

From: [Beth Elenko](#)
To: [Resolution Comments](#)
Subject: public comment for Health Code §47.19
Date: Wednesday, June 22, 2016 11:31:50 AM

I would like to comment to support the amendment for Health Code §47.19 which requires that all Early Intervention and CPSE services for disabled children staff, volunteers, contractors and others in child care services obtain clearances every two years from the State Central Register of Child Abuse and Maltreatment (SCR), be fingerprinted and have employment references checked unless “such person is working under the direct supervision and within the line of sight of a screened employee of the child care service.”

Early Intervention and CPSE providers who are conducting assessments of or providing services to individual children who are disabled or at risk for disability under the Department’s Early Intervention (EI) program (children under three years of age) or the City Department of Education’s committee on preschool special education (CPSE) (ages three through five) already have been cleared and it would avoid unnecessary delay by requiring that child care service permittees also clear them, and possibly delay services for children in transition.

Thank you

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From: [Beth Elenko](#)
To: [Resolution Comments](#)
Subject: In support of inclusion in EI
Date: Wednesday, July 06, 2016 3:00:37 PM
Attachments: [Inclusion-of-Children-With-Disabilities.pdf](#)

I wanted to write again to support the provision of authorized education and therapeutic services to children with developmental delays or disabilities in the Department of Health and Mental Hygiene's Early Intervention (EI) Program and the Department of Education Committee on Preschool Special Education (CPSE). I am an OT and an educator. We teach the OT entry level students the importance of team work, and inclusive in every setting they work in. It is crucial and essential that children in day care settings with disabilities have a collaborative model with the educators there. Both the educator and the OT can learn from one another, and ease the transitions that these children go through in their everyday routines. In Early Intervention, much of what we do is in the home with families, but the child who is in an educational setting has a different "family" which includes educators, aides, administrators and peers who are an integral part of that child's routines. As a clinician I have seen first hand that the system is in a state of confusion. In some settings, the educators embrace the knowledge and work with me to integrate services into their classroom routine while other settings have the pull out mentality- oh here is the OT, take the child and go in a different room and do you stuff. They may listen after to suggestions, but generally treat it like a school-based model of intervention which it is not. The teacher is the caregiver who often spends as much time with the child as his or her family does. If the teacher and therapist work together and collaborate on the issues at hand for that child, the child, family and even the other peers in the classroom can benefit in a multitude of ways.

I am attaching a copy of the American Occupational Therapy Association (AOTA)'s Role in Inclusion of Children with Disabilities

Thank you
Dr Beth Elenko

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Inclusion of Children With Disabilities

For detailed information about the Americans with Disabilities Act (ADA) and Part B of the Individuals with Disabilities Act (IDEA), please go to <http://idea.ed.gov/explore/home>.

OCCUPATIONAL PERFORMANCE

Occupational therapy practitioners enhance occupational performance for children with disabilities by encouraging participation in inclusive environments by:

Social participation

- Helping students develop social relationships through peer interaction and modeling
- Ensuring that students participate with peers in educational and community experiences
- Increasing students' leisure skills to enhance enjoyment

Activities of Daily Living

- Promoting self-help skills (e.g., dressing, eating) in the natural environment
- Incorporating peer modeling of social expectations and positive behaviors into curricula

Education

- Encouraging students to participate with their peers in academic and nonacademic settings (e.g., playground, cafeteria, art room, music class, and gym)
- Increasing access to community-based educational programs, such as museums and parks

Work

- Developing early work skills such as time management and organization within the school setting (e.g., library, school store)

Play and Leisure

- Assisting students with developing play and leisure skills with all peers during recess, after school, and in the community

OCCUPATIONAL THERAPY PRACTITIONERS use meaningful activities to help children and youth participate in what they need and/or want to do in order to promote physical and mental health and well-being. Occupational therapy practitioners focus on participation in the following areas: education, play and leisure, social interaction, activities of daily living (e.g., eating, dressing, hygiene), instrumental activities of daily living (e.g., meal preparation, shopping), sleep and rest, and work. These are the usual occupations of childhood. Task analysis is used to identify factors (e.g., sensory, motor, social-emotional, cognitive) that may limit successful participation across various settings, such as at school, at home, and in the community. Activities and accommodations are used in intervention to promote successful performance in these settings.

Occupational therapy practitioners promote integrated services in all contexts and environments where children are learning, playing, and growing.

ABOUT INCLUSION

Inclusion refers to integrating students with disabilities with their peers into a variety of general education and community settings. Inclusion is a social justice issue—all children and youth with disabilities have a right to live, learn, play, and work alongside their typical peers.

- **Schools:** In school settings, inclusion is the law. The Individuals with Disabilities Education Act (IDEA) mandates the *least restrictive environment*, meaning students with disabilities receive their education, including related services, with their typical peers to the maximum extent possible. The Individualized Education Program (IEP) team must first consider general education as possibly meeting the student's needs before considering a more restrictive setting.
- **Community:** Inclusion in the community refers to equal access to all facilities and services. The Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 prohibit discrimination on the basis of disability by recipients of federal financial assistance.

