



Frank Kruppa
Public Health Director
55 Brown Road
Ithaca, NY 14850-1247

January 27, 2015

DRAFT

Senator Thomas O'Mara
58th Senate District
333 E. Water Street, Suite 301
Elmira, NY 14901

RE: Evaluations for Children between Birth and Five Years of Age

Dear Senator O'Mara

In August 2014, the NYS Education Department (SED) Office of Professions issued a memorandum (Exhibit A) removing the exemption that allowed 4410 private non-profit preschools like Franziska Racker Centers from performing evaluations of children between three and five years of age with professions that are "School Psychologists". This revised interpretation by the SED caused the Department of Health Early Intervention Program (EI) to issue a memorandum that states that School Psychologists employed by 4410 private non-profit preschools can no longer perform evaluations in the EI program for children between the age of birth and two (Exhibit B). This change in interpretation by SED and EI was not expected since in 2000 EI issued a memorandum stating just the opposite interpretation (Exhibit C).

Why does this matter? It matters because thousands of evaluations around NYS are done by School Psychologists employed by 4410 private non-profit pre-schools. Specifically here in Tompkins County, Racker Centers does around 520 evaluations per year. There is not enough capacity to meet NYS requirements that evaluations are completed within the authorized time frames (45 days for EI and 60 days for CPSE). Children could be waiting six months or more for evaluations which may not seem long for you or I, but if you are six months old and need an evaluation and have to wait six months, then another 100% of your life has gone by along with the well established value of early intervention. Research supports that early intervention decreases the severity of needs in the child's later school years.

Since that memorandum, SED and EI have received a lot of negative feedback from the Counties and educational institutions around NYS. Because of this feedback and the impact on children, SED has temporarily retracted its memorandum (Exhibit D). We are hoping that EI does this also, but as of this writing they have not, which means that children between the age of zero and two will soon not get evaluations on a timely basis.

The temporary SED retraction basically says the legislative action is required to change this temporary reprieve to permanent. This is where we need your help! Specifically what needs to happen is that NYS Education Law Article 153, Section 7605 needs to be modified to allow 4410 private non-profit preschools using school psychologists to perform psychological evaluations. Here is what the law currently says:

Attachment 1

§ 7605, Exempt persons,

Nothing in this article shall be construed to affect or prevent:

1. *The activities, services, and use of the title of psychologist, or any derivation thereof, on the part of a person in the employ of a federal, state, county or municipal agency, or other political subdivision, or a chartered elementary or secondary school or degree-granting educational institution insofar as such activities and services are a part of the duties of his salaried position.*

When reading this law it is important to read it as an exemption – i.e. individuals working for these organizations are considered psychologists even though they haven't taken the licensing exam. What we need the law to say is (the capitalized portion is the only change):

1. *The activities, services, and use of the title of psychologist, or any derivation thereof, on the part of a person in the employ of a federal, state, county or municipal agency, or other political subdivision, or a chartered elementary or secondary school or degree-granting educational institution OR A 4410 PROGRAM OPERATED BY A PRIVATE NON-PROFIT insofar as such activities and services are a part of the duties of his salaried position.*

We are asking you to lead this effort. All it does is formalize what has been the practice for more than a decade. To show how important it is, I have attached letters of support from educational institutions (Exhibit E). We would like to meet with you as soon as possible because of the devastating impact it is going to have on young children and families who depend on these evaluations.

Thank you,

Frank Kruppa
Public Health Director

Exhibit A



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

OFFICE OF P-12 EDUCATION: Office of Special Education
ASSISTANT COMMISSIONER
Room 301M EB, 89 Washington Avenue • Albany, NY 12234
www.p12.nysed.gov/specialed/

Telephone (518) 402-3353
Fax: (518) 402-3534

August 2014

SPECIAL EDUCATION FIELD ADVISORY

From: James P. DeLorenzo

Subject: Qualifications of Psychologists Employed by Preschool Special Education Multidisciplinary Evaluation Programs Approved Pursuant to Section 4410 of the Education Law

The purpose of this memorandum is to ensure that all multidisciplinary evaluation programs (MDEs) approved pursuant to section 4410 of the Education Law understand that Education Law does not permit use of school psychologists without appropriate professional licensure under Title VIII of the Education Law to provide psychology services or evaluations to students in MDE programs except as exempted by section 7601 of the Education Law.

Education Law section 7601 states that only a person licensed or otherwise authorized under Article 153 of the Education Law (related to the profession of psychology) may practice psychology, use the title "psychologist" or describe his or her services using the terms "psychology, psychologist or psychological." The requirements in section 7605(1) of the Education Law exempts from licensure "a person in the employ of a federal, state, county or municipal agency, or other political subdivision, or chartered elementary or secondary school or degree-granting educational institution." While the exemption, by amendment to Education Law section 4410 applies to school psychologists providing services in certain preschool programs, it does not apply to MDE programs operated by private agencies. As such, all 4410 MDE programs operated by private entities should review the qualifications of psychologists in such programs and take immediate steps to ensure that such individuals hold the appropriate professional licensure.

