Department of
Education

Testimony of the New York City Department of Education on Medicaid Claims for Special Education Related Services

Before the New York City Council Committees on Education and Finance

March 1, 2012

Chief Operating Officer Veronica Conforme

Good morning, Chairs Jackson and Recchia and all the members of the Education and Finance Committees here today. Thank you for inviting me to testify about the Department's Medicaid claims for special education related services. I am joined today by Michael Tragale, the Department of Education's Chief Financial Officer, and Matt Berlin, our Executive Director of Medicaid.

I would like to begin today by reiterating the Department's commitment to addressing all outstanding issues associated with our Medicaid claims, and increase our reimbursements from the federal government. We recognize our current fiscal reality and we are working hard to implement an aggressive plan that provides a long-term sustainable solution so our students and schools receive the money to which they are entitled. Before I talk about the work we have undertaken, I'd like to provide some background information about Medicaid and the reimbursement process in New York State and the City to put our work and challenges into context.

As you know, under the Individuals with Disabilities Education Act, or IDEA, public schools are required to provide children with disabilities with a free and appropriate public education including special education and related services according to each child's Individualized Education Plan (IEP). Related services are defined as developmental, corrective and other support services that assist students in meeting the objectives of his or her instructional program. The goal is for students with IEPs to be involved in the general education curriculum, experience success in their classroom setting, and be educated with their nondisabled peers. Some examples of related services include speech therapy, physical therapy and occupational therapy.

While states and, in turn, school districts receive some federal aid under IDEA, they are otherwise responsible for the costs of special education and related services. When Congress passed IDEA, they expressed a commitment to providing states with funding to cover up to 40 percent of the additional costs of providing services to students with special needs. To date, despite some attempts in budgets proposed in recent years, that commitment has not been honored and federal contributions have remained around 18 percent.

In an effort to ease the financial burden felt by states and school districts of fulfilling the requirements of IDEA, Congress passed the Medicare Catastrophic Coverage Act of 1988. Through this legislation, states are able to seek reimbursements through Medicaid for the services in a student's IEP, provided that they are eligible for the Medicaid program. Here is the challenge: Medicaid is based on a medical service model while IDEA is based on an educational service model. Even with guidance

from the federal government, many districts, including New York City, have encountered difficulties with the complex and often contradictory rules associated with the reimbursement process which led to an extensive audit of New York State's claims and reimbursements.

In 2001, the Federal Department of Health and Human Services commenced an audit of claims submitted by New York State between 1993 and 2001. Released in 2005, the audit found many claims did not comply with applicable requirements. Subsequently, the State Department of Health opened a corrective action review of all Medicaid services in order to ensure all new claims were meeting federal requirements. After the review was completed in September of 2005, school districts were instructed by the State to stop seeking Medicaid reimbursements for all services except for targeted case management, which refers to the time devoted to creating a student's IEP and coordinating access to the necessary care and services appropriate to the needs of the student.

When the State reach a settlement with the Department of Justice in June 2009, the New York State Department of Health was tasked with creating a new State Plan Amendment and procedures for districts to follow when submitting new Medicaid claims. In order to start billing for additional services beyond targeted case management, the Department of Education had to wait for the completion of the new State plan, which eventually was approved in April 2010. The new State requirements are significantly more complex than prior Medicaid reimbursement regulations and also require more specific documentation.

The new State plan and requirements move further towards a medical, encounter-based model rather than an educational model. The obligations under the new State plan have proven to be incredibly burdensome and have required us to build systems similar to hospitals and healthcare institutions. Moreover, that these requirements were made retroactive has posed particular difficulties because many of these requirements cannot be satisfied after the fact. I'd like to provide some examples of the changes between the previous plan and the new State plan to highlight the challenges we face.

Under the previous plan, in order for claims to be in compliance for reimbursement, speech, occupational, and physical therapists were required to have a current license and registration. Under the new plan, in addition to the previous requirements, they must also undergo annual compliance training; they must obtain a National Provider Identifier number; and physical therapists must have graduated from a program accredited by the Commission on Accreditation in Physical Therapy Education (CAPTE).

State and federal regulations only allow school districts to bill for speech services provided by or "under the direction of" a Speech Language Pathologist (SLP). While all of our speech providers meet Speech Teacher licensing and credentialing requirements under State regulations, 40% of our speech providers do not have a speech language pathologist license because none of our providers need it as a condition of hiring or service. The Department's non-SLP certified speech teachers are also not typically "directed" by SLPs in a way that would allow their services to be billable. Additionally, the SLP license is not a credential addressed in our contract with the teachers' union.

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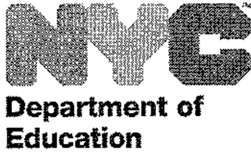
In terms of service delivery, previously a provider would track a student's daily attendance via a monthly attendance card and authorize it with their signature and credentials. Under the current plan, we are now required to document each individual session and keep detailed notes about the types of activities performed during the session. Some of these include: the time and duration of the session, the location of the session, whether it was group or individual therapy, the progress made during the session, the provider signature, credentials and their National Provider Identification (NPI) number, a Current Procedural Terminology (CPT) code and an ICD-9 diagnosis code.

With respect to billing, we must now claim for each individual session or encounter. Previously, we received a monthly rate if a student received at least two related services sessions that month. Now, we must submit a bill for each student every time they receive a service. However, if the notes on each of these sessions that I just described indicate that we have not met all of the requirements, that session will not be eligible for reimbursement. For example, if a session was supposed to be group therapy, but three of the four students do not show up, that disqualifies the session from being reimbursable even if the one student received services. This has additional impacts in terms of workflow as well -- the number of claims we are submitting on a monthly basis has grown exponentially. For example, on average, we would previously submit approximately 30,000 claims for speech services per month. Now, under the new rules requiring that we claim based on the number of encounters a student actually has, this will increase to approximately 250,000 claims we will be submitting per month—more than two million every year.

These are just some of the most glaring examples of the changes between the previous and current rules. Again, when the new state plan was released, the requirements were applicable to both future claims and retroactive claims in order to receive reimbursement for services. This meant that the vast majority of our services from previous years would not meet the eligibility requirements for reimbursements. In addition, New York State has determined that targeted case management services are no longer eligible for reimbursement. This alone represents an annual loss of $37 million dollars.

In a system as large as ours – where there are approximately 175,000 students with IEPs – meeting the new requirements has required a significant amount of investment in order to build long-term solutions. Last September, we hired Matt Berlin as the Executive Director of Medicaid to oversee this work. Previously, several people had aspects of Medicaid in their portfolio but due to the changes we are undertaking in order to meet the requirements of the State plan, we felt it should be overseen by one person whose focus could be solely on streamlining workflow and coordinating the cross-functional responsibilities.

We also hired a Medicaid Compliance Officer in May of 2010, instituted a compliance program and trained thousands of staff members on Medicaid compliance. Last year, for Year 1 School Supportive Health Services Program Medicaid Compliance Training, we trained over 13,000 employees, including our service providers – Occupational Therapists, Physical Therapists, Speech Therapists and their supervisors, our non-DOE school partners and finance staff. This year, thus far, over 9,000 employees have participated in the Year 2 training. We hired 20 part-time physicians who create orders for the services required in a student's IEP, and we are working with the NYC Department of Health and Mental Hygiene (DOHMH) to computerize this process using their Automated School Health Record.



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We have started building a claim generation system that will gather data on providers, students, and services. We continue to train teachers and providers on the use of the Special Education Student Information System (SESIS) - through which notes on the sessions can be logged - and provided schools with thousands of additional computers so providers can record their services. We modified our contracts with specialized schools, and have a plan to capture service data from these providers. We work with NYC Human Resources Administration (HRA) to screen our therapists against exclusion lists and double-check our eligibility for claiming services provided by these therapists. We are also in discussions with NYC Health and Hospitals Corporation (HHC) about additional support in getting orders from doctors within their system. We built a system to distribute and recover 180,000 parent consent release letters every year without hiring a single additional person.

Despite all of the steps we have taken, we are aware that there are challenges that still must be addressed. We know some teachers have experienced difficulty in logging onto and entering data into SESIS. Obtaining a consent release annually from every parent of students with IEPs that are Medicaid eligible and obtaining medical orders for every service a child receives are enormous logistical efforts.

We also need the United Federation of Teachers (UFT) to work with us to fulfill the new requirements and record the critical information about the services they are delivering. We have been in discussions with the UFT since last spring about the new requirements and the support we will need to begin submitting claims again. We have sent the UFT what we believe to be a fair proposal with regard to identifying the additional time their members will need to complete the reporting. We look forward to hearing from the UFT and remain hopeful that we will reach an agreement so we can submit claims for the services we are already providing.

After years of federal and state-induced gridlock, I'm happy to report that we have begun making notable progress, and have claimed $28 million in Medicaid reimbursements this fiscal year. While we still have a way to go to meet OMB's targeted amount of $117 million, we are actively working to claim additional dollars every day, continuing to implement an aggressive system-wide claiming system and protocols, and seeking the cooperation of the UFT and other partners to allow us to realize even more revenue.

As I said at the outset, we are committed to not just providing the services our students need, but we are equally committed to finding additional revenue sources in this time of continuing fiscal uncertainty. With the efforts I described and the cooperation with of our parents and labor partners, we are optimistic that we will reach our targeted goal of increasing our Medicaid reimbursements.

Thank you for your time and attention, and I'm happy to take your questions.

TESTIMONY OF
THE UNITED FEDERATION OF TEACHERS
MICHAEL MULGREW, PRESIDENT

BEFORE THE
NEW YORK CITY COUNCIL
COMMITTEES ON EDUCATION & FINANCE

REGARDING MEDICAID CLAIMS FOR
SPECIAL EDUCATION SERVICES
BY THE DEPARTMENT OF EDUCATION

Hello and good morning to you all. I want to thank Chairman Jackson, Chairman Recchia and members of these two distinguished committees for allowing me the opportunity to testify before you today. My name is Michael Mulgrew and I am the President of the United Federation of Teachers.

The Department of Education's failure to capitalize on Medicaid reimbursements for special education services is perhaps one of the biggest scandals of the Bloomberg administration. The magnitude of mismanagement in this area is stunning: Hundreds of millions of dollars owed to New York City have literally been left on the table, unclaimed, even as our schools have endured round after round of budget cuts.

Every day, thousands of specially-qualified UFT members – occupational therapists, physical therapists, nurses, speech therapists and others – are providing tens of thousands of children with medically necessary services. These services are covered by the State School Supportive Health Services Program, which allows school districts to apply for federal Medicaid reimbursements.

