



ANALYSIS AND RECOMMENDATIONS ON THE PROPOSED EXECUTIVE BUDGET FOR FISCAL YEAR 2015-16

The InterAgency Council of Developmental Disabilities Agencies, Inc. (IAC) is a membership organization of over 150 nonprofit providers of services to children and adults with intellectual and other developmental disabilities, and their families, in the New York City, Rockland, Westchester and Long Island regions, along with associate members in other parts of the state. Our membership operates more than 1,000 residences, employment and day programs, schools, preschools, early intervention services, clinics and family support programs, serving approximately 100,000 children and adults with developmental disabilities.

IAC supports the transformation of systems to enhance outcomes, preserve resources, and ensure the future viability of services for people with developmental disabilities and their families in New York State. We have, and will continue to participate in every way possible to achieve our mutual goals of enhancing the service system and ensuring that people with developmental disabilities of all ages, and their families, have access to the kind of life that all New Yorkers have a right to. In this document we offer comments and recommendations on the Executive budget for the State Education Department's special education services, the Office for People With Developmental Disabilities (OPWDD) and the Department of Health's Early Intervention (EI) and clinic programs.

STATE EDUCATION DEPARTMENT

SPECIAL EDUCATION

Preschool Special Education - 4410 Services

In 2009 the New York State Education Department (SED) imposed a freeze on tuition increases for preschool special education classes. This freeze has remained in effect for the past six years and has pushed many IAC preschool providers to the brink of extinction. Providing preschool special education to children with the most significant needs is a core mission for many IAC agencies. In fact for some, it was the reason the agency was founded. The financial impact of this tuition freeze on IAC's preschool special education providers is staggering: according to 2011-2012 certified cost reports filed with SED, IAC center based preschool providers lost more than \$9 million and the losses for 2012-2013 were an additional \$9.5 million—totaling \$18.5 million in those two years alone. Losses of this magnitude are unsustainable. SED acknowledges the impact of zero growth on tuition for preschool special education center-based providers in their report, *New York State Tuition Rate Setting Methodology: Tuition Rates for Preschool Students with Disabilities*. SED's Rate Setting Unit acknowledges that it does not reimburse these programs for all their approved costs and

expresses serious concerns about the resulting funding gap. The report states that this situation “may ultimately affect the quality and availability of preschool special education services”, and IAC certainly agrees with these conclusions. Several boards of directors of IAC preschools are currently considering what was previously unthinkable for them – the closing of programs due to fiscal distress. In the past six months, two IAC preschool special education providers (with decades of specialized experience) announced their intentions to close their programs due to unsustainable financial losses. Unless tuition increases are enacted this year for preschool special education classes, other schools will surely follow suit. IAC has been sounding the alarm for the past three years that preschool special education has been approaching this critical tipping point. We are now experiencing a crisis that can and must be stopped. It is ironic that at a time when Government and elected officials are stressing the importance of early education and increasing funding for these services, our most vulnerable children have been left out, simply because they have special education needs. In 2007 the Governor’s Temporary Taskforce on Preschool Special Education issued a report entitled *Improving Preschool Special Education in New York State*. It said, “New York State has held a distinguished record of providing high quality preschool special education services, the breadth and depth of which rank among the best in the nation”. New York State’s commitment to its most vulnerable children and its distinguished record is now threatened. This lack of adequate funding for center based preschool special education must be addressed and we are calling upon our elected officials to act.

School Age Special Education – 853 Services

School age 853 providers have faced a similar financial crisis due to the impact of a four-year tuition freeze. The financial losses reported by 853 providers are also considerable. According to 2011-2012 certified cost reports filed with SED, IAC’s 853 school-age providers lost more than \$6.8 million and the losses for 2012-2013 were an additional \$5.6 million—a total of \$12.5 million in those two years. Although the fiscal impact on 853 providers has been softened somewhat in the past two years by annual financial adjustments, significant challenges remain. At a time when school-age providers are just starting to recover from the impact of the four year tuition freeze, we cannot return to a period of no growth.

On a statewide basis, between 2011 and 2013, preschool and school age special education classes have lost a combined \$110 million. New York State must make a commitment to adequately fund 4410 center based preschool and 853 school-age special education if these services are to continue to be available to the children and their families who depend on them. Therefore we make the following recommendations on the Governor’s Budget:

1. **Include a tuition increase for the 2015/16 school year for both classroom based 4410 preschools and 853 school age special education approved programs.**

For the last six years, costs have continued to rise while tuition rates have remained stagnant for 4410 providers. 853 schools benefitted from increases for the past two years but are still recovering from the previous four years with no increase. Both school programs need tuition increases in this budget to allow them to survive while more substantial, permanent funding methodologies are put in place. While SEIT services are being addressed separately, classroom based 4410 special education programs are in desperate need of an interim “lifeline” while a more comprehensive plan is implemented.

