



# Advocates for Children of New York

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Katherine Ceroalo  
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Re: Comments to Proposed Early Intervention Program Regulations

Dear Ms. Ceroalo:

Advocates for Children of New York (AFC) appreciates the opportunity to provide written comments concerning the proposed changes to the New York State Early Intervention Program regulations. For more than 50 years, AFC has worked to ensure a high-quality education for New York students who face barriers to academic success, focusing on students from low-income backgrounds. Every year, we help thousands of New York City parents navigate the Early Intervention (EI), preschool, and school-aged special education programs. As a result, we are well-positioned to comment on these proposed changes.

We have several concerns about proposed amendments that do not comport with legal requirements and would be harmful to children and families. We address these provisions below.

***Section 69-4.1(al)(17) – Removing School Psychologists as Qualified Personnel***

We strongly oppose removing school psychologists from the list of qualified Early Intervention personnel. The implementation of such a change would disrupt the provision of critical services for young children with developmental delays or disabilities. Last spring, the Assistant Commissioner of the Bureau of Early Intervention at the NYC Department of Health and Mental Hygiene noted at a meeting of the State Early Intervention Coordinating Council that the City does not have the capacity to quickly restaff all the cases currently assigned to school psychologists.

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Chapter 217 of the Laws of 2015 clarifies that certified school psychologists can provide services within the family- and community-based settings of the EI system and within preschool special education programs. When the New York State Department of Health (DOH) advised the field of its intention to disqualify school psychologists as EI service providers after June 30, 2022, the Legislature and Governor responded by passing and signing S.8802 / A.9973 into law, allowing school psychologists to continue providing EI services, helping the State meet its legal obligations to young children with disabilities and their families.

The State has an obligation under the federal Individuals with Disabilities Education Act (IDEA) to ensure all children receive their mandated Early Intervention services. Until the State has alternative providers to fulfill the mandates of children currently served by school psychologists, the State must continue to authorize school psychologists to work in the EI system.

**Because removing school psychologists from the list of qualified personnel would disrupt the timely delivery of services, we urge you to reject this proposed amendment and keep school psychologists on the list of qualified EI personnel.**

***Section 69-4.10(a)(1)(iv) and Section 69-4.30(c)(8) – Eliminating Group Services in Community-Based Settings***

We are very concerned that DOH is proposing to change the group services model to limit the provision of group services solely to approved EI providers' sites, explicitly eliminating the option for children to receive group services "in a community-based setting where children under three years of age are typically found," as well as the option of serving children in groups that "include children without disabilities." Under the federal IDEA, Early Intervention services must be provided in a child's "natural environment" to the maximum extent appropriate. The natural environment includes the child's home, child care setting, or other community setting in which children without disabilities participate. Eliminating the possibility for a child to receive group EI services in their child care setting is contrary to the legal requirement for children to receive services in their natural environment to the maximum extent appropriate and would further segregate children with developmental delays or disabilities.

At a time when New York State has made an unprecedented investment to expand subsidized child care, the State should be encouraging policies that support the inclusion of children with developmental delays or disabilities across all settings. Unfortunately, we currently hear from



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families whose children with developmental delays or disabilities are turned away from child care settings with the explanation that staff do not believe they can provide adequate support. To that end, the State should be working to make it easier for children to receive their mandated services in any settings where they spend the day, including alongside children without disabilities when appropriate, and as more children participate in child care programs, there should be increased opportunities for group EI services in that setting. While the proposed amendment of section 69-4.30(c)(8) would authorize group services at a “day care facility duly licensed in New York State,” the proposed amendment of section 69-4.10(a)(1)(iv) does not even include this option.

The proposed changes continue to authorize home- and community-based individual and collateral visits in community-based settings where children under three years of age are typically found “including day care centers, other than those located at the same premises as the early intervention provider, and family day care homes” (69-4.30(c)(5)). Group services should be authorized in the same settings as individual services.

**In order to ensure that children receive their Early Intervention services in their natural environment, promote the inclusion of children with developmental delays or disabilities in settings with their typically developing peers, and encourage children to learn from their peers, we urge you to reject the proposed amendment and retain the language allowing group EI services to take place “in a community-based setting where children under three years of age are typically found (this group may also include children without disabilities),” including a day care facility duly licensed in New York State.**

