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Wednesday, May 22, 2013

Ms. Elizabeth Berlin
Executive Deputy Commissioner
NYS Education Department
89 Washington Avenue
Albany, NY 12234

Dear Executive Deputy Commissioner Berlin:

On behalf of our clients the Coalition of 853 Schools and the Coalition of Special Act Public School Districts, please accept the following comments and recommendations in preparation for the Special Education School Age Financial Advisory Workgroup.

Approximately fifteen thousand (15,000) school age students are served by 853 schools and special act school districts. Local public school districts, court and county system rely on these schools to provide therapeutic and educational services to students who because of trauma, abuse, neglect, disability, behavior or educational challenges require additional services unable to be provided by the local public school district or BOCES.

The current rate methodology no longer adequately supports these schools. The rate methodology is inflexible to the changing needs of students, does not incentivize efficiencies, and restricts innovation. We appreciate this opportunity to offer recommendations to revise aspects of the current rate methodology to provide predictability, efficiencies, and a more equitable tuition rate that adequately supports the needs of the students served.

Overview

In January 2013, in responding to four (4) years of 0% growth to the tuition rate, the Coalition of 853 schools and Coalition of Special Act Public School Districts began an advocacy campaign to amend the Education Law to link growth to the tuition rate for school-age special education schools to the allowable growth provided for school aid.

The students placed at 853 schools and special act public school districts are public school students who for a variety of reasons are unable to be served by their local school district. Increases in school aid to provide for the education of public school students should follow the students regardless of setting.

While there was significant support for addressing our fiscal challenges and approving adequate state support for the education and related service needs of students placed in school-age special education schools, this proposal was not in the final 2013-14 budget. We continue to believe that the tuition rate should reflect equitable funding in relation to that which is provided to public school students served elsewhere and should reflect the program requirements and expenses related to providing all students access to NYS's learning standards.

The partnership between the two Coalitions was established prior to this year's advocacy effort. Over two years ago, the Coalitions identified the challenges associated with the tuition rate methodology and continuous years of 0% growth as affecting both 853 schools and special act public school districts equally. Since, the partnership has invested a considerable amount of resources to develop joint recommendations to address the challenges facing their schools.

The following comments and recommendations to reform the tuition rate methodology reflect this joint endeavor.

Challenge: Transient and Diverse Populations

853 schools and special act public school districts may be affiliated with a residential facility and serve youth placed by the juvenile justice, child welfare, mental health, developmental disabilities and special education systems. These schools also provide educational and related services to day students referred by committees on special education (CSE). Many of the students have emotional, behavioral and educational challenges, and some have been victims of abuse or neglect. For others, the education provided serves as a vehicle to rehabilitate out of the juvenile justice system. The vast majority of students have special educational needs addressed through individualized education programs (IEP).

Students may be enrolled at any point during the school year. While some students placed by a CSE may stay through multiple grades, students placed via the foster care, juvenile justice, and mental health systems in the residential facility, remain on average for 3-9 months. In addition, the current rate methodology system is designed as a one size fits all, and does not have the flexibility to accommodate diverse student populations among the various programs. For example, one school may serve only children with developmental disabilities, while another school may serve children with mental health, behavioral or alcohol and drug related issues. In addition, there are schools that may serve multiple populations within the same school. However, the rate methodology does not have a mechanism to accommodate the range of needs within the current class setting structure.

The transient nature of the student population results in inconsistent utilization (care days). Since the current rate methodology system uses care days as the divisor when computing, in order for

schools to avoid negatively impacting their revenue, a school needs to provide the exact number of care days annually. Given the transient nature of our students enrollment maintaining a consistent care day number is practically impossible.

Recommendation: Establish a “Utilization” Component to the Rate Methodology

Establishing a utilization bandwidth as a component of the tuition rate methodology will stabilize the tuition rate. Bands of utilization should be based on the overall capacity of the school and may reflect the following:

- Capacity 24 students or less: 80% minimum – 97% maximum
- Capacity over 24 students: 83% minimum – 97% maximum

In situations when one tuition rate is established for schools with multiple campus locations, the overall utilization percentage should be based on the capacity of the campus with the lowest capacity. When the utilization consistently falls below the bands, the Department should amend the approved capacity for the school.

Recommendation: Establish Core Allowable Expense Parameters

To address the need for flexibility, we also recommend the establishment of three core expense parameters (1) direct care staff, (2) property and (3) administrative to ensure spending flexibility with reasonable expectations. [Additional information regarding the parameters is included in the attached document.]

For example, the direct care staff parameter would support instructional and support staff required to provide comprehensive educational and related services. For special act public school districts specifically, it would need to accommodate aspects of Part 100 regulations as well as Part 200. School-wide staffing parameters would be reflected in the School’s approval letter. There are various considerations that must be include, such as allowances for substitutes and investments in support staff to reduce the reliance on 1 to 1 aides. Most important however, would be the establishment of a salary proxy to reasonable and predictable compensation for employees of the school-age special education schools. Increasingly, schools are finding it more and more challenging to recruit and retain highly qualified teaching professionals because the compensation is far below comparable options.

