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- The Center for Discovery

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- Queens Centers for Progress
- UCPA of Nassau County
- UCP of NYC
- United Cerebral Palsy of Suffolk
- Metro Services

May 21, 2013

Elizabeth R. Berlin
Executive Deputy Commissioner
The State Education Department
87 Washington Avenue
Albany, NY 12234

Dear Ms. Berlin:

Thank you for the invitation to participate in the Special Education Advisory Workgroup for Chapter 853 school age programs. I am very much looking forward to participating as I worked for SED for 30 years and 20 of those years as Chief of the Rate Setting Unit. Having been part of countless such groups on the State side, and seeing nothing come of the many hours spent in meetings and hundreds of staff hours producing data runs for the various groups, task forces etc., it is my hope that something positive will come from this current project. I am providing you with comments regarding the topics listed in your letter of the 9th.

GENERAL COMMENTS ON THE RATE SETTING PROCESS FOR SCHOOL AGE APPROVED PROGRAMS:

SED has decided to divorce rate setting for 4410 preschool programs from the rate setting process for approved school aged programs. The rationale for this has been cited as there are too many differences between approved preschool and approved school age programs. This is only partly correct. In the school aged world there are two very distinct programmatic models that are in operation. The first involves education programs serving students that have severe multiple disabilities, including intellectual disabilities, that require that they be served in strict special class programs. The other programmatic model involves students that are actually participating in degree programs; many of this type of approved programs are registered high schools. The rate setting implications for these two disparate programmatic models are in many ways different. The programmatic requirements for registered high school students are different than those for alternate assessment students. Speaking for the Cerebral Palsy Affiliates that I represent, our education programs serve alternate assessment students in special class settings and the programmatic model in our preschool versus school aged programs are not

different. I mention this because if SED's intent is to develop two different methodologies, one for school age and one for preschool, there could be significant administrative and fiscal consequences to our Affiliates that run both preschool and school age programs. We are recommending that a single rate methodology for school age and preschool programs serving severely disabled students be in force.

ESTABLISHING RATE INCREASES WITHIN THE CONTEXT OF THE NEW YORK STATE BUDGET:

Historically SED and DOB have "negotiated," SED would propose and DOB would approve, or not, any growth or COLA to be included in the annual rate methodology recommendation as required by statute. This annual methodology request and approval process has taken place outside of the main State budget process. Over the years providers have suggested that this growth factor/COLA be included the annual State budget process. I think at this time we do not have sufficient information regarding moving this to either the main budget process or some other process and look forward to hearing SED's and other providers' thoughts on this topic.

ENROLLMENT FLEXIBILITY, THE GROWTH SCREEN, THE RECONCILIATION PROCESS:

In our view these topics listed in your letter are related and need to be looked at together:

- The enrollment number used in the calculation of tuition rates,
- The relationship between the enrollment number used in the calculation of tuition rates and the calculation of the Total Cost or Growth Screen, and
- The interplay of the two bullets above in the Rate Reconciliation Process.

During my tenure at SED, these interrelated components of the methodology accounted for the majority of the rate issues, complaints, and appeals that providers discussed with the RSU. Over the years many reasonable minor changes to the methodology have been recommended by SED staff and providers. None of these minor improvements have ever gained traction at DOB. We would recommend that the following minor adjustments to the process be adopted as a first step in reengineering the process.

- **Enrollment Number:** Currently, the enrollment number used in the rate calculation process is the annual actual enrollment number expressed in terms of care days. This number fluctuates each school year and has a direct effect on each school year's actual per diem rate. This per diem rate in turn is one of the major variables used in the calculation of the Growth Cost Screen. Thus, if a provider's actual enrollment and thus care-days increase in a particular school year, the per diem rate in that year will likely decrease. Because that per diem rate will now be used to calculate maximum per diem rates going forward, that one year of increased enrollment could negatively affect a program's rate moving forward and will most likely result in a Growth Screen disallowance going

forward. The Department does allow appeals based on enrollment spikes but the process is cumbersome, labor intensive, and not timely.

The use of actual enrollment figures each year should be replaced with some form of proxy care-day number that will be used in the calculation of every school year's per diem rate. A percentage of Approved Capacity care-day figures could be established and used consistently from year to year. The Department should review the Adjusted Care Day section of the OCFS SOP Manual used to set rates for Foster Care Programs. That method establishes a care day range to be used in rate calculations that establishes incentives for efficient programs, establishes a range of care days to be used which stabilizes the care day figure used from year to year and establishes different ranges to be used depending on program type and size. Other State Agency rate setting systems already employ either a percent of capacity or vacancy factor in the establishment of rates.

- **Growth Screen:** As described above, the enrollment number used in the calculation of the Growth Cost Screen has a material impact on the disallowance calculation and can have serious fiscal implications to programs in future years because the maximum per diem rate calculation is hypersensitive to both enrollment and other factors such as offsetting revenues and total reported costs.