ABOUT INTEGRATED SERVICES

In order to help support successful inclusion of children and youth with disabilities in general education and community contexts, it is critical that occupational therapy practitioners skillfully integrate services. *Integrated service delivery* involves providing occupational therapy in the child's or youth's natural environments (e.g., bus, classroom, playground, cafeteria, recreational settings), emphasizing nonintrusive methods and common goals (Bazyk, Goodman, Michaud, Papp, & Hawkins, 2009). Theories of motor control and motor learning indicate that practicing meaningful occupations in natural settings is most effective for learning new skills (O'Brien & Lewin, 2008). All parties benefit from integrated services. In schools, occupational therapy practitioners learn about the curriculum, teacher preferences, and the unique culture of the classroom (Bazyk & Cahill, 2014). Teachers, paraeducators, and other service providers have opportunities to learn how to embed occupational therapy intervention strategies when OT is provided in the natural context. Specifically, students with disabilities benefit from teachers' increased ability to implement therapy strategies throughout the day (Silverman, 2011). Lastly, there is enhanced educational continuity for students with special needs who are not pulled out of the classroom for related services (Bazyk & Cahill, 2014).

Continued on page 2.

Universal design is a concept that was developed in the 1970s by the late architect Ron Mace and his colleagues at North Carolina State University. Universal design, composed of seven principles, refers to the design of services, products, and environments that are usable by the widest range of individuals possible, regardless of age, ability, social status, or preference.

Inclusion of Children With Disabilities

Occupational therapy practitioners serve an important role in promoting inclusion of children and youth with disabilities by integrating services at the universal, targeted, or intensive levels of intervention.

TIER 1: UNIVERSAL PROMOTION OF PHYSICAL AND MENTAL HEALTH AND WELL-BEING

- Advocate that children and youth of all ability levels have access to quality play experiences in community settings (e.g., playgrounds, recreational programs, museums, gardens).
- Collaborate with caregivers, youth, and educational team members to promote mental and physical health and well-being for all students (e.g., serve on committees; provide in-services on bully prevention, positive behavioral interventions and supports, social emotional learning).
- Evaluate and intervene to reduce barriers to participation for all students during cafeteria and recess time.
- Informally observe all children for behaviors that might impact participation, and bring concerns to the educational team.
- Collaborate with educators to promote effective learning styles and, if needed, create modifications within integrated classroom settings (e.g. addressing executive functioning for problem solving).
- Create positive learning environments to foster social participation, self-regulation, social-emotional functioning, and mental health for all students (e.g., shared quiet areas, sensory-friendly classroom and cafeterias, buddy system on playgrounds).
- Recommend modifications to school playground or cafeteria to promote social participation (e.g., design clusters of tables with portable chairs for flexible seating options).
- Provide teacher in-services on topics such as, recess promotion, emotional and sensory regulation, and disability sensitivity.
- Identify, advocate for, and promote community programs for inclusive participation, such as Safe Walk to School programs.
- Model and teach self-regulation techniques using sensory strategies in general education classrooms (e.g., classroom yoga, shared quiet areas).
- Provide handwriting in-services, consult with general education teachers about handwriting strategies for all students, and lead handwriting groups in general education classrooms.
- Apply universal design for learning (UDL) principles to learning activities.

TIER 2: TARGETED PREVENTION

- Embed fine motor activities in general education classrooms, and create fine motor supports for small groups of students identified with potential coordination challenges.
- Provide a variety of relaxation strategies to embed within school routines (e.g., before test taking) to benefit at-risk students and prevent escalation of aggression or anxiety.
- Consult with the educational team on assistive technology tools and programs to promote academic participation and success during computer lab sessions.
- Initiate social skills groups to include at-risk students during school breakfast or lunch.
- Co-lead life skills peer groups (e.g., cooking groups, grooming groups, daily chore groups, community outings).
- Facilitate social programs that support social skill and self-esteem development for at-risk students to engage with all peers in a natural play environment.
- Identify, advocate for, and promote community and home program opportunities and resources for inclusive participation opportunities for at-risk students.
- Provide information to families about after-school programs.
- Develop strategies/accommodations to enhance participation that can be integrated into natural environments (e.g., picture boards, checklists).

Continued on page 3.

CHECK THIS OUT!

- Every Moment Counts—A mental health promotion initiative developed to help all children and youth become mentally healthy in order to succeed in school, at home, and in the community. <http://www.everymomentcounts.org>
- Landscape Structure Inc.—Explore the Inclusive Play area for great ideas! www.playlsi.com
- Shane's Inspiration—Explore the Inclusive Toolbox for resources on inclusive play. <http://www.shanesinspiration.org/>
- Kids Included Together—Great trainings for all staff on inclusion in after-school programs. <http://www.kitonline.org/>
- Including Samuel Project—The Including Samuel Project's mission is to build more inclusive schools and communities through curriculum, training, and outreach. <http://www.includingsamuel.com>
- National Inclusion Project—Project participants have worked with hundreds of programs, trained numerous staff members and leaders, and provided inclusive opportunities for more than 50,000 children. It is poised to continue to make an impact with thousands of children nationwide and to raise national consciousness about the need for and benefits of inclusion. <http://www.inclusionproject.org>
- CAST (Center for Applied Special Technology)—Everything you wanted to know about universal design for learning. <http://www.cast.org>
- Center for Universal Design NCSU—Everything you wanted to know about universal design. www.ncsu.edu/ncsu/design/cud/
- Kids Together, Inc.—Information, resources, educational materials, and trainings on inclusion and issues related to disabilities for parents, teachers, school administrators, service providers, business owners, therapists, recreational facility administrators, and others. <http://www.kidstogether.org/index.htm>

Inclusion of Children With Disabilities

- Monitor students at this level after interventions have been put in place (e.g., applying problem solving strategies throughout the school day).
- Recommend alternative seating to benefit students who have been identified as inattentive.

