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April Wojtkiewicz, Bureau Chief

**To:** District Superintendents, Superintendents and Executive Directors of Approved Programs Serving Students with Disabilities, County Officials, VESID Special Education Policy and Quality Assurance Offices

**From:** April Wojtkiewicz  
Rate Setting Unit

**Subject:** Tuition Rate Setting Methodology for 2009-10 Tuition Rates for Students with Disabilities

**Date:** November 10, 2009

This memorandum communicates the 2009-10 tuition rate setting methodology to service providers operating programs under Articles 81 and 89 of the Education Law and other interested parties. The July 2009 Reimbursable Cost Manual (RCM), which defines reimbursable costs for the 2009-10 school year will also be available at this website soon.

### **Section I: General Rate Setting Methodology**

The following methodology components may be used in whole or in part, pursuant to Section 200.9 of the Regulations of the Commissioner, to establish the 2009-10 tuition rates. Generally, the 2009-10 tuition rates for programs that were in operation during the 2007-08 school year are based on reported 2007-08 financial data. Approved appeal items from prior years and any approved for the 2009-10 school year will be reviewed and, if appropriate, included in the calculation of the 2009-10 rate. As in previous years, each provider's financial data is reviewed by staff of the Rate Setting Unit (RSU) and any necessary adjustments are made in accordance with Section 200.9 of the Commissioner's Regulations and the Reimbursable Cost Manual, as applicable. This process is completed prior to the application of cost screens. The basic components of the tuition rate setting methodology and variable factors used to calculate the 2009-10 tuition rates are described below:

#### **A. Prospective Growth Factors**

There is no prospective growth factor for the 2009-10 school year. A factor of 3.4 percent which represents the compounding of the approved prospective growth factors of 3.4 percent for the 2008-09 and 0.0 percent for the 2009-10 school years was applied to reimbursable 2007-08 base year costs, excluding interest, depreciation, and expenses related to one-time waivers as appropriate, for all school age special

class programs and for all preschool programs, *except those not* meeting the reconciliation provisions in Section I, (E) 3 and 4 of this memorandum.

B. Nondirect Care Cost Parameter

The nondirect care cost parameter limits the amount of nondirect care costs that will be reimbursed through the tuition rate to 30 percent of the reimbursable costs after adjustments. The reimbursable limit for nondirect care costs can be calculated by multiplying adjusted direct care costs by .4286, which is the ratio of 30/70 for nondirect care/direct care costs.

C. Applied Revenues

Applied revenues will be subtracted from total adjusted costs after the application of the nondirect care cost parameter.

Article 28 clinics that have a less-than-arm's-length relationship with an approved preschool (Section 4410 of the Education Law) and that bill Medicaid for preschool services must report the actual full cost of the IEP related services incurred by the clinic on the New York State Consolidated Fiscal Report (CFR) in the related preschool cost center in which the student is placed. The associated Medicaid revenue must be reported in the same manner. Medicaid revenues will be offset against reported program expenses in the calculation of 2009-10 tuition rates.

D. Total Cost Screen

1. The hold-harmless component of the total cost screen is not applied in the calculation of 2009-10 tuition rates.
2. The 2009-10 prospective tuition rate per diem cannot increase by more than 3.4 percent from the 2007-08 reconciliation tuition rate per diem.

The 2009-10 reconciliation tuition rate per diem cannot exceed the 2008-09 reconciliation tuition rate per diem. The 2009-10 budget based tuition rate per diem for programs that did not operate in 2008-09 will be held to the budget-based rate on reconciliation with no growth applied.

For the calculation of the 2009-10 prospective tuition rates, the 2007-08 reconciliation tuition rate per care day generated from the 2007-08 reconciliation adjustment calculations or reconciliation rate calculations, modified as necessary for any appropriate adjustments such as non-recurring allowable base year expenditures, will be used as the prior period per diem rate for total cost screen calculations.

3. For segregated special class preschool programs operating at greater than 2.5 hours per day that are operating 12:1:1 classroom ratios, the 2009-10 prospective tuition rate per diem cannot exceed the 2007-08 reconciliation

tuition per care day unless the program was eligible for a total cost screen waiver in the calculation of the 2007-08 reconciliation rate.

E. 2009-10 Reconciliation Process

Refer to Attachment I for a diagram that details the following 2009-10 reconciliation process. The reconciliation process, as defined in Section 200.9 (f)(3)(iii) of the Commissioner's Regulations, will be applied in the reconciliation of the 2009-10 school year for all approved school age programs and approved preschool programs as follows:

1. (a) Approved school age special class programs will have reconciliation adjustment factors included in the calculation of 2011-12 prospective tuition rates.  
  
