

# New York State Tuition Rate Setting Methodology: Tuition Rates for Preschool Students with Disabilities

A Report Pursuant to Chapter 545 of the Laws of 2013 to the Governor, State  
Comptroller, Temporary President of the Senate, and the Speaker of the Assembly

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**THE STATE EDUCATION DEPARTMENT**

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## **EXECUTIVE SUMMARY**

Pursuant to §4410 of the Education Law, preschool special education programs approved by the New York State Education Department (NYSED) receive reimbursement pursuant to a tuition rate annually determined by the Commissioner of Education and approved by the Director of the Division of the Budget. Currently, the methodology used to determine the annual tuition rate for preschool special education programs is based on a program's reimbursable cost for providing special education and related services and student enrollment.

In accordance with to Chapter 545 of the Laws of 2013, the Department's Rate Setting Unit, Office of Special Education and STAC Unit collaboratively conducted a study of preschool special education tuition reimbursement. This study consisted of analyzing the fiscal impacts, data trends, and monitoring protocols pursuant to the existing tuition rate setting methodology and considering alternative methods that may be utilized. The following themes may be derived from the results of the study:

- The existing tuition rate setting methodology has mechanisms to monitor program spending through the establishment of several reimbursement rules including, but not limited to: requiring at least 70 percent of total reimbursement to be targeted to the direct care of students; restricting the amount of executive compensation that may be eligible for reimbursement; and limiting the year-to-year growth in tuition rates. As alternative reimbursement methodologies are considered, it is important to determine how the objectives of these fiscal monitoring activities will be maintained in order to appropriately oversee and regulate program spending.
- While the existing cost-based system allows for detailed review of program expenditures, and appropriate cost adjustments corresponding with regulation and rules for reimbursement, there are disadvantages to the existing tuition rate setting methodology as problems exist with tuition rate variation and equity. For example, funding inequities occur under the existing tuition rate setting methodology whereby providers that serve students with comparable needs may have dramatically different tuition reimbursement. As the existing tuition rate setting methodology is based on program expenditures and enrollment, changes to these factors will result in a higher or lower tuition rate that is then used as the basis for rates going forward. Although correlation exists between educational and related service provision and total tuition reimbursement, there still remains a wide variety of tuition rates among similar programs. Adjustment to the existing tuition reimbursement methodology, or adoption of an alternative methodology, may obtain better alignment between the level of educational and related service provided and the amount of tuition reimbursement received by preschool special education programs. Alternatives to the existing tuition rate setting methodology that are described in the study include:

- For Special Education Itinerant Services Programs: adjusting the existing cost-based methodology, rebasing tuition rates to a fixed fee, and developing regional tuition rates.
- For Special Class and Special Class Integrated Setting Programs: adjusting the existing cost-based methodology, rebasing tuition rates under a budget-based approach, and rebasing tuition rates using mandated services to build-in required costs. Alternatives to the tuition offset calculation applied to Special Class Integrated Setting Programs are also discussed in the study.
- Although the existing methodology is based on a program's cost, over time and particularly in recent years with no growth in tuition rates, an increasing number of providers are facing a negative disparity between their program costs and the amount of reimbursement they receive. Depending on the individual circumstances relating to a program's expenses and the amount of reimbursement generated by their tuition rate, the limit in tuition rate growth may have a different impact for individual programs. However, the data demonstrates that a declining percentage of aggregate preschool special education gross costs are being reimbursed and concerns exist that this funding gap may ultimately affect the quality and availability of preschool special education services. As alternatives and improvements to the existing tuition rate setting methodology move toward possible adoption, annual growth targeted to address funding shortfalls and inequities should be considered as part of any overall reimbursement reform effort.

In accordance with Chapter 545 of the Laws of 2013, this study will be submitted to the Governor, the State Comptroller, Temporary President of the Senate, and the Speaker of the Assembly.

## **PURPOSE OF THE STUDY**

### **Chapter 545 of the Laws of 2013**

Chapter 545 of the Laws of 2013, signed into law December of 2013, directs the State Education Department (NYSED) to “conduct a comprehensive study of alternative systems of reimbursement methodologies and monitoring protocols for the tuition and maintenance components of special education services programs for preschool children with disabilities.” The statute further directs the study to be delivered to the Governor, the State Comptroller, Temporary President of the Senate, and the Speaker of the Assembly.

In accordance with Chapter 545, this report presents the results of the required NYSED study. It concentrates primarily on a discussion of alternative reimbursement and monitoring approaches for three specific preschool special education services: Special Education Itinerant Services (SEIS), Special Class Programs, and Special Class Programs in an Integrated Setting (SCIS). Reimbursement for these three programs accounts for nearly 72 percent of all preschool special education expenditures under §4410 of the Education Law.

### **Preschool Special Education Financial Advisory Workgroup: Methodology Study Committee**

To assist NYSED with its review and analysis of relevant factors, and to obtain valuable perspectives on the practical implications of the existing rate setting structure and how the needs of preschool children with disabilities may be better served through revisions to the current tuition rate setting methodology, a stakeholder committee of the Special Education Financial Advisory Workgroup was created. NYSED convened six meetings of this committee between September and November of 2014. The stakeholder committee is comprised of individuals representing the following organizations: New York City Department of Education, New York State Association of Counties, New York State School Boards Association, Boards of Cooperative Educational Services (BOCES), Agencies for Children’s Therapy Services (ACTS), Cerebral Palsy Associations of New York State, Interagency Council of Developmental Disabilities Agencies (IAC), NYSARC, The Alliance for Children with Special Needs, Advocates for Children of New York, and Early Childhood Direction Centers.

## **PRESCHOOL SPECIAL EDUCATION: PROGRAM AND FISCAL BACKGROUND**

New York’s history of providing services for preschool children with disabilities predates federal Individuals with Disabilities Education Act (IDEA) mandates for a free appropriate public education for children with disabilities ages three to five. In 1989, legislative changes were enacted to comply with IDEA thereby creating §4410 of the Education Law (§4410). As a result, public school districts are responsible to develop the individualized education programs (IEP) for recommendations for services to preschool students with disabilities, but the fiscal responsibility for such services is with the State and counties.

Eligibility as a preschool child with a disability is based on the results of an individual evaluation, which is conducted by a multidisciplinary evaluation program (MDE) approved by NYSED.<sup>1</sup> Pursuant to §4410, Committees on Preschool Special Education (CPSE) determine the special education services needed for preschool students with disabilities in consideration of the results of an individual evaluation, the student's strengths and needs, and concerns of the parent. Placement of the student must be in the least restrictive environment, which means the placement must provide the special education services needed by the student in a setting with non-disabled peers to the maximum extent possible and be as close as possible to the student's home.

The State's special education programs and services for preschool students with disabilities include related services, SEIS, Special Class and SCIS.

- Related Services are developmental, corrective, and other supportive services required to assist a student with a disability, including but not limited to speech-language pathology, audiology services, psychological services, physical therapy, occupational therapy, and counseling services. When a preschool student is recommended for related services only, these services are provided by qualified individuals on a list maintained by the municipality at a rate established by the municipality.
- SEIS is an itinerant program for the purpose of special education teacher services to students in regular early childhood environment including but not limited to an approved or licensed prekindergarten or Head Start program, the student's home, a hospital, a State facility, or a child care location.
- In a Special Class, preschool students with disabilities are grouped together in a classroom setting for purposes of receiving specially designed instruction and related services. In a SCIS, the class includes both students with and without disabilities. Special Class and SCIS programs can be for a half or a full day.

In making recommendations for a preschool student with a disability, State law requires the CPSE to first consider the appropriateness of related services only, or SEIS only; or related services in combination with SEIS; or a half day Special Class or SCIS; or a full day Special Class or SCIS. Placement of the student must be in the least restrictive environment (LRE), which means the placement must provide the special education services needed by the student in a setting with non-disabled peers to the maximum extent possible and be as close as possible to the student's home.

Tuition costs and transportation services are paid by the counties initially and the State reimburses the counties. Pursuant to state appropriations for recent years, including 2014-15, the State

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<sup>1</sup> NYSED approves MDE programs and establishes an annual rate for each individual evaluation (Psychological, Social History, Physician, Non-Physician) with a separate English and Bilingual rate for each evaluation. Currently, MDE rates are based on Early Intervention rates established by the Department of Health and NYSED does not collect cost data from MDE providers. The methodology to establish MDE rates is therefore not part of this study; however, separate review and analysis, including identifying methods to obtain data regarding the actual cost for conducting an evaluation, may be warranted.

reimburses the counties 59.5 percent of the total costs. In 2011-12, the State and counties spent approximately \$1.45 billion to serve approximately 80,000 preschool students with disabilities. These costs do not include administrative costs for school districts to conduct CPSE meetings and develop IEPs. The following table shows these costs broken down by type of service.

Table 1: 2011-12 School Year Preschool Special Education Reimbursement

Evaluations	\$43,914,000	3.0%
Special Class/SCIS Programs	\$779,750,000	53.9%
SEIS	\$260,266,000	18.0%
Related Services	\$152,691,000	10.6%
Transportation	\$210,673,000	14.6%
<b>Total Reimbursement</b>	<b>\$1,447,294,000</b>	<b>100%</b>

Source: 2011-12 payments through the SED STAC system including both State and local share.

#### Program and Fiscal Oversight of Preschool Special Education Providers in New York State

##### *NYSED Preschool Special Education Program Approval and Reapproval*

Pursuant to §4410, NYSED maintains a list of approved preschool special education MDE, SEIS and Special Class (including SCIS) programs and oversees an application and approval process for providers that operate one or more of the following four different types of programs: MDE, SEIS, Special Class, and SCIS. For the 2013-14 school year, there were 497 preschool special education providers approved by NYSED. Most providers operate more than one type of program. For example, among the 497 providers there are: 402 approved MDE programs, 276 Special Class and/or SCIS programs, and 334 SEIS programs. These providers are mostly not-for-profit organizations, although services are also provided by for-profit organizations as well as public entities including BOCES and school districts.

In 2012, NYSED's Office of Special Education (OSE) developed a new provider approval application to include an in-depth review of: services, staffing and methodologies necessary to ensure provision of high-quality programs; program environment to ensure the health and safety of students with disabilities; appropriate agency background and qualifications to provide sound fiscal practices; and governance qualifications that will provide effective fiscal and program oversight.

Also in 2012, OSE revised its monitoring protocol and procedures to add focus on a review of preschool service delivery structures and models, efficient use of staff, resources, and instructional effectiveness. This revised protocol is used to conduct onsite reapproval reviews of the preschool special education providers. Along with a new program reapproval application, which was developed to obtain more information regarding the provider's management and governance structure, these onsite reviews are the basis for a cyclical program reapproval determination by NYSED in accordance with authority provided within §4410. Beginning in the 2012-13 school year, approximately 50 program reviews are conducted each year.

Upon a finding that a provider did not meet one or more of the State's standards of providing quality services in a necessary and cost-efficient manner, in the least restrictive environment, and



in compliance with federal and State requirements, NYSED will take corrective action steps with each provider to ensure correction of noncompliance within a limited period of time. These actions include steps to correct the noncompliance for individual students, as well as to require revisions of policies, procedures and practices to ensure correction for all students and to address program cost-efficiency findings. Final reapproval of providers is contingent upon the State's verification of correction of noncompliance; implementation of quality, cost-efficient practices; and documentation that the program has appropriate fiscal and governance structures.

#### *NYSED Preschool Special Education Tuition Rate Setting*

In accordance with §4410, SEIS, Special Class, and SCIS programs receive tuition reimbursement based on an annual tuition rate setting methodology that is recommended by the Commissioner of Education and approved by the Division of Budget (DOB). Year-to-year growth in the tuition rate is limited to an annual amount set forth in the tuition rate setting methodology developed by the NYSED and approved by DOB. Any modification to the approved methodology requires DOB approval.

The process for establishing reimbursement under the current system has several steps:

1. A *prospective tuition rate* is established using each provider's historical cost and enrollment data from a base year to calculate a tuition rate two years subsequent. For example, the prospective tuition rate established to reimburse a provider for services provided during the 2014-15 school year is based on the provider's cost and enrollment data from the 2012-13 school year. For providers in their first or second year of operation, the prospective rate is established based on a regional rate for SEIS and Special Class, or a budget for SCIS programs.
2. Following the close of each school year, a *reconciliation tuition rate* is established based on the submission of a Consolidated Fiscal Report (CFR), which is certified by the Executive Director of the provider and an independent Certified Public Accountant, and reflects the provider's actual expenses, revenues and enrollment.<sup>2</sup> Reconciliation tuition rates may be different than prospective tuition rates if allowable costs are less than what was projected for the prospective rate.
3. *Waivers* may be granted for individual programs for both prospective and reconciliation tuition rates, allowing costs to exceed the parameters of the tuition rate setting methodology in limited circumstances. Pursuant to 8 NYCRR 200.9, a provider may also appeal a prospective tuition rate if it can demonstrate that it would have insufficient resources to meet the educational needs of the student population being served due to the following reasons: health and safety issues, issues of compliance as identified by NYSED, and approval of staff in a prior year that were hired in a subsequent year. All waiver and appeal tuition rates must be individually reviewed and approved by NYSED, and the DOB.

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<sup>2</sup> Public providers of preschool special education services have different reporting requirements than private providers and instead report on the SA-111 or ST-3 supplemental schedules. For purposes of this study, the term CFR is meant to represent all provider financial reporting.

The existing approved tuition rate setting methodology is cost-based, and individual tuition rates are calculated pursuant to 8 NYCRR §200.9. In accordance with this regulation, providers are required to submit financial reports, as prescribed by the Commissioner, supported by financial statements certified by a licensed or certified public accountant independent of the program's operation.

Tuition rates are established on a July-June basis, with separate rates issued for the school year (10 month) and the July and August (2 month) component, if applicable. Most private providers report data on a school year basis (July-June) and submit their CFR and financial statements by December 1 of each year. For private providers that are required to file a CFR with other State agencies on a calendar year basis, the data in the CFR and financial statements correspond with the calendar year reporting period and are due to be submitted to NYSED June 1 of each year.

Following a provider's submission of the CFR, and financial statements, the NYSED Rate Setting Unit conducts a desk audit and makes adjustments to the reported cost data in accordance with 8 NYCRR §200.9, based on the approved methodology and allowable costs as defined in the Reimbursable Cost Manual for Programs Receiving Funding Under Article 81 and/or Article 89 of the Education Law to Educate Students with Disabilities (RCM).

Once adjustments to reported costs are made, and any applicable annual inflation factors are applied to base year costs for prospective rate calculations, a non-direct care cost parameter is applied which currently limits reimbursement of non-direct care expenses to 30 percent of total program costs to ensure that program reimbursement is targeted primarily for direct care services to preschool special education students.<sup>3</sup> Applied revenues (or revenues that offset expenses included in the tuition rate calculation) are then subtracted from the total adjusted costs. The remaining gross costs are then subject to a Total Cost Screen parameter which ensures that the final per student per care day (per diem) reimbursable dollars in the tuition rate calculation do not exceed a previous year's per diem tuition rate plus the annual growth rate approved by DOB. For example, in the calculation of a reconciliation rate, if an annual growth factor of 2 percent was approved in a given year, and an individual provider's allowable gross costs for that year grew by 3 percent, then the total rate growth would be capped at 2 percent by the Total Cost Screen.

In 2013-14, the Rate Setting Unit set approximately 697 prospective and 710 reconciliation rates for preschool special education programs. For the 710 reconciliation rates set, the Rate Setting Unit disallowed \$49.9 million in claimed costs reported in NYSED programs, including \$7.5 million in non-direct care costs that exceeded the non-direct care cost parameter.

#### *NYSED Preschool Special Education Reimbursement – STAC Unit*

Counties pay for preschool special education services in the first instance and then are reimbursed by the State for Special Class or SCIS program placements, related services, SEIS services, and transportation costs associated with the delivery of service. The reimbursement rate is currently

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<sup>3</sup> Pursuant to 8 NYCRR §200.9, *direct care cost* means a cost associated with the provision of instruction and related services to students with disabilities; *non-direct care cost* means a cost that is attributable to the administration or the operation and maintenance of the physical plant, as each pertains to the approved special education program.

59.5 percent of the amount claimed (paid) by counties for all preschool services including transportation.

NYSED's System to Track and Account for Children (STAC) Unit is responsible for processing reimbursement requests for Commissioner's approval, including reimbursement approval for the costs of providing services to preschool students placed in approved preschool special education programs. Counties have up to two years after the end of the school year in which to submit a claim; in the case of rate changes, counties are allowed an additional one year after the end of the school year in which the rate change was applied to submit a claim. Claims for reimbursement are issued on a quarterly basis beginning in April of the current school year. Funds are requested and, when available, payments are generated to counties by the Fiscal Management Unit of the NYSED Office of Performance Improvement and Management Services.

In addition to preschool special education services provided, §4410 allows for reimbursement of county administrative costs at \$75 per student and CPSE administrative costs at 59.5 percent of the approved costs.

Preschool Special Education – Fiscal Monitoring Protocols
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*Monitoring Protocols - Existing Rate Setting Methodology*

The existing cost-based tuition rate setting methodology promotes fiscal accountability by permitting scrutiny of annual cost reports and actual spending for each provider in the establishment of both prospective and reconciliation tuition rates. Comparative analyses are performed against prior year's expense, revenue, and enrollment data in order to identify discrepancies and significant changes. Adjustments are made when the submitted CFR data and financial statements do not adhere to the requirements outlined in the RCM. If additional information is necessary to make a cost adjustment determination, the Rate Setting Unit will request additional supporting documentation or further information from the provider, and/or engage in discussions with Office of Special Education regarding whether the reported cost is necessary and directly related to the operation of the specific approved special education program.

Existing preschool special education tuition rate setting methodology principles are used to monitor the use of funds. For example, the total cost screen parameter limits reimbursement to the prior year per diem rate (rate per child per day) plus any growth that was approved. It acts as a cost control monitoring protocol. Through the non-direct care cost parameter, the existing methodology also directs reimbursement for the provision of direct care services to students by restricting the amount of funds that may be reimbursed for administrative and facility costs. Furthermore, the amount of executive compensation (salaries plus fringe benefits) is limited for provider staff whose function is that of Executive Director, Assistant Executive Director or Chief Financial Officer by holding the reimbursement for those titles to the regional median compensation for comparable administration job titles of public school districts. Compensation for an "Executive Director" is compared to the median compensation for "Superintendent" for the region in which the entity is located and compensation for an Assistant Executive Director and Chief Financial Officer is compared to the median compensation for "Assistant Superintendent."

Fringe benefits are currently allowed on the regional median salary up to the approved statewide public sector fringe benefit rate as published annually by the Office of the State Comptroller.

Issuing reconciliation tuition rates, based on actual reported costs that have been reviewed and adjusted, pursuant to the applicable methodology and the RCM, allows NYSED to monitor how funds were used and to recoup funds that were improperly reimbursed. Additionally, if an official state or municipal audit recommends the disallowance of funds, the existing methodology allows for appropriate adjustments to be made to reported costs and recovery of excess tuition by recalculating the tuition rates for the audited years.

