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CERINI & ASSOCIATES LLP
CERTIFIED PUBLIC ACCOUNTANTS

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BRINGING A UNIQUE UNDERSTANDING OF KEY ISSUES FACING THE SPECIAL EDUCATION SECTOR

FROM THE EDITOR - KEN CERINI, CPA, CFP, FABFA

Happy New Year! As we close the school book on 2018 and head into 2019, we can only hope that 2019 brings a little joy and prosperity to special education providers. If we could wave a magic wand, our wish list would look something like this:

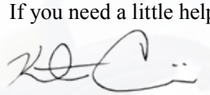
- *A rate adjustment larger than 2% for 4410 providers so that they can afford to pay teachers and other staff members what they are actually worth;*
- *Rates for 853 schools that are more in line with District 75;*
- *A large influx of teachers, teacher assistants, and related service providers, so no program goes without;*
- *Direct linkage of UPK students with 4410 providers so that there are typically functioning kids in each integrated classroom;*
- *Waiver requests that get resolved in less than a year, and open communication with the rate setting unit, so that issues are handled prospectively;*
- *SEIT rates that are fee based and more in line with EI rates (as the current SEIT rates are built off of 2012 costs); and*
- *More uniformity in regulations between all the regulating bodies impacting providers.*

Ah … it's great to fantasize. What we expect to see is:

- *Another year of 2% increases for 4410 providers as the counties have a 2% tax cap that they need to budget within;*
- *A continued increase in the disparity between 853 schools and District 75, along with a shrinkage in the number of students and an increase in the intensity of children serviced outside the districts;*
- *A continued shortage of teachers, as new daycare regulations are also calling for the use of licensed teachers and UPK is adding UPK 3;*
- *An increase in the number of school districts entering the 4410 integrated arena and no legislation linking UPK to 4410;*
- *With the new hires at SED gaining experience … we can be hopeful here … fingers crossed;*
- *SEIT rates sitting at the 2012 regional average rates for a few years;*
- *More and more regulations.*

Even so, special education providers will find ways to make things work and continue to perform miracles every day.

If you need a little help, just ask … *we're here for you.*



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SPECIAL CLASS IN AN INTEGRATED SETTING

As you know, there has been an emphasis at the State level to provide more special education within an integrated environment, however, most providers will tell you that's not what they are seeing. Most of the CPSE placements have been for self-contained, with integrated as a fall back position when all the self-contained classes are full.

When SED recently put together its proposed recommendations to the Board of Regents, one of the key points they identified was a lack of inclusion opportunities. SED cited that the inability of 4410 providers to attract typically functioning children has created inequities within classrooms. These inequities can lessen the impact of the integrated environment, which is designed to incorporate both teacher/student learning opportunities as well as peer-to-peer learning. Furthermore, there is no set model, as 4410 providers use many different approaches to create true integration, including: Head Start, UPK, collaboration with day care providers, parent pay, etc. This creates issues for SED's rate setting unit because each model comes with a different cost structure that must be considered.

In an effort to increase integration, SED recommended that school districts be authorized to provide SCIS classrooms to enrolled students in district operated State Administered Pre-Kindergarten programs without the need for them to obtain separate NYSED approval. According to SED, this model would:

- *Expand the ability for students with disabilities to be enrolled in early childhood classrooms with their typically functioning peers*
- *Reduce student travel time, as the children would receive services within their home district*
- *Increase fiscal viability of integrated programs as the revenue from typically functioning children would help to offset the costs of the integrated classroom*
- *Provide more predictability in funding as the model would have more uniform*

In addition, in conjunction with this, and in order to ensure that children with special needs are afforded the same benefits offered to their typical peers, under SED's proposal, SCIS students would be dually enrolled (*counting as enrolled in both SED and UPK*) and as such, dually funded by both programs.

Furthermore, the proposed regulations similarly provide districts with the ability to perform preschool evaluations without having to complete a formal application to do so. SED does not believe that this will have a significant impact on 4410 providers, however, if you consider SED's proposal, SED is making it much easier for school districts to develop preschool programs:

- *Districts would not need to apply to be an evaluation site or a 4410 SCIS provider*
- *Districts would be able to do preschool evaluations and then offer an integrated environment close to the child's home*
- *Districts could control the flow of UPK students and would now get dually funded for any UPK child with an IEP*

HOW ARE 4410 PROVIDERS EXPECTED TO COMPETE?

It is pretty clear that SED is trying to more closely link UPK and special education services in an effort to develop a model that more appropriately meets the goals they have established. According to SED, more than 50% of UPK services are provided outside of districts. This, unfortunately, is mostly with day care providers and not 4410 providers. Whether this will continue with the new incentives provided to districts is yet to be seen. As 4410 providers are part of the continuum of education, what would make the most sense would be for SED to set aside an appropriate number of UPK slots to effectively integrate with 4410 providers. This would provide offsetting revenue and effectively help to lower the average cost of integrated services for all 4410 providers. The cost of providing pre-school services within the school district arena will most likely be significantly more money than providing these services through 4410 providers, due to higher costs of teachers, facilities, and benefits.

