

Comments of

**The New York State Alliance for
Children with Special Needs**

on the

2021-22 Executive Budget Proposal

Elementary & Secondary Education

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The New York State Alliance for Children with Special Needs

on the

2021-22 Executive Budget Proposal Relating to Pre-School and School-Age Non-Public Programs for the Education of Children with Disabilities

INTRODUCTION

The New York State Alliance for Children with Special Needs is comprised of five regional alliances and coalitions representing approximately 150 early intervention, pre-school and school-age special education programs throughout the state - - the New York City Coalition for Children with Special Needs, the Long Island Coalition for Young Children with Special Needs, the Hudson Alliance for Children with Special Needs, the Capital Region Alliance for Children with Special Needs, the Western Central Coalition for Children with Special Needs and the New York State Alliance for Children with Special Needs – School Age -- and the children and families served through these programs.

Alliance members and representatives are recognized partners with the State Education Department, municipalities and school districts in the successful implementation of IDEA and the development of sound public policies to assure the meaningful participation of families, clinicians and teachers in the decision-making process which makes vital special education services available to eligible families in the most cost-effective manner possible. Alliance members and representatives have, since the transferal of special education programming from the Family Court System to the New York State Department of Education, served on innumerable special education work groups, task forces and advisory panels to inform discussions around clinical guidelines, regulations, reimbursement, provider approval, registration of provider entities and Medicaid compliance. Members of the Alliance most recently assisted the State Education Department in conducting its analysis of preschool special education tuition reimbursement as a member of the Preschool Special Education Fiscal Advisory Workgroup and worked in partnership with the Department as an invited member of the ESSA Non-Public Work Group and the SCIS Workgroup. Our members have also assumed leadership responsibilities in partnership with the Office of Early Learning and specific Department initiatives designed to enhance integration and collaboration among all early education sectors.

The Alliance offers our comments on the Executive Budget proposals relating to the special education system in hopes of providing additional insight to the impact decisions around education will have on the lives of young children with disabilities and on the State.

That these past several months have challenged even the best of us is a profound understatement. That our school-age and preschools special education programs rose to that challenge is an even greater understatement. While the public sector enjoyed the flexibility of reopening after mandated closure at a much more relaxed schedule, the non-public special education sector, and the preschool special education programs more specifically, were compelled to reopen, to “pivot”, to be “nimble” according to a schedule not of their choosing and within days’ notice by the Executive. The programs were privileged “first responders” even as their access to vaccinations regulated their staff below that essential designation.

The Alliance applauds the recent efforts of the Legislature to provide certain fiscal safeguards and protections to the sector through “safety net” legislation. We encourage the Legislature to continue this support and look to your leadership to guide us through these times.

Duplicity of Regulatory Requirements

Recent months have only brought into clearer focus the undeniable need to reassess the designation of preschool special education programs as child care entities, even as their mission remains predominantly, if not exclusively, early education. For too long these programs have “served two masters” without the benefit of coordinated standards. -- NYSED and OCFS (NYCDOHMH). – The tension between the regulatory framework of these state agencies often defies compliance and imposes unnecessary operating burdens on entities often without resources to easily address conflicting requirements.

The Alliance requests the Legislature direct the creation of an Advisory Task Force to review the oversight requirements of NYSED and OCFS (NYCDOHMH) as relates to the preschool special education programs and assess the fuller integration of the 4410 system into NYSED, exclusively.

This reassessment is particularly timely as the Executive Budget proposes the relaxation of certain child care provisions in the interest of enhanced affordability and availability including eliminating requirements that child care employee applicants provide references and crime attestations.

Pre-School Special Education

Universal Pre-K

The Alliance fully supports continued funding of the state’s Pre-Kindergarten system. Many existing 4410 programs are approved providers of UPK and have developed a “single” teacher model to maximize available funding for Special Class in an Integrated Setting (SCIS) programs within these UPK settings. While there is general consensus that integration of children with special needs within the settings of typical peers is preferred, the availability of such peer “community based settings” is troublingly limited. While some elements of the current

Pre-Kindergarten system “encourage” community based organizations to collaborate with 4410 programs, and others encourage 4410 programs to apply for Pre-Kindergarten approval, these efforts to coordinate general and special education operations have been disappointing.

Accordingly, the Alliance recommends that a specific percentage of the UPK funds be specifically reserved for approved 4410 programs to provide opportunities for preschool children with disabilities to learn alongside their non-disabled peers through integration (SCIS).