NYSED provides CFR in-person training at six locations offered across the State through the CFR Interagency Committee, and online on the NYSED webpage. Providers are always encouraged to contact the Rate Setting Unit directly if they have questions regarding the classification of expenses or whether an expense is allowable or not.

#### *Monitoring Protocol – Fiscal Oversight Requirements under the RCM and Conditions for Program Approval/Reapproval*

Pursuant to the principles governing program reimbursement under the RCM, and the conditions for provider approval or reapproval, approved providers are required to establish adequate systems of internal controls and to conduct annual risk assessments. Upon approval or reapproval, providers are required to submit a clear, sufficient, and detailed description of the governance structure of the agency and their internal control procedures and protocols. A written Code of Ethics is required, which must include a specific conflict of interest policy requiring the identification, and disclosure of all less-than-arms-length (LTAL) relationships, and transactions on an ongoing basis. LTAL relationships and transactions are also required to be disclosed on the CFR.

In order to provide guidance, and information to assist trustees, and board members in exercising their fiduciary responsibilities, the RCM contains “The Statement on the Governance Role of a Trustee or Board Member.” The statement is relevant for all institutions that have been incorporated by the Board of Regents, or the New York State Legislature, including programs receiving funding under Article 81 and/or Article 89 of Education Law.

#### *Monitoring Protocol – Audit Adjustments and Corrective Action*

Recent amendments to State law have directed and incentivized fiscal audits of preschool special education providers. Chapter 545 of the Laws of 2013 requires the New York State Comptroller to audit the expenses reported to NYSED by every preschool special education provider at least once, by March 31, 2018. Additionally, the 2013-14 enacted New York State budget amended §4410 to authorize municipalities to retain 100 percent of recoveries that are identified following a municipal fiscal audit of a preschool provider and to require NYSED to create guidelines on standards and procedures to municipalities that choose to conduct fiscal audits of preschool providers. In response to the budget legislation, the Office of Audit Services created new audit guidelines and approved the audit program and plan of any municipality that elects to perform a fiscal audit of preschool special education providers.

Following the release of a final audit report issued by the State or municipality, the Rate Setting Unit will review the recommended disallowances and use the official audit report findings to calculate a tuition rate based on audit for each year in the audit scope period. This audit rate is calculated by making adjustments to reflect actual allowable program expenses, revenues, and enrollment. Upon certification of a tuition rate based on audit, the approved program is required to reimburse any overpayment to the appropriate municipality; in cases where the municipality did not conduct the audit, the State will adjust its reimbursement to the municipality, accordingly. Pursuant to 8 NYCRR §200.18, the municipality is to be paid, as soon as the audit tuition rate is issued, unless it agrees to a longer repayment period with the provider. In either case, the State will adjust its reimbursement to the municipality upon the issuance of the final tuition rate based on audit.

NYSED's Office of Audit Services, Office of Special Education, Rate Setting Unit, and Office of Counsel jointly review official audit findings conducted by the State or municipality in order to assess the programmatic oversight and fiscal management employed by the audited provider and to determine the corrective or enforcement actions that may be warranted. When audit findings disclose the misuse of public funds, NYSED will place the provider on conditional approval or in the case of significant findings, provider revocation will be initiated. A provider placed on conditional approval is required to submit a corrective action plan to correct and/or remedy each of the findings of noncompliance and identify how it will or has revised its policies, procedures and practices to address the specific findings and to make systemic changes to be implemented to assure NYSED that these deficiencies and violations will not recur.

*Monitoring Protocol – Board of Regents Reforms to Enhance the Fiscal Oversight and Accountability of Special Education Providers*

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

- A new unit was formed in the Office of Special Education to address preschool legislative and regulatory issues, and policy guidance; to coordinate the provider application processes; and to liaison with other NYSED offices regarding preschool special education.
- Revised applications for new preschool providers and for program modifications were created. Applications are approved by NYSED based on a revised team review process with established standardized criteria to evaluate program quality, program environment, internal controls, fiscal matters and governance structure.

- The Office of Special Education initiated a cyclical schedule for the review and reapproval of preschool providers using a new monitoring review protocol to add focus to preschool service delivery structures and models, efficient use of staff and resources, and instructional effectiveness. The municipalities in which the programs under review are located, or for which the municipality bears fiscal responsibility, are given an opportunity to submit written comments concerning the program under review. Pursuant to §4410, reapproval review of an approved program cannot be conducted more than once every three years, unless NYSED determines on its own initiative or at the request of a municipality, that a reapproval review of a program is required earlier or more frequently. Upon completion of the program reviews, and after review of each program's response to any findings by NYSED that the program has failed to meet the criteria for reapproval, NYSED will either reapprove the program or program component at issue, if sufficient evidence exists to establish that the program or component is in compliance; or place the program on a corrective action plan sufficient to correct and/or remedy each outstanding finding within a specified time. If placement of the program on a corrective action plan is not feasible because the nature of the findings precludes corrective or remedial action, NYSED will initiate actions to revoke the approval of the program.
- On-line training modules were developed by the Rate Setting Unit in order to instruct providers on how to properly complete the CFR, in accordance with applicable reimbursement regulations and guidelines. This training is currently required for new preschool special education providers and providers undergoing reapproval review.
- Governance training is being developed by NYSED to outline the legal, fiduciary, and ethical responsibilities of board members and owners. NYSED is working to develop a template that may be used by providers to review their financial policies and procedures, test, and evaluate internal controls and review that operations are in compliance.
- NYSED is developing a Request for Qualifications (RFQ) to select Certified Public Accounting firms that may certify the CFR or financial statements of a private special education provider. Pursuant to a draft RFQ, a firm may be disqualified for failing to adhere to requirements contained within Commissioner's regulations, the Consolidated Fiscal Reporting and Claiming Manual, or Generally Accepted Accounting Principles.
- A protocol was established for referral of CPAs to the Office of Professions for professional misconduct based on substantial errors contained in a provider's cost report that has been certified by a CPA and in cases where an audit of a provider contains findings of fraudulent spending or other misuse of public funds.

## Preschool Special Education Reimbursement – Data Trends

A review of the period from 2002-03 to 2011-12 shows markedly different regional trends in annual program reimbursement and student counts for SEIS, with considerably less variation for Special Class Programs and SCIS.

Table 2: Total Reimbursement and Student Counts

Region\Program	2002-03	2007-08	2011-12	Change	% Change
<b>New York City</b>					
Special Class & SCIS					
Reimbursement	\$303,378,817	\$438,743,805	\$506,825,165	\$203,446,348	67.0%
Student Count	14,760	17,475	18,251	3,491	23.7%
Cost/Student	\$20,554	\$25,106	\$27,770	\$7,216	35.1%
SEIS					
Reimbursement	\$51,680,765	\$121,558,183	\$214,916,836	\$163,236,071	315.9%
Student Count	3,691	7,496	12,209	8,518	230.8%
Cost/Student	\$14,002	\$16,216	\$17,603	\$3,601	25.7%
<b>Rest of State (all counties outside of New York City)</b>					
Special Class & SCIS					
Reimbursement	\$334,667,833	\$458,221,540	\$483,267,600	\$148,599,767	44.4%
Student Count	18,034	18,907	18,213	179	1.0%
Cost/Student	\$18,558	\$24,236	\$26,534	\$7,976	42.9%
SEIS					
Reimbursement	\$35,189,684	\$64,716,299	\$45,679,902	\$10,490,218	29.8%
Student Count	5,365	8,031	7,212	1,847	34.4%
Cost/Student	\$6,559	\$8,058	\$6,334	(\$225)	(3.4%)

Source: STAC Data reflecting total authorized State and local reimbursement for approved students

For purposes of this chart, Special Class & SCIS, and SEIS reimbursement totals include any associated transportation costs.

- **Special Class & SCIS Programs:** New York City's growth in Special Class and SCIS reimbursement and student counts significantly exceeded that of Rest of State (ROS) over the period. Much of this growth, however, can be attributed to an increase in the number of preschool children served, coupled with demographic changes over the 10-year period that saw the total population of preschool children ages three and four, in ROS counties drop by 6 percent. By 2012, ROS counties were providing preschool Special Class/SCIS services to approximately 7.2 percent of their total child population ages three and four, while New York City provided these services to 9 percent of its preschool population.
- **SEIS Programs:** In ROS counties, SEIS reimbursement and student counts show modest increases over the 10-year period but have been declining since 2007-08. SEIS reimbursement in NYC, however, has grown by 316 percent while student counts have increased by 231 percent. SEIS in NYC now accounts for more than 44 percent of total reimbursement for Special Class, SCIS, and SEIS while in ROS counties it is only 8.6 percent. In 2012, NYC provided SEIS services to 6 percent of its preschool population ages three and four while in ROS counties outside of NYC, 2.8 percent of the preschool population received these services.

- SEIS vs Special Class Cost per Student: For Special Class and SCIS Programs, NYC's cost per child is only about 5 percent higher than ROS counties, which may be explained by regional cost differences. But for SEIS, the NYC per child cost is nearly 180 percent above the ROS level.

These data trends are more fully analyzed in the subsequent sections of this report.

#### Impact of Zero Rate Growth in the Tuition Methodology

Beginning in 2009-10 as part of an overall State budgetary effort to restrain spending, annual rate growth and cost of living increases (COLAs) for virtually all human services providers, including preschool special education providers, were frozen. These annual adjustments have resumed in recent years for many human service providers as well as special education providers serving school age children. However, annual rate growth for preschool special education programs continues to be frozen in 2014-15, the sixth consecutive year.

Table 3: Percentage of Gross Program Costs Funded Through NYSED Rates

REGION	2008-09	2011-12	CHANGE
<b>New York City (Bronx, New York, Richmond, Kings and Queens)</b>			
Special Class Full Day	97.96	97.53	(.43)
SCIS Full Day	93.74	95.18	1.44
Special Class Half Day	97.29	94.32	(2.97)
SCIS Half Day	88.74	86.21	(2.53)
SEIS	98.73	98.16	(.57)
<b>Long Island (Nassau and Suffolk)</b>			
Special Class Full Day	98.80	97.53	(1.27)
SCIS Full Day	96.04	95.33	(.71)
Special Class Half Day	96.50	91.67	(4.83)
SCIS Half Day	92.08	90.98	(1.10)
SEIS	98.05	97.54	(.51)
<b>Mid-Hudson (Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, and Westchester)</b>			
Special Class Full Day	97.02	95.45	(1.57)
SCIS Full Day	96.70	95.16	(1.54)
Special Class Half Day	90.08	90.81	.73
SCIS Half Day	90.43	83.23	(7.20)
SEIS	96.52	96.26	(.26)
<b>Rest of State (all counties outside of the New York, Long Island, and Mid-Hudson Regions)</b>			
Special Class Full Day	97.14	91.98	(5.16)
SCIS Full Day	96.62	95.72	(.90)
Special Class Half Day	87.50	87.07	(.43)
SCIS Half Day	92.82	88.81	(4.01)
SEIS	93.96	91.77	(2.19)

Source: NYSED Rate Setting Unit Data Analysis



Table 3 illustrates the impact of the freeze on provider tuition rate growth for Special Class and SCIS, half day and full day programs, and SEIS during the first three years, 2009-10 through 2011-12. In general, it shows that reimbursement for gross program costs (i.e. those program costs deemed approvable before the application of the Non-Direct Cost Screen and Total Cost Screen) has declined for most providers following the onset of the freeze, in some cases significantly. Varying impacts by program and region include:

- The SEIS percent of gross costs funded is the strongest among the programs in every region except ROS. Although percent reimbursement for SEIS gross costs declined in all regions, NYC SEIS providers continued to receive over 98 percent reimbursement while SEIS programs in upstate ROS counties dropped below 92 percent. In addition to variations in the number of units provided, this large regional difference in the percent of gross cost funded may also be influenced by the availability of higher SEIS reimbursement rates in NYC as the freeze took effect.
- For full day Special Class programs, providers in upstate ROS counties have, by far, experienced the greatest percentage reductions, and by 2011-12 were receiving reimbursement for less than 92 percent of their gross programs costs. In part, this may be attributable to a 6.7 percent drop in ROS full day Special Class care days during the period -- compared to significant care day increases in other regions for this program category. Although care day declines should, in theory, be rate neutral if providers act to make commensurate spending reductions, spending reductions can be difficult to achieve in the short term and certain fixed costs will remain depending on program operations.
- Full day SCIS programs in NYC experienced an increase in their percent of gross costs reimbursed through NYSED tuition rates while other regions declined. This divergence may again have been affected by care day changes, as NYC providers saw a 16.5 percent increase in care days for full day SCIS while half day SCIS programs decreased by 24.5 percent. It is conceivable that the increases in enrollment, and associated tuition revenue, in full day SCIS programs helped to mitigate the impact of the tuition rate freeze in these programs.
- Among all regions, half day Special Class and SCIS programs experienced the largest funding deficits over the time period and also had the greatest reduction in care days with a 27.17 percent decrease in Special Class care days and a 19.13 percent care day reduction in SCIS programs statewide.

When final data for the most recent three years (2012-13 through 2014-15) of the rate growth freeze becomes available, many preschool special education providers, particularly those in upstate ROS counties, could be expected to show even greater percentage reimbursement reductions against their allowable gross costs. Special Class and SCIS providers have indicated that during the years with no tuition rate increase, they have managed budgets by reducing staff; changing the services provided; delaying maintenance and repairs; reducing employee salaries, health insurance, pension, and fringe costs; eliminating social work staff; reducing school supplies and clerical supports; and made other cuts to save money while maintaining essential core program operations. Another concern noted was the inability to retain qualified staff with existing

funding levels. Increasingly, Special Class and SCIS providers have raised fiscal viability concerns and many have stated they are in jeopardy of closing without financial relief.

As a result of funding concerns, there has been a substantial increase in tuition waiver requests aimed to preserve the fiscal viability of preschool special education providers that are intended to provide some targeted relief under limited circumstances. Tuition waivers are limited and often do not provide timely fiscal relief. Unless addressed as part of a broader rate reform, provider reimbursement losses resulting from the continued rate growth freeze may ultimately affect the quality and availability of preschool special education services.

## **SPECIAL EDUCATION ITINERANT SERVICES: ALTERNATIVE REIMBURSEMENT METHODOLOGIES AND MONITORING PROTOCOLS**

**Special Education Itinerant Services:** SEIS are services by which a special education teacher provides specially designed instruction on an itinerant basis (i.e., the teacher goes to the setting where the child is - for example: Universal Prekindergarten Program (UPK), Head Start; other day care or regular preschool program; hospital or another child care location). In instances where the child has documented medical or other special needs indicating that the child cannot be transported to another site, the child could receive SEIS in the student's home.

### **Calculation of SEIS Rates – Program Codes 9135-9139**

Under the existing cost-based tuition rate setting methodology, SEIS tuition rates are based on actual reimbursable expenses and mandated billable units of service, as reported annually on the CFR. For the purposes of a SEIS program, the CFR captures expense, revenue, staffing, enrollment and units of service data for a given fiscal period (school year or calendar year). Pursuant to Commissioner's Regulations 8 NYCRR 200.9, tuition rates for SEIS must be published as half hour tuition rates and billing by providers to municipalities must be done in half hour blocks or units of time.

Once a complete CFR has been submitted and reviewed by the Rate Setting Unit, necessary adjustments are applied to the reported data, pursuant to regulation and the RCM. This includes the median salary adjustment for the Executive Director, Assistant Executive Director, and Chief Financial Officer. In the case of a provider that operates multiple programs, a portion of any median salary adjustment will be applied to the SEIS program based on the program's share of net agency administration expenses.

The calculation of SEIS tuition rates are also subject to the minimum billable units of service adjustment, which increases the units of service used in the calculation of the corresponding tuition rate if the reported mandated billable units of services are less than 66 percent of the teachers' total employment hours converted into half-hour units. This adjustment is done in accordance with 8 NYCRR 200.9 which states that billable time may not be less than 66 percent or more than 72 percent of any special education itinerant teacher's total employment hours, and that providers are required to maintain adequate records to document direct and/or indirect service hours provided, as well as time spent on all other activities related to each student served. Furthermore, pursuant to 8 NYCRR 200.9, billable time includes time spent providing direct and/or indirect special education itinerant services.<sup>4</sup> The difference between the total number of hours a special education itinerant teacher is employed and the hours of direct and/or indirect SEIS provided must be spent on required functions such as the coordination of services; preparation for and attendance at committee on preschool special education meetings; conferencing with the student's parents; classroom observation; and/or travel.

Once all adjustments are complete, SEIS tuition rates are calculated as half-hour rates by dividing allowable expenses, less applicable offsetting revenues and cost screens, by the greater of the reported

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<sup>4</sup> *Direct special education itinerant services* are specialized individual or group instruction provided by a certified special education teacher. *Indirect special education itinerant services* means consultation provided by a certified special education teacher to assist the child's teacher in adjusting the learning environment and/or modifying their instructional methods to meet the individual needs of a preschool student with a disability who attends an early childhood program.

mandated billable units of service or the units of service calculated in the minimum billable units of service adjustment. Per existing tuition rate setting methodology, the calculation of SEIS tuition rates are subject to: 1) the non-direct care cost parameter (calculated by comparing the total adjusted/allowable non-direct care costs to the product of multiplying the total adjusted/allowable direct care costs by .4286, which is the ratio of 30/70 for non-direct care/direct care costs); 2) the subtraction of applied revenues from total adjusted costs after the application of the Non-Direct Care Screen; and 3) to the Total Cost Screen (calculated by comparing the adjusted/allowable gross costs on a per unit basis, after the application of the Non-Direct Care Screen and the subtraction of applied revenues, to the prior years per unit rate plus approved growth factor).

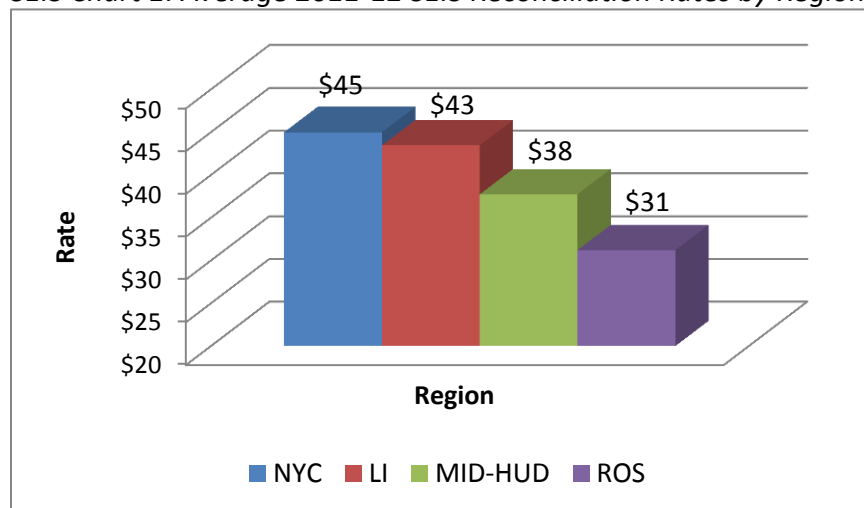
New SEIS programs are issued a regional average tuition rate for the first two years of operation. Both years are subject to reconciliation. Beginning with the third year of operation, SEIS tuition rates are calculated based on actual reported data, as reported in the CFR, and held to the prior year's per session rate plus approved growth factor. Regional tuition rates for SEIS providers are approved by DOB as part of the tuition methodology and published annually by the Rate Setting Unit. Regional tuition rates were calculated by using the total allowable expenses for all providers within each individual region, after adjustments, and dividing that sum by all SEIS mandated billable units of service for that region in the corresponding year. Regional tuition rates are rebased periodically and then carried forward with an annual adjustment to reflect approved growth. Each county and the City of New York have their own tuition rates. For 2014-15, the regional tuition rates range from \$31-\$43, per half-hour session.