This could be the start of a slippery path, leading to a dynamic change in 4410 providers, where 4410 providers will principally be educating those children that are too intense to be educated within a school district system, similar to where 853 schools find themselves now. Providers should consider reaching out to their elected officials and discussing this situation with them.

ALBERT BORGHESE, CPA
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SED
BITS AND PIECES

WHAT TEACHERS WANT:

If you're like every other special education provider, you are having a significant time attracting and retaining special education teachers and assistants. According to Education week, the top reasons teachers leave their current jobs are:

- *Salaries (25%)*
- *School Climate (16%)*
- *Level of autonomy to teach (13%)*
- *Leadership (10%)*
- *School funding/resources (6%)*
- *Benefits (5%)*
- *Relationship with other school educators (5%)*
- *Amount of time to collaborate (4%)*
- *Instructional philosophy/approach (3%)*
- *Advancement/growth (3%)*
- *Class size/student teacher ratio (3%)*

While SED has upped the amount of teacher retention funding it is providing, it is not enough to keep pace with almost 7 years of no rate increases and a discrepancy in fringes of approximately 30 to 40% (*according to SED, the current public school fringe factor is 63.89%*). So while you're not necessarily able to compete on a salary and fringe perspective, however these factors only represent 30% of the reasons teachers leave their employment. You need to focus on the areas where you can differentiate yourself from the public school alternatives. Try to create a positive climate, with strong leadership that is supportive and provides a collaborative environment for sharing ideas and independent thinking. Give teachers a voice in the education process and ensure that the culture is built on an interdisciplinary model with regular team meetings focused on open discussion about curriculum and how best to meet student IEP mandates. Also, find ways to bring in discretionary funding or creative ways to increase the level of resources and technology into the classrooms.

The more you can create the right work environment for your educational staff, the more you can limit the reasons that people will leave … after all, happiness and job satisfaction are key in attracting and retaining staff, and something that the publics may not be able to compete with you on.

RATE METHODOLOGY:

As you should know by now, during the fall, SED released the 2018-19 rate methodology. While most providers focused on the 2% trend factor provided to preschool providers and the 3.4% trend given to school are providers, there were other provisions in the preschool methodology letter that provided real benefit to preschool providers:

- **Offset of actual revenue earned for SCIS classes -** In the past, providers were required to offset revenue for the typically functioning children in their integrated classrooms equal to the greater of the actual revenue they received or the OCFS rate. With the increase in the number of children attending UPK and the difficulty experienced by integrated programs in attracting typically functioning children, SED changed the methodology to require the offset to be whatever providers actually collect for the year for the children within the integrated classrooms.

- **Greater of provision -** Historically, preschool providers were limited to their prior year reconciled rate, trended forward utilizing the trend factor for the given year (*2% for 2018-19*). The rate methodology now provides for a new greater than calculation that is similar to the calculation that has been used in calculating school age rates for the last several years. Under the greater than provision, providers will receive their actual costs up to the greater of either:
  - *Their prior year reconciled rate trended forward utilizing the trend factor for the given year; or*
  - *Their prospective rate for the year*

- This provision will be beneficial to providers that have single year decreases in their rates due to difficulty in finding staff or other unusual issues. They will not need to request rate relief from SED for a one year dip because the prospective rates are calculated based upon data from two years ago.

On the SEIT front, 2018-19 represents the first year that the regional average rates are fully phased in. Regional average rates are built off of provider's 2012 financial data from their CFRs. As a result, providers are working off 7 year-old data without any increases. It is anticipated that it will be a couple years before SED will review the data coming in on provider CFRs to determine how the regional average rates will be adjusted.

BOARD OF REGENTS PROPOSES $2.1 BILLION INCREASE IN AID:

The New York State Board of Regents released its proposed budget for Foundation aid for the 2019-2020 school year. The proposed budget included a $2.1 billion increase to support English Language Learners, career and technical education programs, and universal pre-kindergarten programs. In addition, the Board advanced a comprehensive set of funding proposals to best meet the needs of every student in New York by: achieving equity, implementing the Every Student Succeeds Act, supporting Early Childhood Learning and English Language Learners, and enhancing efficiency.

