

2015 – 2020 PRESCHOOL SPECIAL EDUCATION CONTRACT HIGHLIGHTS

Dear Executive Director:

As you may be aware, recently enacted amendments to the New York State Education Law and Commissioners Regulations require SEIT providers to be paid on a fee-for-service basis beginning July 1, 2015. The change in payment methodology has necessitated that we enter into new contracts, thereby providing an opportunity for New York City Department of Education (“Department”) managers and special education program provider representatives to revisit the obligations and practices reflected in the current contracts and to align the preschool and school-age contract cycles so that they begin and end within the same five-year term. The group’s efforts have resulted in new preschool and school-age contracts which have been sent to current Providers for signature.

Preschool program providers will note that significant changes have been made to various contract sections, including those pertaining to payments to center-based and SEIT program providers; new sections have been added as well. This writing is offered to highlight a select few of the amended/new provisions. It is not intended to substitute for a careful reading of the contract and compliance in full.

It is understood by all parties that in the event that a term of the Agreement becomes inconsistent with law or New York State Education Department regulations or written guidance, the term is superseded by such.

Corporate Identity (Section 7(a)(1) *Services and Licensing Agency Rules*). This new section reads in pertinent part: “The Provider hereby represents that it is a duly organized corporation, validly existing and in good standing under the laws of the State of New York . . . If providing Special Classes or SEIT services, Provider hereby represents that it is in compliance with New York State laws and regulations pertaining to educational corporations, is incorporated under the corporation laws of the state or under the Education Law. In the event the Provider is incorporated under the education law, it shall possess a New York State Board of Regents-issued provisional charter, an extension of its provisional charter or an absolute charter. The Provider further represents that its stated corporate purposes include the provision of special education services as defined in this Agreement. If, during the Term of the Agreement, the corporate structure or purposes change or the provisional charter or extension of the provisional charter lapses, the Provider shall notify the Department in writing of such change in status immediately.”

Service (Section 7(a)(10), (12) and (13) *Services and Licensing Agency Rules*).

- Providers’ program administration can be conducted only at the site(s) approved by SED.
- In addition to meeting all other record-maintenance requirements, the SEIT Provider’s direct service staff must prepare and maintain original session notes for each direct service session performed. The SEIT Provider is required to maintain a copy of the session notes and produce them upon request. Further, if so required by the Department, the SEIT Provider’s direct service staff must complete a SEIT Service form (to be provided by the Department). The SEIT Provider

will be responsible for reviewing the form for completeness and maintaining the original, which must be produced upon demand. The SEIT Provider cannot bill the Department for services that are not reported on the form and confirmed by the signature of parent/service site director/designee verifying that service was provided as indicated on the form.

Calendars (Section 8 *School Calendar*). Providers are still required to submit school year calendars through the Department's payment system. To ensure timely compliance, however, payment for services rendered in the school year to which the calendar would pertain will not be made until the Provider's school calendar for that year is submitted.

Payments (Section 10 *Payments and Payment Adjustments*). The following outlines changes that have been made by law and by contract as permissible to the payment process.

The New York State Education Department's ("NYSED") methodology for determining Center-based program tuition rates has not changed. That is not the case as pertains to SEIT programs. As of this writing, while it is certain that SEIT payments will be made on a fee-for-service basis, NYSED is considering the methodology it will apply in setting ½ hour session rates and will be sharing information about that with the provider community.

- **Monthly Payments to Center-based Providers** (Section 10(c)(1))
 - No advance payments will be made. Rather, payment will be processed by the Department upon the Center-based Provider's submission of its Certified Monthly Roster ("CMR") for the prior month. For example, payment for the students enrolled in September will be paid upon the Center-based Provider's October CMR submission. The following applies to all submissions:
 - On the first of each month (unless the first is a Sunday) the CMR will be available (Monday through Friday from 6:00 AM through 8:00 PM and on Saturday from 6:00 AM through 4:00 PM) for Center-based Providers to certify and submit the roster of students enrolled during the prior month.
 - As long as the Center-based Provider submits the CMR by the tenth of the month, the Department will process payments in accordance with its business practices (generally overnight).
 - CMRs that are submitted after the tenth of the month will be processed after 15 days from submission.
 - No payments for students enrolled as of September will be made until the last CMR for students enrolled in the two-month program is submitted. No payments for the two-month program will be made until the last CMR for students enrolled in the prior school year ten-month program is submitted. If the Center-based Provider does not operate a two-month program, no payments for students enrolled as of September shall be made unless and until the last CMR for students enrolled in the prior ten-month program is submitted.
 - Center-based Providers already should have strong internal controls in place around submission of student enrollment information. As currently is the case, it is in the

Provider's best interests to apply and test those controls as part of its regular business practices. The following two new contract provisions provide additional impetus.