The Alliance shares with the New York State Education Department (NYSED) and the Executive the belief that the state’s Pre-Kindergarten system must itself be better coordinated and has advocated for the consolidation of the discrete programs for the past several years. Since its inception, the State’s system has embraced multiple discrete: Targeted Pre-K (initially Experimental Pre-K, began in 1966); Universal Pre-K (began in 1998); Priority Pre-K (began in 2013-14); Statewide Full-day UPK (began in 2014-15) and Expanded UPK (began in 2015-16). Each of these Programs contains program and funding components unique to that Program, creating a patchwork quilt of standards for provider eligibility and funding levels. Both NYSED and the Executive propose the creation of a single, unified Pre-Kindergarten system.

The Alliance supports the proposal to weave into a single system the several strands of Pre-K programming to improve utilization and to maximize available funding.

While we recognize that many system-wide programs must be built “one room at a time”, the universal pre-K system in New York State has remained “under construction” for nearly two decades. While the current system’s fractured design may present a few challenges for some school districts, it presents insurmountable obstacles for non-public preschool special education programs requesting Pre-Kindergarten approval or seeking to integrate a special education class (SCIS) within a district Pre-Kindergarten program. Simply stated, access to the Pre-Kindergarten system in New York has, in large measure, been denied the 4410 non-public special education sector which, by its design, serves students from several school districts within the same class room.

The Alliance supports the Executive’s proposal to continue to require that district UPK proposals “include students of all learning and physical abilities in integrated settings” within the list of factors to be considered in making UPK awards.

The Alliance recommends further that certain Pre-Kindergarten requirements such as the prohibition against serving students from different school districts be waived to encourage 4410 Pre-Kindergarten applications and approvals in furtherance of fuller integration opportunities.

Implementation of the Pre-Kindergarten system in NYC has presented its own set of challenges as it draws qualified staff away from existing non-public special education programs whose fixed rates of reimbursement prevent them from offering competitive teacher salaries. The extension of the Pre-Kindergarten NYC school day to 6.3 hours a day and the provision of programs on weekends are just two elements which are not aligned with NYSED’s guidelines

around other early childhood education models, and are dramatically different than guidelines governing the operation of 4410 special education programs.

The NYCDOE, among other districts, often establishes policies which present operational difficulties for preschool and school age special education programs which must alert NYSED to the issue and await NYSED guidance.

The Alliance requests the Legislature direct NYSED to work more collaboratively in the development of policies affecting the preschool and school-age special needs student populations.

The Alliance further requests the Legislature direct NYSED to more closely align the Pre-Kindergarten and 4410 special education program models and to assure fiscal support for such alignment.

The Alliance also supports the Executive's extension of NYSED's authority to administer the UPK program and recommends the authority be made permanent.

Mandate Relief for Counties/School Districts

The Alliance adamantly **opposes** further relaxation of codified requirements governing the provision of special education services under the guise of "mandate relief".

In the first instance NYSED currently employs a "waiver" system as deemed necessary and appropriate within select areas such as classroom ratios.

Secondly, the state budget process generally advances wholesale changes to the very statutory requirements the Executive proposes "waiving" generally resulting in further strengthening of accountability within the reasonable parameters of New York's singularly unique special education system. We would suggest that the legislative process remains the preferred approach to challenging the integrity of current mandates.

Third, and perhaps most importantly, the Executive's proposal would create a myriad of nearly 700 districts and counties - - each, potentially with a waiver for one or another special education requirement - - creating a logistical nightmare for any special education program serving as many as 40 school districts and counties with inconsistent, non-standardized mandates.

Fourth, the premier objective of equal access to equal services - - that students in New York City have the same special education opportunities as in Buffalo or Cohoes - - is compromised by a system riddled with waivers district by district, county by county.

Uncommitted IDEA Funds/Excessive Teacher Turnover

The Alliance **applauds** the Executive's acknowledgement that the special education system feels the full weight of recent changes to New York's teacher certification system with equal force as our general education partners. In some regions of the State, the non-public

special education system is experiencing a shortage of certified teachers to a greater extent than the public sector, due, in large part, to the attraction of higher salaries by school districts.

This shortage in available teachers is further exacerbated, especially in New York City, with the implementation of the UPK initiative and the promise of high paying salaries by the public sector. Accordingly, we **encourage** the continued support by both the Executive and Legislature of efforts to more closely align the salaries for non-public classroom based special education teachers with their public system colleagues through application of uncommitted IDEA funds. The continuation of these narrowly targeted funds is critical to assuring the fiscal viability of these programs, even as we await the redesign of the current reimbursement methodology in its entirety.

While the Executive's proposal of flat-funding is an important first step, the Alliance requests further investment to address all teaching staff shortages in the non-public preschool and school-age sectors.