#### SEIS Fiscal Data Under Current Methodology

For purposes of this study, data analysis was performed on 2011-12 reconciliation tuition rates (184 providers with certified 2011-12 reconciliation rates, as of August 2014).

Under the current cost-based tuition rate setting methodology, SEIS tuition rates show significant variation, both between and within regions. *SEIS Chart 1: Average 2011-12 SEIS Reconciliation Rates by Region* compares the average reconciliation tuition rates for four regions: New York City (Bronx, New York, Richmond, Kings and Queens Counties); Long Island (Nassau and Suffolk Counties); Mid-Hudson (Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, and Westchester Counties); and the Rest of the State (remaining counties within the State).

*SEIS Chart 1: Average 2011-12 SEIS Reconciliation Rates by Region*

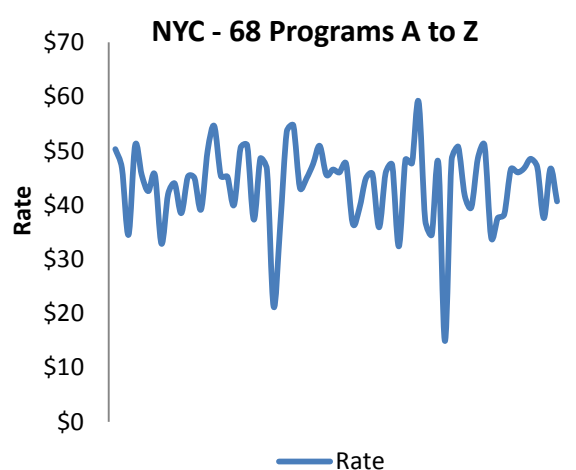


New York City's average SEIS tuition rates are only slightly higher than the Long Island region, but are 45 percent higher than Rest of State (ROS) counties outside the downstate regions. By comparison, the 2011-12 average regional tuition rates for full-day Special Class programs in New York City are less than 12 percent above the ROS counties outside the downstate regions, and are actually lower than the Long Island and Mid-Hudson regions.

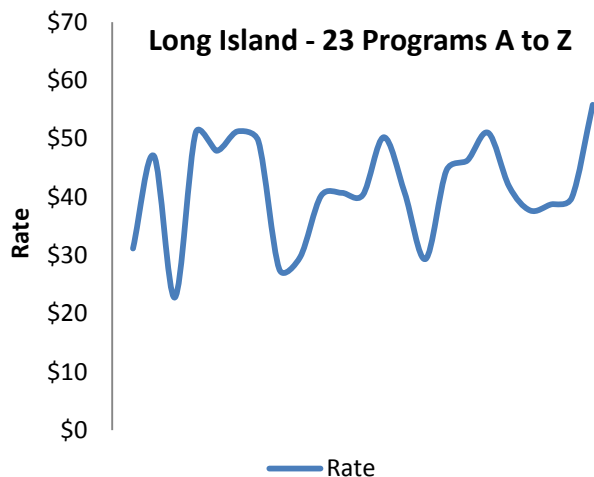
Source: CFR reported data for 2011-12 reconciliation tuition rates certified as of August 2014

Within each region, SEIS tuition rates vary greater by provider. To illustrate this point, *SEIS Chart 2: SEIS Tuition Rate Variability by Region* compares 2011-12 reconciliation tuition rates for each provider (categorized alphabetically with each provider's rate plotted on the graph). Although there is a wide disparity of rates within each region, the provision of services for each SEIS program is based on the same service delivery standard: half hour unit of instruction provided by a certified special education teacher.

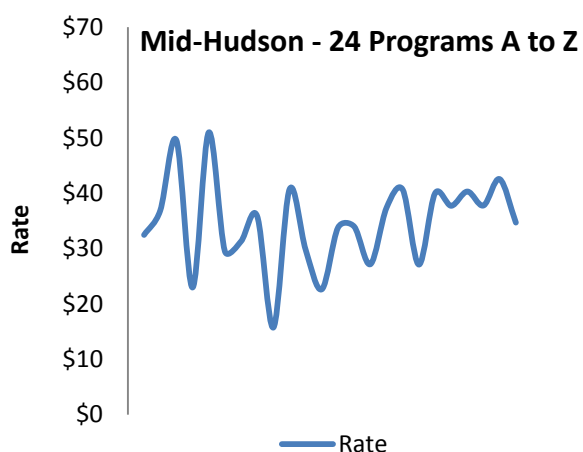
*SEIS Chart 2: SEIS Tuition Rate Variability by Region*



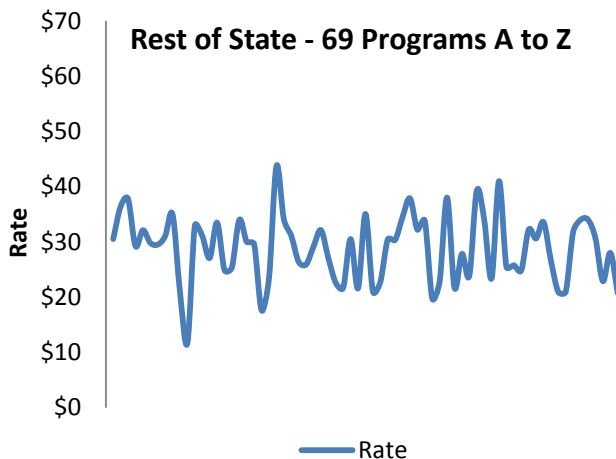
High	Low	Average
\$59	\$15	\$45



High	Low	Average
\$56	\$23	\$43



High	Low	Average
\$51	\$16	\$38

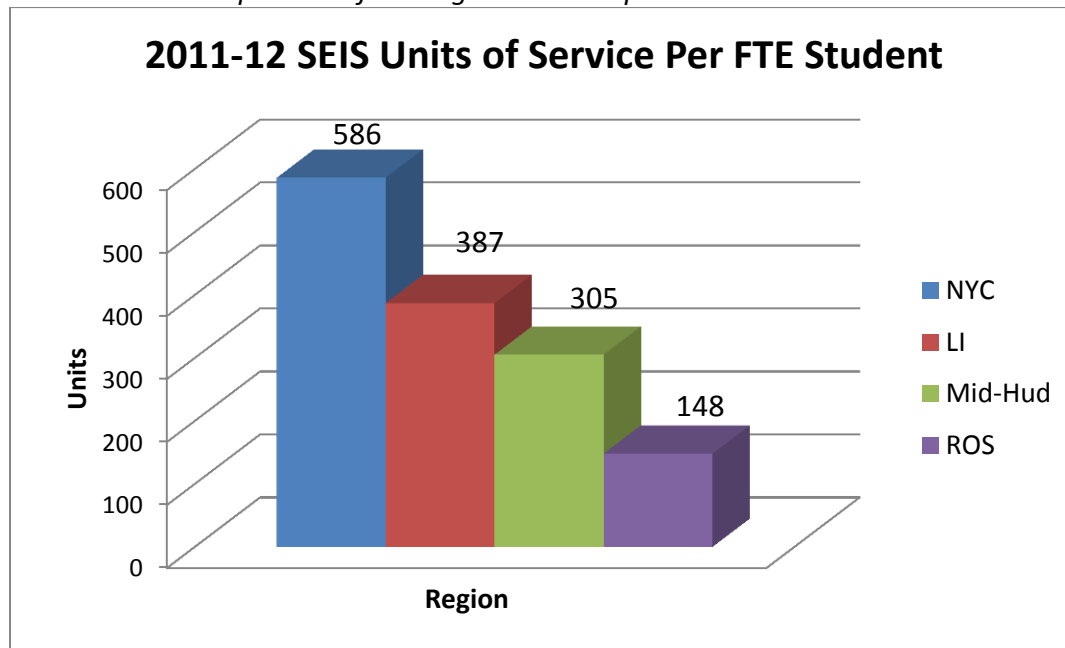


High	Low	Average
\$44	\$12	\$31

Source: CFR reported data for 2011-12 reconciliation tuition rates certified as of August 2014

*SEIS Chart 3: Comparison of Average SEIS Units per Student* compares the average number of SEIS units provided to each full-time equivalent (FTE) student among regions. The units per student were calculated as half hour sessions delivered divided by student FTE enrollment.<sup>5</sup> The SEIS units of service provided to students in New York City are substantially greater than in other regions of the state, and nearly four times higher than in the Rest of State region, which provides the fewest sessions per student.

*SEIS Chart 3: Comparison of Average SEIS Units per Student*



Source: CFR reported data for 2011-12 reconciliation tuition rates certified as of August 2014

In addition, the frequency in which students in New York City receive SEIS units per week is significantly disparate to SEIS provided in other regions of the state. For all other regions of the state, the vast majority of the total verified SEIS sessions were provided to students receiving less than 10 sessions per week. In New York City, the majority of SEIS sessions provided were provided to students receiving 10-20 or 20-30 sessions per week.

*SEIS Chart 4: Frequency of SEIS Sessions Mandated Per Week*

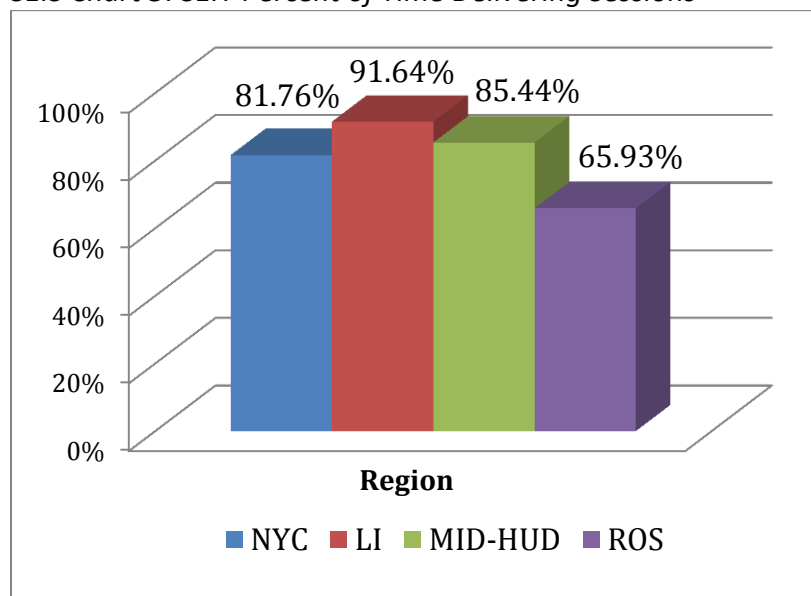
REGION	Total Sessions Verified	% > 10 per week	% 10-20 per week	% 20-30 per week	% 30-40 per week	% 40 or more per week
LI	292,558	<b>83.86%</b>	<b>14.49%</b>	<b>1.10%</b>	<b>0.34%</b>	<b>0.21%</b>
MH	356,795	<b>71.68%</b>	<b>19.28%</b>	<b>7.24%</b>	<b>1.46%</b>	<b>0.35%</b>
ROS	415,386	<b>94.29%</b>	<b>4.22%</b>	<b>1.22%</b>	<b>0.07%</b>	<b>0.20%</b>
NYC	4,144,271	<b>12.29%</b>	<b>45.94%</b>	<b>32.55%</b>	<b>6.42%</b>	<b>2.80%</b>

Source: STAC 2011-12 10 Month Placements with Verified Services Only (as of August 2014)

<sup>5</sup> Where sessions delivered were not reported, the lower of mandated sessions or teacher half hours paid was used. FTE student data weighted for 12 months, prorated for starting/ending enrollment dates.

As described earlier, the SEIS minimum billable units of service adjustment requires at least 66 percent of special education itinerant teacher's total employment hours to be spent providing direct and/or indirect service. *SEIS Chart 5: SEIT Percent of Time Delivering Sessions* illustrates the time teachers spent delivering units of service in the four regions of the State by dividing the half hour sessions delivered by the total teacher half-hours paid. SEIS providers are required to report sessions delivered on the CFR. However, review and analysis of data indicates that not all did so. Therefore, for analytical purposes, where sessions delivered were not reported, the lower of sessions reported and used to calculate the SEIS tuition rate or teacher half hours paid was used.

*SEIS Chart 5: SEIT Percent of Time Delivering Sessions*



On average, New York City, Long Island, and Mid-Hudson teachers spend more than 80 percent of their employment hours delivering direct and/or indirect services. The Rest of State region is indicative of a larger travel component for teachers that cover more sparsely populated areas; and also teachers who provide fewer units per student than in the other regions of the State.

Source: CFR reported data for 2011-12 reconciliation tuition rates certified as of August 2014

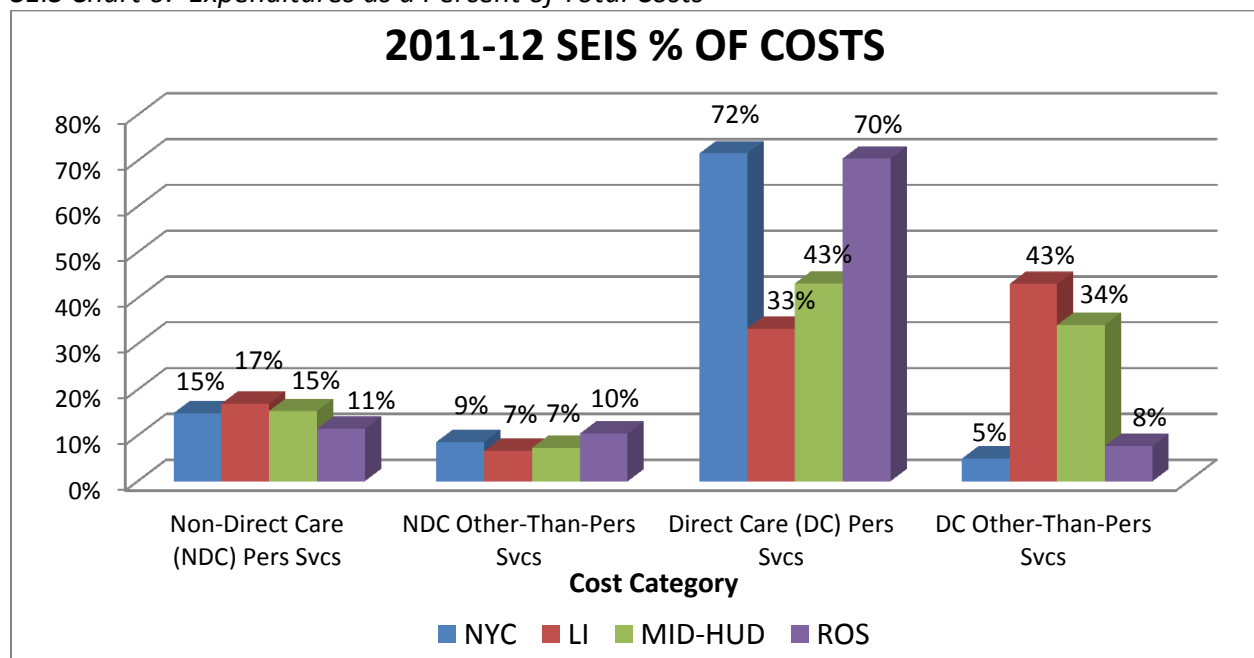
*SEIS Chart 6: Expenditures as a Percent of Total Costs* displays the reported expenditures for SEIS programs in 2011-12. Reported expenses for approved preschool programs (SEIS, Special Class and Special Class Integrated Setting) may be divided into personal service, fringe benefits, other-than-personal services (OTPS), equipment, property, and agency administration. Personal services, fringe benefits, OTPS expenses, and equipment may be categorized as either direct care or non-direct care depending on the purpose. Property and agency administration expenditures are categorized as non-direct care.

Direct care expenses for SEIS include: salaries and wages, including mandated and non-mandated fringe benefits paid to staff providing instruction and direct care services to students with disabilities. Direct care expenses also include certain OTPS costs, such as contracted direct care, supplies and materials, and staff development. Non-direct care expenses include salary and wages, including mandated and non-mandated fringe benefits paid to staff whose primary function is management and administration of the program, as well as expenses for agency

administration.<sup>6</sup> Non-direct care OTPS and facility expenses include, but are not limited to: repairs and maintenance; utilities; lease/rental property (office space); staff travel; telephone; household supplies; accountants and consultants; organization dues; and administrative staff development.

As demonstrated by the 2011-12 reported expenditure data, the largest portion of total expenditures for all regions is attributed to personal services, which for the purposes of the chart, is comprised of salary and fringe benefits). Statewide, equipment represented .19 percent of total 2011-12 reported expenditures (captured in the direct care OTPS category for purposes of the chart); and SEIS property expenditures were 1.23 percent of total 2011-12 reported expenditures (for purposes of this chart, captured in in the non-direct OTPS category).

*SEIS Chart 6: Expenditures as a Percent of Total Costs*



Source: CFR reported data for 2011-12 reconciliation tuition rates certified as of August 2014

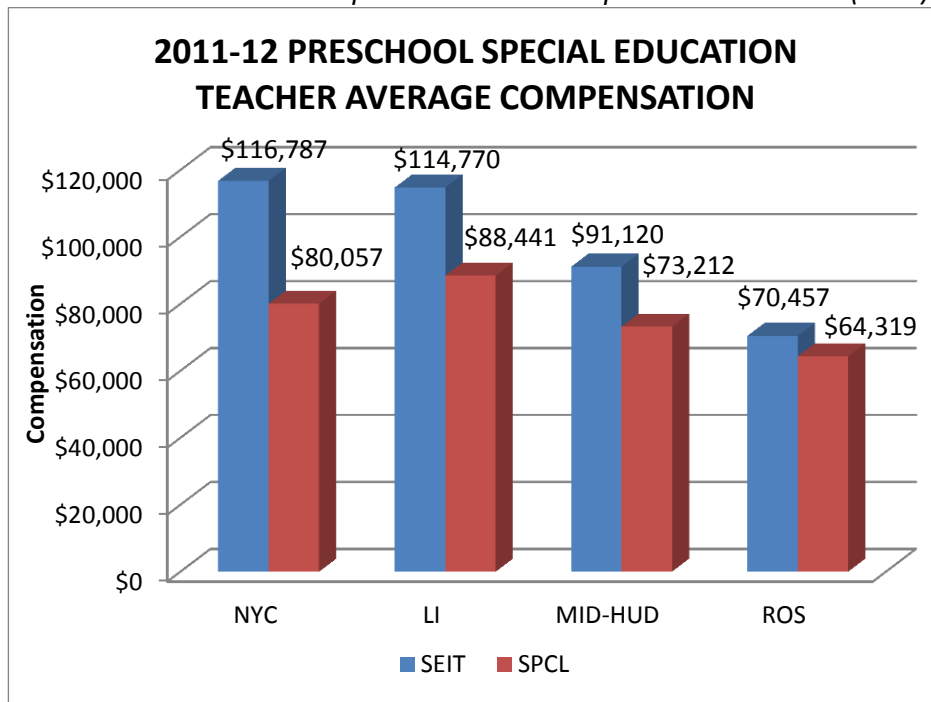
The disparity in Direct Care Personal Services and Direct Care OTPS costs for New York City and Rest of State vs. Long Island and Mid-Hudson is attributed to a greater usage of contracted teachers in the Long Island and Mid-Hudson regions. A NYSED directive was issued in June of 2011 to address the requirement that approved SEIS programs must have an “employer-employee” relationship with special education teachers providing services rather than a contractual relationship. Therefore greater compliance in the affected regions in subsequent years could be predicted. SEIS program reported expenses for contracted direct care are scrutinized in order to monitor compliance with the 2011 NYSED directive.