While the majority of the dollars are focused on districts and infrastructure, there are some provisions that could directly impact special education providers:

- $6 million has been proposed to expand existing initiatives aimed at recruiting and retaining qualified staff in approved special education programs and developing additional incentives to expand the number of qualified individuals to serve students with disabilities;

- $2 million has been proposed to establish Early Learning Regional Technical Assistance Centers to provide support to early care and educational settings including mental health consultation, training in social and emotional learning and development, and professional development on implementing high-quality early childhood education;

- $3 million has been proposed to expand QUALITYstarsNY, New York's early childhood Quality Rating and Improvement System that provides an infrastructure for assessing, improving and communicating the quality of care provided by early learning programs throughout the state;

- $26 million has been proposed to expand the Universal Pre-Kindergarten program. Based on the recommendation of the Board of Regents, in 2017 the Governor and Legislature put the state on a path toward the consolidation of the multiple separate prekindergarten programs that existed. Building on that success, the Regents State Aid Proposal includes a total of $26 million for further expansion of programs for four-year-olds. First, $20 million would allow for the addition of 2,000 more children to be served, which would bring the overall percentage of students served in New York State to just under 70 percent. Second, $6 million would be provided for pilot programs to create a single reimbursement structure for prekindergarten inclusion programs by blending existing pre-kindergarten and preschool special education funding mechanisms; and

- $3.46 million was proposed to implement phase two of SED's Special Education Services Management Data System to improve SED's ability to collect, use, and disseminate relevant programmatic and fiscal information relating to programs and services operated by approved special education providers in the State.

Remember, these are just proposals. Stay tuned to see how these and other provisions fare when the final 2019-2020 budget is enacted.

WILL EI PROVIDERS BE NEXT IN THE CROSSHAIRS?

Over the summer, 8 providers of related services to EI providers were indicted for fraudulent billing totaling more than $500,000. As a result, federal and state authorities are scrutinizing EI service claims in relation to session notes and logs to determine if this is a much larger issue in the marketplace. It is unsure as to whether the transgression of these 8 providers will spark audits of EI providers. In that event, it is imperative for EI providers to ensure that they have proper quality assurance functions in place and that they are properly meeting their Medicaid compliance requirements of educating staff, assessing risk, and performing testing.

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SUCCESSION PLANNING...
PREPARING FOR NEW LEADERSHIP

The statistic is that 75% of nonprofit executives plan to leave their organization within the next 10 years. As a result, succession planning needs to be taken into consideration in order to prepare for the inevitable transition. The board, members of management, and the current executive all need to be prepared for the change, while still keeping the organization running smoothly. Succession planning should be looked at as an opportunity. This is a time where the organization can refocus its values, while simultaneously strengthening the upper management team. The board should be very involved with the succession planning process. This gives them an opportunity to gain a deeper understanding of what each person's role is within the organization.

The main objective of the board is to determine who the next leader will be. This could happen by promoting from within or looking outside the organization for the right candidate. Each of these has its benefits, but ultimately, it should depend on the skillsets that currently reside within the organization. The board needs to identify what values they hope to see in the new leader, which may or may not be the same skills evident in the organization's current leader. Organizations go through cycles within their development, with each cycle requiring different strengths from its leadership. For instance, an SED funded organization may look for someone with a strong educational background, or the ability to raise money, or with strong public sector connections.

The board should also analyze the salary for this position. In many cases, executives may be underpaid for the amount of work they perform on an everyday basis. This needs to be reviewed in order to find a suitable candidate to take over in this vital position. Sometimes the top executive may be taking on too many tasks. This should be factored in when reviewing comparable salaries. The organization depends on this leader and they will also be the face of the organization. These are some very important factors to take into consideration when preparing for the future.

The departing CEO has another key role in succession planning. It may be beneficial for this person to develop documents, such as a job description and a manual outlining procedures performed in order to provide a roadmap for the new incoming executive. The departing executive may want to give advice on who they believe is best suited for this role (*this may be someone within the organization that has the ability to step in*). This could help guide the board to plan as efficiently as possible. The departing executive should also prepare the senior management team by reviewing their day-to-day tasks and making sure they are able to get them done without leaning on the executive for help. This will ensure the organization can continue operations as normal while the new executive transitions into her/his role. Lastly, the departing CEO should confirm the organization has enough funds to cushion them through the transition. This will guarantee regular operations over the transition period.

For members of upper management, the goal should be to grow to become the future CEO of the provider. Both the board and the current CEO should work on this together. Having reviews and development planning for managers will better shape them to be future leaders. Identifying each person's strengths and weaknesses is very important in showing them how to grow. Their progress should be monitored and feedback should be given consistently. This will give the board a clearer view of who is next in line to be a key executive.

When it comes to succession planning, many organizations put this off until it is too late. With proper succession planning, the organization will be prepared for new leadership, making the transition more seamless for everyone involved. Remember, life doesn't always work as anticipated. By being prepared early on, this will ensure success with both an expected or unexpected change in leadership. Although succession planning is not at the top of most organizations list of priorities, it may be beneficial to take the time now to begin the process to prepare for the future.

