PROGRAMS FOR STUDENTS WITH DISABILITIES UNDER THE IDEA AND NEW YORK'S EDUCATION LAW ARTICLE 89

(This policy replaces previously approved Board of Education Policies #5116, 5122.1, 5122.2, 5122.3 and 5127.2)

The Brentwood Board of Education shall make available a free appropriate public education (FAPE) to all students with disabilities who reside within its District and are eligible for special education and related services under the Individuals with Disabilities Education Act (IDEA) and Article 89 of New York's Education Law, and their implementing regulations. Special education and related services will be provided to resident-eligible students with disabilities in conformity with their individualized education programs (IEPs) and in the least restrictive environment appropriate to meet their individual educational needs. Special education services or programs will be designed to enable a student with disabilities to be involved in and progress in the general education curriculum, to the extent appropriate to his/her needs.

The Board of Education also shall make available special education and related services to eligible students with disabilities parentally placed in a nonpublic school located within the District, regardless of whether they are residents of the District. However, this obligation does not extend to resident students with disabilities who because of a disagreement between the parents and the District over the provision of a free appropriate public education are placed by their parents in a nonpublic school within District boundaries. Nonpublic school students with disabilities who are not District residents but who reside within New York State will be provided programs and services in accordance with their individualized education services program (IESP). Nonpublic school students with disabilities who reside out-of-state will be provided services in accordance with their services plan (SP). (Refer to policy 4321.10, Programs and Services for Parentally Placed Nonpublic School Students with Disabilities under the IDEA and New York's Education Law Article 89 for more guidance on this topic).

In addition, to the maximum extent appropriate to their individual needs, eligible students with disabilities residing within the District and attending the District's public schools will be entitled to participate in District academic, co-curricular and extracurricular activities available to all other students enrolled in the District's public schools. Such co-curricular and extracurricular activities may include athletics, transportation, recreational activities, school-sponsored special interest groups or clubs, and referrals to agencies that provide assistance to individuals with disabilities and the employment of students (including both employment by the District and assistance in making outside employment available).

In providing a free appropriate public education to students with disabilities eligible under the IDEA and Article 89, the Board of Education will afford the students and their parents the procedural safeguard rights they are entitled to under applicable law and regulations. The Board also will provide them with notice of such rights as required by law and regulation, using the form prescribed by the Commissioner of Education.

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For purposes of this policy and others related to the provision of services to eligible students with disabilities, and consistent with applicable law and regulation, the word "***parent***" means a birth or adoptive parent, a legally appointed guardian generally authorized to act as the child's parent or authorized to make educational decisions for the child; a person in parental relationship to the child as defined in section 3212 of the Education Law; an individual designated as a person in parental relation pursuant to Title 15-A of the General Obligations Law, including an individual so designated who is acting in the place of a birth or adoptive parent (including a grandparent, stepparent, or other relative with whom the child resides; or a surrogate parent who has been appointed in accordance with Commissioner's Regulations.

Eligible students with disabilities will be entitled to special education and related services until the end of the school year in which they turn 21 or until they receive a local high school or Regent's diploma.

Students with disabilities may not be required to take medication as a condition for receiving a free appropriate public education.

To ensure the provision of a free appropriate public education to all eligible students with disabilities:

1. District staff will take steps to locate, identify, evaluate and maintain information about all children with disabilities within the District, including McKinney Vento children and children who are wards of the state, and children attending nonpublic school within the District (including religious schools), who are in need of special education.

2. The District will establish a plan and practice for implementing school-wide approaches and interventions in order to remediate a student's performance prior to referral for special education services. The District will provide general education support services, instructional modifications, multi-tiered systems of support (MTSS) and/or alternative program options to address a student's performance before referring the student to the Committee on Special Education (CSE). The school's Instructional Support Team (IST) will develop, implement and evaluate pre-referral intervention strategies (4321.2, School-wide Pre-referral Approaches and Interventions).

3. The Board of Education will appoint a Committee on Special Education (CSE), and, as appropriate, CSE subcommittees, to assure the timely identification, evaluation and placement of eligible students with disabilities.

