



TO: P-12 Education Committee

FROM: Beth Berlin *Elizabeth B Berlin*

SUBJECT: Proposed Amendment of Section 200.9 of the Commissioner's Regulations, Relating to Reimbursement for Preschool Special Education Itinerant Services

DATE: March 9, 2015

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SUMMARY

Issue for Discussion

Should the Board of Regents adopt the proposed amendment of section 200.9 of the Regulations of the Commissioner of Education, relating to the reimbursement methodology for preschool Special Education Itinerant Services (SEIS)?

Reason(s) for Consideration

Required by Statute (L. 2014, Ch. 56, Part A, §11) and review of policy.

Proposed Handling

This item will come before the P-12 Education Committee for discussion at the March Regents meeting.

Procedural History

A Notice of Proposed Rule Making will be published in the State Register on April 1, 2015. A copy of the proposed amendment is attached. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

The Department has oversight responsibilities for the preschool special education program, which includes approximately 500 approved providers, private and public schools and boards of cooperative educational services (BOCES), and their

provision of preschool special education services to approximately 80,000 preschoolers with disabilities ages 3-4 annually. SEIS programs are instructional services provided by a special education teacher on an itinerant basis (i.e., the teacher goes to the setting where the child is - for example: Universal Prekindergarten Program (UPK), Head Start; other day care or regular preschool program; hospital or another child care location arranged for by the parent). In instances where the child has documented medical or other special needs indicating that the child cannot be transported to another site, the child could receive SEIS in the student's home. For the 2013-14 school year, 334 approved providers operated SEIS programs.

The proposed amendment would:

- (1) provide that reimbursement is to be paid upon the actual provision of SEIS to the student, in conformity with Chapter 56 of the Laws of 2014;
- (2) allow flexibility in how the minimum billable units of service adjustment are applied; and
- (3) clarify that consultation with a student's regular early childhood provider is an expected function of a special education itinerant teacher.

Chapter 56 of the Laws of 2014 – SEIS reimbursement based on service provision

Currently, pursuant to Commissioner's Regulation section 200.9(f)(2)(ix)(d), SEIS rates are paid on the basis of enrollment as defined in section 175.6(a)(1) and (2)¹. Chapter 56 of the Laws of 2014 amended Education Law §4410(10)(a)(i) to provide that, commencing with the 2015-16 school year, approved programs providing SEIS must be reimbursed based on the actual attendance of preschool children receiving SEIS services. According to the legislative intent contained in the 2014-15 Executive Budget Briefing Book, this provision was recommended by the Executive in order to limit "payment to program operators only for services that are actually provided, incentivizing delivery of these mandated services to children."

In order to effectuate the statutory requirement that SEIS be reimbursed based on actual attendance, section 200.9(f)(2)(ix)(d) would be amended to require SEIS rates be paid for each unit of service delivered, not to exceed the recommendations for such services in the student's IEP. In addition to the change in regulation, the Department will be issuing guidance regarding new reporting requirements. Although mandated and actual provided SEIS units are currently reported by providers on their annual Consolidated Fiscal Reports, and therefore data reporting in that regard does not need to be changed, the Department will issue updated guidance to Counties regarding the reporting of both the number of SEIS units expected to be delivered based on student IEPs and the number of SEIS units actually delivered.

¹ The definition of enrollment pursuant to §175.6(a)(2) includes "the period commencing on the first day a pupil is enrolled in and is physically present at, or legally absent from, a special education program or service... and terminating on the last day such pupil is enrolled in and is physically present at, or legally absent from, such program or service."

Greater Flexibility Regarding the Minimum Billable Adjustment

Section 200.9(f)(2)(ix)(c) currently requires that that SEIS billable time may not be less than 66 percent or more than 72 percent of any special education itinerant teacher's total employment hours in order to ensure that a certain percentage of teacher time is spent directly providing instructional services to students. Data analysis and stakeholder discussions conducted as part of a preschool tuition reimbursement study issued by the Department in December 2014 demonstrated that there are certain circumstances in which meeting this billable time threshold may be difficult, for example depending on varying travel time that may be required in certain regions of the State.