<sup>6</sup> Agency administrative expenses are not directly related to one specific program but rather are attributable to the overall operation of an agency and allocated to all programs operated by the agency, including charges from parent organizations



With higher average regional rates, New York City SEIS programs provide teacher compensation which substantially exceeds Rest of State levels, as well as that provided to Special Class and SCIS teachers throughout the State. *SEIS Chart 7: Teacher Compensation SEIS vs. Special Class & SCIS* compares teacher compensation for SEIS and Special Class/SCIS. It is important to note that for comparison purposes, compensation for 10 month programs was annualized.

*SEIS Chart 7: Teacher Compensation SEIS vs. Special Class & SCIS (SPCL)*

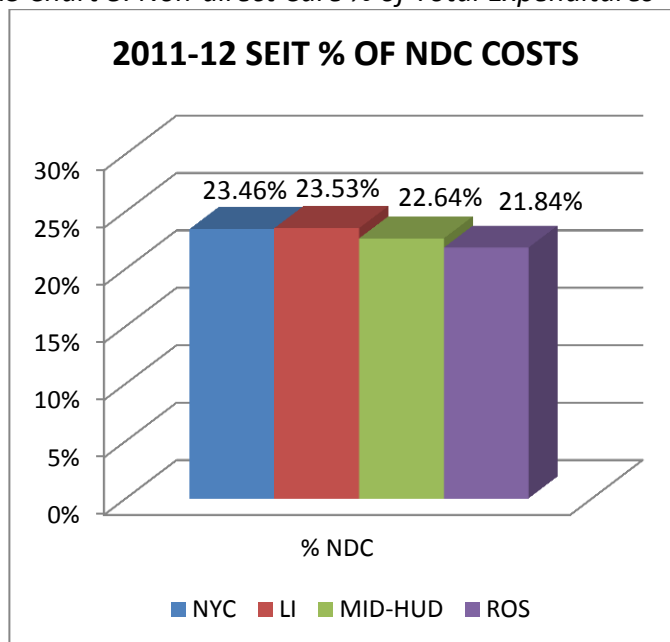


The average compensation of \$116,787 for SEIS teachers in NYC exceeds that of Special Class teachers by nearly 46 percent, while the gap in other regions is considerably lower. While some variation between SEIS and Special Class compensation could be expected, there are no major programmatic or professional qualification differences to support a significant gap between the compensation paid to SEIS teachers vs. compensation paid to Special Class teachers.

Source: CFR reported data for 2011-12 reconciliation tuition rates certified as of August 2014

Under the current methodology, SEIS programs are held to the same 30 percent non-direct care cost parameter as Special Class and Special Class Integrated Setting programs. While SEIS providers on average fall well below this threshold with a statewide average of approximately 23 percent compared to approximately 27 percent in non-direct care spending statewide for Special Class/SCIS programs, SEIS does not require significant spending on facility costs compared to Special Class/SCIS. For example, statewide, SEIS property expenses comprised of 1.23 percent of total 2011-12 expenditures; for Special Class property was 5.57 percent of total 2011-12 expenditures. Also, exclusive of property costs, the average non-direct care spending of New York City SEIS providers is 9 percent higher than Special Class/SCIS providers.

*SEIS Chart 8: Non-direct Care % of Total Expenditures*



Source: CFR reported data for 2011-12 reconciliation tuition rates certified as of August 2014

The 2014-15 New York State Enacted Budget amended §4410 of the Education Law to direct that commencing with 2015-16 reimbursement rates, SEIS must be reimbursed based on the actual attendance of preschool children receiving services rather than on an enrollment basis. The Executive Budget Briefing Book stated that this language intends to limit payment for only services that are actually provided to incentivize the delivery of mandated services to children. In order to effectuate the statutory directive, NYSED will develop guidance to providers and Counties to outline new reimbursement rules and reporting requirements for 2015-16.

Altering the number of SEIS sessions provided in the existing SEIS tuition rate calculation will impact both providers' rates and total reimbursement. Under the current methodology, fewer units provided results in a potentially higher tuition rate up to an amount allowed by the Total Cost Screen parameter. Therefore, if the existing calculation was modified to use actual units delivered, rather than mandated billable units, as the basis for calculating SEIS providers' tuition rate, then providers not impacted by a Total Cost Screen would see an increase in their overall tuition rate. This may be illustrated by *SEIS Chart 8: Comparison of SEIS Rates Calculated using Mandated Units vs. Actual Units*, which compares 2011-12 average reconciliation tuition rates and total reimbursement using mandated billable units of service, under the existing methodology, to the average reconciliation tuition rates and total reimbursement that would result in 2011-12 if actual units of service were used to calculate the tuition rate.

It is important to note that providers recently began reporting the number of actual SEIS units of service they deliver to the Rate Setting Unit. As this is a new reporting requirement, and as this data is not used in the existing tuition rate calculation, the reliability of the aggregate data is not verified.<sup>7</sup> The aggregate data is also incomplete because some providers did not report. For analysis purposes for *SEIS Chart 8: Comparison of SEIS Rates Calculated using Mandated Units vs. Actual Units*, where actual units of service were not reported, the lower of mandated billable units of service or STAC units verified were used.

Although the average tuition rates increase to some extent, up to an amount allowed by the total cost screen parameter, because fewer units of service are used in the tuition rate calculation, the total reimbursement decreases because the total cost screen parameter limits the amount that may be reimbursed for each actual session delivered. Therefore, the approach of changing only the units of service used in the tuition rate calculation would have resulted in higher tuition rates for some providers, but approximately \$22.40 (million) less reimbursement to SEIS providers statewide for 2011-12, assuming the same number of units would have been delivered under the new reimbursement rules.

*SEIS Chart 8: Comparison of SEIS Rates Calculated using Mandated Units vs. Actual Units*

	2011-12 RECON MANDATED UNITS			2011-12 RECON USING ACTUAL UNITS		
REGION	MANDATED UNITS	REIMB \$\$	AVG RATE	ACTUAL UNITS	REIMB \$\$	AVG RATE
NYC	3,777,124	\$170,008,501	\$45.01	3,305,787	\$150,324,515	\$45.47
LI	559,047	\$24,299,433	\$43.47	532,918	\$23,597,895	\$44.28
MID-HUD	227,911	\$8,603,526	\$37.75	204,654	\$7,889,301	\$38.55
ROS	417,585	\$13,036,756	\$31.22	372,065	\$11,692,087	\$31.42
TOTAL	4,981,667	\$215,948,216	\$43.35	4,415,424	\$193,503,797	\$43.82

Source: CFR data for 2011-12 recon tuition rates certified as of August 2014

<sup>7</sup> The actual units of service provided is required to be reported on the CFR; however the CFR manual states that this information is for analysis purposes only and is not replacing the billable units of service.

### *Reimbursement Based on Service Delivery – Absentee Factor for SEIS Rates*

As alternative reimbursement methodologies for SEIS are explored, it is important to consider that any tuition rate established for 2015-16 will only be paid to the provider upon the delivery of the SEIS session. In order to obtain program approval/reapproval, providers must establish a clear plan with time frames identified for rescheduling missed SEIS sessions due to staff absences, which includes arrangements for SEIS to be provided by qualified substitute staff or rescheduled by the assigned SEIS teachers. Missed sessions, as a result of student absences, may be made up to a certain extent, as appropriate; however there may be instances where circumstances prevent all mandated sessions from being delivered. This may be more prevalent if the child is medically fragile and/or is a child with severe disabilities.

Other programs, such as Early Intervention and Related Service providers from the counties' list (Related Service provider), operate under a "fee for service" approach, or payment of a set fee upon service delivery, and have a factor built into the rate to account for student absences.

For example, Early Intervention rates were established by using salary for professional staff as a basis for the rate and then added costs for fringe benefits, indirect costs, travel and meeting/administrative activities, and a "no show rate" factor. The no show rate factor for Early Intervention is 15 percent of the base rate, or 20 percent in cases of enhanced group developmental intervention where the needs of the children served are greater.

Preschool special education Related Service provider rates are determined at the county level, with each county setting its own rate, and are also paid to providers upon the delivery of service. Although the process or method for establishing the Related Service provider rate is not uniform across all counties within the state, several county officials stated that an "absentee factor" is included within the established Related Service provider rate, as a cost of doing business.

As SEIS tuition rates transition from reimbursement based on mandated billable units of service to actual units of service delivered, one method that may be used in the new SEIS tuition rate calculation is to add a factor to allow the tuition rate to include reimbursement for a specified number or percentage of missed sessions. For example, if the 2013-14 SEIS mandated billable units of service are used as the basis for calculating the 2015-16 SEIS tuition rates, the mandated billable units of service could be adjusted down by a certain factor to represent that fewer sessions are expected to actually be delivered, as compared to the number mandated. This would result in a tuition rate calculation that would divide the providers' costs across fewer units and produce a higher per unit cost/higher SEIS tuition rate. Alternatively, if the SEIS tuition reimbursement methodology were based on a regional rate, then a standard rate "add-on" factor could be applied to the base rate similar to the approach used for Early Intervention rates. Also similar to Early Intervention, different absentee factors may be used depending on the needs of the students; however as with Early Intervention, this could be used in limited situations.

In order to incentivize SEIS to be provided in a group setting (group SEIS), options could be explored to ensure that full reimbursement for a unit delivered is allowed even if one or more students within the group are absent.

### *Modifications to SEIS Rate Calculations*

The existing disparity in SEIS tuition rates among providers within the same region may not support appropriate programmatic objectives relating to the delivery of these services. Whether the SEIS rate setting methodology remains provider cost-based, or is altered to reflect a fixed rate, several aspects of the existing methodology may be explored in order to calculate providers' tuition rates going forward to better reflect the appropriate costs of providing SEIS:

#### 1. Alter the Minimum Billable Units of Service Adjustment

As described previously, the minimum billable units of service adjustment is intended to ensure that a certain percentage of teacher time is spent directly providing instructional services to students and the remainder for other required functions. As illustrated by *SEIS Chart 5: Average Percent of SEIS Teacher Time Delivering Sessions*, the teacher time delivering sessions varies depending on the region of the state. For teachers with similar caseloads, the time needed for coordinating services, preparation, meetings, conferences, and classroom observations may be uniform across the State; however, for teachers with different caseloads, the time needed for these authorized functions may vary greatly. Travel time may be widely different based on both caseload and region of the State.

The existing 66 percent minimum could be altered to reflect geographic density or sparsity in order to provide less or more travel time depending on the county in which services are provided.

Furthermore, methods for obtaining provider caseload data (the number of students served by each FTE teacher) could be explored in order to develop a teacher to student ratio for each provider in order to account for greater or lesser need to reimburse travel time or time for other authorized activities that may vary depending on caseload.

The existing method for calculating the minimum billable adjustment could also be amended in order to better reflect the actual cost for the non-reimbursable expense. Instead of increasing the mandated billable units of service, the reported teacher compensation could be decreased to reflect a reduction in the paid hours needed to provide the instructional services to students. This in turn would reduce the amount of non-direct care costs allowed in the rate calculation via the Non-Direct Care Screen.

#### 2. Hold SEIS Teacher Compensation to a Regional Average

SEIS Chart 7: Comparison of Teacher Compensation SEIS vs. Special Class/SCIS, demonstrates a large disparity between compensation among programs types. In order to more closely align SEIS teacher compensation with Special Class/SCIS teacher compensation, a limit on SEIS teacher compensation could be established. This limit could be based on the average salary and fringe benefits of special education teachers employed by a public and/or private entity.

The development of the proxy or comparison to be used for the purposes of this compensation limit would need to consider differences in standard work week and be adjusted to apply equally to 10 month and 12 month programs.

### 3. Classify SEIS Supervising Teachers as Program Administration Staff

The Supervising Teacher position title codes are for those individuals who provide direct supervision of teachers. Currently, the CFR allows certified special education teachers, with appropriate administrative certification if supervising is more than 25 percent of their time, to act as a Supervising Teacher and to be classified as direct care staff if less than 50 percent of the teacher's assignment is supervising. If a Supervising Teacher is spending more than 50 percent of his or her assignment supervising, the title is administrative and he or she must be a certified administrator or supervisor of special education programs.

Concerns exist when the method used to allocate staff time between delivering services to students and supervisory duties is intended to influence the non-direct care parameter (it is important to note, that this is not a predominant practice as based on analysis of 2011-12 expense data, the majority of SEIS providers classify Supervising Teacher as non-direct care). However, in order to prohibit this practice SEIS Supervising Teachers may be classified solely as administrative staff. In examining this adjustment, consideration could be given to whether it should be allowable to split supervising teacher time spent supervising versus teacher time spent delivering a unit of service among separate position title codes of Supervising Teacher (administrative) and Teacher – Special Education in order to get a more accurate accounting of time spent on direct care and non-direct care functions.

Allowing the job duties of the Supervising Teacher to be reported separately between an administrative position title and Teacher – Special Education position title, when applicable, would also allow the teacher time spent delivering units of service to be included in the minimum billable units of service adjustment. Under the current reporting structure, all of the Supervising Teacher's job duties are required to be reported under one position title of Supervising Teacher. This position's time is not factored into the minimum billable units of service adjustment. Thus, allowing the job duties to be reported under both titles would allow the portion of time spent delivering sessions as a Teacher- Special Education to be captured in the minimum billable units of service adjustment.

### 4. Reduce the SEIS Non-Direct Care Cost Parameter

Under the existing tuition rate setting methodology, SEIS providers are held to the same non-direct cost parameter as Special Class/SCIS, but do not have the same facility or administrative overhead expenses. Also, as illustrated by SEIS Chart 8: Non-direct Care SEIS Cost as a Percentage of Total Expenditures, SEIS providers, on average, are spending well-below the 30 percent non-direct care cost parameter. Therefore, reducing this parameter for SEIS programs may be appropriate.

## 5. Apply Different Executive Compensation Adjustments Depending on Program Operations

The existing median salary adjustment for the Executive Director, Assistant Executive Director, and Chief Financial Officer is applied equally to all approved providers within the same region without consideration of differences in individual program operations. This approach may be compared to Executive Order 38, which is applicable to New York State Executive Agencies. Executive Order 38 limits the amount of Executive Compensation that may be paid by entities that receive state funds or state-authorized payments and a waiver to the limit may be requested, which considers the individual circumstances of a provider.

Altering the existing NYSED median executive salary adjustment could allow for the size and complexity of program operations and administrative duties to better correlate with the amount of its Executive Compensation limit. Preschool special education programs vary greatly in terms of the number of students served, student needs, coordination of education, related or medical services provided, and the number of approved programs operated by a single agency. Applying differing compensation limits that reflect the aspects of an approved program's operation, and the qualifications, credentials and duties of its administrative staff is an alternative to the existing regional median adjustment, which pursuant to current methodology does not recognize these various factors.

### *Alternative 1: Maintaining Existing Cost-Based Methodology with Adjustments*

#### **Reimbursement Methodology:**

With consideration of adjustments that may be made to the tuition rate calculation, as described above, the existing SEIS tuition rate setting methodology could remain provider cost-based. Although some amendments to regulation, the RCM, and CFR reporting requirements would be necessary, depending on which adjustments to the tuition rate calculation are made, ultimately, the overall structure of a provider cost-based tuition rate setting methodology could remain the same.

Under this approach:

- 1) the Rate Setting Unit would establish a prospective tuition rate based on historical cost data and any other tuition rate adjustments adopted in methodology;
- 2) SEIS providers would receive payment of this tuition rate from the counties/NYC for SEIS units delivered;
- 3) reported costs would be submitted on the CFR in the following school year;
- 4) the Rate Setting Unit would use the reported actual costs to calculate a reconciliation tuition rate using actual units delivered and any other tuition rate adjustments adopted in methodology/regulations; and
- 5) counties/NYC and providers would use the reconciliation tuition rates to adjust tuition reimbursement to the amount generated by the reconciled tuition rates.

#### **Monitoring Protocol:**

Existing monitoring protocols would be continued, including annually adjusting reported costs to conform to spending protocols and requirements contained in regulation and the RCM, pursuant

to the applicable approved tuition rate setting methodology. Tuition for costs that are determined to not be allowable, during the review of the CFR/financial statements and as a result of rate calculation, or following an official audit of a provider, may be recovered by making adjustments to the reported costs and issuing a reconciliation tuition rate or tuition rate based on audit.

It is important to note, as the reimbursement transitions to payment for services delivered, rather than services mandated, new review procedures and audit functions could be adopted by the State and counties/NYC to verify the actual provision of the SEIS services.

Program approval/reapproval review and conditions, provider's oversight and accountability standards, and applicable corrective action or revocation measures could remain constant.

The existing program approval/reapproval and RCM requirements for preschool special education providers to establish adequate systems of internal controls and to conduct annual risk assessments could be enhanced to require providers to adopt and implement a specific compliance program, similar to what is currently required of Medicaid providers. Under the Medicaid compliance requirements, providers that operate certain programs or receive reimbursement over a certain monetary threshold are required to develop, adopt and implement effective compliance programs aimed at detecting fraud, waste, and abuse.

Early Intervention providers, preschool special education providers, and approved private schools educating students with disabilities, may be incorporated within a county or school district Medicaid compliance program, pursuant to a written agreement detailing the respective responsibilities of the parties, which may be incorporated into agreements reflecting statements of reassignment, record maintenance, quality assurance review and liability of providers for failure to support the county/district relative to special services and programs paid by or reimbursed through Medicaid. Under the county/school district plan, each provider is required to "ensure an internal compliance presence" by designating an employee vested with the responsibility for the day-to-day operation of the compliance program. This individual must understand the culture and operations of the provider, coordinate the compliance issues handled by the provider, and report directly to the provider's chief executive or other senior administrator and periodically report directly to the agency's governing body regarding the activities of the compliance program.

#### *Alternative 2: Rebased SEIS Rates to a Fixed Rate*

##### **Reimbursement Methodology:**

SEIS tuition rates could be rebased, with the removal of the Total Cost Screen parameter in the base report year (i.e. 2013 for 2015 prospective rates), with consideration to other adjustments or uniform expenditure limits that would be applicable across all providers. For example, this could be achieved by removing the Total Cost Screen parameter and applying one or more of the tuition rate calculation adjustments, previously described. A desired result under this approach would be to have less variability in SEIS tuition rates within a region.