The Growth Screen calculation could be reengineered so that the initial purpose of the Screen, that is to control growth in the program costs, is maintained, but that it is operationalized in a more reasonable manner and is less sensitive to annual rate component fluctuations. This could be done in the following manner:

- Pick a **BASE YEAR**. The maximum per diem rate for all future years is tied back to the Base Year reconciled rate.
- The maximum per diem rate for all future years would be established as follows:
 - **YEAR TWO**. The max rate for Year Two would equal the Base Year per diem plus growth.
 - **YEAR THREE**. The max rate for Year Three would equal the Base Year per diem plus Year Two growth plus Year Three growth.
 - **And so on.**
- If the **actual per diem** for Year Two is greater than the Year Two Max per diem, then the program rate is limited to the Year Two Max per diem. If the

actual per diem for Year Two is less than the Year Two Max per diem, the program rate is limited to the **actual per diem**.

- If the **actual per diem** for Year Three is greater than the Year Three Max per diem, then the program rate is limited to the Year Three Max per diem. If the **actual per diem** for Year Three is less than the Year Three Max per diem, the program rate is limited to the **actual per diem**.

UNDER THE CURRENT METHODOLOGY THE YEAR THREE AND FORWARD MAX PER DIEMS WOULD HAVE BEEN LIMITED TO THE YEAR TWO MAX SO THE PROGRAM WOULD HAVE BEEN IMPACTED FROM YEAR THREE ONWARD BEING LIMITED TO THE SCHOOL'S YEAR TWO MAX PER DIEM WHICH WAS LOWER THAN THE YEAR ONE MAX PLUS GROWTH.

SED does expend staff time processing appeals based on enrollment spikes and other non-recurring events. It is quite possible that many of these appeals would not be necessary if the Growth Screen calculation were modified as described above.

- **The Reconciliation Process:** The Reconciliation Process was instituted back in the early 1990s as part of the reengineering of the rate methodology to accommodate the 4410 preschools into a consistent rate methodology. Prior to the adoption of the 4410 statute preschool rates were developed by individual counties using county specific methodologies. This inconsistent rate setting resulted in many programs being over-funded and many programs being under-funded. During the transition to State rate setting control, schools were paid at county generated rates initially and upon the program's submission of a State cost report those rates were then reconciled to actual reimbursable costs. The Reconciliation Process was also employed for school age rates only because it was important from a staffing and administrative perspective to have one methodology for all approved special education programs. The Department has on many occasions analyzed the value-added of the Reconciliation Process to the funding of special education programs. In the analysis of the payouts and take backs prior to the 2008-09 school year, the contribution of the Reconciliation Process was relatively neutral, or the pluses and minuses tended to cancel each other out over time. Any analysis performed using 2008-09 and forward data would only result in amount to the State's credit because the ZERO growth policy while not allowing rate increases, automatically took back monies from rate decreases even though those decreases may have been due to non-recurring enrollment spikes and other events. Those rate decreases were then imposed on programs going forward.

The Reconciliation Process was a necessary component in the 1990s. Since all programs, preschool and school age have operated under the approved rate

setting methodology since the 1992-93 school year and given those programs have been annually reconciled for all those years, reconciliation is now just an untimely, labor intensive, redundant and unnecessary component of the methodology. **Reconciliation should only be applied to those new provider agencies that do not have any historical cost information on file with SED.**

THE TUITION WAIVER PROCESS:

The timeliness of tuition rate appeals filed for health, safety and programmatic reasons could be greatly improved if the modifications mentioned above were implemented. A discussion of an appeal/waiver process, while important, may be more appropriate to discuss once other methodological issues are addressed.

CAPITAL PROJECT FUNDING:

The process for the reviewing and approval of necessary and appropriate capital projects is not working in a timely and efficient manner. There are many components of the review:

- A programmatic review by the Special Education Office
- A fiscal review by the Rate Setting Unit as the costs relate to the Reimbursable Cost Manual
- A program/fiscal review by SED's Facilities Planning Office
- A whole project review by State DOB
- And, for DASNY financed projects several levels of reviews

When I was at SED the total time for running through the processes could take anywhere from six months to several years. At various points in time during my service, we had many discussions with Facilities on how to simplify the process. While the approval of appropriate space by Special Education was always determined to be necessary, alternative methods of determining allowable per square foot costs were discussed and many had potential. An alternative could have some or all of the following characteristics:

- Strict "need for project" guidelines would be established.
- A *regional* per square foot cost could be determined by RSU and FP for classroom space, common space, gym space, etc. These per square foot amounts would be pre-approved by DOB.
- The per square foot allowances would be published so that programs could determine on their own what they could expect to be reimbursed based on their proposed designs.
- All projects in a region would be costed-out using these approved per square foot dollar amounts.