Recommendation: Include a 5% increase in this year’s budget for classroom based 4410 preschools and a 3% increase for 853 school-age programs

*Cost: 4410 Preschools \$37.5 million
853 School Age programs \$20 million*

2. **Include funds for a 4410 preschool safety net pool to be used for essential renovations and/or time-limited emergency funding for providers in fiscal distress**

4410 Preschool program tuition rates have been stagnant for six years. A State Education Department report released in December raises several disturbing findings that support the need for a safety net pool to address dire conditions. Programs have already closed and many more are at risk of closing. A safety net pool would prevent the closure of more schools and could be used for essential renovations or one-time cash infusions while schools in crisis wait for a more permanent fix for 4410 preschools including a statutory index for a growth factor and various regulatory reforms recommended by the SED led workgroup.

Recommendation: Create a 4410 safety net pool to prevent the closure of more schools while providers await the needed reforms.

Cost: \$30 million

3. **Include the State Education Department’s recommendations including the creation of a statutory index for establishing growth in annual tuition rates to maintain fiscal viability for 853 schools in the 2015/16 Budget**

For four years, there had been no growth factor associated with tuition rates for 853 schools. Even though there were modest increases over the last two years, the fiscal viability of many providers remains in question. In November of 2013, the Regents approved a plan, including statutory and regulatory changes (created with the

recommendation of various stakeholders) that would revitalize 853 schools and create a viable structure for the future.

Recommendation: Include the Regents' approved recommendations, including the creation of a statutory index for establishing the growth in annual tuition rates, to maintain fiscal viability for 853 schools.

No additional cost in 2015-16 Budget

4. Include a statutory index for tuition increases for 4410 classroom based preschool special education providers

Similar to what was accomplished for 853 schools, a workgroup was convened that produced recommendations regarding 4410 preschool education reforms. The report published in December, clearly points out that tuition does not cover costs for providers across the State and warns of fiscal instability of the program. Six consecutive years with no growth factor has led to the closure of well-respected preschools and consideration by boards of directors for the closure of many more. A reliable growth factor is essential to ensure that these services are available for the most vulnerable toddlers in New York State.

Recommendation: Include a statutory index for tuition increases for 4410 classroom based preschool special education providers.

No additional cost in 2015-16 Budget

5. Support the creation of new Special Education Itinerant Teacher (SEIT) regional rates which will cover the true costs of providing the service

In last year's budget, a fee for service payment methodology was instituted for SEIT, whereby providers are paid only when the service is delivered. Coupled with this year's proposal for regional rates, the SEIT program reforms will be complete. There are currently many concerns with the present SEIT reimbursement methodology. IAC supports SED's proposed reforms that will create a regional rate approach as long as valid expenses such as transportation and absenteeism are included, which are necessary factors to preserve the integrity of the program.

Recommendation: Support the Governor's proposal to institute new regional rates for SEIT, factoring in transportation and absenteeism of the children receiving the service, to be phased in over four years.

No additional cost

6. Reject a blanket waiver of State special education requirements

The Governor's budget would allow school districts, approved special education providers and BOCES to apply to SED for waivers from State imposed requirements as long as they are not in conflict with federal standards. We believe that an ability to waive any State requirement (such as class size, parents' right to choose evaluators,

functional grouping of students in classrooms, timely implementation of IEP's and the Burden of Proof standards, among others) would have serious negative consequences for special education students. There are certain changes, however, that could be made while maintaining the integrity of special education services including waivers to enhance student achievement and opportunities for placement in regular classes and programs consistent with federal law.

Recommendation: Reject the Governor's proposal to permit school districts and other special education providers to request blanket waivers from NYS special education requirements. Instead, IAC recommends that SED convene a workgroup to evaluate specific proposals that will offer mandate relief while ensuring that high quality services are maintained for our children.

No additional cost

7. Universal Full Day Preschool

IAC continues to support funding for prekindergarten programs and the increase in the number of typically developing students who could attend integrated 4410 classrooms that the UPK initiative provides. SED and municipalities recognize the importance of providing greater opportunities for preschool students with disabilities to learn in classrooms with typically developing children. Achieving that outcome, however, remains a significant challenge in most communities throughout New York State due to the cost for families of typical students under SED's current tuition reimbursement methodology. Greater utilization of UPK could significantly improve the percentage of integrated preschool special education students by relieving parents of the cost of the opportunity and increasing the number of children overall.