- The Center-based Provider's certified representation of student enrollment status is the basis upon which the Department processes tuition payments. Submission of false information is actionable civilly and criminally and, in addition, may provide grounds for a material breach of contract determination.
- Although the Center-based Provider will still have the ability to add/delete enrollment information after a CMR has been submitted (*e.g.*, in December add a student whose enrollment began in September), the opportunity to further revise submissions in what had been referred to in the prior contract as the "Final CMR," has been eliminated. The new contract section reads: "Unless permitted by the Board in its sole discretion, after the *last* CMR reflecting students enrolled in the ten-month center-based program is submitted, the Center-based Provider shall not be able to add students to the roster or revise enrollment information the effect of which is to expand any student's enrollment period. However, if the Center-based Provider determines that the enrollment information submitted to the Board was incorrect in that a student was not actually enrolled at all or not enrolled for a part of the period for which the Center-based Provider was paid, NPSP must be notified immediately. NPSP shall thereupon allow the CMR to be accessed for the purpose of adjusting the enrollment period."

○ **Alternate Payments to Center-Based Providers (Section 10(c)(2))**

The Department's EasyTrac system provides the Department with a means by which it may assess the Center-based Providers' overall compliance with its enrolled students' related services mandates. All Center-based Providers will be paid for students enrolled in September and October upon their submission of corresponding CMRs. However, beginning November 1 of each school year, the Board will undertake a monthly review of each Center-based Provider's usage of EasyTrac on a site-specific basis. Upon that review, if it appears that the Center-based Provider has entered less than 75% of the aggregate related service sessions that the Department's records indicate have been mandated for the Center-based Provider's enrolled students, the Center-based Provider will be given notice and an opportunity to cure. If the situation is not rectified, the Center-based Provider will be permitted to continue to submit CMRs, but payments will be not be processed until all months in default, up to the month identified in the notice, have been cured or until the close of the fiscal quarter related to the notice, whichever comes first.

○ **Payments to SEIT Providers (Section 10(3))**

- The SEIT Provider will be paid on a fee-for-service basis by the Department at a rate set by SED
 - For direct service to an assigned student *only* upon actual delivery of that service. The Department intends to send SEIT students' parents statements of billed services to inform them of the service dates for which SEIT Providers were paid and to request that the parents contact the Department if there is a question whether service actually was delivered.
 - For indirect service (*i.e.*, consultation to assist the student's teacher in an early childhood program in adjusting the learning environment and/or modifying instructional methods to meet the individual needs of the student) *only if the IEP*

*recommends indirect service.*¹ The SEIT Provider may be required to enter on the CMI the name and, if the Board requires, the location of the early childhood program in which the indirect service was delivered. The Department intends to run reports of payments made to SEIT Providers that have billed for indirect service and will review students' IEPs to determine whether indirect service is recommended. If there is no such recommendation, the Department will recoup the payment(s) and consider what, if any, other action should be taken.

- Payment will not be made if the student or the student's teacher (in the case of mandated indirect SEIT) is absent, notwithstanding that SEIT Provider personnel may have been available to provide service.
- SEIT Providers must maintain adequate records to document direct and/or indirect service hours provided as well as time spent on other activities related to each enrolled and served student as identified in Regulations of the Commissioner Part 200.16. Additionally:
 - The SEIT Provider's direct service staff must prepare and maintain original session notes for each direct service session performed, copies of which will be maintained by the SEIT Provider for production upon request.
 - The Department will require the SEIT Provider's direct service staff to complete a "SEIT Service" form to be provided by the Department. The SEIT Provider will be responsible for reviewing the form for completeness and maintaining the original for production upon request. Further, the contract states that: "the SEIT Provider shall not bill the Department for services that are not reported on the form and confirmed by the signature of parent [if services are provided in the child's home as permitted]/ service site director/designee verifying that service was provided as indicated on the form." Since we do not expect that a site director/designee would be able to verify that SEIT service actually was provided unless (s)he observed the provision of service, it is understood that the site director's/designee's certification means that the SEIT service provider was on site and the student was in attendance on the day indicated on the SEIT Service form.
- Payment will be made only through the Department's newly created electronic Certified Monthly Invoice ("CMI"), which will require entry of specific information including, but