- Those per square foot dollar amounts would then be used in conjunction with the square footage amounts approved by the Special Education Office.
- Since DOB already approved the per square foot cost, their review should consist of a review of the approved square footage for the project. If this was done in concert with the Special Education Office, it would eliminate all the back and forth that now occurs.

It is reasonable to expect that some similar type of plug-in type of formula driven methodology would serve to standardize and expedite the processes. A committee from RSU, Facilities and the DASNY should be able to develop regional per square foot cost numbers.

PROGRAM/REGULATORY FLEXIBILITY/INCENTIVIZING SHARED SERVICE ARRANGEMENTS AND OTHER EFFICIENCIES:

These two items from your letter are closely linked as there are potential activities/actions that providers would consider taking in order to operate more efficiently.

An ongoing source of frustration with SED and the approved private schools is SED's inconsistent application of the "these are public school students so you must follow all the school district rules."

On any given issue, individual SED Offices treat us differently using the "you are subject to school district rules" or you're not a district so this doesn't apply. Usually the "this doesn't apply" is used when there is some benefit to the district.

One rule that we are subject to that is particularly troubling is the Part 80 requirement that all approved private schools must employ a staff person that is credentialed with an SAS. Thus a private program that is approved to serve 50 students appears to be required to hire a full time SAS and a school district building with 1,000 special education students also seems to be required to have that one SAS staff person. It would be helpful if SED would allow approved private schools the option of sharing such a staff person or at least developing an SAS FTE requirement that differs depending on the program size, i.e., .5 FTE for programs serving 50 students or less.

The current process of requesting a modification to the programmatic structure in an approved program requires that the providers complete a program modification which in many cases requests information that SED already has on file. It would be advantageous to all parties if providers could simply notify SED of the changes required by changes to student needs from year to year. This would be especially helpful in seeking programmatic changes that do not require an amendment to the tuition rate.

Another methodology component that has negatively impacted providers and has consumed SED and approved provider staff time is the **NON-DIRECT CARE COST SCREEN**, specifically the

application of the Non-Direct Screen (NDS) on a tuition rate program by program basis. If a provider operates two approved school aged programs the NDS is applied to each of the two programs. In many cases one program will be affected by the NDS and the other may not. Therefore one program is over the allowable and the other is under the allowed limit. SED has in the past allowed schools to file waivers which would allow the NDS to be calculated on a combined basis thus netting the results of the two previously separately calculated NDS operations. The NDS calculation should be modified so that the netting is taken into account up-front in the original rate calculation thus eliminating the need to appeal.

Because of funding reductions in all State programs, the CP Affiliates are looking to do more collaboration with both other CP Affiliates and with other local non-profits. While the CP Affiliates that operate school age programs are located throughout NYS and there are only a few that could potentially enter into some type of collaboration with their neighbor Affiliate, many other approved programs throughout the State are in close proximity to other approved programs. SED and the provider community could look to develop initiatives that would allow similarly located programs to merge and jointly run like programs or to create some form of legal entity that could provide services to the partner providers. Similar programs in a given area that serve populations that operate registered high schools should be encouraged to enter into shared staffing arrangements because in many cases, if a school needs to hire a math teacher for one or two sections per day, it is likely that they would be forced to pay for more FTE than necessary. Programs that are in close proximity may have similar back office needs. All over the State non-profits are getting together to form Management Services Corporations to do bookkeeping, payroll, billing, purchasing, etc. It is not clear where SED stands on the creation of these types of corporations but it would seem that there is a potential for material savings if this were allowed.

AUTHORIZATION TO RETAIN RESERVES:

Over the years many proposals have been advanced regarding the allowance of some level of reserves in the approved private schools and Special Act School Districts. These included recommendations from prior Rate Setting Task Forces to actual proposed legislation. The lack of reserves severely limits cash flows and operational flexibility to deal with day to day unplanned events. Lines of credit and working capital loans must be used to cover necessary expenditures until such time as tuition revenue is received from the placing school districts and local social service districts. While the elimination of the reconciliation process and the reforms to the Growth Screen and the care day calculation used in rate setting will in a minor way help smooth out cash flow issues, they will not solve the problem. The State has clearly recognized that reserves are a necessary component of operating education programs as school districts are allowed to keep a percentage of the revenues from operation as reserves.

We are providing you with two documents that have been previously submitted to SED regarding Rate Setting Reform. The February 2011 document was shared with Dr. King and Lisa Timoney at that time.

Thank you again for allowing us to comment on the school aged methodology. While many of these comments apply to preschool and school age programs, we will be sending you additional recommendations for preschool at such time as we receive an invitation to participate in the Preschool Group. We look forward to working with SED, DOB and the other provider organizations to improve the methodology to make it more efficient and timely.