TIER 3: INTENSIVE, INDIVIDUALIZED SERVICES

At the Tier 3 level, occupational therapists begin the evaluation process based on findings from screenings, observations, and interventions implemented at the Tier 2 level. Occupational therapy practitioners continue to provide integrated services for students with special needs in the following ways:

- Collaborate with team members to integrate students with special needs into the general education setting.
- Support transition between and through all activities across the educational pathway.
- Create and implement individualized sensory programs to facilitate integration.
- Embed self-regulation strategies throughout the school day aimed at specific students, such as those with autism spectrum disorder, as well as those in the general education population.
- Evaluate all school environments (gym, music, cafeteria, playground) to provide recommendations for inclusion of children with special needs.
- Promote full inclusion with support in art, music, gym, assemblies, recess, etc.
- Provide support and accommodations (e.g., wearing headphones for auditory distractions, deep pressure for self-regulation) on fieldtrips so students with special needs can participate with their peers.
- Teach alerting and calming strategies to students with attention deficit hyperactivity disorder or attention deficit disorder (ADHD/ADD) to do prior to and during school activities; make environmental modifications to increase attention to task.
- Observe and engage in recess play with students to facilitate and promote social interaction during structured and unstructured play activities.
- Offer staff training to ensure safety in inclusive environments (e.g., prevent children with autism spectrum disorder from wandering or eloping).
- Model positive mental health behaviors with staff and students.

Inclusive practices can be offered by occupational therapy practitioners in a variety of settings: **Home**

- Support development of self-advocacy skills by coaching parents on routine-based strategies. This increases family participation in playgroups and community outings.

School

- Educate administrators and staff on the difference between school-based and clinic-based occupational therapy.
- Work collaboratively with the educational team to adapt, modify, and provide accommodations within the natural setting (e.g., classrooms, cafeteria, playground, hallways, bathrooms, coatroom) to enable students with disabilities to participate in academic and non-academic activities to their fullest capacity.
- Work collaboratively with designers to create spaces that optimize development.

Community

- Bridge school and community integrated services by addressing the student's IEP. The IEP includes a statement by the education team outlining opportunities to participate in non-academic/extracurricular activities with his or her peers.
- Build partnerships with businesses so students have opportunities for integrated community activities. This prepares students as they transition towards independent living.
- Consult on creating universally designed museums, theaters, parks, and playgrounds to attract all families.
- Consult on creating sustainable designs that benefit all in multiple ways: environmentally, socially, and economically.

“One of the most important clarifications that teams should understand is that students with disabilities do not attend school to receive related services; they receive services so they can attend and participate in school.”

(Giangreco, 2001, p.6)

DID YOU KNOW?

- Approximately one in every five children and adolescents has a diagnosed emotional or behavioral disorder. The most common are anxiety, depression, conduct disorders, learning disorders, and ADHD (Koppelman, 2004).
- Children with disabilities are at increased risk for developing mental and/or behavioral challenges. Nearly one in three children with developmental disabilities is diagnosed with a co-occurring mental health problem (Schwartz, Garland, Waddell, & Harrison, 2006).
- A major barrier to learning is the absence of essential social-emotional skills, not necessarily a lack of sufficient cognitive skills (Koller & Bertel, 2006). Emotional and behavioral disorders may adversely affect a child's successful participation in a range of school activities, including classroom work and social participation during lunch and recess.

Inclusion of Children With Disabilities

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- Bazyk, S., Goodman, G., Michaud, P., Papp, P., & Hawkins, E. (2009). Integrating occupational therapy services in a kindergarten curriculum: A look at the outcomes. *American Journal of Occupational Therapy*, 63, 160–171. doi:10.5014/ajot.63.2.160
- Giangreco, M. F. (2001). *Guidelines for making decisions about IEP services*. Montpelier, VT: Vermont Department of Education.
- Koller, J. R., & Bertel, J. M. (2006). Responding to today's mental health needs of children, families and schools: Revisiting the preservice training and preparation of school-based personnel. *Education and Treatment of Children*, 29(2), 197–217.
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- O'Brien, J., & Lewin, J. E. (2008). Part 1: Translating motor control and motor learning theory into occupational therapy practice for children and Youth. *OT Practice*, 13(21), CE-1–CE-8.
- Schwartz, C, Garland, O, Waddell, C., & Harrison, E. (2006). *Mental health and developmental disabilities in children*. Vancouver, British Columbia, Canada: Simon Fraser University.
- Silverman, F. (2011). Promoting inclusion with occupational therapy: A co-teaching model. *Journal of Occupational Therapy, Schools, & Early Intervention*, 4(2), 100–107. doi:10.1080/19411243.2011.595308.

