



July 2, 2013

The Honorable Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Dear Governor Cuomo:

I am writing to urge you to approve A7302-A/S5568-A passed in the latest legislative session. The bill's provisions will improve the oversight of preschool special education program providers. It would reduce fraud, abuse and mismanagement by requiring that every provider be audited at least once by the State Comptroller by March 31, 2018 and that Executive Directors of providers be fully engaged and qualified for their positions. Potential conflicts of interest would be avoided by requiring a school district's Committee on Preschool Special Education (CPSE) consent in writing whenever the same program provider conducts the evaluation and provides services pursuant to that evaluation. In addition the State Education Department (SED) would be tasked to complete a study of alternative reimbursement methodologies and monitoring protocols to identify further reforms. Although ultimately more comprehensive restructuring will be needed, these measures are key first steps toward improving the cost effectiveness of preschool special education services in New York State.

Three longstanding problems characterize preschool special education services in New York. First, heavy reliance on private non- and for-profit providers has led to a fragmented delivery system that requires intensive monitoring for fraud and abuse. In 2012 SED used nearly 700 agencies to provide services. Among these providers audits by the Office of State Comptroller (OSC) and SED reveal serious – and sometimes criminal – conduct including billing the State for extravagant personal expenses, submitting fraudulent payrolls, and evading taxes.ⁱ The numerous problematic practices documented in these reports lead to the conclusion, embodied in this bill, that all providers in the program should be audited and that agency management must be qualified, on-site and full time.

Second, there is little incentive for cost containment and use of the most cost-effective mix of services. School districts bear no financial obligation for the services they mandate. The school district CPSE makes eligibility determinations and develops service plans after reviewing materials prepared by an evaluator selected by the child's parents. Typical services include half- or full-day placements in special schools or integrated settings such as daycare. Special education itinerant teacher service (SEIT), or related services such as speech or occupational therapy may also be provided on an hourly basis. SEIT services consist of one-on-one work with a certified special education teacher in an early childhood program or at home. Transportation to programs up to 50

Chairman

Kenneth D. Gibbs

Vice Chairs

Walter L. Harris

Calvin A. Mitchell III

Merryl H. Tisch

Honorary Chairs

Lawrence B. Buttenwieser

H. Dale Hemmerdinger

Lawrence S. Huntington

Eugene J. Keilin

Richard A. Levine

James L. Lipscomb

Richard Ravitch

Treasurer

Alair A. Townsend

Secretary

Anthony Mannarino

General Counsel

Edward C. Wallace

President

Carol Kellermann

Consulting Research Director

Charles Brecher

Vice President &

Director of State Studies

Elizabeth Lynam

miles from home is also provided. After the initial plan is made the provision of services is then almost always delegated to a private provider who bills the county *not* the school district. The county pays the provider and requests reimbursement from the State for 59.5 percent of the costs. Under these circumstances well-meaning pedagogues and school district personnel are unlikely to challenge the demands of parents or other advocates for a more intensive mix of services than is most cost-effective for the child's needs.

In addition current law does not prohibit the private evaluator selected by the parents from providing the services he or she recommends. This presents an inherent conflict of interest for the evaluator – on the one hand, federal law requires that service be provided in the least restrictive, most integrated manner possible in the best interest of the child, but on the other, more extensive and costly programs benefit the provider agency. This bill establishes a check on this conflict of interest by requiring that school district personnel approve the service recommendations for providers that also serve as evaluators. Although the provision fails to end conflicts of interest, it will offer school districts that use it judiciously the opportunity to challenge evaluators that may not be acting in the best interest of the child.

Third, SED approves providers and provider-specific rates that vary by provider and type of service, based heavily on a provider's historical costs. Because of the reliance on historical costs, rates for similar services within regions where certain costs – land and labor, for example – are similar, can vary widely. For example, in 2012 the rate for an hour of SEIT in the Western New York region ranged from \$12 to \$38 per hour.ⁱⁱ At the opposite tip of the state in Long Island SEIT ranged from \$23 to \$58 per hourⁱⁱⁱ depending on the provider. Setting rates on this case-by-case basis subjects SED to intensive negotiations with providers and results in higher costs than taxpayers would bear if a more transparent and rational rate setting mechanism was in place. A7302-A/S5568-A does not create such a system, but it does require a study of the issue by SED.

These three problems underlie a dramatic increase in the number of children receiving special education preschool service, the intensity of the services they receive, and the cost of the services. From school year 2001-02 to 2011-12, when public school enrollment statewide declined 3.5 percent, the number of children receiving preschool special education services increased 27 percent from 60,536 to 77,096. Service intensity for these children, as measured by the number of preschoolers receiving more than one authorized service, increased 91 percent from 10,408 to 19,836 over the same decade. These trends led expenditures for these services to grow 73 percent (or about 4.8 percent annually) from \$792 million to \$1.37 billion over the period, a pace well above general inflation of 2.8 percent annually.^{iv} While the broadened reach of these important services may be desirable, the incentives for provider abuse and lack of monitoring make it nearly certain that the current levels are *not* the most cost-effective way to serve the children and families in need.

More comprehensive reforms will be needed to ensure New York's preschoolers are receiving the most appropriate special education services. But until the deeper issues are further studied and addressed with legislative changes, A7302-A/S5568-A will help to limit fraud and conflict of interest. We ask that



you approve it. Thank you for your consideration and as always, my staff and I are available to answer any questions you or your staff may have.

Sincerely,

Carol Kellermann

President

Citizens Budget Commission

ⁱ From 2007 to 2012 19 OSC and SED audits revealed 99 instances of inappropriately documented spending and mistaken billing. See New York State Education Department, Board of Regents Meeting Materials, Memo from Valerie Grey to the Audits/Budget and Finance Committee, *Re: Special Education Fiscal Oversight*, September 6, 2012, p. 2. In 2012 OSC announced plans to complete 18 additional audits and released five additional audits documenting troubling practices that ranged from billing for no-show jobs and inflated salaries to unsupported salary documentation for relatives of employees and improper staff bonuses. See New York State Office of the State Comptroller, *Compliance with the Reimbursable Cost Manual, Bilingual SEIT & Preschool, Inc. State Education Department*, Report 2011-S-13, July 2012; New York State Office of the State Comptroller, *Compliance with the Reimbursable Cost Manual, Important Steps, Inc. State Education Department*, Report 2010-S-32, June 2012, and; New York State Office of the State Comptroller, *Compliance with the Reimbursable Cost Manual, Special Education Associates, Inc. State Education Department*, Report 2010-S-31, June 2012.

ⁱⁱ CBC staff analysis based on data provided by the New York State Education Department.

ⁱⁱⁱ CBC staff analysis based on data provided by the New York State Education Department.

^{iv} U.S. Department of Labor, Bureau of Labor Statistics, *Consumer Price Index-All Urban Consumers, Series CUURA 101*, 1999 to 2011 averaged for school years July 2000 to June 2011.

