ensuring adequate space/equipment, and meeting the standards required by the Board of Regents and the federal mandates of the No Child Left Behind Act and the IDEA.

The methodology has become overly complex and untimely, and has placed approved programs at a high risk of not having adequate resources to finance their education programs and fulfill the requirements of the Individualized Education Plans (IEP) as directed by federal law. Furthermore, the potential effect of the CFE decision adds another dimension of concern by placing additional stress on approved programs' viability to provide services within the education community consistent with the public school system.

What are the factors that contribute to the complexity of the methodology and the risk or exposure that approved programs face in financing education programs?

- ❖ Lack of timeliness in getting rates established and certified paralyze approved programs' ability to behave in a financially responsible manner, i.e. budgeting adequately, planning operations, funding salaries and related benefits, etc. . Though current statute and regulation require that SED propose rates to DOB, and the latter certify those rates well before the start of a new school year, it has

been more than a decade since the statutory deadlines have been met. Approved programs must routinely begin the school year, and usually conduct most of the Fall semester, before they are informed of their tuition for the year. Responsible budgeting and financial planning is literally impossible.

- ❖ The retrospective nature of the rate-setting methodology does not provide an accurate perspective of an approved program's cost composition because the data are two years old. This situation is further exacerbated for programs that file on a calendar year basis, which necessitate using data more than two years old so that all rates can be set on a school year (July–June) basis.
- ❖ There is no mechanism to allow an approved program to demonstrate innovative ways to provide services without jeopardizing their future finances. The present methodology does not enable a program to lower its cost per day in one year without risking losses in future years. Approved programs must continuously balance costs against their projected revenues, which is counterproductive to promoting innovation in the delivery of services. Incentives should be created, in conjunction with accountability controls, to empower approved programs to design innovative and cost effective ways to provide services.
- ❖ Certain costs are influenced by market conditions that are beyond the approved programs' control. These costs include such expenses as rising health insurance, utility expenses such as increases in oil prices, increases in casualty insurance, rent influenced by market conditions, etc. . Also, the geographic dispersion of programs that operate multiple sites, as required by the dispersment of children needing services, makes programs more expensive to operate. There is no mechanism to deal with the impact of these types of non-direct care costs when they fall outside the Non-direct Care Cost Screen. Although the methodology does provide for certain growth factors, they do not address these non-direct care cost dynamics which in some instances result in double digit increases.
- ❖ As public school programs become able to serve children with increasingly severe needs, the school-age population served by approved programs becomes more intensely and uniformly high need. This population requires more intensive services, leading to increased costs for approved programs. These children require increased or specialized (e.g., secure) space needs and more intensive staffing with nurses, psychologists and clinicians to meet their IEP-mandated services. The original foundations of the tuition

system were designed to accommodate a broad range of student disabilities and levels of need; present rate methodologies do not readily accommodate the realities of a uniformly high need population. In fact, even for expenditures directly related to children's IEP mandates, approved programs are required to secure additional working capital to fund these expenses for at least two years before they have the opportunity to recoup the mandated expenditures in the reconciliation process. The methodology is not responsive toward providing timely resources to finance the cost of providing services to these children.

- ❖ Student enrollment is a crucial factor in setting tuition rates. It is the denominator that translates overall school expenses into a tuition rate. Ultimately, enrollment determines the amount of revenue generated to finance program expenditures. Substantial fluctuations in a school's enrollment days can wreak havoc with tuition rates which presume relative constant enrollment. Declines in enrollment generate fewer days that, in turn, result in a higher cost per day from the previous period. (Costs divided by enrollment days = cost per day). Given that rate-setting principles limit the amount a rate can grow from year to year (e.g., 3%), a school can be severely penalized by fluctuations in enrollment. Given the elimination of previous "hold harmless" protections as described above, there is no provision that limits the percentage by which a rate can decline. Why does enrollment fluctuate? For example, preschool children often enter the system in a staggered fashion during the school year depending on when they are identified and evaluated. School-age enrollment can fluctuate from year to year based on the nature of the population being served and available space in local public programs. The dynamics of enrollment and how it is treated in the methodology is a significant policy issue that should be handled more fluidly to mollify aberrations that have a deleterious effect on rates.

- ❖ The only mechanism that deals with anomalies in the tuition rate process is the waiver process. This involves the submission of a justification to SED to waive some aspect of the rate methodology process due to extenuating circumstances. Under current practice, DOB must approve each waiver individually, regardless of amount or cause. The criteria for a waiver are not defined in regulation or policy, each situation being handled on a case-by-case basis, and the process is often untimely. For example, a common basis for pursuing a waiver is a dramatic change in IEP - mandated related services resulting in increased need for related services personnel beyond historical base year costs. This is a commonly accepted situation that generally is approved by SED and DOB. Yet each

case involving a related service waiver must go through the same bureaucratic process, up to two years after the expenditures were made.