 **The American Occupational Therapy Association, Inc.**
www.aota.org

From: [Evelyn Blanck](#)
To: [Resolution Comments](#)
Subject: Comment on the Proposed Article 47 of the NYC Health Code Amendments
Date: Thursday, July 07, 2016 11:28:18 AM

To whom it may concern,

I am writing in support of the proposed Article 47 of the NYC Health Code amendments. I particularly support section §47.19 addressing criminal justice and child abuse screening of current and prospective personnel. This section of the Health Code requires that all staff, volunteers, contractors and others in child care services obtain clearances every two (2) years from the State Central Register of Child Abuse and Maltreatment (SCR), be fingerprinted and have employment references checked unless “such person is working under the direct supervision and within the line of sight of a screened employee of the child care service.” The proposed amendment will exempt therapists and teachers conducting assessments of or providing services to individual children who are disabled or at risk for disability under the EI Program (children under three years of age) or the CPSE (ages three through five). Since these therapists and teachers have the necessary clearances in place, this would help to avoid unnecessary delays in service provision by requiring additional clearances by child care service permittees. This amendment will allow for EI and CPSE services to be delivered seamlessly to children in child care settings.

Thank you.

Evelyn J. Blanck

Associate Executive Director

New York Center for Child Development

Public comments for: [Child Care Services \(Article 47 of the NYC Health Code\)](#)

#3

meredith Berger

Comment:

Regarding the requirements for the Educational Director notification, this is redundant for programs that are also 4410/Approved Private School Programs. APS/4410 programs are already burdened by overlapping regulations and requirements from NYS and multiple departments in NYC. I would request an exemption for programs that are already required to have appropriate staffing in place through another state or city agency.

re: Teacher and trainer qualification verification For programs that are 4410/Approved Private Schools, this requirement is redundant based on the NYSED/Commissioner's Regulations that already impose requirements for appropriate certification for the positions discussed. For APS/4410 programs, consider issuing a waiver to reduce the burden and redundancy of overlapping regulations to our programs.

Individuals who work or volunteer in or are in control of any child care service must be fingerprinted in accordance with Health Code §47.19. Currently, Approved Private Schools/4410 programs, which are approved by NYSED to provide special education services have the financial and time burden of having new employees fingerprinted by at least two authorities-DOI and NYC DOE. This occurs because the two agencies do not communicate findings not accept each other's results. This creates an undue burden on small programs. Please consider ways to address this to reduce the burden while maintaining student safety.

Agency: [DOHMH](#)

#4

Tanya Krien

Comment:

Teacher and trainer qualification verification- What constitutes qualification of trainers? Often I find it difficult to locate an affordable trainer with enough expertise to present content to staff. Overall there is a shortage of affordable trainers and this regulation may increase the burden by requiring trainer's to submit additional information in addition to the program verifying the information.

Agency: [DOHMH](#)

#5

Randi Levine

Comment:

Please see the attached comments from Advocates for Children of New York in support of the proposed addition of subdivision (j) to section 47.19 of the New York City Health Code. This amendment would require child care providers to permit Early Intervention and preschool special education providers to conduct assessments and provide services to children at the children's child care centers without providing proof of their fingerprinting, State Central Register (SCR) clearances, or employment references to the child care providers. Early Intervention providers and preschool special education providers have already been cleared to provide assessments and services to children. Citing current rules, some child care centers have prohibited such providers from working with children until they produce another set of documents, causing substantial delays in providing children who have developmental delays and disabilities with the assessments and services they need and to which they are entitled under federal law. The attached document has additional information. Thank you.

See Supporting Document below:



Advocates for Children of New York

Protecting every child's right to learn

July 26, 2016

New York City Department of Health and Mental Hygiene
 Gotham Center, 42-09 28th Street, CN 31
 Long Island City, NY 11101-4132

Re: Comments on Proposed Amendments to Article 47 of the New York City Health Code – Early Intervention and CPSE Services for Children with Disabilities (§47.19)

Board of Directors

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Advocates for Children of New York (AFC) appreciates the opportunity to submit comments on the proposed amendment to Article 47 of the New York City Health Code regarding Early Intervention and preschool special education services. For more than 40 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, preschool special education, and school-aged special education systems.

AFC strongly supports the proposed addition of subdivision (j) to section 47.19 of the New York City Health Code. This amendment would require child care providers to permit Early Intervention and preschool special education providers to conduct assessments and provide services to children at the children's child care centers without providing proof of their fingerprinting, State Central Register (SCR) clearances, or employment references to the child care providers. Early Intervention providers and preschool special education providers have already been cleared to provide assessments and services to children. Citing current rules, some child care centers have prohibited such providers from working with children until they produce another set of documents, causing substantial delays in providing children who have developmental delays and disabilities with the assessments and services they need and to which they are entitled under federal law.

Under federal law, children must receive their Early Intervention or preschool special education services in the setting where they spend the day, including their child care centers, unless providing services in that setting is not appropriate to meet the child's needs. These services include special education instruction, speech therapy, counseling, occupational therapy, and physical therapy. Unfortunately, AFC has received calls from parents whose children are not receiving their mandated services because their child care center turned away the Early Intervention or preschool



special education provider, explaining that, under Department of Health rules, the center could not allow the provider to enter the building without proof of fingerprinting, SCR clearances, or employment references, despite the fact that the provider had already been cleared to provide Early Intervention or preschool special education services.

This year, a parent of a preschooler with a disability reached out to AFC because her child had missed months of services. The child, who had significant delays in her communication skills, was mandated to receive speech therapy three times per week at her child care program through the Department of Education's preschool special education program. However, when the Department of Education sent a speech therapist to the child care program, the child care provider would not allow the speech therapist to work with the child until the therapist produced the documentation listed in the Department of Health rules. The provider did not have all of the documentation easily accessible and decided it would be easier to take a different case and not to serve this child.