But here's the problem: While the vast majority of the city's 168,000 students with special needs reportedly qualify for Medicaid, the city hasn't been filing for reimbursement in a systematic or organized way. As a result, the city received only a small fraction of monies it was eligible for.

The DOE budget only had $17 million in expected Medicaid revenue for FY 11, $117 million for FY 12 and $167 million for FY 13. If any documentation exists that shows how DOE derived these estimates, that documentation should be made public.

We believe, based on what we know is happening in the schools, that the City should be eligible for and claiming more than $500 million in Medicaid revenue each year. The city still seems to be ignoring what they need to do to start claiming the full amounts that should be generated. Hopefully, these hearings will finally shed some light on the magnitude of what can be obtained and what has been lost.

For instance, there are 1,600 UFT occupational and physical therapists and 2,100 speech teachers working with children with special needs every day. They have large caseloads, often a child or a group every half hour. In addition, there is some $300 million of these services contracted out to private vendors. Many of the children we're talking about are in full year programs. We estimate that the city could be eligible for $260 million a year in reimbursements for Speech, Physical Therapy (PT) and Occupational Therapy (OT). That's not including transportation or services for pre-K. Once you factor in transportation and pre-K services, that number more than doubles.

Consider this: The DOE spends some $700 million a year in transportation for special education students. The transportation reimbursement rate per student is $21.69 per one way trip. (Pre-K is a few dollars less per trip.) There are 23,000 students transported each day just in District 75 schools alone, to say nothing of the rest of the city. If you assumed $200 a week for 40 weeks for just the District 75 students, the 50% federal reimbursement share from Medicaid would be $90 million.

And when it comes to special ed pre-K, there are 37,000 students receiving services such as OT, PT and speech, at a cost of about $270 million annually. Busing these students is an additional $150 million. If you assume $150 a week for transportation and $90 a week for other services for those children, the city's 50% federal reimbursement share from Medicaid would be approximately $175 million.

It's worth noting that other districts around the state have been collecting millions for services. Districts like Rochester and Buffalo are also collecting reimbursements for transportation, taking full advantage of the process.

We've taken it upon ourselves to analyze the situation and make revenue estimates, because no one at the DOE is doing this important work. That needs to change -- The magnitude of this scandal is staggering. School budgets have suffered cutbacks in excess of 11% over the last three years.

During that time period, many academic programs and services that our students depend on have been downsized or eliminated entirely, to say nothing of losses in art, music, science labs and so on. We've lost over 6,000 teachers through attrition, dramatically increasing class sizes in the process, and faced down the threatened layoff of thousands more. The DOE even eliminated teacher wage increases received by every other city employee to mitigate further cuts. The negative impact of all these cuts on our students and classrooms is very, very real.

Now, reimbursement for services does not come without having a well-defined plan. To their credit, the New York State Department of Education has provided the City with extensive guidance and support, and additional help is also available through other state and federal agencies. The City already collects billions in Medicaid through agencies such as the NYC Health and Hospitals Corporation.

But despite these readily available resources, the city has for years continued to mishandle claims and chose instead to simply absorb the reimbursement losses by diverting tax dollars from other areas. Efforts to claim reimbursements weren't even taken seriously -- up until recently, schools didn't even have the proper forms to use, nor had the City conducted the required training for DOE employees to be considered in good standing.

When the extent of their mismanagement finally became clear last fall, officials at the Department of Education began taking steps to better handle claims processing, including the hiring of additional staff. But in order to fully collect reimbursements rightfully owed to the City, this is too little, too late because the documentation requirements make it virtually impossible to claim retroactively. For instance, you cannot start claiming for services unless there is a written, signed, dated order from a physician or other qualified professional. The DOE did not take concrete steps to address this issue until the fall of 2011.

What's more, the DOE has yet to make a real dent in the problem. The City should be qualifying for hundreds of millions in Medicaid reimbursements this year alone; yet the latest information from the DOE shows that it has only claimed $28 million as of February 8th.

All of this leads to some very critical questions that need to be answered. How was this problem allowed to continue unabated for so long? Who within the DOE was responsible for the breakdown and how are those individuals being held accountable for this epic failure?

Let's finally get some answers from the DOE. Moving forward, what is the plan? Who is heading these efforts and what departments or networks are responsible for getting the DOE back on track? Who specifically is responsible for working with parents to ensure that they understand what services they are entitled to and securing the parental consent required for Medicaid claiming? Where is the DOE in terms of claiming for each specific service – physical therapy, occupational therapy, speech therapy, nursing, evaluations and transportation? Just take transportation as an example: It's a big pot of available funding, but the DOE will need documentation, including daily bus logs, to claim it. Unfortunately, they haven't even begun to think through how they will obtain and manage that paperwork. On the contrary, it appears they have just abandoned the claiming opportunity.

Beyond its new hires, the DOE has also claimed that the Special Education Student Information System (SESIS) will help get the City back on track by streamlining the documentation process. In reality, however, this is not happening.

Our members work with students' Individualized Education Programs (IEPs) and maintain session notes on each student, including details about how and when services were provided, and assessments on each student's progress. The DOE expects all that information to be entered into SESIS, which then in turn is supposed to aid in the reimbursement process. At least that's what is supposed to happen. To date, the system cannot fulfill that goal, and there are several reasons why.

Developed at a cost of over $80 million, SESIS is plagued with problems, not the least of which is the fact that schools have great difficulty even accessing it due to bandwidth problems and technical glitches that sometimes take weeks to get resolved. What's more, while the system was designed to increase efficiency and improve student service tracking, it actually has had an adverse affect on our members' abilities to provide services due to the complicated, dysfunctional platform and the overwhelming redundant paperwork. Once they're actually able to log on, it can literally take hours each day for service providers to enter attendance and service information for the students they saw that particular day.

The people who have dedicated their careers to helping students with special needs are extremely dedicated and passionate about what they do. Many of their students face severe physical and emotional challenges and they require intensive assistance performing even the most basic of tasks. It is difficult and delicate work, but it is also fulfilling and life-changing for many of these kids. Our members take great pride in the services they are providing. They deserve our support, and they deserve tools that will truly help them.

What's more, our schools and city taxpayers deserve better than to lose out on hundreds of millions of dollars in funding that they are owed. Budgets are tight enough and the economy still continues to struggle. It is unacceptable to allow any more federal dollars to go unclaimed. The DOE needs a plan to solve this problem immediately.

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THE CITY OF NEW YORK
OFFICE OF THE PRESIDENT
BOROUGH OF MANHATTAN

SCOTT M. STRINGER
BOROUGH PRESIDENT

Testimony of Manhattan Borough President Scott M. Stringer before the Committee on Education and Committee on Finance

Regarding Medicaid Claims for Special Education- Related Services by the Department of Education

March 1, 2012

Thank you Chairperson Jackson and Chairperson Recchia for holding this important hearing in response to a critical funding issue that I brought to the public's attention four months ago.

Last fall, my office learned that for the last several years, the New York City Department of Education (DOE) has neglected to apply for federal reimbursement dollars for occupational therapy, physical therapy, and speech services for special needs students, leaving an untold amount of unclaimed benefits on the table.

For New York City taxpayers, the DOE's abject mismanagement of this process would have been a hard pill to swallow under any circumstance. However, it is especially troubling in the context of the deep cuts to the City budget that we have had to weather in recent years.

While working families in this city are pinching every penny just to get by, it's disturbing that the DOE is failing to stretch its dollars and is instead paying bills that the federal government is ready and willing to pick up.

When I raised this issue for the first time in an October 2011 letter to Chancellor Walcott, the response that I received from the DOE was, "...the Medicaid reimbursement process has become increasingly cumbersome." This kind of excuse is utterly unacceptable.

When every other major city in the State except New York can successfully manage this so-called "cumbersome" process, one can't help but question DOE's fiscal stewardship.

And let's be clear, these are not small amounts of money that the City found too cumbersome to apply for. In Buffalo alone, Uncle Sam paid $32.4 million dollars in reimbursements for services provided by the school district between September 2004 and February 2010 – just a small portion of the $558 million dollars that were claimed by school districts across the State. Yet not one penny from this pool of federal dollars went to the City.

You would think that watching every other school district in the state collect millions in Medicaid reimbursements would serve as a wake-up call for the DOE. But no – they apparently still haven't figured it out.

In a letter sent by the New York State Department of Health to the DOE just last fall, the State indicated that Medicaid reimbursement forms submitted by the DOE failed to provide basic information such as a student's diagnosis, service providers' contact information, and the time period for which services were being ordered. This is an outrage.

If this had been the first time the DOE mismanaged the Medicaid reimbursement process, it would be one thing. But the reality is that in 2005, the Inspector General of the U.S. Department of Health and Human Services concluded that a staggering 86 percent of the DOE's Medicaid speech claims did not comply with federal and state requirements. This bungled process forced the DOE to pay out $100 million in 2009 to settle outstanding Medicaid claims – money that would have been better spent in our classrooms.

For the Council's review, I have enclosed the October 2011 letter that I sent to Chancellor Walcott in my formal testimony. In this letter, I inquired about the specific steps the DOE was taking to fix problems with its Medicaid claim forms. I asked for the name of the DOE point person for coordinating Medicaid reimbursement activities so that my office could collaborate with the Department to fix these costly errors. And, I asked about rectifying outstanding technology issues related to claim submissions.

For three months the DOE brushed my inquiries under the rug.

However, shortly after press reports surfaced outlining the scale of the City's failure to claim the Medicaid reimbursements that our schools are entitled to, I received a response from the DOE's Director of Public Affairs – one I consider entirely unsatisfactory -- which I have also enclosed for the Council's review.

This letter states that "in September 2004, the State of New York ordered New York City stop seeking federal reimbursements for all services except targeted case management" and that "[the DOE] had to wait for the completion of the State's new Medicaid plan, which was eventually approved in April 2010," to restart billing for occupational therapy, physical therapy and speech services.

I would encourage members of the City Council to dig deeper into this dubious timeline, as experts at the State level have indicated to me that it is simply inaccurate for the DOE to say it could not submit claims for these services for some five years.

I want to thank Chairperson Jackson and Chairperson Recchia again for holding this important hearing. I look forward to working together with you and with all members of the City Council Education and Finance Committees to get to the bottom of why the City has chosen to saddle taxpayers with tens of millions of dollars in extra costs when Uncle Sam has been ready, willing and able to foot the bill.