Recommendation: IAC recommends that a sufficient proportion of Universal Full Day Preschool opportunities be reserved for locations within 4410 schools to meet New York State's goal of maximizing integration options for students with disabilities.

No additional cost

OPWDD

Provider agencies serving individuals with developmental disabilities have greatly appreciated the many years of support from the Executive and Legislative branches. For more than two decades, this support has allowed us to make the most crucial and far-reaching systemic changes of any state in the nation. We are grateful for the Legislature's support, particularly in the last two legislative sessions, and look forward to continuing this partnership as we work together to preserve the gains we have achieved while we implement the on-going system transformation. While it is essential to fine tune service delivery and achieve maximum efficiency, we must remain committed to ensuring that New Yorkers with developmental

disabilities receive the level of care they require. IAC strongly supports the Governor's efforts to maximize fully integrated and person-centered supports for all individuals with intellectual/developmental disabilities (I/DD), while providing them with every opportunity afforded to all other citizens of New York State. We make the following recommendations on the OPWDD section of the budget:

1. Funds for the development of new services and supports

We are pleased to see \$60 million in State funds (fully annualized) for additional day, residential and other supports in the Executive Budget for people with I/DD and their families. This allocation, which translates into \$30 million in new State dollars in this budget year, however, is insufficient to provide the supports necessary to serve all the individuals with high priority requirements. The need for services including day, at home support, out of home residential and other services, far surpasses the capacity made possible by a \$30 million allocation, particularly for those who can no longer live safely with their families. Since this funding will also cover the graduates from Children's Residential Programs who require residential and day programs, additional funds will be necessary to provide acutely needed services, especially for those who currently live at home with their families. IAC supports the movement of people who are both capable and interested in exploring employment opportunities from their current day programs toward part or full-time employment and other day programs that enhance community integration, but additional funding must be available to accomplish these goals as well. IAC supports the State's goals of creating enhanced Supported Employment rates to serve people with greater needs for support, the Pathway to Employment program to help the transition from current programs to employment, Community based prevocational services to replace strictly center-based options and the continuation of current day programs to ensure enhanced support for those who require it.

Residential Supports:

IAC estimates the annual cost of 24-hour residential supports for 300 individuals to be \$22.5 million (State share) fully annualized. OPWDD should be required to provide viable residential options for families who have maintained their relative with intellectual/developmental disabilities at home as long as possible, but now need other alternatives.

Recommendation: Add additional funding for the development of residential supports for 300 people with high priority needs who reside at home and need 24-hour residential support.

Cost: \$11.25 million (State share for 6 months)

Employment and Day Supports:

As some individuals transition from current day programs (or sheltered workshops) to employment opportunities, volunteer experiences or other more integrated day services, additional funding will be necessary to ensure that a proper level of support is available in these community settings. Additional funding is also needed to make the new employment and day program options viable while maintaining current day program models for those who require more supportive options. Funds for mobility training and transportation are also essential components of a successful transformation of Day Services.

Recommendation: Add a minimum of \$3 million for the addition of 1000 new opportunities in Supported Employment and make sure there are other funds to support the creation of other day options, the transportation that will accompany these services, and to maintain the current day program models for those who require a more supportive setting.

Cost: \$3 million (State share for 6 months)

2. Include funds to assist in meeting the CMS requirement to downsize Intermediate Care Facilities (ICF's)

IAC supports the State's commitment to CMS to downsize large ICF's and create more natural living arrangements for people with developmental disabilities. Simple math shows that more funding is required to do this. If a large group of individuals reside together in one house, creating several smaller living situations requires the investment of new properties and the loss in economies of scale that living together provides both for staff and fixed costs. IAC providers stand ready to assist the State in meeting its commitment to CMS but require the necessary funding to do so.

Recommendation: Include funds to assist nonprofits to cover the additional costs of downsizing larger ICF's so the State can achieve its goals.

Cost: \$5 million

3. Include funds to support the entire cost of room and board in certain certified housing options

In DOH's current rate methodology for OPWDD funded Individual Residential Alternative (IRA) residences, the supplemental funds for room and board only reimburse 65% of room and board costs (after revenue from Supplemental Security Income (SSI) and food stamps (SNAP) is applied). Providers are struggling to cover necessary costs such as: food, utilities, household supplies, telephone and building repairs.