The Department of Education found a speech therapist who could serve this child outside of the child care center. However, this plan would have required the parent to leave her job, pick up her child from child care, take her child on a one-hour public transportation commute to the speech therapist's office, wait while her child received a 30-minute speech therapy session, spend an hour transporting her child back to child care, and then return to work—three times each week. Such a plan not only violated the child's right to receive services in an environment with typically developing peers, but was not feasible for the family. The Department of Education later found another provider to go to the child care center. However, the child care center would not allow that provider to work with the child either.

As a result of the duplicative clearance requirements, this child, who should have started receiving speech therapy in September 2015, did not receive any speech therapy until June 2016. This child missed nine months of services during a key time in her development when these services would have been most effective in addressing her delays in communication.

We are very pleased that the City has taken the step of proposing to amend the New York City Health Code to help ensure that young children with developmental delays and disabilities can receive their services at their child care centers. We support this amendment.

Thank you for the opportunity to submit comments. If you have any questions, please feel free to contact Randi Levine, AFC's Early Childhood Education Project Director, at 212-822-9532 or rlevine@afcnyc.org.

Mary DeBey

Comment:

July 27, 2016 New York City Department of Health and Mental Hygiene Gotham Center
42-09 28th Street, CN 31 New York State Department of Health Long Island City, NY
Re: Department of Health's proposed amendments to Article 47 (Child Care Services)
This is a statement in support of Article 47, the amendment requiring early childhood special educators/early interventionists and therapists across disciplines to deliver EI or CPSE services to infants, toddlers and young children with disabilities in child care settings as determined on their Individualized Family Service Plan (IFSP) or Individualized Education Plan (IEP). I am an associate professor of Early Childhood Education at Brooklyn College and have taught, directed and consulted in early childhood centers and now observe College students at centers weekly. There is a desperate need for qualified teachers in early childhood centers throughout New York City to provide high quality developmentally appropriate educational services for all children including those with disabilities. Given this shortage it is imperative that EI/CPSE therapists and teachers working directly with infants and young children with disabilities in childcare settings be exempt from needing additional SCR clearance, fingerprinting, and employment references and requirements, since these requirements are already required of them to qualify as EIP and/or CPSE providers and would only slow down their ability to provide approved services to infants and young children with developmental disabilities. It is DOHMH's responsibility to ensure that all NYC child care providers allow children with special needs to receive services in the least restrictive or natural environment. The inclusion of infants, toddlers and young children with disabilities into educational settings with typically developing young children and therapists who embed their interventions into children's daily routines supports the overall development and wellbeing of children with special needs. This amendment will assist in meeting this goal more quickly. Please feel free to contact me with any questions regarding my comments in support of the Department of Health's proposed amendments to Article 47 (Child Care Services) Sincerely, Mary DeBey, Ph.D.
Department of Early Childhood Education and Art Education School of Education
Brooklyn College, The City University of New York(CUNY) 2900 Bedford Ave. Brooklyn, NY 11210 mdebey@brooklyn.cuny.edu 718-951-5205 1
Agency: [DOHMH](#)



July 25, 2016,

New York City Department of Health and Mental Hygiene
Gotham Center 42-09 28th Street - CN 31
Long Island City N.Y. 11101-4132

RE: Proposed Amendments to Article 47 of the New York City Health Code

I am writing on behalf of the InterAgency Council for Developmental Disabilities Agencies Inc. or (IAC). The (IAC) was formed in 1977 as a not-for-profit membership organization. Comprised of voluntary service providers supporting individuals with developmental disabilities in the greater metro-New York area, IAC currently represents over 165 member agencies and organizations helping 100,000 individuals and their families in New York City; and Nassau, Suffolk, Westchester and Rockland counties. Support programs and services offered by IAC member agencies include early intervention, special education, residential services, job training and placement programs, day habilitation, home and community based supports, recreation, clinical and health services, and an array of supports to families. The IAC has a long history of working in partnership with the NYC DOHMH to improve the quality of services and programs for young children and families.

We thank the Department of Health and Mental Hygiene for the opportunity to submit comments on the proposed amendments to Article 47 of the New York City Health Code. The IAC supports the majority of the proposed changes that will strengthen requirements around safety, supervision, and accountability for children. We therefore will limit our comments to address to specific amendments.

§47.13 Teaching staff qualifications in child care services for children age's two to six.

(a) *Accreditation.* In determining teacher and educational director qualifications, the Department may accept documentation from schools, colleges and universities approved by the State

Education Department or other teacher accreditation organizations acceptable to the Department certifying that such persons have met the specific Code requirements.

All teacher documentation must be submitted for review to an agency designated by the Department.

- Comment – Currently 4410 special education preschool programs rely on the New York State Education Department Certification Verification system to ensure teachers and teacher assistants have required licenses and credentials. These special education preschool are required by Commissioners Regulations to have properly licensed and credentialed staff. In NYC all 4410 programs under contract with the New York City Department of Education are required to comply with the Boards Security Clearance Procedures including fingerprinting of all staff who has contact with children, criminal background checks, criminal history reviews and background investigation. All staff must be cleared through the Boards “Personnel Eligibility Tracking System” prior to working with any child. Given the extensive requirements placed on 4410 programs to ensure the safety of the children we request that the DOH consider exempting 4410 programs from this requirement.

- Question - What agency is the DOH planning to designate to review the documentation and will there be a timeline established for the completion of this review?