In order to allow for individual factors to be considered when applying the billable time adjustment, section 200.9(f)(2)(ix)(c) would be amended to provide that the approved tuition reimbursement methodology, developed by the Commissioner and approved by the Director of the Budget, may alter the billable time threshold.

Clarification of the special education itinerant teacher functions included in the SEIS rates.

The SEIS rate reimburses the employment hours of a special education itinerant teacher. These hours include billable time, defined in 200.9(f)(2)(ix)(c) as "time spent providing direct and/or indirect special education itinerant services" and other functions not limited to "coordination of service when both special education itinerant services and related services are provided to a student...preparation for and attendance at committee on preschool special education meetings; conferencing with a student's parents; classroom observation; and/or travel..." The proposed amended regulations would clarify that "consultation with the student's regular early childhood provider" is expressly included as a potential function of a special education itinerant teacher.

In addition to proposed amendments to section 200.9, the Department will consider proposed revisions to specific aspects of the tuition reimbursement calculation to be approved in the annual tuition methodology, established by the Commissioner and approved by the Division of Budget. The Department issued a study in December 2014 of the preschool tuition rate setting methodology which considered adjustments that may be made to SEIS reimbursement calculation including, but not limited to:

- Creating an Absentee Factor;
- Altering the Minimum Billable Units of Service Adjustment;
- Holding SEIS Teacher Compensation to a Regional Average;
- Classifying SEIS Supervising Teachers as Program Administrative Staff; and
- Reducing the SEIS Non-Direct Care Cost Parameter.

These adjustments will be reviewed for consideration as part of the 2015-16 SEIS reimbursement methodology recommendation.

The 2015-16 Executive Budget proposes to require SEIS services to be reimbursed using regional rates based on average actual cost, to be phased-in over no

more than four years. In the event this provision is enacted, this additional directive will be incorporated into the SEIS reimbursement amendments beginning for the 2015-16 school year and phased-in within the four year time period.

Timetable for Implementation

It is anticipated that the proposed amendment will be presented for adoption at the June 15-16, 2015, after publication of a Notice of Proposed Rule Making in the State Register and expiration of the 45-day public comment period prescribed for State agency rule makings. If adopted at the June meeting, the proposed amendment will take effect on July 1, 2015.

AMENDMENT OF THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to Education Law sections 207, 4003, 4401, 4403, 4405, 4408 and 4410 and section 11 of Part A of Chapter 56 of the Laws of 2014

Subparagraph (ix) of paragraph 2 of subdivision (f) of section 200.9 of the Regulations of the Commissioner of Education is amended, effective July 1, 2015, as follows:

(ix) The tuition rate for programs for preschool students with disabilities receiving special education itinerant services pursuant to section 4410(1)(k) of the Education Law, shall be established using the reimbursement methodology as set forth in paragraph (1) of this subdivision and subparagraphs (i) through (viii) of this paragraph, with the following modifications:

(a) . . .

(b) . . .

(c) Rates for the certified special education teacher providing special education itinerant services shall be published as half hour rates and billing by providers to municipalities must be done in half hour blocks of time. Billable time includes time spent providing direct and/or indirect special education itinerant services as defined in section 200.16(i)(3)(ii) of this Part in accordance with the student's individualized education program (IEP). The difference between the total number of hours employed in the special education itinerant teacher's standard work week minus the hours of direct and/or indirect special education itinerant service hours must be spent on required functions. Such 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; consultation with the student's regular early childhood provider, 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. Billable time shall not be less than 66 percent [or more than 72 percent] of any special education itinerant teacher's total employment hours; provided that the approved reimbursement methodology, developed by the commissioner and approved by the Director of the Budget, may adjust this billable time threshold. 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.

(d) Special education itinerant service rates will be calculated so that reimbursable expenditures shall be divided by the product of the number of days in session for which the program operates times the number of direct and/or indirect special education itinerant service hours per day times two. In instances where the special education itinerant services are provided in a group session, *i.e.*, two or more students with a disability within the same block of time, the half hour rate must be prorated to each student receiving services. Special education itinerant service rates shall be paid [on the basis of enrollment as defined in section 175.6(a)(1) and (2) of this Title for the period of enrollment as defined by the student's IEP] based on the number of half hour units delivered, provided that the total number of units delivered shall not exceed the recommendations for such services in the student's IEP.

(e) . . .