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Reconstruction – Summary of the Working Group

**Fall 2003**

Introduction

This document summarizes the work of analyzing the issues associated with the reconstruction of approved private special education programs which was accomplished by the programs’ major stakeholders and purchasers.

The group consisted of representatives from the Massachusetts Association of Superintendents, the Association of Special Education Administrators (ASE), the Massachusetts Association of Approved Private Schools (maaps), the Department of Education (DOE), the Department of Social Services (DSS) and the Operational Services Division (OSD).

The group met several times during 2003 in order to create a predictable, systematic way of reconstructing private approved special education programs which will appropriately address the changing needs of students over time.

The group concluded that, although removing reconstruction as a pricing option was a consideration, there remained a legitimate use for reconstruction because of program shifts and movements which occur over time. The remainder of this document presents the background of the issue, followed by the resulting problems of unpredictability and inability to contain costs. It then goes on to report the group’s findings to date and action steps on the inter-related topics of notice, predictability, public perception and salaries. The attachments contain a list of the group’s members, as well as working documents used to assist in the framing and resolution of the complex issues associated with program reconstruction.

Background of Reconstruction

As a result of a settlement to a lawsuit brought against OSD by the Massachusetts Association of Approved Private Schools (maaps), OSD agreed to create a new category of price authorization under 808 CMR 1.06(3) known as reconstruction. Prior to its creation, approved private schools that required adjustments to programs to address changing student needs either 1) requested price authorizations for a “new program” and, once approved, moved most if not all existing students from the old to the new program or 2) requested price adjustments under 808 CMR 1.06(7)(c), Special Circumstances. “Rate relief” was also sought through 808 CMR 1.06(4), Extraordinary Relief, to address out-of-compliance issues, such as health and safety concerns and unforeseen circumstances.

However, approved private schools found these two options to address needed changes in program staffing and services to be inadequate. Although DOE has approved more new programs during the past several years, it requires these applications to be accompanied by a thorough needs assessment. As such, this pricing methodology is inappropriate for existing programs. Further, the regulatory basis for approval of extraordinary relief applications is limited and is not intended to address needed changes in staffing or services which are not non-compliance issues, such as changes in the severity of disabilities in student populations.

The maaps lawsuit settlement ended on June 30, 2002. The language in the settlement, which also included a provision to increase salaries of certain critical direct care staff, set forth specific changes to the regulation and required that OSD agree not to amend or repeal the regulation or related policies until the end of the settlement. As agreed, OSD did not make any changes to the regulation. However, with the end of the settlement, OSD has been legally free to amend its regulation relative to reconstruction and critical direct care salaries.

As such, the main purpose of convening the group of stakeholders was to determine what, if any, changes should be made to the regulation concerning reconstructed programs.

**Program Reconstruction Outcomes**

According to maaps, as a result of program reconstruction, thirty six approved private schools have been able to hire additional staff, increase staff training and improve physical facilities to provide the new services required by the increased severity of disabilities in their student populations. In a survey conducted by maaps, it was found that these programs have been able to hire hundreds of needed additional child care staff, teachers, nurses, speech therapists, social workers and school counselors. Funding totaling over $400,000 for additional staff training, $425,000 for program materials and almost $1 million for facility improvements has been made available as the direct result of reconstruction. Programs have also reported needed salary increases for their critical direct care staff, including special education teachers, teachers and child care workers.

On the other hand, these improvements in staff salaries, staffing patterns, training, materials and physical facilities did result in increased tuition rates.The Commonwealth is now spending an additional $34 million per year as a result of reconstructed programs as well as an additional $4 million in adjustments to critical direct care salaries. Further, it had appeared (prior to the FY 2004 freeze) that an additional thirty one programs would be submitting applications with an average requested increase of 39%.

Given the Commonwealth’s fiscal crisis, the issues of notice, predictability, public perception and salaries would require thoughtful analysis and resolution.

Notice

The lack of notice about upcoming reconstructed programs and tuition price increases was seen to be a major reconstruction problem. Unlike the other pricing options of new programs, Extraordinary Relief and Special Circumstances, purchasers received notice of pending price increases during the first two years of reconstruction from only those approved private schools that voluntarily sent notices to their purchasers. The lack of consistent notice to all purchasers, coupled with the jump in tuition prices, created a great deal of difficulty for the purchasers whose budgets had already been set for the fiscal year.

This lack of notice was remedied through a collaborative effort by maaps, ASE, the Superintendents Association and DOE resulting in an Outside Section to the FY 2003 budget requiring that notice of program changes, including the requested tuition price, be given to purchasers prior to December 1st. It further delayed the implementation of the increased tuition price until the following fiscal year.

The group recommended an even earlier notice date than December 1st and the deadline is now October 1st for the following fiscal year in order to allow for a longer period of time for planning. The notice must also be sent to the Special Education Administrator of each relevant public school as well as specific individuals within purchasing departments. In addition to providing the notice guidance, maaps took the lead, with the support of the members of the group, in changing the legislation to contain the

earlier deadline of October 1st for providing notice. Please refer to Prompt Notification to Purchasers of Submission of Applications for Program Changes.