Sincerely,



Thomas Hamel
Vice President, Financial Management & Support

cc: Susan Constantino
Judi Gerson
Suzanne Bolling ✓
James Delorenzo
Joseph Conroy

Attachments:

March 2005 Conceptual Framework: Education Program Tuition/Rate Methodology Reform
February 2011 CP of NYS Recommendations for Cost-Savings and Efficiencies in Preschool and School-Age Special Education

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 dispersement 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.

Cerebral Palsy Associations
of New York State



Recommendations

for

Cost-Savings and Efficiencies

in

***Preschool and School-Age
Special Education***

February 2011

**CEREBRAL PALSY ASSOCIATIONS OF NEW YORK STATE
(CP OF NYS)**

90 State Street, Suite 929, Albany, NY 12207
(518) 436-0178

ABOUT CP of NYS

Cerebral Palsy Associations of New York State (CP of NYS) was founded more than sixty years ago by families looking for services for their children with cerebral palsy, and today is comprised of 24 Affiliates serving all 62 counties of New York State. We are non-profit service providers and advocates for approximately 87,000 persons with developmental and other disabilities. Our Affiliates provide services to individuals of all ages with all types of developmental and other disabilities.

We provide early intervention, durable medical equipment (DME), special education services, Article 28 and Article 16 clinic services, and in varied day and residential settings, we support persons with developmental disabilities, traumatic brain injuries (TBI) and other medical conditions.

In providing these services, we are regulated by the New York State Education Department (SED), the New York State (NYS) Department of Health (DOH), the NYS Office for People with Developmental Disabilities (OPWDD) and in some instances, the NYS Office of Mental Health (OMH), and are subject to the pertinent federal and state laws and regulations for which these agencies hold responsibility.

As integral parts of our communities we employ close to 20,000 people throughout New York State. We are committed to continuous improvement and compliance both in our service delivery and administrative practices.

Background, History and Role of Private Schools

As mentioned earlier, CP of NYS was founded more than sixty years ago as a result of efforts by parents to secure needed services for their young children with disabilities. At that time, there was no mandate for public schools to serve children with disabilities, and the services provided by our Affiliates were often the only option available for families seeking both educational and therapeutic services for their children.

Since that time, CP of NYS Affiliates throughout New York State have been offering a wide array of early intervention, preschool and school-age special education services for children with disabilities. We have seen many changes throughout these years and have continually adapted our programs and services to meet the changing needs of children and families, incorporate emerging best practice models as well as respond to the priorities established by state and local funding agencies. Even with the passage of P.L. 94-142 and subsequent amendments providing an entitlement to a free, appropriate public education for students with disabilities, our preschool and school-age programs have remained an integral part of the service system, particularly for students with more severe disabilities.

Today, CP of NYS Affiliates operate private preschool programs established pursuant to Education Law §4410 (commonly referred to as 4410 schools) and school-age special education programs established pursuant to Chapter 853 of the Laws of 1976 (commonly referred to as 853 schools). Both types of schools are approved by SED. These programs are publicly-funded, adhere to the same standards as, and augment the services of public school districts for students with disabilities who cannot be appropriately served by their local districts. It is important to note that families do not unilaterally choose to send their

children to our schools, as is the case with other private schools or publicly-funded charter schools. Rather, it is the local school district that determines a student's placement in our schools when there is no appropriate program available through the public school system. While we serve this public function, reimbursement methodologies and other policies set by SED often do not recognize or acknowledge the critical role we play in providing students with the most severe disabilities a free and appropriate public education.

CP of NYS Recommendations

With this history/role serving as a backdrop, and cognizant of the serious fiscal challenges facing New York State at this time, we offer our ideas for administrative cost-savings and efficiencies related to private schools serving preschool and school-age students with disabilities. These recommendations include the following areas to be discussed in more detail:

- Streamlining program administration by developing consistent and uniform data, documentation, and billing procedures;
- Consolidation and collaboration in program delivery and transportation;
- Reform of the overly complex, untimely and inefficient rate setting methodology which would allow efficiencies at the state, county, school district and school provider levels;
- Programmatic reforms to encourage flexibility in class size and staffing and continued availability of integrated educational opportunities with non-disabled peers; and
- Elimination of redundant state agency oversight, excessive service delivery and preference for more costly programs and services.

PROGRAM ADMINISTRATION

The current system involves multiple layers of administration and fiscal responsibility including school districts, counties and the State Education Department (SED). In addition, transition of students from the Early Intervention program for children under three years of age and the Federal Medicaid funding stream for Individualized Education Program (IEP)-related services adds oversight and administrative responsibilities by DOH. The lack of consistency and uniformity in requirements across all these responsible entities has caused excessive levels of administrative burden and paperwork for all stakeholders in the process.

- **Medicaid In Education**

The ability for the school districts and counties to bill the Federal Government for Medicaid eligible special education related services allows New York State to draw down federal dollars that would otherwise require State and locality monies. Approved programs provide students with special education related services and while SED and DOH have the responsibility to administer this program, neither State agency has established a singular set of referral, billing and documentation rules including a State claim form and documentation requirements that are uniformly used by school districts and municipalities. Thus, each and every local government has their own requirements. Most approved programs serve multiple school districts and counties which causes a tremendous burden on program administrators as well as on district and county staff.