MDE programs should direct their questions regarding this memorandum to Kathleen M. Doyle, Executive Secretary of the State Board of Psychology at (518) 474-3817 or appropriate Special Education Quality Assurance Office (<http://www.p12.nysed.gov/specialed/quality/regassoc.htm>).

Howard A. Zucker, M.D., J.D.
Acting Commissioner of Health

NEW YORK
state department of
HEALTH

Sue Kelly
Executive Deputy Commissioner

September 15, 2014

Dear Colleague:

As lead agency for the Early Intervention Program (EIP), the New York State Department of Health (Department) is responsible for establishing appropriate professional requirements for the EIP based on any State-approved or recognized certification, licensing, registration, or other comparable requirements that apply to the profession or discipline (34 CFR 303.119). This Department relies upon the New York State Education Department's (NYSED) licensure, registration, and certification process to qualify certain professionals for the EIP, with the exception of those disciplines in early intervention (EI) for which there is no State license, certification, or registration required (e.g., certified low vision specialist, orientation and mobility specialist).

In March 2000, the Department issued a guidance document to clarify a number of issues with respect to qualified personnel, including acceptable qualifications for the provision of psychological services under the EIP. Based on recent discussions with NYSED's Office of the Professions, this Department is revising its guidance related to qualified personnel who may provide psychological services in the EIP. These revisions are effective immediately.

The Department recently received the following clarification from NYSED.

Education Law §7601 states that only a person licensed or otherwise authorized under Article 153 of the Education Law (related to the profession of psychology) may practice psychology, use the title "psychologist," or describe his or her services as 'psychology.' An exemption to licensure is found in §7605(1), which exempts from licensure 'a person in the employ of a federal, state, county, or municipal agency, or other political subdivision, or chartered elementary or secondary school or degree-granting educational institution.'

By amendment to Education Law §4410 effective September 23, 2011 (Ch. 581 of the Laws of 2011, §§ 1 to 3), the Legislature clarified that the exemption in §7605(1) applies to school psychologists providing services in certain preschool special education programs approved by NYSED pursuant to Education Law §4410:

6. Professional practice issues.

... (d). Notwithstanding any other provision of law to the contrary, the exemption in [Education Law §7605(1)] shall apply to persons employed by a center-based program approved pursuant to subdivision nine of this section as a school psychologist to provide activities, services and use of the title psychologist to students enrolled in such approved center-based program in the course of their employment. (Education Law §4410[6][d]).

Attachment 1

The Legislature did not extend the exemption in §4410(6)(d) to EI agencies. In addition, because the exemption is strictly limited to provision of services to students "enrolled" in a center-based §4410 program, the exemption also does not encompass the provision of services to EI students who are receiving such services from an entity approved under §4410.

Given this very clear statutory language, it is NYSED's opinion that there is no exemption under the Education Law that would permit school psychologists to provide psychology services to eligible children in the EIP without appropriate professional licensure under Title VIII of the Education Law.

Therefore, effective immediately, school psychologists may not provide psychological services in the EIP. In situations where there is an active service authorization for psychological services, municipalities and the EI provider agency should work collaboratively to ensure that such services are transitioned to a psychologist or psychiatrist, as soon as possible. EI provider agencies should not utilize school psychologists as part of their multidisciplinary evaluation or to perform supplemental evaluations. Agencies should also update their employee information in NYEIS to indicate the school psychologist's end date for early intervention services.

Any specific questions concerning the licensure and scope of practice of psychologists under Education Law §7601 should be directed to Kathleen M. Doyle, Executive Secretary for the State Board for Psychology, Office of the Professions, State Education Department at (518) 574-3817, ext. 150, or at psychbd@mail.nysed.gov.

The Department will continue to work collaboratively with SED on qualified personnel issues to address existing and emerging concerns in the field. If you have any questions or concerns of this nature, please contact Margaret Adeigbo of our staff at (518) 473-7016. General questions about qualified personnel under the EIP should be directed to Training and Technical Assistance Unit staff at (518) 473-7016.

Sincerely,


Brenda Knudson Chouffi
Co- Director
Bureau of Early Intervention


Donna Noyes
Co- Director
Bureau of Early Intervention

cc: Kathleen M. Doyle
James P. DeLorenzo
Bradley Hutton

Exhibit C



STATE OF NEW YORK
DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Antonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

Reissued
Early Intervention Memorandum 00-1

To: Early Intervention Officials
Approved Evaluators; Providers and Service Coordinators
Interested Parties

From: Donna M. Noyes, Ph.D., Director
Early Intervention Program

Reissue Date: December, 2000

Subject: Qualified Personnel in the Early Intervention Program

The purpose of this memorandum is to provide guidance and clarification regarding the use of qualified personnel in the Early Intervention Program.