Unlike the cost-based tuition rate setting methodology, this approach would establish a fixed rate that would not be subject to reconciliation. Under this approach:

- 1) the Rate Setting Unit would establish a tuition rate based on a provider's historical cost data and any other tuition rate adjustments adopted in methodology;
- 2) SEIS providers would receive payment of this tuition rate from the counties/NYC for SEIS units delivered;
- 3) reported costs would be submitted on the CFR the following year for an accounting of expenditures, but no reconciliation tuition rate would be issued. The amount of tuition that was paid in the fixed rate remains set regardless of whether the provider's allowable costs were greater or lower on a per unit basis.

**Monitoring Protocol:**

Under a fixed rate approach, the Rate Setting Unit loses its ability to reconcile the tuition rate. Therefore, if a provider exceeds the Executive Compensation limit, spends over the non-direct care cost parameter, provides less than the minimum billable units of service, or has expenditures not allowable, pursuant to regulation, the RCM, or methodology, recouping funds through a reconciliation tuition rate process is not an option. It could be argued that certain aspects of fiscal monitoring currently performed through reconciliation would no longer be applicable in a fixed "fee for service" rate. For example, receiving a fixed rate upon the delivery of services incentivizes efficiency in ensuring that the service is provided, and therefore, the minimum billable units of service adjustment may no longer be needed.

Because providers would still have individual tuition rates under this approach, the CFR data reported in one or several years could be used to rebase the provider's tuition rates going forward. Therefore, if a provider does not follow the rules for reimbursement, as defined in the RCM or regulation, then it could result in a subsequent year tuition rate reduction.

Additionally, rules for repayment could be established requiring providers to repay funds resulting from inappropriate or improper expenditures. This is similar to other programs where, for example, following an audit finding by the Office of the New York State Medicaid Inspector General, providers may be required to pay restitution of overpayments either by full payment or through a repayment agreement for the amount due plus interest charges.

Program approval/reapproval review and conditions, provider's oversight and accountability standards, and applicable corrective action or revocation measures could remain constant. Consideration of new review procedures and audit functions associated with monitoring sessions delivered and requiring program compliance plans, as previously discussed, could be given under this approach.

*Alternative 3: Regional Rate Approach*

**Reimbursement Methodology:**

Establishing one SEIS tuition rate for every provider within the same region would result in greater equity in tuition reimbursement for SEIS providers. Both Early Intervention and Related Service providers from the counties' list (Related Service provider) have regional reimbursement rates;



Early Intervention rates are established by the New York State Department of Health and Related Service rates are established by individual counties. The Department of Health and some counties established a reimbursement methodology by using professional salary data, as a basis, and adding additional cost components (fringe, travel, absentee factor). Other counties used the reimbursement rates for other human service delivery systems as a proxy for their Related Service provider rates. New York City used a competitive bidding process to establish Related Service provider rates. Regardless of the approach used to establish the rate, this methodology results in all providers within the same region having the same rate if providing the same service.

Regional tuition rates could be established by the Rate Setting Unit for SEIS by utilizing the regional tuition rates currently calculated and applicable to new providers, or by applying one or more of the tuition rate calculation adjustments, as previously described, and deriving an average tuition rate from the results by region. Under this approach:

- 1) the Rate Setting Unit would establish one tuition rate for each region.
- 2) SEIS providers would bill at this tuition rate and receive payment from the counties/NYC upon service delivery.
- 3) reported costs would be submitted on the CFR the following year for an accounting of expenditures, but no reconciliation tuition rate would be issued. The amount of tuition that was paid in the regional rate remains set regardless of whether individual providers' allowable costs were greater or lower the tuition generated by the regional rate for that year.

#### **Monitoring Protocol:**

Similar to a fixed rate approach, described in alternative 2, there would be no tuition rate reconciliation under a regional tuition rate setting methodology. However, unlike the fixed rate approach, where SEIS providers are still issued different tuition rates, rebasing tuition rates to lower subsequent year reimbursement for individual providers would not be an option under regional tuition rates.

Regional tuition rates could be rebased periodically or carried forward from year to year with an annual adjustment to reflect approved growth. If enough providers within a region had non-allowable expenditures, these expenditures could potentially impact a regional tuition rate calculation that relied on expenditure data to calculate the tuition rate. However, in a scenario where only a few providers have non-allowable expenditures, a comparably small reduction in allowable expenditures in a calculation would most likely not impact the region's tuition rate. Therefore, a reduction in subsequent year's reimbursement would not be a fiscal monitoring enforcement mechanism under this approach.

As described above under the fixed rate approach in alternative 2, new rules and regulations for recouping improper or inappropriate payments could be established for a regional tuition rate setting methodology; and also as with the fixed rate approach, existing adjustments within tuition rates setting methodology used to monitor program expenditures (total cost screen parameter, minimum billable unit adjustment, median salary adjustment, non-direct care cost parameter) would either no longer be applicable or would need to be enforced in a different manner. For example, pursuant to Executive Order 38, a covered provider that exceeds the Administrative

Expenses limit or Executive Compensation limit may have funds redirected, changes made to its license/operating certificate, contracts or other agreements, or referral for legal action.

Similar to the other alternatives discussed, program approval/reapproval review and conditions, provider's oversight and accountability standards, and applicable corrective action or revocation measures could remain constant; and consideration to new review procedures and audit functions associated with monitoring sessions delivered and requiring program compliance plans could be given under this approach.

*Implementation of SEIS Rate Adjustments and/or Changes to Methodology – Impact to Providers and State/County Reimbursement*

As each approach to altering the existing SEIS tuition rate calculation is deliberated, it is important to consider how any change may be introduced or phased-in over time. For example, in 2015-16 SEIS will be reimbursed based on actual services delivered and consideration should be given to whether SEIS tuition rate reconciliation should continue during initial implementation year(s) until the impacts of this new method are realized and appropriately reflected in tuition rate calculations. Also, as adjustments to the tuition rate calculation are applied, it may be prudent to phase-in tuition rate impacts over time so that no provider receives greater than a 10 percent (up or down) change in rate in a given year. The potential reimbursement consequences of each alternative would need further evaluation in order to determine the appropriate implementation timeline.

## **SPECIAL CLASS AND SPECIAL CLASS INTEGRATED SETTING: ALTERNATIVE REIMBURSEMENT METHODOLOGIES AND MONITORING PROTOCOLS**

**Special Class and SCIS:** In a Special Class, preschool students with disabilities are grouped together in a classroom setting for purposes of receiving specially designed instruction and related services. In a SCIS, the class includes both students with and without disabilities. Special Class and SCIS programs can be for a half or a full day.

### **Calculation of Special Class & SCIS Rates: Program Codes 9100-9109 & 9115-9119**

Under the existing cost-based tuition rate setting methodology, tuition rates for Special Class/Special Class Integrated Setting (SCIS) are based on actual reimbursable expenses, revenues, and enrollment, as reported annually on the Consolidated Fiscal Report (CFR). For Special Class/SCIS, the CFR captures expenses, revenues, staffing data, and full time equivalent (FTE) student enrollments for a given fiscal period (school year or calendar year). Tuition rates for Special Class/SCIS programs are established on a per diem basis (a per pupil, per session day, rate based on FTE students enrolled).

Once a complete CFR has been submitted and reviewed by the Rate Setting Unit, necessary adjustments are applied to the reported data, pursuant to regulation and the Reimbursable Cost Manual (RCM). As with SEIS, Special Class/SCIS programs executive compensation is held to the median salary adjustment. SCIS programs that also operate the early childhood component for students without disabilities have a tuition offset adjustment applied (as discussed in further detail in section V of this report).

A tuition rate is calculated once all adjustments are completed. Tuition rates for Special Class/SCIS programs are established by dividing total reimbursable expenses, less applied revenues and cost screens, by the total care days for the FTE student enrollment of preschool students with disabilities. Per existing tuition rate setting methodology, Special Class/SCIS tuition rates are subject to: 1) the non-direct care cost parameter (calculated by comparing the total adjusted/allowable non-direct care costs to the product of the total adjusted/allowable direct care costs multiplied by .4286, which is the ratio of 30/70 for non-direct care/direct care costs); 2) the subtraction of applied revenues from total adjusted costs after the application of the Non-Direct Care Screen; and 3) the Total Cost Screen (calculated by comparing the adjusted/allowable gross costs on a per diem basis, after the application of the Non-Direct Care Screen and the subtraction of applied revenues, to the prior year's per diem rate plus approved growth factor).

For their first two years of operation, Special Class programs are issued prospective tuition rates based a regional weighted average per diem rate. Both years are subject to reconciliation. Beginning with the third year of operation, Special Class program prospective and reconciliation tuition rates are based on actual data, as reported in the CFR. Regional tuition rates for Special Class providers are published annually by the Rate Setting Unit for both full-day and half-day programs. The Special Class regional tuition rates were calculated for each program using the sum of reimbursable expenses (reported expenses less adjustments, applied revenues, and cost screens) for Special Class providers (full day or half day program) within each individual region, and then dividing that sum by the total care days (full day or half day program) in that region, for the corresponding year. Regional tuition rates are rebased periodically and then carried forward with an annual adjustment to reflect approved growth. Each

county and the City of New York have their own Special Class regional tuition rate, and for 2014-15, the regional tuition rates range from \$153-\$233 for half day programs and \$147-\$212 for full day programs.<sup>8</sup>

In order to meet the individual needs of students, Special Class programs vary in class size and in the array of related services needed to meet the individualized needs of students enrolled in the class. Under the existing tuition rate setting methodology, all new Special Class programs in a region are issued the same initial tuition rate regardless of the approved class size or prescribed frequency of related services provided per student. Thus, a new program with smaller approved class size ratios and/or higher frequency of related service provision will receive the same initial regional tuition rate as a program with larger class sizes and a lower frequency of related services provided. During the third year of operation, the Special Class tuition rate is based on actual reported data.

Unlike Special Class, new SCIS programs are issued a budget based prospective tuition rate for the first two years of operation. Budget based prospective tuition rates are calculated based on budgetary information submitted by the program. Related statistical and historical data for other approved programs operated by the new SCIS provider, or other SCIS programs operated by other providers, may also be used to establish the initial tuition rate for SCIS programs.

Tuition rates for Special Class/SCIS programs include all allowable per pupil cost, including instructional and related services, supplies and equipment, the operation of instructional facilities and allocable debt service for the instructional facilities, and administration. If a student's IEP requires that a 1:1 Teacher Aide, 1:1 Nurse, or 1:1 Interpreter be provided, then a separate add-on rate is applied to the approved tuition rate for that student for the program in which the student is enrolled. These 1:1 rates are set regionally and are not subject to reconciliation; they were originally calculated based on regional reported costs and have been trended forward each year in accordance with applicable reimbursement growth approved by DOB. 1:1 Teacher Aide/Nurse/Interpreter costs (salaries, fringe benefits of the aide and allocated direct and indirect costs) are reported separately on the CFR under a distinct cost center.

The 1:1 Teacher Aide daily rate was most recently rebased in 2011-12 using five years of regional reported expense data from 2004-05 to 2008-09. This rate rebasing used a five year average of the total annual amount of salary and fringe benefits paid by preschool and school-age special education providers for teacher aides within the same region, trended by approved growth, and divided by the region's total annual paid employment hours of teacher aides. This calculation resulted in a regional hourly rate which was multiplied by six hours, to represent five instructional hours and one additional employment hour, in order to determine the regional 1:1 Teacher Aide per diem, or daily rate.

#### Special Class & SCIS Fiscal Data Under Current Methodology

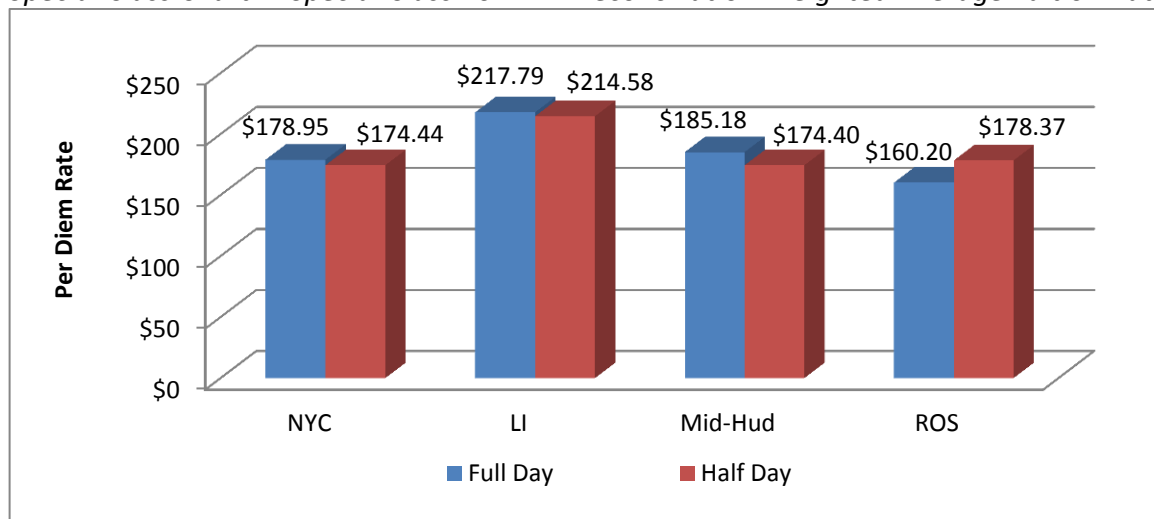
For purposes of this study, data analysis was performed on 2011-12 reconciliation tuition rates (84 half day Special Class providers, 165 full day Special Class Providers, 87 half day SCIS providers, and 153 full day SCIS providers with certified 2011-12 reconciliation rates as of August 2014).

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<sup>8</sup> Half-day programs bill at half of the per diem rate. Therefore, a rate of \$153 is billed at \$76.50 for each FTE in the half-day program.

*Special Class Chart 1: Special Class 2011-12 Reconciliation Weighted Average Tuition Rates* compares the average Special Class full day and half day reconciliation per diem tuition rates for 2011-12 for four regions of the State: New York City (Bronx, New York, Richmond, Kings and Queens Counties); Long Island (Nassau and Suffolk Counties); Mid-Hudson (Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, and Westchester Counties); and the Rest of the State (remaining counties within the State). The average tuition rate is weighted to better reflect the average cost of each care day in the region (rather than representing an average of all issued tuition rates within a region, the 2011-12 reconciliation weighted average tuition rate was calculated by dividing the sum of all adjusted expenditures for Special Class programs within a region for 2011-12 by all 2011-12 reported care days within that region).

*Special Class Chart 1: Special Class 2011-12 Reconciliation Weighted Average Tuition Rates*



Source: CFR reported data for 2011-12 reconciliation tuition rates certified as of August 2014

In addition to the weighted average reconciliation per diem tuition rates for Special Class programs in 2011-12, *Special Class Chart 2: Special Class 2011-12 Reconciliation Tuition Rates by Region* illustrates the highest and lowest per diem tuition rates within each region.

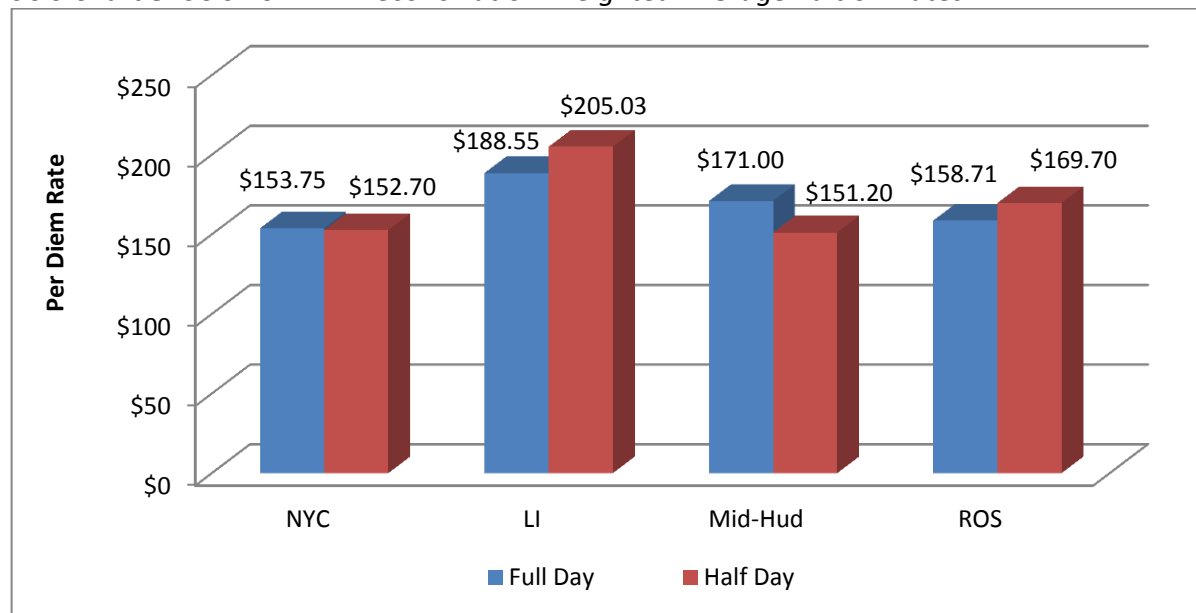
*Special Class Chart 2: Special Class 2011-12 Reconciliation Tuition Rates by Region*

NYC Rate	High	Low	Average	LI Rate	High	Low	Average
Full Day	\$313.36	\$106.99	\$178.95	Full Day	\$290.85	\$109.41	\$217.79
Half Day	\$334.34	\$95.33	\$174.44	Half Day	\$286.57	\$109.18	\$214.58
Mid-Hud Rate	High	Low	Average	ROS Rate	High	Low	Average
Full Day	\$262.67	\$129.79	\$185.18	Full Day	\$262.68	\$80.72	\$160.20
Half Day	\$237.09	\$123.88	\$174.40	Half Day	\$239.68	\$109.35	\$178.37

Source: CFR reported data for 2011-12 reconciliation tuition rates certified as of August 2014

*SCIS Chart 3: SCIS 2011-12 Reconciliation Weighted Average Tuition Rates* compares the SCIS full day and half day reconciliation weighted average per diem tuition rates for 2011-12 for four regions of the State; *SCIS Chart 4: SCIS 2011-12 Reconciliation Tuition Rates by Region* illustrates the highest, lowest and weighted average tuition rates within each region.

*SCIS Chart 3: SCIS 2011-12 Reconciliation Weighted Average Tuition Rates*



Source: CFR reported data for 2011-12 reconciliation tuition rates certified as of August 2014

*SCIS Chart 4: SCIS 2011-12 Reconciliation Tuition Rates by Region*

NYC Rate	High	Low	Average	LI Rate	High	Low	Average
Full Day	\$233.86	\$101.12	\$153.75	Full Day	\$235.94	\$113.58	\$188.55
Half Day	\$194.17	\$106.80	\$152.70	Half Day	\$228.55	\$144.39	\$205.03
Mid-Hud Rate	High	Low	Average	ROS Rate	High	Low	Average
Full Day	\$271.42	\$115.13	\$171.00	Full Day	\$250.84	\$78.58	\$158.71
Half Day	\$291.67	\$108.61	\$151.20	Half Day	\$251.43	\$41.50	\$169.70

Source: CFR reported data for 2011-12 reconciliation tuition rates certified as of August 2014

As demonstrated by *Special Class Chart 2: Special Class 2011-12 Reconciliation Tuition Rates by Region* and *SCIS Chart 4: SCIS 2011-12 Reconciliation Tuition Rates by Region*, each region has wide disparity between the highest and lowest tuition rate for both Special Class and SCIS. Depending on the program's student population, different reimbursement tuition rates may appropriately correspond to the different educational and related services needs of the students served by the program.