We recommend that SED, in consultation with DOH, develop a single State-approved Medicaid claim form and a single documentation library and associated rules.

- **School District and Municipality Contracts**

Similarly, each school district and county which contracts with a school-age or preschool provider may have a different contract with varying requirements. Although SED had at one time developed “boilerplate” contracts to encourage uniformity, these contracts are no longer reviewed and local payors have amended and modified their contracts which now vary significantly.

We recommend that SED develop a single State-approved boilerplate contract for preschool and school-aged programs with limitations on allowable modifications and/or a review and approval process for any modifications.

- **Student Information and Payment Systems**

Many approved providers operate preschool programs and school-age programs under SED and Early Intervention programs under DOH. While many students will be enrolled in all three systems at some point during their academic career, each of the systems employs different student data bases and payment systems requiring the re-entering of basic student identifying information multiple times.

We recommend that SED/DOH develop a single State integrated student Information/payment system, or at least revise the current systems to allow the migration of Information from one system to another.

- **Transportation of Preschool Students**

While each school district is responsible for transporting their school-age students to private schools, preschool students are instead transported by county-contracted transporters. There are large inefficiencies and waste of scarce resources in this system, as frequently buses show up at approved programs with only one or two students aboard.

We recommend that SED/Division of the Budget (DOB) revisit the transportation of 4410 preschool students. This may include shifting that function to school districts which would receive regular transportation aid for that service.

- **Consolidation/Collaboration Among Private Schools**

Governor Cuomo has included the need to seek consolidation of State Agencies, Authorities, etc., in many of his policy papers. Approved private schools recognize the cost savings potential of cooperating with other similarly located approved programs. Beyond the possibilities of cooperating in back office functions like IT, billing, HR, finance etc., we also see the merits of sharing Education Directors, related service staff, or instructional staff. Many times SED's Rate Setting Unit (RSU) looks at approved program staffing and will claim the program is staffed too richly for the number of students served. But, in many cases it is impossible to hire a .333 full-time equivalent (FTE) adaptive physical education teacher so programs either hire a .5 or a 1.0 FTE in order to remain in compliance with staffing regulations. If programs could share the cost of staffing that teacher, all parties would benefit.

We recommend that SED work with the provider groups to develop a collaborative program on a pilot basis that would allow programmatic and rate setting flexibilities to participants if they can demonstrate savings and efficiencies.

- **Consolidation and Consistency in Preschool Policy**

Several years ago the SED Special Education Office reorganized, eliminating the long existing preschool unit. The program approval and program monitoring functions were dispersed to the Regional Offices where one Regional Associate in each office was assigned to preschool responsibilities. As a result, we have seen increasing inconsistencies in the implementation of preschool policy from Regional Office to Regional Office.

We recommend that SED ensure consistency in preschool policies by either consolidating the assigned preschool RAs into Central Office or by appointing one of SED's existing managers to be responsible for preschool on a statewide basis.

THE RATE SETTING METHODOLOGY

The current rate setting 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, requiring frequent adjustments to the rate needing several layers of review and approval. The methodology also does not respond easily to changes in intensity of children's' service mandates from year to year or to fluctuations in enrollment which affect tuition rates. Finally, the methodology lacks a mechanism for demonstrating innovative ways to provide services without jeopardizing future finances.

- **Consolidation of Cost Centers**

In December of 2008, SED had secured DOB approval to allow approved programs to reduce the number of preschool cost centers that had to be reported on the annual Consolidated Fiscal Report (CFR). The SED Special Education Office, Rate Setting Unit and the STAC Unit were all on board with this proposal. The proposal would have allowed programs to consolidate costs centers, reducing the administrative work on providers in trying to determine appropriate allocations to the cost centers. It would have reduced the number of preschool tuition rates that RSU would need to calculate annually, reduce the number of STAC agency files that needed to be built, reduce the number of rates DOB would need to review and approve annually, and finally it would reduce the number of appeals both RSU and DOB would receive from providers annually. Shortly after a Field Memo was published announcing this administrative relief, RSU rescinded the proposal saying it needed to give it further study. To date no further action has occurred regarding this administrative relief proposal.

We recommend that SED implement the cost center consolidation proposal.