MEGHAN GEE
STAFF ACCOUNTANT

NEW EARLY INTERVENTION REGULATIONS

On December 5, 2018, the **Department of Health (DOH)** published final regulations impacting the Early Intervention Program. Some of these regulations are years in the making.

Most provisions do not change practice in any substantive way, but rather they codify existing practice or federal statutes and rules, however, there are several new policy initiatives which are noteworthy.

Some may recall that back in 2012, the DOH promulgated regulations that prohibited evaluators from also providing services to the same child. That prohibition also extended to the family of the evaluator and any business associates. Moreover, that regulation also forbade service coordinators from also being evaluators.

The Association that I lead, **ACTS**, filed a lawsuit to prevent those regulations from going into effect. In response to the Department's contention that there was rampant *"conflicts of interest"* by allowing evaluators to also render services, we responded that such an allegation was entirely without merit or documentation. Worse still it was an insult to the integrity of dedicated professionals. In that litigation ACTS won a stay of the implementation of that regulation and ultimately won our case in the Supreme Court. The State Appellate Court, however, reversed the lower court decision and, although the Department never enforced the prior regulation, its status has been in limbo for all these years... *until now.*

DOH has now made it clear, through the December 5 regulations, that evaluators MAY in fact also provide services to the same child, unless the EIOD documents that such services would not be in the best interest of the child or the family. The prior prohibition against service coordinators also approved to provide evaluations has been repealed. These new policies are the right ones and the Department, particularly the Bureau of Early Intervention, deserves much credit for their willingness to revisit and revise these regulations to arrive at the correct outcome.

Another significant policy adopted by DOH is their requirement that all E.I. claims be submitted into NYEIS within 90 days of the date of service.

Even so, DOH has made it clear that if that time frame cannot be adhered to by the provider for circumstances that is beyond its control, that upon notification to the Fiscal Agent or the Department, that time frame can be extended to allow the provider sufficient time to file its claim. DOH recognizes that providers do not wish to delay submission of claims. In fact, it is in their interest to do so as quickly as possible to facilitate timely payment. The reason that providers may not upload claims into NYEIS quickly, is typically because there is some impediment beyond their control, commonly caused by lack of information or communication from parents, or delays occasioned by a county to do their due diligence.

All in all, the changes adopted in these regulations are examples of the Department collaborating more closely with providers on policy matters. That can only be a good thing for the Early Intervention Program, now and into the future.

STEVEN SANDERS
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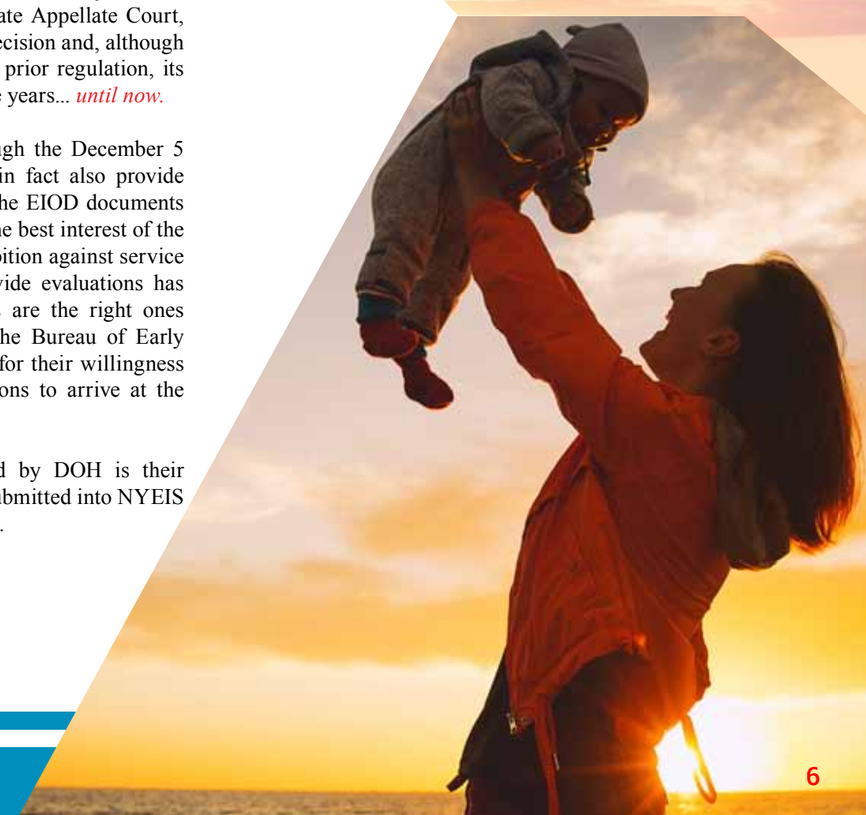

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