Recommendation: Include funds to support the entire cost of room and board in IRA placements.

Cost: \$22 million

4. Support the increase for Direct Support Professionals and Clinical Staff

IAC is grateful for the 2% increase for Direct Support Professionals (DSP's) in January 2015 and the continuation of that increase with an additional 2% for both DSP's and clinical staff in this year's budget proposal. DSP's and clinicians are the backbone of the system and depended upon by New Yorkers with I/DD and their families for daily support. This increase tells our dedicated, hardworking staff they have not been forgotten.

Recommendation: Strongly support the Governor's proposal to continue the 2% increase for DSP's from the 2014 budget and provide an additional 2% for DSP's and clinical staff in this year's proposal.

No additional cost

5. Expansion of the Nurse Practice Act Exemption

IAC strongly supported the Governor's proposal in last year's budget to expand the exemption in the Nurse Practice Act allowing DSP's to administer medication under the supervision of a registered nurse (RN) in non-certified settings funded, authorized or approved by OPWDD. We are pleased to see language in this year's budget that will facilitate the agreement between OPWDD and SED and make the expansion of the exemption a reality.

Recommendation: Strongly support the language in the Governor's proposal to facilitate the expansion of the exemption in the Nurse Practice Act to cover non-certified settings funded, authorized or approved by OPWDD.

No additional cost

6. Support the transition of 249 residents of Developmental Centers or Intermediate Care Facilities to community-based residences.

For more than 35 years, OPWDD has worked with the voluntary sector to move people from developmental centers to more appropriate living environments in the community. This budget continues the movement of people out of developmental centers and Intermediate Care Facilities (ICF's), into more integrated community placements.

Recommendation: Strongly support the Governor's proposal to close Developmental Centers and provide community based residential and day opportunities for 249 developmental center and ICF residents.

No additional cost

DEPARTMENT OF HEALTH

EARLY INTERVENTION PROGRAM

The Early Intervention Program (Part C of the Federal IDEA) is a federal entitlement program, which provides services to infants and toddlers with developmental disabilities and delays from birth to three years of age. In 1992, New York State enacted Article 25 of the Public Health Law, the Early Intervention Program (EI), which established the federal entitlement program for New York's infants and toddlers with disabilities. Early Intervention has been shown to improve the quality of life for children with disabilities and decrease future disability-related expenses to the State. An investment in Early Intervention is clearly both fiscally and socially prudent. The Early Intervention program has been in crisis for some time, as costs for the service continue to rise and the reimbursement rate has been increased only once over the past 20 years. With the 5% cut five years ago, more providers continue to make the difficult decision to discontinue these life-changing services, even as the concept of early intervention is at the very heart of their missions. Along with the other provider associations across the State, over the past several years, IAC has made recommendations for improvements in the Early Intervention program.

1. Creation of a Lifeline for the Early Intervention Program

The EI program for infants and toddlers with severe and multiple disabilities has been underfunded for many years. The few providers left are in tenuous fiscal positions and more will close their doors this year. An unfortunate example: a provider with over 20 years of experience in providing Early Intervention to children in New York City with multiple disabilities and complex medical conditions decided last year to discontinue their Early Intervention program. The previous year, this provider served nearly 3,000 children from inner-city, economically disadvantaged families. Allowing the extinction of the EI program is not only a terrible loss to children with disabilities and their families but a missed opportunity to maintain a program that will result in less costly future services in school and adult programs.

Recommendation: Include a 4.8% increase in EI funding to ensure that providers remain fiscally viable and the adequate availability of services for children with developmental disabilities and their families.

Cost: \$7.6 million

ARTICLE 16 CLINICS

Article 16 Clinics, under the auspices of OPWDD, serve people with developmental disabilities and provide long term therapies like speech, physical therapy, occupational therapy and

psychology to a population that other clinics are unprepared or unwilling to serve. These therapies are important for eating and proper nutrition, maintenance of physical abilities and mobility and necessary to maintain independence.

1. Restoration of the cut to Article 16 Clinics

Two years ago, a 2% across the board cut was taken on a variety of clinical services as per the Medicaid Redesign Team recommendation #26. For Article 16 clinics, the cut was implemented based on utilization thresholds. This had the effect of causing clinics serving people with more severe physical disabilities to lose money. Last year, the 2% across the board cut was restored but the restoration to Article 16 clinics was not made.

Recommendation: Restore the cut to Article 16 clinics as has already been done for other clinics.

Cost: less than \$1 million