§47.19 Early Intervention and CPSE services for disabled children

Health Code §47.19 requires that all staff, volunteers, contractors and others in child care services obtain clearances every two years from the State Central Register of Child Abuse and Maltreatment (SCR), be fingerprinted and have employment references checked unless “such person is working under the direct supervision and within the line of sight of a screened employee of the child care service.” The Department has been asked to exempt from these requirements persons conducting assessments of or providing services to individual children who are disabled or at risk for disability under the Department’s

Early Intervention (EI) program (children under three years of age) or the City Department of Education's committee on preschool special education (CPSE) (ages three through five). These individuals are already cleared and the Department would like to avoid unnecessary delay by requiring that child care service permittees also clear them. The Department is asking the Board to amend this provision accordingly.

(j) *Services for certain children.* Permittees must allow access to children receiving assessments and services of professional consultants retained by Early Intervention program providers or New York City Department of Education committees on preschool special education, or successor programs, without requiring proof of consultants' fingerprinting, SCR clearances or references. *Notes:* Subdivision (j) was added by resolution adopted XXX to enable access to work with individual children attending child care services without further fingerprinting or SCR clearance for certain persons assessing or providing services to such children

- Comment – The IAC fully supports this amendment. We believe that this amendment will facilitate and support the timely provision of authorized education and therapeutic services to children with developmental disabilities in the DOHMH Early Intervention program and the Department of Education's Committee on Preschool Special Education. We applaud DOHMH for working to ensure that there is no unnecessary delay for children in receiving these critical services.

Thank you for consideration of our comments and questions. If you would like to discuss our comments further please feel free to contact.

Christopher Treiber
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From: [Jacqueline D Shannon](#)
To: [Resolution Comments](#)
Subject: Comment in support of amendments to Article 47
Date: Tuesday, July 26, 2016 9:01:53 AM



July 26, 2016

New York City Department of Health and Mental Hygiene
Gotham Center
42-09 28th Street, CN 31
New York State Department of Health
Long Island City, NY 111-1-4132

Re: Comment by Dr. Jacqueline D. Shannon, Chair of Early Childhood Education and Art Education Department, Brooklyn College of The City University of New York (CUNY) on the Department of Health's proposed amendments to Article 47 (Child Care Services)

I'm Dr. Jacqueline Shannon, founding Chair of the Department of Early Childhood Education and Art Education at Brooklyn College, CUNY, and associate professor of Early Childhood/Early Intervention. I hold a Ph.D. in Developmental Psychology from New York University (NYU) and a Masters in Early Childhood Special Education. I was a research scientist and a postdoctoral research fellow at NYU and NICHD, respectively and have over 25 years of experience working with culturally diverse children from 0-5 years with and without special needs and their parents in their homes and inclusive early childhood programs. My published research examines parenting and young children's social-emotional and cognitive development in relation to school readiness. My scholarship also focuses on improving the quality of education and care to young children and families.

I submit this statement to the New York City Department of Health and Mental Hygiene in response to the Department of Health's proposed amendments to Article 47 (Child Care Services) of the NYC Health Code to enhance child care safety requirements.

Specifically, my statement supports Article 47 amendment to require early childhood special educators/early interventionists and therapists across disciplines to deliver EI or CPSE services to infants, toddlers and young children with disabilities in child care settings as determined on their Individualized Family Service Plan (IFSP) or Individualized Education Plan (IEP). I further support that EI/CPSE therapists and teachers working directly with infants and young children with disabilities or delays in childcare settings to be exempt from needing additional SCR clearance, fingerprinting, and employment references and requirements, since these requirements are already required for them

to qualify as EIP and/or CPSE providers and would only slow down their ability to provide approved services to infants and young children with developmental delays or disabilities.

Under the Individuals with Disabilities Education Act (IDEA), children birth to 5 years that qualify for EI or CPSE services due to their disability or developmental delay are required to receive their educational or therapeutic interventions from EC special educators or therapists (e.g., OT, PT, SLP etc.) in their natural environments such as their home and child care settings, to the maximum extent appropriate to meet each child's individual needs. Further, research indicates that the inclusion of infants, toddlers and young children with special needs or disabilities into the childcare or educational setting with typically developing young children and therapists who embed their interventions into children's daily routines supports the overall development and wellbeing of children with special needs. It is DOHMH's responsibility to ensure that all NYC child care providers allow children with special needs have their special instructors/therapists receive required EI/ECSE interventions.

Please feel free to contact me with any questions regarding my comments in support of the Department of Health's proposed amendments to Article 47 (Child Care Services)

Sincerely,

Jacqueline D, Shannon, Ph.D.
Chair and Associate Professor,
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From: [Steve Sanders](#)
To: [Resolution Comments](#)
Cc: [Marie Casalino](#); ["Michael Grossfeld"](#)
Subject: Statement of Support
Date: Wednesday, July 27, 2016 11:31:10 AM

I am the Executive Director Of Agencies for Children's Therapy Services (ACTS). ACTS is comprised of some 34 agency providers of Early Intervention and Pre School Special Education. A majority of the Early Intervention services and evaluations statewide are rendered by ACTS agencies.

I have reviewed the proposed amendments to Article 47 of the New York City Health Code. I am in agreement with the changes proposed therein and I congratulate the Department for formulating these changes in policy and practice. Specifically I CONCUR in your recommendations to sections: 47.13, 47.15, 47.17, 47.37. And sections 47.21, 47.77. And section 47.33, section 47.09, section 47.19, section 47.43(a), section 47.59, and section 47.73.