Challenge: Inefficient and Time-Consuming Reconciliation Process

The reconciliation process is time consuming and inefficient; often resulting in a protracted process by which schools must “re-bill” public school districts for the same student, sometimes years after the student has been enrolled. This not only impacts the special education school, but also creates inefficiencies, expenses, and uncertainty for local public school and social service districts. During the October 2011 roundtable discussion hosted by Senator Flanagan, Executive Deputy Commissioner Valarie Grey stated that the reconciliation process is unnecessary, lengthy and often produces imperceptible changes.

Recommendation: Consider Elimination unless Significantly Reformed

The reconciliation data should be reviewed to determine the annual net value of the pluses and minuses over the most recent two reconciled school years and if not a material amount, recommend repeal of that component of the methodology. In this review, it is important that the same schools are used in the analysis. If it is determined that the reconciliation process is to remain, the reconciliation rate should not be used in the prospective rate calculation process. In addition, the establishment of parameters within the rate methodology would allow schools to be held harmless to fluctuations in expenses as long as they remain inside the parameters.

Challenge: Unresponsive Appeal & Waiver Process

When approved tuition rates fail to address increases in previous year's allowable expenditures schools may seek to appeal the prospective rate. In addition, current unanticipated allowable expenses associated with newly placed student's individual educational plans (IEP), expense related to emergency situations, and/or expenses related to state mandates, may result in a waiver application to modify tuition rates.

However, the current appeal/waiver processes applied to both program and fiscal issues takes too long to efficiently address immediate cost increases. There are no standards or guidelines for how the appeal or waiver should be presented. As such, appeals or waivers may take months to years to resolve. This delay results in additional costs to the school and compounds the need for additional waivers. Further, if the matter of the appeal is ongoing, once that appeal for a given school year is resolved, the school will need to appeal all subsequent rate for the same issue already address in the original appeal.

Recommendation: Revise Appeal & Waiver Process

Appeals and waivers should be an extraordinary practice rather than the normal course of business. We recommend the development of clear guidelines which establish the type of data and information needed for a full review and determination of appeals and waivers. In addition, a reasonable timeline should be established to address all appeals and waivers.

Finally, we believe that the implementation of utilization parameter recommended above will significantly reduce the need for an appeals and waivers. For example, under the current methodology, if a school has a reduction in census, it can appeal/waiver the prospective rate to have the reduction incorporated into a revised prospective rate. However, if the methodology contained the "utilization bandwidth" concept outlined above, that could mitigate the need for an appeal/waiver request by the school.

Challenge: Rate Methodology is Too Rigid

The current rate setting methodology does not readily adapt to the challenges faced by schools in meeting the needs of the special education students they educate. The tuition rate methodology functions primarily through a series of ongoing appeals, exceptions, and variances. Each of these

require the providers to divert its resources to meet the needs of reviewers to overcome the obstacles imposed by cost-screens, growth screens and standards that are not reflective of the needs of students. Additional modifications to current methodology could assist the schools in securing sufficient resources.

Recommendations: Establish Tools to Assist Schools Adapt to Fluctuations in Revenues & Expenses

Revolving Loan Fund: Schools currently need to secure loans, lines of credit or revenue anticipation notes in order to address the following situations:

- i. immediate allowable expenses for which a waiver/appeal has not been authorized,
- ii. cash flow problems due to late payment of tuition by school or social service districts, and
- iii. emergency circumstances unforeseen.

The use of private commercial products adds unnecessary administrative and interest expenses. In addition, the number of banking institutions providing products is reducing.

Access to a state funded revolving loan would provide schools with a tool to address these cost flow problems without adding additional expenses.

Reserve Funds/Fund Balance: Allowing schools to retain a percentage of tuition revenue in a reserve fund would provide them a tool to use to avoid the need for appeals/waivers and overreliance of lines of credit. A well-developed reserve with appropriate restrictions and oversight would protect against abuse while extending a responsible level of flexibility to address the timely needs of the school.

Incentivize Efficiency: After 4 years of 0% growth, these schools have reached their maximum internal efficiencies. However, additional opportunities for outsourcing business functions, sharing courses and supplemental staff may help in further reducing expenses. However, the current rate methodology does not provide incentives to reduce costs. Allowing schools to maintain a fund balance and retain a percentage of the savings due to efficiencies and innovation would allow schools to reinvest in their programs.

Access to Competitive Grants: Many times the Legislature or Executive provide additional targeted resources via competitive grants. However, many times these grants fail to be offered to school-age special education schools. When a new competitive grant is proposed, NYSED should recommend access by all NYS approved schools. In addition, targeted grants should not be considered offsetting revenues. Funds associated with grants are time-limited and targeted; a school's basic funding should not be reduced because of these additional investments.