### Predictability

The group felt it was necessary to build in predictability for the schools and purchasers so that schools systems and departments would not be “blind-sided” by large price hikes.

Although a five year review and reconstruction of programs would be optimal, the group settled on an interval of six years. The group resolved to tie reconstruction requests to DOE program reviews. In general, DOE does full blown reviews of each program once every six years, with a mid-cycle review three years later. DOE develops its schedule of reviews in August and conducts between 18-22 reviews per year.

Programs may apply for an adjustment at either time. Generally, programs will not apply more than once within a six year period, unless DOE deems such an application to be necessary. The expectation is that the adjustments, although possibly more frequent, will be smaller in scope. Schools may elect not to apply within the six year period if program changes are not necessary. The existing pricing options of new programs, Extraordinary Relief and Special Circumstances will continue to be available to address new needs, emergencies and other issues.

### Public Perception

A major issue with reconstruction during the past few years has been a perception by purchasers that the increases are too costly and perhaps unnecessary, particularly in times of tight fiscal constraints. In fact, complaints from public school systems contributed to the legislative FY 2004 freeze of tuition prices.

The group recommended that the issue of public perception be addressed through education and the involvement of the purchasers in decisions affecting the private special education programs. Further, the group recommended that the whole process become more transparent to the public.

The group convened a sub-committee to specifically address the goal of educating purchasers in order to influence their perceptions of reconstructed programs. To that end, the group will be conducting a survey to specifically determine areas of concern on the part of the purchasers, such as proposed staffing levels and other requests that may be made by these programs which would invariably result in higher tuition prices. The sub-committee will use this information to develop a strategy to address each concern in a thorough and systematic manner.

In terms of involving the purchasers (or their representatives) in the decision-making progress regarding program reconstruction, the group discussed several approaches. While one approach involved inviting all of the purchasers to a meeting toward the end of DOE’s deliberations, the group felt this could be unwieldy and too close to the end of the process. Another suggestion was to involve some of the stakeholders in DOE’s monitoring visits. While this approach would be ideal for several reasons, the logistics of coordinating these visits, not to mention devoting considerable staff resources, makes this approach unrealistic at this time.

To resolve the dilemma of participation by purchasers in a realistic manner, the group has suggested that the private school requesting program reconstruction invite representatives from ASE, DOE, DSS and other major public stakeholders, as appropriate, to a half or whole day session at the program site for a complete briefing and discussion of the proposed reconstruction changes. This visit would be earlier in the process, perhaps shortly after the DOE’s program review, rather than closer to the end of the process. The goal of this visit would be to fully inform the public purchasers of the need for program changes and the impact of those changes on the tuition. Prior to an approval, DOE will ensure providers have adequately informed purchasers and DOE will provide an opportunity for purchasers to give input on the rate request.

The education campaign and the involvement of purchasers will be effective in addressing the issue of public perception. The group also recommended that the process be more transparent (open) to the general public. To that end, the efforts addressing public perception will continue to be enhanced by providing information about reconstruction and other special education pricing activities on OSD’s web site. One example of this transparency is the aforementioned notice guidance that has been already been posted. DOE, maaps and ASE may also wish to use the Internet to communicate reconstruction information to the public.

Salaries

Through its settlement of the maaps lawsuit, OSD recognized the need to increase salary levels for certain critical direct care staff. As such, maximum salaries for five positions (Special Education Teacher, Teacher, Direct Care Program Staff Supervisor, Direct Care II and Direct Care I) were established. Schools could apply for tuition increases to bring the salaries of these positions up to the maximum level.

Although the lawsuit settlement has expired, OSD has not rescinded this opportunity for programs to apply for increased salaries for their critical direct care staff. However, the salary levels, established in 2000, ranging from $20,000 to $30,000, have not been increased since that time. While the cost of upgrading the salaries of the critical direct care staff did increase the tuition price of several programs, it did not have as much of an impact on prices as did reconstruction, in which staffing levels and other program components were adjusted.

Despite the salary upgrades as the result of the settlement, there remains a lack of parity in salaries for staff working in private schools when compared to their counterparts in public schools and state departments. Salaries in private programs remain low resulting in high turnover and difficulty in recruiting qualified staff. DOE has also expressed concerns regarding the large number of non-certified (“waived”) Special Education Teachers working in these programs.

The group has agreed to address the salary issue by conducting research and brainstorming about possible phased-in increases to selected professional positions. The issue of salaries for Special Education Teachers and Teachers will be explored further in the spring of 2004 after the public perception sub-committee has discussed the increases and their implication for increased tuition prices with the public purchasers. Assuming that the public purchasers will express written support to address the salary issue, OSD will re-convene the working group to explore a compromise solution. It will also review the group’s recommendations with the Fiscal Affairs Division within the Executive Office for Administration and Finance.

Conclusion

Although reconstruction had begun as a settlement condition, the group agreed that this review and pricing methodology has been successful in addressing the “pent up” need for periodic program adjustments. As such, no changes need to be made to OSD’s regulation.