Accordingly, we request additional funding for initiatives such as the Excessive Teacher Turnover Prevention program with the following modifications to the existing targeted appropriation:

- *extend the funding to teacher assistants and teachers' aides, as well as teachers, in recognition of the statewide shortages combined with salary differentials which impact these pedagogical personnel; and*
- *revise the current methodology of allocation to allow all approved 4410 and 853 programs equal access to the funding by eliminating any minimum thresholds operating cost or other obstacles to full access.*

While IDEA funding of the Excessive Teacher Turnover Prevention Program is welcomed, the alarming disparity between the non-public and public sectors commands a measure of state fund investment as well. Recently conducted surveys of the 4410 provider community revealed the disturbing yet **nonetheless** anticipated consequence of the teacher shortage; specifically the over reliance on an uncertified and substitute teacher workforce.

The Alliance strongly supports the NYSED request for a minimum of \$4 M in state funds to complement the federal IDEA funding reflected in the Executive Budget.

Program and Fiscal Staff Supports

NYSED has, in partnership with special education advocates, identified a number of support programs currently available exclusively to staff serving in the public education sector including, but not limited to, Master Teacher Awards, NY State Masters -in- Education Teacher Incentive Scholarship Program, Empire State Excellence in Teaching Awards, and Teachers of Tomorrow Awards.

We request that the benefits of these incentivizing programs be extended to teaching staff of our preschool and school age special education programs as well.

Tuition Rate-Setting Redesign and Funding Parity

The Alliance supports NYSED's Budget Request of \$1.25 M to improve the financial stability of approved school-age and preschool programs serving students with disabilities.

As the Department shared in its testimony before the Joint Budget Hearing on Elementary and Secondary Education, the financial stability of our approved programs serving district students has long been challenged by an archaic rate setting methodology which has come to rely on waivers to accommodate the growing misalignment between reasonable costs and reimbursement. The waiver process is seemingly protracted by design, often extending several years beyond the year for which relief is requested, stranding programs in deficit spending operations often to the brink of closure. The failure of the methodology and waiver process to more closely and more immediately align reasonable costs with reimbursement is all the more apparent during the COVID Emergency Period as programs can only speculate as to which "COVID" costs will be reimbursed and when.

The Alliance believes that prior year observations by the Executive that funding for preschool special education was level because "special education programs (are) spending more slowly than anticipated" belies the struggles of the non-public special education sector and the fact that costs have clearly increased but remain stranded under the current tuition methodology.

While our school-age colleagues, most profoundly our colleague 4201 schools, have enjoyed significant trend/growth factor increases to their funding, the preschool special education sector had languished without trend/growth for several years before only recently enjoying one-half of the trend/growth enjoyed by our school-age colleagues. This disparate treatment is particularly problematic for special education institutions which operate both preschool and school-age programs.

Importantly, the Executive and Legislature have aligned trend/growth increases in the Charter School sector and the non-public religious and independent school sector all to increases in "State aid" while growth for the non-public preschool/special education sector remains uniquely deflated and well below growth in any and all of the other educational sectors.

Accordingly, the Alliance requests statutory directive that the tuition rates approved for the 2020-21 school year and thereafter for special education services and programs provided to preschool and school-age students by approved education institutions reflect an increase by a percentage equal to the increase in general support for public schools, Charter schools and non-public religious and independent schools.

The Alliance supports the Department's call for a statutory index for establishing growth in annual tuition rates for both the preschool and school-age systems together with program authority to establish a general reserve fund.

Alternative Reimbursement Methodology for SCIS Model

The Alliance requests Executive and Legislative assistance in implementing the provisions of Chapter 59 of the laws of 2017 which directed NYSED to develop and implement an alternative methodology for reimbursement of preschool special education Special Class in an Integrated Setting (SCIS) programming.

As members of the NYSED Special Education Financial Advisory Workgroup for both school age and preschool programming, and, as noted, the most recently convened Preschool Special Education Fiscal Advisory and SCIS Workgroups, we share concerns that the current reimbursement of the SCIS model serves more to prevent than incentivize the operation of a model which was designed specifically to enhance integration within special education programming. Through the work of the SCIS Workgroup convened in furtherance of Chapter 59, NYSED has devoted immeasurable hours towards identifying the obstacles to fuller integration and recognized immediately the fiscal impediments to collaboration with the general education system.

The Alliance urges the Legislature to provide the immediate fiscal relief necessary to sustain the SCIS model while NYSED continues its work through the SCIS Workgroup to implement long term solutions.