The federal Individuals with Disabilities Education Act (IDEA) requires states to adopt policies to ensure that personnel who provide early intervention services meet the highest standards in the state applicable to a specific profession/discipline in which the individual is providing services (34CFR section 303.361). In New York State, the State Education Department (SED) is responsible for the certification and licensing of professionals. Persons who provide services in the Early Intervention Program are subject to SED's regulation of the thirty-eight fields of professional practice. The term "qualified personnel" is defined in Section 69-4.1(a)(1)-(20) of the Early Intervention Program regulations as those individuals who are approved to deliver services to the extent authorized by their licensure, certification or registration, to eligible children and have appropriate licensure, certification, or registration in the area in which they are providing services; including:

- (1) audiologists;
- (2) certified occupational therapy assistants;
- (3) licensed practical nurses, registered nurses and nurse practitioners;
- (4) certified low vision specialists;

- (5) occupational therapists;
- (6) orientation and mobility specialists;
- (7) physical therapists;
- (8) physical therapy assistants;
- (9) pediatricians and other physicians;
- (10) physician assistants;
- (11) psychologists;
- (12) registered dietitians;
- (13) school psychologists;
- (14) social workers;
- (15) special education teachers;
- (16) speech and language pathologists;
- (17) teachers of the blind and partially sighted;
- (18) teachers of the deaf and hearing handicapped;
- (19) teachers of the speech and hearing handicapped;
- (20) other categories of personnel as designated by the Commissioner

Some issues regarding qualified personnel who provide early intervention services may be complex in nature and involve questions about the appropriate practice of a particular profession, such as levels of supervision, settings that influence practice, etc. *This guidance document is meant to clarify issues that have been frequently raised regarding use of qualified personnel providing early intervention services and is not meant to be all inclusive.* For all issues related to the practice of the professions under Title 8 of the Education Law, persons should contact the State Education Department, Office of the Professions at (518) 474-3817 or the State Boards specific to the profession. A telephone listing of relevant State Boards is attached to this document. All descriptions of activities by qualified personnel in the Early Intervention Program are subject to each profession's scope of practice restrictions and to changes in the relevant laws and regulations. If there are specific questions about the appropriate practice of a particular profession, it is strongly recommended that the appropriate professional State Board be contacted at the State Education Department (SED).

Specific early intervention services are defined in Section 69-4.1(k)(2) of the Early Intervention Program regulations. An attachment to this memorandum, the *Qualified Personnel Matrix*, lists qualified personnel under the Early Intervention Program, and indicates which early intervention services the qualified personnel may provide. Please note that the *Matrix* contains a slightly different listing of qualified personnel than Section 69-4.1 (aj)(1-20) of the regulations. As of this date, the *Matrix* contains the most up-to-date and accurate information regarding the qualified personnel authorized to deliver services under the Early Intervention Program and is subject to changes in relevant laws and regulations.

Q. Who can provide social work services in the Early Intervention Program?

- A. Under the Early Intervention Program, an individual must be licensed as a certified social worker (CSW) in New York State in order to provide early intervention “social work” services and to participate as a member of the multidisciplinary evaluation team or as a supplemental evaluator. A social worker who holds a limited permit issued by the State Board for Social Work may practice only under the direct supervision of a licensed certified social worker. Individuals with only a Master’s degree in Social Work (MSW) may not provide early intervention services, including evaluations.

Q. Under what circumstances can licensed psychologists and school psychologists provide services in the Early Intervention Program?

- A. A licensed psychologist may provide the following services under the Early Intervention Program; assistive technology service, family training, family counseling, parent support groups, psychological services, service coordination, and special instruction. These services, including evaluation services, may be provided in hospitals, clinics, and private practices. A licensed psychologist (who is not also a certified school psychologist) may only provide psychological services in a school setting under limited circumstances and when certain criteria have been met. Details regarding the circumstances under which a licensed psychologist may provide psychological evaluations and services in a school setting may be found in the State Education Department’s guidance documents listed below

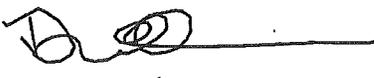
A certified school psychologist is considered to be a qualified person under the Early Intervention Program, however, unless (s)he is also a licensed psychologist, a certified school psychologist may provide early intervention “psychological” services and/or participate as a member of the multidisciplinary evaluation team or as a supplemental evaluator only when employed by a government agency, chartered elementary or secondary school or degree-granting institution of higher education. These services must be provided in the context of this salaried position. Since agencies approved under Section 4410 of the Education Law are considered to be “schools,” when an agency is approved both as an early intervention provider and under Section 4410 of the Education Law, it may employ certified school psychologists to provide early intervention “psychological” services, and/or participate as a member of the multidisciplinary evaluation team or as a supplemental evaluator. “Employed” means the professional must be directly employed (full-time or part-time) in the aforementioned settings in the context of a salaried position, and cannot be contracted by an agency on a per diem or contractual basis.