¹ It is essential that SEIT Providers distinguish between billable indirect services as defined in the text above and those SEIT functions which are referred to as "related activities" and are not separately billable, although they are required. Specifically, Regulations of the Commissioner Part 200.9, states that the required functions "include but are not limited to: coordination of service when both special education itinerant services and related services are provided to a student pursuant to section 4410(1)(j) of the Education Law; preparation for and attendance at committee on preschool special education meetings; conferencing with the student's parents; classroom observation; and/or travel for the express purposes of such functions as stated above. For the purpose of this subparagraph, parent conferencing may include parent education for the purpose of enabling parents to perform appropriate follow-up activities at home. . . Providers shall maintain adequate records to document direct and/or indirect service hours provided as well as time spent on all other activities related to each student served."

not limited to, the NYC student ID and tax ID of the service provider; session time, duration and location; and, number of students served per session. The fee-for-service model will allow the Department a degree of service delivery monitoring that already is associated with other service areas.

- Service provider information submitted through the CMI will be matched to the Department's Personnel Eligibility Tracking System ("PETS"). The Department will pay for SEIT services provided only by an appropriately certified professional (special education teacher and, as applicable, speech teacher, audiologist and hearing education teacher) who is on the SEIT Provider's Pets roster and whose status as reflected in PETS is "eligible" and "active." (See Section 15 *Security Clearance*).
- The CMI incorporates edits and flags which, if triggered, either will block billing (*e.g.*, a security clearance issue) or flag a transaction for the Department's further inquiry (*e.g.*, billing a compensatory make-up session). The electronic CMI data also will facilitate generating reports of service patterns and conditions. SEIT Providers should expect and prepare for Department requests for documentation in support of billing. As such, it is in the SEIT Provider's best interest to ensure that its business practices incorporate robust, applied and tested internal controls over data that is entered into that system. In that regard, it bears stating that the SEIT Provider's certified representations around billable direct and indirect service encounters, including make-up sessions, are the basis upon which the Department will process payments. Submission of false information may provide grounds for a material breach of contract determination and, in addition, may be civilly and criminally actionable.
- No payments for students enrolled and served as of September will be made until the last CMI for students enrolled in the two-month program is submitted. No payments for the two-month program will be made until the last CMI for students enrolled in the prior school year ten-month program is submitted. If the SEIT Provider does not operate a two-month program, no payments for students enrolled and served as of September will be made unless and until the last CMI for students enrolled in the prior ten-month program is submitted.
- No advance payments will be made. Rather, payment will be processed by the Department upon the SEIT Provider's submission of its CMI for the prior month. For example, payment for assigned students served in September will be paid upon the SEIT Provider's October CMI submission. The following applies to all submissions:
 - On the first of each month (unless the first is a Sunday) the CMI will be available (Monday through Friday from 6:00 AM through 8:00 PM and on Saturday from 6:00 AM through 4:00 PM) for SEIT Providers to certify and submit the roster of students enrolled during the prior month.
 - As long as the SEIT Provider submits the CMI by the tenth of the month, the Department will process payments in accordance with its business practices (generally, overnight).
 - CMIs that are submitted after the tenth of the month will be processed after 15 days from submission.