- ❖ Teacher salaries and fringe benefits are the largest cost component in the delivery of education services. Teachers serving students in approved programs must meet the same certification requirements as their counterparts in the public school system. Yet teachers' salaries in the public sector are far greater than what the methodology makes available to approved programs. This affects approved programs' ability to attract, hire and retain teachers. Although teacher salary enhancement grant programs such as the "Excessive Teacher Retention Grant" has provided some relief for school-age programs, its provisions were never extended to teachers of preschool children.
- ❖ An increased demand for related services is an acknowledged basis for cost screen waivers. Yet, clinical services needed to support students other than in direct IEP- driven services does not enter into the productivity measures used in assessing the need for related services personnel. A school psychologist overseeing behavior needs policy and training for the school, or physical therapists repairing wheel chairs, are examples of clinical services in support of IEP-mandated services. Some recognition should be given to such support service so that a more precise and accurate measure of personnel needs can be determined and properly considered as part of the waiver process.
- ❖ Approved programs often experience delays in receiving payments from school district and counties which impinge on cash flow and result in the need to borrow funds. This results in programs incurring interest expense which could be avoided if the payment system were timelier. Delays in payments can be attributed to a number of reasons such as school district's failure to file forms in a timely manner or a county's refusal to honor an interim rate as the basis for payment.
- ❖ There is inconsistency between funds available to an approved program for the cost of an aide assigned to a classroom and the regional rate established in many counties by SED for 1:1 aides authorized by a CPSE or Committee on Special Education (CSE).
- ❖ Approved programs often need to hire 1:1 aides who can manage student behaviors that involve physical and verbal assault. Existing rates do not provide for an enhanced fee to attract qualified candidates who can manage these types of behaviors.

What are the policy considerations for SED and DOB in having a more efficient and effective system for financing education programs operated by approved programs?

- ✓ A multi-year rate-setting system should be implemented similar to the one passed by the NYS Legislature (S.2917-B, A.5451-C) in 2004. Rates are not being set within the timeframes required by Education Law Articles 81 and 89. These statutes require that SED submit all rates by April 15th and the Director of the Budget act upon those rates within 45 days. Having a multi-year rate-setting methodology would better enable the State to comply with the statute and issue rates to approved programs in a timely manner, enabling approved programs to budget properly for the delivery of education programs mandated by IEPs. Another provision of the bill - establishment of regional rates for SEIT services - will also significantly simplify the workload for rate-setting and should be part of such implementation discussions as well.
- ✓ Approved programs should be empowered to develop and propose innovative ways to provide education programs without being penalized fiscally or programmatically. This could include allowing programs to retain funds generated by being more innovative in their service delivery within certain accountability parameters. (S.2917-B, A.5451-C) also provided for approved programs to retain up to 2% fund balance savings in one year for expenditure in another. That important feature of the bill would permit approved programs to reserve funds in an account such as temporarily restricted net assets, to handle emergencies or to plan responsibly for large scale projects which require multi-year financing.
- ✓ Within reasonable parameters and for identified causes, declines in cost-per-care-day in one year must not penalize approved programs in subsequent years.
- ✓ The methodology should recognize that certain costs are driven by market conditions which are beyond a program's control but must still be financed. This would include costs related to upgraded space needs, and more intensive staffing required by children needing more intensive services. Such recognition could be accomplished by allowing approved programs to justify to SED those costs influenced by market conditions as part of the cost reporting process, and authorizing SED to approve waivers under certain circumstances and within defined parameters.

- ✓ The methodology should explore strategies to accommodate fluctuations in enrollment trends to avoid significant swings in cost per enrollment day.
- ✓ Approved programs should be accorded the flexibility to align classroom ratios to the IEP mandates of placed students, supported by certification of compliance with regulations governing class size. This would provide some relief to Regional Associates requirement to pre-approve all individual classroom changes each school year.
- ✓ A set of criteria should be developed that defines the principles by which a waiver from the methodology can be approved by SED. The criteria should be based on such issues as materiality and the health and safety of students. The process should result in more timely action on waivers and consistent, predictable outcomes.
- ✓ Establish better alignment between the salaries in the public school system and approved programs.
- ✓ Approved programs must be able to report clinical services that are both IEP-driven "related services" and non-IEP- driven "clinical supports" so that a more precise measure of accountability for personnel needs can be achieved. The requirement to report statistics in the service category "Related Services Only" should be eliminated.
- ✓ "Related Services Only" rates should be based on a regional cost scale that considers the needs of children, and reimbursement should be based on scheduled services.
- ✓ Payment policy must focus on what constitutes a valid claim for payment; school districts and especially counties need to be held accountable to honor such claims in a timely manner.
- ✓ Approved programs should be given more flexibility to enhance classroom ratios toward reducing the need for 1:1 aides. A fee schedule for 1:1 aides should be established that include both basic and enhanced rates to enable approved programs to hire the appropriate aide needed by a student.