(b) Approved preschool programs will receive reconciliation rates for 2009-10.
2. For segregated special class preschool programs operating at greater than 2.5 hours per day, whose 2009-10 reconciliation tuition rate per care day before calculation of the total cost screen exceeds the 2009-10 regional per diem, the reconciliation tuition rate per care day that will be used in the calculation of the 2009-10 reconciliation rate will be determined to be equal to the lowest of (a), (b), or (c) below:
  - (a) The greater of the program's 2009-10 prospective per diem rate or the program's 2008-09 reconciliation rate per care day; or
  - (b) The program's 2009-10 reconciliation tuition rate per care day; or
  - (c) The 2008-09 reconciliation tuition rate per care day multiplied by 1.00.
3. Segregated preschool special class programs operating at greater than 2.5 hours per day and operating at 12:1:1 classroom ratios that received a total cost screen waiver in prior years will be reconciled for the 2009-10 school year without the modification stated in E (2) of this section.
4. Segregated preschool special class programs operating at greater than 2.5 hours per day **that have never applied** for a total cost screen waiver under the reconciliation provisions for prior years may request a waiver to the modification in 2 (a), (b) or (c) above for the 2009-10 reconciliation rate if they can demonstrate that they serve severely disabled students as evidenced by staffing ratios that are more intensive than 12:1:1 (i.e., 12:1:4, 6:1:1). These ratios must have been approved in writing by the Department and be in effect prior to July 1, 2009. Schools will need to provide the Department with a narrative description of the severity of the students served and a class by class listing demonstrating the approved ratio of students to teacher to classroom paraprofessionals for the 2008-09 and 2009-10 school years. Approval of this waiver will result in the calculation of the 2009-10 reconciliation tuition rate without the modification stated in E (2) of this

section. Any waivers for the 2009-10 reconciliation process must be submitted no later than June 30, 2010 and are subject to approval by the State Division of the Budget.

5. Funding for the Excessive Teacher Turnover Prevention Program for eligible school age and preschool programs has been provided in the State Budget. The 2009-10 grant process will include a Chief Administrator's Certification statement to attest to the use of grant funds and an assurance statement that additional revenues generated from these expenditures will continue in the 2009-10 year to be used to supplement teacher compensation. All funds awarded under this grant for all years must remain in the school's base year costs and must always be used for the specific purposes required by the grant. Upon review of such reports, annual cost reports, or as a result of field audit, if SED determines funds were not spent in compliance with stated grant purpose of supplemental teacher compensation, such expenditures will be recouped via a reconciliation rate or a final audit rate. Schools may also be required to repay current year funds if it is determined that prior funds were not spent in compliance with the stated grant purpose or the school does not continue to use these funds to supplement teacher compensation.

#### Reconciliation Glossary

- "Reconciliation tuition rate per care day" is the per care day rate after adjustments to reported costs made on desk review and after offsetting applied revenues and application of the nondirect care cost parameter and the total cost screen.
- "Regional per diem"<sup>1</sup> used in the 2009-10 reconciliation process is the weighted average per diem developed on a regional basis from the 2009-10 prospective rate data for full-day segregated special class programs operating at greater than 2.5 hours.
- "Reconciliation adjustment factor" is the adjustment to be added to or subtracted from the prospective tuition rate on a per diem basis.

## **Section II. Specific Provisions to the Rate Setting Methodology**

### **A. Special Class Programs**

The general rate setting methodology detailed in Section I applies to special class programs with the following additional provisions:

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<sup>1</sup> These regional per diems will be developed using the 2009-10 prospective rate data and will be calculated as soon as sufficient data is available.

1. Special class programs that operated initially in 2007-08 will be subject to the provisions of Section 200.9 (f)(2)(viii). This section of the Regulations states that if a new program's student enrollment is not equal to or greater than the minimum number required in Section 200.7 (c)(3), then that program shall continue to receive a rate based on the regional weighted average per diem tuition rate previously approved for that program. Upon reconciliation, for programs failing to meet the minimum number of students, the program's per diem rate will be limited to the lower of the per diem based on the school's actual costs or the regional weighted average per diem rate initially established.
2. Special class programs that are seeking initial approval in 2009-10 will receive tuition rates based on the 2009-10 regional weighted average per diem tuition rate. Such new programs must have received a waiver from the Department regarding the statutory moratorium on new or expanded programs. Separate regional weighted average per diem tuition rates shall be used for school age and preschool programs. A list of the 2009-10 regional weighted average per diem tuition rates are listed in Attachment II.
3. Special class programs that operated initially in 2008-09 will have the tuition rate for 2009-10 established at the 2008-09 level with no inflation or growth applied.