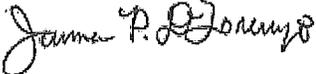
For additional information regarding the provision of psychological services by licensed psychologists and certified school psychologists, contact the State Education Department to request a copy of “Psychologist/Interpreter Work Standards for Conducting Bilingual Evaluations” and “Certification and Licensing of Bilingual Special Education Professionals” Copies of these memos may be obtained by



September 2014

SPECIAL EDUCATION FIELD ADVISORY

From: Douglas E. Lentivech 
Deputy Commissioner, Office of Professions

James P. DeLorenzo 
Assistant Commissioner, Office of Special Education

Subject: **Qualifications of Psychologists Employed by Preschool Special Education Multidisciplinary Evaluation Programs Approved Pursuant to Section 4410 of the Education Law**

In August 2014, a special education field advisory was issued with information regarding the responsibility of multidisciplinary evaluation programs (MDEs) approved pursuant to section 4410 of the Education Law to ensure that they employ appropriately qualified psychologists to conduct evaluations of preschool students with disabilities in MDE programs. Since the issuance of the field advisory, we have received many comments from MDEs and counties which demonstrate the widespread nature of the use of school psychologists in MDE programs, shortages of licensed psychologists and the resulting inability of MDEs to ensure timely psychological evaluations of preschool students with disabilities. As a result, the Department has determined that this issue requires further review, and a legislative solution is needed to address field concerns.

In the interim, it is important that MDEs continue to conduct timely evaluations of preschool students. The federal Individuals with Disabilities Education Act (IDEA) requires that initial evaluations of preschool children with disabilities be conducted within 60 days of parental consent for the evaluation and State law requires that approved MDEs selected by the parent conduct such evaluations.

Until such time as the Department completes its review and otherwise notifies the field, the P-12 Office of Special Education will not be citing approved MDEs for noncompliance in this area, and the Office of Professions will not be making referrals for unlicensed practice against individual school psychologists who are employed by the MDE programs solely based on unlicensed practice.

**Sylvia Allinger - Updated guidance on Qualifications of Psychologists Employed by
Preschool Special Education Multidisciplinary Evaluation Programs Approved
Pursuant to Section 4410 of the Education Law**

From: NYSED SPECED <SPECED@MAIL.NYSED.GOV>
To: <OSE-0-2@LISTSERV.NYSED.GOV>
Date: 10/3/2014 1:19 PM
Subject: Updated guidance on Qualifications of Psychologists Employed by Preschool Special Education
Multidisciplinary Evaluation Programs Approved Pursuant to Section 4410 of the Education Law
BC: Sylvia Allinger
Attachments: MDE Follow up-Oct 2014.pdf

Please see the attached updated guidance on Qualifications of Psychologists Employed by Preschool Special
Education Multidisciplinary Evaluation Programs Approved Pursuant to Section 4410 of the Education Law.
Thank you.

New York State Education Department
P-12: Office of Special Education
89 Washington Avenue, Room 309 EB
Albany, NY 12234

Exhibit E



CANDOR CENTRAL SCHOOL

P. O. Box 145
Candor, New York 13743-0145

JEFFREY J. KISLOSKI
Superintendent
Phone 607-659-5010
Fax 607-659-7112

November 12, 2014

Assemblywoman Barbara Lifton
125th Assembly District
106 East Court Street
Ithaca, NY 14850

RE: Evaluations for Children between the Birth and Five Years of Age

Dear Assemblywoman Lifton:

I am writing this letter in support of the Tompkins County Health Department's advocacy notice regarding evaluations for children between birth and five years of age. As noted in Public Health Director Frank Kruppa's letter, nearly all of the evaluations of children age three to five in our county are completed by non-school district personnel.

This issue is complicated in our state given the involvement of both the County and School Districts in pre-school special education. Although our school districts are responsible for convening Committees on Pre-School Special Education (CPSE), they do not have the internal capacity to complete all of these evaluations. We are fortunate in our region to have local private non-profit organizations who can provide this service. This arrangement is threatened by the NYS Education Department (SED) Office of Professions August memorandum removing the exemption that allowed private non-profit pre-schools to perform these evaluations.

I encourage you to work with Director Kruppa to alleviate the potential impact of this decision.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Kisloski'. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Superintendent of Schools