### ***Section 69-4.30(c)(2)(ii) – Delaying Supplemental Evaluations***

We are concerned with the possible delays in completing necessary supplemental evaluations if the evaluation cannot be done based on the recommendation of the multi-disciplinary evaluation (MDE) team, but instead only after an Individualized Family Service Plan (IFSP) meeting. Currently, supplemental evaluations can be conducted at the recommendation of the MDE team and at the same time as the MDE, helping to ensure that the IFSP team can consider all evaluations in assessing the child's strengths and needs and determining appropriate services at the initial IFSP meeting. We are concerned that the proposed amendment would result in IFSP meetings taking place before the team has all the information needed to understand the child's needs and **urge DOH to retain the current language allowing supplemental evaluations to take place based on the recommendation of the multi-disciplinary team conducting the child's evaluation.**



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### ***Section 69-4.30(c)(8) – Revamping the Group Early Intervention Service Model***

We are concerned that the proposed changes to group services will result in children with significant developmental delays or disabilities, particularly children who have severe autism, going without the intensive services they need. Currently, some young children with the most significant needs participate in an EI group setting for more than two hours per day and receive related services as well as Applied Behavior Analysis (ABA) or special instruction as part of the same program. The proposed regulations would limit the length of the session to 60-120 minutes and appear to propose major changes to these programs as they currently exist. We want to ensure that children with significant disabilities will continue to be able to travel to an EI program, receive a group session, and, while they are on site, also receive individual services, such as speech therapy, if needed. Logistically, that may require having a longer group instruction session and having the speech therapist work with different individual children over the course of that time period. It appears that the proposed regulations might no longer allow for this scenario.

It has become increasingly challenging to find EI group services for children with intensive needs. In reviewing the proposed regulations, providers have expressed substantial concern about the financial viability of the new proposed model. While AFC is not a provider and has no vested interest in provider payment, we want to ensure there will continue to be programs that serve young children with significant disabilities who need intensive support in multiple areas. Among other concerns, it appears that proposed regulations would provide the same reimbursement rate for group services regardless of whether the session is one hour or two hours—making it harder for providers to offer a session that is longer than one hour, which may not be sufficient for children who have the most significant needs. We are particularly concerned that these changes could have a disproportionate impact on children from low-income communities of color who live in underserved areas.

**We urge DOH to schedule stakeholder meetings focused on group services for children with the most significant needs – and ensure there will continue to be effective programs to serve these young children – before moving forward with the proposed changes.**

### ***Need for Telehealth Guidance***

Finally, we urge DOH to take action, including by promulgating regulations, to ensure that children have access to the *in-person* Early Intervention services they need. One of the most significant changes to the Early Intervention program in recent years has been the implementation of telehealth



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as an evaluation and service delivery model. While we appreciate that telehealth was implemented quickly at the start of the pandemic to ensure continuity of services, we have been extremely concerned to hear from families that their children are being offered only telehealth services with the explanation that EI could not find providers to serve the child in person, even when there is agreement that telehealth services will not be effective for the child. The use of telehealth is a significant deviation for a program that once exclusively provided services in person, and DOH should take steps, including through regulations, to ensure that going forward telehealth evaluations and services are only used as necessary and when appropriate for a child and family.

In New York City, we are particularly concerned about children being offered telehealth services based solely on provider availability and not the needs of children and preferences of families. We have heard from families who have waited for months for services to begin because the program has been unable to identify a provider to work with a child in person, as well as from families told their only option was to accept telehealth services if they wanted services to start despite agreement that such services would not be effective for their child. Additionally, the use of telehealth is further contributing to existing inequities in the Early Intervention program. Before the pandemic, the New York City neighborhoods with the lowest percentages of EI-eligible children receiving any services were low-income communities of color, with only 61% of children receiving their services on time in the Bronx.<sup>1</sup> While telehealth makes it easier to find providers to serve children in underserved areas, we are beginning to see the creation of a two-tiered system where children in some communities have access to in-person services while children in other communities—particularly low-income communities of color—are only being offered services through telehealth, even when those services are not effective for the child.

**In order to ensure that EI services meet the developmental needs of eligible children and the needs of their families, DOH must develop regulations to curtail the use of telehealth and ensure it is only used as a service delivery model when appropriate for children and families.**

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<sup>1</sup> Advocates for Children of New York & Citizens' Committee for Children of New York, *Early Inequities: How Underfunding Early Intervention Leaves Low-Income Children of Color Behind* (December 2019). Retrieved from: [https://www.advocatesforchildren.org/sites/default/files/library/early\\_inequities.pdf](https://www.advocatesforchildren.org/sites/default/files/library/early_inequities.pdf)



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Thank you for the opportunity to submit comments. If you have any questions or would like any additional information, please feel free to contact me at (212) 822-9534 or [bbaez@advocatesforchildren.org](mailto:bbaez@advocatesforchildren.org).

Respectfully submitted,

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