

Comments of

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

on the

2024-25 Executive Budget Proposal

Elementary & Secondary Education

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Comments of

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

on the

**2024-25 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. In prior years, members of the Alliance 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 COVID years 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 Alliance applauds the recent efforts of the Legislature 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 2022-23 enacted Budget. 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.

Pre-School Special Education

Authorization that Certified School Psychologists Provide Services Within the Early Intervention and Pre-school Special Education Systems

The Alliance adamantly **opposes** any attempt to repeal the current authorization of certified school psychologists to practices as providers within the Early Intervention system (HMH, Part C) – an extremely short-sided proposal against this current landscape of workforce shortages and consistent non-compliance by New York State with the requirements of the federal IDEA laws governing the provision of services to infants and toddlers with disabilities.

The Alliances fully supports the extension of such authorization in both the Early Intervention and the Pre-school Special Education Systems an additional two years (HMH, Part C) in anticipation of full licensure for school psychologists, as proposed in A.2033 (Rosenthal)/S.3036 (Brouk).

Enactment of school psychologist licensure laws is perilously overdue as the unmet mental health needs of our students becomes more acute each day.

We implore the Legislative to enact this critical licensure law this session, to enable these qualified professionals to provide vital services beyond the school day and school building.

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 designated 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 weaving 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 more than 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 requirement 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.

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

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 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 requests funds to complement the federal IDEA funding reflected in the Executive Budget.

Extension of Teacher Support Programs to the Non-Public Sector

As referenced above, the non-public special education sector relies heavily on the Excessive Teacher Turnover Program which is fiscally supported by IDEA funds. These limited funds are woefully inadequate, however, to either attract or retain teachers in the 4410 preschool and 853 school-age special education programs. Simply stated, our programs are ill-equipped to compete with public sector salaries which are bolstered each year further exacerbating the disparity.

Accordingly, the Alliance respectfully requests the Legislative to begin to address the salary disparity which exists between the public and non-public special education teaching sectors by extending the benefits of each of the existing teacher support initiatives to the teaching personnel within the non-public special education system, including, but not limited to the:

- Teacher Opportunity Corps Program*
- Teacher Monitor Internship Program*
- Teacher for Tomorrow Awards*
- Master Teacher Program*
- NYS Masters-in-Education Teacher Incentive Scholarship*
- Empire State Excellence in Teaching Awards*
- We teach NY grant Program*
- Training on instructional practices for the teaching of reading (Back to Basics); and*
- Such other initiatives and programs designed to support, attract and retain our special education teachers.*

Tuition Rate-Setting Redesign and Funding Parity

It is well established that the financial stability of our non-public 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 could only speculate as to which “COVID” costs would be reimbursed and when.

The Alliance is profoundly appreciative of the Executive and Legislative recognition of this crisis reflection in the recent creation of the Alternative Tuition Rate Setting Methodology Study.

We applaud the continued fiscal support of an additional \$1.3M proposed by the Executive and concede the necessity of extending the study report an additional two years to July 1, 2027.

Interim Relief

The postponement of the Rate-Setting Methodology Study report and findings, while perhaps necessary, will require focused attention on assuring the fiscal viability of our non-public special education programs in the interim.

Accordingly, the Alliance requests a statutory commitment to the following components of the Tuition Rate Setting Methodology for 2024-25 Tuition Rates for Preschool and School-Age students with disabilities:

<i>Trend Factor (SCIS/SC/1:1 Aide/1:1 Nurse/Interpreters/Transportation/Evaluations)</i>	<i>% consistent with GSPS growth, unmodified</i>
<i>Non-District Costs Parameter</i>	<i>65/35</i>
<i>Applied Revenue</i>	<i>Actual revenue received</i>
<i>Extraordinary Federal Aid*</i>	<i>Treat as of setting revenue for reconciliation; prospective rates held harmless</i>
<i>*While all other state reimbursement systems (OMH, OASAS, OPWDD, etc.) declined to “off-set” rates with these federal aides, and, in fact, encouraged providers to submit revised CFRS for fiscal years 2019-20, and 2020-21, no such courtesy was extended 4410/853 providers.</i>	<i>Direct SED to identify extent of negative impact on previously certified 4410/853 rates as a result of the offsetting revenue Rule and allow programs to exceed the authorized 11% retained funds by that amount.</i>
<i>Total Cost Screen</i>	<i>Standard</i>
<i>1% Administrative Reform</i>	<i>Elimination of final rate reconciliation of <1% changes in per diem/issued as prospective</i>
<i>Retained Annual Surplus (Chapter 56 of 2022)</i>	<i>Retention of 11% in 2024-25 if recon rate < prospective by 1% of allowable</i>

Enrollment Adjustment Factor

Minimum Wage

Interim Plus

costs

Application of adjustment in development of 2024-25 recon rates in a program experiences decrease of 5% or more of operating capacity in 2024-25
Addition funding available in development of 2024-25 rates
2024-25 “interim rate” to include the approved “trend/growth” factor for 2024-25 years pending release of methodology letter.

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

DASNY Loans

The Alliance respectfully requests access to the vital DASNY services provided in 2022 to not-for-profits and school districts, 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 2023-24 and thereafter to assure the fiscal burden on districts does not work to deny residential placements.

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.

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