B. Preschool Special Class Programs in an Integrated Setting

The general rate setting methodology detailed in Section I applies to preschool special class programs in an integrated setting with the following additional provisions:

1. Special class programs in an integrated setting that operated in 2007-08 with both preschool students with disabilities and those students without disabilities who are enrolled in the same program, will receive tuition rates based on reported 2007-08 financial data. After application of the nondirect care cost parameter, reported expenditures are 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 (not prorated for program hours per day) times the regional day care rate or a proration of the regional day care rate for children ages 3 to 5, as published in 18NYCRR 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 for the preschool students with disabilities.
2. Special class programs in an integrated setting that operated initially in 2008-09 will have the tuition rate for 2009-10 established at the 2008-09 rate with no growth applied.

3. Special class programs in an integrated setting seeking initial approval in 2009-10 will have the established 2008-09 reimbursement methodology applied to the submitted budgetary data. Related statistical and historical data for other approved programs operated by a provider or similar programs operated by other providers may also be used to establish rates for these newly approved programs.

C. Special Education Itinerant Teacher (SEIT) Service Programs

For programs providing SEIT services to preschool students with disabilities as defined in Section 200.16 (h)(3)(ii) of the Regulations, the 2009-10 tuition rates are established using the general rate setting methodology detailed in Section I, with the following additional provisions:

1. Rates for SEIT programs are established as half-hour rates and billing by providers to municipalities must be done in half-hour units of time.
2. SEIT programs that operated in 2007-08, the 2009-10 half-hour rates are calculated by dividing the 2007-08 reimbursable expenditures, adjusted by 2 year approved inflation factors, by the greater of the actual billable units in 2007-08 as reported to RSU or 66 percent of the SEIT teacher(s)' total employment hours multiplied by two. These 2009-10 SEIT rates will be subject to reconciliation.
3. SEIT programs that operated initially in 2008-09 will have the tuition rate for 2009-10 established at the 2008-09 rate with no inflation or growth factor applied. These 2009-10 SEIT rates will be subject to reconciliation.
4. SEIT programs seeking initial approval in 2009-10 will have their 2009-10 rate established at the SEIT rate listed in Attachment III. These 2009-10 SEIT rates will be subject to reconciliation.

D. 1:1 Aide Add-On Rates

The 2009-10 regional weighted average 1:1 aide add-on rates are listed in Attachment VII. These rates will be added to the approved tuition rate(s) of the program in which the student is enrolled. The 2009-10 1:1 aide add-on rates are not subject to reconciliation.

E. Interim Rates

For the 2009-10 school year, interim rates may be issued to approved programs if necessary. These rates are in effect until the prospective 2009-10 rates are calculated and approved. The interim rates are intended to provide cash flow until such time as the 2009-10 prospective tuition rates, using the above methodology, are processed.

F. Preschool Evaluation Rates

The 2009-10 school year Evaluation Rates are listed in Attachment IV.

G. Reimbursement for July/August Session Days

This is to remind all providers that consistent with Section 4408 of Education Law, funding for school age programs operated during July and August of 2009 will be based on thirty days of service.

Programs that operate more than thirty days during July and August will only be funded for thirty days and may be subject to total cost screens if they choose to operate longer sessions.

H. BOCES & Public Summer School Age Only Programs

School Age July/August Home Instruction (9022-9024), Related Service with Specialized Instruction (9025) and Specialized Instruction (9029) are now combined with the previous Related Service Only programs under program code 9015 and renamed School Age - Non Special Class. This program will be reimbursed with 1/2 hour rates per unit of service, directly through the STAC (System to Track and Account for Children) system. The 2009-10 regional weighted average School Age - Non Special Class rates are listed on Attachment VI. The 2009-10 School Age - Non Special Class rates are not subject to reconciliation.

I. Teacher Certification Funds for 2009-10

Instructions and required forms for applying for these monies are available on the Rate setting Unit Web Site. Please note that related costs and revenues are to be reported in a separate program cost center and not in any rate program cost center. These monies are not to be used to increase base year costs for future rate setting.

Inquiries regarding 2009-10 tuition rates should be directed to the RSU staff accountant who processed the school's 2007-08 financial reports. RSU staff telephone numbers and e-mail addresses are listed on Attachment V. The general office information is listed below:

New York State Education Department  
Rate Setting Unit  
Albany, New York 12234  
Phone: (518) 474-3227  
Fax: (518) 486-3606  
Website: <http://www.oms.nysed.gov/rsu/home.html>

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Enclosures:

- Attachment I: 2009-10 Reconciliation Process
- Attachment II: 2009-10 Regional Weighted Average Per Diem Tuition Rates
- Attachment III: 2009-10 Special Education Itinerant Teacher Regional Average Rates
- Attachment IV: 2009-10 Rates for Preschool (4410) Evaluations
- Attachment V: Internet and RSU Staff Information
- Attachment VI: BOCES and Public School District Non Special Class Rates
- Attachment VII: 2009-10 1:1 Aide Add-on Rates

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