4. The Board of Education will arrange for special education programs and services based upon the recommendation of the CSE or CSE subcommittee.

5. The Superintendent, or his/her designee, shall establish a plan for the recruitment, hiring and retention of staff appropriately and adequately prepared to meet the needs of students with disabilities including, but not limited to, highly qualified special education teachers.

6. The Superintendent, with the assistance of his/her designee, shall establish a comprehensive professional development plan designed to ensure that personnel necessary to carry out IDEA and Article 89 possess the skills and knowledge required to meet the needs of students with disabilities.

7. The Superintendent, along with his/her designee, will establish a process for ensuring that District staff understand the right of students with disabilities to access and participate in the same academic, co-curricular and extracurricular programs and activities as all other students enrolled in the District's public schools, to the maximum extent appropriate to their individual needs.

Locate and Identify Students with Disabilities

Annually, the District will locate and identify all students with disabilities who reside in the District and establish a register of such students who are entitled to attend the public schools of the District during the next school year, including students with disabilities who are McKinney Vento or wards of the State. The registry shall be maintained, in accordance with the requirements established in Commissioner's Regulations.

The Superintendent, in conjunction with the Director of Special Services, will determine what other activities might be appropriate to help locate and identify students with disabilities. These activities may include, but are not limited to, District residents being notified on the availability of special education programs and services and their right to access such services through the annual mailing of the District calendar, and publicizing such notice in the District newsletter (Brentwood Bulletin) and on the District's Web site (www.bufsd.org).

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Evaluation of Students with Disabilities

To initially determine a student's eligibility for a free appropriate public education under the IDEA and Article 89, the District will conduct a full evaluation of the student in accordance within legally prescribed time lines. As set forth in Commissioner's Regulations, the initial evaluation will include, at least, a physical examination, an individual psychological evaluation unless the school psychologist determines it unnecessary, a social history, an observation of the student in the student's learning environment to document the student's academic performance and behavior in the areas of difficulty, and other appropriate assessments or evaluations (including a functional behavioral assessment for a student whose behavior impedes his/her learning or that of others) to ascertain the physical, mental, behavioral and emotional factors that contribute to the suspected disabilities.

Once a student has been determined eligible to receive a free appropriate public education, the District will reevaluate the student with a disability whenever the student's parent requests a reevaluation, and when the District determines the educational and related services needs (including improved academic achievement and functional performance) of the child warrant a reevaluation.

However, a reevaluation must take place at least once every three (3) years, unless the student's parent and the District agree it is unnecessary.

Parental Consent for Student Evaluations

Before conducting any type of evaluation, District staff will take steps to obtain written informed consent from a student's parent, as required by applicable law and regulations. Staff also will keep a detailed record of those attempts and their results, including phone calls and correspondence, and any responses received.

1. If a parent refuses to give consent for an initial evaluation, or fails to respond to such a request, the parent will be given an opportunity to attend an informal conference and ask questions about the proposed evaluation. Unless the referral for evaluation is withdrawn, if the parent continues to withhold consent, the Board of Education may commence due process proceedings to conduct an initial evaluation without parental consent within the timelines established in Commissioner's Regulations.

2. If a parent refuses to give consent for a reevaluation, or fails to respond to such a request, District staff will proceed with the reevaluation without parental consent if it has engaged in documented reasonable efforts to obtain such consent and the parent has failed to respond.

3. If District staff is unable to obtain consent for the initial evaluation or reevaluation of a home schooled or a parentally placed nonpublic school student, the Board of Education will not commence due process proceedings to conduct the evaluation without parental consent and will consider the student as not eligible for special education.

Conduct of Evaluations

In conducting evaluations of students with disabilities, the District will use a variety of assessment tools and strategies, including parent-provided information, to gather relevant functional, developmental, and academic information for determining a student's eligibility for special education and related services, and the content of the student's individualized education program or individualized education services program or services plan in the case of nonpublic school students with disabilities (including information related to enabling the student to be involved in and progress in the general education curriculum).