THE CITY OF NEW YORK
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SCOTT STRINGER
BOROUGH PRESIDENT

October 20, 2011

Dennis M. Walcott
Chancellor
New York City Department of Education
52 Chambers Street
New York, New York 10007

Dear Chancellor Walcott,

I am writing to express my deep concern about the Department of Education's (DOE) handling of Medicaid reimbursements for special education services in our schools, which I believe is costing City taxpayers hundreds of millions of dollars a year. At a time when schools across the city are suffering under the weight of recent budget cuts, it is deeply distressing to learn that the City is paying for services that could and should qualify for federal reimbursements. I am equally troubled by reports to my office about DOE's discombobulated rollout of the Special Education Supports Information System (SESIS) -- which plays a central role in DOE's special education reforms – suggesting that the system is interfering with school staff members' ability to provide necessary services to students with special needs.

As I am sure you know, federal Medicaid payments have been available since the late 1980s to help school districts cover the costs of Occupational Therapy (OT), Physical Therapy (PT), and speech services through the School Supportive Health Services Program (SSHSP). Records show that New York City has simply failed for years to apply in an organized fashion for these funds, citing onerous paper-work requirements, and has chosen instead to cover the bulk of all costs with local tax revenues. That is a tragic and unnecessary waste of City tax dollars, especially at a time of shrinking school budgets.

Figures provided to my office from the New York State Office of Medicaid Inspector General shows that from September 2004 through February 2010, the DOE failed to collect a single dollar in SSHSP reimbursements for OT, PT or speech therapy services. During the same period, the City of Buffalo – with 47,000 students, or 23 times fewer students than New York – received $34.2 million in SSHSP reimbursements in those same three categories. That was just a small fraction of the $558 million in SSHSP claims paid out to other, much smaller school districts across the state, all of which managed to successfully navigate the reimbursement process.

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A recent letter from the New York State Department of Health, dated Sept. 6, 2011, to the New York City Department of Education makes clear the depth of deficiency in the DOE's handling of SSHSP claims, and suggests that the DOE is still wasting a huge opportunity to receive millions of dollars in federal reimbursements. The letter states that DOE's claim form for speech therapy reimbursements "does not contain all the required components of a written order/written referral...and must, therefore, be revised." Specifically, the claim form does not include basic information about the student's diagnosis, the provider's contact information, or the time period for which the services are being ordered. The letter continues: "Complete written orders/referrals must be in place prior to the delivery and billing of Medicaid reimbursable services. Only written orders/referrals that meet the requirements under SPA #09-61 are acceptable for services furnished on or after September 1, 2009."

What I find especially distressing is that the failure to adequately manage Medicaid claims is not a new problem for the DOE. A 2005 audit by the U.S. Department of Health and Human Services Office of Inspector General --"Review of Medicaid Speech Claims Made by the New York City Department of Education" (A-02-02-01029) – uncovered a range of inadequacies. The audit found that 86% of the City's claims did not comply with federal and state requirements, and 68% contained more than one deficiency. It cost the DOE $100 million to settle those claims in 2009.

I request answers to the following questions, by way of confirmation:

I. Has the Department at this point revised its claim form for speech therapy reimbursements, as demanded by the state Department of Health in its letter of Sept. 6? If so, please provide a copy.
II. Who is the point person at the NYC DOE responsible for coordinating Medicaid reimbursement activities?
III. What steps have been taken to identify immediate technology solutions to help collect the documentation required to apply for Medicaid reimbursements?

I am equally troubled by a related problem – namely, the DOE's haphazard rollout of the Special Education Supports Information System (SESIS), the system that the DOE implemented in 2009 to track services for students with disabilities more efficiently. I fully support the concept of moving to an online system. But reports to my office suggest that poor design and inadequate bandwidth in many schools have created an unduly confusing and burdensome system -- one that it is interfering with staff members' ability to provide necessary services to students with special needs.

One aspect of the system – a requirement that documents need to be faxed into SESIS "in order to move forward in the workflow," as the DOE's own PowerPoint briefing to teachers makes clear – raises obvious questions. At a time when many schools don't even maintain fax machines or the dedicated phone lines they require, such an approach seems out of sync with today's integrated, digital world.

Many providers say their ability to provide students with services they require has become increasingly difficult, as they struggle to navigate SESIS without adequate information, tools and resources from the DOE. Deadlines for providers to input student attendance data into SESIS, which would enable the DOE to submit claims for Medicaid reimbursement, have heightened a broad range of problems that providers have drawn attention to in recent months.

Let me offer the following observations, and request answers to the following questions:

1. Many service providers say they have not received adequate training on SESIS and, as a result, are spending countless hours trying to figure out how to navigate the system. Are there any plans to offer face-to-face training sessions with an opportunity to use the system in a training environment?
2. Not all providers have consistent access to computers in their schools. How can the department move to an online system when teachers are not provided sufficient tools to do so?
3. Providers working in schools with antiquated broadband service report spending excessive amounts of time waiting for web pages to refresh each time they enter a new piece of student data into SESIS. I understand that technology upgrades are part of DOE's long-term capital plan. However, what is being done to address this specific technology gap?
4. Providers' access to fax machines -- a critical component of SESIS data entry -- varies from school to school. Some schools do not have dedicated phone lines for fax machines, and some do not have fax machines at all. Related problems of access to fax machine supplies, including ink, printers and paper, exist as well. How is the DOE addressing this situation?

Additional concerns have surfaced about issues related to student confidentiality and SESIS, including:

A. Within schools, access to SESIS is not restricted in any truly meaningful way, so numerous school staff members have the ability to look at and, in theory, alter student records. What is being done to protect student confidentiality?
B. It appears that staff does not have enough time in the workday to complete all of these tasks (considering the computer problems previously mentioned). How does the DOE plan to provide adequate time in the workday so that teaching professionals can complete these SESIS-related tasks.

By all accounts, it appears that service providers have been backed into a corner where they are forced to spend unnecessary time and energy on rectifying problems related to SESIS rather than working with children to address their needs. The human toll this is taking on the City's learning professionals cannot be understated – many report high levels of stress and frustration over a system that was supposed to make focusing on students easier, not harder. We ask a lot of our special education teachers, therapists paraprofessionals and other staffers who work with students with disabilities, who every day confront some of society's steepest educational challenges. At the very least, we should give them the tools that they need to do their job in a professional and efficient manner.

In conclusion, there is no excuse for neglecting to pursue millions of dollars in potential federal reimbursements to which we are entitled, especially at a time when City schools are being forced to absorb deep cuts that directly impact students. The City has had years to address these problems. It is time for the DOE to fix its Medicaid reimbursement system so that it works for teachers, students and taxpayers.

I look forward to your responses to these questions.

Sincerely,

Scott M. Stringer

Department of
Education

12 JAN -9 PM 2:48

January 3, 2012

Hon. Scott Stringer
President, Borough of Manhattan
1 Centre Street, Floor 19
New York, NY 10007

Dear Borough President Stringer:

I write in response to your letter regarding your concerns about the Department of Education's (DOE) handling of Medicaid reimbursements for special education services in New York City public schools.

As a result of federal audits of New York State's Medicaid program for claims submitted in 2001 and prior years, in September 2005, the State of New York ordered New York City to stop seeking federal reimbursements for all services except targeted case management. We complied with that order and stopped billing, but did continue our case management billing, receiving approximately $20 million per year for those particular services.

In order to restart billing for additional services, we had to wait for the completion of the State's new Medicaid plan, which was eventually approved in April 2010. This plan is much more complex than prior Medicaid reimbursement regulations and has required significant investment in new systems and business practices to ensure compliance. In a system as large and complex as New York City's, this transition has taken time.

While the Medicaid reimbursement process has become increasingly cumbersome, we aggressively pursue reimbursements and are working towards a long-term, streamlined solution that will allow us to receive monies available for our students. To this end, we are pleased to report that we are submitting reimbursement claims. In September, we hired an Executive Director, Matt Berlin, who is solely responsible for all operational aspects of Medicaid and have made personnel, technology and infrastructure investments to help manage and facilitate the reimbursement process. These investments include the formation of a steering committee to coordinate efforts across various divisions in the department, the hiring of a Medicaid compliance officer in June 2010, modifications to our student health record database (Automated Student Health Record, or ASHR), a system jointly developed with the Human Resources Administration to screen service providers, hiring 18 part-time doctors to create prescriptions for services, the creation of an in-house system to collate data, monitor performance and generate claims, and the development and rollout of Special Education Student Information System (SESIS). We also recently revised our speech authorization form, which has been reviewed by the State and is now part of (SESIS) (see attached).

Office of Public Affairs
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In your letter, you raised questions regarding the DOE's rollout of SESIS and our efforts to train providers. As of the beginning of this school year (September 30), the DOE had hosted 59 broadcast calls, 298 instructor-led trainings and 50 Webcasts. We also created 37 interactive role-based and 85 interactive function-based online trainings that are available on-demand anytime on the SESIS Web site. Combined, these trainings have reached over 40,000 SESIS end-users. Additionally, about 1,000 DOE service providers participated in four different training sessions on September 7, 2011, and approximately 750 individuals attended four live SESIS demonstrations that were scheduled on September 21 and 23. The DOE has scheduled additional training sessions, which we expect will collectively train more than 5000 additional SESIS end-users.

In addition to the training resources we have developed, the DOE employs a dedicated team to provide targeted personal support to schools, Committees on Special Education, networks and clusters as they continue to learn SESIS. Some of the personnel on this support team include Implementation Rollout Coordinators (IRCs), who provide technical and troubleshooting support to staff members in the field, and SESIS Training Specialists, who provide training and troubleshooting assistance at the school level.

With regards to your concerns about the confidentiality of student records stored on SESIS, please be advised that SESIS restricts access to student information based on the respective user's role in serving a particular student's needs (principal, teacher, psychologist, etc.). Each SESIS user is assigned a role by an administrator in the school, and access to SESIS can be granted or restricted at the school level. Because schools are responsible for ensuring students' success, the approach we use to determine user access at the school level is in alignment with existing confidentiality regulations.

Finally, in your correspondence, you raised questions concerning school access to technology (i.e. computers, phone lines, fax machines, etc). Please be advised that decisions regarding school access to computers and fax machines are made at the local school level by principals. As you know, principals manage their schools' budgets and determine school needs, whether they are instructional, operational, and/or technological. With that said, the DOE has invested in ongoing enterprise-wide technology infrastructure upgrades in order to provide an adequate technological backbone for local computers. We plan to continue our focus on critical infrastructure upgrades throughout City public schools as long as our capital funds permit.