Special Class and SCIS programs' operations vary among providers due to differences in approved student to instructional staff ratios and the frequency in which related services are required to be provided. For example, the maximum class size for Special Class programs is 12 students with at least one certified teacher and one or more supplementary school personnel assigned to each class.<sup>9</sup> The Special Class sizes must be configured to meet the needs of students to be placed in such programs in accordance with 8 NYCRR §200.16(i)(3)(v) and approved by the Office of Special Education to be appropriate to meet the needs of the students proposed to be served by the program. While there are exceptions, generally class sizes are established as follows: 12 students to one teacher (plus additional staff); 8 students to one teacher (plus additional staff); and 6 students to one teacher (plus additional staff). SCIS programs may have a maximum enrollment of 12 students with disabilities, which must be generally equal to or less than the number of students without disabilities in the class. Also, for both Special Class and SCIS programs, each student must be provided with the extent and duration of related services described in his or her IEP and each approved Special Class and SCIS program is expected to provide all related services needed by students enrolled in the program.

In order to evaluate how the existing tuition reimbursement rates correlate to the varying educational and related services offered by a program, programs with similar classroom ratios and related service provision may be grouped together. *Special Class Chart 5: Analysis of Instructional Staffing vs. Tuition Rates* compares tuition rates among programs with similar student to instructional staff ratios for Special Class programs. For purposes of this comparison, instructional staff was defined as Teachers, Teacher Assistants and Teacher Aides, and in order to adjust for salary differential between Teachers and Teacher Assistants and Aides, the Teacher Assistants and Aides were prorated by .5. With the exception of the Long Island full day tuition rate, each tuition rate among the regions increases as the student to staff ratio intensifies. Although this correlation may be expected, it is also important to note that within the class size ranges of each region, there is a wide disparity between the high and low tuition rates for providers that have similar number of students per instructional staff.

*Special Class Chart 5: Analysis of Instructional Staffing vs. Tuition Rates*

REGION	FULL DAY					HALF DAY				
	# OF STUDENTS PER INSTRUC STAFF	# OF PRO-GRAMS	WEIGHTED AVG TUITION RATE	HIGH	LOW	# OF STUDENTS PER INSTRUC STAFF	# OF PRO-GRAMS	WEIGHTED AVG TUITION RATE	HIGH	LOW
NYC	<=4	13	\$197.39	\$313.62	\$167.95	<6	7	\$237.37	\$333.97	\$137.17
	>4-5.5	33	\$187.35	\$233.28	\$129.12	>=6	26	\$165.25	\$235.73	\$95.33
	>5.5	30	\$153.52	\$217.52	\$103.14					
LI	<=4	7	\$217.30	\$241.41	\$182.51	<=4	5	\$245.62	\$286.57	\$109.18
	>4-5.5	7	\$240.63	\$290.85	\$146.04	>4-6	6	\$194.67	\$208.31	\$151.79
	>5.5	7	\$184.86	\$223.77	\$109.41	>6	6	\$200.12	\$236.37	\$144.61
MID-HUD	<4	10	\$203.05	\$262.67	\$141.51	<5	5	\$207.35	\$237.09	\$176.71
	4	8	\$164.11	\$206.95	\$152.97	>5<6	7	\$166.07	\$222.98	\$123.88
	>4	10	\$161.49	\$201.31	\$129.79	>=6	7	\$167.68	\$173.77	\$143.18
ROS	<4	10	\$211.10	\$262.68	\$101.56	<5	8	\$185.41	\$239.68	\$109.35
	4<6	11	\$157.55	\$190.37	\$127.15	>5	7	\$167.45	\$190.64	\$133.08
	>=6	19	\$137.90	\$213.69	\$80.72					

Source: CFR reported data for 2011-12 reconciliation tuition rates certified as of August 2014

<sup>9</sup> Except that a program may temporarily increase the enrollment of a class pursuant to the requirements in 8 NYCRR §200.16(i)(3)(b)(1).

*Special Class 6: Analysis of Related Services vs. Tuition Rates* compares providers within each region by frequency of three different related services (Speech, Physical and Occupational therapies) provided to students per care day. Similar to the analysis of tuition rates for programs with comparable classroom ratios, the variation of tuition rates generally corresponds to the frequency of the related services provided within the ranges studied, with some regional variation in Long Island full day. However, the disparity between the high and low tuition rates within each range also exists in this analysis.

*Special Class 6: Analysis of Related Services vs. Tuition Rates*

REGION	FULL DAY					HALF DAY				
	RS MAND PER CARE DAY	# OF PRO-GRAMS	WEIGHTED AVG TUITION RATE	HIGH	LOW	RS MAND PER CARE DAY	# OF PRO-GRAMS	WEIGHTED AVG TUITION RATE	HIGH	LOW
NYC	>1.25	14	\$216.63	\$313.62	\$134.97	>1.60	11	\$223.26	\$333.97	\$162.65
	1.00-1.25	32	\$176.00	\$250.18	\$103.14	1.25-1.60	11	\$176.49	\$235.73	\$104.20
	<1.00	30	\$165.75	\$199.22	\$108.10	<1.25	11	\$141.31	\$216.68	\$95.33
LI	>1.40	7	\$210.15	\$251.43	\$146.04	>1.70	5	\$256.38	\$286.57	\$166.36
	1.00-1.40	10	\$223.58	\$290.85	\$109.41	1.33-1.70	6	\$211.83	\$236.37	\$144.61
	<1.00	4	\$212.73	\$225.35	\$172.27	<1.33	6	\$171.06	\$194.25	\$109.18
MID-HUD	>1.00	11	\$204.87	\$262.67	\$158.39	>1.60	6	\$191.42	\$224.00	\$143.18
	.75-1.00	8	\$167.87	\$236.13	\$134.71	.85-1.60	6	\$164.63	\$215.58	\$123.88
	<.75	9	\$183.20	\$201.31	\$152.97	<.85	7	\$173.31	\$237.09	\$155.81
ROS	>1.40	14	\$186.02	\$262.68	\$141.34	>2.50	5	\$212.69	\$239.68	\$154.45
	1.00-1.40	13	\$157.86	\$239.67	\$127.83	1.50-2.50	5	\$177.56	\$190.64	\$138.84
	<1.00	13	\$132.42	\$206.61	\$80.72	<1.50	5	\$155.99	\$162.71	\$109.35

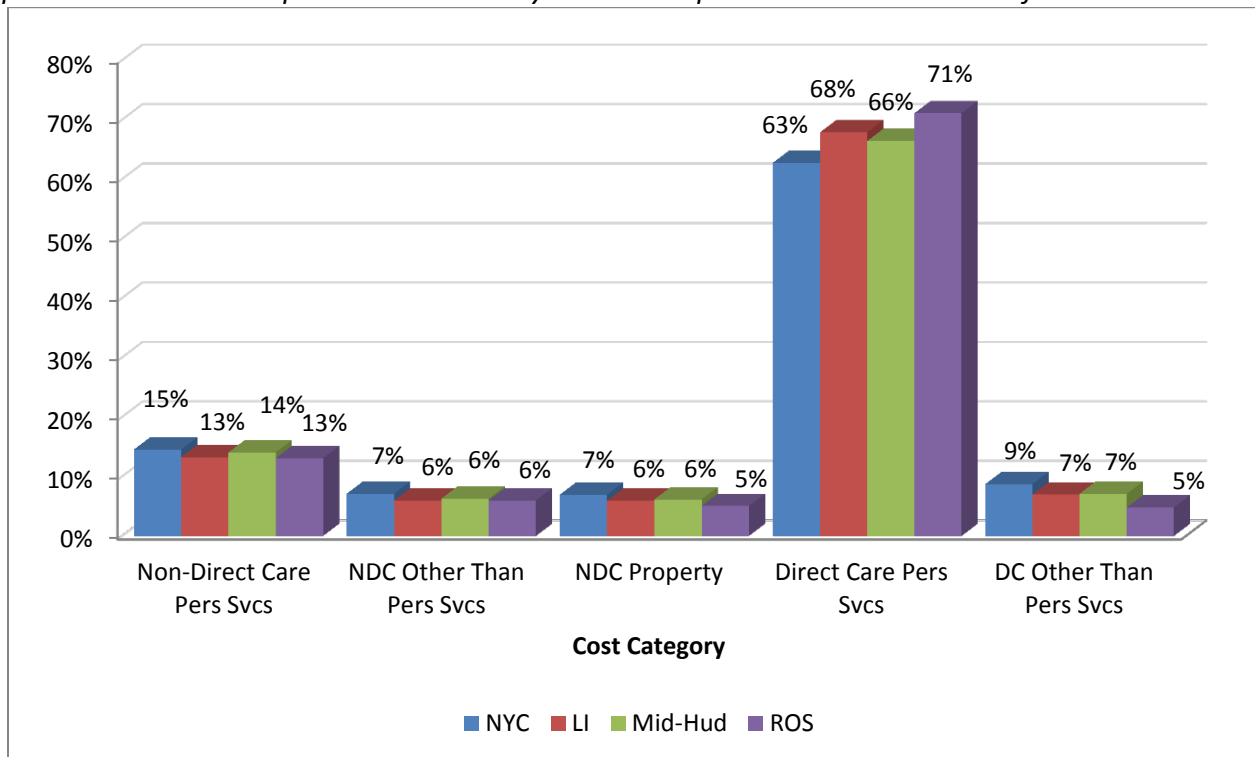
Source: CFR reported data for 2011-12 reconciliation tuition rates certified as of August 2014

As previously described in the SEIS section of this report, reported expenses for all approved preschool programs (SEIS, Special Class and Special Class Integrated Setting) may be divided into personal services, fringe benefits, other-than-personal services (OTPS), equipment, property and agency administration. Personal services, fringe benefits, OTPS expenses, and equipment may be categorized as either direct care or non-direct care depending on the purpose. Property and agency administration expenditures are categorized as non-direct care.

*Special Class Charts 7 & 8* and *SCIS Charts 9 & 10*, outline the reported expenditures for 2011-12 for both full day and half day Special Class and SCIS programs. As with SEIS, the largest portion of total expenditures for both Special Class and SCIS for all regions is attributed to personal services (which for purposes of the chart, is comprised of salary and fringe benefits). *Special Class Charts 7 & 8* and *SCIS Charts 9 & 10* also include a separate grouping of property expenditures for Special Class and SCIS programs, which range from 4 percent to 7 percent of these program's total reported expenditures.

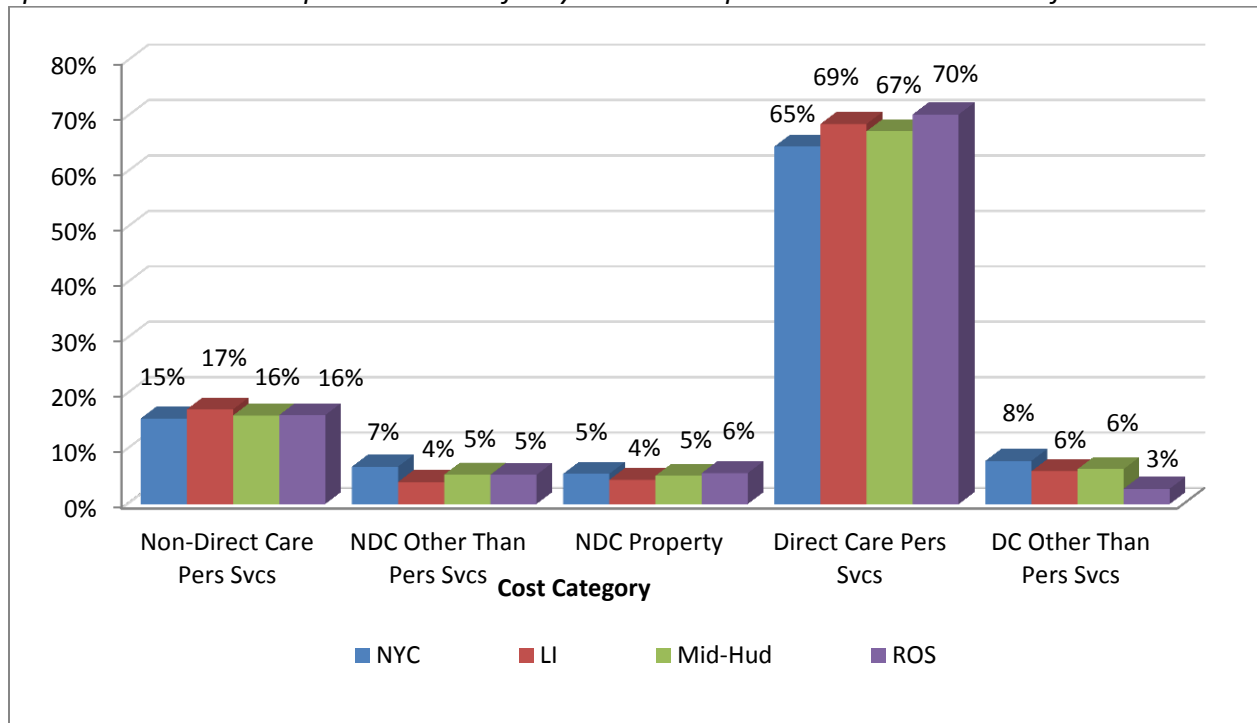


*Special Class Chart 7: Special Class Full-Day 2011-12 Expenditures as a Percent of Total Costs*



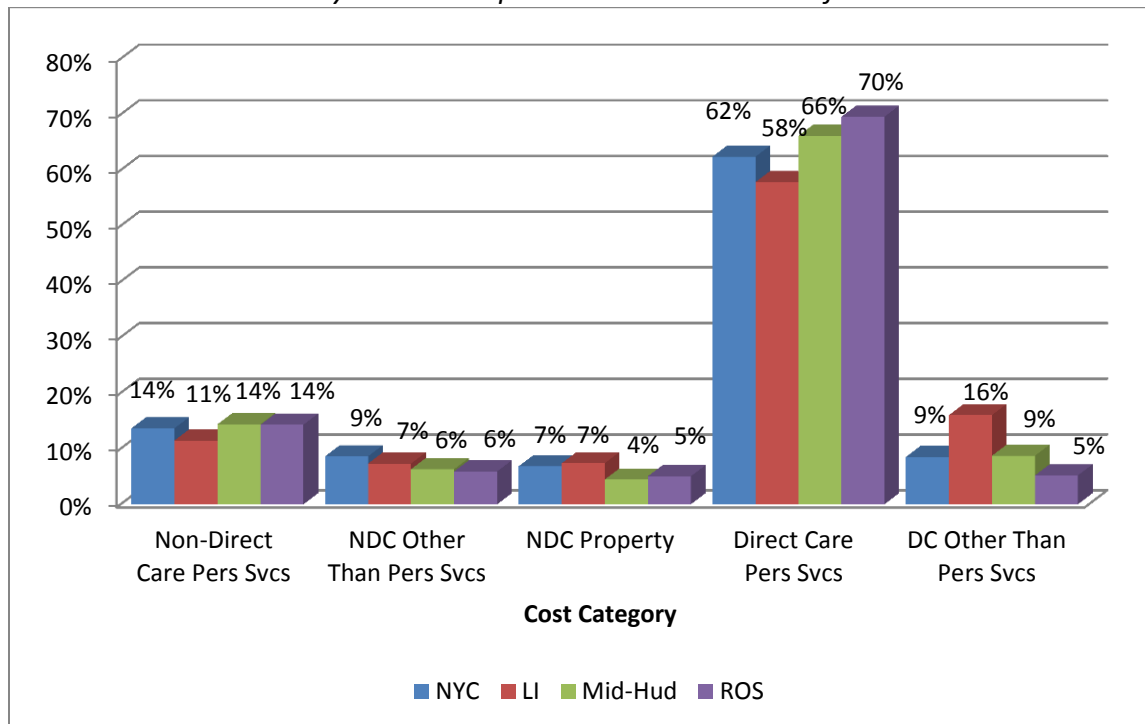
Source: CFR reported data for 2011-12 reconciliation tuition rates certified as of August 2014

*Special Class Chart 8: Special Class Half-Day 2011-12 Expenditures as a Percent of Total Costs*



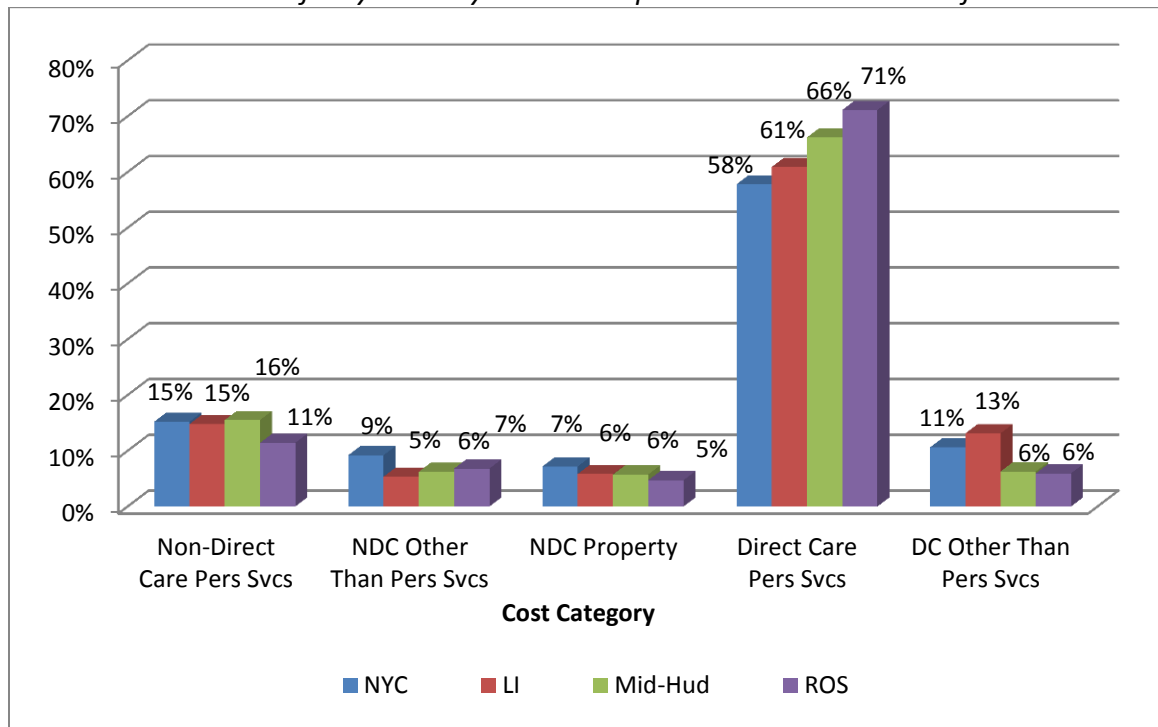
Source: CFR reported data for 2011-12 reconciliation tuition rates certified as of August 2014