Challenge: Responding to Aging Infrastructure

Across the state, school age special education schools are trying to manage aging school buildings. Many schools have the need for capital projects that impact health and safety of the students served. This process is cumbersome and lengthy, often remaining unresolved for years after the capital needs are identified. In addition, the ability to prioritize maintenance has been hindered by four years of 0% growth and the need to target resources to basic programming.

Recommendation: Establish Policies and Guidelines to Standardize the Process

There several relationships that may exist in the ownership and use of school buildings. Each of these relationships requires specific policies to address the responsibilities for maintenance, capital project expenditures. As with the appeals and waivers process, concrete requirements for project applications with reasonable timelines for both submitting the request and the making the decision on the application are needed to ensure an efficient process.

In addition, expense parameters regarding property will assist in ensuring proper investment in the maintenance of facilities.

Challenge: Program Requirements

The approximately 15,000 school age students served by 853 schools and special act public school districts have, in addition to emotional, physical and behavioral, significant educational challenges. As such, applying standard educational programming for these students is not necessarily the best method for delivering NYS's learning standards.

Other factors, such as rolling admissions and varied, but often, short lengths of stay compound the inefficiency in implementing standard program requirements on educational programs for a student population with multiple challenges and changing demographics.

Recommendation: Program and Regulatory Flexibility

- Establish school-wide class sizes & ratio parameters versus identifying a specific classroom size and ratio for each student.

School age special education schools should receive "program" approval in addition to their capacity. Program approval would identify the student population to be served and specify "school wide" parameters for class sizes and/or staffing ratios. By establishing school wide parameters a school would be able to adjust on a day-to-day basis for the changing needs of the student population. This model would require parental notification at admission. We believe, as there are no federal requirements for the class size or a student teacher/aide ratio to be identified on the IEP, this model is within the Department's authority.

- Redefine the school day to permit resources to be used for alternative learning structures.

The “typical” 5 or 5 ½ hour school day with defined class intervals is not necessarily the most effective or productive use of time for students challenged not only educationally, but by emotional, physical and behavioral difficulties. Allowing for a longer day, with flexibility in the unit of study requirements within would provide alternatives for some students who for example have difficulty staying calm for 45 minutes. Such student could be exposed to the NYS learning standards in shorter intervals, or via on-line instruction to allow for the inclusion of therapies or interventions that assist the student over time to regain and maintain focus.

- Adjust the Curriculum and Staffing to Reflect Student Needs and Encourage Innovative Access to Required Curriculum and Services.

The transient nature of the student population as well as the broad range of capability and academic history of students warrants flexibility in the delivery of the curriculum to ensure appropriate access to NYS’s learning standards. Student’s academic portfolio range from lacking a few credits for a Regents Diploma to an inability to read and very limited academic credits. Requiring a full-time curriculum and related staffing to address every Part 100 subject regardless of the student’s current capacity, needs and varied length of stay when such student is enrolled for less than 9 months (and seldom for the traditional September to June school year) does not make sense either academically or fiscally. Flexibility that would allow schools to provide curriculum that exposes the student to NYS’s learning standards in a way that advances them academically on an individual level would better focus resources towards student long-term achievement. Also, given the significant impact of behavioral issues it is important that PPS and behavioral support staffing be consistent with the needs of the population and not simply driven by formulas developed for public school settings. Providing sufficient behavioral support staff and flexibility in how they are used would allow for a safer and more effective program.

In addition to the comments and recommendations outlined herein, we have attached a document shared previously with the Department entitled, “Modeled Tuition Rate Methodology for School-age Programs” (MTR) This document, developed jointly by the Coalition of 853 Schools and Coalition of Special Act Public School Districts in January 2012 further explains the comprehensive reforms being recommended. The rate methodology is a calculation which is equally impacted by its components. Each of the recommended parameters and rate setting components provided in the MTR are essential reform measures. Taken together they streamline the process and provide flexibility within reasonable parameters.

On behalf of our clients, we appreciate the opportunity to submit comments and participate in the Special Education School Age Financial Advisory Workgroup. Please do not hesitate to contact us should you have questions regarding any of the recommendations provided. We appreciate

the Department's investment in resolving the issues facing school-age special education schools and look forward to our continued work together.

Sincerely,

A handwritten signature in black ink, appearing to read "BJ Costello Jr". The signature is written in a cursive style with a large, stylized "B" and "J" at the beginning.

HINMAN STRAUB ADVISORS, LLC

Bartley J. Costello, III

Janet Silver

James Carr

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Enclosure

c.c: Senator John Flanagan, Chair Committee on Education
Assembly member Catherine Nolan, Chair of Committee on Education
Assembly member Shelley Mayer, Chair of Subcommittee on Special Education
Ms. Suzanne Bolling, Executive Coordinator for Special Education