I hope this information has been helpful. We welcome the opportunity to discuss this with you further and if you have additional questions, please do not hesitate to contact me at LSpeiller@schools.nyc.gov or at (212) 374-3456.

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Thank you again for your continued advocacy on behalf of New York City public school students.

Sincerely,

Lenny Speiller

LS:rwt

Enc.

Office of Public Affairs
52 Chambers Street • New York, NY 10007 • Telephone: 212-374-2437 Fax: 212-374-5588

For the Record

MARCH 1, 2012

COUNCILMEN and WOMEN
GOOD MORNING

MY NAME IS KAREN MALONE AND I AM THE MOTHER OF a FIFTEEN YEAR OLD AUTISTIC SON ATTENDING A DISTRICT 75 SCHOOL IN SI. EVERY YEAR I AM SENT HOME A FORM TO SIGN FOR MEDICAID REINBURSMENT FOR RELATED SERVICES (IE: OT/PT/). I SIGN THE FORM AND SEND IT IN TO SCHOOL, THE SCHOOL COLLECTS THEM AND SEND'S THEM TO THE DOE.
WHAT I WANT TO KNOW IS WHAT HAPPENED TO THE FORMS, WHY WERE THEY WERE NOT SUBBMITTED TO THE STATE FOR REINBURSEMENT?
THE SCHOOLS IN THE REST OF THE STATE WERE REINBURSED 455 MILLION DOLLARS AND THE CITY RECIEVED NOTHING,
HOW IS THAT POSSIBLE WHEN NYC HAS THE LARGEST POPULATION OF DISABLED STUDENTS IN THE STATE?
WITH ALL THE BUDGET CUTS TO

SCHOOLS, WHY WOULDN'T THE CITY TRY AND HELP THE SCHOOLS THAT EDUCATE OUR MOST VULNERABLE POPULATION?

IN THE ADVENT OF THE STATE'S NEW 1115 DISCO WAIVER, PARENTS ARE NOT SURE, THAT NEXT YEAR WE CAN EVEN SIGN THESE REINBURSMENT FORMS. THE STATE WILL NOT ANSWER OUR QUESTIONS WHETHER THIS WILL COUNT AGAINST OUR CHILDREN'S SERVICES SINCE THERE WILL BE A MONETARY CAP FOR SERVICES.

I AM NOT ONLY ASKING FOR MY OWN SON BUT FOR ALL OF OUR DISABLED STUDENTS, WE AS PARENTS DO OUR JOB, AND WE EXPECT THE CITY TO DO THEIRS.

RESPECTFULLY SUBMITTED

Karen Malone

14 FAWN LANE
SI NY 10306
718-979-0553

For the Record

TESTIMONY

New York City Council Hearing

Committee on Education

Presented on
Thursday, March 1, 2012

The Council of School Supervisors and Administrators
Ernest Logan, President
Peter McNally, Executive Vice President
Randi Herman, Ed.D., 1st Vice President

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Medicaid Claims for Special Education - Related Services by the Department of Education
NYC Council Education Committee, March 1, 2012

The Council of School Supervisors and Administrators (CSA) applauds the Education Committee of the City Council for initiating this important meeting to discuss a topic that impacts some of our most vulnerable students and their families. We were shocked to read a NY Times article from December 28, 2011 recounting how NYC, during a time of severe fiscal austerity, has "failed to recover tens of millions of dollars in Medicaid reimbursements for services it provided to special needs students in recent years." This, after a 2005 federal audit forced the city to return millions of dollars to both the state and the federal government for Medicaid claims that could not be properly documented by the DOE.

Not only did the federal government cite a number of irregularities in the claims submitted by the DOE but additionally nearly all of the claims submitted were for administrative costs, rather than direct services provided to students. Subsequently, in 2009 the federal government changed the rules so that administrative costs are no longer eligible for Medicaid reimbursement. State Health Department data from 2006-2010 indicate that education-related claims by the city were 60% lower in 2010 than they were in 2006 presumably as a direct result of the change in reimbursement policies. However, this fact begs the question as to why, from 2006-2010, under Chancellor Joel Klein, the DOE failed to file claims related to nursing services, occupational and physical therapy, psychological counseling, audiological evaluations or transportation, all perfectly eligible for reimbursement per the new regulations.

The new regulations for Medicaid reimbursement require school districts to file claims as medical clinics do. For example, doctor's orders must accompany individual claims, and districts must use specific codes for the types of services they provide. Quite simply, Medicaid reimbursements can be issued for direct services, and in theory it should not be difficult to implement proper procedures to ensure New York City is receiving all eligible monies for its special education students. Other large school districts, including Buffalo, Rochester, Syracuse and Yonkers, were reimbursed $77 million from 2006-2010 for direct services despite the fact that the combined special education populations of those cities is less than 10% of New York City's. During the same time period, the NYC DOE received $0 for similar services.

Furthermore, although the DOE is eligible to file reimbursement claims up to 24 months after the services are provided, the DOE has failed to file past claims to recoup expenses. A spokeswoman for the DOE, Barbara Morgan, cited the department's lack of staff and training to handle the more demanding requirements as the reason for the failure to do so. It is perplexing that the DOE does not immediately work to recoup millions of dollars for these services knowing that special education costs in the district total several billion dollars annually. In October 2011, Manhattan Borough President Scott Stringer wrote to Chancellor Walcott to criticize the city for failing "for years to apply in an organized fashion" for these reimbursements. According to Mr. Stringer, "Funding for public schools has been cut to the bone, and it's unconscionable that the DOE will leave millions of dollars on the table."
In Buffalo, they hired a company to handle claims; Syracuse sent social workers knocking on students' doors to make certain that parents signed the required forms; New Rochelle hired a

consultant to train school bus monitors to note pickup and drop-off times for special needs children, which resulted in an additional $100,000 annually. Imagine what a difference these simple steps would make in NYC!

Under the current administration, DOE spent $80 million to build a database known as SESIS (Special Education Student Information System) which was is intended to streamline record keeping and make filing Medicaid claims easier. The program, unfortunately, was implemented before it was ready and has exacerbated an already complex process, with many teachers and Principals citing that it takes too long to load the database and that it often crashes, among a slew of other technical problems the DOE has yet to address.

In addition to SESIS, last year the DOE hired a manager in charge of claims as well as a Medicaid compliance officer. The department has also screened therapists to determine whether they have the appropriate certification, and whether the services they provide are eligible for reimbursement, which shows that the DOE has made steps toward implementing a proper system; however, what it is missing is accountability. During these tough fiscal times, with programs being cut, schools being closed, and vital staff being laid off, the City simply cannot afford to walk away from millions of dollars our students are entitled to, dollars which would simultaneously free up dollars in the DOE budget that can be reallocated to cover programs, staff, and other vital services that have been cut.

In neighboring New Jersey, where the state treasury retains 65% of the reimbursements, filing the claims has been mandatory since 2008. The state has set specific goals for its districts, including a 90% return rate on forms giving parental permission to schools to file on a child's behalf. We urge the City Council to consider a similar measure mandating that the DOE file all applicable Medicaid claims to ensure we are receiving all potential dollars for our students, ensure accountability, and potentially allow for the reallocation of funds currently being unnecessarily spent on services eligible for Medicaid reimbursement.

CSA sincerely hopes that the Department of Education's Medicaid Compliance Plan becomes successful and will ensure that NYC not lose out on millions of dollars to which it is entitled. We cannot afford to lose such large sums of money, particularly when teachers and Principals, among others, have been working for years without a negotiated contract, while the city has been inept in recovering tens of millions of dollars that rightfully belong in NYC's coffers!

Respectfully submitted,

Ernest Logan
President

CSA is Local 1 of the American Federation of School Administrators (AFSA), AFL-CIO, located in Washington, DC. CSA is also affiliated with the NYS Federation of School Administrators (NYSFSA), which is, in turn, a member of the NYS School Administrators Consortium (NYSSAC). CSA represents nearly 6,100 Principals, Assistant Principals, Supervisors and Education Administrators who work in the NYC public schools, 400 Early Childhood Education Directors and Assistant Directors who work in city-subsidized Day Care Centers, and 11,000 retired school supervisors.

New York City Council Testimony

Oversight: Medicaid Claims for Special Education Related Services by the Department of Education

Dominick A. Fortugno, Ph.D.

March 1, 2012

Good morning and thank you for this opportunity to address the Council.

Several months ago, many of us were surprised to learn that New York City has failed to recover tens of millions of dollars in Medicaid reimbursement for special education services. News of this oversight is particularly troubling given the current financial crisis, which has forced painful cuts to special education personnel and threatened to restrict students' access to vital services. It is incumbent upon us to maximize our efficiency in securing these funds, and I am here today to discuss one possible solution to this multifaceted problem: the licensing of specialist-level school psychologists.

School psychologists serve a pivotal role in special education. We are primarily responsible for assessing students' cognitive, social, and emotional development. We serve as vital members of special education committees and guide parents through the evaluation process. We utilize our unique training in statistics and psychometric theory to interpret standardized assessment data and shape essential components of progress monitoring. Finally, we provide direct counseling services and crisis intervention for students, and serve as valued partners with state agencies such as the Office of Mental Health to offer professional development on suicide, depression, and other relevant issues.

School psychologists function at two levels of accreditation. Specialist-level school psychologists are certified as a pupil personnel service by the New York State Education Department Office of Teaching Initiatives, which permits work within specific settings including public and non-public schools, colleges and universities, and some governmental organizations. Doctoral-level school psychologists are eligible for both certification by the Office of Teaching Initiatives and licensure through the Office of Professions.

Prior to changes in Federal Medicaid reimbursement procedures, school districts could obtain reimbursement for special education services provided by school psychologists at both levels. However, recent changes in these procedures stipulated that providers must have credentials allowing them to offer the same service in the community. As a result, over 75% of the school psychologists in New York State became ineligible to provide school-based Medicaid services. A recent analysis by a coalition of school superintendents, school boards, special education administrators, the teacher's union, school psychologists, and preschool advocates estimated that school psychological services represent approximately $100 million dollars in potential Medicaid reimbursements for New York schools. Hence, certification restrictions have resulted in a drastic reduction of potential revenue.

These changes have exacerbated an already critical shortage of psychological services. For years, New York City has struggled to comply with legal mandates for timely completion of comprehensive evaluations. During the 2009 to 2010 academic year alone, approximately 1,200 preschool and school-age evaluations were completed beyond time limits set by state law. Our inability to adequately

assess these students has contributed to millions of dollars wasted on nonpublic school tuition and, ironically, reimbursements for private evaluations.