The areas of notice, predictability, public perception and salaries presented a very ambitious agenda for the reconstruction working group. The group concluded that, despite the issues surrounding reconstruction, such as increased tuition prices, this method of re-shaping programs as they change over time is appropriate and desirable.

To that end, the group:

* Posted guidance on the OSD web site in order for private schools to provide sufficient notice of application for program changes.
* Addressed the concern about predictability by tying reconstruction requests to scheduled program reviews by the Department of Education.
* Made great strides in addressing public perception, not only by coming together as a diverse group of stakeholders and purchasers, but by planning a campaign to educate the purchasers and involve them in the early planning of reconstruction changes.
* Made a good beginning of exploring the issue of salaries in order to allow programs to attract and retain qualified professional staff (despite the FY 2004 tuition freeze and considerable uncertainty and about the state of the budget for FY 2005).

The above accomplishments of the reconstruction working group represent a willingness of its members to collaborate, compromise and forge a working solution to the complex issue of reconstruction. The result will be the continuation of high-quality private special education programs that appropriately address the emerging needs of the students entrusted to their care.

Reconstruction Framework

***What is your perspective of how and why reconstruction came about?***

* Reconstruction was the result of a settlement agreement in the maaps lawsuit.
* Reconstruction was intended to alleviate pent up need.

***What have been the advantages of reconstruction?***

* Reconstructed programs now meet IEP mandates.
* Programs have been able to make needed staff and service changes.
* Facilities have been upgraded; needed facilities have been added.
* Programs have not had to go into a non-compliance condition.
* Parents have been pleased with the outcomes.

***What have been the disadvantages of reconstruction?***

* The process has been too lengthy.
* The salaries remain low resulting in high turnover and difficulty in recruiting qualified staff.
* Purchasers have not been involved.
* There is a public perception that the costs are excessive (the reconstruction process has not been transparent).
* Although notice to purchasers is now mandated, it is not early enough to assist in budget planning.

***What are your recommendations/solutions for the above disadvantages?***

* Streamline the application process (with specific timelines).
* Bring salaries up to public school/market value levels.
* Involve the purchasers.
* Use reconstruction as a last resort; develop criteria and guidelines; conduct training on the guidelines.
* Require earlier notification to the purchasers.
* Involve all of the stakeholders (clients, purchasers and legislators).
* Build in predictability for the schools and purchasers; tie reconstruction to DOE program reviews and joint monitoring endeavors.

***Other notes:***

* Reconstruction has been a substitute for program development. New program development should be carefully planned to meet the needs of the students.
* Program monitoring and licensing should be coordinated.
* The process should be market driven depending on the needs of the purchasers.
* There should be performance measures, outcomes and cost efficiencies.
* Superintendents need to be able to communicate changes to their school committees (when, how, why) in a manner that does not cause a credibility problem.
* District audits conducted by DOE should be coordinated.

Reconstruction Matrix

| **Item** | **Recommendations/Disadvantages to be Addressed** | **Recommended Action/Conclusion** |
| --- | --- | --- |
| Predictability | Build in predictability for the schools and purchasers; tie reconstruction to DOE program reviews and joint monitoring endeavors. Review staffing and items most suitable to DOE review.Streamline the application process (with specific timelines). | DOE to do 6 year review cycle, with 3 year mid-cycle reviews. DOE develops its schedule in August and does 18-22 reviews per year. Programs may apply for an adjustment at either time. Programs will not apply more than once within a six year period, unless DOE deems such an application to be necessary. The expectation is that the adjustments, although possibly more frequent, would be smaller in scope. Schools may elect not to apply within the 6 year period if program changes are not necessary. The existing pricing options of new programs, Extraordinary Relief and Special Circumstances will continue to be available to address new needs, emergencies and other issues.DOE is currently having difficulty in recruiting program monitors. ASE has offered to assist DOE in this recruitment.Due to the complexity of the reconstruction applications, specific timeframes will not be established. |
| Notice | Require earlier notification to the purchasers.Who else, besides the superintendents and departments, should receive notice?  | maaps to take the lead, with the support of the members of the group, in changing outside section 177 to contain the date of October 1 instead of December 1.OSD has placed information (on the OSD Internet Special Education Pricing page) regarding notice, including the 10/1 date as well as the requirement that notice also be sent to the special education administrators and specific individuals within departments. |
| Public Perception | * Develop criteria and guidelines; conduct training on the guidelines.
* Involve the purchasers.
* Involve all of the stakeholders.
* There is a public perception that the costs are excessive (the reconstruction process has not been transparent).
 | ASE, the Superintendents Association and maaps will create a plan (off-line at a separate meeting) which lays out a strategy to address the issues of public perception and the education of the purchasers. |
| Salaries | The salaries remain low resulting in high turnover and difficulty in recruiting qualified staff. | Under review |
| Internet (Transparency) | The reconstruction process has not been transparent. | This issue is continuously being addressed. |