Workforce Investment/True Gap Elimination

While many sectors within the State's human and health care service systems are experiencing workforce shortages with recruitment and retention challenges, the non-public special education sector is obliged by both federal and state law, our approvals and our contracts with school districts and municipalities, to accept all placement referrals to the full extent of our approval and to fully implement each individualized education plan (IEP) without the luxury enjoyed by other sectors of refusing services, denying admission or limiting availability of services.

While we applaud and support the Executive's investment in support of direct salary costs and related fringe benefits associated with the imposition of minimum wage requirements, the Alliance requests an additional investment of \$5 M to eliminate the gap in workforce funding which threatens the continued fiscal viability of the non-public special education sector.

NYSED Data System

The non-public special education sector is intensely data driven and heavily reliant on the regulatory monitoring of NYSED which, in turn, requires a functioning data system to assure compliance with state and federal requirements and the timely provision of quality educational services to students.

The Alliance supports NYSED's request for support of the continued implementation of the Data System Development project.

School-Age Special Education

Private Excess Cost Aid

The Executive Budget expands DASNY's design and constructive and loan services to Not-for-Profits and school districts. *The Alliance respectfully requests access to the vital DASNY services be extended to the 853 special education programs.*

Private Excess Cost Aid

The Alliance strongly **supports** the Executive's appreciation that Private Excess Cost Aid does not contribute to over-identification of eligible students, or the provision of excessive services. The non-public special education system serves the State's most disabled and demanding students - - the 3% of the population which is considered "most severely disabled". The percentage of children served by the non-public system has remained stable for the past several years - - a fact which refutes the need for reductions in private excess cost aid. The effort to reduce private excess cost aid is a misdirected attempt to contain costs which are already more than adequately "held down" by a tuition reimbursement methodology that does not tolerate growth or increases. Under-funding districts who must, by federal law, provide these educational services, is short-sighted.

Elimination of State Share for Placement in Residential Schools

The Alliance must register a measure of concern with the Executive's proposal to permanently shift the current State's share of the cost of residential placements to the district, uncertain whether the district's placement decisions may be negatively affected. We would, then, recommend that NYSED report to the Executive and the Legislature the placement data for 2020-21 and thereafter to assure the fiscal burden on districts does not work to deny residential placements.

Special Education Program Parity with Other Educational Partners

Non-public preschool and school-age special education programs occupy an "awkward" place within the State's educational system - - "neither fish nor fowl". While both the preschool and school-age special education sectors are heavily regulated by the State Education Department, the State's education laws and regulations apply in general to the public educational sector, with a specific body of law governing charter schools. In the absence of statutory directive to the contrary, NYSED generally extends the provisions of public sector regulations to the non-public special education sector.

While we would argue such an application produces some undesirable and unintended consequences, we would note that the same non-public sector which is subject to the requirements of the public general education sector should enjoy each of the benefits accorded its public sector colleagues, including, but not limited to, inclusion in each funded initiative around school safety, school climate and smart technology.

Priority Access to Federal Relief Funds

New York State has been allocated \$322.9 M under the federal Governor’s Emergency Education Relief (GEER) Fund. Of that amount, \$250.1 M is targeted for a new **Emergency Assistance to Non-Public Schools** (EANS) grant program which is available to 853, 4201 and religious/independent schools. The availability of the remaining \$72.8 M is to be determined by the Executive.

The Alliance requests that the Legislature provide for equitable access to these vital funds by the pre-school special education sector, on parity with our school age colleagues and school districts.

Cautionary Notes on Telehealth Services

While the Alliance recognizes the indisputable value of telehealth services in enhancing access to vital health and mental health services, we note that the efficacy of this service modality has recently been the subject of much debate, especially as related to the provision of educational and special education services.

However well-intentioned, we are concerned for the potential “weaponization” of the telehealth service modality, as service delivery decisions may be driven by convenience without acknowledging the well-established clinical benefits of in-person services. Encouragement of only remote services into certain neighborhoods only serves to exacerbate the existing disparities, not eradicate them.

The Alliance requests the Legislature direct the creation of an Advisory Task Force to assess the appropriateness of the telehealth service modality in the provision of special education services and determine the appropriate parameters for its application in the provision of services to students with special needs ages 0 – 21.

Additional Comments

In addition to the recommendations set out above, within the context of the Executive’s proposals, the Alliance offers the following suggestions for the improvement of the special education system:

- *Make permanent the provisions the provisions of the Chapter 217 of the Laws of 2015 authorizing school psychologists to provide services within 4410 systems*
- *License school psychologists to maximize access to federal Medicaid dollars and enhance access to vital mental health services*