The District also will assess a student in all areas of suspected disability, and the assessment and other evaluation used will not be discriminatory on a racial or cultural basis. In addition, students will be assessed in the student's native language, or other mode of communication, in the form most likely to yield accurate information on what the student actually knows and can do academically, developmentally, and functionally, unless it is not feasible to do so.

In the case of students suspected of having a specific learning disability, the District will follow the procedures established in Commissioner's Regulations.

The District will notify a student's parent of any determination that no additional data is needed and the reasons for such a determination. It will also inform the parent of his/her right to request an assessment, notwithstanding that determination.

Eligibility Determination

The CSE or CSE subcommittee will determine whether a student is eligible for special education and related services under the IDEA and Article 89, as well as the student's educational needs.

The CSE or CSE subcommittee may not determine that a student is eligible for special education and related services if the determining factor is lack of appropriate instruction in the essential components of reading, including phonemic awareness, phonics, vocabulary development, reading fluency (including oral reading skills), and reading comprehension strategies; or lack of appropriate instruction in math; or limited English proficiency.

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Committee on Special Education

The members of the CSE and CSE subcommittees will include those individuals identified in applicable law and regulations, and their attendance at CSE and CSE subcommittee meetings will be required except as otherwise provided in law and regulations.

The parent of a student with disabilities is one of the mandated CSE and CSE subcommittee members and as such has a right to participate in CSE and CSE subcommittee meetings concerning the identification, evaluation, educational placement, and the provision of a free appropriate public education to their child. District staff will take steps to ensure the parent's participation, in accordance with the following:

1. CSE and CSE subcommittee meetings will be scheduled at a time and place that is mutually agreeable to the parent and the District.

2. The parent will be given at least five (5) days notice of the time and place of a CSE or CSE subcommittee meeting, except as otherwise provided in law and regulation, along with notice of the purpose of the meeting, those who will attend (including name and title), and the parent's right to be accompanied to the meeting by a person(s) the parent considers to have knowledge and special expertise about their child.

3. The parent and the District may agree to use alternative means of participation at CSE meetings, such as videoconferences or telephone conference calls.

4. District staff will take any action necessary to ensure that the parent understands the proceedings at CSE meetings, including arranging for an interpreter for deaf parents or parents whose native language is other than English.

The CSE or CSE subcommittee may meet without a student's parent only if District staff has been unable to obtain either parent's participation and has a record of its attempts to arrange a mutually agreed upon time and place. Similarly, the CSE or CSE subcommittee may make a decision without the involvement of the student's parent only if District staff has been unable to obtain parental participation, even through the use of alternative means of participation, and has a record of its attempts to ensure parental involvement.

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Provision of Services:

The Board of Education will arrange for appropriate special education and related services recommended by the CSE or CSE subcommittee within 60 school days of the District's receipt of parental consent to evaluate a student not previously identified as a student with a disability, or within 60 school days of referral for review of a student with a disability, except as otherwise provided in law and regulations.

All staff responsible for the implementation of a student's individualized education program, or an individualized education services program or services plan in the case of parentally placed nonpublic school students with disabilities, will be provided information regarding those responsibilities (Refer to policy 4321.5 for more information on this topic).

Parental Consent for the Provision of Services:

The Board of Education acknowledges that parental consent for the initial evaluation does not constitute consent for placement for the provision of special education and related services. Therefore, District staff will take steps to obtain written informed consent for the initial provision of special education and related services to an eligible student. The Board will be precluded by applicable law and regulations from commencing due process proceedings to override the parent's refusal to provide such consent or override the parent's failure to respond to such a request.

Cross ref:
1900, Parental Involvement (Title I)
4000, Student Learning Objectives and District Instructional Goals
5500, Student Records
6700, Purchasing

Ref: The Individuals with Disabilities Education Act (IDEA), 20 USC §§1400 *et seq*.;
34 CFR Part 300
N.Y. Education Law Article 89, §§4401 *et seq.*
8 NYCRR Part 200

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