Michael Grossfeld, President of ACTS and the members of ACTS are vitally interested in promoting safety, accountability, best practices and efficiency in the programs that agencies and providers administer to toddlers and youngsters. As such we believe that your recommended changes will facilitate those objectives. ACTS looks forward to a continued productive relationship with the New York City Department of Health and Mental Hygiene and its leadership to deliver necessary and quality services to at risk children and their families in New York City and throughout the State.

Sincerely, Steven Sanders
Executive Director-ACTS



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

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July 27, 2016

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New York City Department of Health
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Attention: Comment on Proposed Amendments to Article 47 of the New York City Health Code

To Whom It May Concern:

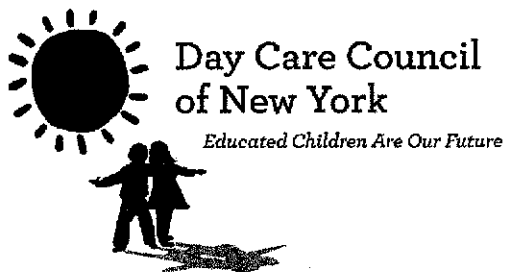
Thank you for the opportunity to comment on the Proposed Amendments to Article 47 of the New York City Health Code. The amendment to section 47.19 proposes to exempt persons conducting assessments of, or providing services to, individual children who are disabled or at risk for disability under the Early Intervention (EI) program or the New York City Department of Education's Committee on Preschool Special Education (CPSE) from the requirements to obtain clearances every two years from the State Central Register of Child Abuse and Maltreatment (SCR), be fingerprinted, and have employment references checked.

The New York State Education Department (NYSED) agrees with this proposal, as persons who conduct assessments and provide special education services have already received clearance through New York State Department of Health or NYSED. The Initial Application for New York State Education Department Approval to Operate a Preschool Special Education and/or Multidisciplinary Evaluation Program requires the applicant to describe how all staff and volunteers are screened to ensure that they are not on the Justice Center Staff Exclusion List or the State's Central Registry of Child Abuse and Neglect. The Initial Application can be found at: <http://www.p12.nysed.gov/specialed/applications/preschool-home.html>. The criteria by which the applicant's response is assessed is available at the same site. Applicants must meet the criteria in order to be approved to operate a Multidisciplinary Evaluation, Special Education Itinerant Services, Special Class and Special Class in an Integrated Setting programs.

The proposed amendment to section 47.19 will reduce the burden on special education providers and expedite the provision of special education services to children in early education settings.

Sincerely,

Monica L. Short
 Supervisor



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**Department of Health and Mental Hygiene Public Hearing
On Proposed Amendments to Article 47 of the New York City Health Code
July 27, 2016**

Teacher and trainer qualification verification: While we applaud the DOHMH in the attempts to strengthen the qualifications and backgrounds of trainers and teachers, the proposed amendment in its present form only leads to more questions and concerns rather than clarifying the desired goals. The most compelling weakness is that potential teacher and trainer documentation, which contains personal as well as professional information, will be given 'for review to an agency designated by the Department.' It appears that DOHMH will be outsourcing this core work usually handled by a regulatory body.

Questions arise:

- What kind of decision-making matrix will be used to choose this agency? Is it a government agency, non-profit entity or for-profit enterprise? Is it a sole-source contract or is an RFP expected to be issued to establish this agency? Is the vision to have a sub-contractor to assist DOHMH in its regulatory work?
- When individual teachers and trainers deliver mandated information and credentials to this agency, how will the safeguard of this information be assured? When given to this agency, who then owns this information, and what are the parameters around how it is used?
- Who will have access to the data that is received by this agency? Will individual teachers and trainers have access? Will employers? Potential employers? Will NYC or NYS agencies have access? Who is the gatekeeper of this data?

Again, while the intent of the proposed amendment is to strengthen teacher and trainer qualifications, much more information is needed before creating 'an agency designated by the Department' to carry out basic regulatory work.

Our next question is, how will compliance with these new regulations be funded, given the fiscal constraints we are currently facing in the child care system?

Following are concerns related to specific articles;

Subdivision F, Applications to be completed. This revision seems over-broad in that centers may be closed if information is missing on a renewal application. A renewal application may be missing information simply due to human error. A penalty of closing down a center as a result of a mistake seems too damaging to the center, its employees, and the parents who rely on it. There should be some opportunity for a center to correct a mistake or to have a hearing before its permit is revoked.

Article 47.19(j): Services for certain children. This new rule requires providers to allow certain professionals, who have not been screened through the fingerprinting, SCR review, and references process, to have access to children receiving assessments and services. The proposed rule does not identify how providers will know whether these individuals have been screened or have been approved to have access to children. Will providers receive a letter beforehand, informing them that the individual is authorized to have access to the children? In addition, how are providers' staff to know how to evaluate a person's credentials prior to providing access to the children? Providers have an immense responsibility to protect the children and one of the safeguards is to check fingerprinting records and the SCR registry. Providers and parents must have reasonable assurance about a person's background before providing access to children.

