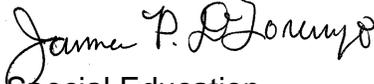




June 2011

To: District Superintendents
Superintendents of Schools
Directors of Approved Preschool Programs
County Fiscal Officers
Authorized Municipality Representatives
Chief Elected Officials of Counties
Early Childhood Direction Centers
Regional Special Education Technical Assistance Support Centers
Commissioner's Advisory Panel for Special Education Services

From: James P. DeLorenzo 
Statewide Coordinator for Special Education
Office of Special Education

Mary Kogelmann 
Director of Fiscal Services
Office of Operations and Management Services

Subject: Approved Preschool Special Education Programs Providing Special Education Itinerant Teacher Services

The purpose of this memorandum is to clarify that each preschool program approved to provide Special Education Itinerant Teacher (SEIT) services to preschool students with disabilities pursuant to section 4410 of the New York State (NYS) Education Law must have an "employer-employee" relationship with the special education teachers providing SEIT services.

NYS Education Law section 4410 and sections 200.7 and 200.16 of the Regulations of the Commissioner of Education establish the State's authority to approve programs to provide special education services to preschool students with disabilities, including a program approved to provide SEIT services. A program approved to provide SEIT services for preschool students with disabilities must ensure that SEIT services are provided by a certified special education teacher of the approved program. As such, the approved program must have direct control of the work and provide direct and appropriate supervision of the special education teachers providing SEIT services.

This level of direct control means that all SEIT providers must have an employer-employee relationship with the approved preschool program and that all programs applying for approval to provide SEIT services must include a plan for staff supervision, identifying

the name and title of the individual who will have direct supervisory responsibilities for the staff and providing the supervisor's resume to document an appropriate level of experience.

Criteria have been established to distinguish an employee from a person in a contractual relationship. The NYS Worker's Compensation Board advises that to the extent that a program controls the work and provides direct supervision of the teacher, the relationship entails employment (W-2) and not independent contract (1099 form). The existence of an employment relationship depends on the factual context of a particular situation or setting. To demonstrate this, the individual must be a W-2 employee such that the employer is subject to federal social security and withholding taxes and other factors that indicate the existence of an employment relationship. Additional relevant factors that may be considered to determine the existence of an employment relationship include the following:

- the degree of the employer's dominion and control over the autonomy of the employee, such as, whether the individual is required to follow the instructions of the provider relating to when, where and how he or she is to work;
- whether the employer requires the submission of written reports and provides training;
- the degree of oversight the employer has over the employee's work product, such as, does the employer set the order of work to be performed; and
- whether the employer establishes the hours of work.

This memorandum is meant to supplement, not replace previous guidance regarding SEIT services issued by the New York State Education Department (NYSED). Please refer to "Special Education Itinerant Teacher (SEIT) Services and Related Services for Preschool Students with Disabilities," James P. DeLorenzo and Thomas Hamel, July 2007 available at <http://www.p12.nysed.gov/specialed/publications/preschool/seit.htm>. This guidance document should be read with the July 2007 memorandum for background and current information.

Questions regarding this memorandum may be directed to one of the following NYSED Offices:

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| Rate Setting Unit | 518-474-3227 |
| STAC, Special Aids and Medicaid Unit | 518-474-7116 |
| Special Education Policy Unit | 518-473-2878 |
| Special Education Quality Assurance Regional Offices | |
| Eastern Regional Office | (518) 486-6366 |
| Western Regional Office | (585) 344-2002 |
| Hudson Valley Regional Office | (518) 473-1185 |
| Central Regional Office | (315) 476-5081 |
| Long Island Regional Office | (631) 884-8530 |
| New York City Regional Office | (718) 722-4544 |
| Nondistrict Unit | (518) 473-1185 |