- Although the SEIT Provider will still have the ability to add/delete service information after a CMI has been submitted (*e.g.*, in December add SEIT service that was delivered in September), the opportunity to further revise submissions in what had been referred to in the prior contract as the “Final CMR,” has been eliminated. The new contract section reads: “Unless permitted by the Board in its sole discretion, after the last CMI reflecting students enrolled in the ten-month SEIT program is submitted, the SEIT Provider shall not be able to add students and/or additional services to the CMI. However, if the SEIT Provider determines that the service information submitted to the Board was incorrect in that a student for whom the SEIT Provider had been paid was not actually served at all or not served in part, NPSP must be notified immediately. NPSP shall thereupon allow the CMI to be accessed for the purpose of making the adjustment(s).”
- SEIT sessions must be scheduled consistent with the student’s IEP and with sufficient time allotted to ensure delivery of the full session. SEIT service must be provided in accordance with the IEP. Unless stated otherwise in the IEP, the recommended frequency is the number of days each week over which the service in the recommended duration is to be delivered. Service sessions cannot be combined into fewer days without formal authorization provided by the CPSE.
- Payment is based on one-half hour blocks of time at the SEIT rate established by SED.
- If, only after a minimum of 23 minutes of face-to-face student instructional time, an issue pertaining to the student causes the session to end prematurely, the one-half hour session will be considered to have been substantially delivered and SEIT Providers shall be paid the full one-half hour rate. In that case, the direct SEIT service teacher shall document the reason the session ended early and maintain that documentation along with, or as part of, the session notes for that particular session. SEIT Providers shall maintain and produce a copy of that documentation upon demand. The CMI shall identify the actual beginning and end times of the shortened session.
- If the direct SEIT service session runs short of one-half hour because the SEIT service teacher ended the session for any reason other than the student’s inability to continue, the session cannot be billed, even if the session was ended after at least 23 minutes of face-to-face student instructional time.
- Service provider information submitted through the CMI will be matched to the Department’s Personnel Eligibility Tracking System (“PETS”). The Department will pay for SEIT services provided only by an appropriately certified professional who is on the SEIT Provider’s Pets roster and whose status as reflected in PETS is “eligible” and “active.” (See Section 15 *Security Clearance*).
- A significant number of contract terms respecting making up and billing for SEIT sessions missed as a consequence of teacher or student absence have been built into Section 10 (c)(3). They were based on NYSED written guidance that was current as of the date the contract was finalized. Certain of the make-up session terms are highlighted below. Again, we caution Providers not to substitute review of the outline for a careful reading of the contract.

- It is clear that NYSED and the Department expect that SEIT Providers will have on staff a sufficient number of substitute SEIT service providers to cover when the assigned SEIT service provider cannot deliver a scheduled session. Therefore, it is only in “extenuating circumstances” that SEIT service provider absence should provide the need for make-up sessions. The Department has the right to inquire whether such circumstances actually existed.
- The SEIT Provider must have on hand a written plan for managing missed SEIT sessions. The required elements of that plan are embodied in Section 10 (c)(3)(N).
- While the contract speaks to “compensatory” make-up sessions, it should be understood that those sessions can be delivered only if the SEIT Provider has been given express written authority by the CPSE to do so and that such authorization must be produced upon demand by the Department. In any case where compensatory make-up sessions have been authorized, and the student is also entitled to a make-up sessions on the basis of an absence, the absence-based sessions must be billed first.
- Although the payment model has been altered, the rules around student enrollment, as defined by Regulations of the Commissioner section 175.6, have not. Therefore, we are still speaking in terms of delivery of SEIT sessions within each student’s period of enrollment and have incorporated into the contract that absence-based make-up sessions cannot be provided when provision of a session would result in the total number of sessions delivered to the student exceeding the maximum number of IEP sessions mandated during the student’s two-month and/or ten-month period of authorization and period of enrollment.
- Two back-to-back 30 minute SEIT sessions, one of which is a make-up session, can be provided only when there is no contrary child-specific reason why back-to-back sessions would be inappropriate, such as attention span or fatigue level of the student, and when no other practicable and appropriate schedule is possible to make up the missed session. In the event that a SEIT service provider delivers a make-up SEIT session back-to-back with a scheduled session, the SEIT Provider must report each session separately on the CMI.

IDEA (Section 11(d) *Special Conditions for Receipt of IDEA Vendor Funding*). Student enrollment data reported in the Provider’s CMR/CMI submitted no later than November 10 will be used by the Department to create the SEDCAR 1 form. If the November 10 deadline is missed, the Provider will not be eligible to receive IDEA grant funds for the applicable year.

Security Clearance (Section 15(a)(5) *Security Clearance and Health Clearance*). “Center-based Providers are required to have day care staff, including administrators, who have contact with Department students in SCIS classrooms, or access to those students’ records, fingerprinted and cleared unless the day care staff has been fingerprinted and cleared by another New York City agency.” It is the Center-based Provider’s responsibility to ascertain whether the collaborative partner has complied with its obligations in that regard.

Staff Supervision (Section 14(c)(4) *Provider Staff*). Center-based Providers are required to maintain at each program site a written plan detailing which staff members must be present in the capacity of a site

supervisor; how a designated site supervisor can be contacted during all hours that students are in attendance; and, which staff members will serve as a site supervisor given the absence or unavailability of the designated site supervisor.

Internal Controls and Conflicts of Interest (Section 16). Following is the text in full.

