

VETO MESSAGE:

VETO MESSAGE - No. 156

TO THE SENATE:

I am returning herewith, without my approval, the following bill:

Senate Bill Number 5672-A, entitled:

"AN ACT to amend the education law, in relation to the funding of certain approved special education programs and special act public school districts"

NOT APPROVED

This bill would establish a multi-year methodology for calculating tuition rates for approved special education programs, special act school districts and special education itinerant teacher programs.

Under current law, tuition rates are established each year by the Commissioner of Education, subject to the approval of the Division of the Budget, with final rates adjusted to reflect the actual approved costs incurred by each provider. This bill requires rates in the first year to be based on actual historical costs, while rates in the second and third years would be subject to an inflation adjustment. In addition, schools transitioning to the multi-year methodology would receive cost-of-living increases during the transition period. The bill further provides that rates for special education itinerant teacher programs would be established on a regional basis.

In addition to changing the rate setting methodology, this bill authorizes approved special education programs and special act school districts to maintain surplus funds of up to 2% of their approved costs, at the discretion of the Commissioner of Education and as approved by the Division of the Budget.

While the bill has the laudable goal of simplifying the methodology for reimbursing approved private schools and special act school districts for the cost of educating special education students, both the State Education Department and the Division of the Budget raise significant concerns and recommend that the bill be vetoed. Indeed, this bill is virtually identical to bills that were vetoed in 2004 and 2006, and I share the concerns expressed in those veto messages. See Veto No. 279

of 2006; Veto No. 220 of 2004.

Most notably, this bill would deny the State administrative flexibility to establish the most appropriate rate for each particular program in each particular year. The current tuition rate setting methodology involves a reconciliation process whereby tuition rates are compared to actual costs incurred by providers. This process allows the State to evaluate and recapture State and local payments that exceed actual costs. The Division of the Budget is concerned that eliminating this process and allowing these school districts and programs to retain

surplus funds would increase costs to the State and local governments without providing any reforms or new efficiencies to offset such costs.

The current process for setting special education tuition rates is complex and is worthy of review and improvement. As part of this year's enacted budget, we created a Temporary Task Force on Preschool Special

Education, and one of the duties of the Task Force is to review the current rate setting methodology for preschool special education programs and services and make recommendations for improvements to the methodology. The Task Force will be issuing a report to the Governor, Legislature and the Board of Regents in November 2007. These recommendations will be an important first step in considering more comprehensive and appropriate changes to the rate setting methodology. I urge the sponsors to consider the recommendations of the Task Force, and to work with the State Education Department and my staff to develop a rate setting methodology that will ensure consistent and appropriate funding for these important schools and programs.

The bill is disapproved.

(signed) ELIOT SPITZER