- **Revisions to the Growth Screen**

The growth screen component of the total cost screen continues to generate appeals annually, primarily due to the screen's sensitivity to minor enrollment variations from school year to school year. If enrollment is up from the previous (initial) year and the program costs are relatively flat, the program's per diem rate will decrease. This is generally fine initially because the lower rate will cover the program's costs. However, if in the next school year the enrollment returns to the level in the initial year, the growth screen will only allow increases off of the lower year two per diem rate. This means that the program will be negatively impacted by the growth screen and will get less money in year three than it received in year one even though the enrollment in years one and three are the same. Programs have successfully filed rate appeals requesting that the year three allowable per diem rate be calculated as follows:

Year 3 per diem = Year 1 per diem rate (plus) allowable Year two growth (plus) allowable Year three growth

Rather than the standard

Year 3 per diem = Year two growth (times) allowable Year three growth.

Permanently revising the growth screen will reduce the number of rate appeals SED and DOB will need to review annually.

We recommend that SED revise the growth screen calculation so that the year 3 per diem is allowed to grow to the higher of the year 1 per diem rate plus the two years of approved growth or the year 2 per diem plus one year's worth of growth.

- **The Rate Reconciliation Process**

The reconciliation process was incorporated into the methodology in the early nineties as part of the new 4410 Preschool Program. The reconciliation process was needed at that time because under the Family Court System, which served 3 and 4 year olds prior to 4410, each county established their own rates with vastly different rate methodologies, many of which greatly over-funded or, under-funded approved programs. After the first five or so reconciliation years, the State recoupment vs. the State payout to providers generally was close to a net of zero. This trend continues today making the reconciliation process a very costly administrative exercise yielding little if any financial benefit to the State and local Payors. All State agencies in this dire fiscal climate are reviewing their internal processes and eliminating any processes that require large amounts of scarce public resources with little or no value added. The reconciliation process is extremely staff intensive for school districts, municipalities, the providers, DOB and SED (RSU and STAC). The reconciliation process means that all of the above parties are required to process two rates for each school year. Each approved rate is reconciled two years after the close of the school year without regard to the amount of the resulting over or under payment. So a provider may be underpaid by \$5.00 or \$1,000 dollars for a child for the school year and all of these entities are forced to go through the claiming and billing processes for a second time for that school year.

We recommend that SED review reconciliation data to determine the annual net value of the pluses and minuses over the most recent three reconciled school years and, if not a material amount, recommend repeal of that component of the methodology. It will be important to make sure that the programs used in the three-year analysis are identical from year to year.

Currently, providers which might be able to develop cost-efficient strategies in one year are penalized with lower rates in future years when they may in fact need the additional resources again.

We recommend that SED incentivize providers to be cost-efficient by allowing them to retain a certain percentage of cost-savings for future needs. In addition, providers should be permitted to have their rates increase back to the original

rate when required for allowable expenses in the future. This is an alternative proposal if reconciliation is not eliminated.

- **Regional Special Education Itinerant Teacher (SEIT) Rates**

The SEIT program was designed to provide a less intensive level of service for preschool students with disabilities who did not need a specially designed classroom placement. However, in many areas of the state, particularly in rural areas, the number of SEIT programs have either declined or have never existed. Consequently, the Committees on Preschool Special Education (CPSEs) are placing SEIT-appropriate children in either half or full day special class programs. SEIT program enrollment is extremely volatile from school year to school year. As a result reported costs are also volatile resulting in SEIT rates moving up and down materially from school year to school year. Changes in enrollment year could materially negatively affect SEIT rates to the point of program closure. In one of the many SED sponsored preschool rate setting task force groups, there was a strong consensus to move to regional SEIT rates. In fact, SED has established regional SEIT rates but only implemented the new rates for use by new programs.

We recommend that SED apply the SEIT regional rates to all SEIT programs. This may be phased in over a 2 or 3 year period as the DOH has done with many of their recent rate setting makeovers.

PROGRAMMATIC REFORMS

Among the myriad of regulations governing preschool and school-age programs, are specific requirements for class size, staffing ratios, IEP-related services and services delivered to students in the “least restrictive environment.” In addition, statewide assessment procedures, even for those students with the most severe disabilities require expensive, time-consuming and sometimes unrealistic efforts and expectations. For preschool programs, the required oversight by both SED and the Office of Children and Family Services (OCFS) or NYC DOH Day Care Division adds additional and unnecessary burdens to both providers and state and local resources.

- **Innovative Waivers for Preschool Special Class In Integrated Setting (SCIS)**

We thoroughly agree with the federal Individuals with Disabilities Education Act (IDEA) regarding providing services in the least restrictive environment and have done much in terms of developing and operating integrated preschool classrooms. Many of these are collaborations with Universal Pre-Kindergarten (UPK) and/or Head Start, while others rely on day care offered by our own agencies or outside day care centers. However, there are numerous impediments to the continuation of these programs. Despite an innovative program waiver process, SED had begun to question some of the existing models in terms of staffing, class size and ratios, making it more difficult to succeed with innovative strategies. With the expansion of UPK programs, many families are choosing this

free option in lieu of day care, making it more difficult to maintain proper ratios of non-disabled students. The current economic climate is further negatively impacting existing integrated programs as parents are struggling financially and may opt not to send their children to day care, thus the regular education populations in our programs are materially declining. The operation of integrated models require more administration and the integrated rates tend to vary more from year to year causing a higher frequency for the need to file appeals.