*SCIS Chart 9: SCIS Full-Day 2011-12 Expenditures as a Percent of Total Costs*



Source: CFR reported data for 2011-12 reconciliation tuition rates certified as of August 2014

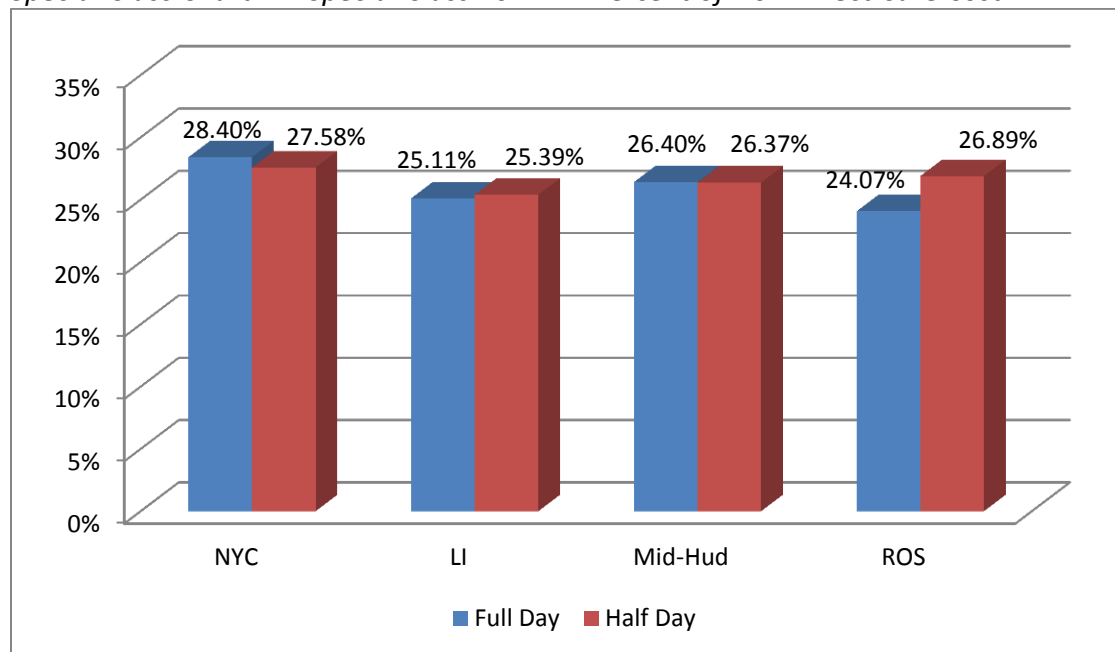
*SCIS Chart 10: SCIS Half-Day Full-Day 2011-12 Expenditures as a Percent of Total Costs*



Source: CFR reported data for 2011-12 reconciliation tuition rates certified as of August 2014

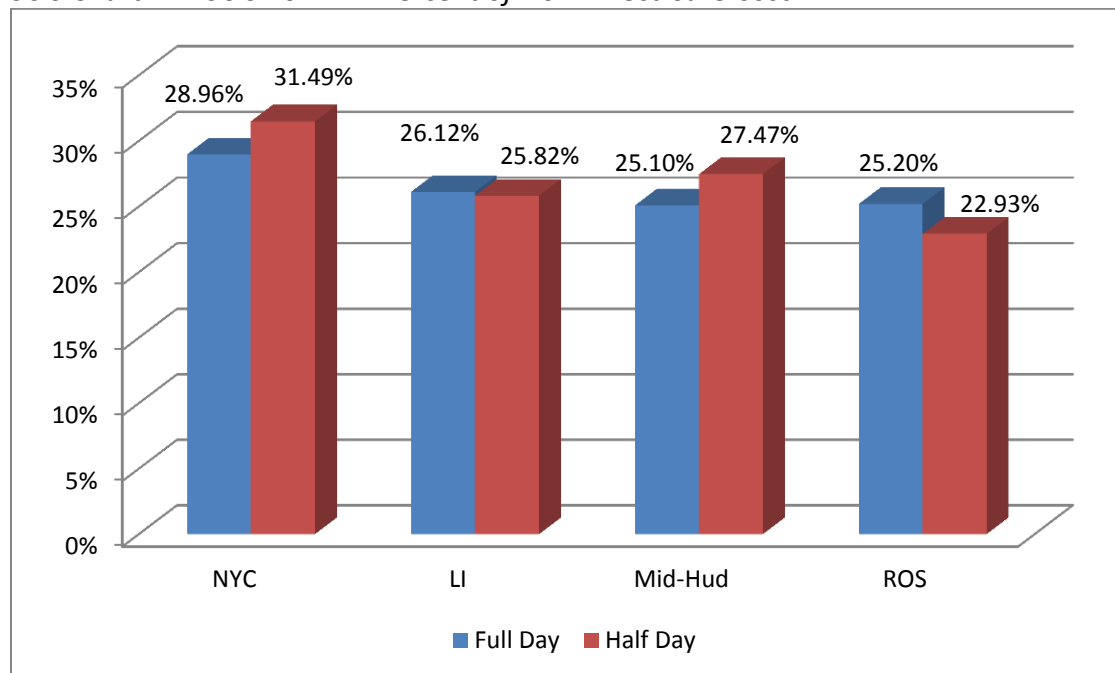
On average, non-direct care expenditures represent approximately 27 percent of total expenditures for Special Class and SCIS programs, statewide, which is below the non-direct care parameter. This percentage varies among the regions, with NYC providers closest to the 30 percent limit.

*Special Class Chart 11: Special Class 2011-12 Percent of Non-Direct Care Cost*



Source: CFR reported data for 2011-12 reconciliation tuition rates certified as of August 2014

*SCIS Chart 12: SCIS 2011-12 Percent of Non-Direct Care Cost*



Source: CFR reported data for 2011-12 reconciliation tuition rates certified as of August 2014

The existing cost-based tuition rate setting methodology has been criticized for not adequately funding the cost of operating the Special Class and SCIS programs, being overly dependent on enrollment, and having a burdensome reconciliation process. There are also reasonable concerns regarding funding equity, and the need for greater alignment between the level of reimbursement and the provision of educational and related services.

Following six consecutive years of no growth in the tuition rates, a significant number of Special Class and SCIS providers are experiencing funding deficits. As various alternatives to the existing tuition rate setting methodology and corresponding monitoring protocols are explored, it is important to consider the short-term and long-term objectives that may be achieved to better align reimbursement with the appropriate provision of services to students with disabilities.

#### *Alternative 1: Maintaining Existing Cost-Based Methodology with Adjustments*

##### **Reimbursement Methodology:**

Several adjustments to the existing cost-based tuition rate setting methodology could be considered to better align reimbursement with the provision of educational and related services to students enrolled in a Special Class or SCIS program. The 2014-15 tuition rate setting methodology for school-age providers adopted adjustments aimed at improving several aspects of the existing cost-based tuition rate setting methodology in order to provide greater flexibility in the tuition rate calculation. These adjustments include the following:

- An enrollment adjustment factor to mitigate the impact of the Total Cost Screen when a significant enrollment decrease occurs will be applied as part of the school-age tuition rate reconciliation process in order to stabilize tuition revenue on a time-limited basis. When an unexpected, substantial enrollment decline occurs, it may be difficult for providers to immediately adjust staffing patterns and spending commensurate with the loss in enrollment due to fixed cost. This enrollment adjustment factor is intended to give providers more time to make necessary changes to either increase enrollment or restructure programs.
- An option to grow prospective and reconciliation tuition rates from a higher tuition rate in the Total Cost Screen calculation. Short-term growth in enrollment can result in a lower tuition rate – one that future rates are based upon even when enrollment returns to prior levels. To reduce the impact of a short-term spike in enrollment on future tuition rates, the tuition rate setting methodology for school-age providers has been revised to utilize the higher of two tuition rates from different points in time, adjusted for approved trend factors, as the basis of the total cost screen calculation when such circumstance occurs. This measure intends to stabilize tuition revenue from year-to-year.

- Elimination of tuition rate reconciliation in cases where the fiscal impact is minimal. In order to streamline the current tuition rate reconciliation process, the methodology for school-age providers has been modified to eliminate final tuition rate reconciliations where school-age providers would experience less than a one percent change in the per-student reimbursement tuition rate.

As described in the SEIS section of this report, the existing median salary adjustment could be altered to apply different Executive Compensation limits in order to better reflect the complexity of a program's operation and the qualifications/credentials of its administrative staff. Also, for Special Class and SCIS programs, property-related costs could have a new cost parameter separate from the existing non-direct care cost parameter.<sup>10</sup>

Additional analysis regarding the existing 1:1 Teacher Aide, 1:1 Nurse, or 1:1 Interpreter rates could be explored in order to determine whether these rates could better reflect the cost of providing these services. For example, currently, NYSED collects expense, revenue, and enrollment data for 1:1 Teacher Aides, Nurses, and Interpreters in aggregate, thus making analysis of the data by discipline not possible. NYSED could begin collecting discrete cost data for 1:1 Teacher Aide, Nurse, and Interpreter services in order to evaluate the current 1:1 rates to determine if they are appropriate for the services provided. Furthermore, although the 1:1 Teacher Aide rates are currently based on regional average salaries paid, further examination of regional cost data could be performed in order to determine whether existing rates inadequately reimburse legitimate costs for these mandated staff.<sup>11</sup>

Under this approach, the methodology for calculating the tuition rate would change depending on the adjustments approved. However, the other aspects of the existing tuition rate setting methodology would remain as follows:

- 1) the Rate Setting Unit would establish a prospective tuition rate based on historical cost data and any other tuition rate adjustments adopted in methodology;
- 2) providers would receive payment of a tuition rate from the counties/NYC;
- 3) reported costs would be submitted on the CFR in the following school year;
- 4) the Rate Setting Unit would use the reported actual costs to calculate a reconciliation tuition rate using actual provider cost data and any other tuition rate adjustments adopted in methodology/regulations. If the reconciliation tuition rate changed from the prospective tuition rate by greater than one percent, RSU would issue a reconciliation tuition rate; and
- 5) counties/NYC and providers would use the reconciliation tuition rates to adjust tuition reimbursement to the amount generated by the reconciled tuition rates.

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<sup>10</sup> Allowing greater flexibility by replacing the current non-direct care cost limit with separate administrative and property-related parameters was a recommendation of the 2007 Temporary Task Force on Preschool Special Education.

<sup>11</sup> Adjusting the 1:1 aide rate and 1:1 nurses rate to reflect appropriate cost of providing services was a recommendation of the 2007 Temporary Task Force on Preschool Special Education.

**Monitoring Protocol:**

Existing monitoring protocols would be continued, including annually adjusting reported costs to conform to spending protocols and requirements contained in regulation and the RCM, pursuant to the applicable approved tuition rate setting methodology. Tuition for costs determined not to be allowable during the review of the CFR/financial statements and as a result of the tuition rate calculation, or following an official audit of a provider, may be recovered by making adjustments to the reported costs and issuing a reconciliation tuition rate or tuition rate based on audit.

This alternative would require more in-depth data analysis regarding programs' enrollment capacity compared to reported care days and monitoring regarding the number of classrooms needed to serve students. This analysis would need to consider the number of students per the approved classroom ratio(s) of a program in comparison to its number of reported care days for purposes of tracking enrollment declines. Additionally, with the school-age tuition rate setting methodology amendments, there are several instances where a provider does not qualify for the option to grow prospective and reconciliation tuition rates from a higher prior year tuition rate. If this approach was applied to Special Class and SCIS providers, then additional fiscal review would also need to be performed to evaluate individual provider circumstances during the calculation of tuition rates.

Program approval/reapproval review and conditions, provider's oversight and accountability standards, and applicable corrective action or revocation measures could remain constant. As described in greater detail in the SEIS section of this report, the existing provider internal controls requirements could be enhanced to require providers to adopt and implement a specific compliance program, similar to what is currently required of Medicaid providers.

***Alternative 2: Rebase to a Budget-Based Rate*****Reimbursement Methodology:**

Annual tuition rates could be established using budgetary information submitted by the program for the projected costs of operating its approved Special Class or SCIS program. Allowable costs would continue to be defined pursuant to the RCM, however new specific spending parameters and limits would need to be established to regulate the budget amount that could be approved based on the mandated educational and related service needs of the students served. This approach could create allowable cost parameters in clearly defined areas such as direct classroom expenses, support services, clinical services, non-personnel expenses, administration, and property<sup>12</sup> and each cost parameter could have a separate and distinct regional reimbursement limit depending on the educational and related services offered by the provider.

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<sup>12</sup> The creation of these allowable cost parameters was recommended by the 2007 Temporary Task Force on Preschool Special Education.

The total approved budget amount could be divided by a projected annual student enrollment, in order to determine a per pupil tuition rate. At the close of the budget year, expenditure data and student enrollment information could be submitted in order to reconcile the budget request to actual expenditures and enrollment.

This approach may be compared to grant funded programs where providers submit a projected budget outlining costs to provide a service or activity requested by the grant announcement. For example, UPK providers or Supplemental Educational Service providers contract with a school district to perform services pursuant to a grant award. The terms of the grant dictate the services or programs to be provided and include requirements pertaining to how an applicant may structure its budget request. Grants may be awarded on a competitive basis, corresponding to an applicant's proposed budget or may be awarded to all qualified applicants that meet cost parameters as defined in the grant contract. A contract for a grant award may be for one year or for multiple years and ultimate reimbursement is commonly subject to reconciliation to the actual costs of the grant recipient for providing the service outlined in the grant. Many times a retainage applies, or portion of the total approved budget amount is withheld from reimbursement until final reconciliation occurs.

One major difference between a budget-based tuition rate setting methodology and the existing cost-based tuition rate setting methodology is that the budget-based methodology would allow providers to change funding requests from one contract period to another, depending on the educational and related services to be provided in accordance with its program approval. This differs from the existing tuition rate setting methodology that relies on historical costs of two years prior. Although specific spending parameters and limits would apply under a budget-based approach, provider's reimbursement could potentially better align with its program operational needs, which may change over time.

Cost parameters and spending authorizations established to regulate budget requests under this approach could be developed to directly correlate with the approved class size ratios and related services provided, so that providers offering similar educational and related services may have more comparable tuition rates under a budget-based approach.

If this approach were to be applied to Special Class or SCIS programs:

- 1) the Rate Setting Unit would establish a prospective tuition rate based on a program's budget request, in conformity with cost and spending parameters established pursuant to a new approved reimbursement methodology, for the approved educational and related services to be provided in the following year;
- 2) providers would receive payment of a per pupil tuition rate from the counties/NYC;
- 3) reported costs would be submitted on the CFR to determine actual allowable expenditures;
- 4) the Rate Setting Unit would use the reported actual allowable expenditures to reconcile to the budget request.

**Monitoring Protocol:**

The principles of the Rate Setting Unit's existing fiscal monitoring and review pertaining to cost and enrollment data submitted in the CFR and financial statements could continue under this approach, because reconciliation would still exist under this approach. Non-allowable costs pursuant to the established spending parameters, which may still include a Non-Direct Care limit and Executive Compensation limit, could continue to not be eligible for reimbursement and would be subject to reconciliation.

Extensive program and fiscal analysis would need to be performed in order to establish clearly defined spending parameters and reimbursement limits for program budget requests, so that an approved budget-based tuition rate is aligned with the educational and related service needs of the students served by the program.

Program approval/reapproval review and conditions, provider's oversight and accountability standards, and applicable corrective action or revocation measures could remain constant.

***Alternative 3: Rebase Tuition Rates Using Mandated Services to Build-In Required Costs*****Reimbursement Methodology:**

Due to the variety of educational and related service needs of students enrolled in Special Class and SCIS programs, a true regional tuition rate that treats all programs alike would not appropriately align funding with program operations in all cases. Under the current methodology, all new Special Class providers receive a regional average tuition rate for the first two years of operation. The rates are the same for all new providers in a region regardless of the level of services required. Once the regional rate is issued, the provider's rates in subsequent years cannot increase from the regional rate beyond the annual approved growth factor (absent a waiver to methodology). Thus, providers who serve students that require instructional and related services above the regional average often find it challenging to provide the mandated services within the regional rate.

A regional rate approach may be implemented in a different manner for Special Class and SCIS programs by establishing set reimbursement rates within each region to fund the core educational component of a program, corresponding with the instructional staff needs of a program, with costs built into the rate for related services, direct care support staff, non-direct care staff and administrators, OTPS, and property.

This approach could establish a per-student tuition rate by building in the program's required instructional and support costs based on the approved and operated classes as follows:

- **Instructional Classroom Staffing** – a per classroom tuition rate to fund the core instructional component of a program could be based on the number of teachers and paraprofessionals required for each approved and operational class. Staff salaries could be based on regional median salary data and regional employee fringe benefit rates.
- **Related Service or Clinical Staffing** – a cost could be added based on the frequency of related service sessions prescribed, as per each student's IEP. Salaries for related service



and clinical staff could be based on based on regional median salary data and regional employee fringe benefit rates, or, as an alternative, county related service rates could be considered as a regional proxy for which to base this add-on component. A pre-defined efficiency factor would be employed to determine the level of related services staff to build into the rate.

- **Direct Care Support Staffing** – cost could be added for other direct care staff such as IEP Coordinators, Curriculum Coordinators, Supervising Teachers, etc. based on an a program’s needs, as determined by the number of students and frequency of related services provided. Staff salaries could be based on regional median salary data and regional employee fringe benefit rates.
- **Administration Support Staffing and OTPS** - costs could be added based on a percentage of program costs, as determined by historical data of private preschool providers, similar to the existing non-direct care 30 percent spending limit. Executive Compensation expenditure limits could be evaluated and defined as part of this add-on rate.
- **Non-Direct Care Support Staffing (Maintenance)** - costs could be added based on an appropriate percentage as determined by facility space. Staff salaries could be based on regional median salary data and regional employee fringe benefit rates.
- **Other-Than-Personal-Services (OTPS)** – cost for support expenses (supplies, equipment, utilities, other incidental costs) could be added based on a program’s needs, as determined by the number of students enrolled in the program or the program’s facility space, as appropriate. Cost thresholds would be based on historical data of private preschool providers by region.
- **Property** - costs could be added based on program facility space, using criteria to define limits on reimbursement, such as maximum square feet reimbursement rates, based on regional historical cost data.

This approach would require the identification of a program’s projected student enrollment per classroom. Although the program’s approved operating capacity (or the number of students a program is approved to serve) could be used as a factor, enrollment in Special Class and SCIS programs tends to be highly volatile and therefore it is not unusual for classrooms to have less than full capacity at different times throughout the year (for example, due to the nature of the timing in which students enter the preschool special education system, many Special Class and SCIS programs are not at full capacity in September but reach capacity in January when additional students need placements).

In order to establish a tuition rate that recognizes that actual enrollment may be less than approved classroom capacity, an appropriate classroom utilization factor would need to be developed as part of the tuition rate calculation. This factor could incorporate historical individual provider, regional, or statewide data to compare actual enrollment to total capacity (or care day data compared to the number of total students a program is approved to serve,

multiplied by the number of school session days) in order to determine the appropriate enrollment factor to use when calculating the tuition rate.

