

Comments of

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

on the

2022-23 Executive Budget Proposal

Elementary & Secondary Education

January 25, 2022

Greenberg Traurig, LLP
54 State Street
Albany, New York 12207
Phone: 518-689-1412 Fax: 518-689-1499
CONTACT: Pamela A. Madeiros, Esq.

Comments of

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

on the

**2022-23 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 efforts of the Legislature last session to provide certain fiscal safeguards and protections to the sector through “safety net” legislation. We also applaud the several relief provisions advanced by the Legislature and ultimately included within the 2021-22 enacted Budget – the extension of which we request again. 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 bought 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.

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** the State Education Department request to further relax 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 Departments'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 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 \$1.72 M to improve the financial stability of approved school-age and preschool programs serving students with disabilities.

As the Department shared in its Legislative and Budget Priorities Report, 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.

While the Alliance applauds the Executive's commitment to assuring an 11% trend factor (growth) in the development of our 2022-23 rates of reimbursement, a more consistent and reliable approach to assuring fiscal stability is necessary.

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 2022-23 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, as proposed in S.6516 (Mannion) / A.8013 (Benedetto) vetoed by the Executive, and A.7755 (Pheffer Amato) / S.7096 (Cooney) (copies attached) also vetoed.

The Alliance also calls for the redesign of the reimbursement rate methodology, with an interary approach which hold providers to approximate their appropriate rate for a period

of 5 years without application of reconciliation, providing finalization of a revised methodology (See Attached).

2021-22 State Budget Relief Provisions Requested to be Extended

The Legislature championed the need of the special education provider community in the 2021-22 State Budget through a series of complementary provisions which we respectfully request be **extended**:

- §37-d of S.2506-C / A.3006-C (ELFA/2021) providing an enrollment adjustment factor as part of the tuition rate reconciliation process of 5% points or more during the recent 2020-21 school year:

We request extension of the same accommodation for the 2021-22 school year, and annually thereafter, of 5%.

Unfortunately, the methodology letter for the 2021-22 year set the underenrollment measure at 7.5% -- significantly reducing the intended benefits of the provision which was enacted in April 2021.

- §37-f of S.2506-C / A.3006-C (ELFA/2021) authorizing 853 schools to retain funds in excess of allowable/reimbursable costs, to the extent of 1% of total allowable costs not to exceed 4%:

We request the same accommodation be extended for the 2021-22 school year and annually thereafter for 4410 programs, as well, with the modification that such excess funds would also be deemed an allowable expense.

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, specifically.*

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 2021-22 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.

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***

Rate Setting Redesign



**Rate-Setting Redesign Appropriation Language
for Inclusion in SED's State Operations Budget (General Fund)***

For services and expenses related to the design of a new tuition rate setting methodology for private and public providers serving school age and preschool children with disabilities.

Personal service1,000,000

Contractual services.....1,500,000

Total amount available.....2,500,000

***A corresponding increase in SED's general fund cash ceiling will be necessary to enable SED to be able to spend these funds.**

AN ACT to amend the education law, in relation to eliminating annual reconciliation of tuition rates and designing a new tuition rate setting methodology with stakeholder input

Section 1. Paragraph c of subdivision 4 of section 4405 of the education law, as amended by chapter 82 of the laws of 1995, is amended to read as follows:

c. The director of the budget, in consultation with the commissioner [of education], the commissioner of social services, and any other state agency or other source the director may deem appropriate, shall approve reimbursement methodologies for tuition and for maintenance. Any modification in the approved reimbursement methodologies shall be subject to the approval of the director of the budget. [Notwithstanding any other provision of law, rule or regulation to the contrary, tuition rates established for the nineteen hundred ninety-five--ninety-six school year shall exclude the two percent cost of living adjustment authorized in rates established for the nineteen hundred ninety-four--ninety-five school year.] **Provided, however, that tuition and regional rates approved for special services or programs provided to school-age students by approved private residential or non-residential schools for the education of students with disabilities that are located within the state, by special act school districts, and by July and August programs for students with disabilities approved pursuant to section forty-four hundred eight of this article, and for special services or programs provided by programs serving preschool students with disabilities approved pursuant to section forty-four hundred ten of this article including, but not limited to, special class and special class in an integrated setting programs, shall not be subject to annual reconciliation, commencing with the start of the two thousand twenty-two--two thousand twenty-three school year. Provided further that for each five-year period commencing with the start of the two thousand twenty-two--two thousand twenty-three school year, the tuition and regional rates approved for each subsequent school year shall be established at the previous year's rate plus the approved growth percentage. Provided further that funded tuition for each five-year period commencing with the start of the two thousand twenty-two--two thousand twenty-three school year shall be reconciled against the allowable expenses for the same five-year period per the approved tuition methodology as promulgated pursuant to regulations of the commissioner. Provided further that if the reconciled expenses for each five-year period commencing with the start of the two thousand twenty-two--two thousand twenty-three school year are lower than the provided funding by greater than one percent, reimbursement will be adjusted to recover the amount of underspending above one percent.**

§2. Subdivision 2 of section 4003 of the education law, as amended by section 947 of the laws of 1981, is amended to read as follows:

2. The director of the budget, in consultation with the commissioner of education, the commissioner of social services, the commissioner of health, the commissioner of mental health, and any other state agency or other source he may deem appropriate, shall approve reimbursement methodologies for tuition and maintenance. Any modification in any such methodology which has previously been approved shall be subject to the approval of the director of the budget. **Provided, however, that tuition and regional rates approved for special**

services or programs provided to school-age students by approved private residential schools for the education of students with disabilities that are located within the state or by special act school districts, shall not be subject to annual reconciliation, commencing with the start of the two thousand twenty-two--two thousand twenty-three school year. Provided further that for each five-year period commencing with the start of the two thousand twenty-two--two thousand twenty-three school year, the tuition and regional rates approved for each subsequent school year shall be established at the previous year's rate plus the approved growth percentage. Provided further that funded tuition for each five-year period commencing with the start of the two thousand twenty-two--two thousand twenty-three school year shall be reconciled against the allowable expenses for the same five-year period per the approved tuition methodology as promulgated pursuant to regulations of the commissioner. Provided further that if the reconciled expenses for each five-year period commencing with the start of the two thousand twenty-two--two thousand twenty-three school year are lower than the provided funding by greater than one percent, reimbursement will be adjusted to recover the amount of underspending above one percent.

§ 3. This act shall take effect immediately.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [] is old law to be omitted.

2021-22 State Budget
provisions to be
Extended

20 § 37-d. Notwithstanding any provision of law or regulation to the
21 contrary, if as a result of the state disaster emergency declared pursu-
22 ant to Executive Order 202 of 2020, approved private schools serving
23 students with disabilities subject to articles 81 and 89 of the educa-
24 tion law, special act school districts, and approved preschool special
25 class and special class in an integrated setting programs pursuant to
26 section 4410 of the education law experience an enrollment decrease as a
27 percentage of operating capacity of 5 percentage points or more during
28 the 2020-21 school year as compared to the previous three year period
29 2016-17 through 2018-19, the state education department shall apply an
30 enrollment adjustment factor as part of the tuition rate reconciliation
31 process to stabilize tuition revenue, provided that the commissioner of
32 education shall submit a plan for the implementation of such enrollment
33 adjustment factor to the director of the budget for approval.