We recommend that SED encourage an innovative waiver process and work with the provider community to eliminate barriers to offering this program model.

- **One-to-One Staffing**

Frequently, students with very severe disabilities or challenging behaviors have IEPs that require a 1:1 aide. Often there are more than one or two students per classroom that have this required aide. Despite this additional staffing, programs are required to maintain the same original number of aides or assistants as their class ratio specifies. This results in extreme overstaffing and crowded conditions in the classroom.

For those programs that continue to use 1:1 aides, the staffing ratios should then be calculated only on the remaining students without 1:1 aides.

Many approved programs that serve very severe students have, over time, eliminated 1:1 aides by building additional permanent staffing into the tuition rate calculation resulting in saving to the State because permanent aides are added at a lower number of FTEs.

SED, using the STAC system, should determine those programs that continue to employ large numbers of 1:1 aides and work with those programs to convert from the 1:1 model to the increased staffing ratio model.

The newest trend in Committee on Special Education (CSE) and CPSE recommendations is the addition of 1:1 nurses to the IEPs and STAC forms. We know of cases where there are multiple 1:1 nurses in the same classroom where we believe the conversion of 1:1 nurses into permanent staff at a lower FTE is more appropriate.

SED, using the STAC system, should determine those programs that employ large numbers of 1:1 nurses and work with those programs to convert from the 1:1 model to the increased staffing ratio model.

NOTE: Using this model, additional arrangements may need to be developed for nurse accompaniment during transportation for students who require this service.

- **Overall Staffing Requirements**

In many of our classrooms special education related services are delivered in the classroom itself, resulting in the number of adults in the class at any one time exceeding, sometimes materially, the approved staffing ratios. In addition, when

several children are receiving their IEP mandated related services during the same time period either in or out of the classroom, the required staffing ratio must be maintained, regardless of the fewer number of children requiring staff attention.

SED should count all adults in the classroom, including related service providers, in determining whether a program is in compliance with the staffing ratios. Additionally, flexibility should be available to adjust staffing ratios to the number of students requiring general classroom supervision.

- **Over-Enrollment/Class Size**

There currently exists an SED-approved process to temporarily over-enroll preschool classes when necessary in order to provide Free Appropriate Public Education (FAPE) to a new student needing a particular program. There is also a process in regulation to temporarily over-enroll a class for middle or secondary grade-age students. Despite this, we are aware of instances where the Regional Associate regularly denies these requests, resulting in students needing to travel much longer distances to an appropriate program at much greater expense. In addition, there is no process that we are aware of to increase the size of a class for elementary age students.

We recommend that SED review the consistency of approvals for over-enrollment and extend the current procedures to include elementary aged classes.

- **Alternate Assessments for Students with Severe Disabilities**

The currently required alternate assessments involve an inordinate amount of staff time and expense as well as a lot of SED personnel expenses. For students with the most severe disabilities, there are often unrealistic and unattainable expectations and we question the value or effectiveness of this process.

We recommend that SED re-look at the requirement for alternate assessments for students with the most severe disabilities and consider using data from the accomplishment of IEP goals and objectives as a means of assessment.

- **Duplicative Oversight by SED and Day Care Agencies**

As mentioned earlier, our special education programs, including the 4410 preschool programs, are approved and monitored by SED. In order to maintain their approval status, programs must adhere to SED regulations and other requirements regarding teacher and supervisor qualifications, child to staff ratios, health and safety, training and staff development, and a variety of other programmatic and procedural issues, which are consistent with the requirements of public schools. Our preschool programs are also subject to Office of Children and Family Services (OCFS-upstate) and NYC DOH Day Care despite the fact that public school programs, which adhere to the same SED standards described above, are exempt from day care requirements. As a result, many of our 4410 preschool programs are subject to time-consuming, costly and unnecessary approval and monitoring by two different state agencies, often with differing or even conflicting requirements. It is felt that some of the day care requirements

are redundant and unnecessary, given the much higher qualifications of our teaching and supervisory staff and intensive staffing ratios. In addition, day care reviewers are not always familiar with the unique needs of children with disabilities, some of which are not easily accommodated under day care requirements. One example is the need for specialized behavioral interventions for students with significant behavioral challenges.

We recommend that SED eliminate the costly and redundant program approval and monitoring by OCFS and NYC Day Care, placing sole responsibility for approved 4410 programs with SED.

- **Excessive Related Service Frequencies**

Preschool providers have expressed many times to SED our concern regarding the high number of therapy frequencies often recommended by the CPSE for children attending their programs. Some believe it may be a function of high service delivery in the Early Intervention program, while others feel the districts bend to parents' wishes, especially because the CPSEs have no financial responsibility for preschool services. This practice greatly adds expense to the program and also stretches existing resources to the point of non-compliance with IEPs.