- Consistent with SED requirements and guidelines, Providers shall develop, maintain, and produce upon the Board's request, a clear, sufficient, and detailed written description of the governance structure of the agency and the agency's internal control procedures and protocols. Such document shall be reviewed annually and updated as conditions require.
- Consistent with SED requirements and guidelines, Providers shall develop, maintain, and produce upon the Board's request a written Code of Ethics that shall include a specific conflict of interest policy requiring the identification, and written disclosure of all less-than-arms-length relationships, and transactions on an ongoing basis.

SEQA Reports (Section 18(a)(9) and (b)(l) *Audits, Limited Scope and Contract Compliance Reviews*). Upon the Department's request the Provider must submit copies of SED Special Education Quality Assurance Reports and any Corrective Action Plans and response(s).

Register of Attendance (Section 21(c) *Attendance Records and Withdrawal/Discharge Process*).

- To facilitate the use of a more uniform record of attendance, the contract requires the Provider to capture at least the following for each student:
 - school name and CAP code (Board-designated site code);
 - full name of student;
 - date of birth;
 - student identification number issued by the Board;
 - full names of parent(s) or legal guardian(s);
 - address where the student resides;
 - phone number(s) where parent(s) or legal guardian(s) may be contacted;
 - date of the student's enrollment;
 - date of student's first attend;
 - date of and reason for discharge;
 - record of student's attendance on each day of scheduled instruction;
 - record of program closure dates;
 - record of student's absences from program, including date of absence, date of contact with parent/legal guardian, means of contact, reason for absence provided by parent/legal guardian, and name of staff member who reached out to parent/guardian; and
 - signature of certified teacher after last date of student's attendance.
- After the preschool and school-age contracts were finalized, we were asked whether the teacher signature requirement could be satisfied with an electronic signature when student attendance data is maintained in an electronic system. The question was answered as follows: In the event that the School uses an electronic system for recording students' daily attendance, the teacher's signature may be electronic as long as

- The School complies with the contract’s internal controls requirements, which must include guidelines for student attendance data collection and verification.
 - The electronic system requires each teacher to be uniquely identified; and
 - The electronic system incorporates controls that restrict usage based on functionality.
- In lieu of an electronic signature, the teacher’s actual signature may be affixed to a print-out of the electronic attendance record which the teacher must have had an opportunity to review before signing.
- Whether in electronic form or hardcopy, the attendance records must be maintained as required and produced upon demand.

Establishment of Period of Enrollment (Section 21(d) *Attendance Records and Withdrawal/Discharge Process*). The Provider must document any claimed legal absence with respect to the first and/or last date(s) of attendance in the student’s attendance record as follows:

- In the case of the student’s illness, a
 - Signed and dated physician’s note identifying the date of treatment; or
 - Signed and dated parent-provided note identifying the date(s) of the student’s illness.
- In the case of a legal absence based on any condition identified in §175.6 of the Commissioner’s Regulations other than illness, the Provider must obtain a signed and dated parent-provided note identifying the reason for the absence and the applicable date(s).
- Further, the Provider must record the claimed legal absence along with records identifying the basis of the Provider’s information supporting the claimed legal absence and must make a copy of such records available to the Department upon request or in the course of an audit of the Provider’s records. The originals of all records referred to in Section 21 must be maintained.

Emergency Contact Forms and Procedures (Section 23 (c) – (f) *Individual Student Files*).

- Since, based on site visits and field reviews, it appeared that Providers were not maintaining uniform information on student emergency contact forms and/or updating them regularly, the contract requires the following current information to be maintained for each student in addition to any other information the Provider deems useful:
 - The student’s full name, OSIS number and date of birth;
 - Full name of parent(s)/guardians;
 - Address and phone number;
 - Contact information for at least three (3) persons who may be contacted in case of emergency or sickness and who are authorized to pick up the student from the program;
 - Identification of any person or persons who may not have access to the student;
 - Contact information for the student’s physician;
 - Health alerts, if any; and,
 - Instructions in the event of an emergency and neither the parent/guardian nor an identified alternate contact can be reached.
- Further, Providers must:

- Distribute and collect an emergency contact form for each student upon enrollment and annually, thereafter.
- By the end of January of each school year, send to the parent/guardian of each enrolled student a notification that the emergency contact form must be kept up-to-date and that, if any information has changed, the Provider is to be notified immediately.
- Inform the CPSE in writing as quickly as practicable if the Provider becomes aware of errors or changes in students' names, and/or the names of their parents or guardians, and/or errors in their dates of birth.