

New York Public Welfare Association

Statement on the SFY 2022-23 Executive Budget Proposal for Foster Care [\[ELFA, Part O\]](#)

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February 14, 2022

On December 20, 2021, the OCFS Commissioner signed a Stipulation of Settlement to settle a lawsuit brought against OCFS in 2010 which had alleged that New York State's statutory scheme for reimbursement of foster parents does not comply with the federal Adoption Assistance Child Welfare Act. The local districts were not part of this lawsuit or the settlement and it was OCFS that agreed to its terms, as follows:

1. Create a methodology to calculate a foster parent reimbursement rate that "covers the cost of and costs of providing" all items enumerated in the Federal definition of foster care maintenance payment set forth in 42 USC 675(4)(a)
2. Create a higher rate category by regulation, to be called "Extraordinary."
3. Propose, and support the passage of, legislation mandating that all LDSS's pay foster parents at the rates set forth in the OCFS methodology (#1 above), commencing with the 2022-23 NYS Budget legislation.

In order for the State to meet the commitment made by OCFS in settling the lawsuit brought against OCFS, we expect to see the funding included in the enacted State budget for SFY 2022-23. However, the proposed executive budget for the Foster Care Block Grant (FCBG) is the same appropriation as it was in the prior year, aside from an unrelated human services COLA of \$5.9 million, which brings the total to \$390.7 million. Thus, it is clear that there are no new dollars appropriated to cover the State's settlement. The FCBG was previously cut by \$62 million in SFY 2017-18.

The State budget needs to include language that clarifies that the State of New York will be accountable for the full cost of the changes that OCFS agreed to in the settlement. Therefore, the State budget should also include funding to cover the additional costs, including the new "Extraordinary" rate to be set by OCFS. Cost information is based on statements released publicly on the legal settlement which include an estimate of a 46 percent increase to create the "Extraordinary" rate in New York City with an increase of 20 to 40 percent in the rest of the State.

In addition, the proposed FCBG includes the Kinship Guardian Assistance Program (KinGap) contrary to our continued recommendation that KinGap be funded outside of the FCBG similar to adoption subsidies which are a comparable permanency option—unlike foster care, which is temporary.

As proposed in the executive budget, all counties would be made responsible for all future Maximum State Aid Rate (MSAR) annual increases and for the entire cost of the new "Extraordinary" rate increase, since the block grant caps the State's fiscal contribution. Approximately two-thirds of districts would also share in the increase in local cost to meet the MSAR, as they do not currently pay the maximum.

The estimated annual cost of implementing the legal agreement is a statewide increase of \$200 million. This total includes New York City's estimate that their full cost of implementation would be \$117 million and the cost for the rest of the State, which is estimated at \$83 million.

The proposed budget contains a hole in State funding. State dollars are needed to enable all counties to reach the current MSAR and to implement the "Extraordinary" rate in order to increase subsidies to foster and adoptive parents. Language needs to be added to the budget that indicates that the State will cover the full cost of the legal settlement agreed to by OCFS. Adding such language will enable the State to avoid the cuts in human services that would be sparked by shifting the cost to localities who had no role in the settlement.