Rather than expanding access to these vital services, our answer over the past several years has been to cut corners in the name of fiscal responsibility. The 2003 and 2007 reorganizations failed to increase evaluation compliance rates and resulted in school psychologists enduring increased workloads and pressure from their supervisors to reduce evaluation accessibility. More recently, New York Education Commissioner John King has proposed a series of mandate relief recommendations that seek to retrench psychologists' scope of practice. Such changes are likely to further erode the quality of our assessments, undermine student outcomes, and expose our districts to increased liability.

Instead, our goal should be to use our existing resources more efficiently and effectively. Licensing specialist-level school psychologists will serve multiple purposes to this end. First, it will restore their capacity to obtain Medicaid reimbursement. This is particularly helpful here in New York City, where more than two-thirds of our 168,000 special-needs students qualify for assistance. Second, it will expand the number of qualified professionals available to provide services to the community. Third, it will reflect the evolution of school psychology competencies and establish a clear scope of practice, thereby ensuring highly specialized training and ongoing professional competence.

Legislative efforts to license specialist-level school psychologists are already underway. Governor Cuomo's administration has initiated discussion through the Mandate Relief and Medicaid Redesign

Teams tasked with identifying and removing Medicaid impediments through redesign, not loss of services. New York Senate Bill S5676 was introduced by Senator John Flanagan and is currently being considered by the Senate's Higher Education Committee. Assembly Bill 233 was introduced by Assemblyman George Latimer and is currently being considered by the Assembly's Higher Education Committee. These measures would offer swift, direct relief to schools, as well as an expansion of needed services to families of children with special needs.

School psychology specialists possess unique technical training that makes them perfect partners for school reform. They are eager to assume this role, and I sincerely hope these hearings will offer the chance to support restoring their full professional capacity in order to help secure needed federal reimbursement for special education services.

Thank you once again for your consideration.

Advocates for Children of New York

Protecting every child's right to learn

Testimony for City Council Hearing
Oversight of Medicaid Claims for Special Education Related Services
by the Department of Education
March 1, 2001
Advocates for Children of New York

My name is Maggie Moroff. I am the Special Education Policy Coordinator at Advocates for Children of New York. At AFC, we work to protect every child's right to an education. For more than 40 years, our staff have successfully helped hundreds of thousands of families by providing free legal and advocacy services, educating families about what they need to know to stand up for their children's educational rights, and working to change education policy to ensure that the public school system serves all children of New York City effectively.

We appreciate the opportunity to testify today before the City Council Committees on Education and Finance regarding the oversight of Medicaid claims for special education related services by the Department of Education. We are not Medicaid experts in our office, but we do hear from parents through our direct case work and our policy efforts, and we have come here today to relay some of their concerns.

Parents do ask us about the Medicaid waiver forms, and we are, honestly, conflicted about how to advise them. We can't promise signing the waiver will lead to better delivery of services, and we actually fear that it could lead to a further reduction of services as Early Intervention, preschool special education, and school aged special education programs will now be competing to get more out of Medicaid, while Medicaid is simultaneously working to reduce its own costs. In addition, we cannot assure parents that Medicaid will not cut their benefits. While there are statements in the law about how DOE access to Medicaid and private insurance should not reduce levels of service or result in elevated rates, it is hard to see how this will be enforced. Practically speaking, we understand that the DOE, Medicaid, and insurance companies already look at what a student might be receiving elsewhere to justify reducing services. We can envision a scenario where both the DOE and Medicaid will claim the other is responsible. Neither will take on the responsibility to cover service costs, money will be saved,

but at great expense to the students involved. If the DOE is to pursue Medicaid waivers more aggressively from families of students with disabilities, we would hope that some mechanism to protect needed services will be instituted immediately. We would like to hear more from the DOE about its plans to establish such mechanisms.

Additionally, the DOE has thus far failed to communicate and educate parents around this issue, and any consent signed by parents at this point is likely to be less than informed. Without a disclaimer about the possible effects of the waiver (e.g., reduced services out of school for specialized therapies and counseling), or any mechanism to withdraw the waiver if it turns out that families do see service reductions, we will likely continue to make clear our own concerns to the parents that reach out to us.

Thank you for your time and attention. I am available to answer any questions our testimony may raise for you.

Legal Services NYC

Testimony of Oroma H. Mpi, Esq.
Senior Staff Attorney
Education Law Unit
Legal Services NYC - Bronx

Before the New York City Council
Committees on Education and Finance

Regarding: Oversight of Medicaid Claims for Special Education-Related Services by the Department of Education
March 1st 2012

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Raun J. Rasmussen, Executive Director
Joseph Steven Genova, Board Chair

LSC

Legal
Services NYC

Good morning, Chairman Jackson, Chairman Recchia, and distinguished members of the New City Council. Thank you for the opportunity to testify at this oversight hearing. It is my privilege to present this testimony on behalf of Legal Services NYC, the nation's largest provider of free civil legal services for low-income individuals and families. My practice area focuses on the education rights of children with special needs in the Bronx. Since 2008, I have been representing students and their parents in obtaining appropriate educational services from the New York City Department of Education (DOE)—services to which my clients are entitled under federal and state laws.

Under the Individuals with Disabilities Education Act (IDEA), related services are defined as support services that are required to assist a child with a disability to benefit from special education. *See* 20 U.S.C. 1401(22); 34 C.F.R. 300.34(a). Though the DOE typically categorizes related services as falling into one of five categories—speech/language therapy, occupational therapy, physical therapy, counseling, and paraprofessional aid[1]—the law contemplates a much broader definition. Related services can include accommodations for a child's bus transportation, such as the assignment of a porter or specialized transportation assistant to help a wheelchair-bound student down the steps of his apartment. A related service can also be treatment provided to help modify a child's maladaptive behavior, such as Applied Behavior Analysis (ABA) therapy for students with autism.

Given the variety of therapies covered under the definition of a related service, it is imperative that the DOE utilize the funding sources available for the provision of these services. Too often, my clients are placed in public schools that lack the related services they need to make academic and social-emotional progress. Even District 75, the school district designated for students with the most severe disabilities, has schools in which nearly half of the students who need a particular service are placed on waiting lists. For example, out of the 525 students at P.S. 176 in the Bronx who were mandated to receive occupational therapy last year, there were 230 students placed on waiting lists.[2] At P.S. 723 in the Bronx, only 63% of the students who needed counseling actually received it last year, and only 56% of students who required physical therapy received it.[3] And at P.S. 12, 66% of the students who required speech/language therapy were on waiting lists, along with 90% of the students who needed occupational therapy, and 80% of the students who needed physical therapy.[4]

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[1] A one-on-one paraprofessional is typically assigned to a student who requires additional adult support in the classroom based on the child's significant health or behavior management needs.
[2] http://schools.nyc.gov/documents/teachandlearn/sesdr/2010-11/sesdr_X176.pdf
[3] http://schools.nyc.gov/documents/teachandlearn/sesdr/2010-11/sesdr_X723.pdf
[4] http://schools.nyc.gov/documents/teachandlearn/sesdr/2010-11/sesdr_X012.pdf

At schools like the ones I mention above, parents are routinely issued vouchers, known as Related Service Authorizations, or "RSAs". For my clients, RSAs have proven to be an ineffective remedy for the lack of related services at the schools. With an RSA comes a booklet of approved DOE related service providers. The DOE advises parents to look through the booklet and find a provider who can treat their child outside of school hours. I have had clients call each and every provider on the list for a related service, and receive only a handful of returned calls. Of those few calls back, none of the providers were available to treat the child. I have also seen parents with employment and child care obligations that make it impossible to transport the child to and from provider clinics every week during the evenings and weekends.

And then there are the students for whom an RSA will never be an adequate remedy for the lack of related services at school. Some of my clients require occupational therapy and counseling to be available throughout the day at the school, in order to make educational progress. For them, an RSA is no substitute for the provision of an appropriate education by the DOE. These are students who are so cognitively impaired or emotionally disturbed, that they would be unable to function at school without their related service.

For example, I have a 17-year-old client diagnosed with both autism and an intellectual disability. He attends a District 75 school where there is no occupational therapist or speech therapist to provide him with his mandated related services. At age 17, this student is nearing the end of his secondary school education, however, he is ill-prepared for life after high school. The student still has trouble tying his shoelaces and cannot write his own name—tasks he would have learned in occupational therapy sessions. His speech skills are at a 2-year-old level. The student's mother has been unable to find anyone from the DOE's booklet to provide him with the services he needs. This year, the parent successfully obtained a private school placement for the student, where all his needs can be met—at the expense of the DOE. The provision of related services inside the public schools would ultimately save the DOE money in private school tuition. When public schools are equipped to provide students with disabilities with the services they require, there is less of a need for a student to attend a private school.

Additional funding obtained through Medicaid reimbursements should also be used to assist with the provision of mental health services inside the public schools. Our clients have been subject to harsh exclusionary practices because some public schools have not been able to adequately meet the child's emotional needs. In some instances, school officials routinely call parents to pick up their child from school because the child is exhibiting behaviors that the classroom teacher has not been trained to handle. In other cases, school officials call Emergency Medical Services to have the child taken to the psychiatric emergency room. Sometimes, students are prevented from returning to school without a psychiatric evaluation or "medical clearance" letter. These three types of exclusionary practices do nothing to resolve the child's behavioral issues in the school environment on a long-term basis. Furthermore, the child's education is disrupted. Increased school-based mental health services will reduce the number of incidences where children are pulled away from the learning environment for problems that can be more appropriately addressed by a counseling session at the school.

Legal Services NYC applauds the City Council's Education and Finance Committees for holding today's oversight hearing. After reading the New York Times reports this past December and January-- indicating that the DOE has missed out on tens of millions of dollars in Medicaid reimbursements for related services—it became apparent to many advocates like myself that the DOE has much more work to do to increase funding for related service provision in our public schools. The reality is that hundreds and hundreds of New York City students with disabilities go without their

mandated related services. We urge the Education and Finance Committees to continue monitoring the DOE's solution to their difficulty in properly documenting claims for Medicaid reimbursement. The DOE should be able to increase the services it provides to children if it effectively utilizes all possible sources of funding, including Medicaid reimbursement. Thank you again for the opportunity to testify on behalf of Legal Services NYC.