Article 47.33(c): Staff immunizations. The new rule requires "each staff person and volunteer [to certify] that such person has been immunized". Due to this rule, providers will be placed in a position where they may improperly discipline or terminate an employee that has a legally recognized basis for not being immunized. For example, an employee may have a religious objection to vaccinations and immunizations; such a scenario occurred when health care providers raised religious objections to mandated flu vaccination. If an employee raises a religious objection, an employer generally has a legal duty to accommodate the objection, unless there is an undue hardship. Failure to accommodate the objection could result in employment lawsuits and liability for discriminatory actions.

The rule may also unfairly impact staff who have valid medical reasons why they cannot receive an immunization. For example, a person may have an allergic or other harmful reaction to an immunization.

DOH needs to clarify whether employees with medical or religious concerns may be exempted from the rule or whether the rule must be strictly followed, resulting in the person's employment being terminated. Such a clarification will prevent unnecessary claims against employers, based either on anti-discrimination laws or protections against unjust terminations in collective bargaining agreements.

Article 47.21(a)(3): Corrective action plan. The new rule proposes that a corrective action plan may be required, "when the Department determines that the permittee has been operating with serious uncorrected violations over a period of time." If the corrective action plan will only be required after a citation and finding of a violation, or after a finding that a prior corrective action plan has not been followed through, then the rule change appears repetitive. If the corrective action plan is needed before any finding of a violation, then the rule seems to require a corrective action without a process for establishing fault.

Lisa Caswell LCSW
Senior Policy Analyst
July 27, 2016

From: <jennifer.s@nykidsclub.com>
Date: July 27, 2016 at 10:37:29 AM EDT
To: "fcresciu@health.nyc.gov" <fcresciu@health.nyc.gov>
Subject: Statement - Public Hearing

Statement regarding proposed changes to Article 47:

Education Directors

The request being made regarding certified teachers only addresses a symptom of the real disease - which is that childcare services struggle to keep certified teachers on staff because most of us cannot afford to pay salaries and benefits that are competitive with DOE. This is especially true for those of us that only operate partial day programs for three or four hours a day. This inevitably turns us into a stepping stone for young teachers that, understandably, end up leaving us when a DOE role comes along. So the real detriment to our children comes not in the form of a missing certified teacher, but rather from the inconsistency of the revolving door created by trying to continually fill those roles.

Many major cities, including Chicago, Boston, and Washington DC to name a few, have policies that do not require certified teachers in preschools and daycare - but rather require facilities to buy or use accredited curriculum to ensure educational standards are being met. It is the belief of our organization and the parents we serve, that adopting a similar policy in NYC would greatly improve the quality and consistency of childcare.

This would also eliminate the wage gap created by UPK/PKA programs. When a facility brings in a PKA program, the DOE provides salaries for those certified teachers. This DOE salary is often much higher than the salary provided by the facility to non-PKA teachers that are also certified but may be teaching in other non-PKA classrooms. This gap currently discourages certified teachers from accepting or keeping preschool positions that are not in a PKA classroom.

Revocation of permits

In my decade of experience working with field inspectors from the Bureau of Childcare, I've found that the vague language of Article 47 is open to a wide range of interpretations. I have personally witnessed a facility receive a suspension because the Ed Director was out sick and no sub was available for that day. Because of this, we have many concerns about this proposed change.

Revoking a permit is a serious step and the parameters for which it could occur should be thoroughly detailed in the regulation so providers understand exactly what to expect.

Additionally, not allowing anyone from the organization to apply for a permit for five years should only be implemented in the event of a lost child, fraud, severe injury, or death. Otherwise, the department is denying facilities the opportunity to improve.

We should work to be allies and improve the conditions and for our children and employees.

Alice Mulligan

As an early childhood facility, licensed by the Department of Health since 1969, we have always adhered to the requirements of Article 47 of the Health Code. As we know, one of the many components of this code includes fingerprinting for criminality and clearance from the State Central Registry for Child Abuse and Maltreatment (SCR) for all people who have the potential for unsupervised contact with children. As required, we have always screened staff, volunteers, student teachers and SEITs. These screenings are currently done digitally, allowing us to be directly notified of an arrest or of a child abuse allegation against anyone with access to children working in our building.

This winter, while attempting to process a new SEIT to begin services for a pre-k child with special needs in our program, we were informed by the DOE that there was an internal agreement between the DOE and the DOH and that we are now relieved of our obligation to run security checks as such individuals are already cleared by their agencies. We were also told that our attempt to obtain clearance would cause a delay in a child's educational program.

We are now faced with having to rely on the discretion of other vendors/agencies to inform us if one of their employees working in our building has been arrested or accused of child abuse or maltreatment, as we will no longer be in the direct line of notification. At Our Saviour's Lutheran Preschool, we believe that we can no longer attest to the security of our own building.

New York has made great strides in recent years in its efficiency of running security checks. As a DOH licensed school providing UPK services, we routinely process individuals for criminality through the online PETS system. Their status of eligibility or ineligibility is instant. SCR clearance is also online and those results are usually within five business days. Reliable systems are in place and we believe that we can both meet a child's educational needs as well as ensure their safety. Children in NYC should not be faced with an 'either or' scenario and deserved to be both educated and safe.

Mayor de Blasio's push for Pre-K for All has resulted in tens of thousands of children entering day care and school facilities. We have seen and will continue to experience a marked increase in the number of children in need of special education and similar support services in the coming years. We believe that this attempt to relax critical and sound Article 47 security requirements for persons who come in contact with children in DOH licensed schools will only result in children being hurt.