34 Moreover, should such programs receive federal Paycheck Protection
35 Program loan forgiveness revenue or other extraordinary federal revenue
36 provided in response to the COVID-19 pandemic as defined by the state
37 education department in consultation with the director of the budget,
38 such revenue shall be applied as offsetting revenue for reconciliation
39 tuition rate calculation purposes after allowable costs incurred in
40 responding to the state disaster emergency declared pursuant to Execu-
41 tive Order 202 of 2020 are defrayed, and such revenues shall be
42 subtracted from total costs after the application of the nondirect care
43 screen, provided, however, that the combined amount of tuition revenues,
44 extraordinary federal revenues provided in response to the COVID-19
45 pandemic, and any other revenues available to the program that are
46 treated as offsetting revenue shall not exceed the program's actual
47 costs, and provided further, that the state education department shall
48 hold harmless tuition rates in subsequent school years to reflect the
49 impact of receipt of such extraordinary federal revenue.

50 § 37-e. Section 4004 of the education law is amended by adding a new
51 subdivision 5 to read as follows:

52 5. The board of education of a special act school district shall be
53 authorized to establish a fiscal stabilization reserve fund. There may
54 be paid into such fund an amount as may be provided pursuant to the
55 requirements of paragraph k of subdivision four of section forty-four
56 hundred five of this title.

1 § 37-f. Subdivision 4 of section 4405 of the education law is amended
2 by adding a new paragraph k to read as follows:
3 k. The tuition methodology established pursuant to this subdivision
4 for the two thousand twenty-one--two thousand twenty-two school year
5 and annually thereafter shall authorize approved private residential or
6 non-residential schools for the education of students with disabilities
7 that are located within the state, and special act school districts
8 to retain funds in excess of their allowable and reimbursable costs
9 incurred for services and programs provided to school-age
10 students. The amount of funds that may be annually retained shall not
11 exceed one percent of the school's or school district's total allowable
12 and reimbursable costs for services and programs provided to school-age
13 students for the school year from which the funds are to be retained;
14 provided that the total accumulated balance that may be retained shall
15 not exceed four percent of such total costs for such school year; and
16 provided further that such funds shall not be recoverable on reconcil-
17 iation of tuition rates, and shall be separate from and in addition to
18 any other authorization to retain surplus funds on reconciliation. Funds
19 may be expended only pursuant to an authorization of the governing board
20 of the school or school district, for a purpose expressly authorized as
21 part of the approved tuition methodology for the year in which the funds
22 are to be expended, provided that funds may be expended to pay prior
23 year outstanding debts. Any school or school district that retains funds
24 pursuant to this paragraph shall be required to annually report a state-
25 ment of the total balance of any such retained funds, the amount, if
26 any, retained in the prior school year, the amount, if any, dispersed in
27 the prior school year, and any additional information requested by the
28 department as part of the financial reports that are required to be
29 annually submitted to the department.

2021 Legislation

STATE OF NEW YORK

6516--A

2021-2022 Regular Sessions

IN SENATE

May 4, 2021

Introduced by Sens. MANNION, REICHLIN-MELNICK -- (at request of the State Education Department) -- read twice and ordered printed, and when printed to be committed to the Committee on Disabilities -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, in relation to providing an annual growth amount for tuition and regional rate reimbursement for approved school-age and preschool special education programs

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraph c of subdivision 4 of section 4405 of the educa-
2 tion law, as amended by chapter 82 of the laws of 1995, is amended to
3 read as follows:
4 c. The director of the budget, in consultation with the commissioner
5 [of education], the commissioner of social services, and any other state
6 agency or other source the director may deem appropriate, shall approve
7 reimbursement methodologies for tuition and for maintenance. Any modifi-
8 cation in the approved reimbursement methodologies shall be subject to
9 the approval of the director of the budget. [Notwithstanding any other
10 provision of law, rule or regulation to the contrary, tuition rates
11 established for the nineteen hundred ninety-five-ninety-six school year
12 shall exclude the two percent cost of living adjustment authorized in
13 rates established for the nineteen hundred ninety-four-ninety-five
14 school year.] Tuition and/or regional rates approved for the two thou-
15 sand twenty-one-two thousand twenty-two school year and thereafter for
16 special services or programs provided to school-age students by approved
17 private residential or non-residential schools for the education of
18 students with disabilities that are located within the state, by special
19 act school districts, and by July and August programs for students with
20 disabilities approved pursuant to section forty-four hundred eight of
21 this article, and for special services or programs provided to preschool

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [] is old law to be omitted.