Citywide Council on Special Education

March 1, 2012

Chairman Jackson, Chairman Recchia and Honorable Members of the Education and Finance Committee of the City Council of New York:

My name is Jaye Bea Smalley, I am a parent of two special needs children and Co-Chair of the Citywide Council on Special Education (CCSE). The CCSE appreciates the opportunity to provide you with our perspective on oversight of the failure to collect for eligible Medicaid claims for related services provided by the Department of Education (DOE). We applaud the Council's priority of oversight of the Department of Education's overall fiscal competency and leveraging all opportunities to recoup reimbursement available under other federal programs. However, we have serious concerns specific to the DOE's ability to administer the Medicaid in the Schools program. Our concerns are based on these unresolved issues: the rights of parents, coordination with the local Department of Health (DOH)/related agencies and the general infrastructure.

The Rights of Parents

The final rule 34 CFR §300.154(d)(2)(iv)
http://www.gpo.gov/fdsys/pkg/FR-2011-09-28/pdf/2011-22784.pdf
that would amend parental consent to access Medicaid and other available benefits for medically related IEP services is still pending. The amended regulation proposes that a school district would only be required to obtain one-time consent where the current regulation requires a school district to obtain parental consent each time it seeks to use a family's public health benefits. The proposed regulation is also not specific in regard to public vs. private benefits. Approximately 400 comments were made during the 45-day period. About half of the comments were from schools and education agencies that were in favor of the regulation because they believe it will remove administrative burden. The other comments included organizations that represent civil rights concerns, children, and individuals with disabilities. (NYSED and NYCDOE comments attached) The comments from many nationally recognized organizations voiced (see attachments) specific concerns with the proposed regulation, mostly related to how it would considerably weaken the rights of parents. I have attached the responses from COPAA and the Autism National Committee for your review. Although the final rule has not been published, parents are extremely hesitant in this time of significant reform in the Department of Health and Office of People With Developmental Disabilities to just hand over their benefit information to schools at all, let alone in a one time release. What systems are in place to ensure parents that this will not compromise their health benefits or other Medicaid waiver services they may receive? What consideration has been given to ensure the rights of foster children who do not have consistent parent or educational guardians?

Coordination with local DOH and other Healthcare Agencies

In response to the New York Times article City Schools Missing Out On Aid For Special Needs, Ms. Reagan, the president of the National Alliance for Medicaid in Education, said, "It's a hassle, but once you've got the infrastructure and staff in place, the costs are almost always worth the benefit." It is unclear what that infrastructure looks like beyond a culture of compliance. The DOE's only information on Medicaid in the Schools is their 2011 Compliance Plan that is searchable on their site. It is clear that the main concern with collecting Medicaid funds is issues of

compliance and training. We understand compliance around Medicaid and Medicare is not to be taken lightly these days. However, we would not consider this an appropriate "infrastructure" if you intend to be accessing children's public benefits in the midst of progressive healthcare reforms. The Department of Health should be aware of this so as to develop communication and contacts for any problems or questions that arise. Currently the only committee in place is a compliance committee made up of the following DOE departments:

• Division of Financial Operations
• Office of Legal Services
• Office of the Auditor General
• Division of Human Resources
• Division of Capital Budgeting and Financial Planning
• Division of Students with Disabilities and English Language Learners
• Division of School Support Services

Even if a parent or provider were to penetrate this department and present a problem, whom would they contact? Does the administration at the managed Medicaid plans and NYS Medicaid know what to do if psychological services are denied to a bipolar student who has reached a maximum through school counseling. This is already happening.

It is critical during a time of progressive education and healthcare reforms, particularly in NYS, that we do not let our most vulnerable children slip through the cracks. Regulation and compliance should not only serve to relieve the burden and protect the very agencies administering the programs, they should work to improve the care of the individuals they serve. Regardless of the outcome of the federal regulation on parental consent, DOE must be transparent and cooperative if they want to ensure a fiscally sustainable Medicaid in the Schools program. We urge them to proactively form a committee of various stakeholders including other agencies providing reimbursable services to individuals with disabilities as well as parent members. The CDC recently issued Parent Engagement: Strategies for Involving Parents in School Health[1]. The report underscores the importance of the following practices for parent and community engagement:

- Creating opportunities for parents of children with special health care needs (e.g., asthma, diabetes, or food allergies) to meet and discuss concerns and solutions.
- Engaging parents at the school and district level.
- Enlist parents of students with special health care needs (e.g., asthma, diabetes, or food allergies) to share expertise and experiences in staff meetings or professional development events.
- Create policies that institutionalize parent representation on decision-making groups, such as school health councils.
- Give parents who have children with special health care needs (e.g., asthma, diabetes, or

[1] http://library.constantcontact.com/download/get/file/1102546453320-472/parent_engagement_factsheet.pdf 2012

food allergies) opportunities to help develop or shape staff professional development events (e.g., educational sessions related to specific chronic health conditions such as asthma, diabetes, or food allergies).

- Create a system that links families to community health and social service resources, activities, and events.

These recommendations may help foster trust and collaboration among parents and other public stakeholders while enabling the DOE to maximize the Medicaid in schools program at minimal risk to the students served. Furthermore, it presents an opportunity to leverage the expansion of children's health coverage and school health initiatives so as to facilitate more inclusive school health plans, which strong evidence has connected to increased achievement for high-risk students[2]. The DOE has a progressive school health program. These two departments could work in tandem on parental engagement. An additional consideration would be the appointment of an ombudsman who could liaise between families, the DOE and various healthcare providers, agencies and Medicaid insurers.

Thank you again for this opportunity. The CCSE is always available to collaborate with the City Council and all other stakeholders concerning policies related to the provision of services for students with disabilities.

[2] The Impacts of School-based Behavioral and Emotional Health Interventions on Student Educational Performance, The Center for Health and Health Care in Schools An Annotated Bibliography of Research Studies Published 2001-2011

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The Council of Parent Attorneys and Advocates, Inc.
A national voice for special education rights and advocacy

December 12, 2011

Jennifer Sheehy
U.S. Department of Education
400 Maryland Avenue, SW.
Room 5103
Potomac Center Plaza
Washington, DC 20202-2600

RE: NPRM - 34 CFR Part 300 [Docket ID ED–2011–OSERS–0012] IDEA Part B

Dear Ms. Sheehy

We sincerely appreciate the opportunity to submit comments on the Department of Education's Notice of Proposed Rule Making regarding regulations in 34 CFR Part 300 governing the Assistance to States for the Education of Children with Disabilities Program and Preschool Grants for Children with Disabilities Program.

The Council of Parent Attorneys and Advocates (COPAA) is a national nonprofit organization of attorneys, lay advocates, parents, and other professionals who work to secure appropriate educational services for children with disabilities. Some lawyers and lay advocates are in private practice; others work for nonprofit public interest groups and organizations. COPAA members see the successes and failures of special education and the Individuals with Disabilities Education Act (IDEA) through thousands of eyes, every day of every year. Some of us are new to the system and work to improve the life of a single child. Others have years or decades of experience working for and with hundreds of children.

For more than 30 years, the IDEA has been the main law protecting the civil rights of children with disabilities, including the rights to a free appropriate public education (FAPE) and to be educated with their peers without disabilities to the maximum extent possible. The Education Department's regulations must first and foremost ensure that all of the rights given to children and families by the IDEA are protected. The regulations must preserve the strong voice and role parents play in their children's lives, including the right to make informed and meaningful decisions regarding their children's education.

The Part B regulations allow public agencies to use public benefits or insurance (*e.g.*, Medicaid) to provide or pay for services required under Part B with the consent of the parent of a child who is enrolled under the public benefits or insurance program. Public insurance is an important source of financial support for services required under Part B. Currently, with respect to the use of public insurance, § 300.154(d)(2)(iv)(A) specifically provides that a public agency must obtain parental consent, consistent with § 300.9, ''each time that access to public benefits or insurance is sought.''

The proposal would entirely eliminate the requirement in current regulations that a school district must obtain parental consent each time it seeks to use a family's public insurance benefits. In its place, the proposal would require a one-time notice to the parents that prior to releasing personally information for billing purposes the school district must obtain parental consent. The notice would also inform the parents (1) of the IDEA's "no cost" protections when accessing insurance benefits, (2) that they may revoke their consent at any time and (3) that their refusal to grant consent does not relieve the school district of its responsibility to provide a FAPE to the student. Proposed 34 C.F.R. § 300.154(d)(2)(iv) and 76 Fed. Reg. 60311.

The stated purposes for this proposal are school district's concerns about the administrative and financial burdens associated with the current requirement and a belief "that we could improve this regulation to protect parents' and children's interests." 76 Fed. Reg. 60311.

We are very concerned that the proposed rule serves to weaken and reduce the rights of parents and their children.

The current letter of the law, including accompanying OSEP Policy Memorandum *Letter to Hill*, 107 LRP 13113 (OSEP 3/8/2007); *OSEP Policy Memorandum 07-10*, May 3, 2007. should remain unchanged. The IEP team meeting is the appropriate vehicle to secure authorization for accessing public or private insurance and OSEP already clarified that this rule only applied when there was a change in the services being billed to Medicaid--the consent may be obtained one time for the specific services and duration of services identified in the IEP.

It is critical that consent be obtained each time an IEP is developed or changed. Such consent must contain stipulations as to amount and time of the consent, in no case lasting longer than the life of the IEP. Given complexities and possible ramification of such consent, due to co-pays, deductibles and limits schools should not have the ability to access without specific authority each time insurance is accessed.

While 300.154 (e)(2) specifies that there would be no change in the "Free" in FAPE, allowing the SEA unlimited access to Medicaid benefits could "cost" a family access to needed services through Medicaid that would not otherwise be available from the LEA. Parents need to be given sufficient information to understand the ramifications of granting consent each time services are changed or agreed upon. The following sampling of situations illustrates such need:

- Children in the foster care system are at times denied psychological evaluations for reunification or other purposes because their Medicaid has been tapped for school-related psychological services. Additionally, the proposed rule does not take into account the fact that foster children may experience a series of educational guardians or surrogate parents in their educational lives; a one-time notice is insufficient to protect the rights of foster children who do not have a consistent parent or educational decision maker in their lives.

- IDEA requires but a basic floor of services. Many times in order to get a heightened level of intense services to a child, families supplement services provided through the LEA with Medicaid services. Allowing the LEA unfettered access to a child's coverage through Medicaid could result in the family's loss of the ability to supplement LEA services because of policy limits or otherwise. A family should have the opportunity in each instance to give informed consent to the LEA's use of Medicaid funds. Informed consent must include in each instance

notice of the impact that LEA access to a child's Medicaid benefits would have on their benefit limits.

We believe it is critical to assure that parents retain control of consent to the services provided to the child both inside and outside of school using their insurance. Notice is not sufficient.

We appreciate the opportunity to comment on this issue.