We recommend that SED develop an education/awareness campaign to counter the "more is better" philosophy and work with districts and families to develop more appropriate IEP recommendations. This problem might resolve itself if districts were responsible for paying for the program instead of the counties.

- **Public vs. Private vs. Least Restrictive Environment**

SED's current interpretation of "least restrictive environment" includes a distinction between "public versus private," implying that a Board of Cooperative Educational Services (BOCES program, due to its "public" status is less restrictive than an approved private program, and therefore should be considered as a placement first before considering an approved 4410 or 853 program. In almost all areas of the state, BOCES programs have significantly higher rates, thereby increasing costs to local and State taxpayers. In addition, BOCES programs typically provide no more "less restrictive" experience in terms of interaction with non-disabled peers. In fact, at the preschool level, approved private 4410s often offer more integrated opportunities for students with day care/UPK and/or Head Start programs for non-disabled children co-located at their sites and/or collaborating with their SCIS classes. In addition, the current practice of requiring a "sign-off" by the BOCES superintendent, before allowing a private program to expand, is a conflict of interest and perpetuates the ability of BOCES to expand their own more costly programs rather than recommending approval of a private provider that most likely would serve children less expensively.

We recommend that SED eliminate the current practice of always viewing BOCES programs as less restrictive than approved private programs.

SUMMARY OF RECOMMENDATIONS

In order to facilitate and encourage cost-savings and efficiencies, CP of NYS recommends that SED:

- ✓ in consultation with DOH, develop a single state-approved Medicaid claim form and a single documentation library and associated rules.
- ✓ develop a single state-approved boilerplate contract for preschool and school-aged programs with limitations on allowable modifications and/or a review and approval process for any modifications.
- ✓ along with DOH, develop a single state integrated student information/payment system, or at least revise the current systems to allow the migration of information from one system to another.
- ✓ along with DOB, revisit the transportation of 4410 preschool students. This may include shifting that function to school districts which would receive regular transportation aid for that service.
- ✓ work with the provider groups to develop a collaborative program on a pilot basis that would allow programmatic and rate setting flexibilities to participants if they can demonstrate savings and efficiencies.
- ✓ ensure consistency in preschool policies by either consolidating the assigned preschool RAs into central office or by appointing one of SED's existing managers to be responsible for preschool on a statewide basis.
- ✓ implement the cost center consolidation proposal.
- ✓ revise the growth screen calculation so that the Year 3 per diem is allowed to grow to the higher of the Year 1 per diem rate plus the two years of approved growth or the Year 2 per diem plus one year's worth of growth.
- ✓ review reconciliation data to determine the annual net value of the pluses and minuses over the most recent three reconciled school years and, if not a material amount, recommend repeal of that component of the methodology. It will be important to make sure that the programs used in the three year analysis are identical from year to year.
- ✓ incentivize providers to be cost-efficient by allowing them to retain a certain percentage of cost-savings for future needs. In addition, providers should be permitted to have their rates increase back to the original rate when required for allowable expenses in the future. This is an alternative proposal if reconciliation is not eliminated.
- ✓ apply the SEIT regional rates to all SEIT programs. This may be phased in over a 2 or 3 year period as DOH has done with many of their recent rate setting makeovers.

- ✓ encourage an innovative waiver process and work with the provider community to eliminate barriers to offering this program model.
- ✓ calculate the staffing ratios only on the remaining students without 1:1 aides for those programs that continue to use them.
- ✓ using the STAC system, should determine those programs that continue to employ large numbers of 1:1 aides and work with those programs to convert from the 1:1 model to the increased staffing ratio model.
- ✓ using the STAC system, should determine those programs that employ large numbers of 1:1 nurses and work with those programs to convert from the 1:1 model to the increased staffing ratio model. NOTE: Using this model, additional arrangements may need to be developed for nurse accompaniment during transportation for students who require this service.
- ✓ should count all adults in the classroom, including related service providers, in determining whether a program is in compliance with the staffing ratios. Additionally, flexibility should be available to adjust staffing ratios to the average number of students requiring general classroom supervision.
- ✓ review the consistency of approvals for over-enrollment and extend the current procedures to include elementary aged classes.
- ✓ re-look at the requirement for alternate assessments for students with the most severe disabilities and consider using data from the accomplishment of IEP goals and objectives as a means of assessment.
- ✓ eliminate the costly and redundant program approval and monitoring by OCFS and NYC DOH Day Care, placing sole responsibility for approved 4410 programs with SED.
- ✓ develop an education/awareness campaign to counter the “more is better” philosophy and work with districts and families to develop more appropriate IEP recommendations. This problem might resolve itself if districts were responsible for paying for the program instead of the counties.
- ✓ eliminate the current practice of always viewing BOCES programs as less restrictive than approved private programs.