LBD08508-03-1

1 students by programs serving preschool students with disabilities
2 approved pursuant to section forty-four hundred ten of this article
3 including, but not limited to, special class and special class in an
4 integrated setting programs, multi-disciplinary evaluation programs,
5 special education itinerant services, and preschool transportation
6 services for which tuition and/or regional rates are determined, shall
7 grow by a percentage equal to the greater of: (i) the difference of the
8 quotient arrived at when dividing the statewide apportionments for
9 general support for public schools, as defined in subdivision one of
10 section thirty-six hundred nine-a of this chapter, for the current year
11 by such apportionments for the base year, as such terms are defined in
12 subdivision one of section thirty-six hundred two of this chapter, as
13 computed based on an electronic data file used to produce the school aid
14 computer listing produced by the commissioner in support of the enacted
15 budget for the current year, less one; or (ii) zero.

16 § 2. This act shall take effect immediately.



STATE OF NEW YORK

7755--A

2021-2022 Regular Sessions

IN ASSEMBLY

May 21, 2021

Introduced by M. of A. PHEFFER AMATO, GRIFFIN, RA -- read once and referred to the Committee on Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, in relation to authorizing the retention of federal funds for special education programs for preschool children that are subject to tuition rate reconciliation

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraph k of subdivision 4 of section 4405 of the educa-
2 tion law, as added by section 37-f of part A of chapter 56 of the laws
3 of 2021, is amended to read as follows:
4 k. The tuition methodology established pursuant to this subdivision
5 for the two thousand twenty-one--two thousand twenty-two school year and
6 annually thereafter shall authorize approved private residential or
7 non-residential schools for the education of students with disabilities
8 that are located within the state, [and] special act school districts
9 and programs approved pursuant to section forty-four hundred ten of this
10 article that are subject to tuition rate reconciliaton, to retain funds
11 in excess of their allowable and reimbursable costs incurred for
12 services and programs provided to school-age and preschool students. The
13 amount of funds that may be annually retained shall not exceed one
14 percent of the school's [or], school district's, or programs subject to
15 tuition rate reconciliation that are approved pursuant to section
16 forty-four hundred ten of this article's total allowable and reimbursa-
17 ble costs for services and programs provided to school-age and preschool
18 students for the school year from which the funds are to be retained;
19 provided that the total accumulated balance that may be retained shall
20 not exceed four percent of such total costs for such school year; [and]
21 provided further that such funds shall not be recoverable on reconcil-
22 iation of tuition rates, shall be carried forward as total reimbursable

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [] is old law to be omitted.

LBD11513-02-1

1 costs for purposes of calculating subsequent year prospective and recon-
2 ciliation tuition rates, and shall be separate from and in addition to
3 any other authorization to retain surplus funds on reconciliation. Funds
4 may be expended only pursuant to an authorization of the governing board
5 of the school [or], school district, or program approved pursuant to
6 section forty-four hundred ten of this article, for a purpose expressly
7 authorized as part of the approved tuition methodology for the year in
8 which the funds are to be expended, provided that funds may be expended
9 to pay prior year outstanding debts. Any school [or], school district,
10 or program approved pursuant to section forty-four hundred ten of this
11 article that retains funds pursuant to this paragraph shall be required
12 to annually report a statement of the total balance of any such retained
13 funds, the amount, if any, retained in the prior school year, the
14 amount, if any, dispersed in the prior school year, and any additional
15 information requested by the department as part of the financial reports
16 that are required to be annually submitted to the department.
17 § 2. This act shall take effect immediately and shall be deemed to
18 have been in full force and effect on and after April 1, 2021.