Sincerely,

Denise Marshall
Executive Director

Robert I. Berlow, Esq.
Co-Chair COPAA Government Relations Committee

Dawn R. Smith, Esq.
Co-Chair COPAA Government Relations Committee

Autism National Committee
www.autcom.org
3 Bedford Green, South Burlington, VT 05403

20 years of advocating for the civil rights of children and adults with autism

Jennifer Sheehy
U.S. Department of Education
400 Maryland Avenue, SW
Room 5103
Potomac Center Plaza
Washington DC 20202-2600

Re: **Notice of Proposed Rulemaking, ED-2011-OSERS-0012**

Dear Ms. Sheehy:

The Autism National Committee (AutCom) is a 20 year old national nonprofit organization dedicated to protecting social justice and civil rights for people with autism and related disabilities. Our members include people with autism, parents of children with autism, family members, advocates, professors, teachers, lawyers, and other professionals. We greatly appreciate the opportunity to provide comments and input on the Notice of Proposed Rulemaking regarding Assistance to States for the Education of Children With Disabilities, Docket ID ED–2011–OSERS–0012, published in the Federal Register on September 28, 2011 at 76 Fed. Reg. 60310. We are concerned that children with autism and other disabilities and their parents will be harmed by the NPRM because it weakens consent and notice provisions for schools to access public insurance. It will allow schools to see consent and provide notice only once in the child's school career, which can span more than a decade.

Requested Changes to NPRM: (1) We ask that ED continue the requirement that schools get parental consent before accessing public insurance, just as they do with private insurance. (2) We ask that ED write into the regulation the guidance in OSEP Memorandum 07-10, permitting this consent to be given once a year or for other periods, so that parents may give consent at the same time as their annual IEP, as well as when service levels change. This will be efficient and save schools money by simply requiring annual consent. It is a reasonable compromise. (3) Finally, we ask that the final regulation require that school districts annually notify parents that they have agreed to allow the school to access public insurance, a description of the information the school will share with insurance and notifying parents every year of the right to revoke consent. This annual notice should also inform the parents of the IDEA's "no cost" protections when accessing insurance benefits, that they may revoke their consent at any time and that their refusal to grant consent does not relieve the school district of its responsibility to provide a FAPE to the student. Annual notice continues the IDEA model of annual notice. Expecting parents of a teen to remember a notice and consent form that they received when their child was in kindergarten is grossly unfair. Providing adequate notice does not unduly burden the school district and will serve the interests of parents and children.

Summary of Justification: The NPRM affects low income parents on Medicaid as well as military service members receiving Tricare and other children covered by Medicaid and the Children's Health Insurance Program (CHIP). They should have the same rights as parents who use private insurance, like Blue Cross and similar programs. Requiring annual consent and providing annual notice will respect the rights of parents and make them full and equal participants in the process. The proposed regulation is premised on the belief that parents on public insurance simply aren't returning their consent forms. It does not appear to fully respect that these parents may wish to use their insurance to receive high-quality therapy services from universities, teaching hospitals, and highly-credentialed private providers—just like parents with private insurance do. Such providers give 1:1 therapy, rather than the group therapies so prevalent in school districts. Many of them have specific credentials parents seek and levels of experience that result in better treatment. For example, a parent may seek a particular form of therapy (e.g. PROMPT speech therapy or Sensory Integration therapy) needed by their child, rather than the methodology-free therapy offered by the schools.

Moreover, when school districts use up parent insurance funds, they deny parents the use of those funds for other purposes. If the school uses a parent's Medicaid or Tricare to pay for the child's triennial evaluation, the parent may be denied the ability to obtain a privately-funded Independent Educational Evaluation to challenge those results—because the school already used the money. While a school district-funded IEE is a possibility, districts often deny them or force parents to use low-cost, low-quality providers, perhaps in a relatively local area rather than a teaching hospital in a big city. Since there is no guarantee of a school district-funded IEE, parents should not be forced to give up their rights to an IEE funded with public insurance because they consented years ago to allow the school district to access that insurance. Parents often do not know they will challenge an evaluation until months after it occurs. We are also concerned that the NPRM is based on information provided by school district affiliated organizations through the NAME project, cited in the NPRM at page 60312. The NAME project describes its advocacy efforts to seek the NPRM and also promotes form letters supporting the NPRM on its website. It is not a disinterested neutral source of information, which, unfortunately, the NPRM does not make clear. Finally, it is difficult to imagine any reason not to provide annual notice to parents (including the right to revoke), and doing so has the effect of hiding things from parents . A regulation requiring notice and consent only once in what can be a 12-18 year school career serves the interests of school districts, but will harm parents and children who receive services under IDEA. By contrast, even credit card companies provide notice and give consumers the right to revoke on a more frequent basis.

In-depth Analysis. AutCom believes that ED's NPRM permitting LEAs to obtain consent to billing Medicaid once for their entire school career has the potential to harm children and parents who receive public insurance. This includes low-income families on Medicaid and CHIP and military service members on Tricare.

Since May 2007, ED has permitted school districts to seek consent to cover for a specified amount of services over a specified period, rather than once each time it serves the child. See NPRM, 76 Fed.Reg. 60311 (citing OSEP Memorandum 07-10). This has been understood to mean consent provided at the same time as the annual IEP. This is an efficient process that best respects parent rights. Thus, the process is not as burdensome as schools seem to claim in asserting that consent must be obtained for each therapy session or treatment.

The NPRM is premised on the belief that parents simply are not returning consent forms, rather than the possibility that they may be using their Medicaid funds to obtain more effective services from private providers, hospitals, and universities. These are usually provided by top-credentialed, highly-experienced employees, such as SLP-CCC or Registered Occupational Therapists in a 1:1 environment. The child gets the true benefit of the services. Many of them have specific credentials parents seek and levels of experience that result in better treatment. For example, a parent may seek a particular form of therapy (e.g. PROMPT speech therapy or Sensory Integration therapy) needed by their child, rather than the methodology-free therapy offered by the schools. Parents often hire a specific professional with the skills they need.

By contrast, schools refuse to commit to specific therapies and often do not provide personnel skilled in those therapies. They refuse to commit to particular therapists, telling parents that the school makes that decision—not the parent. Schools frequently provide services through groups, where the child receives little individualized care. According to a report from the American Speech-Language-Hearing Association NOMS project, children K-6 are better served and make more progress in 1:1 therapy. Those in group therapy required more hours of treatment to achieve the same functional levels as those in individual therapy.

For the same reasons, a child may be best served with a teaching hospital's assistive technology evaluation that results in the purchase of a Dynavox, rather than using the same insurance funds for a school district evaluation that supports the use of static devices the District already has. Similarly, a child may be better served with an assistive technology device or durable medical equipment provided through public insurance directly to the family—rather than to the school. Schools often do not permit children to take such devices home at night, or impose onerous obligations upon the parents if they do.

Moreover, parents of children with mental health issues may choose private providers rather than school providers for many reasons. They may be more highly skilled or better meet a child's needs. Parents may not wish the IEP team or school personnel to have access to the child's personal mental health therapies and treatments. This is as private as the information is for any student, child, or adult. FERPA privacy is weaker than HIPAA privacy.

Very important is the ability to obtain a privately-funded Independent Educational Evaluation, as recognized in the IDEA regulations, 34 C.F.R. 300.502(b)(4), 300.502(c). In this situation, the parent would use their public insurance to pay for the evaluation. But by providing consent at some point in their child's life, parents will have consented to the school district's accessing the parent's public insurance funds for an evaluation that supports support the school's view of services the child needs. This leaves the parent without the funds to do the same. The funds belong to the child and should be used to support the child's needs. This is particularly dangerous for low-income families on Medicaid and CHIP and service members with limited incomes receiving Tricare. Indeed, to the extent that the school district seeks to use the Medicaid or Tricare funds for any evaluation, it will foreclose low-income parents and service members from the right to a privately-funded Independent Evaluation that parents with private insurance have. Private evaluations may be used to challenge the school's evaluation or simply to show the need for additional services or changes in the IEP. Often, parents obtain these from noted professionals in the field. f a school district takes the parents' public insurance for its evaluation, parents may not be able to use the same funds for their own evaluation. While a school district-

funded IEE is a possibility, districts often deny them or force parents to use low-cost, low-quality providers, perhaps in a relatively local area rather than a teaching hospital in a big city. Since there is no guarantee of a school district-funded IEE (as recognized in the regulations, 34 C.F.R. 300.502(b)(3), parents should not be forced to give up their rights to a privately-funded IEE (paid for with public insurance) because they consented in years past to accessing their insurance. Parents often do not know they will challenge an evaluation until months after it occurs. Or things may have gone very well with the school district for years and then problems develop. Annual consent and notice will help protect parents in this situation.

This is not to criticize school employees. There are tremendously talented school teachers, therapists, related services personnel, psychologists and other staff. Their work makes an important difference to children and improves their educations greatly. But the reality is that their caseloads are extremely heavy (even more so with budget cuts and personnel cutbacks); children receive therapies in large group settings; they may not have the same training in the methodologies the child needs; and the services themselves may be provided by lesser qualified staff. Parents may wish to choose private services for the same reasons parents with private insurance do.

The NPRM is also likely to have a substantial impact on foster children whose parent can change. Short-term foster parents are parents under IDEA 2004 in many states, and they lack the incentives to advocate strongly for a child. Consent given years ago by a temporary foster parent could bind and affect another parent years later, under this NPRM. And the new parent would not even have the notice that the old parent got years ago. The same can be true of children whose parents are divorced/separated if one of the parents is less interested in advocacy or other changes occur.

Furthermore, of very great concern, the NPRM will not require annual notice to parents that they have agreed to allow the school to access public insurance, a description of the information the school will share with insurance and notifying parents every year of the right to revoke consent. The NPRM would require such notification only once-- at the same time consent is given early in the child's career. But parents of a 8th grader are unlikely to remember a notice and consent form received in 1st grade or preschool. In addition, many Medicaid families are low-income, and poor families are extremely unlikely to have extensive record-keeping systems for years and years. They do not have high-speed scanners where they scan in and index every document. Annual notification of parental rights is more appropriate and is the IDEA model for procedural safeguards. Parents tend to be largely ignorant of rights and protections. There is no reason that a concern about parents returning consent forms should prevent annual notice to parents or annual notice of their right to revoke. But the NPRM would give parents notice only once in what can be an 12-18 year school career (a child who starts special education at age 3 and leaves school at age 21 will have an 18 year school career).