One approach to issuing a prospective tuition rate that builds in cost based on mandated services is to not subject the prospective rate to reconciliation. In this approach, changes in enrollment and expenditures within a reasonable range would not impact a program's tuition reimbursement which would provide greater predictability for both the Special Class/SCIS programs and the counties/NYC. Future rates could be adjusted or rebased to correspond with a program's enrollment, service provision, and expenditures.

However, as previously noted, preschool Special Class and SCIS programs often experience high volatility in enrollment on a year-to-year basis. In instances where the enrollment as a percentage of capacity is lower than the classroom utilization factor used in the rate by a pre-defined percentage, an adjustment could be made on a limited basis to the prospective tuition rate in order to use actual enrollment or a lower classroom utilization factor. Each situation would need to be reviewed by program and fiscal staff to determine the propriety of such an adjustment.

Under this reimbursement methodology approach:

- 1) the Rate Setting Unit would establish a rate on a per-student per-care day basis, pursuant to a new approved reimbursement methodology containing the criteria to be used to calculate the cost of instructional staff for the approved classrooms to be operated and the add-on costs for instructional and operational support to each rate;
- 2) providers would receive payment of a per diem tuition rate from the counties/NYC;
- 3) reported costs would be submitted on the CFR for accounting purposes;
- 4) the Rate Setting Unit would use the reported actual cost and enrollment data to periodically rebase regional cost data used to establish future year's prospective tuition rates (either annually or for a longer time period) and retroactively apply rate adjustments in limited situations as warranted.

#### **Monitoring Protocol:**

This approach would require extensive program and fiscal analysis in order to: identify each item or activity that should be funded for all Special Class and SCIS programs; define the specific expectations and programmatic functions to be fulfilled by the funded items or activities; and determine the appropriate amount of reimbursement for each item and activity within each region.

The principles of the Rate Setting Unit's existing fiscal monitoring and review pertaining to cost and enrollment data submitted in the CFR and financial statements would continue under this approach, but in most cases tuition rates would not be subject to reconciliation. The financial analysis pertaining to a provider's cost and enrollment data would be for the purpose of determining prospective tuition rates in circumstances where a tuition rate rebase may be necessary. Non-allowable costs, which may still include expenditures exceeding the non-direct care limit and Executive Compensation limit, could still be ineligible for reimbursement and taken out of a program's prospective tuition rate.

Additional program and fiscal monitoring and data analysis could be conducted in order to evaluate the appropriateness of the classroom utilization levels for Special Class and SCIS programs and to ensure that the program's actual delivery of educational and related services to enrolled students continues to directly correspond with the tuition rate being applied.

Program approval/reapproval review and conditions, provider's oversight and accountability standards, and applicable corrective action or revocation measures could remain constant.

## **SPECIAL CLASS INTEGRATED SETTING: TUITION OFFSET CALCULATION**

**Special Class in an Integrated Setting (SCIS)** means a class consisting of both preschool students with disabilities, who have been grouped together because of similar individual needs for the purpose of being provided specially-designed instruction, and preschool students without disabilities receiving an early childhood education program.

SCIS is the special education program on New York State's continuum of services for preschool students with disabilities who require full or part time special class services in order to receive such instruction in settings with nondisabled peers. Federal law, regulations and policy provide a strong preference for educating preschool students in regular classes alongside their nondisabled peers. States must make the full continuum of placement options available to all preschool students and States must engage in ongoing long and short term planning to ensure that the full continuum of placements is available. However, there are only 293 SCIS programs available statewide for NYS preschool students with disabilities. Statewide, only 41.5 percent of preschool students receive the majority of their special education services<sup>13</sup> in regular early childhood settings. The existing tuition rate setting methodology specific to SCIS programs may be examined to determine if any adjustments to the existing calculation may be made in order to promote and increase the availability of integrated placements for students with disabilities.

SCIS may be offered by a provider that operates both the special education and early childhood components of the program (for example, the provider is approved by NYSED for SCIS and is also provides day-care, private preschool, Head Start, or UPK program). Alternatively, an approved SCIS program may collaborate with a separate entity that operates day-care, Head Start or UPK.

Of the 259 SCIS programs with 2011-12 certified reconciliation rates: 136 had day care or private preschool, with 49 of these programs also having UPK placements of students without disabilities; 27 had students without disabilities that were exclusively UPK placements; and 96 collaborated with an outside agency that operated as a day care provider, UPK or head start.

### **Calculation of Rates Under Current Methodology & §4410(10)(e)**

The tuition rate setting methodology for SCIS is the same methodology used for Special Class, provided that if both the SCIS component and the early childhood component are operated by the same entity, the tuition rate for SCIS is adjusted to offset revenue received for the children without disabilities against program expenses. This adjustment is made pursuant to §4410(10)(e) of the Education Law which states that "[p]ublic special education funding provided for the purposes of this section shall not be used to purchase regular preschool educational services, day care or other child care services, or to purchase any instructional service other than special services or programs...and the purchase of such regular preschool

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<sup>13</sup> Includes students receiving SEIS and/or related services provided in regular early childhood settings and students who are enrolled in SCIS.

educational services and child care services shall not be approvable pursuant to this section as a charge upon the municipality or the board.”

As with Special Class programs, SCIS programs report their total costs for operating their program annually in the CFR and financial statements. In order to remove the portion of costs attributed to students without disabilities, a tuition offset calculation is applied to the SCIS tuition rate, where both the regular and special education components of the program are operated by the same service provider. If the SCIS program does not also operate the regular early childhood component of the program, but rather collaborates with a separate entity for this purpose, then the revenues, expenses, and enrollment data for the non-disabled students is not reported on the entity’s financial reports; thus, a revenue offset is not needed and therefore not applied.

#### *SCIS Tuition Offset Calculation - 8 NYCRR §200.9*

8 NYCRR §200.9 (f)(2)(x)(b) states: “[a]fter application of the non-direct care cost parameter, reported expenditures shall be reduced by the greater of actual revenues received for students without disabilities or an amount calculated by multiplying the reported FTE enrollment of students without disabilities times the regional day care rate or a proration of the regional day care rate for children aged 3 to 5, as published in 18 NYCRR 415.9, applicable to the time period for which the program operated. The total cost screen is then applied to the resulting expenditures to determine the total reimbursable costs.”

#### *Offset Calculation for Students without Disabilities in Day Care or Private Preschools*

The tuition offset calculation applied by the Rate Setting Unit to the SCIS tuition rate to reflect the participating fee for students without disabilities in day care private preschool settings is based on market rates for subsidized child care established by the New York State Office of Children and Family Services (OCFS). Depending on the approved program’s hours per day, part-day or hourly OCFS day care rates are used in this tuition offset calculation. Part-day rates, which are calculated by the Rate Setting Unit as the lower of the OCFS “part-day” rate or the OCFS “hourly rate” times 4, are used when the program is approved for 4 hours per day or more. OCFS hourly rates are used when the program is approved for less than 4 hours per day.

Region	2011-12 OCFS Hourly Rate	2011-12 Lower of OCFS Part-Day Rate or Hourly Rate x 4
NYC	\$6.75	\$27
Long Island	\$7.00	\$28
Mid-Hudson	\$5.75, \$6.75, \$7.00, \$7.25	\$23, \$28, \$29
Rest of State	\$5.75, \$6.75, \$7.25	\$23, \$27, \$29

Example of Tuition Offset Calculation Using OCFS Part-Day Rate:

	1. Hours Per Day	5
	2. Students without Disabilities Enrollment	40
X	3. Session Days	210
X	4. <u>OCFS Part-Day Day Care Rate</u>	\$28
=	5. Minimum Offset for Regular Education Component	\$235,200
	6. Reported Tuition for Students without Disabilities	\$220,000
	7. Adjustment to Tuition for Students without Disabilities (if 6 < 5)	\$15,200

Example of Tuition Offset Calculation Using OCFS Hourly Rate:

	1. Hours Per Day	2.5
	2. Students without Disabilities Enrollment	40
X	3. Session Days	210
X	4. <u>OCFS Hourly Day Care Rate</u>	\$7.00
=	5. Minimum Offset for Regular Education Component	\$147,000
	6. Reported Tuition for Students without Disabilities	\$140,000
	7. Adjustment to Tuition for Students without Disabilities (if 6 < 5)	\$7,000

From the 136 SCIS programs with a 2011-12 certified reconciliation rate whose nondisabled students attended day care or private preschool, \$12.9 million was reported in participant fees (or reported tuition for students without disabilities). For this year, the tuition offset calculation applied by RSU impacted 25 of the 136 programs with adjustments totaling \$636,232 above the revenue reported in those programs (see SCIS Offset Table 1).

*SCIS Offset Table 1 - 2011-12 SCIS Adjustments to Tuition for Students without Disabilities*

Region	# of Providers w/ Placements of students without disabilities	Tuition Reported for students without disabilities	# of providers w/Adjustment to Tuition for students without disabilities	Tuition Adjustment students without disabilities	Tuition adjustment as a percent of Reported Tuition
NYC	50	\$4,980,162	10	\$354,871	7.13%
Long Island	18	\$2,813,651	0	\$0	0
Mid-Hudson	19	\$1,561,917	2	\$23,228	1.49%
Rest of State	49	\$3,585,878	13	\$258,133	7.20%
Statewide	136	\$12,941,608	25	\$636,232	4.92%

Source: CFR reported data for 2011-12 reconciliation tuition rates certified as of August 2014

Compared to the total reported tuition for students without disabilities for 2011-12 of \$12.9 million, the tuition adjustment of \$636,232 represents a small portion of this amount or 4.9 percent. This portion was higher in NYC, with an overall adjustment of 7.13 percent of the total reported tuition for students without disabilities, and for Rest of State, it was 7.2 percent. The overall impact of the adjustment, as compared to the total reported tuition for students without disabilities, is not largely significant; however, the impact to the 25 providers for which the adjustment was made is noteworthy. Statewide, the nondisabled student tuition adjustment for the 25 impacted providers was approximately 79 percent of the nondisabled student tuition reported (see SCIS Offset Table 2).

*SCIS Offset Table 2 - SCIS Providers with an Adjustment to the 2011-12 Reconciliation Rate for Tuition for Students without Disabilities*

Region	# of providers with Adjustment to Tuition	FTE Enrollment students without disabilities	Tuition Reported for students without disabilities	Tuition Adjustment for students without disabilities	Total Tuition Offset for students without disabilities
NYC	10	72.778	\$241,206	\$354,871	\$596,077
Long Island	0	0.000	\$0	\$0	\$0
Mid-Hudson	2	15.000	\$91,301	\$23,228	\$114,529
Rest of State	13	101.094	\$474,290	\$258,133	\$732,423
Statewide	25	188.872	\$806,797	\$636,232	\$1,443,029

Source: CFR reported data for 2011-12 reconciliation tuition rates certified as of August 2014

#### *Tuition Offset for Students without Disabilities in Public Programs or Collaborations*

If the early childhood program component for student without disabilities is operated by the SCIS provider as a UPK program, RSU does not perform the same tuition offset calculation as for placements that collect tuition revenue for students without disabilities (i.e. day care or private preschool). Instead, RSU will offset the amount of UPK tuition reported by the SCIS program against the reimbursable program costs. If the early childhood program component for students without disabilities is in collaboration with a Head Start, separate day care agency or separate UPK provider, the revenue, expenses, and enrollment data for the non-disabled students is not reported by the approved SCIS program; thus no offset against program expenses is required.

*SCIS Offset Table 3 - 2011-12 UPK Enrollment & Tuition for Students without Disabilities*

Region	# of Providers w/UPK Placements	UPK FTE Enrollment students without disabilities	UPK Tuition students without disabilities
NYC	35	622.898	\$3,921,155
Long Island	6	91.123	\$686,653
Mid-Hudson	9	185.506	\$980,685
Rest Of State	26	350.856	\$2,333,986
Statewide	76	1,256.383	\$7,922,479

Source: CFR reported data for 2011-12 reconciliation tuition rates certified as of August 2014

For the 76 SCIS providers with UPK placements that had a 2011-12 certified reconciliation rate, \$7.9 million was reported in UPK tuition for that year (see SCIS Offset Table 3).

#### Alternative Methods for Calculating Tuition Offset for SCIS Programs

In order to be considered an integrated setting, the SCIS program must include at least 50 percent non-disabled preschool children. Recent program re-approval review findings have indicated that some SCIS programs are unable to enroll or maintain sufficient numbers of children without disabilities. While a variety of factors may contribute, the existing tuition offset for nondisabled student placements creates an obstacle for SCIS programs that cannot generate enough tuition revenue for students without disabilities to equal the amount of the minimum tuition offset. Providers that are not able to collect tuition revenue to equal the existing minimum tuition offset are not fully reimbursed for their cost of operating the program. Alternative methods for calculating the tuition offset for students without disabilities could be considered in order to reimburse a greater share of a SCIS provider's operating costs.<sup>14</sup>

#### *Alternative 1: Calculate the Adjustment to the Tuition Offset on a Combined Basis*

For providers that operate multiple SCIS programs, reported tuition for non-disabled students could be considered on a combined program basis to potentially alleviate the impact of a minimum offset adjustment when calculated on an individual program basis.

<sup>14</sup> The analysis in this section pertains to how a tuition rate offset is applied to the existing cost-based tuition methodology. If an alternative methodology were to be adopted for SCIS tuition rates, a tuition rate offset to remove costs for the regular education component of the program may not be applicable depending on how the new SCIS methodology is structured.



#### Example of Full Day Tuition Offset Calculation with Tuition In Excess of Minimum Offset

	1. Hours Per Day	5
	2. Students without Disabilities Enrollment	40
X	3. Session Days	210
X	4. <u>OCFS Part-Day Day Care Rate</u>	\$28
=	5. Minimum Offset for Regular Education Component	\$235,200
	6. Reported Tuition for Students without Disabilities	\$240,200
	7. Adjustment to Tuition for Students without Disabilities (if 6 < 5)	0
	8. Reported Tuition In Excess of Minimum Offset	\$5,000
	9. Tuition Offset Applied (greater of minimum offset or reported tuition)	\$240,200

#### Example of Half-Day Offset Calculation with Tuition Less Than Minimum Offset

	1. Hours Per Day	2.5
X	2. Students without Disabilities Enrollment	40
X	3. Session days	210
X	4. <u>OCFS Hourly Day Care Rate</u>	\$7.00
=	5. Minimum Offset for Regular Education Component	\$147,000
	6. Reported Tuition for Students without Disabilities	\$142,000
	7. Adjustment to Tuition for Students without Disabilities (if 6 < 5)	\$5,000
	8. Reported Tuition In Excess of Minimum Offset	0
	9. Tuition Offset Applied (greater of minimum offset or reported tuition)	\$147,000

In this scenario, the tuition offset applied would be \$387,200 (the sum of item 9 from both examples above \$240,200 + \$147,000). Because the provider reported \$5,000 in tuition in excess of the minimum offset in the full day SCIS program, and \$5,000 in tuition below the minimum offset in the half day SCIS program, on a combined basis, the minimum tuition offset adjustment would equal \$382,200 (the sum of item 5 from both examples above). Therefore, under an approach that would allow the reported tuition revenue to be combined, the provider's reported \$382,200 in general education tuition for both programs would result in the full day adjustment of \$5,000 to increase the offset to the minimum of \$240,200 not being applied.

This approach may mitigate the impact of the existing tuition offset calculation if tuition collected in one program operated by the provider is in excess of the minimum tuition offset for the regular education component.

#### *Alternative 2: Perform an Alternative Assessment for Providers Impacted by the Tuition Offset Calculation*

For those providers impacted by the existing tuition offset adjustment, a second analysis could be performed in order to determine whether the actual cost of providing the regular education component of the program is less than the minimum offset that is currently calculated for the regular education component based on the OCFS market rates for subsidized child care.

This approach would require standards to be developed in order to define what costs should be attributed to the regular education component. It could be argued that the method for accounting for the regular education component costs should include not only direct-care costs but also costs associated with facilities and administration. Alternatively, it could be argued that in some circumstances the costs for facilities and administration would be maintained if the program operated a Special Class, and therefore, the additional cost of operating a SCIS would be restricted to the cost of the regular education teacher or other regular education direct-care staff, and the supplies and materials that are used for the education of students without disabilities.

If standards were established for calculating the regular education program component cost, the existing tuition offset adjustment could potentially be reduced for the programs that are not able to collect an amount equal to the OCFS market rates for subsidized child care.

*Alternative 3: Apply the OCFS Day Care Rate of the County of the Program Site Location*

An additional alternative analysis that could be performed when a provider is impacted by the existing Tuition Rate Offset Adjustment is to apply the OCFS day care rate of the county in which the SCIS program site is located. Currently the OCFS rate used in the offset is based on the location of the agency's administrative office. In some cases, the location of the SCIS program may be in a county that may have a lower rate than the county in which the administrative office is located.

*Alternative 4: Establish a New Tuition Offset Calculation for All Providers Based on Cost*

Similar to alternative 2, alternative 4 would use a provider's actual reported cost of providing the regular education component of the program to calculate the tuition offset for students without disabilities; but it would not first calculate the existing Tuition Offset Adjustment. Also, similar to alternative 2, this alternative would require the adoption of uniform measures for accounting for the regular education component costs and would potentially result in a lower tuition offset than the existing tuition offset adjustment depending on how the regular education component costs are calculated.

## **CONCLUSION**

Chapter 545 of the Laws of 2013
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In accordance with Chapter 545 of the Laws of 2013, this study will be submitted to the Governor, the State Comptroller, Temporary President of the Senate, and the Speaker of the Assembly.

<b><u>TABLE OF ABBREVIATIONS</u></b>	
§4410	§4410 of the Education Law
8 NYCRR §200	Regulations of the Commissioner of Education Part 200, Codes Rules and Regulations of the State of New York
BOCES	Boards of Cooperative Educational Services
CFR	Consolidated Fiscal Report
CPA	Certified Public Accountant
CPSE	Committees on Preschool Special Education
DOB	Division of the Budget
FTE	Full-Time Equivalent
IDEA	Individuals with Disabilities Education Act
IEP	Individualized Education Programs
LI	Long Island
LRE	Least Restrictive Environment
LTAL	Less-than-Arms-Length
MDE	Multidisciplinary Evaluation Program
MH or Mid-Hud	Mid-Hudson
NYC	New York City
NYSED	New York State Education Department
OAS	Office of Audit Services
OCFS	New York State Office of Children and Family Services
OSE	Office of Special Education
OTPS	Other-Than-Personal Services
RCM	Reimbursable Cost Manual for Programs Receiving Funding Under Article 81 and/or Article 89 of the Education Law to Educate Students with Disabilities
ROS	Rest Of State
RSU	Rate Setting Unit
SA-111	BOCES Supplemental Schedules
SC	Special Class Programs
SCIS	Special Class Programs in an Integrated Setting
SEIS	Special Education Itinerant Services
ST-3	Forms and Schedules (Financial)
STAC	System to Track and Account for Children
TCS	Total Cost Screen
UPK	Universal Prekindergarten Program