There are issues that arise when a child also has private insurance (e.g., Blue Cross) in addition to the publicly-funded Medicaid, CHIP, or Tricare. There are costs to these when their public insurance is used. There could be out of pocket costs for Tricare and Medicaid. For families that have both private insurance and Medicaid, the Medicaid program will require that the private insurance be utilized first. But without annual notice and consent, school districts will not even be in a position to know whether using the families' public insurance will reduce coverage for services they are seeking outside of the school.

Moreover, the requirement to obtain parental consent each time public insurance benefits were to be accessed was added in response to comments to the 2006 regulations. The stated purpose was to provide greater protections to families:

> We believe obtaining parental consent each time the public agency seeks to use a parent's *public* insurance or other public benefits to provide or pay for a service is important to protect the privacy rights of the parent and to ensure that the parent is fully informed of a public agency's access to his or her public benefits or insurance and the services paid by the public benefits or insurance program. Therefore, we will revise § 300.154(d)(2)(iv) to clarify that parental consent is required each time the public agency seeks to use the parent's public insurance or other public *benefits*. We do not believe that it would be appropriate to include a provision permitting waiver of parental consent in this circumstance, even where a public agency makes reasonable efforts to obtain the required parental consent. 71 Fed. Reg. 46608 (emphasis in original).

Nothing has changed for families since these comments were made in 2006 and the provision at issue in this Notice was added.

Finally, the NPRM relies primarily on information from the National Alliance for Medicaid in Education, Inc., 76 Fed. Reg. 60312. But NAME is not a disinterested third-party, which is not clear from the NPRM . Rather, NAME sought the proposed regulation through strong advocacy, see http://medicaidforeducation.org/filelibrary-name/webcommittee/PDF/SPECIAL_UPDATE_2011-10-19_Summary_of_Meetings_With_OSERS-OSEP_-_Parental_Consent_-_R1.pdf. NAME is also organizing a write-in campaign for comments in support of the regulation, with templates that school districts, advocates, and parents can mail in, http://medicaidforeducation.org/ (Thurs. Oct. 20, 2011 entry).

Conclusion: For these reasons, AutCom respectfully asks the Department to reject the proposed regulation. (1) We ask that ED continue the requirement that schools get parental consent before accessing public insurance, just as they do with private insurance. (2) We ask that ED write into the regulation the guidance in OSEP Memorandum 07–10, permitting this consent to be given once a year or for other periods, so that parents may give consent at the same time as their annual IEP, as well as when service levels change. This will be efficient and save schools money by simply requiring annual consent. It is a reasonable compromise. (3) Finally, we ask that the final regulation require that school districts annually notify parents that their public insurance will be billed, the information that will be provided, and notifying them annually of right to revoke consent. This annual notice should also inform the parents of the IDEA's "no cost" protections when accessing insurance benefits, that they may revoke their consent at any time and that their refusal to grant consent does not relieve the school district of its responsibility to provide a FAPE to the student. This continues the IDEA model of annual notice of safeguards.

Thank you very much for considering the views of the Autism National Committee and for providing this opportunity for comment.

Donna Downing
President

James Butler
Vice President and Government
Affairs Chair
autcomjimb [at] yahoo.com

Autism National Committee
www.autcom.org

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

ASSOCIATE COMMISSIONER, OFFICE OF P-12 EDUCATION: Office of Special Education
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September 30, 2011

Ms. Jennifer Sheehy
U.S. Department of Education
400 Maryland Avenue, SW.
Room 5103
Potomac Center Plaza
Washington, DC 20202-2600

RE: Docket ID ED-2011-OSERS-0012

Dear Ms. Sheehy:

On behalf of the New York State Education Department (NYSED), I am submitting comments on the proposed regulations under Part B of the Individuals with Disabilities Education Act (IDEA) governing the Assistance to States for the Education of Children with Disabilities Program, including the Preschool Grants program, as published in the Federal Register on September 28, 2011.

Specific Comments on Proposed Regulations

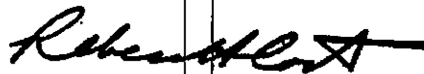
Methods of ensuring services
§300.154(d)(2)(iv)

NYSED supports the proposed amendments to §300.154(d)(2)(iv) that would no longer require public agencies to obtain separate parental consent prior to seeking to bill or otherwise access public benefits or insurance programs in which a child participates for Part B services. The proposed regulations would instead require public agencies to provide written notification to parents, consistent with §300.503(c), informing them of their rights and protections with respect to the use of their public benefits or insurance. Since the Part B regulations were amended in 2006, many of NYSED's stakeholders have expressed concern about the increased costs and administrative burdens current §300.154(d)(2)(iv) imposes on school districts. The proposed amendments would reduce unnecessary financial and administrative burdens imposed by requiring public agencies to obtain parental consent "each time" they seek access to public benefits or insurance, while protecting the rights of parents and students and ensuring that students with disabilities receive a free appropriate public education.

The U.S. Department of Education indicated that it is interested in receiving comments as to whether requiring the notification should be required to be provided at a specific time or meeting, such as the initial IEP meeting. NYSED supports the flexibility provided by the language in the proposed amendments, which would allow a public agency to determine on an individual basis the exact timing of the written notification, so long as the notification is provided before the public agency seeks access to the child's or parent's public benefits or insurance.

Thank you for the opportunity to provide comment and recommendations on federal regulations under Part B of IDEA. If you have any questions regarding this information, please contact me at 518-473-4818.

Sincerely,



Rebecca H. Cort

c: Kenneth Slentz
James P. DeLorenzo
Patricia J. Geary
Harold Mattot

Document Details

Comment on FR Doc # 2011-22784

Document ID: ED-2011-OSERS-0012-0029

This is comment on Proposed Rule: Assistance to States for the Education of Children with Disabilities

Docket ID: ED-2011-OSERS-0012

Document Type: Public Submission

RIN: 1820-AB64

Topics: *No Topics associated with this document*

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More

Comment:

November 10, 2011 Jennifer Sheehy, U.S. Department of Education 400 Maryland Avenue, SW, Room 5103 Potomac Center Plaza Washington, DC 20202-2600. RE: Docket ID ED-2011-OSERS-0012 RIN 1820-AB64 34 CFR Part 300.154(d)(2)(iv) On behalf of the New York City Department of Education and its' 1.1 million pupils, I am pleased to submit this letter in support of the regulation posted by the US Department of Education, Office of Special Education and Rehabilitative Services in the Federal Register as published at FR Vol. 76, No. 188 on September 28, 2011, which changes the IDEA regulation requiring schools to obtain parental consent prior to billing Medicaid for health-related IEP services. The proposed amendment to 34 CFR 300.154(d)(2)(iv) would clarify and simplify the requirements for appropriately informing parents and obtaining their consent for LEAs to access public benefits or insurance. The proposed amendments would lessen the undue administrative burden and confusion associated with obtaining parental consent and would be consistent with the requirements of FERPA to which school districts must also comply. We appreciate the efforts of OSERS in addressing the concerns that have been expressed over the years regarding the parental consent requirements and submit this letter in SUPPORT of the proposed amendment to 34 CFR 300.154(d)(2)(iv) and look forward to their promulgation at the end of the comment period. Respectfully submitted, Matt Berlin, Executive Director Medicaid Office NYC Department of Education

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. ______ Res. No. ______
☐ in favor ☐ in opposition

Date: ______

(PLEASE PRINT)

Name: Jaya Bea Smalley

Address: ______

I represent: Citywide Council on Special Education

Address: ______

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. ______ Res. No. ______
☐ in favor ☐ in opposition

Date: 3/1/12

(PLEASE PRINT)

Name: Carmen Alvarez

Address: Vice President Special Ed

I represent: United Federation of Teachers

Address: 52 Bway

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. ______ Res. No. ______
Oversight Hearing on Medicaid Reimbursement Related Services ☐ in favor ☐ in opposition

Date: 3/01/2012

(PLEASE PRINT)

Name: OROMA H. MPI, ESQ., Legal Services NYC

Address: 579 Courtlandt Ave, Bronx, NY 10451

I represent: children with special needs

Address: at Legal Services NYC-Bronx

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. ______ Res. No. ______
☐ in favor ☐ in opposition

Date: 3/1/12

(PLEASE PRINT)

Name: Michael Mulgrew
Address: President
I represent: United Federation of Teachers
Address: 52 Broadway

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. ______ Res. No. ______
☐ in favor ☐ in opposition

Date: ______

(PLEASE PRINT)

Name: Dominick A. Fortugno
Address: 50 West 23rd Street New York, NY 10010 - office 612
I represent: Touro College NYASP
Address: Same as above

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. ______ Res. No. ______
☒ in favor ☐ in opposition

Date: 3-1-12

(PLEASE PRINT)

Name: KAREN MALONE
Address: 14 FRANKLIN SI 10306
I represent: PARENT OF SPECIAL ED STUDENT
Address: I need to leave at 12 to meet bus

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. ______ Res. No. ______

☐ in favor ☐ in opposition

Date: 3-1-12

(PLEASE PRINT)

Name: Meggre Moroff

Address: Advocates for Children of NY 151 West 30th St

I represent: NY

Address:

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. ______ Res. No. ______

☐ in favor ☐ in opposition

Date: 3/1/2012

(PLEASE PRINT)

Name: Veronica Conforme

Address:

I represent: DOE, Chief Operating Officer

Address:

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. ______ Res. No. ______

☐ in favor ☐ in opposition

Date: 3/1/2012

(PLEASE PRINT)

Name: Michael Fragale

Address:

I represent: DOE, Chief Financial Officer

Address:

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. ________ Res. No. ________
☐ in favor ☐ in opposition

Date: 3/1/2012

(PLEASE PRINT)

Name: Matt Berlingieri

Address: DOE

I represent: Executive Director, Medicaid

Address: ________

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. ________ Res. No. ________
☐ in favor ☐ in opposition

Date: 3/1/2012

(PLEASE PRINT)

Name: Judy Nathan

Address: DOE

I represent: DOE First Deputy Counsel, Medicaid

Address: ________

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. ________ Res. No. ________
☐ in favor ☐ in opposition

Date: ________

(PLEASE PRINT)

Name: ELLEN MCHUGH
Address: 185 MARINE AVE
I represent: Citywide Cncl on Spec Ed
Address: ________

Please complete this card and return to the Sergeant-at-Arms

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

I intend to appear and speak on Int. No. ________ Res. No. ________
☐ in favor ☐ in opposition

Date: ________

(PLEASE PRINT)

Name: Scott M. Stringer
Address: Manhattan Borough President
I represent: ________
Address: ________

Please complete this card and return to the Sergeant-at-Arms